

2015 WORKERS' COMPENSATION SUMMIT LEGAL UPDATE

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LEGISLATIVE ACTION:

Minn. Stat. 14.49

This amendment to administrative rules allows the appointment of retired workers' compensation judges to serve when regularly appointed judges are not available to hear pending cases on a timely basis. (Signed into law May 14, 2015)

Minn. Stat. 176.135 , 176.221 & 176.1362

A new section was enacted to provide for electronic transactions to health care providers. No later than July 1, 2015 health care providers must electronically submit copies of medical records and reports substantiating the nature of the charge and relationship to the work injury using the most recent version ASC X12N 275 transaction. No later than September 1, 2015 the insurers must provide the patient's name and control number on all payments made to a provider, whether it is by check or electronic funds transfer so that providers can match the payment to specific bills. A penalty of \$500 for each violation, not to exceed \$25,000 for identical violations during a calendar year can be assessed after an initial warning for a first violation. This provision became effective on May 20, 2015, the day after enactment.

The statute was also amended to provide for payment of compensation benefits by electronic fund transfer to a bank, savings association or credit union if requested and the proper information was provided to the employer/insurer. Payment of benefits is deemed to have been made on the date when payment was sent. A penalty of \$500.00 can be assessed for violation of this after an initial warning. This becomes effective as of January 1, 2016.

This amendment also adopted recommendations of the Workers' Compensation Advisory Counsel regarding inpatient hospital payments. This requires payments to hospitals for initial treatment to be based on a patient diagnosis using the Medicare MS-DRG

(Medicare severity-diagnosis related group) system which classifies medical conditions based on the severity and complexity of treatment. The maximum payment will be set at 200% of the amount paid by Medicare for the applicable DRG subject to 2 exceptions. The first is that if the charge is over \$175,000 the payment is to be no more than 75% of the hospital's usual and customary charges. The second exception is for Critical Access Hospitals, which are in rural areas and 35 miles or more away from another hospital, payment is set at 100% of the hospital's usual and customary charges. These provisions are effective for all inpatient hospital stays, services and supplies provided to patients discharged on or after January 1, 2016.

Prompt payments by insurers are now required. When hospitals submit an electronic bill and a DRG applies, the insurers must within 30 days deny the entire bill or pay 200% of the Medicare amount. They cannot request additional documentation or challenge particular line items in the bill. Any post-payment audits must be initiated within 6 months of payment. This also becomes effective as of hospitalization discharges on or after January 1, 2016.

COURT DECISIONS:

Arising out of:

Dykhoff v. Excel Energy 840 NW 2d 821, 73 W.C.D. 865 (Minn. 12/26/13) reversing (WCCA 11/30/12).

Employee who wore high heels to out of office business meeting in response to directive to "dress up" and slipped on smooth marble floor was ultimately held not have sustained work injury. The causal connection required between the injury and employment is only met if the environment exposes the employee to a hazard which originates on the premises as a part of the working environment or peculiarly exposes the employee to an external hazard whereby they are subjected to a different and greater risk than if they had been pursuing their ordinary personal affairs. This can be met even if the workplace connection to the injury is obviously not hazardous. Here the employee did not prove that her workplace exposed her to a risk of injury that was increased over that which she would face in her everyday life. The compensation judge found as a factual matter there was nothing hazardous about the floor and without proof that something about the floor increased her risk of injury, she did not meet her burden to prove that her injury arose out of her employment.

The Court also specifically rejected the balancing test outlined by the WCCA in the Bohlin case and its progeny because they felt that it failed to give effect to all parts of the

statute. The Supreme Court clarified that under the statute there are 2 distinct requirements for an injury to be compensable – the “arising out of” and the “in the course of” requirement and both must be met. There must be more to the “arising out of” requirement than simply an injury occurs at work and they declined to make an employer an insurer against all accidents that might befall an employee in employment. A work-connection test such as utilized by the WCCA in Bohlin would improperly allow a court to consider the statutory elements as alternatives that relieves the employee’s the burden of proof of one element if there is strong evidence of the other element.

