



California Workers' Compensation Institute

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DECEMBER 22, 2016

SIGNIFICANT DECISION 16-07

REBECCA GAGE v WCAB

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
C081618

FILED: NOVEMBER 22, 2016
PUBLISHED: DECEMBER 21, 2016

Penalties under §5814 may be imposed against public employers who unreasonably delay advanced disability pension payments due under §4850.3 and §4850.4.

Significance: This case represents another step in the expansion of WCAB jurisdiction over employment and disability benefits provided to local safety officers.

Facts: Applicant, a deputy sheriff in Sacramento County, sustained an on-the-job injury and applied for industrial disability retirement. While her retirement application was being processed, she requested §4850.4 advanced disability pension payments in March 2015, which the County failed to pay until July 2015. During that time, applicant sought penalties under §5814 for unreasonable delay. Following trial, WCJ Dudley Phenix ruled that because §4850.4 advanced disability pension payments constituted “compensation” under §3207, penalties under §5814 were available for an unreasonable delay (the question of actual liability for any penalty was deferred).

The County filed for Removal, contending that because the WCAB had no jurisdiction to award advanced disability pension payments in the first place, it also had no jurisdiction to award any penalty related to those benefits. In a 2-1 panel decision, the Appeals Board agreed with the County, holding that advanced disability retirement payments are not equivalent to workers’ compensation benefits; the dissent by Commissioner Sweeney opined that the County had the obligation to pay §4850.4 benefits and thus the WCAB had jurisdiction to enforce that payment through §5814 penalties. Applicant filed for review.

Holding: The Court of Appeal reversed the decision of the Appeals Board, finding in favor of applicant and holding that “compensation” as defined by §3207 includes advanced disability pension payments because those payments are provided for in Division 4. Thus, the Court remanded the case for a determination of whether §5814 penalties are appropriate in this case.

Discussion: The decision in this case turned on the question of whether advanced disability pension payments qualify as “compensation.” On appeal, the County had argued that prior case law held that delayed payment of similar §4850 benefits (providing a leave of absence without loss of pay to certain disabled law enforcement officers in lieu of temporary disability payments) is not subject to a §5814 penalty. The County contended that disability pension advances are neither workers’ compensation benefits nor paid in lieu of workers’ compensation benefits, and thus are not subject to penalties under §5814.

But in its decision, the Court of Appeal referenced more recent case law holding that §5814 penalties could be applied to §4850 benefits. The Court of Appeal pointed out that the WCAB’s powers under §4851 to govern §4850 benefits have steadily increased, and now include the authority to determine the amount of §4850 benefits as well as jurisdiction to award and enforce §4850 payments. While there is a specific provision in §4851 expressly granting the WCAB jurisdiction to award benefits under §4850 (but no corresponding statute granting similar jurisdiction as to benefits under §4850.4), the advanced disability pension payments are limited to “any local safety officer who has qualified for benefits under §4850 and is approved for disability allowance.” Thus, by extension, in the absence of any evidence of legislative intent *not* to allow penalties, and with the support of the general rule of liberal construction under §3202, the Court of Appeal ruled that advanced disability payments are compensation and subject to penalties under §5814.

In summary, the Court of Appeal has determined that advanced disability pension payments are compensation under Division 4; because §4850.4 benefits replace §4850 benefits, and because §4850 benefits are paid in lieu of temporary disability payments, §4850.4 benefits are likewise intended to serve the same purpose as workers’ compensation benefits. As such, penalties for unreasonable delay or refusal to pay may be available at the WCAB to enforce such payment.

The decision from the Court of Appeal on November 22, 2016, was originally not certified for publication. Following a request for publication from the Unpublished Workers’ Compensation Cases Review Committee, the court ordered publication on December 21, 2016. As a published decision, this case may now be cited and relied upon in other cases.

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