

DLI seeks input for PTSD treatment parameters



On May 20, 2018, legislation was enacted that directs the Department of Labor and Industry (DLI) to adopt workers' compensation rules governing the criteria for treatment of post-traumatic stress disorder (PTSD). The legislation directs the department to consider the guidance set forth in the American Psychological Association's Clinical Practice Guideline for the Treatment of PTSD in Adults.

As DLI begins the expedited rulemaking process for treatment parameters governing PTSD, it is consulting with various professional organizations, stakeholders and clinicians to learn about the most effective care for injured workers with PTSD.

The legislation also directs DLI to consult with the Medical Services Review Board (MSRB) regarding these rules. MSRB advises the department about the adoption of rules relating to medical care for injured workers and has formed a workgroup to study appropriate, evidence-based treatment for PTSD. For more information, visit www.dli.mn.gov/about-department/boards-and-councils/medical-services-review-board.

Stakeholders are encouraged to provide the Department of Labor and Industry with input or recommendations regarding what principles of care should govern treatment of injured workers for PTSD. When available, DLI will post a draft of the proposed rule on its website. Email Alexis Russell, director of legislative affairs, at alexis.russell@state.mn.us with questions or comments.

CapTech to build DLI's modernized workers' compensation system

The state has finalized its contract with CapTech Ventures to design and build the Department of Labor and Industry's (DLI's) Workers' Compensation Modernization Program (WCMP).

The new state-of-the-art technology solution will allow for increased electronic interactions with customers, easier access to data, minimized duplication of tasks and an overall better experience for the users.

"DLI staff members do a great job on behalf of the stakeholders of the Minnesota workers' compensation system," said DLI Commissioner Ken Peterson. "The modernization program will help us to do even better."

CapTech is a national IT consulting firm with extensive experience in building software and modernizing state workers' compensation systems. Company representatives officially joined the WCMP team at DLI on Monday, Aug. 6. The program is expected to take two years to complete.



Jessica Stimac to lead DLI's Office of General Counsel

Jessica Stimac has been named the new director of the Department of Labor and Industry's (DLI) Office of General Counsel. The Office of General Counsel provides overall internal policy and administrative support, as well as assistance to the commissioner in proposing, evaluating and drafting legislation. It also provides legal assistance to staff members and to employers, employees, insurers, attorneys and others concerning legal issues under the authority of DLI.

Since February 2012, Stimac has been the director of the DLI Compliance, Records and Training unit, which included oversight of medical policy, rehabilitation policy, rehabilitation registration, compliance, document processing, data processing, electronic data interchange and copy file review. During that period, she also temporarily served as director of DLI's Vocational Rehabilitation unit, which is dedicated to providing vocational rehabilitation and placement services to injured workers.

Stimac's primary area of practice since 2004 has been workers' compensation. She initially practiced as a litigator, representing insurers, self-insured employers and medical intervenors. She has been with DLI's Workers' Compensation Division for 12 years, initially making benefit determinations, mediating disputes and supervising a unit dedicated to management of uninsured claims.

She is actively engaged in workers' compensation legislative, policy and technology initiatives in Minnesota. She served as the 2017-2018 president of the Central States Association of the International Association of Industrial Accident Boards and Commissions (IAIABC) and, in 2017, was the recipient of the IAIABC's NextGen award, recognizing individuals under the age of 40 who have had a positive impact on the workers' compensation industry and their organizations.

Stimac has a bachelor's degree in biological sciences from the University of Notre Dame and graduated with honors from the University of St. Thomas School of Law. Her hobbies include trail running with her Great Dane, reading, watching Notre Dame football, traveling around the country with her fifth wheel, and spending time with family and friends.



Jessica Stimac

Pam Carlson to lead Office of Workers' Compensation Ombudsman

Pam Carlson has been named to lead the Department of Labor and Industry's (DLI's) Office of Workers' Compensation Ombudsman. She is an attorney with a bachelor's degree from Gustavus Adolphus College and a Juris Doctor from Hamline University School of Law.

Carlson originally worked for DLI from 1989 to 1995 in the Office of the General Counsel and from 1995 to 1998 for the workers' compensation settlement judges in Judicial Services. In 1998, the settlement judges at DLI merged with the hearing judges at the Office of Administrative Hearings (OAH).

At OAH, Carlson assisted the judges with legal research and writing, as well as answering questions for callers.

Carlson, continues ...



Pam Carlson

Carlson, continues ...

She is excited about her new position at DLI and can be reached by phone at 651-284-5013 or 800-342-5354 and by email at dli.ombudsman@state.mn.us.

The Office of Workers' Compensation Ombudsman is a separate entity within the Department of Labor and Industry. Its purpose is to inform, assist and empower injured workers and small businesses having difficulty navigating the workers' compensation system, to help resolve problems encountered in the system.

The Office of Workers' Compensation Ombudsman also recommends statute or rule changes to improve the effectiveness of the workers' compensation system.

Ombudsman services for injured workers, small businesses

After a serious injury, it can be difficult to navigate the workers' compensation system. In 2011, the Department of Labor and Industry created an Office of Workers' Compensation Ombudsman to provide assistance to injured workers and small businesses having difficulties navigating the workers' compensation system. The ombudsman provided assistance to approximately 2,250 citizens from 2011 to 2017. The ombudsman has played a critical role in assisting injured workers who are in the most difficult of circumstances, working to ensure they receive the benefits they deserve.

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 mediation; and
- making appropriate referrals to other agencies or entities when further resources are needed.

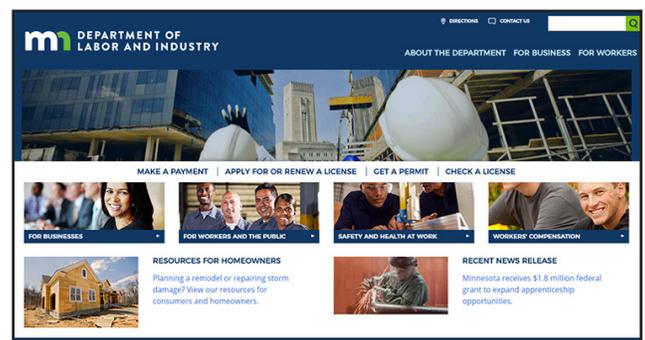
The ombudsman assists small businesses by:

- providing information regarding what to do when an employee reports an injury;
- 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.

Department of Labor and Industry unveils new website

The Department of Labor and Industry (DLI) has developed and built a new website that is citizen focused, mobile friendly and consistently formatted.

The design and layout of the new site was based on the types of users who visit DLI's website most frequently and was customized to ensure search engines can find the content much more easily. The goal of this website rebuild was to help the agency's visitors quickly find what they seek and successfully complete a transaction.



Take www.dli.mn.gov for a spin and let us know what you think.

