

COMPACT

for workers' compensation professionals

May 2010

Minnesota Department of Labor and Industry

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Legislative and rule update



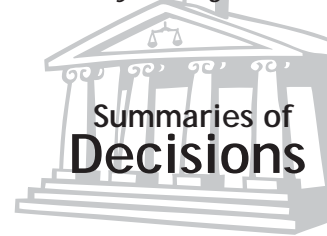
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Legislative and rule update

By Kate Berger, General Counsel

Legislation of interest

There was no Workers' Compensation Advisory Council bill this year, but there was other legislation affects the obligations of health care providers and workers' compensation payers. Minnesota Statutes §176.221, subd. 7, provides that any payment of compensation, charges for treatment, rehabilitation expenses or penalties assessed under the workers' compensation law "not made when due shall bear interest from the due date to the date the payment is made at the rate set by section 549.09, subd. 1." The Legislature amended section 549.09 in 2009 to provide for different interest rates, depending on whether the judgment or award is more than \$50,000. This law was amended again this year to provide that the higher interest rate for judgments and awards greater than \$50,000 does not apply when section 549.09 is referenced for the purpose of computing an interest rate on any amount owed to or by the state or political subdivision of the state. For the actual language of the new legislation, see <https://www.revisor.mn.gov/laws/?id=249&doctype=Chapter&year=2010&type=0>.



As a result of legislation enacted in 2008, all health care providers must submit workers' compensation bills and all workers' compensation payers must provide remittance/claim payment advices according to federal electronic health care transaction standards, as implemented by the Minnesota Department of Health. The Legislature has amended M.S. sections 62J.51 and 62J.536 to further clarify the responsibilities of providers, payers and clearinghouses for electronic transactions. See <https://www.revisor.mn.gov/laws/?id=243&doctype=Chapter&year=2010&type=0>.

Rules

The Office of Administrative Hearings conducted hearings on March 2 and 4, 2010, about proposed amendments to the workers' compensation treatment parameter rules (Minnesota Rules Ch. 5221) and the permanent partial disability schedule (Minn. Rules Ch. 5223). Administrative Law Judge Beverly Jones Heydinger recommended adoption of the proposed amendments to the permanent partial disability schedule in a report issued April 9, 2010; Judge Heydinger's report can be viewed on the OAH Web site at www.oah.state.mn.us/aljBase/190020868rr.htm. Administrative Law Judge Richard C. Luis recommended adoption of proposed amendments to the treatment parameter rules in a report issued April 27, 2010; Judge Luis's report can be viewed at www.oah.state.mn.us/aljBase/190020869trmnt-params-rr.pdf. Updates about the final adoption process will be posted on the Department of Labor and Industry's rulemaking docket page at www.dli.mn.gov/RulemakingWC.asp.

On Monday, May 17, 2010, the department published two Requests for Comment about possible amendments to workers' compensation rules. The requests invite interested people to submit comment and information about possible amendments to rules governing workers' compensation vocational rehabilitation, medical services and fees, penalties related to improper payment or denial of medical services, and workers' compensation certified managed care plans. The requests provide additional information about the possible amendments under consideration and how to provide comments and information. See www.comm.media.state.mn.us/bookstore/mnbookstore.asp?page=register. The possible rules will be discussed with the Rehabilitation Review Panel on Fri., June 4, and with the Medical Services Review Board on Tues., June 8. For more information visit www.dli.mn.gov.

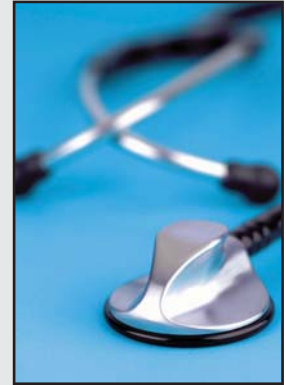
From the *State Register*

Provider participation list available

Minnesota Statutes § 256B.0644 and Minnesota Rules parts 5221.0500, subp. 1, and 9505.5200 to 9505.5240, also known as DHS "Rule 101," require health care providers that provide medical services to an injured worker under the workers' compensation law to participate in the Medical Assistance Program, the General Assistance Medical Care Program and the MinnesotaCare Program.

Notice is hereby given that the Minnesota Health Care Programs provider participation list for April 2010 is now available. The provider participation list is a compilation of health care providers that are in compliance with the Department of Human Services (DHS) Rule 101. If a provider's name is not on the list, DHS considers the provider noncompliant.

