
In the Matter of the Compensation of
ANTHONY D. CAYTON, Claimant
WCB Case No. 06-00923
THIRD ORDER ON REMAND
Fontana & Takaro, Claimant Attorneys
Maher & Tolleson LLC, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

In our April 13, 2011 and March 25, 2011 Orders on Remand, we awarded claimant a penalty under ORS 656.268(5)(d) and affirmed an Administrative Law Judge's (ALJ's) attorney fee award pursuant to ORS 656.382(1). Noting that our order neglected to refer to the ALJ's Order on Reconsideration and asserting that his counsel is entitled to an attorney fee award for services rendered on appeal and remand, claimant seeks reconsideration.

First, we address claimant's request for an attorney fee award for his counsel's services before all appellate forums regarding the "penalty-related" attorney fee issue. Relying on ORS 656.388(1), he contends that, because he finally prevailed after remand from the court, his counsel is entitled to a fee for services performed in all prior forums. We have previously rejected such an argument, reasoning that we are not authorized to award an attorney fee under ORS 656.382(1) for services rendered in securing a penalty or penalty-related attorney fee. *Anthony D. Cayton*, 63 Van Natta 54, 63, *recons*, 63 Van Natta 266, 267 (2011).

Turning to claimant's second contention, we acknowledge that our prior orders omitted a reference to the ALJ's June 12, 2006 Order on Reconsideration. To correct this oversight, we replace the final paragraph of our previous orders with the following paragraph.

Accordingly, on remand, the ALJ's order dated May 12, 2006, as reconsidered, June 12, 2006, is reversed in part and affirmed in part. Claimant is awarded a 25 percent penalty under ORS 656.268(5)(d), to be based on the amount determined to be due at claim closure. The remainder of the ALJ's order is affirmed.

Consequently, we withdraw our previous orders. On reconsideration, as supplemented, we republish our April 13, 2011 order. The parties' rights of appeal shall begin to run from the date of this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on May 6, 2011