

## Meyer, John

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### PENALTIES (RCW 51.48.017)

#### Unreasonable delay – medical treatment

There is no statutory authority for imposition of a penalty based on a self-insured employer's unreasonable delay in providing medical treatment. ...***In re John Meyer***, BIIA Dec., 03 14702 (2004) [*Editor's Note*: The Board's decision was appealed to superior court under Pierce County Cause No. 06-2-09086-1. *Overruled, In re James Coston*, BIIA Dec., 11 12310 (2012).]

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS  
STATE OF WASHINGTON**

1 **IN RE: JOHN V. MEYER** ) **DOCKET NO. 03 14702**  
2 )  
3 **CLAIM NO. T-881938** ) **DECISION AND ORDER**  
4

5 **APPEARANCES:**

6  
7 Claimant, John V. Meyer, by  
8 Casey & Casey, P.S., per  
9 Gerald L. Casey

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11 Self-Insured Employer, Manke Lumber Company, Inc., by  
12 Groves & Groves, per  
13 Dennis G. Moynihan and James L. Groves, Lay Representatives

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15 The claimant, John V. Meyer, filed an appeal with the Board of Industrial Insurance Appeals  
16 on April 30, 2003, from an order of the Department of Labor and Industries dated March 7, 2003. In  
17 this order, the Department denied the claimant's request that a penalty be assessed against the  
18 self-insured employer for failing to provide necessary and proper treatment. The Department order  
19 is **AFFIRMED**.  
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22 style="text-align:center">**DECISION**

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24 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
25 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order  
26 issued on March 19, 2004, in which the industrial appeals judge affirmed the Department order  
27 dated March 7, 2003.  
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30 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that  
31 no prejudicial error was committed. The rulings are affirmed.  
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33 The issue presented by this appeal is whether the claimant is entitled to a penalty for the  
34 employer's alleged failure to provide necessary and proper treatment. We hold that he was not,  
35 and have granted review for the limited purpose of correcting a clerical error found on page 1, line  
36 26 of the Proposed Decision and Order. The language on line 26 indicated that the Department  
37 order of March 7, 2003, was reversed when, in fact, it was affirmed.  
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40 We agree with the summary of evidence as presented in the Proposed Decision and Order.  
41 Specifically, Mr. Meyer's attending physician, Donna E. Moore, M.D., was persuasive with respect  
42 to her description of the difficulty she had in obtaining authorization of medical treatment that she  
43 regarded as reasonable and necessary for Mr. Meyer. The insistence by the self-insured  
44 employer's administrator for increasingly lengthy and complex documentation had the practical  
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1 effect of denying treatment altogether. It is perhaps unfortunate that there is no provision in the law  
2 for a penalty in the event of an unreasonable delay or denial of appropriate medical treatment.  
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4 However, we do not believe that medical treatment is a benefit within the meaning of  
5 RCW 51.48.017. That section states,  
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7           If a self-insurer unreasonably delays or refuses to pay benefits as they  
8           become due there shall be paid by the self-insurer upon order of the  
9           director an additional amount equal to five hundred dollars or  
10          twenty-five percent of the amount then due, whichever is greater, which  
11          shall accrue for the benefit of the claimant and shall be paid to him with  
12          the benefits which may be assessed under this title. The director shall  
13          issue an order determining whether there was an unreasonable delay or  
14          refusal to pay benefits within thirty days upon the request of the  
15          claimant. Such an order shall conform to the requirements of  
16          RCW 51.52.050.  
17