The list of providers is separated by provider type, each section is in alphabetical order by provider name and there is no additional information on the list other than the provider's name. This list is distributed on a quarterly basis to Minnesota Management and Budget, the Department of Labor and Industry, and the Department of Commerce. To obtain the list, call Julie Hervas, DHS Rule 101 specialist, at (651) 431-2707 or toll-free at 1-800-366-5411. You may fax requests to (651) 431-7462 or mail them to the Department of Human Services, P.O. Box 64987, St. Paul, MN 55164-0987.



CHALLENGING TIMES: UNLOCKING NEW OPPORTUNITIES

Second annual Workers' Compensation Policy Summit **June 14 through 16, 2010** **Grand View Lodge, Nisswa, Minn.**

The intent of this conference is for participants to listen, educate and speak about policy reforms needed in the workers' compensation system and not to tiptoe around controversial topics.

Through general sessions, breakout sessions and panel discussions, there is something for all workers' compensation stakeholders: employers, insurers, providers, employee representatives, public officials, lobbyists and more. In addition, participants can visit the vendor exhibit hall to learn about companies that offer assistance to workers' compensation stakeholders.

New! Governor's Award for Innovative Measures in Workers' Compensation
Three Minnesota employers will be recognized with the Governor's Award for Innovative Measures in Workers' Compensation for implementing programs and strategies to make their workers' compensation system, management and approach stand out from the rest. Nominations were accepted through April 30, 2010.

Complete information is online

Visit www.dli.mn.gov/Summit for the latest information about breakout sessions, speakers and exhibitors; learn more about beautiful Grand View Lodge; register as a participant or exhibitor; or print a brochure.



Exhibitors:
Don't miss this
great opportunity
to reach workers'
compensation
stakeholders!

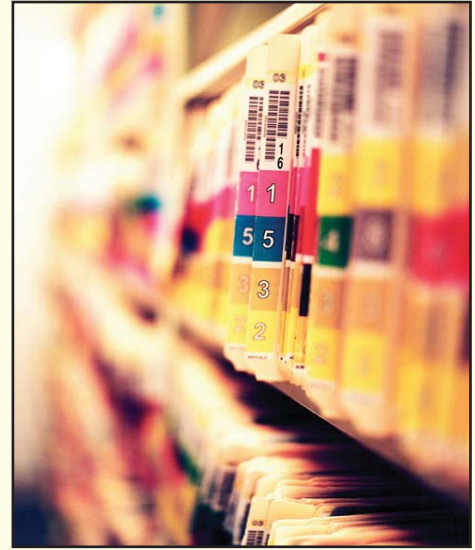
www.dli.mn.gov/Summit

Job tenure and insurance – What’s the connection?

By Brian Zaidman, Policy Development, Research and Statistics

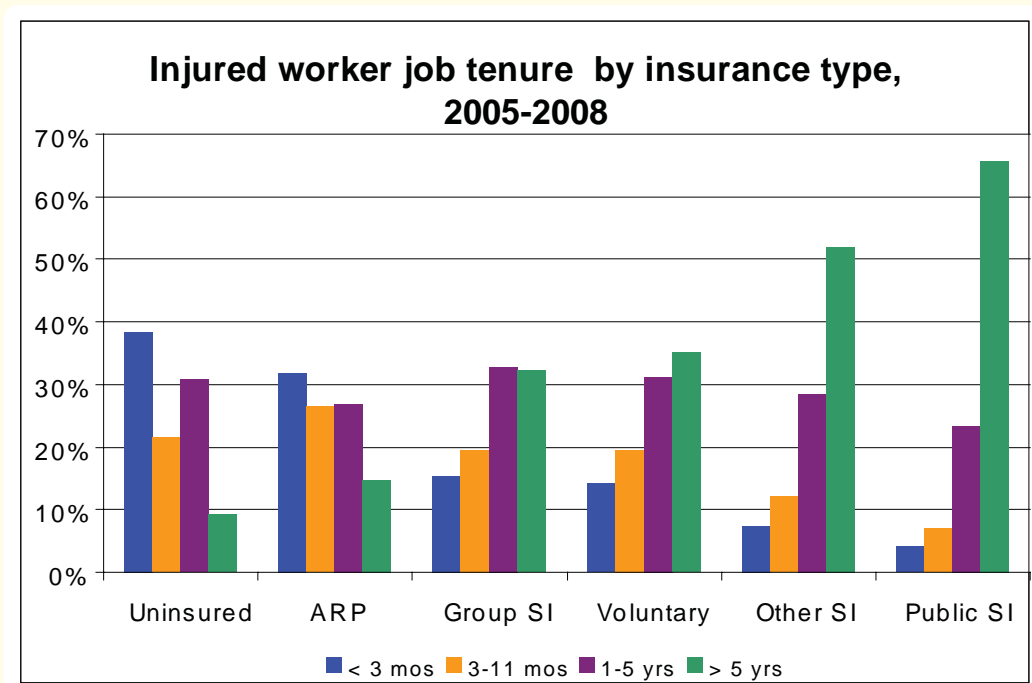
An examination of injured workers' job tenure, the length of time they were employed by their employers when they were injured, shows an interesting relationship with the type of insurance arrangement used by employers to provide workers' compensation coverage.