How to obtain worker identification (WID) numbers

Background, new law

The Department of Labor and Industry (DLI) assigns a worker identification (WID) number when a first report of injury has been filed with DLI or a case-creating document on the claim has been filed with DLI or the Office of Administrative Hearings (OAH). Legislation effective June 1, 2018, allows attorneys, intervenors, potential intervenors and qualified rehabilitation consultants (QRCs) to obtain the WID number from DLI (Minnesota Statutes § 176.231, subd. 9). Online WID number access is available to attorneys and QRCs only.

Online lookup for attorneys

An attorney who represents an employer, insurer, employee, dependent of a deceased employee, or an intervenor or potential intervenor in a workers' compensation dispute, may obtain the WID number online. (See below for how to obtain a WID number by phone.)

- Step 1.** Go to <https://secure.doli.state.mn.us/adrlogin/Login.aspx>.
- Step 2.** Register for an account if you have not already registered. This will require you to do the following.
 - Read the terms and conditions in the user agreement. If you agree, check the box next to "Proceed" and then click "Proceed."
 - Create a user ID and password. You must also enter your email address, a password security question and your access number. (If you don't know your access number, call DLI at 651-284-5030.) Finally, you will also need to type in the code shown in a gray box and then click "Create User."
- Step 3.** After you have registered:
 - on the online WID lookup page, log in and click "Go";
 - read the terms and conditions in the user agreement and, if you agree, check the box next to "Proceed" and then click "Proceed";
 - select "Click here for WID number lookup"; and
 - follow the instructions to obtain the WID number.

Online lookup for QRCs

A QRC who has filed a rehabilitation plan for an injured worker with DLI may also use an online lookup to obtain the WID number for that injured worker.

- Step 1.** Go to the rehabilitation forms submission page at <https://secure.doli.state.mn.us/wc/Login.aspx>.
- Step 2.** Register for an account if you have not already registered. This will require you to do the following.
 - Read the terms and conditions in the user agreement. If you agree, check the box next to "Proceed" and then click "Proceed."
 - Create a user ID and password. You must also enter your QRC registration number, email address, a password security question and the access ID obtained from DLI. If you don't know your access ID, call DLI at 651-284-5459. Finally, you will also need to type in the code shown in a gray box and then click "Create User."
- Step 3.** After you have registered:
 - log in and click "Go";
 - click on the WID number lookup link (under the R-forms menu);

- if you acknowledge the conditions listed, check the box next to "Proceed" and then click "Proceed"; and
- enter the required information to obtain the WID number.

Attaining a WID number by phone

Intervenors not represented by an attorney

An intervenor is a person or entity that has already filed a motion to intervene in a pending workers' compensation dispute, either at the Office of Administrative Hearings or DLI. An intervenor who is not represented by an attorney may obtain the WID number in one of two ways.

- Option 1.** If the dispute is pending at OAH, an intervenor may contact OAH for information about how to look up the dispute and WID number in the C-Track system. OAH has a guide for intervenors at mn.gov/oah/assets/oah-workers-compensation-intervenor-efiling-user-guide_tcm19-339863.pdf.
- Option 2.** If the dispute is pending at DLI, an intervenor may contact the Alternative Dispute Resolution unit at 800-342-5354.

Potential intervenors not represented by an attorney

A potential intervenor is a person or entity that has not yet filed a motion to intervene in a pending workers' compensation dispute, but intends to do so. A potential intervenor that is not represented by an attorney may obtain the WID number in one of two ways.

- Option 1.** A potential intervenor may obtain the WID number from the attorney who sent notice of the right to intervene.
- Option 2.** A potential intervenor may file a paper motion to intervene with OAH or DLI (depending upon where the dispute is pending) using the Social Security number (SSN).

Attorneys

An attorney may also call DLI's Copy File Review at 651-284-5200 to request a WID number. Copy File Review will provide the WID number by phone to an attorney with written verification that the person represents the employee, employer or insurer for the employee's date of injury according to the following procedures.

If there is a Notice of Appearance form or retainer agreement already in the division file, the attorney may call Copy File Review and provide the names of the parties, date of injury and SSN (so representation and WID number can be verified). Copy File Review will then be able to provide the attorney the WID number by phone.

If there is no Notice of Appearance form or retainer agreement in the division file, Copy File Review will provide the WID number if the attorney mails or faxes a letter* on the attorney or firm's letterhead, including:

- a statement that the attorney would like to be called with the WID number;
- a statement that the attorney represents the injured worker, employer or insurer;
- the names of the parties, the employee's SSN and the date of injury (so DLI can verify whether there is a WID number); and
- the attorney's signature and attorney license number.

Copy File Review will call the attorney with the WID number.

*These attorney letters can be faxed to 651-284-5731 or sent to Minnesota Department of Labor and Industry, Copy File Review, P.O. Box 64226, St. Paul, MN 55155-0226.

New benefit, provider fee levels, fee schedules effective October 2018

The statewide average weekly wage (SAWW) effective Oct. 1, 2018, is \$1,077, a 3.46 percent increase from the current SAWW of \$1,041, which has been in effect since Oct. 1, 2017. (See the table below.) The levels for minimum and maximum weekly benefit payments are presented in the table on page 9. The statewide annual average wage will change to \$55,978 on Jan. 1, 2019.

The new SAWW is based on 2017 payroll and employment figures supplied by the Department of Employment and Economic Development and the calculation procedure in Minnesota Statutes § 176.011, subdivision 1b. The change in the SAWW is the basis for the Minn. Stat. § 176.645 annual benefit adjustment. The time of the first adjustment is limited by Minn. Stat. § 176.645, subd. 2.

Vocational rehabilitation rule amendments and fee adjustments

Adopted vocational rehabilitation rule amendments – An administrative law judge approved amendments to the workers' compensation rehabilitation rules (Minnesota Rules 5220.1900) on July 31, 2018. The Notice of Adoption of the rule amendments was published in the *Minnesota State Register* on Sept. 17, 2018, and the rules become effective Sept. 24, 2018. For rehabilitation services provided on or after Sept. 24, 2018, the rules:

- eliminate the \$10 an hour fee reduction for lengthy and costly rehabilitation plans;
- adjust the maximum hourly rate to \$103.10 for qualified rehabilitation consultant (QRC) services to maintain cost neutrality (see the further adjustment effective Oct. 1, 2018, noted below);
- increase the limit on payment to QRCs for their services during job development and job placement to six hours a month (excluding travel and wait time), subject to reasonableness and necessity; and
- provide clarity to rehabilitation providers and insurers about services and activities that require approval or are not billable.

