Workers' Compensation
Court of Appeals

October through December 2004

Case summaries published are
those prepared by the WCCA

***Cameron v. Metro Transit/Metro Council*, 10/1/04**
DOI: 5/10/99

Causation – Aggravation

Substantial evidence of record, including expert medical opinion, supports the compensation judge's finding that the employee's work-related injury of May 10, 1999, was a temporary aggravation that resolved within three months.

Causation – Gillette Injury

Substantial evidence of record, including expert medical opinion, supports the compensation judge's finding that the employee did not sustain a Gillette injury, culminating on April 3, 2002, as a result of his work activities as a bus driver.

Earning Capacity
Temporary Partial Disability

Where it is not clear from the limited evidence of record whether the employee's wage loss after July 5, 1999, was causally related to his 1999 work injury, the compensation judge reasonably denied the employee's claim for temporary partial disability benefits.

Affirmed.

***Sorby v. DCI, Inc., et al*, 10/1/04**
DOI: 10/4/00, 2/5/81

Vacation of Award – Newly Discovered Evidence

Where one of the issues at hearing was whether an employer and insurer had paid workers' compensation benefits for an earlier injury, where there was a lack of documentation of payments for that earlier injury and no file existed at the Department of Labor and Industry, Workers'

Compensation Division, for that injury, where the compensation judge found that benefits had not been paid by the earlier employer and insurer, and where documents showing that such benefits had been paid were located after the findings and order were issued, the petition to vacate the findings and order in the matter is granted.

Petition to vacate granted.

***Carlino v. Peterson Construction*, 10/4/04**
DOI: 7/21/03

Causation

Substantial evidence, including the employee's testimony, found credible by the compensation judge, and the adequately founded opinion of the employee's treating surgeon, supports the compensation judge's finding the employee suffered a personal injury in the nature of a C6-7 herniated disc in a work accident on July 21, 2003.

Temporary Total Disability

There is no requirement an injured employee be formally taken off work by a medical provider to be totally disabled. Where the employee testified he took several days off work following the injury due to his pain and symptoms, the compensation judge could conclude the employee was incapacitated from working due to the injury and did not err in awarding temporary total disability benefits for that period.

Intervention
Minnesota Statutes §176.361 (2002)

The intervenors attached to their motions to intervene documentation sufficient to establish their reimbursement interest. No objection was made to the reasonableness or necessity of the charges or contrary proof submitted. By failing to attend the hearing, the intervenors waived only the right to submit additional evidence, examine witnesses and make statements or arguments. There was no failure to "appear" in this case requiring denial of payment of reasonable, necessary and causally related medical treatment provided by or paid for by the intervenors.

Affirmed.

***Fieck, deceased by Dokken and Nelson vs. Brandrup & Associates*, 10/6/04**
DOD: 3/29/95

Vacation of Award – Mistake

Where there was no evidence in the record that the alleged mistake was both mutual and a mistake of fact, and where any arguable mistake was instead apparently a mistake in legal judgment, the court lacked authority to grant the employer and insurer's petition to vacate the order for reallocation at issue.

Petition to vacate denied.

***Hanegmon v. National Steel Pellet*, 10/6/04**
DOI: 8/29/81

Attorney Fees
Calculation of Benefits – Statutory Interest
Minnesota Statutes §176.225, subd. 5

Attorney fees are compensation for purposes of interest under Minnesota Statutes §176.225, subd. 5, and Minnesota Statutes §176.221, subd. 7, and interest on compensation that is due is mandatory under the statute, regardless of whether entitlement to such fees has been pleaded or ordered; and, notwithstanding the facts that entitlement to interest was not expressly pleaded in the claim petition and the judge had on an unrelated legal basis denied the penalties that were claimed under Minnesota Statutes §176.225, where payment of previously ordered fees was found by the compensation judge to have been unreasonably and inexcusably delayed, the Workers' Compensation Court of Appeals (WCCA) affirmed the compensation judge's decision to award interest on the fees at issue, but it modified that award to be assessed at a rate provided for in Minnesota Statutes §176.221, subd. 7, rather than at the 12 percent rate provided for in Minnesota Statutes §176.225, subd. 5.