Arrowhead Senior Living Community v. Kainz, 860 N.W. 2nd 379 (Minn. March 4, 2015)

Employee who was walking down stairs at work and inverted her ankle causing an avulsion fracture was ultimately held not to have sustained a work injury. The WCCA initially found this case compensable using the Bohlin balancing test. The case was remanded by the Supreme Court after the Dykhoff decision and on remand the WCCA again found it compensable applying the “increased risk” test, finding that there were no handrails on the portion of the stairway where the employee twisted her ankle and that the staircase was “kind of steep”. The Supreme Court, however, found this to be manifestly contrary to the evidence based on a photo that showed handrails extended all the ways down. It also noted that the compensation judge had not made any finding regarding the steepness of the stairs. The case was then remanded back to the compensation judge for reconsideration.

Karstad v. Lorentz (WCCA 5/20/2015)

Employee who returned to the employer’s premises to retrieve personal tools and supplies at the end of the work season held not to have sustained a compensable work injury. The employee urged compensability because he might be recalled for work in the spring together with the employer’s actions in allowing him access to the truck yard demonstrated an ongoing employment relationship. The WCCA disagreed indicating there was no guarantee of further work and that until/unless there was work, there were no work duties to perform. Even if there was continuing employment, the primary consideration is whether the actions were taken in advancement of the employer’s interest and here there was no evidence that the employee’s actions in removing his property were in furtherance of the employer’s interests because the presence of these items didn’t interfere with the employers business as the truck wasn’t in use over the winter.

Shire v. Rosemount (WCCA 4/22/15)

Employee's participation in an Employee Recognition Event held not to have engaged in voluntary recreational activity so as to preclude coverage under the workers' compensation act under Minn. Stat. §176.021, subd. 9. The employee's participation was held not really "voluntary". Here he was not given the option of remaining at work but only whether he would forfeit 3 hours of regular pay or take 3 hours of vacation pay. The WCCA held that "voluntary" means an act performed without external persuasion or compulsion and where attendance is the only means available by the employee to avoid forfeiture of pay or benefits there is an implicit element of compulsion that renders an employee's attendance "involuntary". The employer also tried to argue that the employee's participation in the laser tag game where he got hurt was voluntary. However, the WCCA rejected that argument finding that there was one single, continuous employer sponsored event in which the employee was required to attend in its entirety and during which various elective activities took place. They didn't feel that the statute required analysis for every act that the employee may have undertaken as part of the overall event.

Dennis v. Salvation Army (WCCA 4/8/15)

Employee who slipped on slushy snow on a curb as he was crossing the street between two facilities of the employer, while on a paid break to go have a smoke, was held to have sustained a work injury under the "street risk" doctrine. The defense argued against compensability stating that Dykhoff abolished the street risk doctrine. The WCCA disagreed, noting that in Dykhoff the Supreme Court specifically cited Bookman one of the earliest street risk cases. The WCCA also rejected an argument that the earlier "street risk" cases were not authoritative as decided under a "liberal interpretation" standard that is no longer valid. They pointed out the rationale for the street risk doctrine which was that crossing a street while working may be more perilous than an employee's ordinary work activities, especially when as in Minnesota there is accumulated snow, slush or ice. A contrary result would also be inconsistent with case law that affirms compensability for injuries sustained during ingress/egress to/from the employment premises. The fact that the employee was on break and not working as a cook when hurt did not remove him from being in the course of his employment. He was given two breaks, which the Court said could be inferred to benefit the employer since it was paid. Also, since he was given no more than 15 minutes, it could be inferred that the employer intended the employee to be at or near the premises. He had to use a particular smoking area and the closest one was not available to him due to snow accumulation. So the decision to go to a different designated area across the street didn't remove him from the course of his employment.

