

SAVE THE DATE:

2017 Workers' Compensation Summit

Mark your calendars now and plan to join the Department of Labor and Industry for its 2017 Workers' Compensation Summit on Tuesday, Sept. 19, in St. Paul, Minnesota.

The Summit offers general sessions and workshops focused on current issues affecting the workers' compensation system and ways to improve processes and services that affect employers and injured workers.

The one-day conference will be at the University of Minnesota's Continuing Education and Conference Center, 1890 Buford Ave, St. Paul, MN.

Further information will be published in the May edition of *COMPACT* and posted online at www.dli.mn.gov/Summit as it becomes available.

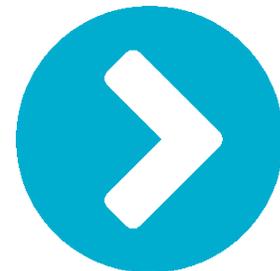
We hope to see you there!

New webinar video explains workers' compensation inpatient hospital billing

The Minnesota Department of Labor and Industry (DLI) has published a new webinar video explaining the payment system for inpatient hospital bills for workers' compensation.

The 15-minute video, available free online at www.dli.mn.gov/WC/CrtDrgVideo.asp, highlights the steps for appropriately calculating the correct hospital inpatient payment amount.

Questions about calculating or making inpatient hospital payments can be emailed to DLI Medical Policy Specialist Lisa Wichterman at lisa.wichterman@state.mn.us.



Mileage rate decreases

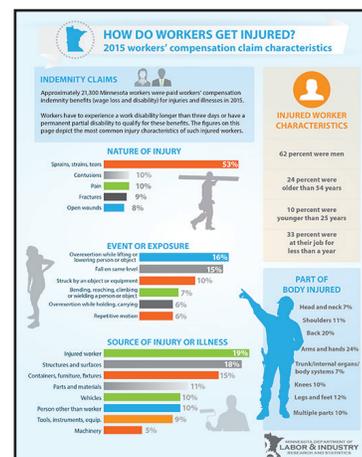
The standard IRS mileage rate for the business use of an employee's personal automobile decreased from 54 cents to 53.5 cents effective Jan. 1, 2017.

How do workers get injured?

Claims characteristics flier updated

Approximately 21,300 Minnesota workers were paid workers' compensation indemnity benefits (wage loss and disability) for injuries and illnesses in 2015. Sixty-two percent of these workers were men, 24 percent were older than 54 years, 10 percent were younger than 25 years and 33 percent were at their job for less than a year.

View the updated one-page flier online at www.dli.mn.gov/RS/ClaimCharac.asp.



Reconciliation, final determination of 2015 SCF assessment 'true-up'

By John Kufus, Financial Services

Minnesota Statutes § 176.129, subd. 2a, now provides for an adjustment, or "true-up," of the assessment paid by insurers for deposit into the Special Compensation Fund (SCF).



Currently, the Department of Labor and Industry commissioner *estimates* each insurer's share of the assessment using the insurer's earned standard premium from the previous calendar year. The commissioner must later make a final determination of the amount owed based on the insurer's *actual* earned standard workers' compensation premium for the current year, after those figures become available.

The insurer portion of the 2015 SCF assessment liability was unchanged at \$61,635,918, but the designated statistical reporting (DSR) pure premium assessment base increased, which resulted in a decrease to the final insurer surcharge rate.

Insurer premium surcharge rate

The original insurer premium surcharge rate applied for the purpose of estimating the 2015 SCF assessment was 7.5652 percent. The rate was determined by dividing the insurer portion of the Special Compensation Fund state-fiscal-year 2015 liability (\$61,635,918) by the 2014 DSR pure premium reported by all insurers to the Minnesota Workers' Compensation Insurers Association (\$814,729,521).

The revised insurer premium surcharge rate applied for the purpose of determining the 2015 SCF assessment was 7.2723 percent. The rate was determined by dividing the insurer portion of the Special Compensation Fund state-fiscal-year 2015 liability (\$61,635,918) by the 2015 DSR pure premium reported by all insurers to the Minnesota Workers' Compensation Insurers Association (\$847,543,352).

	Estimated liabilities	DSR pure premium	Insurer surcharge rate
Insurers estimated rate	\$61,635,918	\$814,729,521	7.5652 percent
Insurers revised rate	\$61,635,918	\$847,543,352	7.2723 percent

As a result of this "true-up," 101 insurers owed an additional \$3,248,655 in assessment to the Special Compensation Fund and 79 insurers were refunded \$3,248,655 in overpaid assessment.

Invoices for additional funds were mailed to insurers by Nov. 15, with payment due Dec. 15. Refunds were processed by Dec. 1.