Penalties
Minnesota Statutes §176.225, subd. 5

Awards of additional "compensation" authorized under section 176.225 are clearly penalties by their inherent nature, notwithstanding the arguably more express "penalty" language of other statutes providing for payment of penalties to the division rather than to the employee, and the court found no reason to reverse the compensation judge's decision to deny penalties under section 176.225 by application of Minnesota Statutes §79A.10, subd. 2, which protects the Minnesota Self-Insurer's Security Fund against liability for certain penalties.

Evidence – Res Judicata

Final orders of a compensation judge may be modified only by the Workers' Compensation Court of Appeals – either by timely appeal or by petition to vacate – or by the Supreme Court, not by a compensation judge. Where one compensation judge's award of subdivision 7 fees, arguably contrary to an earlier stipulation for settlement, was a final order, and where a subsequent compensation judge's award of a credit for the payment of those subdivision 7 fees pursuant to that award constituted an effective modification of that award, the subsequent judge's award of a credit was reversible error, the only proper procedural remedy being a petition to the WCCA to vacate the award of the fees.

Modified in part, affirmed in part, and reversed in part.

***Thuringer v. Virginia Regional Medical Center*, 10/7/04**
DOI: 7/25/02

Evidence – Credibility
Causation

The compensation judge's determination finding the employee's testimony credible was not clearly erroneous. Based, in part, on the employee's testimony, substantial evidence supports the compensation judge's finding the employee's injury was caused by her crutch slipping on a piece of metal on the floor at work.

Arising Out of and In the Course Of

The compensation judge did not err in finding the employee's injury arose out of her employment where the injury-producing hazard, a small piece of metal on the floor, increased the risk of harm to this employee who was walking on crutches, and the source of the harm was a hallway floor that was part of the work environment.

Affirmed.

Bradwell v. U.S. Roof Tech Corporation*, 10/12/04
DOI: 2/4/89, 11/4/87

Stipulation for Settlement
Credits and Offsets – Credit for Overpayment
Child Support Payments

The parties stipulated and agreed the employer and insurer would incur an overpayment and continue to pay full permanent total disability benefits until an SSDI lump-sum payment was received by the employee. If, upon receipt of the SSDI payment, the employee failed to reimburse the insurer within 30 days, the parties agreed the insurer could take a 100 percent credit against ongoing benefits until the overpayment was satisfied. In June 2003, the employer and insurer sought to discontinue the employee's permanent total benefits to recoup the overpayment. At that time, the insurer was making payments from the employee's workers' compensation benefits directly to the state of Minnesota and the state of Iowa under an attachment order for child support. The compensation judge erred in holding the minor children had an independent right to claim a portion of the employee's worker's compensation benefits by way of the child support attachment orders, and the employer and insurer are entitled to take a 100 percent credit in accordance with the Stipulation for Settlement until the overpayment is satisfied.

Reversed.

* This case is on appeal to the Minnesota Supreme Court.

Qadiid v. Acrometal Companies, Inc.*, 10/12/04
DOI: 5/1/02

Causation – Psychological Injury
Evidence – Expert Opinion

The compensation judge's finding of a psychological injury secondary to a work-related traumatic brain injury is supported by the evidence, including the adequately founded opinion of two treating psychiatrists.

Maximum Medical Improvement

Substantial evidence supports the compensation judge's determination that the employee has not reached maximum medical improvement (MMI) from his head injury or the psychological effects of the injury.

Withdrawal from Labor Market

Substantial evidence supports the finding the employee did not withdraw from the labor market where the employee had not been released to return to work and was temporarily totally disabled, and the compensation judge accepted as credible the testimony of the employee's witness that the employee was not working and had earned, at most, $500 as a return on his investment in a café the witness owned.

Affirmed.

***Trboyevich v. Potlatch Corporation*, 10/12/04**
DOI: 5/26/02

Maximum Medical Improvement

Substantial evidence supports the compensation judge's determination that the employee had not reached maximum medical improvement where the employee's treating doctor was recommending additional treatment approaches to improve the employee's condition.

Temporary Total Disability – Misconduct

Minnesota Statutes §176.101, subd. 1(e)(1) which bars the reinstatement of temporary total compensation when the employee has been terminated for misconduct does not apply when temporary total compensation was never paid to the employee.