In Minnesota, workers' compensation coverage can be arranged through: the Assigned Risk Plan (ARP); purchase of insurance on the open market (voluntary insurance); group self-insurance (group SI), where groups of small employers organize to form self-insurance groups; public self-insurance (public SI), which involves state and local government units providing self-insurance coverage either individually or through associations; and through all other self-insurance (other SI), which involves an employer (usually a large employer) providing self-insurance for its own Minnesota workers. Unfortunately, there is one other group, albeit a small one, uninsured employers.



As shown in the figure, injured workers from uninsured employers were the most likely to have been employed for less than three months and the least likely to have been employed for more than five years. This is due to the short-term nature of many uninsured businesses. At the other extreme, injured workers from public SI employers were the least likely to have been recently employed and the most likely to have job tenures in excess of five years. This is due to the job stability provided by public employment and the low rate of hiring in recent years.

The other insurance arrangements are ordered by decreasing prevalence of newly-hired workers (or increasing prevalence of long-tenured workers).



Annual update:

Workers' compensation system report

By David Berry, Policy Development, Research and Statistics

The Department of Labor and Industry (DLI) will soon release its 2008 *Minnesota Workers' Compensation System Report*. The report, part of an annual series, will present data from 1997 through 2008 about several aspects of Minnesota's workers' compensation system – claims, benefits and costs; vocational rehabilitation; and disputes and dispute resolution. The purpose of the report is to describe statistically the current status and direction of workers' compensation in Minnesota and to offer explanations where possible for recent developments. It will be available on the department's Web site at www.dli.mn.gov/RS/PDF/wcfact08.pdf.



Some report findings

- From 1997 to 2008, the overall claims rate declined from 8.7 to 5.4 paid claims per 100 full-time-equivalent workers, a decrease of 38 percent.
- The total cost of the workers' compensation system was an estimated \$1.35 per \$100 of payroll in 2008, 16 percent less than in 1997 and just above the low-point of \$1.31 for 2000. Total system cost was an estimated \$1.5 billion in 2008.
- Regarding benefit levels:
 - Adjusted for average wage growth, average medical benefits per insured claim rose by 81 percent between 1997 and 2007, while indemnity benefits per claim¹ rose 34 percent. Most of the increase in adjusted average medical benefits, and all of the increase in adjusted average indemnity benefits, occurred between 1997 and 2003.
 - The increase in indemnity benefits per claim is due primarily to increasing benefit duration and increasing frequency and amounts of stipulated benefits.
 - Relative to payroll, medical benefits were 2 percent higher in 2008 than in 1997, and indemnity benefits were 18 percent lower, reflecting the net effect of the falling claim rate and higher benefits per claim.
- Regarding vocational rehabilitation:
 - The vocational rehabilitation participation rate – the percentage of paid indemnity claims with a vocational rehabilitation plan filed – increased from 15 percent to 23 percent between 1997 and 2008.
 - The average cost per vocational rehabilitation participant was \$8,350 in 2008, an increase of 34 percent from 1998 after adjusting for average wage growth.

¹Indemnity benefits are monetary benefits paid to the injured worker.

System report, continued ...