Annual Workers' Compensation System Report released:

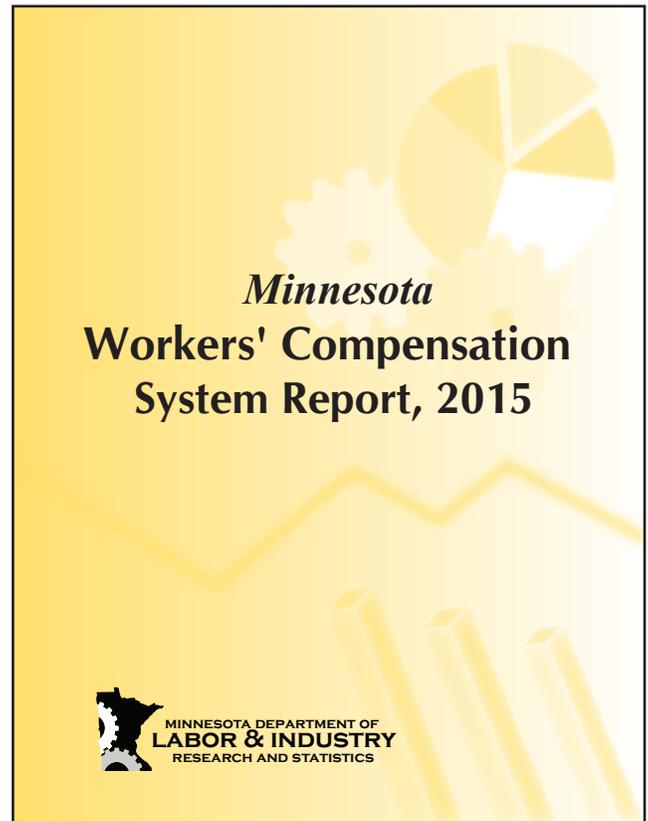
Long-term downward trend continues in number of claims, system cost

By David Berry, Research and Statistics

The number of paid workers' compensation claims fell 53 percent relative to the number of full-time-equivalent (FTE) employees from 1997 to 2015, according to the *2015 Minnesota Workers' Compensation System Report*, released this month by the Department of Labor and Industry (DLI).

Among the report's findings are the following.

- The number of paid claims fell from 8.7 per 100 FTE employees in 1997 to 4.1 in 2015.
- The cost of the workers' compensation system for 2015 amounted to \$1.28 per \$100 of payroll. In Minnesota and elsewhere, this cost follows a multi-year pricing cycle. However, comparable points in the cycle for Minnesota indicate a long-term downward trend.
- Adjusted for average wage growth, average medical benefits per claim were 74 percent higher in 2014 than in 1997; indemnity benefits per claim were 36 percent higher. Medical benefits per claim have been stable (relative to average wages) since 2008 and indemnity benefits since 2003. (The report does not detail hospital inpatient, and outpatient and ambulatory surgical center costs.)
- Despite higher benefits per claim, costs are down relative to payroll because of the falling claim rate. Compared to 1997, indemnity benefits per \$100 of payroll were 34 percent lower in 2015 and medical benefits were 27 percent lower.
- In 2015, on a current-payment basis, medical benefits accounted for an estimated 35 percent of total system cost, followed by insurer expenses at 32 percent and indemnity benefits other than vocational rehabilitation at 29 percent.
- The percentage of indemnity benefit claimants receiving vocational rehabilitation services rose from 15 percent in 1997 to 25 percent in 2015.
- The percentage of indemnity claims with a dispute of any type rose from 16 percent in 1997 to 21 percent in 2008 but has been stable since then.



This report, part of an annual series, presents data from 1997 through 2015 about Minnesota's workers' compensation system. The purpose of the report is to describe the current status and direction of the system and to offer explanations, where possible, for recent developments.

The report will be available soon on the DLI website at www.dli.mn.gov/RS/WcSystemReport.asp.

Two annual reports updated, available online

Collection and Assessment of Fines and Penalties

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



FISCAL-YEAR 2016

COLLECTION AND ASSESSMENT OF FINES AND PENALTIES

IN THE WORKERS' COMPENSATION SYSTEM

Failure-to-insure penalties and the amount collected have stabilized as greater emphasis has been placed on partnering with other state, county and city agencies to ensure workers' compensation insurance is in place at the time those agencies issue licenses to employers. Continuing efforts to reach all new business owners to inform them of their responsibility to obtain workers' compensation insurance appear to have been successful.

Claim-related penalties have remained relatively stable. Penalties issued for late filing of the first report of injury increased in fiscal-year 2014 through 2016, likely due to increasing filings from system auto-triggers related to mandatory electronic reporting. Although the overall number of prohibited practice penalties issued has decreased, the number of penalties with a dollar amount assessed increased in fiscal-year 2016.

Prompt First Action Report on Workers' Compensation Claims

Minnesota Statutes § 176.223 directs the Department of Labor and Industry 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.



FISCAL-YEAR 2016

PROMPT FIRST ACTION REPORT ON WORKERS' COMPENSATION CLAIMS

IN THE WORKERS' COMPENSATION SYSTEM

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 2016, 90.1 percent of the 23,407 lost-time claims had a timely first action. This percentage is slightly higher than fiscal-year 2015, where 89.8 percent of the 23,559 lost-time claims had a timely first action.

The department's Workers' Compensation Division anticipates increased use of technology, electronic data exchange and early intervention will maintain or improve the overall first action timeliness percentage.