Affirmed.

* This case is on appeal to the Minnesota Supreme Court.

***Winkel v. Jacobson Transport*, 10/12/04**
DOI: 12/24/83

Causation

Substantial evidence, including the opinions of several experts, supported the compensation judge's decision that the employee's left knee condition was not a compensable consequence of the employee's work-related right knee injury.

Affirmed.

***Vaynberg v. The McKnight Foundation*, 10/14/04**
DOI: 4/26/96

Jurisdiction – Subject Matter

As compensation judges are charged with responsibility to enforce provisions of the Minnesota Workers' Compensation Act, the compensation judge had subject matter jurisdiction to address the employer and insurer's motion to compel attendance at an independent medical examination.

Appeals
Jurisdiction – Subject Matter

The Workers' Compensation Court of Appeals lacks subject matter jurisdiction to consider an appeal from an order compelling the employee's attendance at an independent examination, as an order compelling attendance is not a final or appealable order under Minnesota Statutes §176.421.

Appeal dismissed.

Sweet deceased by Sweet v. Tremendous Entertainment, Inc.*, 10/15/04
DOI: 10/4/02

Causation

Substantial evidence supported the judge's decision that the employee's work activities did not substantially contribute to his cardiac arrest or resulting death.

Affirmed.

***Beers v. General Mills*, 10/20/04**
DOI: 1/14/97

Evidence – Expert Medical Opinion
Causation

Absolute certainty in the opinion of an expert medical witness is not essential to support a finding as to a relationship between a work injury and subsequent disability; a medical opinion is sufficient if it is probably true. The standard for expert opinion testimony is the "reasonable probability" standard,

* This case is on appeal to the Minnesota Supreme Court.

that is, the expert testimony must demonstrate it was more likely than not that the personal injury was a substantial contributing cause of the disability. Considering the testimony of the employee's cardiologist, Dr. Taylor, as a whole, along with the opinion of Dr. Wolters and the testimony of the employee, there is adequate support for the compensation judge's finding of causation.

Affirmed.

***Brovitch v. Park Landscaping*, 10/20/04**
DOI: 9/6/88

Vacation of Award – Substantial Change in Condition

When the employee established a substantial change in condition, under the factors specified in Fodness v. Standard Café, 41 W.C.D. 1054 (W.C.C.A. 1989), vacation of the award was appropriate.

Petition to Vacate Granted.

***Reich v. F&S Construction*, 10/21/04**
DOI: 1/00/01, 12/17/86

Practice and Procedure – Statute of Limitations
Minnesota Statutes §176.151

Where the compensation judge expressly credited the employee's testimony that the employer's owner had assured him that the bills for treatment for his work injury would be paid, where the employee was justified in relying on the owner's statements, and because other than for payment of his medical expenses the employee had had no reason to file a claim for benefits at the time of his work injury, the employer and insurer were estopped from pleading the statute of limitations as a defense, and the compensation judge erred in denying benefits based on the statute of limitations.

Medical Treatment and Expense
Intervenors

Where there was no dispute over the fact that the treatment at issue was reasonable and necessary and causally related to the work injury, and where the employee had made a direct claim for payment of the treatment expenses at issue, the compensation judge's order denying payment of the treatment expenses at issue was reversed, notwithstanding the fact that several of the providers involved and one third-party payor of the employee's medical bills had not formally intervened in the case.

Reversed.

Walbridge v. Northern Hydraulics*, 10/22/04
DOI: 8/19/95

Causation

Substantial evidence, including expert opinion, supported the compensation judge's decision regarding the nature and extent of the employee's work injury.

* This case is on appeal to the Minnesota Supreme Court.

Rehabilitation – Retraining

Substantial evidence, including expert vocational opinion, supported the compensation judge's conclusion that retraining was not reasonably required to restore the employee's lost earning capacity.

Vacation of Award – Substantial Change in Condition

The employee's alleged improvement following a 1996 determination of maximum medical improvement (MMI) did not constitute good cause to vacate the MMI decision.

Affirmed.
Petition to vacate denied.

