

COMPACT

for workers' compensation professionals

February 2012

Minnesota Department of Labor and Industry

- 2 Save the dates – 2012: Worker' compensation summit; rehabilitation provider update conferences
- 2 Corrections: mileage rate, chart error
- 3 CompFact: Return-to-work increases for 2011 vocational rehabilitation closures
- 3 Changes for two DLI Vocational Rehabilitation unit offices
- 4 Report compares Minnesota to other systems by state
- 5 Workers' compensation cost declines from 2004 to 2010
- 5 More resources from DLI: newsletters, email lists
- 6 2011 updates to annual reports released: *Collection and Assessment of Fines and Penalties* report; *Prompt First Action Report on Workers' Compensation Claims*
- 6 Updated brochure available: Work comp claim characteristics
- 7 Basic adjuster training 2012: April 23 and 24; June 14 and 15; Oct. 30 and 31
- D-1 Court decisions: October through December 2011

Save the dates – 2012: work comp summit, rehab updates



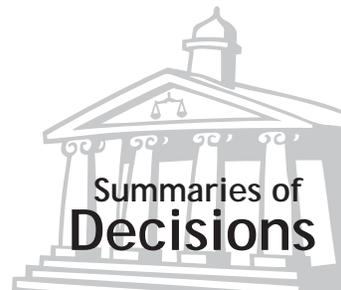
2

Updated brochure: work comp claims characteristics



6

Court decisions: October through December 2011



D-1

SAVE THE DATES – 2012

★ Workers' Compensation 2012: Working Together for a Better Minnesota

The Minnesota Department of Labor and Industry will sponsor its Workers' Compensation Summit on **June 12 and 13**, at Cragun's Conference Center in Brainerd, Minn.

The conference will feature multiple breakout sessions led by experts and stakeholders in workers' compensation and occupational safety and health. The conference will examine current issues that affect employers, employees, insurers, medical providers, legislators, attorneys and others who comprise Minnesota's workers' compensation system.

Registration and schedule information will soon be available on the Minnesota Department of Labor and Industry's website at www.dli.mn.gov/Summit.



Calendars All Calendars +						
June 2012						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
27	28	29	30	31	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

★ 2012 Rehabilitation Provider Update Conferences

The Department of Labor and Industry's (DLI's) 2012 Rehabilitation Provider Update Conferences will be **Sept. 27 and Oct. 18**. Each one-day training session will be at the University of Minnesota Continuing Education Center in St. Paul, Minn. Online-only registration for the event will be available on the DLI website in mid-summer.

Who should attend the conference?

- Registered qualified rehabilitation consultants (QRCs), QRC interns and placement vendors to meet mandatory requirements and to learn new skills to enhance job performance
- Stakeholders interested in the work skills of QRCs and placement vendors
- Insurance representatives wishing to better understand registered rehabilitation provider skill sets and the use of available technology

Attendance for registered rehabilitation providers is mandatory, unless excused by Minnesota Rules 5220.1500, subp. 3a.

Corrections

- **Mileage rate:** Incorrect mileage rate information was published in the August 2011 edition of *COMPACT*. The current rate is 55.5 cents a mile. (The rate did not change Jan. 1, 2012.)
- **Chart error:** There was an error in the online chart outlining maximum annual rate benefit adjustments for dates of injury Oct. 1, 1995, and after. The rate for adjustments made on or after Oct. 1, 2011, is 2 percent. A corrected chart has been posted on the Department of Labor and Industry website at www.dli.mn.gov/WC/RatesSAWW.asp.

Changes for two DLI Vocational Rehabilitation unit offices

Bemidji

DLI Vocational Rehabilitation unit
616 America Ave. N.W., Suite 300
Bemidji, MN 56001
Phone: (218) 308-2080 or 1-888-234-1116

Fergus Falls

DLI Vocational Rehabilitation unit
P.O. Box 439
Fergus Falls, MN 56538-0439
Phone: (218) 739-7296