Access the reports

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

Rehabilitation Review Panel seeks new member, alternate-members

The Rehabilitation Review Panel was created in 1981 by Minnesota Statutes § 176.102. The panel: reviews and makes determinations with respect to appeals from orders of the Department of Labor and Industry (DLI) commissioner regarding certification approval of rehabilitation consultants and vendors; advises DLI about vocational rehabilitation issues; and assists in the education of the provider community about workers' compensation. It also has the authority to sanction a rehabilitation provider after a hearing at the Office of Administrative Hearings if there has been a violation of the statutes or rules.



The panel, which meets quarterly at DLI, currently has three openings: one chiropractor member; one labor representative alternate member; and one alternate member representing a licensed or registered health care provider, chiropractic or rehabilitation. To apply for a position, visit www.sos.state.mn.us/boards-commissions.

The meeting schedule, agendas and minutes are online at www.dli.mn.gov/Rrp.asp. The panel is composed of two members each representing employers, insurers, rehabilitation and medicine (for a total of eight), one member representing chiropractors and four members representing labor.

Turn to Office of Workers' Compensation Ombudsman for help with claims

The Office of Workers' Compensation Ombudsman informs, assists and empowers injured workers and small businesses having difficulty navigating the workers' compensation system. It is a separate entity within the Minnesota Department of Labor and Industry.

The ombudsman assists injured workers by:

- providing information to help them protect their rights and to pursue a claim;
- contacting claims adjusters and other parties to resolve a dispute;
- assisting in preparing for settlement negotiations or mediations; and
- making appropriate referrals to other agencies or entities if needed.



The ombudsman assists small businesses by:

- providing information about what to do when an employee is injured;
- directing them to appropriate resources for assistance in obtaining and resolving issues regarding workers' compensation insurance; and
- responding to questions pertaining to employers' responsibilities under Minnesota's workers' compensation law.

For assistance, contact the Office of Workers' Compensation Ombudsman at (651) 284-5013, 1-800-342-5354 or dli.ombudsman@state.mn.us.

2016 professional conduct complaints against registered rehabilitation providers

By Mike Hill, Rehabilitation Policy Specialist

If a party believes a rehabilitation provider is not following the statutes or rules, they can file a written complaint with the Minnesota Department of Labor and Industry (DLI). Upon receipt and review of the information provided, DLI may perform an investigation to determine if disciplinary action is warranted.

Below: Table 1 details where complaints originated (closed complaints only); Table 2 shows complaint investigation outcomes; and Table 3 lists the 2016 violations, with the corresponding statute or rule.

Table 1. Source of complaints

Year	ER/IR	EE	Attorney	Rehabilitation	DLI	Other	Total
2016	0	1	0	0	15*	0	17
2015	1	2	1	1	2	0	7
2014	1	2	0	3	24	1	31
2013	2	0	5	6	1	0	14
2012	5	3	3	18	27	0	56

*Of the 15 DLI complaints, 13 were due to non-attendance at the September 2016 update training.

Complaint outcomes

A single complaint may allege violations of workers' compensation statutes or rehabilitation rules. During the course of an investigation, additional issues may be identified. Outcomes are determined by the findings of the investigation. Possible outcomes include the following.

- Unsubstantiated – The allegations are not supported by the information obtained.
- Letter of instruction – A letter is not considered to be formal discipline. The letter is retained by DLI because sometimes letters of instruction are relevant to subsequent inquiries into a provider's conduct.
- Discipline/stipulation – Discipline, typically in the form of a stipulated agreement, involves corrective action and a penalty. The severity of the disciplinary action may be increased if the subject has a history of similar violations.
- Inactive rehabilitation provider – The rehabilitation provider's registration became inactive during the investigation. Before being allowed to re-register, the complaint must be resolved.

Table 2. Professional conduct and accountability outcomes

Year	No jurisdiction	Unsubstantiated	Letter of instruction	Stipulation/penalty	No appeal	Inactive	Total
2016	1	7	4	1	0	2	15
2015	0	0	11	5	0	1	17
2014	1	45	40	7	0	6	99
2013	0	5	19	3	0	1	28
2012	0	13	23*	4	3	6	47

*The complaint (or complaints) resulted in a letter of instruction and a stipulation being issued.

Professional conduct, continues ...

Table 3. Rehabilitation provider violations, corresponding statute or rule, 2016	
Violation	Statute, rule
A rehabilitation provider performed both disability case management and qualified rehabilitation consultant (QRC) services for the same injured worker	176.102, subd. 10(b)
A rehabilitation provider working as a disability case manager misrepresented himself or herself as a QRC on documents	5220.1805 B
Failure to suspend professional relationship with injured worker due to impaired objectivity for economic reasons	5220.1801, subp. 11
**Failure to explain to injured workers their rights and responsibilities so they understand them	5220.0130, subp. 3 B (1) 5220.1803, subp. 1 and 1a
**Failure to disclose a business referral or other arrangements (verbal or written)	5220.1803, subp. 1A, 1B
**Failure to provide copies of all required reports and progress records, including email messages, to all parties	5220.1802, subp. 3 5220.0100, subp. 30 and 31
**Failure to attend DLI's mandatory September 2016 update either in person or via simulcast session	5220.1500, subp. 3a
Failure to file actual rehabilitation costs with the department on R-forms	5220.1801, subp. 9 A and 9 K (3)
**Failure to stay informed to be knowledgeable and informed about workers' compensation laws and rules	5220.1803, subp. 2
**Failure to perform professional rehabilitation services with reasonable skill and to monitor a person working at the rehabilitation provider's direction	5220.1801, subp. 9 E
Failure of rehabilitation provider to keep separate their role as a QRC from that of an insurer	5220.1801, subp. 8 A
**Failure to list employee's name, worker identification (WID) number or Social Security number and date of injury on all required reports and progress records	5520.1802, subp. 1
Failure to file a rehabilitation consultation narrative report explaining the basis for the QRC's determination that the employee was qualified to receive rehabilitation services	5220.0130, subp. 3C (4)
**Failure to file an initial evaluation report with the R-2 Rehabilitation Plan form and/or to file an initial evaluation report covering the eight required points	5220.1803, subp. 5
**Failure to provide evidence that the R-2 form and narrative reports were sent to the parties for their review	5220.0410, subp. 6
Failure to identify barriers that are present and then measures to overcome them using the Plan Progress Report form	5220.0450, subp. 2 E