- Vocational rehabilitation accounted for an estimated 3.1 percent of total workers' compensation system cost for 2008.
- The percentage of vocational rehabilitation participants with a job at plan closure fell from 71 percent in 1998 to 53 percent in 2008.
- Regarding disputes and dispute resolution:
 - The annual number of disputes has remained relatively stable since 1997 despite a decrease in the number of claims. The percentage of filed indemnity claims with a dispute of any type rose from 15 percent to 21 percent between 1997 and 2008, a 34-percent increase.
 - Between 2006 and 2009, the percentage of medical and vocational rehabilitation disputes that were certified by DLI dropped from 58 percent to 52 percent.² During the same period, the number of agreements via DLI mediation or administrative conference rose from 450 to 890. These changes coincided with an increased DLI emphasis on early dispute-resolution.
 - From 1997 to 2008, the percentage of paid indemnity claims with claimant attorney involvement rose from 15 percent to 20 percent.³
 - Claimant attorney fees accounted for an estimated 2.7 percent workers' compensation system cost for 2008.⁴

²In a medical or vocational rehabilitation dispute, before an attorney may charge for services, the Department of Labor and Industry must certify a dispute exists and informal intervention did not resolve the dispute (Minnesota Statutes §176.081, subd. 1(c)).

³The claimant attorney fees counted here are those calculated as a percentage of indemnity benefits, and claimant attorney involvement is determined according to the presence of these fees.

⁴See note 3.

Budget-balancing includes cut to Assigned Risk Safety Account

The Minnesota Department of Labor and Industry (DLI) budget, while not spared the state's budget-balancing knife, did not get cut as deeply as some of the other state agencies. The DLI budget cut was \$1,425,000 from the Assigned Risk Safety Account, which will now go to the state's general fund.

Under workers' compensation law, penalties are paid to one of two recipients, depending on the nature of the violation. Most penalties are paid to the Assigned Risk Safety Account that was created in 1992 by the Minnesota Legislature. This account finances some safety programs in the department, including matching grants or loans awarded to employers to improve the safety of their workplaces. Some penalties are paid directly to injured employees when their monetary benefit payments have been unreasonably delayed by the insurer.

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Basic Adjuster's Training 2010

– Only two more two-day sessions in 2010! –

June 24 and 25

Oct. 26 and 27

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.

Topics include:

- 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
Minnesota Room

Cost:

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

Registration, payment: *All participants must pre-register.*

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

Early registration is encouraged. Each session is limited to 28 people. Classes will be filled on a first-come, first-served basis. The department reserves the right to cancel a session if there are not enough participants registered.

If paying by check, the Department of Labor and Industry FEIN is 416007162.

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 at (651) 297-4198.

Workers' Compensation Court of Appeals

January through March 2010

Case summaries published are
those prepared by the WCCA



*Vandervoort v. Olinger Transportation, 1/3/10**

Permanent Total Disability – Retirement

The record as a whole did not support the compensation judge's conclusion that the employee had failed to rebut the presumption that he had retired at age 67, where the parties had stipulated, prior to the employee's reaching the age of 67, that the employee was permanently and totally disabled, and the judge erroneously focused on the fact that the employee had not sought rehabilitation assistance or other work.

Reversed.

Shepard v. Loram Maintenance of Way, 1/5/10

Temporary Partial Disability Benefits
Temporary Partial Disability – Earning Capacity

The employee's earnings were too insubstantial to establish entitlement to temporary partial benefits. The record does not support the compensation judge's finding that the employee's part-time work constituted gainful employment and was not sporadic employment resulting in an insubstantial income, and therefore the compensation judge's denial of the employer and insurer's request to discontinue temporary partial benefits is reversed.

Reversed.

Rabideaux v. Minnesota Power/ALLETE, Inc., 1/6/10

Apportionment – Permanent Partial Disability
Apportionment – Equitable

Principles of equitable apportionment do not apply to apportion to a non-work, pre-existing disability liability for permanent partial disability resulting from a work-related injury. Where the total permanent partial disability awarded was the result of functional loss or medical conditions diagnosed subsequent to the employee's April 2003 personal injury, the compensation judge properly

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

• Summaries of Decisions

denied apportionment pursuant to Minnesota Statutes § 176.101, subd. 4a, which states that apportionment of permanent partial disability may be made only if the rated disability is pre-existing and clearly evidenced in a medical report or record made *prior* to the current personal injury.

Affirmed.