CompFact

Return-to-work increases for 2011 vocational rehabilitation closures

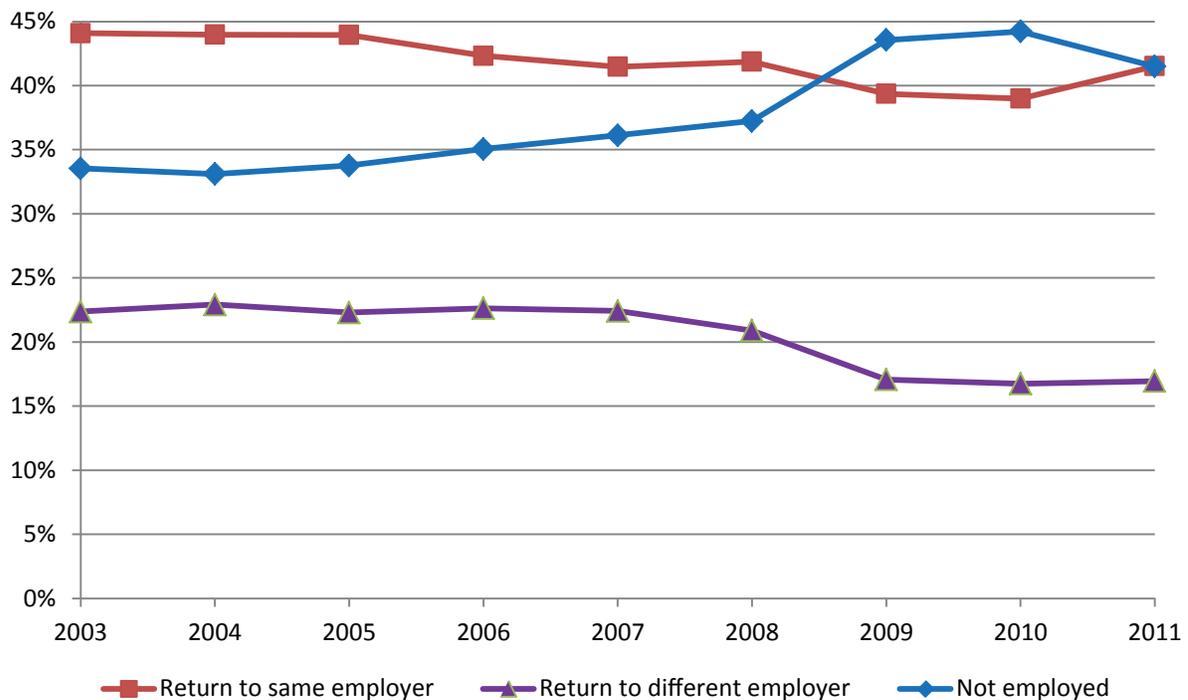
By Brian Zaidman, Research and Statistics

Analysis of closed vocational rehabilitation plans shows the trend toward lower percentages of workers returning to employment at plan closure was reversed in 2011.

In 2011, the percentage of injured workers returning to the pre-injury employer increased by more than two percentage points compared to 2010, from 39.0 percent to 41.5 percent. Also, the percentage returning to a different employer increased slightly, from 16.7 percent to 17.0 percent of plan closures. These results indicate the poor results for 2009 and 2010 were very likely influenced by the recession.

Starting in late January 2011, qualified rehabilitation consultants started using a new rehabilitation closure form that provides a breakdown in the status of workers who were not employed at plan closure. Among the 2011 plan closures using the new form, 8.9 percent indicated the unemployed worker was released to return to work without physical limitations, and 32.7 percent indicated the unemployed worker was not yet released for work or had work limitations.

Employment status at close of vocational rehabilitation plan



Report compares Minnesota to other systems by state

By Brian Zaidman, Research and Statistics

In December, the Workers' Compensation Research Institute (WCRI) released its latest study of Minnesota's workers' compensation system, *Benchmarks for Minnesota, CompScope™ 12th Edition*. The study looks at indemnity and medical benefits, vocational rehabilitation and claims expenses, comparing Minnesota's statistics with those from 15 other states.

WCRI is a nonprofit organization based in Cambridge, Mass., that conducts research about workers' compensation policy issues. Its *CompScope™* project uses claims data directly from insurers and self-insured employers to provide statistics comparable across states. For most measures, only claims with more than seven days of lost time are compared (because waiting periods vary among states) and these claims are adjusted for injury and industry mix and wages. The *CompScope™* database for Minnesota represents 59 percent of the claims. (A full presentation of the methodology is available in the report.)

The *CompScope™* statistics are not comparable with those in the Department of Labor and Industry's *Minnesota Workers' Compensation System Report* because of the adjustments used by WCRI to make the statistics comparable between states and because WCRI does not develop the claims to a high maturity. The statistics in the current *CompScope™* report focus on claims from October 2008 through September 2009, evaluated as of March 2010 (called 2009/10 claims) and claims from October 2006 through September 2007, evaluated as of March 2010 (called 2007/10 claims).

The report shows that compared to the other 15 states studied, Minnesota's claims on average receive their first benefit payments sooner, receive indemnity benefits for less time, have

lower total indemnity payments and have lower benefit-delivery expenses. This article compares Minnesota's results with those for the median of the 16 states studied.¹

For all 2007/10 claims (medical only and lost-time claims), WCRI found that for Minnesota:

- total cost per claim was 28 percent below the median; and
- the percentage of claims with more than seven days of lost time was 17 percent, compared to a median value of 20 percent.