Table 3. Rehabilitation provider violations, corresponding statute or rule, 2016	
Violation	Statute, rule
**Failure to file an R-3 Rehabilitation Plan Amendment form on a timely basis and to provide evidence the form was sent to the parties for their review	5220.0510, subp. 2c and 2d
Failure to remain professionally objective in conduct and in recommendations on all cases	5220.1801, subp. 4a
**Failure to cooperate with disciplinary proceedings, including forwarding requested documents	5220.1806, subp. 4
**Similar to professional conduct violations reported in the May 2016 edition of <i>COMPACT</i> .	

Conclusion

The purpose of a professional conduct investigation is to determine if a violation of the rules and statutes has occurred so the behavior can be corrected, preventing future problems. Through outreach, education and compliance efforts the department strives to work with rehabilitation providers to improve the quality of services provided to the stakeholders in Minnesota.

More information

DLI's web page, "Information for a rehabilitation provider" (www.dli.mn.gov/WC/RehabProv.asp), was developed to provide information to QRCs and placement vendors to enhance their work product. Stakeholders may also call DLI, at 1-800-342-5354, with their questions and concerns.

DLI offers variety of workers' compensation training opportunities

Employees, employers, health care providers and staff, insurers, rehabilitation providers



Workers' compensation training is offered about a variety of subjects by Department of Labor and Industry staff members. Some classes are sponsored by the department and take place at its 443 Lafayette Road N., St. Paul, location, but off-site training can be scheduled as well.

Employees – Contact Melissa Parish at dli.wctraining@state.mn.us or (651) 284-5431 for more information.

Employers – Learn about employer training opportunities at www.dli.mn.gov/WC/TrainingEr.asp.

Health care providers – Training can be arranged for groups of at least 20 employees or injured workers by contacting Melissa Parish at dli.wctraining@state.mn.us or (651) 284-5431.

Insurers – Learn about insurer training opportunities at www.dli.mn.gov/WC/TrainingIns.asp.

Rehabilitation providers – Learn about training opportunities at www.dli.mn.gov/WC/TrainingRp.asp.

PART TWO:

Results of DLI survey of attorneys' use of mediation services

By Christopher Raymond, *Alternative Dispute Resolution*, and Brian Zaidman, *Research and Statistics*

In 2016, the Department of Labor and Industry (DLI) conducted a survey of attorneys licensed in Minnesota about their use of mediation services, whether by a DLI mediator, a private mediator or an Office of Administrative Hearings judge. The survey was sent to 552 attorneys; 120 responses were received. A technical appendix (at www.dli.mn.gov/RS/Pdf/mediation_survey_technical_appendix.pdf) provides survey methodology and the survey questions.

Part one, published in the August 2016 *COMPACT*, presented the survey results identifying the majority-users of mediation in workers' compensation cases in Minnesota. These frequent users of mediation were seasoned attorneys, having more than 20 years of experience practicing in the field of workers' compensation law.

In part two, we take a closer look at *why* attorneys use or choose not to engage in mediation in particular cases. All the attorneys responding used mediation at least once in the preceding 12 months.

Attorneys were asked why they would choose to use mediation. A list of reasons was given, along with the opportunity to write in other reasons. Attorneys could select as many reasons as they wanted. Three reasons were selected by the majority of the attorneys:

- mediators help set reasonable client expectations (87 percent);
- mediators provide an objective analysis of the strengths and weaknesses of the case (72 percent); and
- mediators use techniques that help to resolve disputes (60 percent).

These reasons reflect characteristics of mediators and the mediation process.

Figure 1. Why do you use mediation to settle a workers' compensation dispute?



