

## Impact of Iowa Supreme Court Decision in Evenson v. Winnebago & Sentry Ins. Co.

### Overview:

On June 3, 2016, the Iowa Supreme Court issued a 5 to 2 decision in which they reversed a 1995 Iowa Court of Appeals decision<sup>1</sup> and held that Temporary Partial Disability (“TPD”) benefits need to be paid concurrently to Permanent Partial Disability (“PPD”) if PPD is in fact owed. See *Evenson v. Winnebago & Sentry Ins. Co.* (IA Sup Ct. 14-2097)(Filed June 3, 2016). This was a case of statutory interpretation.

### Code Sections Involved:

This case hinges on the interpretation of Iowa Code sections 85.34(1) and 85.34(2). The dissent in the case looks to section 85.33(2) in support of its dissenting opinion and the prior way of doing things. However, that was not the majority opinion.

Iowa Code 85.34(1) provides that permanency payments are to commence at the first of three events:

- 1) The employee returns to work; or
- 2) The employee is at MMI; or
- 3) The employee is medically capable of returning to substantially similar work the employee was engaged in at the time of the injury.

The majority focuses its analysis on the first qualifying event in the statute, as the case involved the employee returning to work, but receiving less pay than he was prior to the injury. This reduced pay triggered TPD to be owed. The Court held that since he returned to work, the statute mandates this return date to work becomes the commencement date for PPD benefits. In short, the majority holds that the Claimant can be owed both TPD benefits and PPD benefits at the same time. The Claimant would be due TPD benefits until he returned to his prior earning level or reached MMI, whichever came first.

The Court rationalizes that there can be concurrent TPD and PPD benefits owed because TPD is making the injured worker (IW) whole when it comes to wages and the PPD benefits make the IW whole for functional disability. The majority deems these as two separate and distinct concepts and therefore there is no duplication of benefits.

The dissent argues that Iowa Code section 85.33(2) (the TPD statute) is incompatible with Iowa Code section 85.34(1) if read the way the majority reads section 85.34(1). Section 85.33(2) states that TPD is paid in lieu of temporary total disability benefits and healing period benefits. The dissent argues that the majority’s reading of section 85.34 eviscerates the “in lieu of language” so that the statutes are now incompatible. The dissent further argues that it is impracticable to anticipate PPD benefits owed when the IW has not even yet been deemed to be at MMI by the medical provider(s). It is exactly this point by the dissent that highlights the impact of this ruling on the claims professionals and the difficulties implementing this change that they will face.

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<sup>1</sup> *Presthus v. Barco, Inc.*, 531 N.W.2d 476 (IA Ct. App. 1995).

## **FREQUENTLY ASKED QUESTIONS**

- 1) If the IW goes on TPD, then back on TTD, do PPD benefits continue during TTD (because of the trigger on TPD)?**
  - No, PPD would suspend until the healing period ended.
  
- 2) How does this change payout on the claim?**
  - The payout should ultimately be the same but may occur earlier on some claims. Past Iowa law had required advancing PPD in certain cases but only when TTD ended or MMI was reached. This case does not require a change in the amount to be paid—just the timing.
  
- 3) Is there still a benefit to returning an employee to modified/alternate duty?**
  - Yes. Studies still show that the earlier an injured employee returns to work the faster they recover and have less residual disability. Furthermore, paying TPD is still cheaper than paying TTD. TPD will only trigger when the IW returns to less than full duty work from a standpoint of earnings. Many times an IW returns to work on light duty, but still works full time for the same pay. In this situation, this Court ruling does not apply.
  
- 4) Will this increase the reserves on claims submitted?**
  - Reserving is based on the facts of the case and this new law does not change the amount of anticipated payout on a given claim.
  
- 5) What is Travelers doing in response to this case?**
  - We will identify claims that potentially fit this scenario and will respond accordingly.
  
- 6) Is interest or penalties due on any 'back-owed' PPD benefits?**
  - Yes, interest may be owed. The Court ruling is a determination that this is the law, and always has been the law, as the Supreme Court rules on statutory interpretation and their opinion is the only opinion that matters. Therefore, the ruling applies to any open claims, even if the claim pre-dates the ruling. As for penalty, it is not likely many attorneys would argue for penalty, but at this point, the expectation is that the Agency would deem the issue to be fairly debatable given the way the law was previously applied. We do not intend to make any penalty payments voluntarily. We will continue to monitor this issue to see if the current Commissioner addresses this specific situation in a case that comes up on appeal and is ripe.