Renwick v. Halverson (WCCA 4/10/14).

Caretaker who slipped in a rut and fell in a snow covered tenant parking lot while walking back from discarding debris he found in the back entryway of apartment building in the dumpster behind the apartment building held to have sustained a work-related injury. While parking lot might be construed as part of employee's "residence" it was also recognized as part of the employer premises where he worked. Employer's expectation was that employee would dispose of debris in common areas regardless of time of day and this exposed him to hazard or risk of walking across an icy rutted parking lot.

Attorneys Fees:

David v. Bartel 856 NW 2nd 271 (Minn. 11/26/14).

An attorney claimed contingent attorneys' fees after a settlement was reached regarding medical bills. An objection was raised based on an argument in part that the fees claimed exceed the statutory limit and that mechanical application of the statutory formula for calculating fees in contested cases violated the separation of powers principles. The case was affirmed all the way up to the Supreme Court. They held that the legislature formulation of attorneys' fees under 176.081 is presumptively reasonable and absent exceptional circumstances, review whether the fee calculated using the statutory formula is excessive. Conducting a case by case determination of attorneys' fees neglects a legislative policy choice previously upheld that is designed to protect employee's from excessive legal charges which might otherwise severely deplete funds badly needed by an employee. Because this doesn't involve a prohibition on a statutory maximum, the Irwin reasoning which the SC invalidated need not be applied. Calculation of fees on medical basis per statutory formula was therefore upheld against constitutional challenge and absent exceptional circumstances would not be reviewed by the courts. Exceptional circumstances are not just that the fee is significantly greater than the attorneys' normal hourly billing rate as a central feature of a contingent fee is the possibility that an award exceeds the value of fees on an hourly basis.

Causation:

Lehnen v. Process Displays (WCCA 9/10/14)

A work injury which produces determinable PPD was held by definition to be a permanent injury and the finding that it was temporary in nature was reversed. The WCCA held that since PPD was payable for functional loss of use or impairment of

function “permanent in nature” a condition meeting the criteria of the rules by definition must be permanent rather than temporary.

Bowman v. A & M Moving & Storage (WCCA 8/14/13).

Employee’s death from prescription drug overdose held causally related to work injury. Employee was prescribed Oxycodone for pain from work injury and cause of death was acute Oxycodone toxicity. While there was no one specific piece of evidence to explain the toxic level of this in the employee’s system, there were a number of facts in evidence that allowed the judge to infer an explanation for the level of Oxycodone and reach a conclusion on a causal connection between his death and work injury. For a causal relationship to exist, the condition need not be the sole or even most direct cause of death, only that the compensable injury was a substantial contributing factor. Injury or disability caused by medical treatment provided to treat a work-related injury is compensable. Death resulting from an accidental overdose taken to relieve pain caused by a work injury may also be compensable.

Fraud:

Frederick v. Divine Home Care (WCCA 7/1/14)

Fraud claim held properly denied even though the employee made intentional misrepresentations about her complaints and physical capabilities, testified falsely during her deposition and at hearing and misled the employer, provider and court with regard to her disability and/or need for treatment because some of the treatment was reasonable per the IME. The judge felt this called into question whether the employee’s state of mind was directed towards fraudulent conduct. Also, the employer/insurer had not complied with Minn. Rule 5220.2580 requiring making a request for refund.

Intervention:

Gamble v. Twin Cities Concrete, 852 NW 2d 245 (Minn. 8/13/14) reversing WCCA 7/8/13.

When an employer fails to give a medical provider notice of right to intervene, the medical provider is not entitled to automatic payment of its medical bill under Brooks unless the medical provider can show the lack of notice resulted in prejudice. Post Brooks intervention rules were held to adequately protect the rights of an interested party that is not given notice of its right to intervene and participate in hearing or

settlement negotiations which weren't in place when Brooks was decided as then there were no remedies to protect their interest.