***Koshak v. Reserve Mining Company*, et al, 10/26/04**
DOI: 10/6/99, 9/00/81

Permanent Total Disability

Where the employee's surgeon had considered the necessity of the employee's early retirement due to his work injury, where several physicians had agreed that the employee's low-back-related physical condition restricted him to only a few hours of very sedentary work each of only a few days each week, where the employee had most recently been totally restricted from even such work due to abdominal problems arguably related to his work injury, and where the employee was 63 years of age, had completed no formal education beyond a GED, and was no longer able to work at the maintenance tasks in which he had most of his employment experience, the compensation judge's award of permanent total disability benefits was not clearly erroneous and unsupported by substantial evidence, notwithstanding the fact that a vocational expert had provisionally identified a few jobs in the employee's job market for which he might be qualified.

Affirmed as modified.

Scanlon v. Caille Farm, Inc.*, 10/26/04
DOI: 5/29/02

Exclusions from Coverage – Family Farm

The compensation judge properly concluded that the employer, which was engaged primarily in the business of training horses and riders for show and recreational riding, was not a farm operation within the meaning of the family farm exclusion.

Affirmed in part and vacated in part.

* This case is on appeal to the Minnesota Supreme Court.

***Knutson v. Jordan Mill Work*, 10/28/04**
DOI: 1/23/97, 9/28/95, 2/9/95, 1/19/95

Vacation of Award – Substantial Change in Condition

The employee has not established a substantial change in medical condition which would support vacating the stipulations at issue.

Petition to vacate denied.

***Haag v. Minnesota Department of Labor and Industry*, 11/1/04**
DOI: 1/14/02

Penalties
Notice of Discontinuance
Minnesota Statutes §176.238

The statutes and rules provide for penalties to be assessed against an employer and insurer for an improper discontinuance. The compensation judge properly disallowed a penalty under Minnesota Statutes §176.221, subd. 3, because it applies to a failure to "begin payment," and this was a discontinuance case, but as Minnesota Rules Part 5220.2720, subp. 2.C., allows a penalty for improper discontinuance, we reinstate the penalty assessed by the commissioner but limit the amount to the $1,000 level allowed by Minnesota Statutes §176.238, subd. 10.

Penalties
Notice of Discontinuance
Minnesota Statutes §176.225, subd. 1

Where the employer and insurer improperly retroactively discontinued temporary total disability benefits, the compensation judge erred in setting aside the penalty assessed by the commissioner under Minnesota Statutes §176.225, subd. 1, and we reinstate the penalty payable to the employee for violation of Minnesota Statutes §176.238.

Affirmed in part, reversed in part and vacated in part.

***Lehner v. Como Transport, Inc.*, 11/1/04**
DOI: 4/7/01

Causation

Substantial evidence, including expert opinion, supported the compensation judge's decision that the employee's 2001 fall at work was a substantial contributing cause of the employee's bilateral cubital tunnel syndrome.

Affirmed.

***Wittrock v. Dalco Roofing and Sheet Metal*, 11/2/04**
DOI: 4/22/02

Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence, including expert opinion, supported the compensation judge's decision that proposed surgery was reasonable and necessary to treat the employee's work injury.

Affirmed.

***Bloom v. Slash, Inc, f/k/a GT Interactive Software, et al*, 11/3/04**
DOI: 6/21/96

Practice and Procedure – Dismissal

Vacation of the compensation judge's order for dismissal was appropriate where the judge made no findings on factual issues and there was no record of the proceedings leading to the dismissal.

Vacated and remanded.

***Humphreys v. Grandmas, Inc.*, 11/3/04**
DOI: 7/6/02

Causation – Substantial Contributing Cause

Substantial evidence supports the compensation judge's finding that the employee's work injury of July 2, 2002, was no longer a substantial contributing cause of the employee's left upper extremity condition after March 27, 2003.

Affirmed.

Stone v. Harold Chevrolet*, 11/3/04
DOI: 5/3/01

Permanent Partial Disability – Reflex Sympathetic Dystrophy
Minnesota Rules Part 5223.0430, subp. 6

When the compensation judge determined that the employee had a functional impairment as a result of his reflex sympathetic dystrophy, an award of permanent partial disability compensation was appropriate pursuant to Minnesota Rules Part 5223.0430, subp. 6.

Affirmed.

* This case is on appeal to the Minnesota Supreme Court.

