

## Modernizing DLI's workers' compensation technology

The Department of Labor and Industry (DLI) set out in 2015 to work toward a major overhaul of the technology system and business processes that support its Workers' Compensation Division. That overhaul is now known as the Workers' Compensation Modernization Program (WCMP). Objectives of WCMP include: interacting with customers electronically; reducing paper transactions; minimizing redundant data entry; gaining efficiencies in business unit functions; and improving data integration.



During the first part of 2017, each work unit within the DLI Workers' Compensation Division reviewed its current methods and operations to develop its goals and requirements for a new "future-state" system. The future-state system will be a secure, accessible, supportable, cost-effective and stable web-based system that:

- securely processes electronic data from customers;
- provides customers and staff members with safe, efficient, user-friendly and informative online capabilities;
- supports effective, automated workflows; and
- supports reliable and accurate tracking of operations, deadlines and performance.

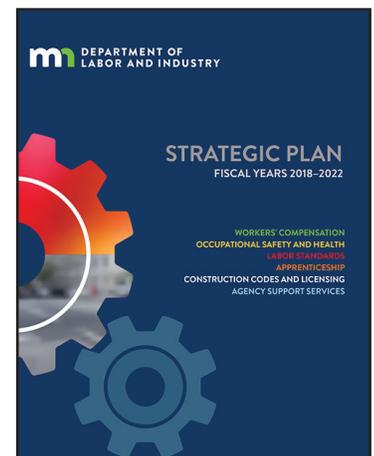
A request for proposals was developed for WCMP and published Aug. 25, with a proposal submission deadline of Nov. 9. A WCMP team will evaluate submitted vendor proposals, with the goal of awarding a contract in January and beginning contract negotiations.

## Department of Labor and Industry sets five-year goals, strategies

The Minnesota Department of Labor and Industry (DLI) conducted a review of its priorities and operations to prepare a strategic plan to guide it in carrying out its mission during the next five years. This strategic plan does not describe all of the agency's functions. Instead, it identifies areas where DLI staff members and stakeholders believe focus and innovation can improve the services provided by the agency.

Mindful of the need to use its resources wisely, DLI staff members first identified the core objective of each of its work units, requiring an answer to the basic question "Why is DLI's work important to the citizens of the state of Minnesota?" It then identified specific, targeted strategies to carry out each of the objectives. Finally, outcome measurements were established to determine whether DLI is successful in the strategies and initiatives it undertakes.

As part of its strategic planning process, DLI staff members took a close look at the work it performs and considered how to measure the results of its efforts. In addition, areas were identified where DLI didn't currently collect the data necessary to measure success. In those situations, DLI will identify and monitor available information so appropriate baselines can be established.



The goal of the strategic plan is to help DLI continue to improve the services it provides. It is available on the DLI website at [www.dli.mn.gov/PDF/strategic\\_plan\\_18\\_22.pdf](http://www.dli.mn.gov/PDF/strategic_plan_18_22.pdf).

## Offers to negotiate payment of medical bills:

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### *Information health care providers should know*

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It has come to the attention of the Department of Labor and Industry (DLI) that health care providers have been receiving unsolicited offers to settle or negotiate a payment amount from bill review companies that have contracted with payors. Health care providers should be aware of the following so they can make an informed decision about whether to participate.

- These offers are often inconsistent with the Minnesota workers' compensation law and providers have no legal obligation to respond to them.<sup>1</sup>
- If a health care provider does not sign the offer, the workers' compensation payor is still required by law to process the bill (according to any applicable fee schedules) within 30 days after receipt.<sup>2</sup> If a provider is not paid within the 30 days, penalties may be assessed against the payor.
- In many cases, the proposed settlement amount is less than the amount payable under the applicable workers' compensation fee schedules.
- These offers are typically not signed by the payor and are, therefore, not binding on it. They often expressly state that the amount in the offer is subject to the payor's agreement to pay that amount.
- The offer may also ask providers to waive rights under the workers' compensation law, such as:
  - the right to be paid within 30 days;
  - the right to interest, penalties or other fees if the payor does not pay within 30 days according to the workers' compensation law; and
  - the right to dispute the payment made, even if it is less than the amount payable under applicable law.

A provider is not required to waive its right to penalties, interest or other costs associated with collection of its bill before payment is made.

Health care providers always have the right to file a Medical Request form with DLI if the payer has not paid its bill, according to any applicable fee schedule, within 30 days of receipt.<sup>2</sup> A provider may call the workers' compensation hotline at 1-800-342-5354 (press 3) for information about how to file a Medical Request form for payment of medical bills.

If you have any questions, contact the payor directly (rather than the contractor that sent you the document). You may also email Lisa Wichterman, DLI medical policy specialist, at [lisa.wichterman@state.mn.us](mailto:lisa.wichterman@state.mn.us).