Hausladen v. Egan Mechanical, 1/7/10

Medical Treatment and Expense – Treatment Parameters

Where the employee was working at her usual and customary occupation with no formal restrictions, there was no medical evidence explaining in any detail what the employee might hope to gain from the proposed treatment, and there was nothing otherwise unusual about the case, the compensation judge erred in concluding that the employee was entitled to a chronic pain evaluation under the “rare case” exception to the treatment parameters.

Medical Treatment and Expense – Treatment Parameters
Medical Treatment and Expense – Reasonable and Necessary Treatment

The record adequately established that the employee’s epidural injections and requested repeat MRI scan were consistent with the applicable treatment parameters and that the employee’s treatment with Dr. Biewen was reasonable and necessary.

Affirmed in part and reversed in part.

Tudahl v. Beverley Enterprises d/b/a Greeley Healthcare Center, 1/11/10

Vacation of Award – Substantial Change in Condition

The employee has demonstrated an unanticipated and substantial change in medical condition sufficient to establish cause to vacate the 1999 Award on Stipulation.

Petition to vacate award on stipulation granted.

Davis v. Trevilla of Golden Valley/United Healthcare, 1/21/10

Vacation of Award – Substantial Change in Condition

Where the employee’s several post-award surgeries, including a three-level lumbar fusion, could not reasonably have been anticipated at the time of her award on stipulation, and where the employee’s petition reasonably satisfied all other factors of a substantial change in condition established in Fodness v. Standard Cafe, 41 W.C.D. 1054 (W.C.C.A. 1989), other than causation, which remained clearly arguable, the court referred the matter of causation to the Office of Administrative Hearings for an evidentiary hearing and an appealable finding on solely that issue.

Petition to vacate referred to the Office of Administrative Hearings on the issue of causation.

Hatch v. Langhoff Enterprises d/b/a Subway, 1/25/10

Evidence – Credibility

The compensation judge evaluated the employee's testimony and found him to be credible. There is no basis in the record for this court to conclude that the compensation judge erred in this assessment.

Causation

Substantial evidence supports the compensation judge's finding that the employee sustained an injury on Oct. 3, 2008, that arose out of and in the course and scope of his employment, and that his injury resulted in physical restrictions and limitations, as well as disability from employment, for periods of time in 2008 and 2009.

Affirmed.

Ihrig v. Special School District 1, 1/26/10

Causation – Psychological Condition

Substantial evidence, including expert opinion, supported the compensation judge's decision that the employee's depression was not causally related to his work injury.

Affirmed.

Swenson v. Michael Nickagoine d/b/a Northland Quality Builders, 1/26/10

Jurisdiction

Minnesota has jurisdiction to consider a workers' compensation claim asserted by an employee who was injured on an Indian reservation while employed by a private party.

Reversed and remanded.

Winkel v. Jacobson Transport, 1/26/10

Permanent Partial Disability

The law in effect on the date of the employee's 1983 work injury did not require the use of any particular method of rating the employee's permanent impairment. As such, the compensation judge did not err in accepting the opinion of a doctor who based his rating in part on AMA Guides published subsequent to the employee's injury.

Affirmed.

Gebrekidan v. LSG Sky Chefs, Inc., 1/29/10

Intervenors – Exclusion

A rehabilitation provider who had filed a rehabilitation request was an intervenor and exclusion of the rehabilitation provider from settlement negotiation entitled the intervenor to full reimbursement of its claim.

Vacated.

Baker v. T. Maxwells, Inc., 2/8/10

Evidence – Credibility

Considering the record as a whole, the evidence supports the compensation judge's acceptance of the employee's testimony and his decision that the employee's disability was the result of a work injury.

Affirmed.

Slaight v. Exceptional Homes, 2/10/10

Vacation of Award – Mutual Mistake of Fact
Minnesota Statutes § 176.461

Where the matter of the employee's weekly wage was raised at a hearing on rehabilitation issues, where the parties stipulated to a specific weekly wage, and where the compensation judge memorialized that stipulation in his findings and order, any mistake made by the employee in stipulating to that wage was not clearly a "mutual" mistake that the court could vacate under Minnesota Statutes § 176.461.

Vacation of Award – Newly Discovered Evidence
Minnesota Statutes § 176.461

The fact that the evidence regarding the employee's wage at his second job had not been obtained or uncovered through reasonable investigation by the employee or his counsel at the time of trial does not make that evidence "newly discovered" under Minnesota Statutes § 176.461.

