

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

BON SECOURS HEALTH
SYSTEM and GALLAGHER
BASSETT SERVICES, INC.,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

Appellants,

v.

CASE NO. 1D12-4268

ANGELINA BONANNO,

Appellee.

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Opinion filed March 28, 2013.

An appeal from an order of the Judge of Compensation Claims.
Diane B. Beck, Judge.

Date of Accident: March 29, 2004.

Charles W. Hall, Mark D. Tinker, and Kate B. Munkittrick of Banker Lopez
Gassler P.A., St. Petersburg, for Appellants.

Brian O. Sutter of All Injuries Law Firm, P.A., Port Charlotte, for Appellee.

THOMAS, J.

In this workers' compensation appeal, the Employer/Carrier (E/C) challenges an order entered by the Judge of Compensation Claims (JCC) that awards Claimant permanent total disability supplemental benefits and E/C-paid penalties and interest based on the untimely payment of said benefits. We affirm

the JCC's award of permanent total disability supplemental benefits and interest without further comment, but we reverse and remand on the issue of the imposition of E/C-paid penalties.

Under the applicable statutory authority, the payment of penalties is excused where nonpayment results from "conditions over which the E/C had no control." See § 440.20(6), Fla. Stat. (2003); see also Jones v. City of St. Petersburg, 46 So. 3d 637 (Fla. 1st DCA 2010) (holding penalties should have been excused where untimely payment of supplemental permanent total disability benefits resulted from conditions over which the E/C had no control). Although the JCC found the payment of Claimant's permanent total disability supplemental benefits was untimely, the JCC made no findings as to whether the untimely payment resulted from conditions over which the E/C had no control. Because it is not clear why the JCC imposed penalties in this case, and further, because the facts of this case could conceivably permit a finding of excusable delay under the law, the lack of factual findings supporting the imposition of penalties against the E/C is not harmless error.

Accordingly, the award of permanent total disability supplemental benefits, and interest on those late payments, is **AFFIRMED**, and the award of E/C-paid penalties on the benefits at issue is **REVERSED** and **REMANDED** for proceedings consistent with this opinion.

LEWIS and MAKAR, JJ., CONCUR.