Statewide average weekly wage Effective Oct. 1 of the indicated year

	Statewide average weekly wage	Percent change from prior year
2005.....	\$774	4.59%
2006.....	\$782	1.03%
2007.....	\$808	3.32%
2008.....	\$850	5.20%
2009.....	\$878	3.29%
2010.....	\$868	-1.14%
2011.....	\$896	3.23%
2012.....	\$916	2.23%
2013.....	\$945	3.17%
2014.....	\$961	1.69%
2015.....	\$989	2.91%
2016.....	\$1,026	3.74%
2017.....	\$1,041	1.46%
2018.....	\$1,077	3.46%

The final rehabilitation rule amendments (which consist of the proposed rules with the modifications shown in the adopted permanent rules) are available at www.dli.mn.gov/sites/default/files/pdf/5220_1900_adopted_rules0918.pdf.

Annual maximum hourly rehabilitation fee adjustment – Pursuant to Minn. R., part 5220.1900, subpart 1b:

- the maximum qualified rehabilitation consultant hourly rate, set at \$103.10 by the rule amendments noted above, will be increased by 3 percent to **\$106.19** for rehabilitation services provided on or after Oct. 1, 2018; and
- the maximum hourly rate for rehabilitation job development and placement services, whether provided by rehabilitation vendors or by QRC firms, will increase to **\$85.06** on Oct. 1, 2018. This is a 3 percent increase from the current \$82.58 maximum hourly rate.

Relative value medical fee schedule and IME fee adjustments

The following annual adjustments to the workers' compensation medical fee schedule conversion factors and the independent medical examination (IME) fees in Minn. R. 5219.0500, subp. 4, and 5221.4020, subp. 1b, have been approved by an administrative law judge. The rule amendments, which are effective for services provided on or after Oct. 1, 2018, are available at www.dli.mn.gov/sites/default/files/pdf/5219_5221_draft_rules_2018.pdf.

Conversion factor annual adjustment – Minnesota Statutes § 176.136, subd. 1a, paragraph (c) (1), provides for annual adjustment of the medical fee schedule conversion factors by no more than the percent change in the SAWW. As in previous years, the conversion factors are adjusted by the percent change in the federal Department of Labor's Producer Price Index for Offices of Physicians (PPI-P) for 2017 (annual-average basis).¹ This change is 0.45 percent. Therefore, for services provided on or after Oct. 1, 2018, the new conversion factors will be:

- for medical/surgical services described in Minn. R. 5221.4030 **\$69.93**
- for pathology and laboratory services described in Minn. R. 5221.4040 **\$57.07**
- for physical medicine/rehabilitation services described in Minn. R. 5221.4050 **\$55.93**
- for chiropractic services described in Minn. R. 5221.4060 **\$49.66**

IME fee adjustment – Minnesota Rules, part 5219.0500, subp. 4, provides for adjustment of the maximum fees for independent medical examinations in the same manner as the adjustment of the conversion factors. Therefore, the maximum fees will increase by 0.45 percent for IME services provided on or after Oct. 1, 2018.

Hospital catastrophic injury threshold adjustment

The threshold for payment of inpatient hospital services, articles and supplies provided to patients with catastrophic, high-cost injuries is adjusted pursuant to Minn. Stat. § 176.362, subd. 2. For hospital discharges on or after Oct. 1, 2018, the threshold amount is adjusted 5.51 percent, from \$196,021 to **\$206,822**. If a hospital's usual and customary charges exceed this amount, payment is 75 percent of the hospital's charges instead of the MS-DRG amount calculated according to the PC Pricer.

Notice of availability of PC Pricer program under Minn. Stat. 176.1362, subd. 1

On Oct. 1, 2018, the applicable PC Pricer program to be used to calculate payment for workers' compensation inpatient hospital services, articles and supplies based on the Medicare MS-DRG system under Minn. Stat. § 176.1362, subd. 1, is the 2018 fiscal-year PC Pricer program, version 2018.0, available on the Department of Labor and Industry (DLI) website at www.dli.mn.gov/business/workers-compensation/work-comp-pc-pricer-tool-inpatient-hospital-bills.

This PC Pricer program is the most recent version available on the Medicare website as of July 1, 2018. It is the PC Pricer program to be used to calculate payment of inpatient hospital charges for patients discharged on or after Oct. 1, 2018, unless the charges exceed the catastrophic injury \$206,822 threshold amount listed above.

Notice of availability of ambulatory surgical center addenda

The Legislature adopted a fee schedule for workers' compensation ambulatory surgical center (ASC) services provided on or after Oct. 1, 2018 (to be codified as Minn. Stat. § 176.1363). This fee schedule is based on the Medicare

Ambulatory Surgical Center Payment System (ASCPS) Addenda AA, BB and DD1 available on the Medicare website as of July 1, 2018, and the corresponding Medicare rules and claims processing manual. Payment for workers' compensation procedures and services is 320 percent of the ASCPS amount, or the ASC's actual charges, whichever is less.

The June 28, 2018, Addenda AA, BB and DD1 are the most recent ASCPS addenda available on the Medicare website as of July 1, 2018. Links to Addenda AA, BB and DD1, and the corresponding Medicare rules and claims processing manual, are available on the DLI website at www.dli.mn.gov/business/workers-compensation/work-comp-medical-fee-schedules-ascps. They are effective for services provided by an ASC on or after Oct. 1, 2018.

Notice of availability of hospital outpatient fee schedule

The Legislature adopted a hospital outpatient fee schedule (HOFS) for payment of workers' compensation outpatient hospital services that are listed in the HOFS and that are provided on or after Oct. 1, 2018 (to be codified as Minn. Stat. § 176.1364). The HOFS is available on the DLI website at www.dli.mn.gov/business/workers-compensation/work-comp-medical-fee-schedules-hofs.

The HOFS provides two separate payment rates, one for hospitals with more than 100 licensed beds and one for non-Critical Access Hospitals with 100 or fewer licensed beds.

The HOFS does not apply to Medicare-designated Critical Access Hospitals, which continue to be paid at the Critical Access Hospital's usual and customary charge, unless the commissioner or compensation judge determines that the charge is unreasonably excessive.

Other legislative changes related to medical fees and services

The Legislature also adopted the following changes to Minn. Stat. § 176.136, subd. 1b, for services provided on or after Oct. 1, 2018.

- Non-Critical Access Hospitals of 100 or fewer licensed beds are subject to the HOFS. If a non-Critical Access Hospital service is not covered by the HOFS, payment is according to the relative value fee schedule. If it is not covered by either the HOFS or relative value fee schedule, payment is 85 percent of the hospital's usual and customary charge.
- Prevailing charge as a basis to reduce a payment no longer applies to payment for services provided by an ASC under Minn. Stat. § 176.1363 or to a hospital as defined in Minn. Stat. § 176.1364.
- "Inpatient," for purposes of Minn. Stat. chapter 176, is defined as a patient admitted to a hospital by order of a physician or dentist. A hospital must provide documentation of an inpatient order upon the employer's or insurer's request.