Petition to vacate denied.

Anderson v. Tradesmen International, Inc., 2/11/10

Causation – Temporary Aggravation

Substantial evidence, including expert opinion, supported the compensation judge's finding that the employee's work-related shoulder injury was merely temporary.

Affirmed.

*Martin v. Morrison Trucking, Inc., 2/11/10**

Insurance – Coverage

Where the employer's sole operation was located in Hager City, Wis., and where the employer, as an interstate, long-haul trucking firm, had specifically requested supplementary Wisconsin Limited Other States Insurance to cover its employees while traveling to and through states other than Wisconsin, the exclusion of Minnesota from Limited Other States coverage was inconsistent with Travelers' obligation to provide all necessary coverage to the employer through the Wisconsin Worker's Compensation Insurance Pool. The purported exclusion is contrary to public policy and invalid, and cannot be enforced to prevent coverage of Morrison Trucking's liability for Minnesota benefits paid to the employee for an injury that occurred in Minnesota.

Reversed in part and vacated in part.

Hergott v. Rahr Malting Company, 2/12/10

Vacation of Award – Newly Discovered Evidence
Vacation of Award – Mistake

Where the employee's condition deteriorated substantially following the hearing before the compensation judge, in ways apparently not contemplated by physicians as of the date of that hearing, where the employee's working diagnosis has changed, and where there was no evidence tying the new diagnosis to the employee's work injury, good cause was sufficiently established to justify vacation of the compensation judge's findings and order.

Petition to vacate findings and order granted.

Morin v. The Star Tribune Company, 2/16/10

Causation

Whether or not the work incidents reported by the employee occurred, substantial evidence, including expert medical opinion, supports the compensation judge's determination that the employee's activities at work neither caused nor contributed to the employee's chronic, pre-existing left shoulder condition.

Affirmed.

French v. Special School District #1, 2/12/10

Temporary Partial Disability – Earning Capacity

Although the employee had minimal wages and was nominally working as an independent contractor during the brief periods at issue, where the employee's work was temporary pending her resumption of retraining, where she had worked for the post-injury employer in the past, and where she was at all times cooperating with rehabilitation assistance, the compensation judge's conclusion that the

employee's earnings were a sufficient basis for temporary partial disability benefits was not clearly erroneous and unsupported by substantial evidence.

Penalties

Minnesota Rules 5220.2790, subp. 1A
Minnesota Statutes § 176.225, subd. 1 and 5

Where the judge had denied penalties under Minnesota Statutes § 176.225, subdivision 1, for delay in payment of benefits on grounds that the employer had raised good faith defenses, where the employee had agreed at hearing that her penalty claim was pursuant to subdivision 1, where the court found no basis under that subdivision, but only under subdivision 5 of that statute, for an award of penalties for failure to timely deny a claim, where subdivision 5 and certain related Minnesota Rules cited in the employee's brief were not argued before the judge, the compensation judge's denial of penalties under subdivision 1 of the statute without reference to any potential claim for penalties for failure to reply under subdivision 5 was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

Anfinson v. Anamax Corporation, et al, 3/8/10

Causation – Gillette Injury
Gillette Injury – Date of Injury

Substantial evidence supports the compensation judge's finding that the employee's work throughout his employment with Anamax was causally related to his bilateral shoulder condition, and that his later work for another employer for a limited time was not a substantial contributing factor. We modify the compensation judge's finding regarding the date of injury to be the last day the employee worked for Anamax.

Affirmed as modified.

Jacobson v. Metropolitan Corporation/Suburban Chevrolet, 3/8/10

Temporary Partial Disability – Calculation
Minnesota Statutes § 176.101, subd. 2(b)

Where the employee's demonstrated wage during all but one week of the benefits period at issue exceeded his stipulated weekly wage at the time of the only work injury found causally related to the employee's ongoing disability, the compensation judge's award of temporary partial disability benefits for the whole benefits period was improper under Minnesota Statutes § 176.101, subd. 2.(b), and was reversed with regard to those four weeks during which the employee earned more at his post-injury job than he earned at his date-of-injury job.

