

Cowley, Neil

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

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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.
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24 **CONCLUSION**

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

27 Dated: February 2, 2022.

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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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