***Hennings v. Lakes Gas Company*, 11/8/04**
DOI: 3/20/91

Vacation of Award – Substantial Change in Condition

Where the employee underwent an amputation of his right forearm as a result of his reflex sympathetic dystrophy and was assessed as having an increased permanent partial disability relative to his work injury, the employee showed a substantial change in medical condition to support vacating the stipulation and awards at issue.

Petition to vacate awards on stipulation granted.

***Burnsed v. Vehicular Testing Services, et al*, 11/9/04**
DOI: 1/29/00, 1/8/97

Practice and Procedure – Dismissal

Where the occurrence of a work injury was undisputed, where there appeared to be numerous issues of fact as to the nature and extent of the employee's disability, where it had been by agreement of the parties that the matter be originally stricken from the calendar only for the purpose of mediation, where, at the time of the filing of the operative motion to dismiss, the matter had not yet been stricken from the calendar for a full year pursuant to provisions of Minnesota Statutes §176.305, subd. 4, and where there was no definitive finding or evidence of full compliance with the notice provisions of that subdivision, the compensation judge erred in dismissing the employee's claim with prejudice, and her decision doing so was reversed and remanded for a hearing on the employee's claim petition.

Reversed and remanded.

***Cruz v. Deli Express*, 11/10/04**
DOI: 4/23/02

Causation – Temporary Aggravation

Substantial evidence supports the compensation judge's determination that the employee's injury was temporary and had resolved by July 7, 2003.

Affirmed in part, vacated in part.

***Noggle v. Lazer Communications, Inc.*, 11/10/04**
DOI: 4/10/03

Arising Out Of and In the Course Of

Substantial evidence supports the compensation judge's determination that the employee's cervical injury and need for surgery arose out of and in the course of his employment where the employee,

while driving in the course of his employment as a technical supervisor, described a pop in his neck and immediate onset of severe pain while turning his head sharply to the right to merge into traffic.

Affirmed.

***Johnson v. Apple Valley Health Care Center*, 11/12/04**
DOI: 1/5/90

Appeals – Interlocutory Orders

The pretrial order determining the nature of the proceeding to be held before the compensation judge does not constitute a final determination of the rights of the parties on the merits nor is it decisive of any substantive or ultimate right of the parties. The employee's appeal is premature and this court lacks subject matter jurisdiction to consider the appeal.

Appeal dismissed.

Kuehn v. St. Louis County*, 11/16/04
DOI: 1/4/96

Settlements – Interpretation
Penalties

Where the stipulation for settlement was silent as to the employer's right to a credit for sick leave paid during a period in which the stipulation provided for payment of temporary total disability benefits, and where the record indicated that the parties had expressly discussed the credit issue prior to executing the stipulation, the compensation judge properly concluded that the employer had intentionally underpaid compensation when it withheld amounts representing sick leave pay from the temporary total disability benefits specified by the stipulation, warranting an award of penalties.

Affirmed.

***Keuten v. Viele Contracting, Inc.*, 11/18/04**
DOI: 9/20/91

Vacation of Award – Substantial Change in Condition

Where there was insufficient evidence of a substantial change in condition, pursuant to the factors listed in Fodness v. Standard Cafe, 41 W.C.D. 1054, 1060-61 (W.C.C.A. 1989), the employee's petition to vacate the award on stipulation is denied.

Vacation of Award – Fraud

Where about seven years separate the employee's representations as to the nature and extent of his symptoms from the contradictory evidence of videotapes, these are simply too remote in time from each other to support vacation of an award on the basis of fraud.

Petition to vacate denied.

* This case is on appeal to the Minnesota Supreme Court.

***Homan v. Hoffman Engineering/Pentair Company, et al*, 11/23/04**
DOI: 1/15/01, 7/26/69

Causation – Gillette Injury

Where the expert opinion that was relied on was properly founded on facts that were substantially supported by the evidence, including the records of the treating surgeon, and where that opinion clearly supported the judge's decision, the compensation judge's conclusion that the employee sustained a Gillette-type injury on the date alleged was not clearly erroneous and unsupported by substantial evidence.

