

Overview of the Workers' Compensation Advisory Council bill

HF 2478; Laws of Minnesota 2016, Chapter 110

Note: This is only an overview of the amendments, not the actual law; the complete law is available online at www.revisor.mn.gov/laws/?year=2016&type=0&doctype=Chapter&id=110.

Article 1. Workers' Compensation Court of Appeals amendments

- **Sections 1, 2 and 6:** The amendments clarify the applicability of two statutes under which the Workers' Compensation Court of Appeals (WCCA) awards attorney fees: 1) when there is an appeal to the WCCA disagreeing with the compensation judge's decision about the amount of attorney fees payable to the employee's attorney under Minnesota Statutes § 176.081; and 2) where the WCCA awards attorney fees for an attorney's work on an appeal before the WCCA under Minn. Stat. § 176.511.
- **Sections 3 and 4:** These amendments eliminate the requirement that the appellant pay a bond (for the cost of the court's review) in every case a WCCA decision is appealed to the Supreme Court. The amendments allow a party to request a bond in extraordinary circumstances as prescribed by rule 107.2 of the Rules of Civil Appellate Procedure, but it is no longer mandatory.
- **Section 5:** The amendments allow the WCCA to order an adverse party to reimburse a prevailing party actual and necessary disbursements on cases before the court, and increase the time – from five days to 10 days – for giving notice of taxation of costs to the adverse party.
- Other terminology changes are made throughout Article 1 for clarity and consistency.



Effective date of Article 1: May 13, 2016.

Article 2. Department of Labor and Industry amendments

- **Section 1:** This section amends a law, initially enacted in 2015, that requires workers' compensation providers and insurers to use one standard electronic format to electronically transmit and receive relevant medical records or reports with the medical bill. The amendments extend the effective date of this attachment standard six months, to Jan. 1, 2017, and provide more specificity about the electronic attachment standard that must be used.
- **Section 2:** This section restores payment for outpatient services at hospitals with 100 or fewer beds to the payment in effect before 2015 amendments (100 percent of usual and customary charges unless the commissioner or compensation judge determines the charge to be unreasonably excessive).

Overview, continues ...

Overview, continued ...

- **Section 3:** This section reflects that the Department of Administration is the current state agency that administers workers' compensation claims of injured state workers.

Effective date of Article 2: May 13, 2016.

Article 3. Litigation-related amendments

- **Section 1:** This section updates definitions to reflect the current location of compensation judges at the Office of Administrative Hearings (OAH). The definition of "calendar judge" is deleted because OAH no longer uses one.
- **Sections 2, 3 and 4:** These sections amend the workers' compensation law that governs remodeling of an injured workers' residence as needed to accommodate the disability. The amendments reflect the current process for approval of remodeling requests and resolving disputes by the three workers' compensation agencies: The Department of Labor and Industry (DLI) approves remodeling agreements between the parties. If there is a dispute about a remodeling request, the case is heard by a compensation judge at OAH; the compensation judge's decision is appealable to the WCCA.
- **Section 5:** This section allows the compensation judge to consider whether good cause exists to grant a continuance of a hearing where a party has not timely filed an answer in response to a petition.
- **Sections 6 through 12:** These sections amend Minn. Stat. § 176.361, which governs intervention in workers' compensation disputes.
 - Sections 6, 7 and 8 make terminology changes for consistency and clarity, including "motions" instead of "application or motion" and "attend" instead of "appear."
 - Section 6 updates the proceedings at DLI and OAH that are not subject to subdivisions 3 to 6: mediation proceedings; discontinuance conferences under section 176.239; and administrative conferences under Minn. Stat. § 176.106.
 - Section 7 clarifies what information must be submitted with the motion to intervene and who must be served with the motion (all parties except for other intervenors). It also requires a motion to intervene to provide the name and phone number of the person who has authority to represent the intervenor and reach settlement.
 - Section 8 requires objections to a motion to intervene to be "specific and detailed." It also allows OAH to establish procedures for filing objections when a timely motion to intervene is filed less than 30 days before a scheduled hearing.
 - Section 9:
 - eliminates the requirement that intervenors must attend all settlement and pretrial conferences and hearings at OAH, but allows the compensation judge to order attendance upon a party's motion or the judge's own discretion;
 - requires that a motion to require attendance must be served and filed at least 20 days before a scheduled hearing and the order granting or denying a motion to require attendance must be served and filed at least 10 days before a hearing;

Overview, continues ...

Overview, continued ...

- provides that reimbursement is denied if the intervenor fails to attend a proceeding after being ordered to do so, unless the judge finds good cause for the failure to attend, and attendance may be in person or, if approved by the judge, by telephone or other electronic medium; and
- provides that, even if attendance is not ordered, an intervenor may attend a proceeding in person or may request the judge's permission to attend by phone or other electronic medium.
- Section 10 provides that when the intervenor has not been ordered to attend the hearing, or has permission to attend the hearing by telephone or other electronic medium, the intervenor may provide a written response to an objection before the hearing for consideration as a matter of discretion by the judge.
- Section 11 provides that when the intervenor has not been ordered to attend the hearing, or has permission to attend the hearing by telephone or other electronic medium, OAH may establish a procedure for submission of the intervenor's evidence and response to outstanding objections. If the intervenor does not submit a written response to an objection before the hearing, the judge's determination must be based on the information and evidence submitted before or at the hearing, as a matter of judicial discretion.
- Section 12 grants the chief administrative law judge the authority to issue standing orders to implement the intervention statute in disputes before OAH.

Effective date of Article 3: Aug. 1, 2016.

Commissioner seeks new members for medical board, rehabilitation panel

Medical Services Review Board – alternate member openings available

The Medical Services Review Board currently has alternate member openings for a hospital representative, a labor representative and a physician. To apply for one of the positions, submit the application found on the Secretary of State's website at www.sos.state.mn.us/boards-commissions.

The board advises the Department of Labor and Industry (DLI) about workers' compensation medical issues; is the liaison between DLI and the medical-provider community; and supports and engages in the education of the provider community about workers' compensation. It meets quarterly at DLI; the meeting schedule, agendas and minutes are online at www.dli.mn.gov/Msrb.asp.

