

**IN THE COURT OF APPEALS OF IOWA**

No. 2-740 / 11-1697  
Filed October 17, 2012

**JEFF CARTER, Conservator for  
SANDRA PANIAGUA,**  
Petitioner-Appellant/Cross-Appellee,

**vs.**

**ALTER TRADING CORPORATION,  
a/k/a ALTER TRADING CO., Employer,  
SENTINEL INSURANCE COMPANY,  
LTD., Insurance Carrier,**  
Respondents-Appellees/Cross-Appellants,

**and**

**CARMEN YOLANDA GUZMAN,  
Surviving Spouse and ANGEL Y.  
SABILLON, LIDIA G. SABILLON  
MORENO a/k/a JOSE RODRIGUEZ  
JR., Deceased and AIDA GUZMAN,  
As Duly Acting Representative of the  
Above Named Surviving Family  
Members/Dependents,**  
Respondents-Appellees.

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Appeal from the Iowa District Court for Polk County, Donna L. Paulsen,  
Judge.

Dependent of deceased employee and employer separately appeal from a  
district court judicial review ruling affirming the appeal decision of the workers'  
compensation commissioner. **AFFIRMED ON APPEAL; AFFIRMED IN PART  
AND REVERSED IN PART ON CROSS-APPEAL.**

Bruce H. Stoltze of Stoltze & Updegraff, P.C., Des Moines, for appellant Jeff Carter.

Troy A. Howell and Benjamin J. Patterson of Lane & Waterman, L.L.P., Davenport, for appellants Alter Trading Corporation and Sentinel Insurance Company.

James C. Byrne of Neifert, Byrne & Ozga, P.C., West Des Moines, for appellees.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

**BOWER, J.**

Jeff Carter, conservator for Sandra Paniagua, dependent of deceased employee, and employer Alter Trading Corporation separately appeal from a district court judicial review ruling affirming the appeal decision of the workers' compensation commissioner apportioning benefits and awarding penalty benefits following the death of Yobany Sabillon Moreno. Carter raises claims in regard to the commissioner's apportionment of death benefits, and the amount and apportionment of the penalty benefit award. Alter raises claims in regard to the commissioner's award of penalty benefits, and the district court's remand to the agency on the issue of discovery sanctions.

Upon our review, we find the commissioner considered the facts, circumstances, and needs of the dependents in reaching an equitable apportionment of benefits. Substantial evidence supports the commissioner's award of penalty benefits, as well as the amount and apportionment of such benefits. We therefore affirm the district court's judgment on those issues. However, we find the district court should not have ordered a remand on the issue of discovery sanctions, and we reverse that directive by the district court.

**I. Background Facts and Proceedings.**

Yobany Sabillon Moreno was born in Honduras in 1968. Moreno's oldest son, Angel Yobany Sibillon, was born in 1990.<sup>1</sup> In 1994, Moreno married Carmen Yolanda Guzman. In 1997, Lidia Gabriela Sabillon, the child of Moreno and Guzman, was born. In 1999, Moreno moved to the United States to find

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<sup>1</sup> Angel's biological mother, Beatriz Medina Chavez, is not a party in interest in this case.

more lucrative employment to support his family (Guzman, Angel, and Lidia) in Honduras. Moreno regularly sent money to Guzman.<sup>2</sup> Guzman depended on Moreno's income to support the family, and needed the money "to survive."

Once in the United States, Moreno began using the alias Jose Rodriguez Jr. after assuming a Wisconsin Identification Card and social security number. At some point, Moreno began living and working in Iowa. In January 2006, Moreno's paramour, Ruth Paniagua Salas,<sup>3</sup> an American citizen, gave birth to Moreno's child, Sandra Paniagua, also an American citizen. The evidence does not suggest that Moreno was living with Ruth and Sandra, but he did provide them financial support.<sup>4</sup>

In September 2006, Alter Trading Corporation hired Jose Rodriguez Jr. (Moreno). Using Rodriguez's social security number, Alter verified his identity in a Department of Homeland Security database which indicated Rodriguez was legally able to work in the United States. Rodriguez's name and social security number were listed on Alter paperwork related to life insurance. Moreno signed the employment application and insurance application as Rodriguez, indicating all information was true and correct to the best of his knowledge.