These same attorneys were also asked why they would choose not to use mediation for any particular dispute. A list of reasons was given, along with the opportunity to write in other reasons. Attorneys could select as

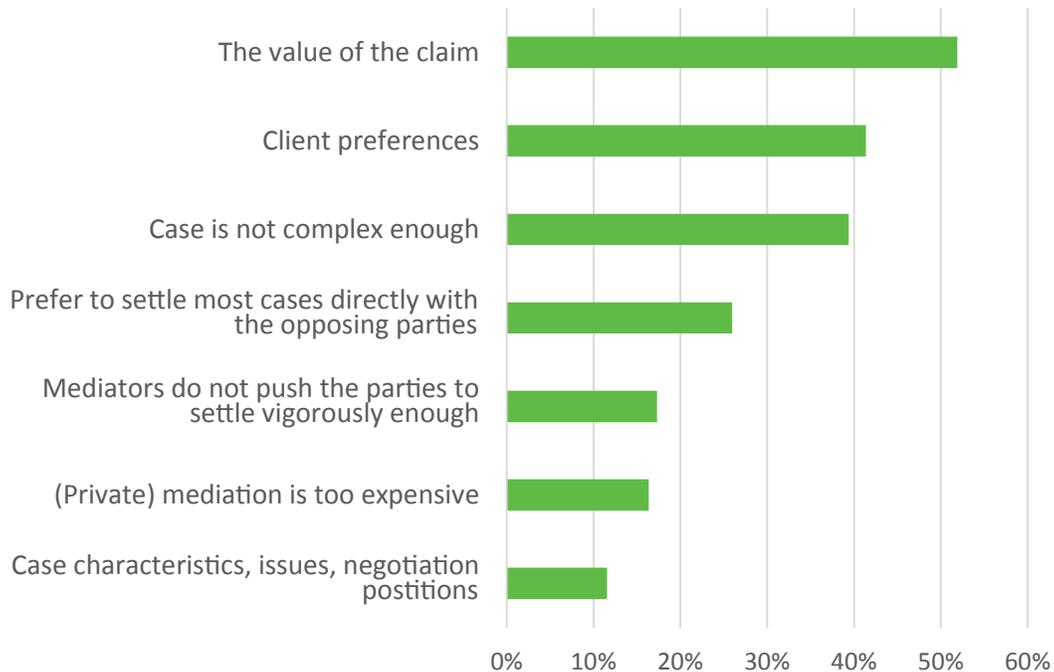
Results, part two, continues ...

Results, part two, continued ...

many reasons as they wanted. The most-common reason selected by the attorneys for not using mediation was the value of the claim (52 percent). The value means the amount of benefits in dispute. The next two most common reasons were client preferences (41 percent) and the case is not complex enough (39 percent).

These reasons reflected the characteristics of the workers' compensation claim and parties involved, rather than attributes of mediation.

Figure 2. Why might you prefer not to use mediation to settle a workers' compensation dispute?



A closer look at these responses, taking into account attorney characteristics, shows:

- 69 percent of defense attorneys indicated client preferences were a reason for not using mediation, compared with 19 percent among plaintiff attorneys;
- 58 percent of plaintiff attorneys viewed mediation as an opportunity for their clients to be heard, compared with 21 percent of defense attorneys; and
- compared with attorneys who have more than 10 years of workers' compensation experience, attorneys with fewer years of experience were more likely to
 - not use mediation because of a preference for settling cases directly (48 percent or 20 percent),
 - say mediators do not push parties to settle vigorously enough (35 percent to 12 percent),
 - find private mediation is too expensive (30 percent to 12 percent) and
 - use mediation as a way for their client to be heard (65 percent to 38 percent).

DLI's Alternative Dispute Resolution (ADR) unit provides mediation services for workers' compensation disputes. Mediations accounted for 34 percent of the average annual number of ADR proceedings from 2013 through 2015, with an average of 520 mediations a year. More information about DLI mediation services is available online at www.dli.mn.gov/WC/DispRes.asp and via email at mediation.dli@state.mn.us.

Inquiries about the scheduling of mediation services can be directed to Melanie Tischler at (651) 284-5326.

Workers' compensation events calendar

March

March 14, 15 Basic adjuster training
www.dli.mn.gov/WC/TrainingIns.asp

March 22 Workers' Compensation Insurers' Task Force meeting
www.dli.mn.gov/Wcitf.asp

April

April 6 Rehabilitation Review Panel
www.dli.mn.gov/Rrp.asp

April 12 Workers' Compensation Advisory Council
www.dli.mn.gov/Wcac.asp

April 20 Medical Services Review Board
www.dli.mn.gov/Msrb.asp

May

May 9, 10 Basic adjuster training
www.dli.mn.gov/WC/TrainingIns.asp

May 17 Workers' Compensation Insurers' Task Force meeting
www.dli.mn.gov/Wcitf.asp

June

June 14 Workers' Compensation Advisory Council
www.dli.mn.gov/Wcac.asp

July

July 20 Medical Services Review Board
www.dli.mn.gov/Msrb.asp

More resources from DLI: newsletters, specialty email lists, rulemaking lists

Newsletters – The Minnesota Department of Labor and Industry (DLI) offers three quarterly publications in addition to *COMPACT: Apprenticeship Works*, *CCLD Review* and *Safety Lines*.

- ***Apprenticeship Works*** is the newsletter from DLI's Apprenticeship unit. Its purpose is to inform the public of the goals, plans and progress of the Apprenticeship unit. Learn more or subscribe online at www.dli.mn.gov/Appr/Works.asp.
- ***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 online 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 online at www.dli.mn.gov/OSHA/SafetyLines.asp.



Monthly update – Stay up-to-date with the Department of Labor and Industry by signing up for its monthly email update at www.dli.mn.gov/Email.asp about DLI activities.