Rehabilitation Review Panel – alternate member opening available

The Rehabilitation Review Panel currently has an alternate member opening for a labor representative. To apply for the position, submit the application found on the Secretary of State's website at www.sos.state.mn.us/boards-commissions.

The panel offers vocational rehabilitation rule advice and makes determinations, including sanctions, related to contested cases about rehabilitation provider registration and professional conduct. It meets quarterly at DLI; the meeting schedule, agendas and minutes are online at www.dli.mn.gov/Rrp.asp.

2015 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. Table 1, below, details closed complaint files and where the complaints originated.

Year	ER/IR	EE	Attorney	Rehabilitation	DLI	Other	Total
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
2011	0	2	1	79	3	0	85
2010	8	0	4	2	2	0	16
2009	7	4	5	1	16	0	36
2008	14	8	3	4	30	1	60

*Twenty-one of 24 complaints: non-attendance at September 2014 mandatory 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 in case subsequent inquiries into a provider's conduct are undertaken.
- Discipline/stipulation – Discipline, 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 went inactive during the investigation. Before being allowed to re-register, the complaint must be resolved.

Year	No jurisdiction	Unsubstantiated	Letter of instruction	Stipulation/penalty	No appeal	Inactive	Total
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
2011	0	6	3*	2	0	0	10
2010	1	4	5	6	0	0	16
2009	3	11	15*	8*	0	0	36
2008	0	24	16	21	0	0	61

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

Professional conduct, continues ...

Table 3. Rehabilitation violations of Minnesota Statutes and Minnesota Rules for 2015	
Violation	Statute, rule
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 qualified rehabilitation provider's (QRCs) determination that the employee was qualified to receive rehabilitation services	5220.0130, subp. 3C (4)
Failure to obtain a signed written medical release from the employee prior to contacting the treating physician	5220.1802, subp. 5
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 5220.0100, subp. 31
Failure of vendors to attend DLI's mandatory September 2014 update either in person or via videostream session	5220.1500, subp. 3a
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 of QRC intern supervisor to sign off on all written intern documents	5220.1400, subp. 3a
Failure of QRC supervisor to monitor the QRC intern	5220.1801, subp. 9 (E)
Failure to use current DLI R-forms	5220.1802, subp. 2
Failure to file rights and responsibilities form	5220.0130, subp 3 (D)
Failure to disclose a business referral relationship	5220.1803, subp. 1 (A) 5220.1803, subp. 1 (B)
Failure to file Rehabilitation Consultation Report form and narrative report within 14 days of the first in-person meeting with the employee	5220.0130, subp. 3 (D)
Intentionally filing a false first in-person meeting date on the R-2 Rehabilitation Plan form	5220.1801, subp. 9 (A)
Failure to file the R-2 Rehabilitation Plan form within 45 days of the first in-person meeting	5220.0410, subp. 6
Failure to provide evidence the R-2 Rehabilitation Plan form and narrative report were sent to the parties for their review	5220.0410, subp. 6
Failure to file a Plan Progress Report form six months after an R-2 Rehabilitation Plan form was filed with DLI	5220.0450, subp. 3

Table 3. Rehabilitation violations of Minnesota Statutes and Minnesota Rules for 2015	
Violation	Statute, rule
Failure to recommend plan amendment, closure or alternative when it was known the plan's objective was not likely achievable	5220.1801, subp. 9 (P)
Repeated failure to file required R-2 Rehabilitation Plan forms with DLI	5220.2830
Failure to file an R-3 Rehabilitation Plan Amendment on a timely basis and to provide evidence the form was sent to the parties for their review	5220.0510, subp. 2c 5220.0510, subp. 2d
Data privacy: A rehabilitation provider shall not disclose employee information to a referral source who is not a party to the claim	5220.1802, subp. 5
Failure to file a narrative summary report of services provided to the employee with the R-8 Notice of Rehabilitation Plan Closure form	5220.0510, subp. 7(4)
A rehabilitation provider shall remain professionally objective in conduct and in recommendations on all cases	5220.1801, subp. 4a
A rehabilitation provider shall not act as an advocate for or advise any party about a claim or entitlement issue	5220.1801, subp. 8 (B)
Failure to comply with authorized request for information about an employee's rehabilitation plan	5220.1801, subp. 9K(4) 5220.1802, subp. 10
Failure of the QRC to inform the parties of intention to close the rehabilitation file during the employee's decision and order appeal period	5220.1801, subp. 9K(2)
Failure to perform professional rehabilitation services with reasonable skill	5220.1801, subp. 9 (E)
Lack of knowledge about workers' compensation laws and rules	5220.1803, subp. 2

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 parties to the claim.

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 (651) 284-5038 or 1-800-342-5354.

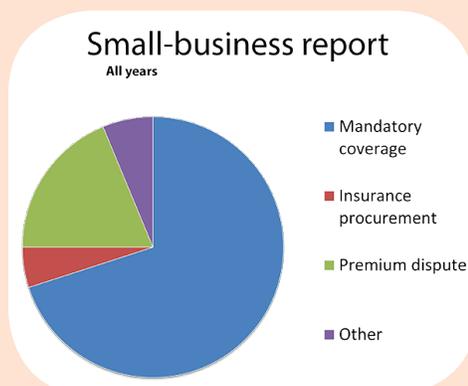
Ombudsman helps small businesses navigating the workers' compensation system

Small businesses have been helped successfully by the Office of Workers' Compensation Ombudsman at the Minnesota Department of Labor and Industry (DLI) since Sept. 1, 2011.

In addition to assisting injured workers, DLI's ombudsman works to inform, assist and empower small businesses having difficulty navigating the workers' compensation system, to help resolve problems encountered in the system.

Small businesses contact the ombudsman about a variety of issues, including mandatory coverage, insurance procurement, premium disputes and more.

- Employers most often call the Office of Workers' Compensation Ombudsman to discuss the workers' compensation insurance requirement and to learn what circumstances would exempt them from that requirement.
- Employers are next most likely to call asking why they are seeing an insurance premium increase. This can require some investigation into their loss history and discussion about premium disputes.
- Employers sometimes call with questions about how to obtain workers' compensation insurance, what their insurance options might be in the marketplace or what their options are when their coverage has been canceled by an insurer.
- Employers also ask more general questions about the impact of workers' compensation laws on their business, including their obligations toward an injured worker, such as reporting an injury or the implications of accommodating non-work-related restrictions.