Medical Treatment and Expense – Reasonable and Necessary
Medical Treatment and Expense – Surgery
Temporary Total Disability

Where the conclusion of the judge was supported not only by the opinion of an independent medical examiner but also by the records of the employee's surgeon, the compensation judge's conclusion that the employee's first forearm surgery and immediately subsequent total disability were related to his second, overuse syndrome, work injury was not clearly erroneous and unsupported by substantial evidence.

Temporary Partial Disability

Where the employee's surgeon and the independent examiners for both employer/insurers had recommended restrictions related to the employee's work injuries, one of the independent examiners relating restrictions solely to the employee's second injury, the compensation judge's conclusion that the employee was subject to restricted employment and was entitled to temporary partial disability benefits half apportioned to the employee's second injury was not clearly erroneous and unsupported by substantial evidence, nor was there any prejudice in the judge's award of the full amount of the benefits against the second employer/insurer where temporary partial disability benefits were no longer available under the law in effect at the time of the first injury.

Apportionment – Rehabilitation Benefits

Where it was evident, from the development of the employee's second, overuse syndrome, injury, from the restrictions issued by the employee's surgeon, and from the employee's several aborted attempts to return to his pre-injury job, that the employee had become increasingly unlikely to be physically able to return to the kind of work that he was employed at at the time of his second injury, the compensation judge's apportionment of half of the employee's rehabilitation expenses against the insurer on the risk for the second injury was not clearly erroneous and unsupported by substantial evidence, notwithstanding the fact that the employee may not have been rated with any additional permanent partial disability.

Affirmed.

***Grenfell v. Zumbrota Healthcare*, 11/24/04**
DOI: 3/11/03

Causation

Substantial evidence, including expert opinion, supported the compensation judge's conclusion that the employee's work injury was a substantial contributing cause of the employee's left knee condition and resulting disability.

Affirmed.

***Jacobson v. Hennepin Faculty Associates*, 11/24/04**
DOI: 1/28/00, 1997, 1996, 1993, 1982

Vacation of Award

Where the employee's petition to vacate two stipulations on the basis of a substantial change in medical condition, mutual mistake of fact, and/or newly discovered evidence, involves complex issues of medical and legal causation, the case is referred to the Office of Administrative Hearings for factual findings to be reported back to the WCCA for determination of the petition.

Referred to OAH for an evidentiary hearing.

***Palmi v. Inter City Oil*, 11/24/04**
DOI: 2/22/99

Rehabilitation – Change of QRC

Substantial evidence supports the compensation judge's finding that a change in qualified rehabilitation consultant (QRC) would help to restore effective and balanced communications between parties and that a change of QRC is in the best interests of the parties.

Causation
Rehabilitation

Where the employee has physical restrictions from his work injury and is restricted from returning to his previous truck driving job, and he has not been able to earn his pre-injury wage since his work injury, substantial evidence, including medical records in evidence and the employee's testimony, supports the compensation judge's finding that the employee's work injury was a substantial contributing cause of the employee's loss of earning capacity and need for certain rehabilitation services.

Rehabilitation – Eligibility

Where the employee had a job available to him with a guaranteed annual salary, with the potential to earn additional money through commissions, and there was evidence that the employee is reasonably likely to return to his pre-injury wage in a reasonable time, substantial evidence supports the

compensation judge's finding that additional vocational assessment or other rehabilitation services in the nature of new job development or retraining research were unreasonable and unnecessary.

Affirmed.

***Sever v. Radotich Heating and Sheet Metal*, 11/24/04**
DOI: 12/22/99

Rehabilitation – Retraining

Where it was reasonably supported by analysis under all of the factors identified in Poole v. Farmstead Foods, 42 W.C.D. 970 (W.C.C.A. 1989), the compensation judge's award of retraining benefits was not clearly erroneous and unsupported by substantial evidence.

Temporary Partial Disability

Where the employee had petitioned for temporary total disability benefits during the period of any retraining program that might be certified by the judge, and where, at trial, the employee's counsel advised the court that his client was working two or three hours a week under a work/study program and that the judge should take earnings in that program into consideration in any award of wage-loss benefits should the retraining plan be approved, the compensation judge's award of temporary partial disability benefits concurrent with retraining benefits was not clearly erroneous and unsupported by substantial evidence, notwithstanding the employer and insurer's contention that the employee's work/study earnings did not represent his true earning capacity and that they had not received proper notice of the claim prior to trial.