<sup>1</sup>The solicitations discussed in this article are different from cases where a health care provider has intervened in a matter pending at DLI or the Office of Administrative Hearings, and receives an offer, usually from an attorney, to settle the provider's medical bill as part of settling the claim. Minnesota Statutes, section 176.361, and Minnesota Rules 5220.1850 govern an intervenor's obligations in the context of litigation.

<sup>2</sup>The payor must pay or deny the charges, or request additional information, within 30 days of receiving the bill and supporting documentation.

## Designated contact registration, database now available

As of Nov. 1, each workers' compensation insurer, self-insured employer, licensed third-party administrator, hospital and clearinghouse is required by Minnesota Statutes § 176.135, subd. 9, to provide the Department of Labor and Industry with the name and contact information of a designated employee to answer inquiries related to the submission or payment of workers' compensation medical bills.

- For more information, visit [www.dli.mn.gov/WC/DesignatedContact.asp](http://www.dli.mn.gov/WC/DesignatedContact.asp).
- Contacts may register directly at <https://secure.doli.state.mn.us/crtdesignatedcontacts/userlogin.aspx>.



## Great participants, information generate 2017 Summit success

By Chris Leifeld, assistant commissioner, Workers' Compensation Division



The Department of Labor and Industry's (DLI's) 2017 Workers' Compensation Summit was well-attended (a record 260 participants, 14 exhibitors and four sponsors), provided a variety of informational topics and gathered a great group of participants, including attorneys, medical providers, qualified rehabilitation providers, employers, insurers and others.

In the opening remarks at the one-day event on Tuesday, Sept. 19, DLI Commissioner Ken Peterson welcomed the attendees and noted the Minnesota workers' compensation system is working reasonably well, with system costs at historically low levels and the rate of injuries reduced in half from 1997 to 2015.

The two keynote addresses were given by Jennifer Wolf Horejsh, executive director, International Association of Industrial Accident Boards and Commissions, and Ken Barlow, chief morning meteorologist for KSTP-TV and mental health advocate. Barlow's comments were particularly insightful as he described his own struggle with mental health and the impact it has had on both his work and his home life.

The Summit, at the University of Minnesota's St. Paul campus, offered 10 breakout sessions, including a judges' panel, mediation panel, legal update, opioid and non-opioid treatment options, ergonomics issues, ReWalk exo-skeleton demonstrations, study reviews and more.

A slideshow of the event and some of the presentations are available at [www.dli.mn.gov/Summit](http://www.dli.mn.gov/Summit).

DLI thanks all of the attendees who responded to a follow-up survey about the event, giving us high marks and providing good suggestions for changes we can make. We have already begun work on the 2019 Workers' Compensation Summit. Stay tuned!

# Statistics shine spotlight on worker safety indicators

To create greater awareness of occupational hazards, the Minnesota Department of Labor and Industry (DLI), Minnesota Department of Health (MDH) and Minnesota Safety Council have created a workplace safety "dashboard" spotlighting a number of key indicators related to worker safety and health.

"In the past decade, Minnesota has seen the number of work-related injuries and illnesses fall from 124,800 in 2005 to 91,520 in 2015; a 27 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 (2011 through 2015).
- Agriculture remains one of the most dangerous industries in Minnesota: 31 percent of fatal work injuries from 2011 through 2015 were among people working in the agriculture, forestry, fishing and hunting sector, particularly in crop production.
- On average, four new cases of workers with elevated blood lead levels are reported every week.
- The total cost of Minnesota's workers' compensation system in 2015 was an estimated \$1.75 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."

View the dashboard online at [www.minnesotasafetycouncil.org/WorkplaceSafetyDashboard.pdf](http://www.minnesotasafetycouncil.org/WorkplaceSafetyDashboard.pdf).

## A BALANCE OF BUSINESS AND LABOR:

### Advisory council works with DLI on workers' compensation matters

The Workers' Compensation Advisory Council (WCAC) advises the commissioner of the Department of Labor and Industry about workers' compensation matters and submits its recommendations for proposed changes to the workers' compensation statutes to the proper legislative committees.

The WCAC is made up of 12 voting members (six representing organized labor and six representing Minnesota businesses), 10 of which are appointed by the governor, the majority and minority leaders of the Senate, and by the speaker and minority leader of the House of Representatives. The other two members are the presidents of the largest statewide Minnesota business organization and the largest organized labor association. Two members of each legislative house serve as nonvoting, advisory members.

The WCAC generally meets on the second Wednesday of even-numbered months from 9:30 to 11:30 a.m. at the Minnesota Department of Labor and Industry. Information about the council, including a members and alternates list, meeting agendas and meeting minutes, is online at [www.dli.mn.gov/Wcac.asp](http://www.dli.mn.gov/Wcac.asp).