Sumner v. Jim Lupient (WCCA 4/3/14).

Denial of intervention claims due to failure of intervenors to attend hearing affirmed as to those intervenors that did not have objections filed against their petitions Minn. Stat 176.361 subd. 4 and Minn. R. 1415.1250 subp 2 were interpreted so as to require intervenors to attend hearings and that failure to appear "shall" result in denial of the claim. This language was held clear and unambiguous. No contradiction was found between the language of the statute and rule. Where no objections were filed, those intervenors were not subject to the personal attendance requirement of the rule or sanction for failure to do so. Intervenors can get a waiver to attend at the discretion of the judge who can determine if their presence is necessary for the full and fair litigation of the issues. Also as a practice note, a judge must determine reasonableness, necessity and causal relationship of all medical treatment provided even where the intervention claims are denied.

Aegerter v. Fairway Foods (WCCA 12/12/14).

Held no error of law by awarding reimbursement of medical expenses to intervenors and medical providers who did not personally appear at the hearing. The judge has the discretion to waive the personal attendance requirement. Here the employee initiated the claim for payment of medical expenses and thus this claim was presented regardless of whether the intervenors made any formal intervention or attended.

Joint Employment/employers:

Drier v. Grounded Air (WCCA 12/3/12).

An owner of a company that supplied employees to another was held personally liable for benefits due the injured worker when employer for whom injured worker actually worked failed to obtain the contractually agreed upon workers' compensation coverage. The WCCA held that in a joint employment case the employee may look to one or the other or both employers for compensation. While Minn. Stat. 176.071 allows joint employers, as between themselves, to contractually agree which will pay the employee, the statute doesn't permit a joint employer to contract away its liability for benefits imposed by Minn. Stat. §176.021, subd. 1. SCF, who paid benefits, held entitled to reimbursement

from the uninsured employer who was then personally liable as owner of a corporation per Minn. Stat. §176.183.

Guevara v. BT-PCE (WCCA 7/29/14).

Under the loaned-servant doctrine a labor broker who supplies employees to another is considered as the general employer and the employer needing services is the special employer. An employee could be considered as employed by both and therefore both could be liable for workers' compensation. Under Minn. Stat. §176.071 the two employers can between themselves agree to a different arrangement for payment of workers' compensation. However this only works where the employee actually is employed by both. In this case, since one employer was not an employer under any theory it was not a joint employer and therefore was not liable for workers' compensation benefits.

Jurisdiction:

Nugent v. Seven Clans Casino (WCCA 6/17/14).

Red Lake Band of Chippewa Indians held immune from liability for Minnesota workers' compensation benefits per Tibbets. The WCCA distinguished Swenson where the employer was not the tribe but a tribal member operating a private business. The doctrine of sovereign immunity doesn't immunize individual members of the tribe but does apply here where language of the Band's plan provides that it is the exclusive remedy.

Medical:

Lowe v. Alexandria-Peterson (WCCA 4/15/15)

On an appeal from an award of proposed fusion surgery, the employer attempted to argue that because the employee had not exhausted conservative treatment the treatment parameters prohibited approval. Unfortunately, this defense had not been initially raised at the hearing and the WCCA held that it could therefore not be raised on appeal. Where the treatment parameters are raised as a defense, a party must identify the specific treatment parameter at issue if it is going to be considered.

Rivera v. Cargill Kichen Solutions (WCCA 3/15/15).

The employer held liable for treatment of diabetes as reasonably required to effectuate a recommended hernia surgery necessary to address a work-related condition. The WCCA held that the relevant question was not whether the diabetic condition is causally related to the work injury but whether the medical treatment for this personal health condition, was reasonably required in order to cure and relieve from the effects of the work injury. Here Employee needed hernia surgery and in order to have that needed to get their diabetes under control to avoid recurrence or complications. Therefore, this personal health condition became the responsibility of the employer and insurer.