For 2007/10 claims with more than seven days of lost time, WCRI found that for Minnesota:

- indemnity benefits per claim were 21 percent lower than the median of the study states;
- medical benefits per claim were 9 percent lower than the median of the study states;
- claim expenses per claim with any expenses were 10 percent lower than the median of the study states; and
- indemnity benefits in Minnesota were lower because of shorter duration of temporary disability and lower permanent partial disability/lump sum frequency than most study states, which was partially offset by higher-than-average lump-sum amounts.

WCRI also found that for Minnesota:

- indemnity benefits increased 13 percent from 2008 to 2009 (comparing 2008/09 claims with 2009/10 claims), primarily because of an increase in the duration of temporary disability; and
- it was third-highest among the study states for promptness of first indemnity payment.

The full report is available for purchase from WCRI at www.wcrinet.org/studies/public/books/BMscope_multi12_MN_book.html.

¹The median is the point where half the states are above and half are below. With 16 states, it is the halfway point between the eighth- and ninth-ranked states.



Workers' compensation cost declines from 2004 to 2010

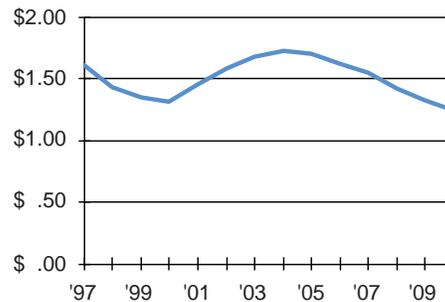
By David Berry, Research and Statistics

After peaking in 2004, Minnesota's workers' compensation costs declined relative to payroll from 2004 to 2010.

The overall cost of the system was estimated at \$1.25 per \$100 of payroll for 2010. This is down from the most recent peak of \$1.72 for 2004, and the lowest since 1997.

These figures include premiums paid by insured employers and estimated losses for self-insured employers.

Minnesota workers' compensation system cost per \$100 of payroll, 1997-2010 [1]

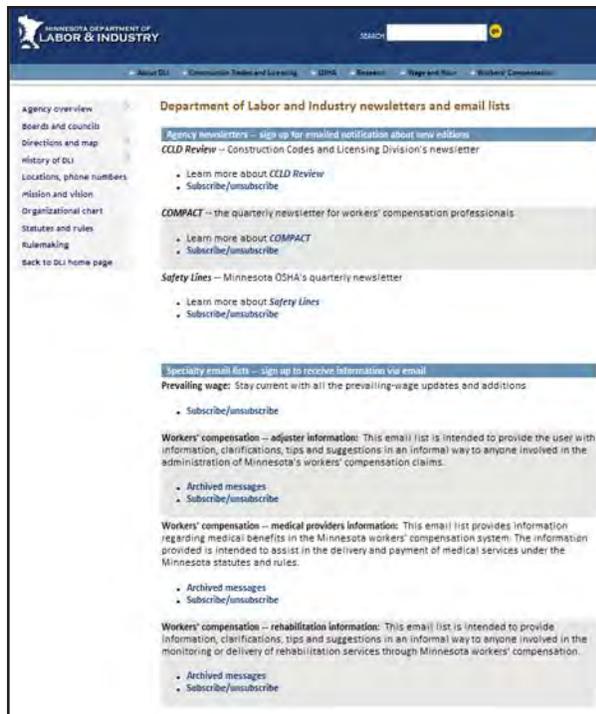


	Cost per \$100 of payroll
1997	\$1.61
2000	1.31
2004	1.72
2006	1.62
2007	1.55
2008 [2]	1.42
2009 [2]	1.33
2010 [2]	1.25

1. Estimated by DLI Research and Statistics with data from several sources. Includes insured and self-insured employers.
2. Subject to revision.

More resources from DLI: newsletters, email lists

Besides *COMPACT*, the Minnesota Department of Labor and Industry (DLI) offers two other quarterly publications: *CCLD Review* and *Safety Lines*.



- **CCLD Review** is the newsletter from DLI's Construction Codes and Licensing Division. Its purpose is to promote safe, healthy work and living environments in Minnesota and to inform construction and code professionals about the purpose, plans and progress of the division. Learn more or subscribe at www.dli.mn.gov/CCLD/Review.asp.
- **Safety Lines**, from Minnesota OSHA, promotes occupational safety and health, and informs readers of the purpose, plans and progress of Minnesota OSHA. Learn more or subscribe to the quarterly newsletter at www.dli.mn.gov/WC/SafetyLines.asp.

DLI also maintains four specialty email lists to which interested parties may subscribe:

- prevailing wage information;
- workers' compensation adjuster information;
- workers' compensation medical providers information; and
- workers' compensation rehabilitation information.