# Ask the ADR pro

By Keith Maurer, *Alternative Dispute Resolution*

## Q. What's the best way to prepare for a mediation session?

**A.** The best way to prepare for mediation is to draft a pre-mediation statement for the mediator. While pre-mediation statements are not required by the Department of Labor and Industry (DLI), they are strongly encouraged and are extremely valuable to the parties and the mediator as they prepare for and participate in the mediation.

One of the most important functions of a pre-mediation statement is that it requires an attorney to focus on and prepare for the mediation. An effective pre-mediation statement contains the following elements, which – out of necessity – require an attorney and his or her client to review the case and prepare for the mediation:

- an itemization of benefit claims and defenses, and potential recovery and exposure;
- expectations regarding a reasonable settlement range;
- the status of any negotiations, offers or demands;
- assessment of strong and weak points;
- intangibles or dynamics you believe could affect achievement of a resolution;
- pertinent medical or vocational records and reports, independent medical examinations and independent vocational evaluations; and
- confirmation that all intervenors and potential intervenors have been properly notified.



This information is also very helpful to the mediator as he or she prepares for and conducts the mediation. An effective mediator will use the information contained in the pre-mediation statement to become familiar with the case and develop appropriate strategies that fit the unique facts and circumstances of the case.

## Q. What are some tips to keep in mind when providing an opening demand or opening offer in the context of mediation?

**A.** Attorneys have an ethical duty to provide competent representation to their clients, which sometimes requires aggressive advocacy. Protection of a client's best interests does not stop at mediation. However, attorneys and their clients should carefully consider the potential implications of their respective opening demands and opening offers.

A hugely inflated opening demand that far exceeds a reasonable assessment of the maximum value of a case can be viewed as a nonstarter by defense counsel and may create an immediate obstacle to creating momentum toward settlement. Similarly, punishing a reasonable opening demand by responding with an offer far below even the minimum exposure may create the same result – a loss of that all-important element to successful mediations: momentum.

## DLI's Vocational Rehabilitation unit:

### Helping Minnesota's injured workers return to work

At the Department of Labor and Industry's Vocational Rehabilitation unit (VRU) we provide vocational rehabilitation services to eligible injured workers to restore the injured worker to a job related to their former employment or to a job in another work field. VRU provides services to both injured workers with accepted claims and those whose claims were denied or suspended to help them return to work.

We have six offices throughout the state and our staff members travel to meet with clients.

We have more than two centuries of experience providing rehabilitation services to injured workers. VRU comprises 10 qualified rehabilitation consultants (QRCs), six placement professionals, two QRC supervisors, one director, a state program administrator and office administrative support staff members.

Our staff members have diverse professional and cultural backgrounds, including:

- workers' compensation
- vocational evaluation
- job development and job placement
- human resources
- insurance industry
- brain injury rehabilitation
- Social Security determination
- group-home supervisor
- teaching and career planning
- corrections/detention office
- Spanish translation
- chemical dependency counseling

Learn more about VRU online at [www.dli.mn.gov/WC/Vru.asp](http://www.dli.mn.gov/WC/Vru.asp). If you have questions, call (651) 284-5038.



#### Services available

- ★ Medical management
- ★ Return-to-work assistance
- ★ Job analysis
- ★ Vocational counseling
- ★ Vocational testing
- ★ Transferable-skills analysis
- ★ Job-seeking-skills training
- ★ Job placement
- ★ Retraining planning
- ★ Court testimony

### Vocational Rehabilitation staff members gather in St. Paul



All six of the Department of Labor and Industry's Vocational Rehabilitation unit (VRU) office locations came together Oct. 25 for a day of training in St. Paul. Presentation topics included diversity, the rehabilitation rules and fatalities in the workplace. Staff members also celebrated VRU's recent accomplishments.

## Reminder: 2016 Special Compensation Fund assessment 'true-up'

Minnesota Statutes § 176.129, subd. 2a, now provides for an adjustment or "true-up" of the assessment paid by insurers for deposit into the Special Compensation Fund (SCF). The Department of Labor and Industry commissioner *estimates* each insurer's share of the assessment using the insurer's earned standard premium from the previous calendar year. The commissioner must later make a final determination of the amount owed based on the insurer's actual earned standard workers' compensation premium for the current year, after those figures become available.



As a result of this true-up, insurers will likely either owe additional monies to the SCF or be refunded monies that were overpaid. Invoices for additional funds will be mailed to insurers by Nov. 15, with payment due Dec. 15. Refunds will be processed by Dec. 1. To be issued a refund, insurance companies that are not currently registered as vendors with the state of Minnesota will be required to file a W-9 Request for Taxpayer Identification Number and Certification form.