Willy v. Northwest Airlines (WCCA 12/3/14)

Medical mileage from employee's residence in Wisconsin to her providers in Wisconsin was held properly denied. The employee had argued that treatment for her complicated medical condition and treatment with specialists was warranted. There appeared to be no argument about the reasonableness of this treatment or that it had been paid by the employer and insurer. However, reasonable treatment by a provider was held not to automatically mean that expenses for travel to that provider were also reasonable. A key question is whether the same of similar care was available closer to the employee's home and in this case neither party had investigated this. The employee was apparently afraid if she treated in Wisconsin for her work injury she would end up responsible for the difference between the Wisconsin workers' compensation fee schedule and the total amount of the bill under Schatz although the WCCA noted whether the employee is actually personally liable for this wasn't actually decided in that case. The WCCA recognized that some amount of travel expenses would be reasonable and remanded the matter back for consideration of that.

Kuhnau v. Manpower (WCCA 12/15/13).

Transportation costs are the responsibility of the employer/insurer if such services are reasonably required to convey the employee for treatment for a work-related injury, which can include reasonable expenses for spouse for transportation. Factors to be considered in determining what is compensable are the time involved, whether there are "nursing" type services involved as well as what fee may be reasonable to compensate the drive for his or her help. This can also include meal expense.

Peterson v. St. Paul (WCCA 2/11/14).

In another mileage case, an award of mileage to obtain prescriptions was affirmed. The objection appeared to be based on the fact that employee purchased other unrelated items at the same location during the trip. The WCCA held this fact was, however, irrelevant to whether it was reasonable to award mileage related to prescriptions. They distinguished the Calhoun case where the employee made separate trips into town to obtain his medications when he could have coordinated his prescription pick ups with his mother's trips to town.

Lehto v. Community Hospital (WCCA 1/28/14).

Medication for treatment of chronic pain syndrome was held properly denied based on a determination of the insufficiency of submitted medical records and reports. The WCCA was critical of the documentation because it did not adequately provide long term strategy for medication management, explain the necessity of multiple pain medication, considering the other ongoing medical treatment such as the pain stimulator; provide a credible explanation for the use of multiple anti-inflammatory agents, adequately explain or consider the possibility of potential complications or the potential for dependency which may include the perceived need for narcotic analgesic agents.

Brunkhorst v. Andrews Knitting Mills (WCCA 9/25/14).

Long term use of narcotic medications, MS Contin and Oxycodone held in this case held neither medically reasonable and necessary nor causally related to the work injury. Again there seemed to be a problem with the medical records in that there was no indication in these records that Employee's function or discomfort improved over the 12 year history of narcotic pain medication use. The Court also adopted an IME opinion that there is a potential for a "paradoxical effect" with chronic narcotic use meaning that a patient's pain sensation actually increases with time and their pain is actually worse with time on chronic narcotics.

Phipps v. Bamboo Betty's (WCCA 9/10/14)

Because the work injury was determined to have resolved, there was no err in refusing to award diagnostic surgery to alternate explanations for the employee's symptoms. Because the injury had resolved any ongoing symptoms were not due to the work injury so there was no basis to order the employer and insurer to pay for testing of symptoms and a condition not related to the work injury. The salient factor appeared to be the recovery since generally diagnostic testing or evaluation to rule out alternative diagnoses

for symptoms may be compensable even if it is later determined that the ultimate diagnosis is not work related, where the ongoing symptoms in the same area of the body could otherwise be causally related to the work injury. See Bayliss v. National Steel Pellet (WCCA 6/11/13) where MRI of brain and neck were determined to be reasonable diagnostic tests to see if headaches were due to neck injuries and to determine alternative treatment for neck condition.

Penalties:

Albert v. Dungarvin (WCCA 2/7/14).