Specialty and rulemaking news – DLI also maintains five specialty email lists and 11 rulemaking lists to which interested parties may subscribe. The specialty email lists are: prevailing-wage information; workers' compensation adjuster information; workers' compensation EDI trading partners; workers' compensation medical providers information; and workers' compensation rehabilitation information. Learn more about DLI's specialty email lists, subscribe or review previously sent messages online at www.dli.mn.gov/EmailLists.asp.

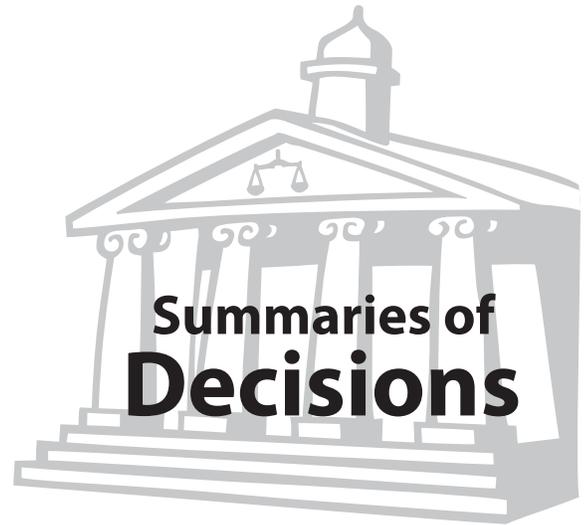
The rulemaking lists are required to be maintained for people who have registered with the agency to receive notices of agency rule proceedings via email or U.S. mail. The rulemaking lists topic areas are: apprenticeship; boats/boats-for-hire; electrical; fire code; high-pressure piping; independent contractor; labor standards/prevaling wage; Minnesota OSHA; plumbing; state building code; and workers' compensation. Learn more or subscribe at www.dli.mn.gov/Rulemaking.asp.

Subscribing to *COMPACT* – Interested parties may subscribe or unsubscribe from the *COMPACT* email list at <https://webmail.mnet.state.mn.us/mailman/listinfo/wc-compact>. Subscribers receive emailed notices about editions of the quarterly workers' compensation newsletter and other periodic updates from DLI.

Workers' Compensation Court of Appeals

October through December 2016

Case summaries published are
those prepared by the WCCA



Joel J. Leuthard v. Craig's Tree Service, Oct. 6, 2016

Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence supports the compensation judge's finding that a referral to another physician was not reasonable and necessary medical treatment where the record as a whole provided no clear basis for the referral.

Affirmed.

Lewis W. Nyema v. Brown Tank, LLC, Oct. 7, 2016

Causation – Permanent Injury

Substantial evidence, including medical records, lay testimony and expert medical opinions, supported the compensation judge's finding that the employee's work injury of April 20, 2015, was temporary and had resolved by July 6, 2015.

Affirmed.

Glenn G. Olson v. Clearwater Rice, Inc., Oct. 12, 2016

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 a Gillette-type injury to his lower back.

Affirmed.

Debra K. Mattick v. Hy-Vee Food Stores, Oct. 14, 2016

Causation – Permanent Aggravation

Where overwhelming evidence supports the claim of causation concerning the change in the employee's condition following her work injury, and the only evidence contrary is that of an IME that does not accurately describe the employee's condition and is contradicted by the employee's medical records, substantial evidence

does not support the compensation judge's conclusion that the employee's work injury did not permanently aggravate the employee's pre-existing ankle condition.

Reversed and remanded.

Kristopher R. Turner v. Jerry's Enters., Inc., Oct. 25, 2016

Causation – Gillette Injury

Substantial evidence supports the compensation judge's determination that the employee sustained a Gillette injury to his left thumb that arose out of and in the course of his employment.

Affirmed.

Darlene F. Moyer v. Lifeworks Servs., Inc., Oct. 25, 2016

Permanent Total Disability – Substantial Evidence

The compensation judge's finding that the employee had failed to prove permanent partial disability sufficient to meet the threshold required for an award of permanent total disability compensation was supported by substantial evidence in the record.

Practice and Procedure – Matters at Issue

Where the employee's primary claim was for permanent total disability compensation, it was not error for the compensation judge to make a finding on the issue whether the employee had proven that she had sufficient permanent partial disability to reach the applicable threshold. The compensation judge's resolution of that issue was not mooted by her findings on an alternative claim for temporary partial disability compensation under the facts of this case.

Affirmed.

Robert W. Lindelof v. Lano Equip., Inc., Nov. 1, 2016

Causation – Gillette Injury

Substantial evidence, including expert medical opinion, medical records and lay testimony, supports the compensation judge's finding that the employee sustained a Gillette injury to the bilateral shoulders and neck culminating on or about Nov. 6, 2012.

Affirmed in part and modified in part.

Paul O. Hudacek v. Loram Maint. of Way, Inc., Nov. 3, 2016

**Vacation of Award
Jurisdiction**

Where a compensation judge considered evidence and issued an order of dismissal with prejudice, this court retains authority to vacate that order, as the effect of such an order differs from a resolution without a determination on the merits that is issued without prejudice.