Contact John Kufus at (651) 284-5179 or [john.kufus@state.mn.us](mailto:john.kufus@state.mn.us) or contact Loni Delmonico at (651) 284-5311 or [loni.delmonico@state.mn.us](mailto:loni.delmonico@state.mn.us) for more information.

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## DLI videos offer quick, concise lessons

The Department of Labor and Industry currently offers nine brief online videos about workers' compensation subjects. Each video explains a specific topic in five minutes or fewer. Visit [www.dli.mn.gov/WC/Videos.asp](http://www.dli.mn.gov/WC/Videos.asp).

### Forms

- How QRCs can submit vocational rehabilitation forms online
- How to complete a Notice of Benefit Reinstatement form
- How to complete an online Annual Claim for Reimbursement form
- Injury reporting for workers' compensation claims adjusters using electronic data interchange and electronic first report of injury

### Medical benefits

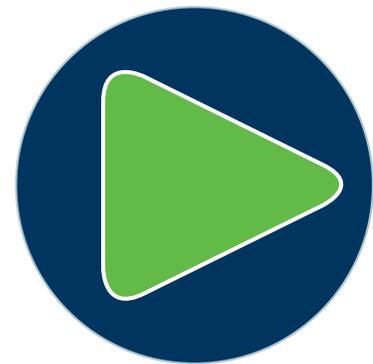
- Minnesota workers' compensation inpatient hospital payments
- Payment of medical bills and requests for treatment

### Vocational rehabilitation benefits

- How VRU uses technology to facilitate a faster return to work for injured workers

### Workers' compensation coverage requirements

- Do I need to provide workers' compensation coverage for my family members?
- Workers' compensation insurance coverage requirements



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## Bureau of Labor Statistics injury and illness rates, case characteristics released Nov. 9

The OSHA-recordable estimated injury and illness incidence rates and case counts for industries will be released Nov. 9. The estimates are prepared from the Survey of Occupational Injuries and Illnesses, conducted in Minnesota jointly by the U.S. Bureau of Labor Statistics and the Minnesota Department of Labor and Industry (DLI).

The case and demographic estimates will also be released Nov. 9, which address the worker and injury characteristics for injury and illness cases where the worker is unable to work for one or more days after the date of injury.

DLI will post both sets of 2016 estimates online at [www.dli.mn.gov/RS/StatWSH.asp](http://www.dli.mn.gov/RS/StatWSH.asp). Information about the number and characteristics of fatal work-related injuries in 2016 is expected to be released Dec. 19.

## Law enforcement claims maintaining steady level

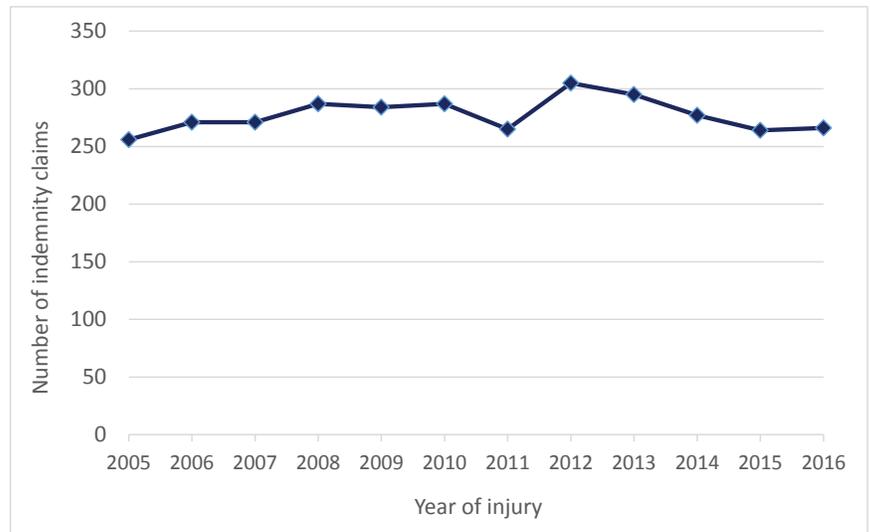
By Brian Zaidman, Research and Statistics

Workers in law enforcement face many workplace safety challenges particular to their occupation. For officers, detectives and supervisors in local police departments, county sheriff's offices and the state's Highway Patrol, every call for assistance brings particular dangers. These dangers are apparent from an examination of the workers' compensation indemnity claims for these workers.

Figure 1 shows the number of law enforcement workers with indemnity benefits has fluctuated between 250 and 300 claims since 2005.