Affirmed.

Voshage v. State (MNSCU), Winona State University*, 11/24/04
DOI: 4/23/02, 12/1/01

Causation – Gillette Injury

Substantial evidence in the form of a well-founded medical opinion supports the compensation judge's determination that the employee did not sustain an injury to her cervical spine.

Affirmed.

***Countryman v. Firefly Creek Casino*, 12/6/04**
DOI: 10/17/92

Vacation of Award – Substantial Change in Condition

The employee did not establish good cause to vacate the mediation award pursuant to the factors specified in Fodness v. Standard Café, 41 W.C.D. 1054 (W.C.C.A. 1989).

Petition to vacate denied.

* This case is on appeal to the Minnesota Supreme Court.

***Figgs v. Dungarvin, Inc.*, 12/9/04**
DOI: 1/17/04

Termination of Employment – Misconduct
Minnesota Statutes §176.101, subd. 1(e)(1)

Substantial evidence supports the compensation judge's finding that the employee's actions did not constitute misconduct justifying cessation of temporary total disability compensation under Minnesota Statutes §176.101, subd. 1(e)(1).

Affirmed.

***Clemmer v. National Steel Pellet Company*, 12/13/04**
DOI: 3/8/02

Medical Treatment and Expense – Surgery

Substantial evidence in the form of the independent medical examiner's (IME) opinion supports the compensation judge's decision that the proposed surgery to lengthen the employee's Achilles tendon was reasonable and necessary.

Practice and Procedure – Expedited Hearing
Minnesota Statutes §176.106, subd. 7

Where the employee's medical request for surgery approval was set for hearing on an expedited basis pursuant to Minnesota Statutes '§176.106, subd. 7, the compensation judge did not err in refusing to expand the issues to include the designation of the employee's treating doctor.

Affirmed.

***Schwieters v. Order of St. Benedict*, 12/13/04**
DOI: 10/17/91

Permanent Partial Disability

Substantial evidence, including medical opinions and the employee's extensive medical records, supported the judge's decisions as to the appropriate permanent partial disability ratings attributable to the employee's cervical, lumbar, and traumatic brain injuries. The judge's award was, however, modified to correct calculation errors.

Affirmed in part and modified in part.

***Scheunemann v. Installation Concepts/Multiple Concepts Interiors, Inc.*, 12/14/04**
DOI: 2/6/03, 10/25/00

Causation

Substantial evidence supports the compensation judge's finding of a new, work-related injury to the back on Feb. 6, 2003, based on the judge's acceptance of the employee's testimony as credible, and the well-founded opinion of the employee's treating surgeon.

Notice of Injury

Substantial evidence, including the employee's testimony that he was on the phone at work discussing the job with his supervisor at the time of the injury, yelled when he felt a pop in his back, and the supervisor asked him what he did, is sufficient to support a finding of inquiry notice on the date of the Feb. 6, 2003, injury.

Causation
Rehabilitation

Substantial evidence supports the compensation judge's determination that the employee's Feb. 6, 2003, injury necessitated additional rehabilitation services causally related to the employee's new injury.

Causation
Medical Treatment and Expense

Substantial evidence supports the compensation judge's award of reimbursement for counseling provided by Primary Behavioral Health Clinic from Dec. 11, 2003, through the date of hearing.

Affirmed.

***Hiller v. Parker Hannifin*, 12/14/04**
DOI: 9/16/02

Temporary Total Disability
Minnesota Statutes §176.101, subd. 1(h)

A written report placing restrictions on the employee is not necessary for the compensation judge to determine that the employee continues to have limitations on his ability to return to work. The compensation judge may rely on the credible testimony of the employee and on the record as a whole.

Affirmed.

***Doree v. SICK Optics, Inc.*, 12/14/04**
DOI: 9/3/03

Temporary Total Disability

Although the medical records were somewhat ambiguous, there was substantial evidence to support the compensation judge's finding that the employee's left shoulder injury continued to play a substantial contributing role in the employee's need for medical restrictions.

Affirmed.