Moreno was killed in a work-related accident in October 2007. Following his death, two sets of claimants presented themselves: (1) Moreno's minor child Sandra Paniagua, who lives in Iowa and is represented in this action by Jeff

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<sup>2</sup> The evidence supports the finding that Moreno provided Guzman \$300-\$500 (in U.S. dollars) per month in financial support.

<sup>3</sup> Ruth Paniagua Sala is not a party in interest in this case.

<sup>4</sup> The evidence supports the finding that Moreno provided Salas \$250-\$300 per month in financial support.

Carter, and (2) Moreno's wife, Guzman, and minor children, Angel and Lidia, who live in Honduras.<sup>5</sup> Both sets of claimants asserted Rodriguez was in fact Yobany Sabillon Moreno. Carter and Guzman filed separate petitions with the Iowa Workers' Compensation Commissioner seeking apportionment of Moreno's survivors' benefits pursuant to Iowa Code section 85.31 (2007).

Following an arbitration hearing, the deputy workers' compensation commissioner allocated forty-five percent of Moreno's death benefits to Guzman as surviving spouse,<sup>6</sup> and twenty-two percent to Angel, during the period of his dependency.<sup>7</sup> The remaining thirty-three percent was assigned to Paniagua, during the period of her dependency.<sup>8</sup> The deputy further ordered that one-half of the benefits apportioned to Guzman and her children should be paid to the Second Injury Fund of Iowa (the Fund) as mandated in section 85.31(5). In doing so, the deputy stated, "It should be noted for purposes of judicial review that the benefits of the American citizen, Sandra Paniagua, were decreased somewhat to provide an equitable apportionment to the family in Honduras." In

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<sup>5</sup> The dependent-statuses of the claimants are not at issue in this case.

<sup>6</sup> Guzman, as the surviving spouse, is eligible to receive benefits under Iowa Code section 85.31(1)(a), because under section 85.42(1) she is conclusively presumed to be wholly dependent. As the deputy explained, "No apportionment to Lidia is believed necessary [because Guzman] is the natural mother and is legally bound to provide care for Lidia."

<sup>7</sup> Angel, currently age twenty-two, is eligible to receive benefits under section 85.31(1)(b), because section 85.42(2) conclusively presumes him to be wholly dependent until age twenty-five. The deputy separately apportioned benefits to Angel, noting, "The payment to Angel is significant in that Angel is the son of [Moreno, but not Guzman, and thus Guzman] is under no legal obligation to provide care for him as she has currently been doing." The deputy further set forth, "When Angel no longer qualifies as a dependent his share shall revert to [Guzman, unless Guzman] has died or remarried."

<sup>8</sup> Paniagua, currently age six, is eligible to receive benefits under section 85.31(1)(b), because section 85.42(2) conclusively presumes her to be wholly dependent until age twenty-five.

reaching its findings, the deputy also observed Paniagua had received life insurance in the amount of \$48,402.88. Finally, the deputy awarded penalty benefits in the amount of \$17,500, observing Alter “never commenced benefits herein although they knew or should have known on the date of claimant’s death that he had a dependent or dependents.”

On intra-agency appeal, the commissioner modified the deputy’s decision in part, reapportioning Moreno’s death benefits to allocate forty percent to Guzman, thirty percent to Angel, and the remaining thirty percent to Paniagua. The commissioner further ordered that when Angel was no longer a dependent, the benefits shall then be apportioned sixty-five percent to Guzman, and thirty-five percent to Paniagua. In reaching its conclusion, the commissioner stated, “The undersigned has not considered the amount of benefits payable to the Second Injury Fund when apportioning the compensation to the non-resident aliens.”<sup>9</sup> The commissioner affirmed the deputy’s decision in regard to the penalty award.

Carter, on behalf of Paniagua, and Alter each filed petitions for judicial review. Following a hearing, the district court affirmed the agency decision.<sup>10</sup>

## **II. Scope and Standard of Review.**

Carter and Alter both seek judicial review of the decision of the workers’ compensation commissioner. Carter raises claims in regard to the

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<sup>9</sup> Paniagua (through Carter) subsequently filed an application for rehearing, which the commissioner denied.