Here a claim for penalties for frivolous denial were properly denied. The claim alleged that there was insufficient evidence to support any work related injury. However, the WCCA accepted that there were enough discrepancies regarding the nature of the injury itself for the employer/insurer to question liability at that time. Whether this would later be proven true or false does not render the denial frivolous or lacking in good faith so as to warrant an imposition of penalties.

Carroll v. Allina (WCCA 10/31/14).

This was another denial of a claim for penalties for an alleged frivolous defense. Even though the employer/insurer's own IME report indicated there could be some liability apportioned to an injury, that opinion assumed that an injury actually occurred. The Employer maintained that no such injury occurred and raised a number of questions on the employee's credibility in that regard, determination of which is a unique function for the trier of fact. Therefore, although the judge did not ultimately agree with the employer, the questions it raised were sufficient to require a credibility determination and thus a colorable defense, despite the IME opinion. Penalties were also denied for alleged frivolous Jewison defense. An employer need only raise a colorable defense to avoid penalties and need not establish a prima facie case relating to every element of that defense.

Larson v. RR Donnelly (WCCA 12/8/14).

Penalties were awarded for late payment under 176.225 subd. 1 amounting to 1% to the employee for a one day late payment and 10% to attorney for a 22 day late payment affirmed. The amount of penalties issued by DOLI held properly considered in reviewing the adequacy of the amount awarded. Penalty due for inexcusable delay under 176.226, subd. 5 was added to the statute in 1981 and interpreted as being meant for

inexcusable delay referring to actions and behavior by an employer/insurer that were more egregious than neglect or vexatious delay referred to in subd. 1. They thus affirmed denial under this section when the delay in payment was 1 day and sent to the wrong address. Paying the penalty assessed by DOLI, after initially objecting to it, held not constitute a frivolous defense. Such action does not mean that the employer/insurer never had any defense to the assessment.

Permanent Partial Disability

Roskos v. Bauer Electric (WCCA 9/23/14).

Employer/insurer held entitled to use a 5% discount rate to arrive at the present value of PPD payments. Here the judge accepted this rate because of the legislative adoption of a variable discount rate of “up to” 5% which suggested that the term present value was intended to incorporate multiple economic factors in approximating the investment potential of a lump sum. The 5% cap indicated that the discount rate and present value should be based upon relatively conservative investments. While it is unlikely that the legislature intended to give insurers sole discretion to decide how much to pay an employee for their permanent functional impairment, it is hard to envision a circumstances where an insurer would voluntarily pay an employee more than the statute would require so whether they would even choose a discount rate of less than 5% is questionable at best but that didn’t need to be decided here as is appropriate based on the facts here.

Permanent Total Disability :

Stevens v. S.T. Services 851 N.W. 2d 52 (Minn. 7/30/2014)

Where the parties agreed by stipulation that the employee was permanently totally disabled a petition to discontinue those benefits was held foreclosed by statute. Here the parties in 1994 entered into a stipulation under which the employee was found entitled to PTD benefits due to injuries. He was subsequently paid benefits for the next 17 years. In 2008 employee found work where he did no manual labor but advised customers. The job was disclosed to an investigator for the employer/insurer. In 2011 a petition was filed with the WCCA to discontinue PTD. After an evidentiary hearing at OAH, this petition was granted based on a finding he wasn’t PTD either when he was working or at the hearing. The WCCA appealed. The Supreme Court held that the issues in this case

turned on questions of statutory and contract interpretation that they were free to review de novo and their interpretation was that a discontinuance of PTD could not be allowed.

The Court noted that two routes are available to discontinue previously awarded benefits. A petition to vacate under Minn. Stat. §176.421 could be filed however it did not do so here. The other way was to try to utilize Minn. Stat. §176.238 by filing a petition to discontinue. Here the Court was troubled by the language of subdivision 11 which indicates that “this section shall not apply to those employees who have been adjudicated permanently totally disabled”. They held that this meant that an employer cannot file a petition under this statute to discontinue PTD benefits that an employee is getting under an award on stipulation.