Causation – Gillette Injury
Evidence – Expert Medical Opinion

Where the judge did not apply the pre-Steffen standard for proving a Gillette-type injury by attaching significant weight to the employee's lack of recall of events during the period at issue, where the examining doctor's concern over the *date* of the alleged Gillette-type injury appeared to be more a concern over the *occurrence* of such an injury, where the judge's decision was supported by expert medical opinion that was founded on essentially the same information about the employee's work as was contrary expert opinion, and where the employee's three previous injuries at essentially the same work had been specific injuries sustained while performing tasks outside the normal lifting limits of his work, the compensation judge's conclusion that the employee did not sustain a fourth, Gillette-type, injury in the course of his normal work was not clearly erroneous and unsupported by substantial evidence.

Apportionment – Equitable
Contribution and Reimbursement
Practice and Procedure – Temporary Order

The granting of a temporary order does not automatically entitle the paying insurer to contribution and/or reimbursement, and, where the employee had undergone a laminectomy following a 1991 specific work injury, where his 1996 and 1997 specific work injuries had each resolved fully within a few weeks, and where there was expert medical support for the judge's decision that the employee's condition in 2005 did not constitute a new, Gillette-type injury, the compensation judge's denial of the 1991 insurer's petition for contribution and/or reimbursement and request for equitable apportionment was not clearly erroneous and unsupported by substantial evidence.

Practice and Procedure – Adequacy of Findings
Minnesota Statutes § 176.371

Minnesota Statutes § 176.371 allows a compensation judge substantial discretion as to whether even to include a memorandum in his or her decision, and, where it was clear from his very copious findings that the compensation judge examined the medical records in evidence very thoroughly before making his decision, there was no impropriety in the judge's memorandum being very brief.

Affirmed in part and reversed in part.

Kristofferson, Jr. (deceased) by Kristofferson v. Arctic Cat, Inc., 3/8/10

Causation – Consequential Injury
Causation – Intervening Cause
Dependency Benefits – Payments to Estate

Where the deceased employee had tested positive for marijuana use at the time of his hernia work injury and had quit his job rather than submit to a random drug test, where, upon his death, illicit drugs were discovered near the employee's body, and where the autopsy report had noted several puncture spots on the employee's body suggestive of injection sites and had concluded that the employee's death could have resulted from either morphine prescribed for his work-injury pain or

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illicit heroin, the compensation judge's conclusion that the employee's own negligence and intentional conduct was a superseding intervening cause of his death was not clearly erroneous and unsupported by substantial evidence. On this record, it was not unreasonable for the judge to find that the employee's own conduct was a superseding intervening cause of his death, and the judge's denial of the estate's claim for the statutory death benefit is affirmed.

Permanent Partial Disability – Weber Rating

Where the treating doctor's permanency rating was unclear and was not based on workers' compensation schedules, where that rating appeared to include generally the employee's entire hernia-related condition, including loss of a testicle and chronic pain, and where no doctor had documented a functional loss of use or impairment of function related to the employee's alleged chronic pain syndrome, the compensation judge's conclusion that the petitioner did not prove the employee's entitlement to an additional rating for chronic pain syndrome under Weber v. City of Inver Grove Heights was not clearly erroneous and unsupported by substantial evidence.

Temporary Total Disability

Where the employee had demonstrated an ability to work full time until he voluntarily quit working two years after his work injury, where he acknowledged in testimony that for over two years thereafter he made no effort to search for work, where after being found qualified for rehabilitation assistance he failed to maintain any contact with his QRC, where there was no evidence that he ever again searched for work up to the date of his death, and where his doctor did not explain what he meant by concluding that the employee had been unable during that time to perform any "meaningful" work, the compensation judge's denial of wage replacement benefits during all but a brief period of the employee's claim was not clearly erroneous and unsupported by substantial evidence.

Temporary Total Disability

Where the judge evidently accepted expert medical opinion that, for a period of the employee's claim, the employee was clearly unable to work due to his work injury, and where, for another part of the employee's claim, the judge apparently misconstrued what the court concluded was a medical restriction from all work pending further repair of the employee's work injury, the compensation judge's denial of temporary total disability benefits for part of the period of the employee's claim was unsupported by substantial evidence and so was reversed.

Permanent Total Disability

Where the employee did not pursue vocational rehabilitation and did not offer any expert vocational opinion in support of his claim that a job search would be futile for him, and where he did not meet the permanent partial disability threshold required for an award of permanent total disability under the statute, the compensation judge's denial of permanent total disability benefits was not clearly erroneous and unsupported by substantial evidence.

Affirmed in part and reversed in part.