The Legislature also enacted new provisions related to outpatient billing, payments and dispute resolution for services provided by an ASC and by a hospital. These new requirements, which will be codified as Minn. Stat. § 176.1365, are in Article 3 of the 2018 Minnesota session laws, chapter 185, available on the Office of Revisor of Statutes website at www.revisor.mn.gov/laws/?id=185&year=2018&type=0.

¹The PPI, produced by the U.S. Bureau of Labor Statistics, measures the average change over time in the selling prices received by producers for their output. The annual PPI-P and the associated annual changes (using industry code 62111 – offices of physicians) are available at www.bls.gov/ppi/data.htm.

Compensation rates as of Oct. 1, 2018

Statewide average weekly wage (SAWW) = \$1,077

Percentage change in SAWW from previous year = 3.46%

(Apply Minnesota Statutes § 176.645 adjustment as necessary based on date of injury.)

Maximum under M.S. § 176.101, subd. 1(b)(1)

105% of SAWW

10-01-92	\$481.95
10-01-93	\$508.20
10-01-94	\$516.60

Set by statute

10-01-95	\$615.00
10-01-00	\$750.00
10-01-08	\$850.00

102% of SAWW

10-01-13	\$963.90
10-01-14	\$980.22
10-01-15	\$1,008.78
10-01-16	\$1,046.52
10-01-17	\$1,061.82
10-01-18	\$1,098.54

Minimum under M.S. § 176.101, subd. 1(c)

20% of the SAWW or the employee's actual weekly wage, whichever is less

10-01-92	\$91.80
10-01-93	\$96.80
10-01-94	\$98.40

Set by statute, the listed amount or the employee's actual weekly wage, whichever is less

10-01-95	\$104.00
10-01-00	\$130.00

Supplementary benefits under M.S. § 176.132

(Minnesota Statutes 1994)

and permanent total minimum under

M.S. § 176.101, subd. 4

(for injuries 10-1-95 and later)

10-01-02	\$456.30	(rounded to \$457)*
10-01-03	\$466.70	(rounded to \$467)*
10-01-04	\$481.00	(round)
10-01-05	\$503.10	(rounded to \$504)*
10-01-06	\$508.30	(rounded to \$509)*
10-01-07	\$525.20	(rounded to \$526)*
10-01-08	\$552.50	(rounded to \$553)
10-01-09	\$570.70	(rounded to \$571)*
10-01-10	\$564.20	(rounded to \$565)*
10-01-11	\$582.40	(rounded to \$583)*
10-01-12	\$595.40	(rounded to \$596)*
10-01-13	\$614.25	(rounded to \$615)*
10-01-14	\$624.65	(rounded to \$625)*
10-01-15	\$642.85	(rounded to \$643)*
10-01-16	\$666.90	(rounded to \$667)*
10-01-17	\$676.65	(rounded to \$677)*
10-01-18	\$700.05	(rounded to \$701)*

*Rounding applies to supplementary benefits.



Recent reports look at Minnesota's workers' compensation system

By Brian Zaidman, Research and Statistics

The Workers' Compensation Research Institute (WCRI) recently published two reports that provide insight into various aspects of Minnesota's workers' compensation system. This article provides some highlights of the findings. Readers are encouraged to visit WCRI's website, at www.wcrinet.org, to purchase the full studies and view results for all states.



Medical Price Index, 10th edition

This study examines prices paid for medical professional services by physicians, physical and occupational therapists, and chiropractors. WCRI uses a fixed market basket based on services for each provider type to compare the prices across states. The study looks at data for 35 states, presenting data about prices paid during 2016 and the first half of 2017. Minnesota adopted a new federal Relative Value Schedule in 2010, the previous schedule had not changed since 1998.

- Minnesota had the 14th highest price index in 2016 and the 13th highest index in 2017. Minnesota had the 10th highest price index out of 31 states in 2015.
- Minnesota's prices increased by 9 percent from 2008 through 2017, the 16th highest increase.
- Minnesota's prices for evaluation and management services increased by 51 percent from 2008 through 2017, and at the low end, prices for major radiology services decreased by 43 percent.



Hospital Outpatient Payment Index: Interstate Variations and Policy Analysis, 7th edition

This study examines payments for a group of common hospital outpatient surgeries. Data from 39 states is included, with a focus on prices paid during 2016.

- With the median state payment index set to 100, Minnesota's 2016 index value was 153, down from a value of 164 in 2015. The index values ranged from 35 to 265. Minnesota had the 9th highest value. Both Iowa and Wisconsin had higher index values.
- Minnesota experienced a 17 percent cumulative growth rate in hospital payments for outpatient surgeries from 2011 to 2016 and 52 percent growth from 2006 to 2016. Among the 25 states with no substantial changes in their hospital outpatient fee schedules during the study period, Minnesota had the 10th highest cumulative growth rate from 2011 to 2016.

Results of 2018 Special Compensation Fund assessment

The Special Compensation Fund (SCF) assessment funds Minnesota's workers' compensation programs. Most of the assessment dollars go to funding the supplementary and second-injury benefit programs. The assessment also pays the operating expenses of the Workers' Compensation Court of Appeals and the workers' compensation divisions of the Department of Labor and Industry (DLI) and the Office of Administrative Hearings. It also supports anti-fraud activities at the Department of Commerce.

The SCF assessment is directly invoiced by DLI. The first half of the assessment is invoiced by June 30 of each year, and is due Aug. 1 of that year. The second billing is due Feb. 1 of the following year, and is mailed approximately 30 days before the due date.

	2017 indemnity	Ratio	2019 funding liabilities	2017 DSR pure premium
Insurers	\$376,435,652	77.59%	\$54,310,620	\$850,577,113
Self-insurers	\$108,745,616	22.41%	\$15,689,380	
Total	\$485,181,268	100.00%	\$70,000,000	\$850,577,113

The estimated state-fiscal-year 2019 funding requirement for the SCF was determined to be \$70 million. The liability was divided between the insurers and self-insurers by the ratio of their 2017 indemnity payments to the total indemnity reported by both groups.

Due to decreasing second-injury and supplementary benefit obligations, the 2018 SCF assessment continues a downward trend in the amount of funding required, with a corresponding reduction in the assessment rate. The 2018 assessment of \$70 million is \$8 million less than the 2017 assessment of \$78 million. During the past 10 years, the annual funding requirement has dropped \$21 million: the 2009 assessment was \$91 million versus \$70 million for the 2018 assessment. The assessment rate has dropped from 23.3 percent for the 2009 assessment to 14.4 percent for the 2018 assessment.