The employer tried to argue that this petition is authorized by a line of WCCA cases starting with Ramsey. The Court rejected this, stating that this decision created what appeared to be a “freestanding, extra-statutory procedure” for discontinuance of PTD benefits and to that extent it was rejected as being outside the statutory provisions. The WCCA was not free to amend the statute by judicial determination to create an avenue of review that the Legislature expressly eliminated. However, they didn’t say that the result in Ramsey was necessarily incorrect because the parties in that case did not expressly stipulate that the employee was PTD but only that the employee was entitled to benefits “so long as the employee’s disability shall warrant”. This statement was at least arguable to an “open award” which would allow a potential discontinuance, although they did not specifically decide this.

The relevant provision in the stipulation in this case was:

All parties stipulated and agree that Stevens has been permanently and totally disabled from gainful employment since the injury of September 3, 1985 and that from this point forward, workers’ compensation benefits shall be classified as permanent total disability benefits within the meaning of §176.101, subd. 4 . . . Stevens shall continue to receive permanent total disability benefits on an ongoing basis subject to the terms and conditions of Chapter 176 in conjunction with injuries as previously described herein which occurred on or about June 30, 1984 and September 3, 1985 with both injuries contributing to permanent total disability status pursuant to §176.101, subd. 4.

The Court held this created no doubt that the parties agreed the employee was PTD. The reference to Chapter 176 means all of it, including §176.238 which doesn’t permit the discontinuance of PTD for someone so adjudicated. This language was held very different from the language of Ramsey which created an “open award” because it didn’t contain a provision that benefits would be paid only so long as warranted.

Hartwig v. Traverse Care Center 852 NW 21d 251 Ekhadl v. ISD #213, 851 NW 2nd 874 (Minn. 8/13/2014).

Employer/insurer held not entitled to reduce the PTD benefits by the amount of retirement benefits being paid through PERA due to language of statute. The Supreme Court interpretation of “old age and survivor insurance benefits” was held to refer only to social security benefits under the Social Security Act. Addition of the word “any” before the phrase was held not to broaden the meaning to include all government-service type pensions. Therefore, a disability pension from PERA can be deducted but not money from a retirement plan.

Allan v. RD Offut (WCCA 8/12/14).

Judge held to err by not including 10% PPD rating for complete loss of teeth in determining if the employee met the PT threshold. Employer’s argument that an employee’s PPD must affect their employability held not in accordance with case law per Metzger. PPD rating for loss of teeth doesn’t provide that the rating is lessened if the employee uses dentures and thus can properly be used in determining if the PTD threshold is met.

Hellgren v. St. Mary’s (WCCA 7/9/2014)

Employee held not to have retired or withdrawn from the labor market considering the factors in Dillemuth. A critical factor in the analysis was not only the employee’s disability status at retirement but the employee’s intent – i.e. whether this was the involuntary result of a compensable disability. Any statement by the employee that they would have continued to work but for the disability is of particular significance in establishing an intent whether or not to retire.

Procedure:

Small v. S. Louis Park (WCCA 1/2/14).

Voluntary payment of benefits held not to preclude a later denial of liability for those benefits paid. Here, the employer made payment of significant benefits, including some pursuant to stipulation which involved ongoing wage loss. However, pursuant to denials in the stipulation the WCCA agreed that there was never an admission of a permanent

injury such that they owed ongoing PTD or other benefits. The employee tried to argue that by choosing to pay benefits over the years, they concluded that the work injury was a substantial contributing factor in his condition and they were contractually bound to concede the nature and extent of the injury. The WCCA disagreed and clearly held that based on this language a voluntary payment of benefits did not constitute an admission of liability or preclude a later denial or responsibility for ongoing benefits.

Wiehoff v. ISD (WCCA 1/17/14).