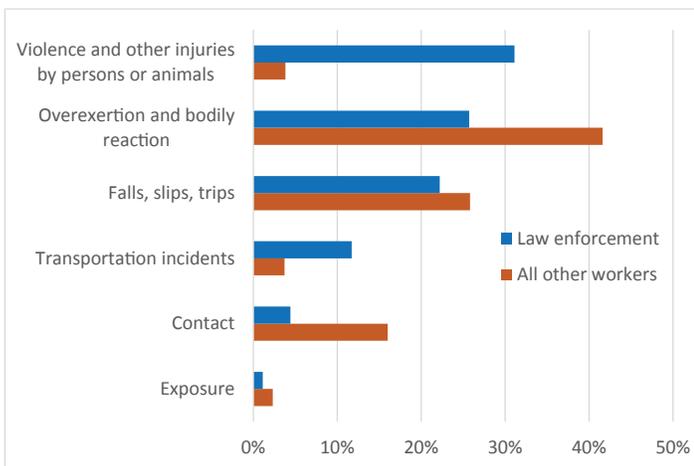
The profile of events that lead to the indemnity claims is unique to this profession. Violence and other injuries involving other people and animals accounted for 31 percent of the indemnity claims reported between 2012 and 2016. For workers in all other occupations, violence accounted for only 4 percent of the claims. Law enforcement officers also suffered transportation-related injuries more frequently than other workers.

**Figure 1. Number of law enforcement worker indemnity claims**

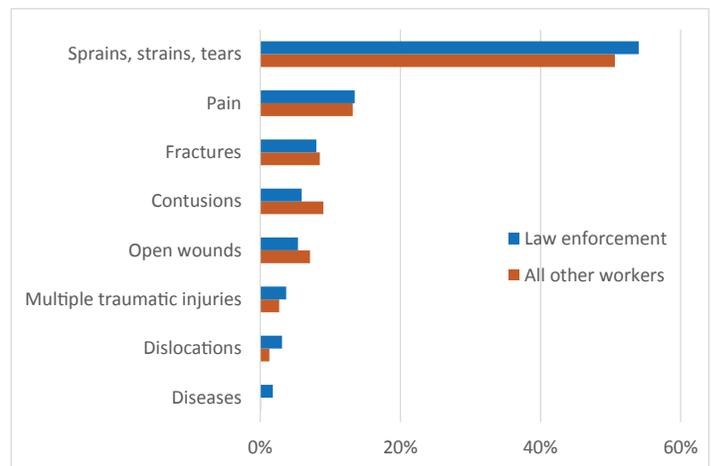


These differences in events did not lead to differences in the types of injuries suffered by the workers. As shown in Figure 3, the distribution of the nature of injury was nearly identical between law enforcement workers and all other workers.

**Figure 2. Distribution of indemnity claims by type of event or exposure, injury years 2012 through 2016**



**Figure 3. Distribution of indemnity claims by nature of injury or illness, injury years 2012 through 2016**



# Workers' compensation coverage for farms

By Brian Zaidman, Research and Statistics

A farm operation must provide workers' compensation insurance for its employees, unless it paid or was obligated to pay cash wages to farm laborers during the previous calendar year less than a certain dollar amount. That threshold dollar amount depends on whether the farm operation maintains specified liability insurance.



If the farm operation has a farm liability insurance policy with \$300,000 total liability coverage and \$5,000 medical payment coverage for farm laborers, then the farm operation is not required to maintain workers' compensation insurance if the total wages to farm laborers during the previous calendar year were less than the statewide average annual wage.<sup>1</sup> If the farm operation does not maintain the specified liability insurance, then the farm operation must maintain workers' compensation insurance unless the total wages to farm laborers during the previous calendar year were less than \$8,000.<sup>2</sup>

The chart below may be used to determine if the farm operation's wages to farm laborers (roughly payroll) during the previous calendar year are less than the statewide average annual wage for the year in which the farm liability policy is written.

## Family farm coverage

Minnesota Statutes § 176.011, subd. 11a (a)(2)

Average annual wage under M.S. § 176.011, subd. 20	Services rendered (roughly payroll) year	Policy written year
\$45,095	Jan. 1-Dec. 31, 2010	Jan. 1-Dec. 31, 2011
\$46,572	Jan. 1-Dec. 31, 2011	Jan. 1-Dec. 31, 2012
\$47,616	Jan. 1-Dec. 31, 2012	Jan. 1-Dec. 31, 2013
\$49,134	Jan. 1-Dec. 31, 2013	Jan. 1-Dec. 31, 2014
\$49,924	Jan. 1-Dec. 31, 2014	Jan. 1-Dec. 31, 2015
\$51,420	Jan. 1-Dec. 31, 2015	Jan. 1-Dec. 31, 2016
\$53,349	Jan. 1-Dec. 31, 2016	Jan. 1-Dec. 31, 2017
\$54,103	Jan. 1-Dec. 31, 2017	Jan. 1-Dec. 31, 2018

<sup>1</sup>The statewide average annual wage is received from the Department of Employment and Economic Development and is the number from which the statewide average weekly wage is derived.