Learn more about the DLI Office of Workers' Compensation Ombudsman online at www.dli.mn.gov/WC/Ombudsman.asp.

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 the Department of Human Services (DHS) "Rule 101," require health care providers to 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 2016 is now available. The provider participation list is a compilation of health care providers that are in compliance with 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 types, 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 the DHS Provider Call Center at (651) 431-2700 or 1-800-366-5411. Requests may also be faxed to (651) 431-7462 or mailed to the Department of Human Services, P.O. Box 64987, St. Paul, MN 55164-0987.



Minnesota Department of **Human Services**

Request for comments:

Possible rules governing workers' compensation medical services and fees, rules of practice and penalties; Minnesota Rules, chapters 5220 and 5221

Subject of rules

The Minnesota Department of Labor and Industry requests comments on its possible rules governing workers' compensation medical services and fees. Although all the rules in Minnesota Rules, chapters 5220 and 5221, related to medical services are being considered for amendment, the department is specifically considering rules governing: a payment system for hospital outpatient services; submission and payment of medical bills; additional conduct subject to prohibited practices penalties under Minnesota Statutes § 176.194; and penalties for failure to timely pay medical bills as required by Minn. Stat. chapter 176.

Persons affected

The rules would likely affect hospitals and other health care providers who treat injured workers; workers' compensation payers (employers, self-insured employers and insurers); agents of payers, such as third-party administrators and bill review companies; and injured workers.

Statutory authority

Minnesota Statutes § 176.136, subd. 1b (b), authorizes the commissioner to establish by rule the reasonable value of a service, article or supply in lieu of the 85 percent limitation in that paragraph. Minnesota Statutes § 176.1362, subd. 8, authorizes the commissioner to adopt or amend rules using the authority in Minn. Stat. § 14.389, including subd. 5, to implement the Medicare Hospital Outpatient Prospective Payment System, or other fee schedule, for payment of outpatient services provided under chapter 176 by a hospital or ambulatory surgical center, not to take effect before Jan. 1, 2017. Minnesota Statutes § 176.194, subd. 5, authorizes the commissioner to adopt by rule additional illegal, misleading, deceptive, fraudulent practices or conduct which are subject to the penalties under that section. Minnesota Statutes § 176.83, subd. 1, authorizes the commissioner to adopt, amend or repeal rules to implement the provisions of chapter 176.

Public comment

Interested persons or groups may submit comments or information on these possible rules in writing until further notice is published in the *State Register* that the department intends to adopt or to withdraw the rules. The department will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments.

Rules drafts

The department has not yet drafted the possible rules, but anticipates that when a draft becomes available it will be posted on the department's workers' compensation rule docket Web page at www.dli.mn.gov/RulemakingWC.asp.

Agency contact person

Written or oral comments, questions, requests to receive a draft of the rules when it has been prepared and requests for more information on these possible rules should be directed to: Kate Berger, Office of General Counsel, 443 Lafayette Road N., St. Paul, MN 55155; (651) 284-5006; or dli.rules@state.mn.us.

Alternative format

Upon request, this information can be made available in an alternative format, such as audio, Braille or large print. To make such a request, contact the agency contact person at the address or telephone number listed above.

Request for comments, continues ...

Request for comments, continued ...

Note: Comments received in response to this request for comments will be considered in developing the rules, but will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure that the administrative law judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Signed by Department of Labor and Industry Commissioner Ken B. Peterson on May 20, 2016.

Workers' compensation cost-savings payment system took effect Jan. 1

Effective Jan. 1, 2016, Minnesota's workers' compensation system requires using the same payment system Medicare uses to reimburse hospitals for inpatient care. The change cuts workers' compensation inpatient hospital costs by 10 to 15 percent and slows future medical costs increases. The payment system bases a hospital's reimbursement on a patient's diagnosis, using Medicare Severity – Diagnosis-Related Groups (MS-DRGs), replacing the prior standard of paying 85 percent of the hospital's usual and customary charge (Minnesota Statutes § 176.1362).

The move to the MS-DRG payment system was a combined effort of hospitals, insurers, labor representatives and employers. It is designed as a cost-effective means where payers and providers can quickly understand the payment required for a specific inpatient treatment. Simplifying Minnesota workers' compensation inpatient payments and reducing administrative costs and disputes was the purpose of the change.



Minnesota Statutes § 176.1362 establishes the following criteria.

1. The maximum payment for inpatient services with discharge dates after Jan. 1, 2016, is 200 percent of the amount paid by Medicare PC Pricer for the applicable MS-DRG.
2. Payment for services, articles and supplies provided to patients discharged Jan. 1, 2016, through Dec. 31, 2016, must be based on the Medicare PC-Pricer program in effect Jan. 1, 2016.
3. Hospitals must bill using the same format and details as required by Medicare.
4. If inpatient charges exceed \$175,000, the payment is 75 percent of the hospital's usual and customary charge, instead of the MS-DRG.
5. Hospitals certified as critical access hospitals by Medicare and the Centers for Medicare are paid at 100 percent of the hospital's usual and customary charges, instead of the MS-DRG.
6. Insurers may not require an itemization or additional documentation to support a bill if the following criteria are met:
 - the hospital submits its charges to the insurer on the required 837I institutional electronic transaction;
 - an MS-DRG applies to the hospitalization; and
 - the hospital's total charge is less than \$175,000.
7. Insurers may conduct post payment audits if the insurer paid the bill within 30 days and the amount paid according to the PC-Pricer program included an "outlier" amount. (An outlier payment is payment made above the MS-DRG amount, allowed by Medicare for some more expensive cases.) Audits must be initiated within six months after the inpatient bill is paid.

This is a summary of the law; the complete statute is available at www.revisor.mn.gov/statutes/?id=176.1362.