Percentage for assessments due for insurers and self-insurers			
Year assessed	Basis for assessment	Insurers	Self-insurers
2008	2007	8.6050%	23.8969%
2009	2008	8.5347%	23.3185%
2010	2009	8.6636%	22.4319%
2011	2010	8.9013%	22.0264%
2012	2011	8.2960%	21.6310%
2013	2012	7.6546%	19.9725%
2014	2013	7.5457%	19.8520%
2015	2014	7.2723%	19.2567%
2016	2015	7.0704%	19.2897%
2017	2016	6.4976%	18.9351%
2018	2017	6.3851%	14.4276%

Insurer premium surcharge rate

The insurer premium surcharge rate applied for the purpose of determining the Special Compensation Fund assessment was 6.3851 percent. The rate was determined by dividing the insurer portion of the Special Compensation Fund state-fiscal-year 2019 liability (\$54,310,620) by the 2017 designated statistical reporting pure premium reported by all insurers to the Minnesota Workers' Compensation Insurers Association (\$850,577,113).

Self-insured assessment rate

The imputed self-insured assessment rate was 14.4276 percent. It was determined by dividing the self-insured portion of the Special Compensation Fund state-fiscal-year 2019 liability (\$15,689,380) by the total 2017 indemnity reported by the self-insured employers (\$108,745,616).

The current assessment is considered to be an estimate based on the prior year's data. The reconciliation and final determination (true-up) for insurers will be completed by Dec. 1, 2018.

More information

For further information, contact Loni Delmonico at 651-284-5311 or dli.assessment@state.mn.us.

Ask the ADR pro

DLI's Alternative Dispute Resolution unit answers frequently asked questions

By Ken Kimber, Mediator/Arbitrator

Editor's note: The Alternative Dispute Resolution (ADR) unit at the Minnesota Department of Labor and Industry seeks early intervention in workers' compensation disputes through conference and mediation. It handles calls from the workers' compensation hotline and responds to questions from injured workers and their employers.

Q. When is the best time to mediate a case?

A. It is up to the parties to determine when a case should be mediated. A case can be mediated too early. Generally, if the parties are in the early part of the discovery process and are still investigating the claim or another medical procedure is contemplated, it is too early to mediate. Additionally, an employee may not be willing to consider certain terms offered by the employer, such as a closure of all future medical benefits. It is important for the parties to discuss some of the essential terms in advance of mediation, so the parties are comparing "apples to apples" before proceeding with mediation.

If there is any question about whether a mediation is premature, the parties should discuss their concerns with the mediator in advance.



Q. Who should attend a mediation?

A. It is generally up to the parties to determine who should attend the mediation. Attendance can be in person, by videoconference or by phone. As a basic premise, it is important that all decision-makers attend the mediation. The term "decision-maker" includes any family member, community member, church member or other person who the employee considers essential in assisting with the resolution of a case.



For example, it is common for an injured employee to include spouses or adult children at a mediation because the injured employee may want their input when making what may be a significant financial decision. Additionally, in certain cultures, individuals must get the approval of an elder before agreeing to a settlement.

If all decision-makers do not attend the mediation, settling the case can be more difficult because the decision-makers will not have the same context as the injured employee. Throughout the mediation, the mediator and the attorneys will discuss the pros and cons of the case, as well as reasons to resolve the case. If a decision-maker is not present for these discussions, the decision-maker may be making an uninformed decision about the appropriateness of a settlement because he or she may have a small percentage of the relevant information. Making an uninformed decision about a settlement could undo hours, days or months of work by the parties, the attorneys and the mediator.

Q. Should an intervenor attend mediation personally?

A. In some circumstances, it is important for an intervenor to attend the mediation. For example, if the intervenor asserts a large intervention interest, the parties may want to invite the intervenor to the mediation (especially if the parties expect the intervenor to accept a significant discount off of the asserted intervention interest).

There are circumstances where an intervenor can be the critical to resolving a case. In preparation for an effective mediation, the parties should provide the intervenor with any relevant information well in advance of the mediation. This includes any medical reports and other evidence that will permit the intervenor to analyze why accepting less than the asserted intervention interest is appropriate. Just like any insurer, the intervenor will need time to discuss and evaluate settlement authority prior to the mediation.



Notices to attorneys and other interested parties

New legislation coordinating OAH case management, DLI imaging systems – effective June 1, 2018

Under new legislation (Minnesota Statutes § 176.2611), the following must be filed with the Department of Labor and Industry (DLI) regardless of the amount in dispute:

- Medical Request forms;
- Rehabilitation Request forms;
- Claim Petition forms containing only medical or vocational rehabilitation issues;
- any other document related to an administrative conference pending at DLI, including but not limited to Medical Response forms, Rehabilitation Response forms, answers to Claim Petition forms containing only medical or vocational rehabilitation issues, Motion to Intervene forms and amendments to all of these forms;
- requests for medical and rehabilitation dispute certification; and
- objections to penalties assessed by DLI.

Do not file the above documents with the Office of Administrative Hearings (OAH). In addition, documents that are not related to a dispute (for example a Notice of Insurer's Primary Liability Determination form) should not be filed with OAH.

Dispute certification

Attorneys are advised to file an Attorney Request for Certification of Dispute form or a letter requesting certification before filing a Medical Request form, Rehabilitation Request form or Claim Petition form containing only medical or rehabilitation issues. Attorney Request for Certification of Dispute forms, Medical Request forms and Rehabilitation Request forms can be accessed and submitted online at <https://secure.doli.state.mn.us/adrlogin/Login.aspx>. Fillable PDF versions of these forms are available at www.dli.mn.gov/business/workers-compensation/work-comp-forms.

Scheduling administrative conferences

DLI will use attorneys' state of Minnesota Outlook calendars, the imaging database and the OAH case management system to determine when attorneys' are unavailable. Attorneys currently without access to state Outlook calendars are advised to register for these calendars as soon as possible. To establish a free account, contact Angel Severson at angel.severson@state.mn.us or 651-284-5241.



CompFact:

Burns most common among younger workers

By Brian Zaidman, Research and Statistics

Workers with burn injuries annually account for slightly less than 2 percent of all paid claims with indemnity benefits. These injured workers must have more than three days of work disability from the injury or payment of permanent partial disability benefits. Figure 1 shows that after the Great Recession, there have annually been about 300 injured workers receiving indemnity benefits for their burn injuries. Burns include injuries due to exposure to heat and flames, hot objects and liquids, electricity and chemicals. About two-thirds of the burns are due to heat and burning objects.

Work and demographic characteristics of workers with burns were examined for the years 2012 through 2016. Burns are reported in nearly all industries, but they were concentrated in food service (28 percent) and manufacturing (20 percent). By occupation, workers in food preparation and service occupations accounted for 37 percent of all claims, followed by production occupations with 20 percent.

Seventy-two percent of the workers with burns were males, younger workers accounted for the highest percentage of the injuries (see Figure 2) and workers within their first year of tenure with their employer accounted for 47 percent of the injuries.