Learn more about each of DLI's specialty email lists, subscribe or review previously sent messages at www.dli.mn.gov/EmailLists.asp.

2011 updates to annual reports released

Collection and Assessment of Fines and Penalties report

Minnesota Statutes §176.222 directs the commissioner of the Department of Labor and Industry (DLI) to submit an annual report regarding the assessment and collection of fines and penalties under the workers' compensation law. Some of the results of the current report include the following.



- The department has continued to improve its efforts to find employers that have never obtained or fail to maintain workers' compensation coverage. This has included increased efforts to ensure canceled policies are investigated within six months of the cancellation.
- Most claim-related penalties have trended downward since fiscal-year 2007, paralleling the gradual decline in the number of lost-time claims and gradual increase in the timeliness of the insurer's first action during the same time period.

Prompt First Action Report on Workers' Compensation Claims

Minnesota Statutes §176.223 directs the DLI commissioner to publish an annual report providing data about the promptness of all insurers and self-insurers in making first payments or denials on a claim for injury.

The department evaluates data submitted on the *First Report of Injury* and *Notice of Insurer's Primary Liability Determination* forms to determine whether the first payment or denial of benefits is timely. In fiscal-year 2011, 90.2 percent of the 23,184 lost-time claims had a timely first action. This percentage is essentially unchanged from fiscal-year 2010, where 90.3 percent of the 22,512 lost-time claims had a timely first action.

Both reports are available online at www.dli.mn.gov/WC/ReportsPubs.asp.

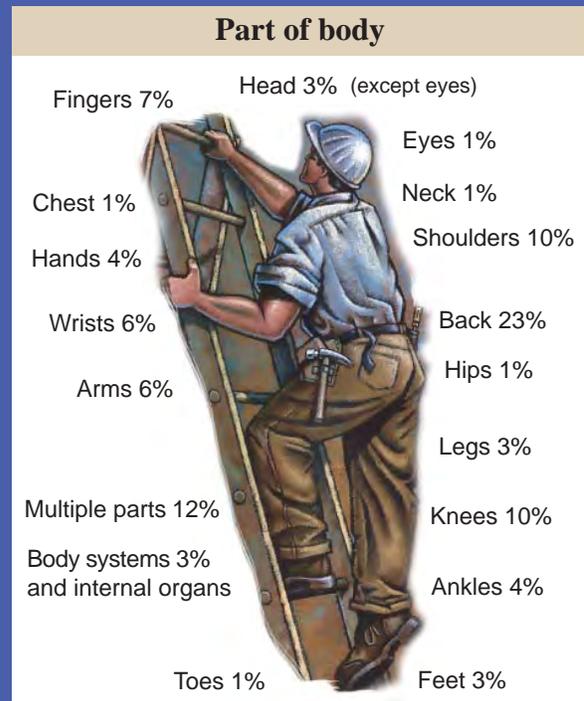
Updated brochure available:

Work comp claim characteristics

The Department of Labor and Industry's (DLI's) Policy Development, Research and Statistics unit has updated its annual Minnesota workers' compensation claims characteristics brochure.

The brochure provides statistics at a glance about injury, illness and fatality claims for 2010, such as the number of claims, nature of injury or disease, occupation of injured workers and other injured worker characteristics. The brochure also provides resources for further workers' compensation statistical information.

The brochure is available on the DLI website at www.dli.mn.gov/RS/ClaimCharac.asp. For more information, contact DLI's Research and Statistics unit at dli.research@state.mn.us or (651) 284-5025.



Basic Adjuster Training 2012

– *Three sessions in 2012* –

April 23 and 24 • June 14 and 15 • Oct. 30 and 31

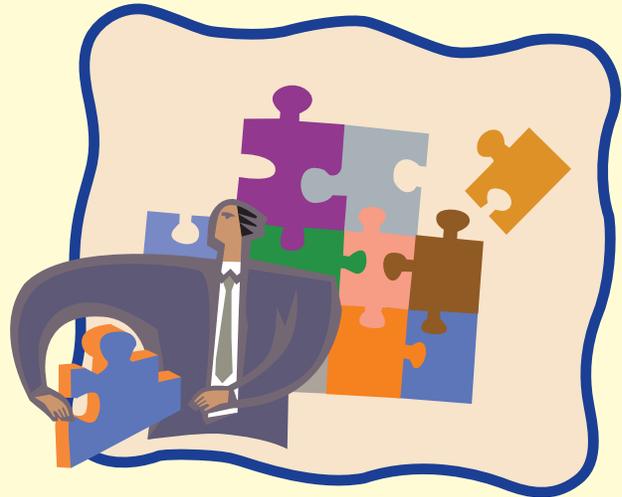
8:30 a.m. to 4 p.m.