WCRI report compares Minnesota with 17 other states

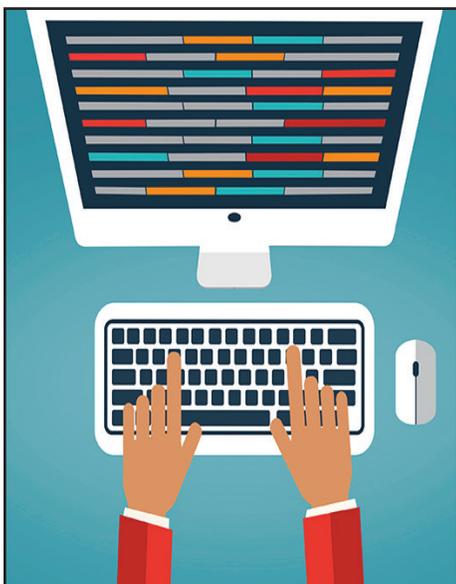
The Workers' Compensation Research Institute's (WCRI's), *CompScope Benchmarks for Minnesota, 16th edition*, was released in April. The report uses insurer claim files to compare Minnesota's medical payments, indemnity benefits and insurer expenses with those of 17 other states, including Iowa and Wisconsin, for the 2009 to 2014 period. The report is available for purchase from WCRI at www.wcrinet.org.

Some of the major findings

- Average costs for all paid claims, measured at an average of 36 months after the injury (2012 claims measured in 2015) were 18 percent lower in Minnesota than the 18-state median.
- Average costs for all benefits for Minnesota claims have been stable from 2009 to 2014. Analysis of claims with more than seven days of lost time, measured an average of 12 months after the injury, shows the total of medical costs, indemnity benefits, vocational rehabilitation and claims expenses increased at an average annual rate of 1.3 percent.
- Medical payments for Minnesota claims with more than seven days of lost time at an average of 12 months after the injury grew at a rate of 0.7 percent from 2009 to 2014, much slower than the median annual growth of 2.9 percent among the 18 states studied.
- Although Minnesota had slightly fewer claims, compared with the median state, with any permanent partial disability (PPD) or lump-sum payment at an average of 36 months after the injury, the average PPD/lump-sum payment for these claims was 13.2 percent higher than the median.
- Adjusted benefit delivery expenses for claims with any benefit delivery expenses – which include medical cost containment expenses, defense attorney fees and independent medical examination costs – for Minnesota claims with more than seven days of lost time at an average of 36 months after the injury were 16.5 percent lower than the median.



OSHA recordkeeping training offered June 17: Reviewing the basics



The ability to maintain an accurate OSHA log of recordable work-related injuries and illnesses is an important skill that benefits employers, workers, safety professionals and government agencies. Recording the correct cases and accurately including the required information leads to higher quality injury and illness rates that enable employers to better understand their relation to the benchmark rates and help government agencies to properly direct resources.

This free introductory-level training session about OSHA recordkeeping requirements will be Friday, June 17, from 9 a.m. to 11:30 a.m., at the Minnesota Department of Labor and Industry (DLI), 443 Lafayette Road N., St. Paul, MN. Register now at www.dli.mn.gov/OSHA/Recordkeeping.asp.

Topics will include a review of the fundamental requirements of OSHA recordkeeping and will expose the most common OSHA log errors. If you have questions about the training session or about recordkeeping, call the DLI Research and Statistics unit at (651) 284-5025.

CompFact: Rate of denial of primary liability higher for low-wage workers

By Brian Zaidman, Research and Statistics

An insurer may deny primary liability (deny an injury is compensable) if it has reason to believe the injury was not work-related, was intentionally self-inflicted, resulted from intoxication or happened during participation in a nonrequired recreational program. Between 1997 and 2013, the denial rate for claims filed for indemnity benefits (developed to ultimate maturity) has varied from a low of 12.1 percent to a high of 16.7 percent (*Minnesota Workplace Safety Report, 2013*, figure 5.3).

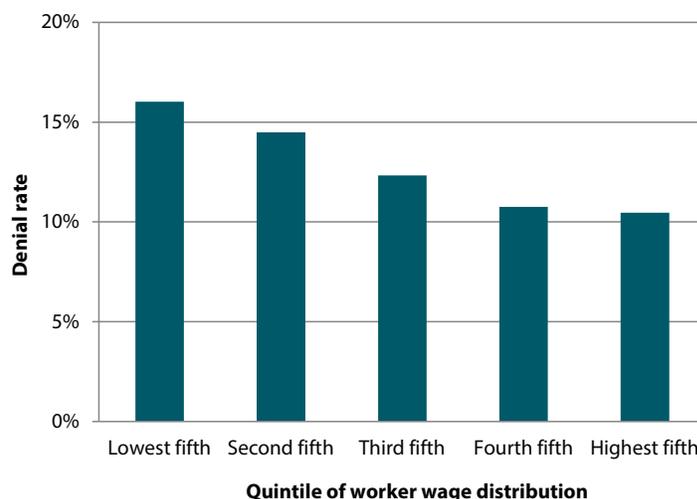
Research conducted by DLI's David Berry in 2002¹ examined factors associated with claim denial among filed indemnity claims for injuries and illnesses from 1996 through 2000. The overall denial rate during this period was 15.2 percent. Estimated denial rates were calculated using a statistical model to control for associations between different predictive factors, such as gender, age, job tenure, occupation, industry and type of injury. Among the findings of this study,² the estimated denial rate for workers in the lowest fifth of the wage distribution was 15.9 percent and the rate decreased for each succeeding quintile, reaching 12.3 percent for the workers with the highest wages.

This CompFact revisits the relationship of worker wage levels with the denial rate, looking at filed indemnity claims for injuries and illnesses in 2012, 2013 and 2014. The overall denial rate during this period was 15.0 percent. Claims for indemnity benefits were assigned to wage quintiles (20 percent sections) independently for each year and then the quintiles were combined across years. Statistical controls for the effects of other influences on claims denial were not used.

The denial rate is higher for workers with lower wage levels, decreasing from a rate of 16.0 percent for the lowest fifth of workers by wage to 10.5 percent among the highest fifth of workers by wage, replicating the earlier finding (Figure 1). This relationship is evident among denied claims that were paid benefits, either before or after the denial was filed, and among claims without any indemnity benefits. The percentage of denied claims that were ever paid any indemnity benefits did not show any wage-related trend (Table 1).

