

## **Cowley, Neil**

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### **SANCTIONS**

#### **\*Deadline to pay sanctions**

Absent a stated deadline, the Board and its judges should include "date payable by" language in orders awarding sanctions. ....***In re Neil Cowley, Order Denying Motion for Further Monetary Sanctions, BIIA Dec., 20 10532 (2021)*** [Editor's Note: The Board's decision was appealed to superior court under Snohomish County Cause No. 22-2-00989-31]

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

1     **IN RE: NEIL J. COWLEY**                     )     **DOCKET NO. 20 10532**  
2   )  
3   )  
4   )  
5     **CLAIM NO. SL-80253**                     )     **ORDER DENYING MOTION FOR FURTHER**  
6   )     **MONETARY SANCTIONS**

7             Claimant Neil Cowley moves us to impose further monetary sanctions against the employer,  
8     The Boeing Company, for its claimed unreasonable delay in paying previously imposed monetary  
9     sanctions. Because we have no authority to grant the relief Mr. Cowley seeks, his Second Motion to  
10    Sanction Employer is **DENIED**.

**DISCUSSION AND DECISION**

**Background Facts**

15             Following a hearing, Industrial Appeals Judge Lance Palmer issued a Proposed Decision and  
16     Order affirming the Department's order rejecting Mr. Cowley's claim that he had suffered an industrial  
17     injury or occupational disease. Judge Palmer also imposed sanctions of \$5,299.86 against Boeing  
18     for contacting Mr. Cowley's attending physician without his knowledge or permission, in violation of  
19     RCW 51.52.063. The monetary amount represented the reasonable expenses and attorney fees  
20     Mr. Cowley incurred in establishing the violation. Judge Palmer's proposed decision included no due  
21     date for payment of the sanctions. Both parties petitioned for review of the decision. In a  
22     September 13, 2021 order, we denied the petitions and adopted the Proposed Decision and Order  
23     as our decision and order. Neither party appealed our order.

24             On December 1, 2021, over two-and-a-half months after we issued our order, Mr. Cowley  
25     brought this motion, asserting that Boeing had not yet paid our earlier sanction and had failed to  
26     respond to his October 20, 2021 inquiry about payment. Mr. Cowley suggests we can sanction  
27     Boeing under RCW 51.48.017, the provision relating to a self-insured employer's unreasonable delay  
28     in paying benefits. He asks for additional sanctions of \$1,714.50, which includes a \$1,000 penalty  
29     plus \$714.50 in attorney fees. In opposition to the motion, Boeing contends that Mr. Cowley never  
30     contacted it in October about payment, and that its payment of a monetary sanction imposed by us  
31     can never be delinquent because no statute or rule provides a deadline for payment. It argues that  
32     we have no authority to impose a further sanction in any event. Finally, it asserts that it paid the  
33     sanction on December 7, 2021.

1 **Delayed payment of sanctions**

2 Mr. Cowley suggests we can award him further monetary sanctions pursuant to  
3 RCW 51.48.017, which authorizes the Department to impose penalties against a self-insured  
4 employer who unreasonably delays or refuses to pay benefits as they become due. We disagree.  
5 The unreasonable delay provision grants no authority to the Board to award sanctions against an  
6 employer for delayed payment of sanctions.  
7

8  
9  
10 Boeing paid the sanctions only after Mr. Cowley filed a further motion to obtain the award. But  
11 as Boeing has pointed out, Judge Palmer's Proposed Decision and Order, which we adopted,  
12 included no date by which it was required to pay the sanctions. Boeing paid the sanctions promptly  
13 once Mr. Cowley moved for further sanctions for its delay.  
14

15 **Our future sanctions orders should include payment deadlines**

16  
17 Mr. Cowley's motion causes us to appreciate that we can do more to encourage parties' prompt  
18 compliance with our orders awarding monetary sanctions. Prospectively, we will endeavor to include  
19 "date payable by" language in our orders awarding monetary sanctions. We will encourage our  
20 industrial appeals judges to do the same. Finally, by this order, we encourage parties seeking  
21 monetary sanctions in the future to ask for "date payable by" language in their motions.  
22  
23

24 **CONCLUSION**

25  
26 For the above reasons, we deny Mr. Cowley's Second Motion to Sanction Employer.

27 Dated: February 2, 2022.  
28

29 BOARD OF INDUSTRIAL INSURANCE APPEALS

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31 MARK JAFFE, Chairperson Pro Tem

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33 ISABEL A. M. COLE, Member

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35 JACK S. ENG, Member  
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