<sup>10</sup> The district court, however, remanded the case to the agency on the issue of sanctions, which the court determined was raised by Alter and not ruled upon by the agency.

commissioner's apportionment of Paniagua's benefits, and Alter takes issue with the commissioner's award of penalty benefits.

Iowa Code section 17A.19(10) governs judicial review of agency decision making. We will apply the standards of section 17A.19(10) to determine whether we reach the same results as the district court. The district court may grant relief if the agency action has prejudiced the substantial rights of the petitioner, and the agency action meets one of the enumerated criteria contained in section 17A.19(10)(a) through (n).

*Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 255-56 (Iowa 2012) (quotation marks omitted).

Our standard of review depends on the aspect of the agency's decision that forms the basis of the petition for judicial review. *Id.* at 256. We are to defer to the agency's interpretation of a statute when the legislature has clearly vested the agency with the authority to interpret a statute, and "only reverse a decision of statutory construction which is irrational, illogical, or wholly unjustifiable." *Westling v. Hormel Foods Corp.*, 810 N.W.2d 247, 251 (Iowa 2012); see also Iowa Code § 17A.19(10)(l). If the agency has not clearly been vested with such authority, however, we are to review questions of statutory interpretation for correction of errors at law. *Westling*, 810 N.W.2d at 251; see also Iowa Code § 17A.19(10)(c).

Here, we are reviewing the commissioner's interpretation of Iowa Code sections 85.31, 85.43, and 86.13, which deal with penalty benefits and apportionment of death benefits. An examination of chapters 85 and 86 do not reveal any basis for concluding that the legislature clearly vested the workers' compensation commissioner with authority to interpret these sections at issue.

Accordingly, we review the commissioner's statutory interpretation for correction of errors at law. Iowa Code § 17A.19(10)(c).

When a claim is made that the commissioner's decision is not based upon substantial evidence, we must determine if a factual determination made by the commissioner "is not supported by substantial evidence in the record before the court when that record is viewed as a whole." *Id.* § 17A.19(10)(f). "This review is limited to the findings that were actually made by the agency and not other findings that the agency could have made." *Burton*, 813 N.W.2d at 256. "Merely because we may draw different conclusions from the record does not mean the evidence is insubstantial." *Westling*, 810 N.W.2d at 251.

When an agency has been clearly vested with the authority to make factual determinations, application of the law to those facts is likewise vested by a provision of law in the discretion of the agency. *Burton*, 813 N.W.2d at 256. When the application of law to fact has been clearly vested in the discretion of an agency, a reviewing court may only disturb the agency's application of the law to the facts of the particular case if that application is "irrational, illogical, or wholly unjustifiable." Iowa Code § 17A.19(10)(m); *see also* *Burton*, 813 N.W.2d at 256; *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 465 (Iowa 2004).

### **III. Apportionment.**

There is no dispute in regard to the identity of those eligible to receive death benefits as dependents of Moreno. See Iowa Code §§ 85.31, 85.42 (setting forth relevant provisions in determining eligible beneficiaries of death benefits). However, Carter, on behalf of Sandra Paniagua, claims the



commissioner's apportionment of benefits between Moreno's dependents was not supported by substantial evidence. We first turn to Carter's claim in regard to the commissioner's alleged "failure to correctly consider and analyze the economic facts, expert testimony and factual evidence and the failure to then make a proper application of those facts to the law of apportionment."

The provision bearing on the apportionment of benefits that is relevant for our purposes is found in Iowa Code section 85.43:

If the deceased employee leaves a surviving spouse qualified under the provisions of section 85.42, the full compensation shall be paid to the surviving spouse, as provided in section 85.31; provided that where a deceased employee leave a surviving spouse and a dependent child or children the workers' compensation commissioner may make an order of record for an equitable apportionment of the compensation payments.

This section requires that "the full compensation shall be paid to the surviving spouse" unless the commissioner equitably apportions the compensation between the surviving spouse and any dependent children. Iowa Code § 85.43; *Rojas v. Pine Ridge Farms, L.L.C.*, 779 N.W.2d 223, 234 (Iowa 2010). Here, the commissioner ordered benefits to be apportioned between Moreno's surviving spouse, Guzman, and dependent children, Angel and Paniagua.