In his 2002 report, Berry speculated about some of the reasons that denial rates are higher for lower-wage workers. Lower-wage workers are less likely to have health insurance coverage and this may lead some workers to file claims for injuries with an uncertain connection to work. Employers and insurers may speculate workers with low education, limited English proficiency and uncertain immigrant status might be less likely to contest a denial. However, Table 1 shows that the percentage of denials with payment is very similar for workers in the highest and lowest wage groups. Further research is needed to better understand the relationship between worker wages and claim denials.

Figure 1. Percentage of filed indemnity claims with a denial of primary liability, by quintile of worker weekly wage, injury years 2012-2014 [1]



1. Filed indemnity claims are claims for indemnity benefits, including claims paid and claims never paid.
Source: Minnesota workers' compensation claims database.

Table 1. Denial rates for filed indemnity claims, with and without payment of indemnity benefits, by quintile of worker weekly wage, injury years 2012-2014 [1]

Quintile of claim wage distribution	Percentage of filed indemnity claims ever denied			Percentage of denied claims ever paid
	Total	With payment	Without payment	
Lowest fifth	16.0%	4.9%	11.1%	30.6%
Second fifth	14.5%	5.0%	9.5%	34.3%
Third fifth	12.3%	4.3%	8.0%	35.2%
Fourth fifth	10.8%	3.6%	7.1%	33.7%
Highest fifth	10.5%	3.3%	7.2%	31.1%

1. Filed indemnity claims are claims for indemnity benefits, including claims paid and claims never paid.
Source: Minnesota workers' compensation claims database.

¹David Berry, *Workers' compensation claim denial project* (2002). www.dli.mn.gov/RS/ClaimDenialProj.asp

²Effects were found for age, job tenure, employment status, and nature and cause of injury, among other factors.

Part one:

Understanding the dispute certification process

By Dave Bateson, *Alternative Dispute Resolution*

The Minnesota Department of Labor and Industry (DLI) is required by Minnesota Statutes § 176.081, subd. 1 (c), to certify that a rehabilitation or medical issue is actually disputed, and that DLI has tried to resolve the dispute, before an attorney can claim attorney fees for resolving that issue. DLI's Alternative Dispute Resolution (ADR) unit handles the certification process for the agency.

The certification process is an important opportunity for DLI to help resolve disputes that may otherwise result in litigation. For example, in 2014 (the most recent year for which complete statistics are available), DLI mediators were able to resolve 38 percent of certification requests for rehabilitation services and 34 percent of certification requests for medical disputes, allowing injured workers to receive requested benefits more quickly and helping employers and insurers avoid costly litigation.

It is helpful for parties on both sides of a potential dispute to understand how the certification process works:

- petitioners can more efficiently obtain a certification of dispute for genuinely disputed issues; and
- employers and insurers can resolve issues early in the dispute process.

When is certification of a dispute needed?

Certification of a dispute is required if the petitioner's attorney wishes to seek attorney fees for resolving a medical or rehabilitation issue, unless other litigation is already pending in the case. So, if another medical or rehabilitation request, claim petition, request for formal hearing, petition to discontinue or objection to discontinuance has already been filed, the petitioner's attorney does not need to obtain certification of the new dispute. In that instance, the petitioner's attorney may immediately proceed with filing the medical or rehabilitation request.

How does the certification process work?

The dispute certification process begins when the petitioner files a Request for Certification of Dispute form. The form can be filed by mail, by fax or by using the DLI electronic filing system. An ADR mediator reviews the submitted information and then contacts the insurer representative or the insurer's attorney (if one has made an appearance on the file) to determine whether the requested medical treatment, medical bills or rehabilitation services are disputed or whether some or all of the requested issues could be resolved. The mediator will see if some compromise can be reached to resolve the potential dispute and will, generally, set a specific time frame for the insurer representative to make a decision about the issue presented.

What are the potential certification request outcomes?

There are essentially three potential outcomes for each request for certification: certification; noncertification; or noncertification with explanation.



Dispute certification, continues ...

1) Certification: If the dispute is certified, the mediator has contacted the insurer and determined the requested issue is, in fact, disputed by the insurer and voluntary resolution of the issue is not possible at that time. Additionally, if the insurer does not respond to inquiries from the mediator in a timely fashion, the mediator will assume the issue is disputed and will issue the certification. The mediator will send the petitioner's attorney a certification of dispute document. The petitioner may then proceed with filing the medical or rehabilitation request.

2) Noncertification: If a petitioner files a request for certification where it is not required, due to other pending litigation, the mediator will respond with a noncertification letter to the petitioner. Before sending the letter, the mediator will typically still contact the insurer to see if the issue can be resolved. If the issue can be resolved, the noncertification letter will explain the resolution. If the issue cannot be resolved, the noncertification letter will explain certification is not needed and that the petitioner may proceed by filing a medical or rehabilitation request.



3) Noncertification with explanation: The mediator may issue a letter of noncertification with an explanation for why certification cannot be granted currently. For example, if the insurer agrees to what has been requested, there is no dispute and the issue is resolved. The noncertification letter will identify the specific resolution of the issue and be sent to both parties.

There may also be times where certification cannot yet be granted for legal reasons. For example, if the request is to certify a dispute about payment of medical bills, the insurer must have had 30 days from the proper submission of the medical bills to pay them, deny them or request additional information. If the bills have not been properly submitted, the 30-day period has not occurred and certification of a dispute is premature.

Similarly, if the request is for approval of medical treatment, the treatment request or referral, along with the chart note documenting the referral, must be submitted to the insurer so the insurer may take a position about the requested treatment. The mediator cannot certify an issue as disputed where the insurer is not yet legally required to take a position about the issue.

Where can I get more information?

For additional information about DLI's mediation program, visit www.dli.mn.gov/WC/DispRes.asp, call (651) 284-5005 or 1-800-342-5354, or email mediation.dli@state.mn.us.