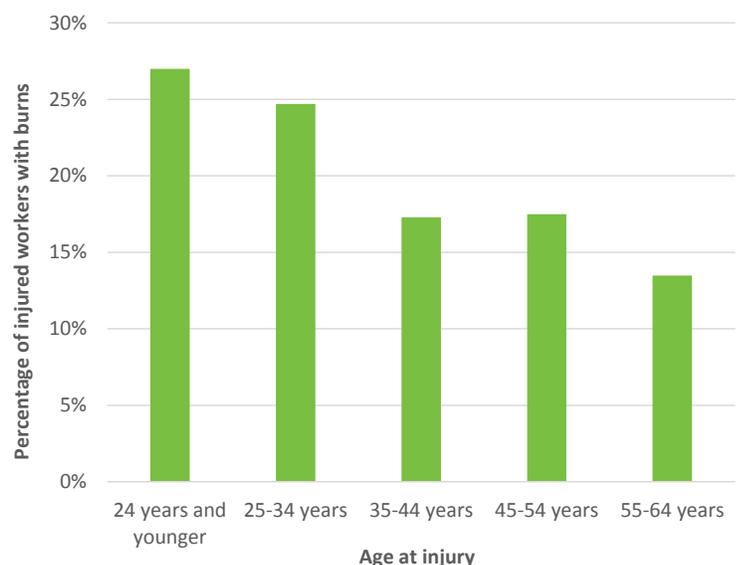
Figures 3, 4 and 5 provide further insights into the relationship between the age distributions of workers, workers with indemnity claims and workers with indemnity burn claims for all workers and for manufacturing and food services and drinking places. These three figures show the age distributions for workers and for injuries occurring during the 2012 through 2016 period. The age categories for 25 years through 34 years and 35 years through 44 years were merged to reflect the available employment statistics.

Among all workers (Figure 3), those in the two youngest age categories accounted for a lower percentage of all injuries than their respective share of employment while they accounted for a much higher percentage of the workers with burn injuries. Burns accounted for 6 percent of all indemnity claims for workers age 24 years and younger, higher than the percentages in all other age groups.

Figure 1. Number of burn injuries paid indemnity benefits



Figure 2. Distribution of burn injuries by worker age



While workers age 24 years and younger in manufacturing (Figure 4) accounted for 9 percent of the workers, and for 7 percent of all workers with indemnity claims, they accounted for 44 percent of all workers with burns. This pattern was similar among workers ages 25 years through 44 years old, who accounted for a higher percentage of burn injuries than their percentages of workers and of workers with indemnity claims. Workers in the two older age groups had higher percentages of indemnity claims than employment and lower percentages of workers with burn injuries.

Younger workers predominate in the food services and drinking places industry subsector (Figure 5). Workers age 24 years and younger were 49 percent of the workers and experienced only 24 percent of all indemnity claims, yet they accounted for 44 percent of all workers with burns. (Because these younger workers worked fewer hours than workers in older age groups, the injury rates per full-time-equivalent worker would be much higher compared to older workers.) Workers ages 25 years through 44 years old accounted for higher percentages of all injuries and illnesses and of burn injuries than their percentage of employment. Burns also accounted for a significant percentage of the injuries and illnesses with indemnity benefits among these two age groups: 20 percent of the indemnity claims for the workers age 24 years and younger and 10 percent of the indemnity claims for the workers age 25 through 44 years.

Figure 3. Distributions of employment, claims and burn injuries for workers in all industries, 2012-2016

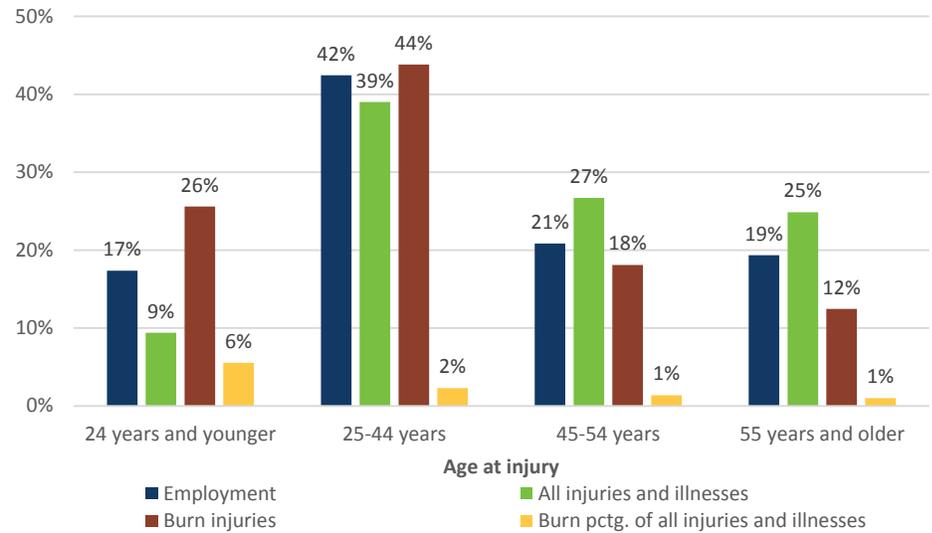


Figure 4. Distributions of employment, claims and burn injuries for workers in manufacturing, 2012-2016

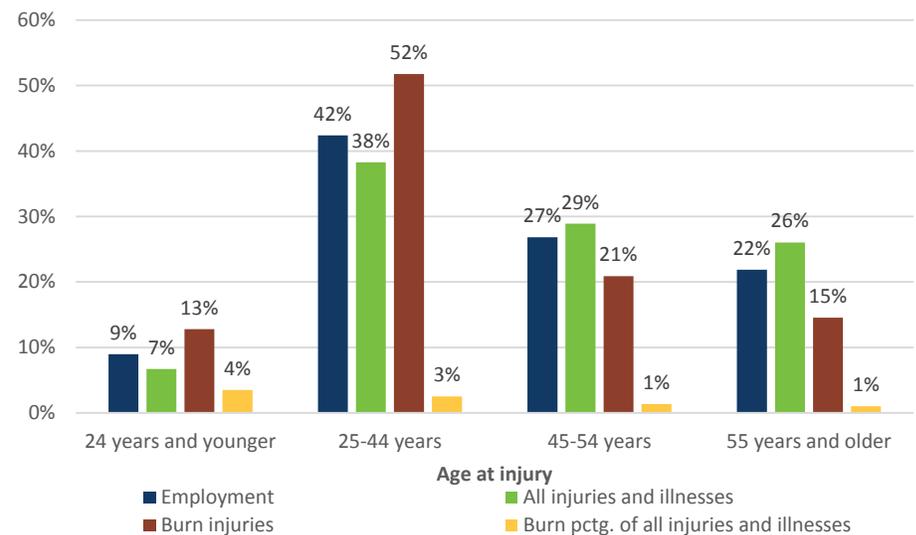
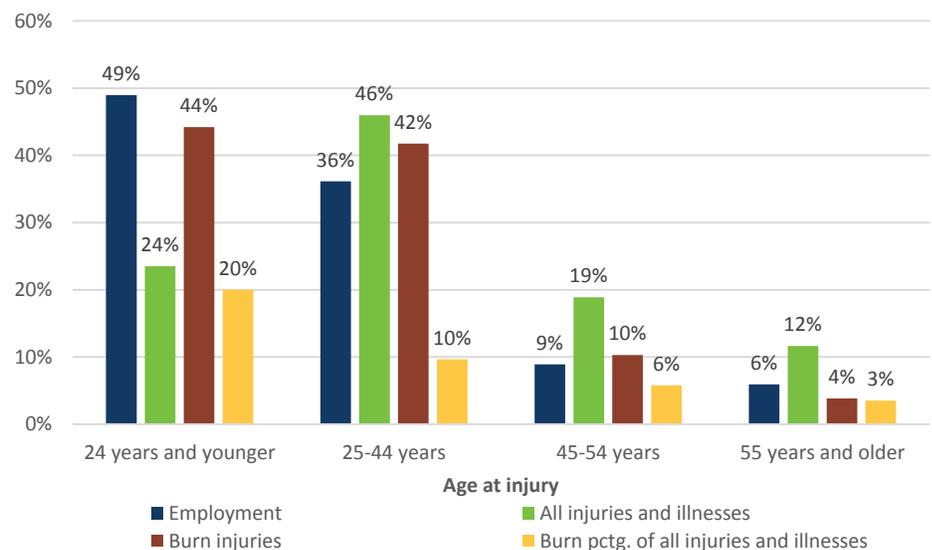