Kunferman v. Ford Motor Company*, 12/16/04
DOI: 2/19/91, 6/30/88

Temporary Partial Disability – Earning Capacity

Where the employee returned to work on a full-time basis, during two time periods post-retraining, substantial evidence supports the compensation judge's finding that the employee's loss of earnings during those two periods were presumed to accurately represent her retained earning capacity and therefore served as a basis for calculation of temporary partial disability benefits.

Temporary Partial Disability – Earning Capacity

Where the employee returned to work on a part-time basis during a two-year period of time post-retraining, and where the employee was released to work on a full-time basis and conducted no search for additional work to supplement her part-time hours, the compensation judge's finding that the employee was entitled to the presumption that her actual earnings represented her earning capacity was not supported by substantial evidence and was clearly erroneous, and we, therefore, reverse the award of temporary partial disability benefits for that period of time.

Affirmed in part and reversed in part.

***Neururer v. Jamar Company*, 12/21/04**
DOI: 11/8/98

Permanent Total Disability

In view of the entire record as submitted, including expert vocational testimony and the employee's tax returns, substantial evidence supports the judge's conclusion that the employee's activities at his own business do not constitute gainful employment and that he is permanently and totally disabled.

Affirmed.

* This case is on appeal to the Minnesota Supreme Court.

***Kromschroeder v. ME International*, 12/21/04**
DOI: 8/00/00

Causation – Aggravation
Causation – Pre-Existing Condition

Where they were supported by expert medical opinion and were not otherwise unreasonable, the compensation judge's conclusions that the only work-related injuries proven to be at issue were the admitted carpal and cubital nerve tunnel injuries in the employee's wrists and elbows and that those injuries were effectively resolved upon the employee's post-surgical release to return to work without restrictions were not clearly erroneous and unsupported by substantial evidence, notwithstanding the fact that the employee had been initially diagnosed with wrist tendonitis and also with symptoms of arguably transient or pre-existing shoulder problems.

Affirmed.

Minnesota Supreme Court

October through December 2005

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• ***Anita S. Tillemans v. Pierce Company of Minneapolis, Inc., and Mutual Insurance Corporation, n/k/a APCapitol, and Park Nicollet Hospital, intervenor*, A04-1205, _____**

Decision of the Workers' Compensation Court of Appeals filed June 2, 2004, affirmed without opinion.

• ***David J. Ganfield v. City of Richfield, Self-Insured, Administered by Berkley Risk Administrators Company, and City of Apple Valley, Self-Insured, Administered by the League of Minnesota Cities Insurance Trust Workers' Compensation Plan*, A04-1162, Sept. 29, 2004**

Decision of the Workers' Compensation Court of Appeals filed May 24, 2004, affirmed without opinion.

• ***Clara Wensman v. Order of St. Benedict/St. John's University, Self-Insured, and BRAC, Administrator, and Center for Diagnostic Imaging, St. Cloud Orthopedics, and Medicare, Intervenors*, A04-1463, Oct. 27, 2004**

Decision of the Workers' Compensation Court of Appeals filed July 14, 2004, affirmed without opinion.

• ***John T. Kowalik v. Martinson Construction, Uninsured, and Schuett Construction, Uninsured, and Minnesota Department of Human Services and HealthPartners, Inc., Intervenors*, A04-1436, Oct. 27, 2004**

Decision of the Workers' Compensation Court of Appeals filed July 8, 2004, affirmed without opinion.

• ***Clint M. Webb v. Hercules, Inc.,/Burns Philip, Inc., and Broadspire, f/k/a Kemper Services, and Twin Cities Bakery Drivers Health & Welfare Fund, Intervenor*, A04-1736, Nov. 23, 2004**

Decision of the Workers' Compensation Court of Appeals filed Aug. 16, 2004, affirmed without opinion.

***• John A. Ahles v. John A. Dalsin & Sons, Self-Insured, adm'd by Berkley Risk Administrators Company, and McGrath Sheet Metal/Minneapolis Convention Center, and Zurich North American Insurance Group, and Sheet Metal #10 Benefit Fund, Twin Cities Anesthesia Associates, and Minnesota Department of Labor and Industry/VRU, Intervenors*, A04-1648, Nov. 23, 2004**

Decision of the Workers' Compensation Court of Appeals filed Aug. 9, 2004, affirmed without opinion.