Dave Bateson joined ADR as a mediator and arbitrator in October 2015. He has more than 15 years of experience as a lawyer, the vast majority litigating workers' compensation cases. He has been a frequent speaker at workers' compensation continuing legal education events and seminars. To schedule a mediation session with Bateson, call him at (651) 284-5161, call ADR scheduler Melanie Tischler at (651) 284-5326 or send an email message to mediation.dli@state.mn.us.

Updated opioid-use model contract spells out patient, provider agreement

The rules governing long-term treatment with opioid medication for workers' compensation injuries were adopted effective July 13, 2015 (see August 2015 *COMPACT* at www.dli.mn.gov/WC/Pdf/0815c.pdf). The rules require the Department of Labor and Industry (DLI) commissioner to develop a form for a model contract that includes the provisions specified in Minnesota Rules 5221.6110, subp. 7.

If a prescribing health care provider uses this model contract, it is deemed to meet the requirements of the rules once completed and made part of the patient's medical record. However, a health care provider is not required to use the DLI commissioner's model contract.

The commissioner may revise the model contract from time to time to address new issues or information. The contract was recently revised and the current version, effective May 1, 2016, is available at www.dli.mn.gov/WC/Pdf/opioid_model_contract_050116.pdf. [This link was updated July 27, 2016.]



Helpful workers' compensation information sheets available online

The Department of Labor and Industry offers 14 information sheets online that delve deeper into topics such as workers' compensation insurance coverage requirements, reporting an injury, post-traumatic stress disorder and more. The information sheets, from the Office of General Counsel, are at www.dli.mn.gov/WC/InfoSheets.asp.

Available information sheets

- Extraterritorial jurisdiction: A summary
- Failure to provide workers' compensation insurance
- Guide for calculating interest on workers' compensation benefits
- Reporting a work injury
- Third degree of kindred chart
- Workers' compensation: Post-traumatic stress disorder and mental injuries
- Workers' compensation cumulative trauma injuries: *Gillette* injuries in Minnesota
- Workers' compensation insurance: May an employer directly pay medical bills?
- Workers' compensation insurance coverage: Corporations and limited liability companies
- Workers' compensation insurance coverage: General information
- Workers' compensation insurance coverage and liability: Farmer-employer exception
- Workers' compensation insurance coverage and liability: Temporary and leased employment situations
- Workers' compensation liability of contractors
- Workers' compensation settlements



The documents contain general information, not legal advice. Every situation is different and other laws might apply. For specific information about a workers' compensation situation, contact an attorney, visit the DLI Workers' Compensation Division's main Web page at www.dli.mn.gov/WorkComp.asp or call the Workers' Compensation Hotline at 1-800-342-5354.

Training opportunities for adjusters, rehabilitation providers, employers

2016 Basic adjuster training – Offered June 6 and 7; Nov. 8 and 9

These classes are designed for claims adjusters who have less than one year experience handling Minnesota workers' compensation claims. The \$150 registration fee for each two-day session includes lunch. This educational offering is recognized by the commissioner of the Minnesota Department of Commerce as satisfying 10.5 hours of credit toward continuing insurance education requirements.

Topics

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

The training sessions are from 8:30 a.m. to 4 p.m. at the Department of Labor and Industry office in St. Paul, Minnesota. Participants must register and pay online. Complete information is available online at www.dli.mn.gov/WC/TrainingIns.asp.

Rehabilitation provider orientation – Offered Aug. 25, 2016

The 2016 rehabilitation provider orientation session is only for qualified rehabilitation consultant (QRC) interns, QRC intern supervisors, newly registered job placement vendors or rehabilitation providers re-entering the field, if absent for two years or more.

Topics

- Workers' compensation 101
- Medical aspects
- Rehabilitation consultation practices and ethics
- Registration renewal and completion of internship
- Litigation procedures at DLI
- Work as a provider and documentation
- A vendor's perspective
- Intern qualifying criteria
- Online R-form submission
- Follow-up questions and answers

The training session is from 7:30 a.m. to 4:15 p.m. at the Department of Labor and Industry (DLI) office in St. Paul, Minnesota. Participants must register and pay online. Complete information is available online at www.dli.mn.gov/WC/TrainingRp.asp.

Rehabilitation provider update conference and simulcast – Offered Sept. 20, 2016

The 2016 rehabilitation provider update will be offered live at the University of Minnesota's St. Paul campus and via simulcast that day. For those unable to participate Sept. 20, the video will be available again from Sept. 22 through Oct. 14 only. Attendance is mandatory for all QRCs, QRC interns and one representative from each vendor firm unless an emergency situation arises and is reported to DLI.

Topics

- Minimally invasive surgery
- How to deal with difficult adjusters
- Maximizing R-form use to avoid problems
- Case law update
- Job search: Internet skills training
- Effective court testimony

Notices for the updates session will be mailed in July; registration will be open July 15 through Aug. 31. Complete information is available online at www.dli.mn.gov/WC/TrainingRp.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.



Breaking news – Stay up-to-date with the Department of Labor and Industry by signing up for its email newsletter at www.dli.mn.gov/Email.asp. The agency sends occasional messages to subscribers to share news 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.

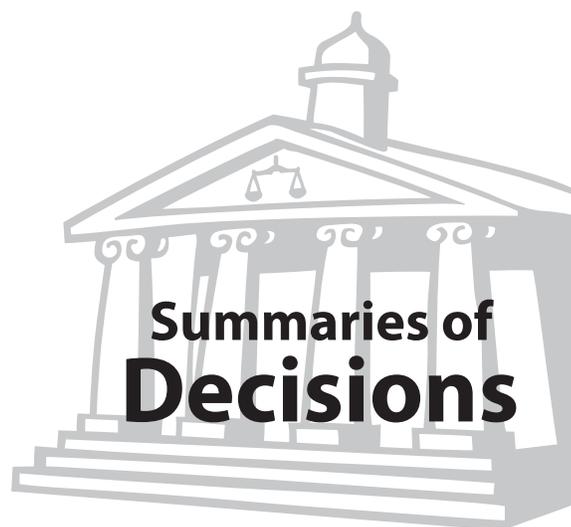
The rulemaking lists are required to be maintained for people who have registered with the agency to receive notices of agency rule proceedings via email or U.S. mail. The rulemaking lists topic areas are: apprenticeship; boats/boats-for-hire; electrical; fire code; high-pressure piping; independent 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

January through March 2016

Case summaries published are
those prepared by the WCCA



David Killian v. State Department of Transportation, Jan. 11, 2016

Temporary Partial Disability – Earning Capacity
Temporary Partial Disability – Restrictions

Substantial evidence, including testimony by the employee that was accepted by the compensation judge, supports the determination the employee was restricted by pain and had sustained a loss in earning capacity as the result of his work injury.