Massood v. Denny's Restaurant, 3/8/10

Evidence – *Res Judicata*
Medical Treatment and Expense

Where a compensation judge at an earlier hearing found that the employee had not, at that time, established that he suffered PTSD as a substantial result of his work injury, the finding concerning PTSD was not *res judicata* for a later request for medical treatment where there were changed circumstances and additional medical evidence.

Vacated and remanded.

Nguyen v. Anderson Automatics, Inc., 3/8/10

Evidence – *Res Judicata*
Practice and Procedure – Dismissal

The compensation judge properly refused to apply *res judicata* in denying the employer and insurer's motion to dismiss.

Affirmed.

Benoit v. Max Gray Construction, Inc., 3/9/10

Vacation of Award – Substantial Changed in Condition

Where the employee did not establish a change in diagnosis or ability to work, any increase in permanent partial disability was minor, the employee's possible need for additional surgery had been suggested previously, and the employee's possible need for retraining had also been raised prior to settlement, the employee did not establish good cause to vacate on grounds of a substantial change in condition.

Petition to vacate award on stipulation denied.

Satrum v. City of Minneapolis Public Works, 3/9/10

Gillette Injury
Evidence – Unopposed Medical Opinion

In denying the employee's Gillette injury claim, the compensation judge erred in disregarding the unopposed medical opinion on causation.

Reversed.

Steindel v. AmeriPride Linen & Apparel Services, 3/15/10

Causation – Gillette Injury

Substantial evidence, including the employee’s testimony, medical records, and expert medical opinion, supports the finding of a Gillette injury to the employee’s fingers.

Medical Treatment and Expense – Surgery

Substantial evidence, including the employee’s testimony, medical records, and expert medical opinion, supports the finding that surgery to the specific fingers awarded is reasonable and necessary.

Affirmed.

*Tambornino v. Health Risk Management, 3/18/10**

Permanent Total Disability – Discontinuance
Permanent Total Disability – Retirement
Minnesota Statutes § 176.101, subd. 4

Where, in the parties’ stipulation for settlement, the employer and insurer agreed to pay permanent and total disability benefits to the employee “as her condition may warrant” and did not specifically incorporate into the settlement agreement the provisions of Minnesota Statutes § 176.101, subd. 4, or expressly reserve the right to discontinue benefits at the age of 67 years, the petitioners’ intention to waive the right to discontinue on the basis of the employee’s presumed retirement at age 67 is reasonably to be inferred from their conduct in assenting to the terms of the stipulation and failing to make an express reservation of that right.

Petition to discontinue permanent total disability denied.

Dempsey v. KMB Architectural Metals, Inc., 3/19/10

Temporary Total Disability – Work Restrictions
Job Search

Substantial evidence supported the compensation judge’s denial of temporary total disability benefits for a seven-month period, where no doctor had restricted the employee’s activities for the first part of the employee’s claim, and the employee submitted very little evidence of any search for work during the second part of the claim.

Affirmed.

• Summaries of Decisions

Goerdts v. Dwayne Young, Inc., et al, 3/25/10

Practice and Procedure – Dismissal

Where the employee supplied no support for his claims against an employer, it was not error for the compensation judge to dismiss the employer as a party.

Affirmed.

Minnesota Supreme Court

January through March 2010

Case summaries published are
those prepared by the WCCA



- **Anna M. Gee v. Now Technologies, and SFM Mutual Insurance Company, and HealthEast Care Systems, A09-1593, January 4, 2010**

Decision of the Workers' Compensation Court of Appeals filed July 30, 2009, affirmed without opinion.

- **Andrew Konczal v. Hage Construction Company and General Casualty Insurance Company, and Fairview Health Services, A09-1594 and A09-1595, January 4, 2010**

Decision of the Workers' Compensation Court of Appeals filed July 30, 2009, affirmed without opinion.

- **Nancy Budke v. St. Francis Medical Center and Alternative Insurance Management Services/Catholic Health Initiatives, A09-1994, January 27, 2010**

Decision of the Workers' Compensation Court of Appeals filed Oct. 14, 2009, affirmed without opinion.

- **Maria (Dunahoo) Ollikkala v. RSI, Inc., Self-Insured/Berkley Risk Administrators Company, L.L. C., A09-1638, January 29, 2010**

Decision of the Workers' Compensation Court of Appeals filed Aug. 11, 2009, affirmed without opinion.