This training is recommended for claim adjusters who have less than one year of experience in Minnesota workers' compensation.

Session topics

- Overview of Minnesota workers' compensation
- Waiting period
- Liability determination
- Indemnity benefits
- Rehabilitation benefits and issues
- Medical benefits and issues
- Penalties
- Dispute resolution
- How to file forms



Location: Minnesota Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN 55155

Cost: \$150 for the two-day session (includes lunch)

All participants must register and pay online

★ <https://secure.doli.state.mn.us/events/events.aspx?eid=15> ★

Early registration is encouraged. The sessions are limited to 28 people. Classes are filled on a first-come, first-served basis. The Department of Labor and Industry reserves the right to cancel a session if there are not enough participants registered.

Accommodation

If you need special accommodations to enable you to participate in this event or have questions about this training, call Jim Vogel at (651) 284-5265, toll-free at 1-800-342-5354 or TTY (651) 297-4198.

Take the pre-test

Do you administer Minnesota workers' compensation claims? Not sure if you need training? Take the pre-test at www.dli.mn.gov/WC/PDF/quiz.pdf and see how you do.

Workers' Compensation Court of Appeals

October through December 2011

Case summaries published are
those prepared by the WCCA



Wheeler vs. Menard, Inc., Oct. 5, 2011

Employment Relationship – Independent Contractor

Substantial evidence supports the compensation judge's determination that the appellant, a truck owner-driver, was an independent contractor, not an employee.

Affirmed.

Bauer vs. Fedex Freight, Oct. 12, 2011*

Causation – Medical Treatment; Medical Treatment and Expense – Surgery

Where the employee's morbid obesity had pre-existed her work-related knee injury but the weight loss surgery at issue had been recommended primarily to treat the knee condition, not the obesity, the compensation judge's conclusion that the proposed bariatric surgery was not causally related to the work-related knee injury was clearly erroneous and unsupported by substantial evidence, although the judge did not err in finding that the particular surgery proposed was not reasonable and necessary.

Affirmed in part and reversed in part.

Smith vs. Metro Transit, Oct. 17, 2011

Arising Out Of and In The Course Of – Prohibited Act

Substantial evidence supported the compensation judge's decision denying compensation on grounds that the employee's injury occurred as a consequence of his violation of the employer's specific rule prohibiting bus drivers from leaving their seats to confront unruly passengers.

Affirmed.

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

Phipps vs. Masterson Personnel, Oct. 18, 2011

Rehabilitation – Eligibility

Where the record reasonably supported the conclusion that the employee required restrictions on his activities as a result of his work injury, he has no high school diploma or driver's license, and the QRC intern testified that the services provided were reasonable, substantial evidence supported the compensation judge's decision ordering the employer and insurer to pay for rehabilitation services rendered through the date of hearing.

Affirmed.

Trevino vs. Holtmeier Constr., Inc., Oct. 19, 2011

Evidence – Expert Medical Opinion

Where the opinion of the medical expert on whom the judge relied was not without sufficient foundation by its failure to address the date of the employee's first treatment for depression, and where arguable factual errors in that opinion were neither importantly relevant nor dispositive as to the directness of the causal relationship between the employee's work injury and her subsequent depression condition, the compensation judge's denial of benefits for a consequential depression injury was not reversible on grounds of insufficient foundation for the credited medical opinion.

Causation – Consequential Injury;
Causation – Mental Stress;
Causation – Psychological Condition

Where the judge reasonably concluded that the employee's claim centered not directly enough on the work injury itself but on the employee's job loss, the compensation judge's denial of the employee claim to compensation for a consequential depression injury was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

Tschudi vs. Lakewood Entertainment, Oct. 19, 2011

Rehabilitation – Retraining

Substantial evidence did not support the compensation judge's award of retraining, given the lack of evidence establishing that the employee could expect to find employment after retraining that would restore her as close as possible to the economic status the employee would have enjoyed but for her disability.

Affirmed in part and reversed in part.

Pierce vs. Clarity Glass/SDB Enter, Oct. 24, 2011

Temporary Partial Disability – Earning Capacity

Substantial evidence supports the compensation judge’s finding that the employee was entitled to temporary partial benefits where the judge properly considered all of the relevant factors in determining the employee’s earning capacity under the circumstances of this case.

Affirmed.

Brown vs. City of Minneapolis, Oct. 27, 2011

Intervenors

Where the parties failed to give notice of its right to intervene to a long-term disability carrier in time for a hearing on a claim for benefits that coincided with the term of disability insurance payments, the parties’ notice to the disability carrier in later proceedings was not timely or adequate, and the disability carrier was entitled to full reimbursement from the employer of benefits it had paid the employee under its policy, with the employer entitled to a credit against benefits payable to the employee.

Affirmed.