Practice and Procedure – Adequacy of Findings
Medical Treatment and Expense – Treatment Parameters

Where the compensation judge's finding that the treatment at issue was reasonable and necessary does not address a relevant treatment parameter discussed by the parties at the hearing, a remand is required for consideration of whether a treatment parameter defense was, in fact, properly raised and, if so, whether the treatment at issue is consistent with the specified treatment parameter rules, i.e., whether the treatment and care at issue was reasonable and necessary under those rules and, if not, whether a departure is warranted.

Affirmed in part, and vacated and remanded in part.

Jackie Peterson v. Long Term Health Care Associate, Jan. 11, 2016

Where the employee established a substantial change in condition under the factors set forth in *Fodness v. Standard Cafe*, 41 W.C.D. 1054 (W.C.C.A. 1989), vacation of the award was appropriate.

Petition to vacate award on stipulation granted.

Kevin Weldon v. Fahey Sales Agency, Inc., Jan. 11, 2016

Based on all of the pleadings in the case, the transcript of evidence taken before the compensation judge, the exhibits admitted into evidence, and briefs and arguments of counsel, the court is of the opinion that the Findings and Order of the compensation judge are in accord with the evidence and law in the case.

Affirmed.

Maria E. Gutierrez Sepulveda v. Aggressive Indus., Inc., Jan. 12, 2016

Evidence – Credibility
Evidence – Expert Medical Opinion

There is adequate support for the compensation judge's credibility determination. The compensation judge did not err in adopting the opinions of the self-insured employer's independent medical examiners.

Causation – Temporary Injury

Substantial evidence supports the compensation judge's findings that the injuries sustained by the employee at work on Sept. 17, 2012, were temporary and have resolved, and that the employee did not injure her low back or hip when she fell on Sept. 17, 2012.

Temporary Partial Disability – Work Restrictions

Substantial evidence supports the compensation judge's finding that the employee no longer needs work restrictions as a result of the Sept. 17, 2012, injury, and the judge's determination that the self-insured employer established reasonable grounds to discontinue temporary partial disability benefits.

Appeals – Scope of Review

A medical record submitted with the employee's letter brief reflects treatment provided after the hearing and after issuance of the compensation judge's decision. This court may not consider new evidence on appeal, although it may provide a basis for a petition to vacate.

Affirmed.

Dennis Johnson, deceased v. Steven Alexander Eliason and Blitz Auto Sales, Jan. 15, 2016

Employment Relationship – Independent Contractor

The determination of the compensation judge that the decedent was an independent contractor, not an employee of the purported employer, was supplied by substantial evidence and was not clearly erroneous.

Affirmed.

Edwin Ganun v. Vinco, Inc., Jan. 19, 2016

Causation – Temporary Injury
Maximum Medical Improvement – Substantial Evidence

Substantial evidence, including medical records and expert medical opinion, supports the decision of the compensation judge that the employee's work injury resulted only in a temporary low back strain that resolved by May 23, 2014, and from which maximum medical improvement was reached.

Causation – Medical Treatment
Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence, including adequately founded medical opinion, supports the compensation judge's findings that proposed SI fusion surgery was not reasonable, necessary or causally related to the employee's work injury.

Affirmed.

Regina Huderle v. Sanford Clinic Bemidji, Jan. 26, 2016

Causation – Substantial Evidence

Substantial evidence, including expert medical opinion, supports the compensation judge's finding that the employee's April 2012 work injury had resolved of Sept. 12, 2012, and, therefore, was not a substantial contributing factor of her disability, need for treatment or work restrictions after that date.

Rehabilitation – Eligibility

Where the employee had returned to suitable gainful employment with the date-of-injury employer, substantial evidence supports the compensation judge's finding that the employee was not a qualified employee for rehabilitation services.

Affirmed.

Josephine M. Hohlt v. University of Minnesota, Feb. 3, 2016

Arising Out Of And In The Course Of

Based upon Dykhoff v. Xcel Energy, 840 N.W.2d 821, 73 W.C.D. 865 (Minn. 2013) and related case law, where the employee worked on the University of Minnesota campus and, at the end of the work day, remained on the premises on her way to a parking ramp owned and operated by the employer, and, while on her way, slipped and fell on an icy sidewalk maintained by the employer, the employee's injury on Dec. 30, 2013, arose out of her employment.

Arising Out Of And In The Course Of

Where the employee was on the premises of the employer, had punched out just minutes before her injury and was walking a short distance on the most direct route to a parking ramp owned and operated by her employer, the compensation judge correctly found the employee was in the course of her employment when injured.

Affirmed in part and reversed in part.

Kristel Kubis v. Community Memorial Hospital Association, Feb. 5, 2016

Arising Out Of And In The Course Of

The compensation judge erred in disregarding the substantial evidence in the record that the employee fell on stairs due to hurrying to carry out her work duties that demonstrated that the employee's shoulder injury arose out of her employment when considering the case under the increased risk test.

Reversed.

William David v. The Heavy Equipment Co., Feb. 17, 2016

Practice and Procedure – Dismissal – Subject Matter Jurisdiction

The compensation judge did not err in dismissing the employer and insurer's petition for recovery of erroneously paid medical benefits where there is no subject matter jurisdiction for the claim.

Affirmed.

Sandra R. Williams v. Independent School District 2396, Feb. 17, 2016

Arising Out Of And In The Course Of

Where the employee was injured when her foot landed on a metal strip while she was descending bleachers she was setting up in the employer's gymnasium, substantial evidence supported the compensation judge's finding that the injury arose out of her employment.

Affirmed.