Vacation of Award – Fraud

Where the employee submitted no evidence to establish fraud, the petition to vacate the order of dismissal is denied.

Petition to vacate order of dismissal denied.

Kandice M. Morgan v. Care Force Homes, Inc., Nov. 14, 2016

Medical Treatment and Expense – Treatment Parameters Rules Construed – Minnesota Rules 5221.6050, subp. 8A

A "medical complication" permitting departure from durational treatment limits under Minnesota Rules 5221.6050, subp. 8A, is not limited to situations where the work injury has brought about a wholly new, secondary medical condition. Substantial evidence, including medical records, expert medical opinion and the employee's lay testimony, here supported both a finding of a documented medical complication and the judge's determination that a departure from the medical treatment parameters was warranted.

Medical Treatment and Expense – Treatment Parameters Rules Construed – Minnesota Rules 5221.6050, subp. 8

A departure may be granted from parameters that limit the type of treatment as well as from those limiting the duration of treatment.

Practice and Procedure Medical Treatment and Expense – Treatment Parameters Rules Construed – Minnesota Rules 5221.6050, subp. 7D

Where the question of the applicability of a treatment parameter is at issue, a compensation judge is required to consider whether a departure is warranted, even when the parties have not specifically addressed the basis for such a departure at hearing.

Affirmed.

James C. Dittel v. NW Airlines Co., Nov. 15, 2016

Permanent Partial Disability – Substantial Evidence

Substantial evidence, including adequately founded expert medical opinion, supports the compensation judge's finding that the employee's psychiatric/psychological conditions were not causally related to his work injury.

Permanent Total Disability – Threshold

The compensation judge did not err by addressing the employer and insurer's job search defense when the employee had not met the permanent partial disability threshold for permanent total disability.

**Medical Treatment and Expense – Substantial Evidence
Statutes Construed – Minnesota Statutes § 176.101, subd. 5**

Substantial evidence supports the compensation judge's denial of some medical expenses as not causally related to the employee's work injury. Denial of payment for a neurological evaluation and testing that resulted in a non-work-related carpal tunnel diagnosis is reversed because the initial treatment was needed to determine whether the employee's symptoms were related to his work-related cervical fusion. Payment for physical therapy treatment denied on the grounds that it was not ordered by a doctor is reversed in part where the record indicates the therapy was ordered by the employee's doctor.

Affirmed in part and reversed in part.

Joshua Samuda v. Minnesota Vikings Football Club, Nov. 15, 2016

**Earning Capacity
Temporary Total Disability
Wages – Calculation**

Where the record does not indicate whether the employee had worked as a professional football player during the year before his injury, a remand is necessary to determine his earning capacity as a football player.

Vacated and remanded.

Doug M. Dekeyrel v. Metro. Mech. Contractors, Nov. 16, 2016

Permanent Total Disability

Although the possibility exists that the employee's second surgery *may* benefit him to the point where his physicians are able to establish permanent restrictions and release him to return to work, this speculative potential does not obscure the fact that the employee's disability and inability to work has existed, and is likely to continue to exist, for an indefinite period of time into the foreseeable future. Given the employee's significant disability and the extended period during which the employee has been unable to work, the matter is reversed.

Permanent Total Disability – Retraining

Mere speculation that an employee *might* find employment if he receives some unspecified training in a sedentary profession provides an inadequate basis for a compensation judge to conclude that an employee is not currently permanently and totally disabled.

Reversed.

Chase Baker v. Minnesota Vikings Football Club, Nov. 16, 2016

Wages – Calculation

It was reasonable and within the compensation judge's discretion to reject the two alternative average weekly wage calculations stipulated to by the parties and his calculation constitutes a fair representation of the employee's loss of earning capacity attributable to the work injury.

Job Search – Substantial Evidence

Substantial evidence in the record supports the compensation judge's conclusion that the employee did not make a diligent job search considering the nature of his activity restrictions.

Affirmed.

Julie A. Fischer v. I.S.D. 625, Nov. 16, 2016

Intervenors

Upon intervention by a medical provider, an employee cannot assert a direct claim for benefits on behalf of that provider absent a demonstration the employee or employee's counsel is authorized to act on that provider's behalf.

Reversed.

Eddie Hudson v. Trillium Staffing Solutions, Nov. 22, 2016

Vacation of Award – Substantial Change in Condition

Vacation of an award on stipulation is appropriate where the employee established a substantial change in medical condition under the factors set forth in Fodness v. Standard Café, 41 W.C.D. 1054 (W.C.C.A. 1989).

Petition to vacate award on stipulation granted.

Deanna L. Hurley v. Dunganvin Minnesota, LLC, Nov. 23, 2016

Vacation of Award – Substantial Change in Condition

Where the employee has shown a change in diagnosis of the thoracic spine, additional thoracic spine fusion surgery that may be rated for permanent partial disability, a need for more extensive medical care than was anticipated, an admitted causal relationship of the thoracic spine condition to her work injury and that the parties contemplated the employee would return to work, the evidence supports the employee's claim that she has sustained a substantial change in medical condition that was clearly not anticipated and could not reasonably have been anticipated at the time of the award, sufficient to justify vacation of the award on stipulation.