*Jacobson vs. Third World Friends, Oct. 28, 2011**

Temporary Total Disability – 104 Weeks;
Statutes Construed – Minn. Stat. § 176.101, Subd. 1(K);
Statutes Construed – Minn. Stat. § 176.101, Subd. 1(M);
Discontinuance – Notice Of Intent To Discontinue

Where Minnesota Statutes § 176.101, subd. 1(k), required that the employee’s temporary total disability benefits be capped at 104 weeks, where Minn. Stat. § 176.101, subd. 1(m), provided that an employer/insurer “must” provide the employee with notice of that cap once 52 weeks of such benefits had been paid, but where the statute nowhere specified any penalty for violation of that requirement, the compensation judge did not err in concluding that he lacked authority to create and impose a penalty or in confirming the employer’s discontinuance of benefits.

Evidence – Estoppel and Laches

Where the employer and insurer had failed to provide the employee with notice of the 104-week cap on temporary total disability within 52 weeks, as required but without specified penalty for failure under Minn. Stat. § 176.101, subd. 1(m), but where there was no evidence of any inducement or misrepresentation on the part of the employer and insurer or any detrimental reliance on the part of the employee, the compensation judge’s conclusion that the doctrine of equitable estoppel did not apply was not clearly erroneous and unsupported by substantial evidence, and, “not a court of equity,” the WCCA declined to apply the doctrine itself.

Affirmed.

*Kovensky vs. Larry's Autos Unlimited, Oct. 28, 2011**

Appeals – Notice of Appeal

Under the specific facts of this case, the appellant failed to prove that its notice of appeal was filed within the time specified by statute.

Affirmed.

Skari vs. Aero Sys. Engineering, Nov. 7, 2011

Permanent Total Disability – Retirement

Substantial evidence supports the compensation judge's determination that the employee rebutted the statutory retirement presumption and was entitled to continuing permanent total disability benefits.

Affirmed.

Todd vs. West Wind Vill., Nov. 10, 2011

Evidence – Expert Medical Opinion

Where the opinion of the medical expert on whom the judge relied was not without sufficient foundation by its failure to address the date of the employee's first treatment for depression, and where arguable factual errors in that opinion were neither importantly relevant nor dispositive as to the directness of the causal relationship between the employee's work injury and her subsequent depression condition, the compensation judge's denial of benefits for a consequential depression injury was not reversible on grounds of insufficient foundation for the credited medical opinion.

Causation – Consequential Injury;
Causation – Mental Stress;
Causation – Psychological Condition

Where the judge reasonably concluded that the employee's claim centered not directly enough on the work injury itself but on the employee's job loss, the compensation judge's denial of the employee claim to compensation for a consequential depression injury was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

Lara vs. Volunteers of Am, Nov. 16, 2011

Causation—Substantial Evidence

Where the employee's testimony was inconsistent and contradicted by the evidence in the record, the compensation judge could reasonably conclude that there was a lack of evidence to sustain the employee's claim that her injury occurred at work.

Affirmed.

Brown vs. City of Minneapolis, Nov. 17, 2011

Practice and Procedure – Independent Medical Examination

Where the compensation judge indicated that the employee's claim for psychological treatment was unclear as to whether the treatment was for an admitted chronic pain condition or for a different mental condition, the compensation judge did not abuse her discretion by continuing the hearing to allow the employer to obtain an independent psychiatric examination of the employee.

Evidence – Res Judicata

Res judicata does not bar the compensation judge from denying the employee's claim for psychological treatment where a previous decision found that the employee's work injury had aggravated her pre-existing chronic pain syndrome, but had not addressed whether that injury caused or aggravated her depression and/or anxiety.

Causation;
Medical Treatment and Evidence – Reasonable and Necessary;
Evidence – Expert Medical Opinion

Substantial evidence, including adequately founded expert opinion, supports the compensation judge's findings that the employee's work injury did not aggravate her pre-existing psychological condition and that the nonpsychological treatment was not reasonable and necessary.

Affirmed.

Frandsen vs. Ford Motor Co., Nov. 17, 2011

Permanent Total Disability – Discontinuance;
Permanent Total Disability – Retirement

In cases involving the retirement presumption contained in Minnesota Statutes § 176.101, subd. 4, an employer or insurer may discontinue payment of permanent total disability benefits when the employee attains the age of 67, without taking further action prior to cessation. No petition to discontinue permanent total disability benefits is required.

Petition to discontinue dismissed.

Lambert vs. City of Duluth, Nov. 18, 2011

Causation – Substantial Evidence

Substantial evidence supports the compensation judge's finding of causation for the employee's bilateral ankle condition.

Temporary Total Disability; Interest

Under the record presented to the compensation judge, the order determining eligibility for temporary total disability and interest was not improper or in contradiction to a claimed stipulation of the parties.

