Supreme Court Case No. 96879-9
Court of Appeals Case No. 51143-6-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

MASCO CORPORATION, Petitioner,

vs.

ALFREDO SUAREZ, Respondent

PETITION FOR REVIEW

Gress, Clark, Young & Schoepper
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I. INTRODUCTION

The Court of Appeals' decision holds that RCW 51.52.050(2)(b) is clear on its face and requires an employer to pay benefits pending a Board of Industrial Insurance Appeals' (Board) decision on a Motion for Stay of Benefits. *Masco*, No. 51143-6-II. As reasoned by the Court of Appeals, the employer has other ways of recouping these benefits if the stay is granted and therefore it is clear. The reasoning in this decision is in direct conflict with express language of the other relevant statutes.

The Court of Appeals is required to interpret statutes to effectuate the Legislature's intent. Instead, the Court of Appeals has elected to not consider the Legislature's intent and justify the penalties to the employer by creating more ambiguity within Title 51. The Court of Appeals' interpretation of RCW 51.52.050(2)(b) is a procedural due process violation which deprives the employer of property prior to due process. By holding that the employer must pay benefits pending an appeal prior to an adjudicative decision on its statutory right to seek a Motion for a Stay of Benefits, the Court of Appeals has unconstitutionally taken the self-insured employer's property rights without due process. This makes this case a significant question of law under the Constitution of the United States and should be under review by the Supreme Court under RAP 13.4(b)(3).

This is not just about the singular penalty to one employer. The Court of Appeals through its interpretation of RCW 51.52.050(2)(b) has fundamentally changed the meaning of RCW 51.32.240(3) and RCW 51.44.142. This statute in its current iteration has never been litigated before the courts and to completely ignore the canons of statutory interpretation and muddying the reimbursement avenues has opened the potential for substantially more litigation. The scope and impact of the Court's decision makes this case a matter of substantial public interest, warranting review under RAP 13.4(b)(4).

II. IDENTITY OF PETITIONER

Masco Corp., by and through its attorney, Rebecca K. Corcoran, respectfully requests the Supreme Court to review the published decision of Division II of the Court of Appeals referred to in Section II below. Masco Corp. Plaintiff and Respondent, is the Petitioner.

III. COURT OF APPEALS' DECISION

The Superior Court of Clark County determined the employer, Masco, was entitled to defer payment of benefits until the Board had acted upon the Motion for a Stay of Benefits and even if the benefits were due, that Masco had a genuine legal doubt as to its obligation to pay such benefits based upon the lack of case law interpreting the statute. Alfredo

Suarez and the Department of Labor and Industries (Department) appealed the decision to the Court of Appeals, Division II. On January 23, 2019, a three-judge panel reversed the trial court's order in a published decision, *Masco Corp v. Alfredo Suarez*, 51143-6, (Jan. 23, 2019). A copy of the Appellate Court's decision is attached as Appendix 1.

IV. ISSUES PRESENTED FOR REVIEW

Masco respectfully requests that this Court review the following issues:

1. Does RCW 51.52.050 require that a self-insured employer pay benefits while a Motion for Stay of Benefits is pending?
2. Where there is more than one reasonable interpretation of the plain language of a statute and there is no clearly established interpretation, does this give rise to a genuine doubt of the requirement to pay benefits?
3. Did the employer here have genuine legal doubt as to its obligation to pay benefits, making a penalty under RCW 51.42.017 unwarranted?

V. STATEMENT OF THE CASE

On December 19, 2014, the Department of Labor and Industries (Department) ordered Masco to pay time loss compensation benefits for the period of October 11, 2013, through December 10, 2014. Masco

timely appealed this order to the Board and filed a Motion to Stay Payment of Benefits while the appeal was pending.

On February 25, 2015, the Board denied Masco's Motion for a Stay of Benefits. Masco paid the claimant $27,647.91 for time loss compensation within five business days of receiving notice of the Board's decision.