Section 85.43 requires an equitable apportionment. The term "equitable" is not defined by the legislature. In reviewing the commissioner's apportionment of death benefits, our supreme court has followed the ordinary and common meaning for "equitable," and observed: "[T]he ordinary meaning of the term "equitable" does not mean an equal distribution of benefits. In equitably apportioning death benefits between entitled dependents, the commissioner must

consider the facts and circumstances of the dependents. This includes consideration of the needs of the dependents.” *Rojas*, 779 N.W.2d at 235.

In this case, on intra-agency appeal, the commissioner allocated Moreno’s death benefits as follows: forty percent to Guzman, thirty percent to Angel, and thirty percent to Paniagua. At the time Angel was no longer a dependent, the benefits were to then be allocated sixty-five percent to Guzman and thirty-five percent to Paniagua.

Carter argues the commissioner’s apportionment “was done without any detailed or factual explanation by the Commissioner as to why or how this was an equitable apportionment,” or how the apportionment “comports with the undisputed expert economic decisions and other economic factors.” Specifically, Carter contends the commissioner failed to consider the cost of living of Honduras compared to Iowa, and “the economic realities” of the countries in which the dependents reside.

As the district court observed, “Carter presented a significant volume of financial information and evidence . . . some of which was presented by well-qualified experts.” This evidence includes comparisons between the economies of Iowa and Honduras, the income needed to support the expected standard of living for each dependent, the relative purchasing power of each dependent, and the level of support Moreno provided to each dependent during his life. As Carter notes, this evidence shows the cost of living in Honduras is roughly 40% of that in the United States, and one dollar in Honduras has the purchasing power of approximately nine dollars in the United States.

The commissioner did not summarily disregard or ignore the expert testimony submitted by Carter. As the deputy workers' compensation commissioner observed, "The amount of income necessary to live in Honduras is likely less than is required to live in the United States . . . the cost of living in Honduras is approximately 40 percent that of the United States." In reaching its apportionment decision, however, the deputy also considered other relevant factors, including the relative support Moreno provided his dependents during his life, Paniagua's receipt of life insurance in the amount of \$48,402.88, Paniagua's mother's "ability to be employed and earn income" for Paniagua, and the fact that the money Guzman received from Moreno "was the major source of income" for Moreno's family in Honduras. On intra-agency appeal, the commissioner found:

The equitable apportionment set forth above is premised upon the needs of the current dependents. It is concluded that claimant provided for all of his children to the level of their need. [Moreno] was clearly a hardworking person who selflessly labored to provide for all of his dependents, often going without himself so that he could provide not only necessary financial support, but also occasional gifts. The undersigned is not swayed by the economic reports from experts which argue that a significant majority of the benefits should be paid to [Paniagua]. Such an award may be in Paniagua's best interest, but would provide a devastating result to the other three dependents.

We find the decision of the commissioner considered the facts, circumstances, and needs of the dependents in reaching an apportionment of benefits that is equitable rather than equal. See Iowa Code § 85.43; *Rojas*, 779 N.W.2d at 235. We affirm as to this issue.

#### IV. Reduction in Benefits.

“In enacting our workers’ compensation statutes, the legislature made a conscious choice that certain nonresident aliens should receive reduced benefits.” *Rojas*, 779 N.W.2d at 236. Iowa Code section 85.31(5) provides in relevant part:

[When] compensation is payable to a dependent who is an alien not residing in the United States at the time of the injury, the employer shall pay fifty percent of the compensation herein otherwise provided to such dependent, and the other fifty percent shall be paid into the second injury fund in the custody of the treasurer of state.

Recently, in *Rojas*, 779 N.W.2d at 234, our supreme court expressed that the commissioner should not consider “the amount of the benefits payable to the Second Injury Fund when it apportion[s] the compensation to the nonresident aliens.” As the supreme court explained:

By not incorporating the allocation of benefits with the amount of benefits payable, the legislature intended to keep the determination of the allocation of benefits separate from the determination of the amount of benefits payable to a dependent. . . . If we were to allow the commissioner to consider this reduction when making an equitable allocation, we would be giving the commissioner the power to circumvent the clear intent of the legislature, that the allocation of benefits is a separate and distinct issue from the amount of benefits payable to a dependent and the benefits payable to nonresident alien dependents are to be reduced by fifty percent.