WCCA affirmed a denial of stipulation for a close out of future medical. The judge was concerned the money would be used for daily living expenses leaving her without resources to pay for necessary work related medical treatment which was likely given the fact a prior hearing had determined that a fusion procedure was reasonable. It would also inappropriately shift work related medical cost from the liable employer/insurer to a private insurer or government agency which is a valid consideration for a compensation judge. A judge has discretion to approve/disapprove which was appropriately exercised here.

Psychological Injuries:

Schuette v. City of Hutchinson (WCCA 4/18/13).

Police officer's PTSD arising from responding to an emergency call where a 12 year old girl had fallen from a pick-up truck, hit her head and subsequently died, was held not compensable under Lockwood. The compensation judge found that the symptoms were consistent with PTSD, as an emotional disorder not classified as a physical injury to the brain, and rejected the opinions of other doctors who testified that PTSD is in fact a physical injury to the brain caused by an intense neuro-endocrine response to a threat. Excluding mental injury caused by mental stimulus from statutory term "personal injury" held not to violate federal and state equal protection rights. There is no compelling reason to overrule Lockwood and Johnson as these decisions expressly left to the Legislature the major policy determination whether to expand the WC act to include these kinds of injuries. Also under the 3 part rational basis test, there is no arbitrary distinction between physical and mental injuries and that the decision effectuates the purpose of the Act to assure quick and efficient delivery of indemnity and medical benefits to injured workers' at a reasonable cost.

Rehabilitation :

Petermeyer v. Centimark Corp (WCCA 10/14/14)

Decision that Employee was not entitled to job search assistance from a QRC because of a refusal of work from his employer was vacated. Here the employee was clearly unable to return to his pre-injury job due to injury related reasons which is the relevant question in determining entitlement to rehabilitation. Thus he was entitled. The refusal of this job was because the schedule would not allow him to continue regular visitation with his son. The WCCA recognized that refusal of work was not unreasonable where an employee had established a reasonable and responsible pattern of life allowing them to fulfill their family responsibilities, including spending time with and properly caring for children. Thus the matter was vacated to allow the Court to address this issue.

Breeze v. Fedex (WCCA 8/26/14).

Rehabilitation assistance is a form of compensation. Whether or not an employee could be held responsible for payment of QRC bills, he clearly has an adequate connection to the matter to claim payment of those bills and dispute an order denying payment. Therefore he doesn't lack standing to pursue payment of disputed QRC bills. In addition, the WCCA could not find any authority that a QRC is required to continue to provide rehab services during a pendency of a rehab dispute. In Parker v. University of MN (WCCA 9/16/03) the WCCA recognized that a QRC has no obligation to provide services during litigation on the question of an employee's eligibility for rehab. This principle doesn't differ when the dispute is over which QRC should provide services. Therefore the QRC was not entitled to be paid for time spent on an unsuccessful effort to continue serving as a QRC.

Temporary Partial Disability

Middlestead v. Range Reg'l Health (WCCA 3/3/15)

This case is just another reminder that an issue of whether an employee is able to return to work without restrictions is an ultimate question of fact for a compensation judge. Formal written restrictions underlying this are not required and an employee's testimony alone may constitute sufficient evidence to support a finding that an employee has a disability that restricts or limits their ability to perform work.

Wage:

Larson v. PDI Foods (WCCA 2/18/14).

Average weekly wage held not properly based on wage decrease taking place after injury where pay was changed from salary to hourly. Prior case law such as Knotz and Bradley don't stand for the proposition that a weekly wage may be reduced because of some development occurring after the injury. Here the injury took place well before change in method of payment. The wage on the date of injury thus held controlling.

Gilles v. Paul Bunyan Tree Service (WCCA 8/19/14).

Where employee had not paid himself a wage in the 27 years he worked in his tree business, there was no err in determining wage based on the wage of the tree trimmer hired to take over the work employee could no longer due because of injury. Where evidence in inadequate to all computation of wage pursuant to statute, the judge may use another method that reasonably reflects the employee's loss of earning capacity.