James W. Stevens v. ST Services, Feb. 22, 2016

Penalties

Where the parties agreed to a cessation of permanent total disability benefits as part of settlement negotiations, the filing of a Notice of Intent to Discontinue need not result in an award of penalties

Affirmed.

Patrick J. Blomme v. Independent School District 413, Feb. 23, 2016

Vacation of Award – Mutual Mistake

The absence of medical evidence at the time of settlement of a claimed failure of a fusion surgery prevents reliance on mutual mistake of fact regarding the status of that fusion surgery as a basis for vacating an award. See Monson v. White Bear Mitsubishi, 663 N.W.2d 534; 63 W.C.D. 337 (Minn. 2003).

Vacation of Award – Substantial Change In Condition

Failure by the employee to adequately demonstrate one of the factors outlined in Fodness v. Standard Cafe, 41 W.C.D. 1054 (W.C.C.A. 1989) does not preclude vacation on grounds that he has experienced a

substantial change in his medical condition where the remaining factors strongly demonstrate good cause to grant the employee's petition to vacate his 2006 award on stipulation.

Petition to vacate granted.

Randy D. Meyer v. Genmar Transp., Inc., March 1, 2016

Medical Treatment and Expense – Treatment Parameters

The compensation judge did not commit reversible error by failing to apply the treatment parameters on the facts of this case. Where the applicability of the treatment parameters was not raised before the compensation judge below, this court will not consider the question for the first time on appeal. In addition, where the employer and insurer denied medical causation for the employee's condition at the time of the fusion surgery, the medical treatment parameters do not apply.

Medical Treatment and Expense

If an employee proceeds with surgery denied by the employer and insurer and the treatment is found not reasonable or necessary, the employer and insurer are not liable for the cost of the treatment.

Affirmed.

James W. Stevens v. ST Services, March 8, 2016

Vacation of Award – Mutual Mistake of Fact

Where the employer and insurer failed to present evidence of a mutual mistake of fact at the time of settlement, the petition to vacate must be denied.

Vacation of Award – Substantial Change in Condition

Where the employer and insurer failed to present evidence of a substantial change in medical condition as of the time of the petition to vacate, the petition must be denied.

Denied.

Gina Wright v. Shafer Contracting Co., Inc., March 10, 2016

Causation – Substantial Evidence

Substantial evidence, including expert medical opinion, supports the compensation judge's finding that the employee failed to prove she sustained a compensable injury to her cervical spine or left upper extremity while working for the employer.

Affirmed.

Michael J. Dahlgren v. Johnson Carpet Tile and Linoleum Co., March 14, 2016

Temporary Partial Disability – Substantial Evidence

Substantial evidence, including the employee's testimony found credible by the compensation judge, supports the compensation judge's award of temporary partial disability benefits.

Causation – Substantial Evidence

Causation – Medical Treatment

Substantial evidence, including expert medical opinion, supports the compensation judge's determination that the employee's March 2013 work injury is a substantial contributing factor to the employee's current disability and need for surgery.

Affirmed.

Mary B. Arneson v. Alexandria Extrusion, March 18, 2016

Causation – Substantial Evidence

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

Permanent Total Disability – Substantial Evidence

Where there is evidence the employee was capable of some sedentary employment and was employable within her local labor market with reconditioning, training and job search assistance, substantial evidence supports the compensation judge's denial of permanent total disability.

Affirmed.

Kim J. Hagel v. Barrel O'Fun Snack Foods Co., March 21, 2016

Medical Treatment and Expense – Reasonable and Necessary

Under the circumstances peculiar to this case, the compensation judge could reasonably conclude that lodging provided by intervenor Lee was a reasonable necessary service required by the employee to obtain medical care prescribed to cure and relieve from the effects of her work injury.

Medical Treatment and Expense – Day Care Expenses

Minnesota Statutes § 176.135, subd. 1, does not provide for the payment of child care expenses incurred while an employee is undergoing medical care and treatment.

Medical Treatment and Expense – Change of Physician

Substantial evidence supports the compensation judge's determination that the employee had no ongoing treatment relationship with her previous physician after 2009, and that the treatment with Dr. Falconer in

2015 did not constitute an unauthorized change of physician. The compensation judge properly awarded payment of the medical expenses incurred for treatment with Dr. Falconer prior to the hearing.

Affirmed in part and reversed in part.

Ellen Gianotti v. Independent School District 152, March 24, 2016

Evidence – Expert Medical Opinion

A licensed psychologist who is not a medical doctor is not competent to opine on a physical medical condition where that condition is outside the scope of practice for a licensed psychologist.

Evidence – Expert Medical Opinion

The opinion of a licensed psychologist lacks foundation when that opinion is arrived at through factual assumptions that are unsupported by the record developed at hearing.

Practice and Procedure – Timeliness of Appeal Brief

Where the filing of the appeal brief is accomplished one day late and the responding party has not shown prejudice, dismissal of the appeal is inappropriate.

Reversed, vacated in part, remanded.

Minnesota Supreme Court

January through March 2016

Case summaries published are
those prepared by the WCCA



Kelly Dennis v. The Salvation Army and Chesterfield Services, Inc., A15-0715 – Feb. 3, 2016

Because relators did not timely serve a cost bond upon the Workers' Compensation Court of Appeals as required by Minnesota Statutes § 176.471, subd. 3 (2014), the writ of certiorari is discharged and the appeal is dismissed.

Joan Van Riper v. Interstate Packaging, Inc., A15-1156 – Feb. 3, 2016

Decision of the Workers' Compensation Court of Appeals filed June 26, 2015, affirmed without opinion.

Leanda Muhonen v. New Horizon Academy, A15-1239 – Feb. 3, 2016

Decision of the Workers' Compensation Court of Appeals filed July 1, 2015, affirmed without opinion.

Ali M. Shire v. Rosemount, Inc., A15-0856 – Feb. 17, 2016

1. The voluntary-recreational-program exception to the workers' compensation statute, Minn. Stat. § 176.021, subd. 9 (2014), is not satisfied when the employees' choices are either to attend the program or risk forfeiting pay or benefits.
2. The phrase "voluntary recreational program" in Minn. Stat. § 176.021, subd. 9, plainly refers to a voluntary "program," not voluntary activities within a program.

Affirmed.