Permanent Partial Disability

In light of the rating physician's opinion that the employee would likely show further improvement and had presumably shown improvement since last examined, the rating of permanent partial disability for the employee's ankle conditions was premature.

Affirmed in part and vacated in part.

Bourgoin vs. The Gillette Co., Nov. 23, 2011*

Vacation of Award – Substantial Change In Condition

The evidence submitted with the petition, evaluated in light of the factors listed in Fodness v. Standard Cafe, 41 W.C.D. 1054 (W.C.C.A. 1989), justifies vacating the award on stipulation on grounds of substantial change in medical condition.

Petition to vacate granted.

Brotherton vs. Federal Express Corp., Nov. 28, 2011

Temporary Benefits – Fully Recovered

Where the employee had been released to work without any restrictions and his inability to return to his job was due solely to Department of Transportation regulations, it was not unreasonable for the compensation judge to conclude that the employee was not entitled to wage-loss benefits, and the judge did not err in allowing discontinuance.

Affirmed.

Keck vs. ISD #877, Nov. 30, 2011

Practice and Procedure – Appeal

Where no transcript of the testimony at the hearing was available because of equipment failure and the compensation judge prepared a reconstruction of the record in accord with the procedure set out in Moulzolf v. Pierz Marine Inc., 51 W.C.D. 397 (W.C.C.A. 1994), the reconstruction of the record and the documentary evidence provides an adequate record for this court's review.

Temporary Partial Disability

Substantial evidence supports the compensation judge's conclusion that the employee had a loss of earning capacity related to her work injuries and had cooperated with her QRC in her job search, finding additional employment in the course of that job search.

Apportionment – Equitable

The compensation judge's apportionment of liability for rehabilitation and temporary partial disability benefits was supported by substantial evidence where the evidence demonstrated that the work-related shoulder and knee conditions both contributed to her loss of earning capacity.

Affirmed.

Schuler vs. Cemstone Prods. Co., Nov. 30, 2011

Permanent Total Disability – Substantial Evidence

Substantial evidence, including the opinion of the employee's QRC, supported the compensation judge's decision that the employee was permanently and totally disabled as a substantial result of his work injury.

Credits and Offsets

Nothing in the statute or case law supported the employer and insurer's claim that the employee's permanent total disability benefits should be reduced by benefits the employee received under a private long-term disability insurance plan.

Affirmed.

Michog vs. Wal-Mart Stores, Inc., Dec. 1, 2011

Permanent Partial Disability – Shoulder;
Permanent Partial Disability – Weber Rating;
Rules Construed – Minnesota Rules 5223.0450

Where the employee's MRI results were not definitive, due to motion artifact, and where the judge's decision was supported by expert medical opinion, the judge's conclusion that the employee had not sustained a rotator cuff tear under Minnesota Rules 5223.0450, subp. 3, such as would entitle him to further benefits under Minn. R. 5223.0450, subp. 4, was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

Peterson vs. Ariel, Inc., Dec. 8, 2011

Temporary Partial Disability

Substantial evidence supports the compensation judge's determination that the employee was not entitled to temporary partial disability benefits where his employment resulted in insubstantial income in which the employee worked no more than 1.5 hours a week and earned no more than \$15 a week.

Causation – Medical Treatment

Substantial evidence supports the compensation judge's determination that the condition for which a specialist referral was requested is not related to the employee's work injury.

Affirmed.

Lann vs. Stan Koch & Sons Trucking, Dec. 12, 2011

Permanent Total Disability – Insubstantial Income

Substantial evidence supported the compensation judge's conclusion that the employee earnings were not insubstantial, and the judge did not err in denying permanent total disability benefits, especially where vocational opinions supporting the employee's claim were based on outdated restrictions.

Credit and Offsets

Where the employee elected to receive Minnesota workers' compensation benefits, the employer and insurer were entitled to a credit for proceeds from the employee's third-party suit and settlement, despite the fact that the third-party suit and resulting settlement took place in Georgia.

Affirmed.

Katzenberger vs. Kelly Raph, Dec. 14, 2011

Arising Out Of and In The Course Of – Going To and From Work

Where neither party testified definitively as to any mutual understanding regarding the purpose behind the car pooling, where the employee, who had no driver's license, apparently rode to and from work with the employer only to and from the last of several job sites and only over the course of the three-week period preceding his injury, and where there was no testimony suggesting that the car pooling was for the convenience or economic benefit of the employer, the compensation judge's conclusion that the employee failed to establish that transportation to and from work was regularly furnished to him as a condition of his employment was not clearly erroneous and unsupported by substantial evidence.