Figure 5. Distributions of employment, claims and burn injuries for workers in food services and drinking places, 2012-2016



Statistics shine spotlight on worker safety indicators

The Minnesota Safety Council has updated its Minnesota Workplace Safety dashboard to spotlight the most recent indicators related to worker safety and health. The Minnesota Department of Labor and Industry (DLI) and the Minnesota Department of Health produced the statistics. The dashboard presents many of the most important occupational safety and health measures together in an easy-to-use format.

"In the past decade, Minnesota has seen the number of work-related injuries and illnesses fall from 121,600 in 2006 to 89,700 in 2016; a 26 percent decrease," said Ken Peterson, DLI commissioner. "To continue this positive trend, we need to build safer worksites so more workers go home healthy each night."

Dashboard highlights

- More than one in three fatal workplace injuries involve driving or operating a vehicle (2012 through 2016).
- Agriculture remains one of the most dangerous industries in Minnesota: 30 percent of fatal work injuries from 2012 through 2016 were among people working in the agriculture, forestry, fishing and hunting sector, particularly crop production.
- The number of occupational safety and health professionals has dropped 15 percent since 2005.
- The total cost of Minnesota's workers' compensation system in 2016 was an estimated \$1.78 billion.

"No one goes to work thinking they will get hurt or sick," said Paul Aasen, Minnesota Safety Council president. "No one purposely puts themselves in harm's way. And safety professionals across our state work hard every day to keep their coworkers safe. Nonetheless, the numbers remind us we have more to do."

The dashboard, Minnesota Workplace Safety, 2018, is on the Minnesota Safety Council website at www.minnesotasafetycouncil.org/WorkplaceSafetyDashboard.pdf.



Workers' compensation events calendar

October 2108

Oct. 4 **Medical Services Review Board**

Oct. 11 **Rehabilitation Review Panel**

November 2018

Nov. 8 **Medical Services Review Board**

Nov. 21 **Workers' Compensation Insurers' Task Force**

December 2018

Dec. 12 **Workers' Compensation Advisory Council**

January 2019

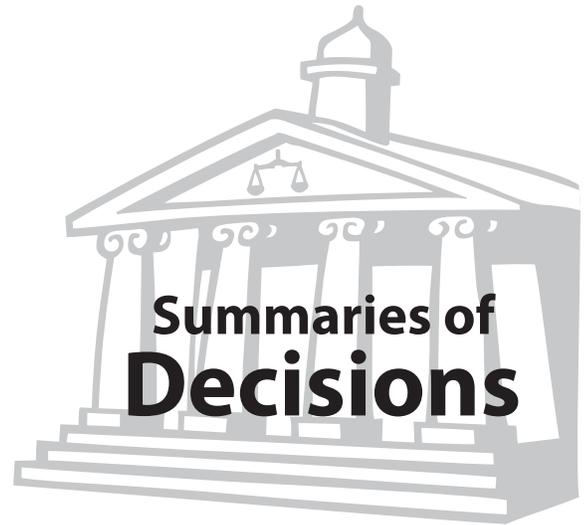
Jan. 10 **Rehabilitation Review Panel**



Workers' Compensation Court of Appeals

April through June 2018

Case summaries published are those prepared by the WCCA



Wilton Grieger v. Menards, April 10, 2018

Dependency Benefits – Calculation

The employee's actual earnings cannot be used to determine the dependency benefit under Minnesota Statutes § 176.111, subd. 5, where the record contains adequate information to determine the number of hours normally worked in the employment or industry in which the injury was sustained as required by Minn. Stat. § 176.011, subd. 18.

Dependency Benefits – Calculation

The dependency benefit under Minn. Stat. § 176.111, subd. 5, cannot be prorated for payment by dividing the minimum required payment over the period to be paid as Minn. Stat. § 176.011, subd. 18, sets out the required mechanism for those payments and the amount to be prorated is uncertain due to the effect of required cost of living adjustments (COLAs).

Vacated and remanded in part; affirmed in part.

Pamela Benson v. McQuay International/AAF McQuay, Inc., April 26, 2018

Medical Treatment and Expense – Medications

Substantial evidence, including medical records, lay testimony and expert medical opinion, substantially supports the compensation judge's determination that certain medications were reasonable, necessary and causally related.

Affirmed.

Richard W. Oseland (deceased) by Terrence Oseland, Richard Oseland and Karen Hayhoe v. Crow Wing County, May 1, 2018

Statutes Construed – Minnesota Statutes § 176.1292

Where the provisions of the applicable statute were not addressed at the hearing, this matter is remanded for further consideration.

Vacated and remanded.

Kathy A. Murphy v. Riverview Healthcare Association, May 3, 2018

Practice and Procedure – Estoppel

In the absence of prejudice to the employee from the employer and insurer's initial acceptance of her claim and payment of benefits, there is no basis to estop the employer and insurer from subsequently asserting a primary liability defense predicated on a mistake of fact.

Practice and Procedure – Expedited Hearing

The employer and insurer were not limited to the filing of either a NOID or a petition to discontinue, nor were they required to combine different grounds for the discontinuance of various benefits into one request. The failure to raise their primary liability defense at an expedited hearing resulting from a NOID seeking discontinuance of temporary total disability compensation on the basis of attainment of maximum medical improvement did not result in the waiver of that defense in a subsequent hearing.

Evidence – Expert Medical Opinion

The compensation judge did not err in relying on the expert medical opinion despite a foundational objection where the compensation judge could reasonably conclude that there was an adequate factual foundation for the expert's opinion.