*Id.* at 236.

The deputy workers’ compensation commissioner issued its order in this case prior to the *Rojas* decision. In ordering one-half of the benefits apportioned to Guzman and her children to be paid to the Second Injury Fund of Iowa (the Fund) as mandated in section 85.31(5), the deputy stated, “It should be noted for

purposes of judicial review that the benefits of the American citizen, Sandra Paniagua, were decreased somewhat to provide an equitable apportionment to the family in Honduras.” Subsequent to the *Rojas* decision, on intra-agency appeal, the commissioner modified the deputy’s apportionment of benefits. In reaching its conclusion, the commissioner specifically stated, “The undersigned *has not considered* the amount of benefits payable to the Second Injury Fund when apportioning the compensation to the non-resident aliens.” (emphasis added).

On appeal, Carter states that “despite this statement, the Commissioner’s Appeal Decision altered the apportionment by *reducing* the amount payable to the Iowa child, and *increasing* the amount payable to the Honduran adult child.”<sup>11</sup> Carter contends the commissioner’s apportionment, “without any detailed or factual explanation . . . as to how an equitable apportionment [was] realistically made” was based upon an irrational, illogical, or wholly unjustifiable application of law to fact.

We have already determined the allocation of death benefits awarded in this case is equitable. We further find the commissioner was correct in not considering the reduction contained in section 85.31(5) for nonresident aliens when it apportioned the benefits. Despite Carter’s argument to the contrary, the commissioner’s failure to consider section 85.31(5), as it was required to do,

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<sup>11</sup> The deputy commissioner allocated Moreno’s death benefits as follows: 45% to Guzman, 22% to Angel, and 33% to Paniagua. The commissioner’s modification allocated 40% to Guzman, 30% to Angel, and 30% to Paniagua; at the time Angel was no longer a dependent, the benefits were to then be allocated 65% to Guzman and 35% to Paniagua.

does not automatically compel an increase in benefits for Paniagua. On intra-agency appeal, the commissioner was reviewing the deputy's entire order on apportionment, not merely the deputy's handling of section 85.31(5). We affirm as to this issue.

## **V. Penalty Benefits.**

Cross-appellant Alter argues the district court erred in affirming the commissioner's \$17,500 penalty benefits award "when there was no delay in the payment of benefits, and even if there was a delay, there was reasonable cause for the delay." Penalty benefits in a workers' compensation case are authorized by Iowa Code section 86.13, which provides:

If a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were unreasonably delayed or denied.

A. *Delay.* Under this provision, the claimant must first establish a delay in the payment of benefits. *Schadendorf v. Snap-On Tools Corp.*, 757 N.W.2d 330, 334 (Iowa 2008). Here, Alter argues "there was no delay in the payment of benefits to Sandra Paniagua" because the commissioner had not yet decided how to apportion benefits. Alter admits, however, it did *not* pay any benefits until after the commissioner determined apportionment. As the deputy workers' compensation commissioner concluded, "[Alter] never commenced benefits

herein . . . .”<sup>12</sup> Substantial evidence supports the claimants’ establishment of a delay in the payment of benefits.

*B. Reasonable Cause or Excuse.* Upon establishing a delay, the burden then shifts to the employer to prove a reasonable excuse for the delay. *Id.* at 334–35. “A reasonable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to contest the employee’s entitlement to benefits.” *City of Madrid v. Blasnitz*, 742 N.W.2d 77, 81 (Iowa 2007).

A “reasonable basis” for denial of the claim exists if the claim is “fairly debatable.” A claim is “fairly debatable” when it is open to dispute on any logical basis. Whether a claim is “fairly debatable” can generally be determined by the court as a matter of law. The reasonableness of the employer’s denial or termination of benefits does not turn on whether the employer was right. The issue is whether there was a reasonable basis for the employer’s position that no benefits were owing. If there was no reasonable basis for the employer to have denied the employee’s benefits, then the court must determine if the defendant knew, or should have known, that the basis for denying the employee’s claim was unreasonable.