<sup>2</sup>Farm laborer does not include machine hire and other persons specified in [Minnesota Statutes § 176.011, subds. 11a and 12](#). Other farm employees excluded from workers' compensation coverage in certain circumstances are described in [Minnesota Statutes § 176.041, subd. 1](#).

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

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

### *The ombudsman assists injured workers by:*

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

### *The ombudsman assists small businesses by:*

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



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

## DLI offers variety of workers' compensation training opportunities

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

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



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

**Employers** – Learn about employer training opportunities at [www.dli.mn.gov/WC/TrainingEr.asp](http://www.dli.mn.gov/WC/TrainingEr.asp).

**Health care providers** – Contact Melissa Parish at [dli.wctraining@state.mn.us](mailto:dli.wctraining@state.mn.us) or (651) 284-5431 for more information.

**Insurers** – Learn about insurer training opportunities at [www.dli.mn.gov/WC/TrainingIns.asp](http://www.dli.mn.gov/WC/TrainingIns.asp).

**Rehabilitation providers** – Learn about training opportunities at [www.dli.mn.gov/WC/TrainingRp.asp](http://www.dli.mn.gov/WC/TrainingRp.asp).

# Workers' compensation events calendar

## November

**Nov. 8** Workers' Compensation Advisory Council  
[www.dli.mn.gov/Wcac.asp](http://www.dli.mn.gov/Wcac.asp)

**Nov. 9** Workers' Compensation Insurers' Task Force  
[www.dli.mn.gov/Wcitf.asp](http://www.dli.mn.gov/Wcitf.asp)

## December

**Dec. 13** Workers' Compensation Advisory Council  
[www.dli.mn.gov/Wcac.asp](http://www.dli.mn.gov/Wcac.asp)

## January

**Jan. 4** Rehabilitation Review Panel  
[www.dli.mn.gov/Rrp.asp](http://www.dli.mn.gov/Rrp.asp)

## February

**Feb. 15** Orientation training session  
[www.dli.mn.gov/WC/TrainingRp.asp](http://www.dli.mn.gov/WC/TrainingRp.asp)

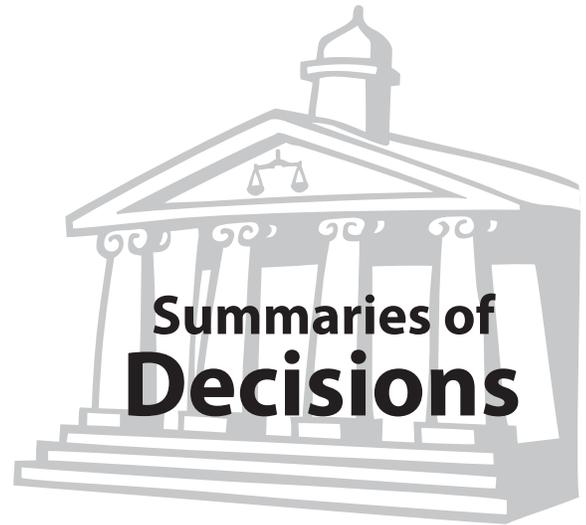
## April

**April 5** Rehabilitation Review Panel  
[www.dli.mn.gov/Rrp.asp](http://www.dli.mn.gov/Rrp.asp)

# Workers' Compensation Court of Appeals

*July through September 2017*

Case summaries published are  
those prepared by the WCCA



*David Oleson v. Independent School District #272 Eden Prairie Schools, July 7, 2017*

## **Apportionment**

Substantial evidence supports the compensation judge's apportionment determination where there were varying apportionment opinions with adequate foundation.

## **Experience – Expert Medical Opinion**

An otherwise well-founded medical opinion on apportionment constitutes substantial evidence that may be relied upon by the compensation judge, even where the opinion pre-dates some medical care, so long as there is no evidence that the apportionment would have been affected by that care.

Affirmed.

*Judy A. Carda v. State of Minnesota, Department of Human Services, July 11, 2017*

## **Evidence – Medical Records**

The compensation judge was not required to continue the hearing or to keep the record open for potential post-hearing medical reports where no party requested that he do so.

## **Appeals – Scope of Review Practice and Procedure – Re-opening Record**

This court's standard of review on an appeal from a findings and order normally limits it to consider only the evidence submitted into the hearing record. It is not clear that this court has the authority to vacate and remand findings to the compensation judge "in the interests of justice" based solely on post-hearing evidence alone.

Affirmed.

***William C. Little v. Menards, Inc., July 27, 2017***

**Causation – Substantial Evidence  
Evidence – Expert Medical Opinion**

Substantial evidence, including adequately founded medical opinion of the employee's treating physician, supports the compensation judge's finding that the employee's injury requiring rotator cuff repair arose from the employee's work injury and not a pre-existing shoulder condition.