On August 25, 2015, the Department ordered Masco to pay $6,911.01, the statutory rate of 25% of the total time loss compensation award to Suarez, as a penalty for delaying payments. Masco appealed this to the Board.

At the Board hearing, Sheryl Whitcomb, the penalty adjudicator, testified that "until or unless a stay is granted, benefits are due." Board Transcript (Whitcomb) at 21. Ms. Whitcomb additionally testified that there was no specific language in the RCW stating that benefits must be paid prior to the Board ruling on a Motion for a Stay of Benefits and because of this ambiguity an administrative rule interpreting the RCW had to be issued in January of 2015 to bring clarity to the statute. Board Transcript (Whitcomb) at 24-25. The Superior Court reversed the Board decision and concluded that Masco was entitled to defer payment of benefits until the Board had acted upon the Motion for a Stay of Benefits

and even if the benefits were due, that Masco had a genuine legal doubt as to its obligation to pay such benefits based upon the lack of case law interpreting the statute. The Court of Appeals, Division II, reversed the trial court. The Court of Appeals held that RCW 51.52.050(2)(b) is clear that payments become due when ordered by the Department and therefore Masco unreasonably delayed making payments. The Court of Appeals reinstated the penalty award and determined that Suarez was entitled to an award of attorney's fees pursuant to RCW 51.52.130(1) and RAP 18.1(a).

VI. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. The Court of Appeals' Decision Conflicts with Principles of Statutory Construction

The Court of Appeals cites to *Blomstrom v. Tripp*, 189 Wn.2d 379, 390, 402 P.3d 831 (2017) as a guideline for statutory interpretation. While this is an accurate portrayal of statutory interpretation, the Court of Appeals fails to resort to canons of construction and legislative history when "the statute remains ambiguous or unclear". *Blomstrom*. This is contrary to the primary goal for the Court is to carry out legislative intent. *Taylor v. Nalley's Fine Foods*, 119 Wn.App. 919, 923, 83 P.3d 1018 (Div. 2, 2004).

It is clearly a policy goal of the legislature to avoid a statutory scheme that incentivizes employers to use the appeal process in bad faith for the sole purpose of delaying the payment of benefits that have been ordered. However, the legislature has granted a mechanism for an employer to request a stay, undoubtedly recognizing that there are circumstances in which a stay of benefits pending appeal is appropriate. An expedited time frame specific to such a motion was also provided in the statute, presumably to minimize the effects this type of motion may have on a claimant before the Board has had a chance to rule on it. The expedited time frame demonstrates an intent to provide a relatively quick decision on the issue of stay prior to a ruling on the merits. By its unrealistic and unworkable interpretation of this statute, the Court of Appeals has chosen to entirely render moot that part of the statute which allows for the Board to grant a Motion to Stay Benefits. Statutes must not be construed in a way that would lead to an unrealistic interpretation. *Dep't of Labor & Indus. v. Granger*, 159 Wn.2d 752, 757, 153 P.3d 839 (2007). Under the Court of Appeals' interpretation, an employer cannot possibly seek and receive a stay within the 14-day time frame allowed for payment by agency rule following the issuance of an order. To read RCW 51.52.050(2)(b) to mean that benefits must be paid within 14 days of the date of an order granting benefits, regardless of whether the employer

chooses to seek a stay of those benefits, renders the stay procedure provided by the legislature moot and frustrates its purpose. Such a reading is inconsistent with the basic tenants of statutory construction.

2. The Court of Appeals' Ruling is Contrary to the Express Language of other Title 51 Statutes

The Court of Appeals' decision indicates that if the Board grants a stay of benefits, the employer is able to recover payments under RCW 51.32.240(3). *Masco Corp. v. Alfredo Suarez,* No. 51143-6 (Jan. 23, 2019) at 7. RCW 51.32.240(3) states that "[w]henever the *Department* issues an order rejecting a claim for benefits. . . the recipient thereof shall repay such benefits." (emphasis added). The Court of Appeals' opinion indicates that the employer is allowed to recoup payments under RCW 51.32.240(3) if the Board grants the stay. This is contrary to the language of the statute. Even assuming that the Board grants a stay of benefits, the Department is still defending the underlying order at issue. The employer is not allowed to recover benefits under RCW 51.32.240(3) unless the Department issues the order reversing those benefits. The Court of Appeals interchanges a Board granting a stay with a Department order, when these are fundamentally different entities.