*Burton*, 813 N.W.2d at 267 (citations and quotation marks omitted).

Alter argues it had “a reasonable or probable cause or excuse for the delay” in payment of benefits. Alter alleges “only the Commission can apportion benefits” and “[t]o assess Alter penalties for . . . making its own apportionment, when the Claimants vigorously disputed the proper apportionment, flies in the face of logic.” Alter further argues “the issues of Rodriguez’s true identity and dependents were fairly debatable.”

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<sup>12</sup> Alter’s argument to the contrary is more akin to an attempt to explain its delay, and will be discussed further below.

The commissioner disagreed. In determining penalty benefits were appropriate, the deputy workers' compensation commissioner provided the following analysis:

[Alter] never commenced benefits herein although they knew or should have known on the date of claimant's death that he had a dependent or dependents. Nor was it reasonable to deny payment of benefits on the basis that the employer did not know if the employee going by the name of Jose Rodriguez, Jr., was in fact Yobany Sabillon Moreno. The employer knew at the time of death, or shortly (day or days) after the death, that Jose Rodriguez, Jr., was an alias used by Yobany Sabillon Moreno. Within approximately a month of the death the employer was asserting to the State of Iowa that the deceased employee was Yobany Sabillon Moreno and that he died with a dependent or dependents.

On intra-agency appeal, the commissioner affirmed the deputy's findings: "It is concluded that the presiding deputy commissioner correctly assessed a penalty against [Alter]. The deputy cited the correct legal standard and carefully weighed the evidence to determine that a penalty was warranted. The penalty was correctly limited to only those benefits accrued at the time of hearing."

Under the facts of this case, Alter's denial of benefits on the basis that it was "waiting until the outcome of the apportionment" was not objectively reasonable. The fact that Moreno had a dependent or dependents was not open to dispute on any logical basis. *See, e.g., IBP, Inc. v. Burress*, 779 N.W.2d 210, 222 (Iowa 2010) (finding employer must assert facts upon which the commissioner could reasonably find the claim was fairly debatable). As the deputy commissioner noted, "The employer's failure to admit to this agency that [Moreno] had a dependent or dependents at the time of his death was not in good faith."



Alter's employment paperwork indicated its employee, Moreno (using the alias Jose Rodriguez, Jr.), had a dependent, Sandra Paniagua. Even if Moreno's identity had been fairly debatable, it was clear from the outset that the individual Alter believed to be Jose Rodriguez had at least one dependent. We further observe that Alter initially paid \$45,000 to the State of Iowa, the amount due to the Second Injury Fund when an employee dies leaving no dependents. See Iowa Code § 85.65. Several weeks later, however, Alter requested and received a refund of \$33,000 from the State, explaining it had "now learned that Mr. Rodriguez does have depend[e]nts."

"The employer must assert facts upon which the commissioner could reasonably find the claim was fairly debatable." *MC & R Pools, Inc. v. Shea*, 802 N.W.2d 237 (Iowa Ct. App. 2011). In reaching the conclusion that penalty benefits were warranted pursuant to section 86.13, the commissioner made the factual finding that Alter knew or should have known that the basis for denying the claim was unreasonable, and therefore, that there was no reasonable basis for Alter's position that no benefits were owed. As the record contains substantial evidence to support the commissioner's award of penalty benefits in this case, we affirm as to this issue.

*C. Amount and Apportionment of Penalty Benefits.* Carter, on behalf of Paniagua, argues the district court erred in affirming the commissioner's "failure to award a sufficient amount of penalty and in the apportionment of the penalty benefits among the claimants." Specifically, Carter alleges "the penalty should be assessed in the maximum amount allowable, 50%, of *all* the past due

benefits, not on just a portion of those past due benefits as was ordered,” arguing the commissioner “only calculated the penalty on the portion of benefits as to the existence of single with two exemptions, rather than married with five exemptions.”