Petition to vacate award on stipulation granted.

Yer Sumner v. Jim Lupient Infiniti, Nov. 30, 2016

Medical Treatment and Expense – Substantial Evidence Temporary Benefits – Fully Recovered

Substantial evidence supports the compensation judge's finding that the employee has recovered from her work injury without residual disability or need for work restrictions or medical care as of May 29, 2012, and the compensation judge's findings regarding the employee's medical expenses through that date.

Intervenors Practice and Procedure – Intervention

Where parties had intervened and the self-insured employer had objected to the motions to intervene, the employee cannot make a direct claim for medical expenses for those parties. Where an employer and/or insurer did not object to an intervenor's motion to intervene, the intervenor is not required to appear at the hearing.

Affirmed in part and reversed in part.

Dawn E. Eve v. About U, Inc., Dec. 7, 2016

Causation – Temporary Injury

Substantial evidence, including expert medical opinion and medical records, supports the compensation judge's finding that the employee's Jan. 26, 2012, work injury resulted in a temporary aggravation of the employee's pre-existing conditions.

Affirmed.

Kayla Lein v. Eventide, Dec. 7, 2016

Arising Out Of And In The Course Of

Evidence that the employee slipped and fell on stairs that did not have anti-slip treads is sufficient to meet the employee's burden to show the requisite causal connection to conclude that the injury arose out of employment.

Reversed and remanded.

Julie M. Bode v. 3M Company, Dec. 9, 2016

Rehabilitation – Change of Qualified Rehabilitation Consultant

Where the evidence documents a failure on the part of the employee's qualified rehabilitation consultant (QRC), over a nine-month period, to ensure the injured employee's work assignments were within the physical restrictions assigned by her medical providers, and the employee testified she had no trust in the QRC, the judge's determination that a change of QRC was not in the best interest of the parties is contrary to law and unsupported by the evidence as a whole.

Reversed.

Sara Willy v. Northwest Airlines Corp., Dec. 14, 2016

Evidence – Expert Medical Opinion

Where a party fails to object to the introduction of a medical expert report or testimony, arguments with respect to competency or foundation go only to the weight of the evidence and not admissibility.

Affirmed.

Terry M. Zeimet v. Metropolitan Council Environmental Services, Dec. 15, 2016

Evidence – Burden of Proof

The compensation judge's summarization of an expert's conclusion with respect to whether a causal relationship between whole-body vibration and spinal disorders has been clearly established is not an indication that the employee was held to a burden of proof higher than the preponderance of the evidence standard.

Causation – Gillette Injury

Substantial evidence in the record supports the compensation judge's determination that the employee did not sustain a Gillette injury to his cervical spine as a result of whole-body vibration while operating a light-rail vehicle.

Affirmed.

Nigussie D. Tekle v. JBS USA, LLC/Swift Pork Co., Dec. 20, 2016

Causation – Substantial Evidence

Substantial evidence, including expert medical opinion, supports the compensation judge's determination that the employee failed to prove he suffered compensable, work-related injuries to his low back on March 30, 2011, to his right shoulder and/or left thumb on June 1, 2012, to his right eye on Oct. 30, 2012, and to both legs as of Nov. 10, 2012, and/or a Gillette injury to his low back, right shoulder, left thumb and/or hand, bilateral legs and/or bilateral knees culminating on Dec. 27, 2012.

Affirmed.

David M. Welter v. Ray N. Welter Heating Co., Dec. 20, 2016

Evidence – Admission

The compensation judge did not abuse his discretion by admitting evidence of a crime involving dishonesty without performing an assessment of the probative value of the evidence where the last incarceration for the offense occurred within 10 years of the date of the hearing.

Evidence – Admission

The factual findings of an investigation by a government agency are not excluded as hearsay, absent an independent demonstration of a lack of trustworthiness. Minn. Rule of Evid. 803(8)(C).

Affirmed.

Donald Dale Degrio v. Center for Alcohol and Drug Treatment, Dec. 22, 2016

Vacation of Award – Substantial Change in Condition

The employee's petition to vacate an award on stipulation is denied where the employee failed to establish a substantial change in condition, as the employee's own treating physicians and the independent medical examiner

considered the employee a candidate for further cervical spine surgery at the time the employee stipulated to closing out his workers' compensation claim, including future medical, on a full, final and complete basis.

Petition to vacate award on stipulation denied.

Jason Jarveis v. Carroll Distrib., Dec. 28, 2016

**Causation – Substantial Evidence
Medical Treatment and Expense – Substantial Evidence
Evidence – Credibility**

Substantial evidence supports the compensation judge's determination that the employee's work-related motor-vehicle accident of Feb. 18, 2014, was a substantial contributing factor to the employee's current low back condition and need for medical treatment, including a recommended fusion surgery. The compensation judge did not commit reversible error by relying on the employee's testimony at the hearing.

Affirmed.

Mark S. Aulik v. Alloy Hardfacing and Engineering, Dec. 30, 2016

Causation – Temporary Aggravation

Substantial evidence, including expert medical opinion and video surveillance, supports the compensation judge's finding that the employee's 2012 and 2014 work injuries resulted in a temporary aggravation of a pre-existing condition.

Affirmed.