**Permanent Partial Disability – Back**

Substantial evidence, including the employee's medical record, supports the compensation judge's finding that the employee was entitled to a 3 percent permanent partial disability rating for paresthesia into his lower extremity even where the employee's pain symptoms had largely resolved.

Affirmed.

***Dale A. Nelson v. State of Minnesota, Department of Human Services, July 27, 2017***

**Statutes Construed – Minnesota Statutes § 176.011, subd. 15(d)  
Causation – Substantial Evidence**

Substantial evidence, including adequately founded expert medical opinion, supports the compensation judge's finding that the employee did not suffer post-traumatic stress disorder, as defined in Minnesota Statutes § 176.011, subd. 15(d), resulting from his work injury.

Affirmed.

***Emmit A. Trotter v. Metro Transit, July 31, 2017***

**Causation – Substantial Evidence**

Substantial evidence, including medical records, expert medical opinion, lay testimony and video, supported the compensation judge's findings that the employee did not sustain either a work-related specific or Gillette injury on or about Oct. 20, 2014.

Affirmed.

***Carolyn A. Hemphill v. Soude Enterprises, Aug. 1, 2017***

**Intervenors**

Where claims of intervenors are not presented or addressed at hearing, vacation of the compensation judge's award of identified intervention claims is necessary, as is a remand of the matter to determine whether intervention claims exist, were properly made under the statute, and are payable.

Vacate and remand.

***Linnea M. Magnuson v. Choices for Children, Inc., Aug. 2, 2017***

**Evidence – Medical Records  
Causation – Medical Treatment**

Substantial evidence, including independent medical opinion, supports the compensation judge's conclusion that the period of disability from work at issue was not causally related to the employee's work injury.

**Evidence – Expert Medical Opinion**

The compensation judge's reliance on expert medical opinion that does not accurately describe the employee's symptoms as set forth in chiropractic records is not unreasonable where the expert medical opinion relies on the history of symptoms provided by the employee and in other medical records.

**Practice and Procedure – Matters at Issue**

Failure of the appellant to discuss an issue in the appellant brief that was raised in the Notice of Appeal supports a conclusion that the issue was waived under Minnesota Rules 9800.0900, subp. 1.

Affirmed.

***Julie A. Hartzell v. State of Minnesota, Department of Trial Courts, Aug. 4, 2017***

**Vacation of Award – Substantial Change in Medical Condition**

Where the employee failed to demonstrate a causal relationship between her work injury and any current disability, or a change in diagnosis, good cause was not shown to vacate the employee's award on stipulation on grounds of a substantial change in the employee's medical condition.

Denied.

***Theresa M. (Garrett) Hovde v. Villages of North Branch, Aug. 8, 2017***

**Causation – Substantial Evidence**

Substantial evidence, including adequately founded expert medical opinion, supports the compensation judge's conclusion that the employee's work injury of Feb. 23, 2014, was temporary and fully resolved by April 6, 2014, and the denial of the employee's claim for benefits after that date.

Affirmed.

***Charlene Kness v. Kwik Trip, Aug. 11, 2017***

**Evidence – Expert Medical Opinion**

Where the treating physician reviewed the report prepared by the independent medical examiner that outlined the chronology of the employee's past low back injuries and treatment, the opinions of the treating physician cannot be said to lack foundation on the basis that the treating physician was not aware of prior injuries.

### **Causation – Temporary Injury**

Substantial evidence in the record, including the adequately founded medical opinion of the independent medical examiner, supports the compensation judge's determination that the employee's work injury was a temporary aggravation of her pre-existing degenerative condition, which has since resolved.

Affirmed.

*Sheila Anderson v. ShopNBC/Valuevision Media, Inc., Aug. 31, 2017*

### **Causation – Gillette Injury**

Substantial evidence in the record supports the compensation judge's determination that the employee failed to prove that she sustained a work-related specific or Gillette injury to her neck, back and shoulders on July 2, 2013.

### **Causation – Consequential Injury**

Substantial evidence in the record supports the compensation judge's determination that the employee failed to prove that she sustained consequential chronic pain syndrome and/or depression as a result of the Jan. 23, 2012, or Oct. 19, 2012, work injuries.

Affirmed.

*Ryan Keltner (deceased employee) by Delinda Walters v. Spartan Staffing, L.L.C., Sept. 5, 2017*

### **Arising Out Of and In The Course Of**

Substantial evidence supports the compensation judge's determination that the employee's injury and death arose out of and in the course of his employment where the employee fell from an unguarded height on the work premises as he prepared to begin his work shift.