The Court of Appeals further indicates that RCW 51.44.142 will allow the employer to recover funds under RCW 51.32.240(3). This is contrary to the language of RCW 51.44.142. The Self-Insured Employer Overpayment Recovery Reimbursement Fund may only be used for reimbursing self-insured employers for benefits overpaid during the pendency of Board or court appeals. This is explicitly different from the language of RCW 51.32.240(3) which explicitly deals with the Department reversing its own decision. The overpayment recovery fund is only available to benefits paid pending appeal. The Court of Appeals creates a limbo where the benefits paid while waiting for the Board to adjudicate the Motion for Stay of Benefits are both benefits pending appeal and not benefits pending appeal. If they are do not qualify for a stay, it becomes unclear if they would qualify for the overpayment recovery reimbursement fund.

If a Motion for Stay of Benefits is granted pending appeal, these funds are forfeited because they will not qualify for recoupment under RCW 51.44.142 or RCW 51.32.240(3). If these statutes were designed to allow the immediate reimbursement of funds paid pending a Motion for Stay of Benefits, as the Court of Appeals erroneously indicates, the Supreme Court needs to clarify that interpretation.

B. The Court of Appeals' interpretation of RCW 51.52.050(2)(b) inherently violates the self-insured employer's due process rights protected by the Constitution

The Court of Appeals' decision on how to interpret the payment pending appeal portion of RCW 51.52.050 is a procedural due process violation that infringes on the employer's property rights that are protected under the United States Constitution. "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law." *U.S. Const. amend.* XIV, § 1. By arguing that the employer must pay benefits pending an appeal prior to an adjudicative decision on its statutory right to seek a Motion for a Stay of Benefits, the Court of Appeals has unconstitutionally taken the self-insured employer's property rights without the due process it is afforded under the correct interpretation of RCW 51.52.050(2)(b). Specifically here, it was ultimately decided that the claimant was not entitled to benefits. Masco is now being assessed a penalty for delaying benefits, later determined not owed, while it exercised its statutory right to stay benefits upon appeal.

VII. CONCLUSION

Masco respectfully requests that review be granted because the Court of Appeals' decision runs contrary to the legislative intent of the statute. The Court of Appeals' decision has not only refused to engage in proper statutory interpretation for RCW 51.52.050, but has also redefined the meaning of RCW 51.32.240 and RCW 51.44.142 contrary to their express language. The scope of this Court's decision presents a matter of substantial public interest and a question of constitutional law under RAP 13.4(b)(3) and RAP 13.4(b)(4). The Court's review will ensure that the legislative intent of RCW 51.52.050 is applied and clarity of the interplay of these statutes is achieved.

Filed
Washington State
Court of Appeals
Division Two

January 23, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

MASCO CORPORATION, Respondent, v. ALFREDO SUAREZ, Appellant.	No. 51143-6-II PUBLISHED OPINION

MELNICK, J. – Alfredo Suarez appeals the superior court's reversal of a $6,911.01 penalty awarded to him. The Department of Labor and Industries (L&I) imposed the penalty against Masco Corporation for delayed payments of time loss compensation benefits. The Board of Industrial Insurance Appeals (the Board) affirmed.

The superior court reversed, concluding that the payments were not due until the Board decided Masco's motion for a stay of benefits and that Masco did not unreasonably delay paying the benefits. Suarez appeals. L&I joins Suarez's appeal.

We conclude that under RCW 51.52.050(2)(b), payments to Suarez became due when ordered by L&I, and that Masco unreasonably delayed making payments. Accordingly, we reverse the superior court's order and reinstate the penalty award.