Arising Out Of and In The Course Of – Special Errand

Where the employee contended that he was acting in good faith to further the employer's interests when he was injured while surveying an alternative job site on his way home from work with the employer, and where the judge opted to credit instead the employer's position that he did not ask or expect the employee to do anything on the alternative site, the compensation judge's conclusion that there was no business value to the employer in the employee's activity at the time of the employee's injury was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

Coles vs. W.E. Neal Slate Co., Dec. 15, 2011

Employment Relationship

Where the employer ceased affiliation with the petitioner's union but instead contracted with a separate company to provide union workers, including the petitioner, for the employer's installation projects, but where the employer retained control of the means and manner of the work, the compensation judge's conclusion that the petitioner remained an employee of the employer was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

Vold vs. Pepsi-Cola of Ortonville, Dec. 21, 2011

Causation – Substantial Evidence

Substantial evidence, including expert opinion, supported the compensation judge's decision that the employee's need for the implantation of a pacemaker was related to a pre-existing non-work-related condition rather than the employee's work-related injury.

Affirmed.

Grubessich vs. Allina Health Sys., Dec. 22, 2011

Credits and Offsets – Social Security Offset;
Statutes Construed – Minnesota Statutes § 176.101, Subd. 4

An offset from permanent total disability benefits under Minnesota Statutes § 176.101, subd. 4, for Social Security retirement benefits which commenced before the employee was permanently and totally disabled, does not require that the eligibility for retirement benefits be occasioned by the work injury or injuries that resulted in the eligibility for permanent total disability benefits.

Affirmed.

Washenberger vs. Metropolitan Ctr. For Indep. Living, Dec. 23, 2011

Permanent Partial Disability – Skin Disorders;
Rules Construed – Minnesota Rules 5223.0630, Subps. 2.D. and 2.E.

The compensation judge's determination that the employee was able to live independently under Minnesota Rules 5223.0630 based on her ability to live alone, drive and work outside the home does not adequately take into account the degree of independence the employee lost after the work injury. The activities of daily living are the appropriate factors to consider when defining the phrase "live independently" within the meaning of the rule. Identifying activities of daily living and measuring the degree of supervision, direction or personal assistance needed to perform each activity must be addressed when determining whether an employee is able to live independently under Minn. R.

Summaries of Decisions

5223.0630. This case is remanded to the compensation judge for consideration of the evidence as to the employee's activities of daily living and how they affect her ability to live independently.

Vacated and remanded.

Sechrist vs. Will Do Truckin, Inc., Dec. 23, 2011

Evidence – Expert Medical Opinion

Although the doctor's reports were not very copiously detailed, where the doctor had made no factual assumptions affirmatively contradicted by the evidence, and where the doctor had indicated clearly that he had reviewed not only the IME's report but also records of chiropractic treatment evidencing the employee's complaints of pre-existing right shoulder pain, the court would not reverse the judge's decision on grounds that the treating doctor's opinion, on which the court had relied, was without proper foundation.

Causation – Substantial Evidence

Where the judge reasonably assessed the delay in the employee's request for surgery, the employee's pre-injury chiropractic treatment, the employee's history of restrictions and the onset of the employee's symptoms, the compensation judge's finding of a work-related shoulder injury was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

Hudson vs. Lake County Home Health Serv., Dec. 27, 2011

Causation – Medical Treatment

Substantial evidence, including the opinion of the employer and insurer's independent medical examiner, supported the compensation judge's denial of medical expenses related to claimed consequential injuries, on grounds that those conditions had resolved prior to the period at issue or that the conditions were simply unrelated to the employee's initial work-related low back injury.

Affirmed.

Minnesota Supreme Court

October through December 2011

Case summaries published are
those prepared by the WCCA



- **Mark Trompeter vs. Boise Cascade Corporation, self-Insured/Sedgwick Claims Management Services, Inc., A11-1047, Oct. 26, 2011**

Decision of the Workers' Compensation Court of appeals filed May 18, 2011, affirmed without opinion.

- **Thomas A. Johnson vs. AmeriPride Linen & Apparel Services, and CAN/Risk Enterprise Management, Ltd., A11-1086, Oct. 26, 2011**

Decision of the Workers' Compensation Court of appeals filed May 19, 2011, affirmed without opinion.

- **Sandra R. Hoover vs. Independent School District #84, Self-Insured/Minnesota School Boards Association Insurance Trust/Berkley Risk Administrators, A11-1347, Oct. 27, 2011**

Decision of the Workers' Compensation Court of appeals filed June 29, 2011, affirmed without opinion.

- **Richard D. Drury vs. YRC International f/k/a Roadway Express, Self-Insured/Gallagher Bassett Services, Inc., A11-0924, Sept. 29, 2011**

Decision of the Workers' Compensation Court of appeals filed April 18, 2011, affirmed without opinion.