18           The language of the above section implies a financial payment that inures to the advantage  
19 of the claimant. Although it is possible to determine the dollar value of medical treatment by  
20 reference to the Department fee schedule, it is unreasonable to conclude that medical benefits  
21 were being contemplated by the Legislature when it passed this section. The language, "the  
22 amount then due," strongly suggests time loss compensation or permanent partial disability award;  
23 something in money that is payable to the claimant. On balance, we have to agree with our  
24 industrial appeals judge that an employer's denial of medical treatment is outside the reach of  
25 RCW 51.48.017 as it relates to assessing a penalty against the employer for failing to authorize  
26 treatment.  
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31           We remind the parties that recourse is available when medical treatment is denied.  
32 RCW 51.32.055(6) states,  
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34           Where a dispute arises from the handling of any claim before the  
35           condition of the injured worker becomes fixed, the worker, employer, or  
36           self-insurer may request the department to resolve the dispute or the  
37           director may initiate an inquiry on his or her own motion. In these cases,  
38           the department shall proceed as provided in this section and an order  
39           shall issue in accordance with RCW 51.52.050.  
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41           Additional help may be found in RCW 51.32.190(6). This section states,  
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43           The director, upon his or her own initiative, may make such inquiry as  
44           circumstances require or is necessary to protect the rights of all the  
45           parties and he or she may enact rules and regulations providing for  
46           procedures to ensure fair and prompt handling by self-insurers of the  
47           claims of injured workers and beneficiaries.

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2 In particularly egregious situations, a worker may petition the Director to de-certify the  
3 self-insured employer under RCW 51.14.080 and RCW 51.14.090. Finally, a worker may appeal  
4 the denial of treatment to the Board of Industrial Insurance Appeals, arguing that his or her  
5 industrially related condition had not reached maximum medical improvement.  
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8 After consideration of the Proposed Decision and Order and the Petition for Review filed  
9 thereto, and a careful review of the entire record before us, we make the following:  
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11 **FINDINGS OF FACT**

- 12 1. On March 10, 1995, the Department of Labor and Industries received an  
13 application for benefits, alleging that the claimant, John V. Meyer,  
14 injured his back and neck on February 22, 1995, while in the course of  
15 his employment with the self-insured employer, Manke Lumber  
16 Company, Inc. The claim was allowed and benefits and treatment were  
17 provided.  
18

19 On March 7, 2003, the Department issued an order in which it denied  
20 the claimant's requested penalty for the self-insured employer's failure to  
21 provide necessary and proper treatment. On April 30, 2003, Mr. Meyer  
22 filed a Notice of Appeal. On May 16, 2003, the Board of Industrial  
23 Insurance Appeals issued an order granting the appeal, assigning  
24 Docket No. 03 14702, and directing that proceedings be held.  
25

- 26 2. On February 22, 1995, while Mr. Meyer was working for the self-insured  
27 employer, he was lifting a hood on machinery and felt something give in  
28 his back.  
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30 3. The February 22, 1995 industrial injury caused permanent impairment to  
31 Mr. Meyer's low back and resulted in three surgical procedures to his  
32 low back.  
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34 4. As of March 7, 2003, the self-insured employer had denied authorization  
35 for treatment, and has not paid for treatment provided by Mr. Meyer's  
36 attending physician, Donna E. Moore, M.D., that she believes was and  
37 is necessary and proper medical treatment.  
38

39 **CONCLUSIONS OF LAW**

- 40 1. The Board of Industrial Insurance Appeals has jurisdiction over the  
41 parties to and the subject matter of this appeal.  
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43 2. RCW 51.48.017 does not provide for a penalty for a self-insured  
44 employer's failure to provide or pay for necessary and proper medical  
45 treatment.  
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1 3. The Department of Labor and Industries' order dated March 7, 2003, is  
2 correct and is affirmed.  
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4 It is so **ORDERED**.

5 Dated this 16th day of June, 2004.  
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7 BOARD OF INDUSTRIAL INSURANCE APPEALS  
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11 /s/ \_\_\_\_\_  
12 THOMAS E. EGAN Chairperson  
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16 /s/ \_\_\_\_\_  
17 FRANK E. FENNERTY, JR. Member  
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21 /s/ \_\_\_\_\_  
22 CALHOUN DICKINSON Member  
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