FACTS[1]

Suarez worked as an insulation installer for Masco, a self-insured employer. On June 27, 2012, Suarez received an on-the-job injury. Suarez could not work for several months and received time loss compensation benefits. Suarez then attempted to return to work part time, on light duty. By October 2013, Suarez felt he could no longer work because of his injuries. He filed a claim with L&I.

On December 19, 2014, L&I ordered Masco to pay time loss compensation benefits for the period of October 11, 2013 through December 10, 2014. On January 30, 2015, Masco appealed this order to the Board and filed a motion to stay payment of benefits while the appeal was pending.

On February 25, the Board denied Masco's motion for a stay of benefits. Masco received notice of the Board's decision on February 27. On March 5, five business days later, Masco paid Suarez $27,647.91 for time loss compensation for October 2013 through December 2014.

On August 25, L&I ordered Masco to pay $6,911.01, the statutory rate of 25 percent of the total time loss compensation award to Suarez as a penalty for delaying payments.[2] Masco appealed this order to the Board.

At the Board hearing, Sheryl Whitcomb, L&I's penalty adjudicator, testified that "until or unless a stay is granted, benefits are due." Board Transcript (Whitcomb) at 21. The Board affirmed L&I's order, concluding "[Masco] unreasonably delayed in the payment of benefits when due." Board Record at 30. Masco appealed to the superior court. The superior court reversed the Board, concluding, "[Masco] is entitled to defer payment of . . . benefits until [the Board] has

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[1] The majority of the facts are taken from *Suarez v. Masco Corp.*, No. 50566-5-II (Wash. Ct. App. Aug. 9, 2016) (unpublished), http://www.courts.wa.gov/opinions.

[2] RCW 51.48.017.

acted upon the Motion for a Stay of Benefits." Clerk's Papers (CP) at 72. The court also concluded that "[Masco] timely filed an appeal to [the Board] . . . and timely filed a Motion for a Stay of Benefits. As such, the benefits were not due and payable until [Masco] received [the Board's] order denying the Motion for a Stay of Benefits which was February 27, 2015." CP at 72. Lastly, the court concluded,

> [Masco] did not unreasonably delay the payment of benefits ordered by [L&I] in that the benefits were not due and payable until the order denying the Motion for a Stay of Benefits was received by [Masco]. Even if benefits were due . . . prior to . . . the Board's order, . . . [Masco] had a genuine legal doubt as to its obligation to pay such benefits based upon the lack of case law interpreting the statute.

CP at 72.

Suarez now appeals the reversal of his penalty award.[3]

ANALYSIS

Suarez and L&I contend that the superior court erred in reversing Suarez's penalty award because benefits were due while Masco's motion for a stay of benefits was pending before the Board and Masco unreasonably delayed in paying those benefits. We agree.

I. STANDARD OF REVIEW

On an appeal under the Industrial Insurance Act (IIA), title 51 RCW, our review is limited to the superior court's decision, not the Board's decision. RCW 51.52.140. "The statutory scheme results in a different role for this court than is typical for appeals from administrative decisions." *Hendrickson v. Dep't of Labor & Indus.*, 2 Wn. App. 2d 343, 351, 409 P.3d 1162, *review denied*, 190 Wn.2d 1030 (2018). Rather than sitting in the same position as the superior court, "we review only 'whether substantial evidence supports the trial court's factual findings and then . . . whether

[3] Subsequently, a superior court jury ruled in Masco's favor on the merits of the L&I claim and found Suarez was not entitled to benefits for this period. *Suarez*, noted at 4 Wn. App. 2d 1025, at 2. We affirmed. *Suarez*, noted at 4 Wn. App. 2d 1025, at 1.

the trial court's conclusions of law flow from the findings.'" *Hendrickson*, 2 Wn. App. 2d at 350 (internal quotation marks omitted) (quoting *Rogers v. Dep't of Labor & Indus.*, 151 Wn. App. 174, 180, 210 P.3d (2009)). We review conclusions of law de novo. *Sunnyside Valley Irrig. Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003). Additionally, "[s]tatutory interpretations are questions of law reviewed de novo." *Kustura v. Dep't of Labor & Indus.*, 169 Wn.2d 81, 87, 233 P.3d 853 (2010).