Affirmed.

Juvenal E. Mendoza v. Installed Building Products, Inc., May 8, 2018

Evidence – Expert Medical Opinion

Substantial evidence in the record supports the compensation judge's determination that the work-related injury caused a medial meniscus tear. The medical opinions relied upon by the compensation judge were not lacking in foundation with regard to the mechanism of injury.

Termination of Employment – Misconduct

Substantial evidence in the record supports the compensation judge's determination that the employee was not terminated for misconduct such that he was not entitled to wage-loss benefits.



Temporary Total Disability Job Search

Substantial evidence in the record supports the compensation judge's determination that the employee conducted a diligent job search.

Temporary Partial Disability – Earning Capacity

Substantial evidence in the record supports the compensation judge's determination that the employee is entitled to temporary partial disability benefits in the absence of evidence to rebut the presumption that the employee's actual wages reflect his earning capacity.

Affirmed.

Cathy M. Pietila v. Department of Human Services, May 10, 2018

Medical Treatment and Expense Causation – Substantial Evidence

Substantial evidence, including adequately founded expert medical opinion, supports the compensation judge's finding that the proposed arthroscopic surgery of the employee's shoulder was not causally related to her work injury.

Affirmed.

Claude Bruton v. Smithfield Foods, Inc., May 21, 2018

Credits and Offsets

Where there is no evidence that the payor of an employee's short-term disability benefits is the same entity as the employer, and where the payor did not intervene in the action, we reverse the compensation judge's determination that the employer and insurer are entitled to offset the owed temporary total disability benefits by the short-term disability benefits paid to the employee. Had the employer shown it was the same entity and was not required to intervene, there is still no right to an offset since there is no right to reimbursement in the short-term disability policy, and the compensation judge erred in applying equitable principles to allow an offset.

Reversed.

Rebecca M. May v. Independent School District 115, May 30, 2018

Jurisdiction – Subject Matter

The compensation judge properly dismissed the employee's claim petition where the employer named in the claim petition was not the employer of the employee and any claim deriving from a memorandum of understanding between the actual employer and the alleged employer is barred due to the sovereign immunity of the employer.

Affirmed.



Burdette Lowe v. Northwest Airlines Corp., May 31, 2018

**Jurisdiction
Practice and Procedure – Dismissal**

The court lacks jurisdiction to consider an appeal of an order of dismissal without prejudice because the order does not affect the merits of the case.

Dismissed.

William Johnson v. Darchuks Fabrication, Inc., June 13, 2018

**Medical Treatment and Expense – Treatment Parameters
Causation – Medical Treatment**

The compensation judge correctly declined to apply the treatment parameters where the employer and insurer admitted primary liability for the employee's condition but denied that the employee's claimed treatment was reasonable and necessary.

Affirmed.

Kurt Caswell v. North Country Sheet Metal, June 18, 2018

Attorney Fees – Genuine Dispute

Where the employer and insurer paid the employee's claim for permanent partial disability compensation within three weeks of receiving a permanent partial disability rating from the employee's physician without taking any action to dispute the claim, the compensation judge's finding that no genuine dispute existed on that issue is supported by substantial evidence.

Affirmed.

Wayne L. Gerhardt v. Enzymology Research Center, Inc., June 19, 2018

Practice and Procedure – Adequacy of Findings

The compensation judge's findings were not adequately specific to disclose the basis for the start date of the judge's award of temporary total disability benefits or to permit meaningful appellate review.

**Jurisdiction – Subject Matter
Rules Construed – Minnesota Rules 1420.3150, subp. 1**

After an appeal of a Findings and Order has been filed or 30 days has passed since the Findings and Order was served and filed, whichever comes first, a compensation judge does not have jurisdiction to issue an Amended Findings and Order.

Vacated in part and remanded in part.



Rehabilitation – Retraining

Substantial evidence, including the expert opinion of the employee’s qualified rehabilitation consultant (QRC), supported the compensation judge’s approval of the retraining plan. The compensation judge did not err as a matter of law in considering the employee’s potential for future earnings as well as her date of injury wage in assessing the employee’s proposed retraining plan.

Affirmed.

Attorney Fees – Sanctions

Statutes Construed – Minnesota Statutes 176.081, subdivision 12

Substantial evidence supports the compensation judge’s findings that the employee acted in bad faith by failing to appear at a hearing, that he had misrepresented his reasons for not attending, that the failure to attend was not substantially justified and that there were no circumstances that made the awarded sanctions unjust under Minnesota Statutes 176.081, subdivision 12.

**Practice and Procedure – Discovery
Evidence**

The compensation judge did not err by refusing to allow the employee’s attorney to examine a witness’s cellphone for information and by refusing to compel discovery of other communications where the information was not relevant to the issue of whether sanctions were appropriate or whether the employee’s conduct was substantially justified.

Practice and Procedure

Rules Construed – Minnesota Rules 1420.2500, subpart 1

Where the employee’s credibility was an issue in pleadings previously filed by the parties as well as in the motion for sanctions, it was appropriate and consistent with Minnesota Rules 1420.2500 for the compensation judge to consolidate pleadings for hearing.

**Appeals
Practice and Procedure**

Issues appealed in the notice of appeal but not addressed in a party’s brief are deemed waived. Issues that were not raised in the notice of appeal will not be considered. See Minnesota Rules 9800.0900, subpart 1.

Affirmed.

Minnesota Supreme Court

April through June 2018

Case summaries published are those prepared by the WCCA



Anthony Gist v. Atlas Staffing, Inc., A17-0819, A17-1096, April 4, 2018

1. The compensation judge did not abuse her discretion in concluding that respondent's work-related silica exposure was a substantial contributing factor to his kidney failure.
2. Under 42 C.F.R. § 447.15 (2016), a provider cannot recover payment from third parties for any services billed to Medicaid after the provider has accepted payment from Medicaid for those services.
3. Respondent/appellant's 30-day period for filing a notice of appeal to the Workers' Compensation Court of Appeals had not expired at the time of filing the appeal because the findings and order of the compensation judge were not served directly on respondent/appellant.
4. The Workers' Compensation Court of Appeals did not err by reviewing and modifying the compensation judge's order instructing appellants to make workers' compensation payments "in accordance with all other state and federal laws."
5. The question of whether the Minnesota workers' compensation fee schedules apply to medical bills for treatment incurred prior to a finding of primary liability is remanded to the Workers' Compensation Court of Appeals.

Affirmed in part, reversed in part, and remanded.

Roberto U. Varela Leal v. Knife River Corporation, A17-0527, April 10, 2018

The decision of the Workers' Compensation Court of Appeals affirmed without opinion.

John R. Gerardy v. Anagram International, A17-1507, April 19, 2018

The decision of the Workers' Compensation Court of Appeals affirmed without opinion.