In calculating the penalty award, the commissioner observed the penalty was based on Alter’s conduct in unreasonably denying payment of benefits despite its knowledge Moreno had “at least one dependent” at the time of his death. As the deputy workers’ compensation commissioner found:

At a minimum, payments of weekly benefits should have been made in trust at the rate of single with 2 exemptions on behalf of the dependent(s). The total benefits unreasonably unpaid at the single with 2 exemption rate as of the date of hearing was just over \$35,000. A penalty of up to 50 percent of unreasonably late or unpaid benefits is allowable. A penalty of \$17,500, which is in the range of 50 percent, is warranted here. The penalty will be apportioned in the same proportion as are the weekly benefits.

Carter argues there is not substantial evidence to support the penalty amount assessed where the commissioner *ultimately* determined Moreno was married with three dependents. We disagree. The commissioner appropriately relied on the information available to Alter during the time period of the delay in considering the penalty benefit. “Just because the interpretation of the evidence is open to a fair difference of opinion does not mean the commissioner’s decision is not supported by substantial evidence.” *Schadendorf*, 757 N.W.2d at 337. We find substantial evidence supports the amount of the penalty benefit awarded by the commissioner.

The commissioner determined the penalty benefits should be apportioned by awarding the first \$2000 to Paniagua (to return to Paniagua approximately the

amount she borrowed from her life insurance proceeds prior to the commencement of death benefit payments), and allocating the remaining \$15,500 in the same apportionment as the death benefits. Carter contends, however, that “all penalty shall be paid to Paniagua,” because “the penalty is based upon the failure of Alter to have paid weekly benefits to the apparently undeniable dependent, Sandra Paniagua.”

The commissioner disagreed, and on intra-agency appeal, the commissioner observed, “It is also necessary to equitably apportion the penalty award.” And as the district court aptly noted:

Carter’s argument concerning apportionment of the penalty fares no better. Carter argues that, because the penalty was assessed based upon the fact that Alter knew, or should have known, the fact that Paniagua was Moreno’s dependent, then all penalty benefits should be assigned to her. This is not the case. Had Alter acted properly and paid all benefits to Paniagua starting at the proper time, Guzman and Angel would have been later compensated for the benefits they should have been paid during that time. Paniagua would not have been able to keep 100% of all benefits until apportionment was made. Credits would have been given to off-set overpayment to one dependent while another was made whole. The same is true with the penalty. Paniagua isn’t the only party to suffer from Alter’s misconduct. All parties received fewer benefits because of the employer’s actions. All parties therefore should properly share in the penalty, as they do all other benefits.

Upon our review, we find substantial evidence supports the apportionment of the penalty benefit awarded by the commissioner.

## **VI. Sanctions.**

Before the agency, Carter requested the commissioner assess sanctions against Alter “for failure to admit the facts of identity of the Decedent and the Dependency of Sandra Paniagua.” Carter raised the issue of discovery

sanctions in its application for rehearing following the deputy commissioner's ruling. Carter again raised the issue in its application for rehearing following the commissioner's ruling. Both applications were denied. On judicial review, the district court determined the issue of sanctions was raised by Carter and "the presiding authority has failed to rule on the issue." The court therefore remanded the case to the agency on the issue of sanctions.

On appeal, Alter contends "the commissioner had the legal authority to deny the application for rehearing raising the issue of discovery sanctions without issuing any written ruling." We agree. Carter's first application for rehearing was "deemed denied [when it was] not granted within twenty days after its filing." See Iowa Code § 17A.16(2); see *also* Iowa Admin. Code § 876-4.24. The commissioner entered a written ruling summarily denying Carter's second application for rehearing, which inherently denied Carter's request for assessment of sanctions. Unless the district court found the evidence did not support the conclusion made by the commissioner, the commissioner's ruling should have been upheld and the district court should not have ordered a remand. We reverse that directive by the district court.

## **VII. Conclusion.**

Upon our review of the issues presented by the parties, we find the commissioner considered the facts, circumstances, and needs of the dependents in reaching an equitable apportionment of benefits. Substantial evidence supports the commissioner's award of penalty benefits, as well as the amount and apportionment of such benefits. We therefore affirm the district court's

judgment on those issues. However, we find the district court should not have ordered a remand on the issue of discovery sanctions, and we reverse that directive by the district court.

**AFFIRMED ON APPEAL; AFFIRMED IN PART AND REVERSED IN PART ON CROSS-APPEAL.**