II. INDUSTRIAL INSURANCE ACT

Under the IIA, an on-the-job injury is generally compensable if it occurs during the course of employment and the claimant establishes a causal relationship between the injury and the condition for which compensation is sought. RCW 51.04.010; *Goyne v. Quincy-Columbia Basin Irrig. Dist.*, 80 Wn. App. 676, 682, 910 P.2d 1321 (1996). The purpose of the IIA, is to provide "sure and certain relief for workers, injured in their work . . . regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation." RCW 51.04.010. "To effectuate this purpose, the IIA sets forth in detail when an injured worker is entitled to compensation and the amount of compensation the worker is entitled to receive." *Birrueta v. Dep't of Labor & Indus.*, 186 Wn.2d 537, 543, 379 P.3d 120 (2016).

An employer secures payment of compensation by insuring such payments with the state fund or by self-insuring. RCW 51.14.010. In the case of a self-insured employer, like Masco, the injured employee files an application for compensation with the employer. RCW 51.28.020(1). Either the self-insured employer or injured worker may request a determination by L&I whether compensation is required. RCW 51.32.195.

III. RCW 51.52.050(2)(b)

If L&I awards time loss compensation benefits, its order "shall become effective and benefits due on the date issued." RCW 51.52.050(2)(b). Any aggrieved party has a right to dispute the decision. RCW 51.52.050(2)(a). A self-insured employer may appeal an L&I order to the Board. RCW 51.52.050(2)(a). "[I]f the department order is appealed the order shall not be stayed pending a final decision on the merits unless ordered by the board." RCW 51.52.050(2)(b). "Any employer may move for a stay of the order on appeal, in whole or in part." RCW 51.52.050(2)(b).

The legislature has established timelines for the stay. An employer must seek a stay within 15 days of the order granting appeal. RCW 51.52.050(2)(b). The Board will then "conduct an expedited review" of L&I's claim file as it existed on the date of L&I's order and will issue a final decision on the stay "within twenty-five days of the filing of the motion for stay or the order granting appeal, whichever is later." RCW 51.52.050(2)(b). The Board will grant a stay if it believes the employer will more likely than not prevail in the appeal. RCW 51.52.050(2)(b).

At issue in this appeal is whether benefits must be paid while the Board considers a motion to stay benefits under RCW 51.52.050(2)(b).

If a statute's meaning is plain on its face, we give effect to that meaning as an expression of legislative intent. *Blomstrom v. Tripp,* 189 Wn.2d 379, 390, 402 P.3d 831 (2017). In reviewing whether the statute's meaning is plain on its face, "we consider the text of the provision, the context of the statute in which the provision is found, related provisions, amendments to the provision, and the statutory scheme as a whole." *State ex rel. Banks v. Drummond*, 187 Wn.2d 157, 170, 385 P.3d 769 (2016). If "after this inquiry, the statute remains ambiguous or unclear, it is appropriate to resort to canons of construction and legislative history." *Blomstrom*, 189 Wn.2d at 390. "All

doubts as to the meaning of the Act are to be resolved in favor of the injured worker." *Clauson v. Dep't of Labor & Indus.*, 130 Wn.2d 580, 584, 925 P.2d 624 (1996).

Here, RCW 51.52.050(2)(b) clearly states that if benefits are ordered, the benefits shall not be stayed pending a final decision on the merits "unless ordered by the board." Only the Board can order a stay of the payment of benefits. Benefits are payable unless the Board orders otherwise. Thus, benefits are payable while the Board is considering a motion to stay benefits.

L&I and the Board also interpret this statute as requiring the payment of benefits until a stay of benefits is granted during the appeal process. The Board's interpretation of the IIA, while not binding upon this court, "is entitled to great deference." *Weyerhaeuser Co. v. Tri*, 117 Wn.2d 128, 138, 814 P.2d 629 (1991). Designated as a "significant decision" by the Board,[4] *In re Suarez*, decided that "RCW 51.52.050(2)(b), when taken together with the liberal construction of the Act found in RCW 51.12.010, require[d] the payment of benefits pending appeal and pending a motion to stay benefits. The statute is unambiguous." No. 15 20822, at 5 (Wash. Bd. Indus. Ins. Appeals Nov. 21, 2016), http://www.biia.wa.gov/SDPDF/1520822.pdf.

Moreover, a plain reading of the statutory language as requiring payments during the consideration of a motion to stay benefits supports the purpose of the IIA. The IIA mandates that it be liberally construed in favor of the injured worker, and that it should be interpreted to minimize the suffering and economic loss that arises from injuries in the course of employment. RCW 51.12.010; *Cowlitz Stud Co. v. Clevenger*, 157 Wn.2d 569, 573, 141 P.3d 1 (2006).

The legislature recognized the need to balance both the employee's and employer's interests by including a timeline for a motion to stay. RCW 51.52.050(2)(b). Once an employer has made a motion to stay, the Board is required to "conduct an expedited review" of L&I's claim

[4] The Board publishes its significant decisions and makes them available to the public.

file as it existed on the date of L&I's order and will issue a final decision on the stay "within twenty-five days of the filing of the motion for stay or the order granting appeal, whichever is later." RCW 51.52.050(2)(b).

Masco argues that self-insured employers will be penalized for exercising their right to move for a stay of benefits by being required to pay benefits while it awaits a Board decision. However, RCW 51.32.240(3) states that "[w]henever the department issues an order rejecting a claim for benefits, . . . after it has been paid by a self-insurer, . . . the recipient thereof shall repay such benefits." Thus, an employer is allowed to recoup payments under RCW 51.32.240(3) if the Board grants the stay.[5]

Based on RCW 51.52.050(2)(b)'s plain language, we conclude that L&I-ordered benefits to Suarez must have been paid while Masco's motion for a stay of benefits was pending before the Board. This conclusion is in harmony with the purpose of the IIA to provide sure and certain relief for workers and in harmony with the requirement that the IIA be liberally construed in favor of the injured worker. We next turn to the issue of whether Masco unreasonably delayed making payments.

IV. UNREASONABLE DELAY

Under the IIA's penalty statute, if a self-insured employer "unreasonably delays or refuses to pay benefits as they become due" to an injured worker, L&I must issue a penalty to the employer. RCW 51.48.017. The penalty is five hundred dollars, or 25 percent of the amount due, whichever is greater. RCW 51.48.017.

[5] If the claimant is unable to pay, the employer can obtain reimbursement from a special fund. RCW 51.44.142.

Here, the court concluded,

> [Masco] did not unreasonably delay the payment of benefits ordered by [L&I] in that the benefits were not due and payable until the order denying the Motion for a Stay of Benefits was received by [Masco]. Even if benefits were due . . . prior to . . . the Board's order, . . . [Masco] had a genuine legal doubt as to its obligation to pay such benefits based upon the lack of case law interpreting the statute.

CP at 72. As discussed above, we review conclusions of law de novo. *Dickie*, 149 Wn.2d at 880.

In *Taylor v. Nalley's Fine Foods*, 119 Wn. App. 919, 926, 83 P.3d 1018 (2004), we addressed the unreasonable delay language in RCW 51.48.017. There, the employer claimed it did not have enough information regarding Taylor's medical condition to pay benefits. *Taylor*, 119 Wn. App. at 926-27. The employer then waited over six months before paying benefits. *Taylor*, 119 Wn. App. at 927. The trial court granted summary judgment in favor of the employer. *Taylor*, 119 Wn. App. at 921.

On review, we held that "unreasonable delay turns on whether the employer possessed a genuine doubt from a legal or medical standpoint as to who was liable for benefits." *Taylor*, 119 Wn. App. at 926 (discussing *In re Madrid*, Nos. 860224–A, 860226–A, and 860228–A, at 3-4 (Wash. Bd. of Indus. Ins. Appeals, Sept. 4, 1987), http://www.biia.wa.gov/SDPDF/860224-A.pdf). And that genuine issues existed as to whether there was medical documentation to support an award of benefits. *Taylor*, 119 Wn. App. at 927. We remanded the matter to the trial court for a determination of whether the delay was unreasonable. *Taylor*, 119 Wn. App. at 927.

Our case is distinguished from *Taylor* because we have the benefit of RCW 51.52.050(2)(b), which went into effect in 2008. LAWS OF 2008, ch. 280 § 1. As discussed above, the plain language of RCW 51.52.050(2)(b) clearly states that if benefits are ordered, the benefits "shall not be stayed pending a final decision on the merits unless ordered by the board." Only the Board can order a stay of the payment of benefits. In other words, benefits are payable up until

the time of a Board order. Thus, benefits are payable while the Board is considering a motion to stay benefits. The meaning of the statue is clear.

Under RCW 51.32.190(3), where temporary disability compensation is payable, as is the case here, "the first payment thereof shall be made within fourteen days after notice of claim." L&I ordered Masco to pay Suarez compensation on December 19, 2014. Masco did not pay until March 5, 2015.

This 77-day delay would be unreasonable because Masco was required to pay within 14 days. Accordingly, the trial court erred in concluding that Masco did not unreasonably delay the payment of benefits ordered by L&I.[6]

We hold that under RCW 51.52.050(2)(b), payments are due when ordered by L&I. Accordingly, the superior court erred in deciding benefits were not due and payable while Masco's motion for a stay of benefits was pending before the Board. The superior court further erred in deciding Masco did not unreasonably delay payment of benefits. We reinstate the penalty award.

V. ATTORNEY FEES

Suarez requests attorney fees on appeal based on RCW 51.52.130(1). Under RAP 18.1(a), this court may grant a party its attorney fees on appeal when an applicable law allows. RCW 51.52.130(1) requires a court to award a worker attorney fees if he or she improves their position on appeal. Because we reinstate the penalty award to Suarez, he prevails on appeal. Thus, we award Suarez his reasonable attorney fees conditioned upon his compliance with RAP 18.1(d).

[6] L&I asks us to hold that the unreasonable delay test set forth in *Taylor*, which is based on the Board's decision in *Madrid*, no longer applies. While we agree that the plain language of RCW 51.52.050(2)(b) precludes refusing to pay benefits based on legal or medical doubt here, there may be other circumstances where a delay occurs and this test would be instructive. We, therefore, decline L&I's request to overrule the unreasonable delay test set forth in *Taylor*.

We reverse the superior court's order and reinstate the penalty award.

Melnick, J.

We concur:

Worswick, J.

Maxa, C.J.

CERTIFICATE OF MAILING

I hereby certify that I caused to be served the foregoing **Petition for Review** on the following individuals on February 22, 2019, by mailing to said individuals true copies thereof, certified by me as such, contained in sealed envelopes, with postage prepaid, addressed to said individuals at their last known addresses to wit:

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And deposited in the post office at Beaverton, Oregon, on said date.

I further certify that I filed the original of the foregoing with:

Clerk of the Court
Washington Supreme Court
415 12th Street W
Olympia, WA 98504

by e-filing it on: February 22, 2019.

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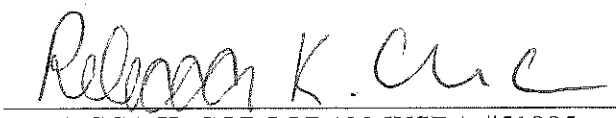

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