### **Arising Out Of and In The Course Of – Prohibited Act**

The compensation judge's finding that the employer and insurer failed to meet their burden of establishing under *Hassan v. Spherion Corp.*, 63 W.C.D. 491 (W.C.C.A. 2003) that the employee's injury and death were the result of a prohibited act by the employee is supported by substantial evidence.

### **Causation – Suicide**

Substantial evidence in the form of credible testimony supports the compensation judge's determination that the employee's injury and death were not intentionally self-inflicted.

Affirmed.

**Evidence – Medical Records  
Causation – Medical Treatment**

Substantial evidence, including medical opinion from the employee's treating physicians, supports the compensation judge's conclusion that the ongoing symptoms were causally related to the employee's work injury.

**Evidence – Expert Medical Opinion**

Under the facts presented, the compensation judge's reliance on a treating neurologist's opinion that the employee suffers from post-concussion syndrome does not constitute error where: 1) the employee's symptoms are consistent with the condition, and 2) where proof of loss of consciousness is not established as a requirement for existence of the condition.

Affirmed.

***Shannon George v. Cub Foods, Sept. 7, 2017***

**Medical Treatment and Expense – Examinations**

Where the employee had refused to allow the examiner to touch her arm and hand during an independent medical examination for a right upper extremity injury, substantial evidence supports the compensation judge's finding that the employee had refused to comply with a reasonable request for examination and the judge's denial of temporary total disability benefits until the employee complied with another request for an independent medical examination.

**Maximum Medical Improvement – Substantial Evidence**

Substantial evidence, including expert medical opinion, supports the compensation judge's finding that she had reached maximum medical improvement as of May 3, 2016.

**Medical Treatment and Expense – Reasonable and Necessary  
Causation – Substantial Evidence**

Substantial evidence supports the compensation judge's finding that a functional capacity evaluation and work hardening therapy were reasonable, necessary and causally related to the employee's work injury.

**Rehabilitation – Consultation  
Causation**

Where substantial evidence supports the compensation judge's finding that the employee's need for restrictions was causally related to the employee's work injury, an award of rehabilitation consultation was appropriate.

Affirmed.

**Practice and Procedure – Expedited Hearing**

Where the employer and insurer had raised an additional defense to the employee's claim for medical treatment at the hearing and the employee had not objected, the compensation judge did not improperly expand the scope of the hearing under Minnesota Rules 1420.2150.

**Settlement – Interpretation**

Substantial evidence supports the compensation judge's interpretation of the settlement term closing out medical treatment except for the lumbar spine.

**Vacation of Award – Mutual Mistake**

Where the employee was not awarded Social Security benefits after a settlement, the employee's claim that the parties had assumed at the time of settlement that the benefits would be awarded was not a mutual mistake since there was no misapprehension of facts known at the time of settlement.

**Vacation of Award – Substantial Change in Condition**

Where the employee had not shown a change in diagnosis, a change in ability to work, more costly or extensive medical treatment, or additional permanent partial disability, and the parties had limited additional medical treatment to the lumbar spine, the employee's SI joint condition and need for treatment did not constitute an unanticipated substantial change in medical condition.

Affirmed.

**Temporary Total Disability – Substantial Evidence**

Substantial evidence in the record supports the compensation judge's determination that the employee was not entitled to temporary total disability benefits because the work injury was temporary and resolved prior to the period of time for which the benefits were claimed.

**Jurisdiction – Subject Matter**

Liability for workers' compensation benefits is determined without regard to the existence of negligence on the part of the employer or the employee; therefore, claims of negligence are outside of the subject matter jurisdiction of the compensation judge and properly not considered in making findings of fact and issuing an award.

**Jurisdiction – Subject Matter**

Claim of wrongful termination is outside of the subject matter jurisdiction of the compensation judge, but the determination that the employee was terminated for economic reasons and not the employee's physical ability to perform the job was relevant to the employee's claim for benefits and properly considered in making findings of fact and issuing an award.

Affirmed.

**Permanent Partial Disability – Gastrointestinal Tract**

Substantial evidence, including the employee's medical records, supports the compensation judge's finding that the employee was not entitled to permanent partial disability ratings of 65 percent and 50 percent for short bowel syndrome where the employee's desirable weight was maintained for a year prior to hearing.

**Permanent Partial Disability – Gastrointestinal Tract**

Substantial evidence, including expert medical testimony, supports the compensation judge's assignment of two 15 percent permanent partial disability ratings for short bowel syndrome.

**Practice and Procedure – Matters At Issue**

Failure of the appellant to fully identify all arguments in the Notice of Appeal that later appear in the appellant brief does not constitute a waiver of those issues on appeal where the initial description of the issues provided adequate notice to the respondent.

Affirmed.

## Minnesota Supreme Court

*July through September 2017*

Case summaries published are  
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### ***Julie D. Halvorson v. B&F Fastener Supply, A16-0920 – Sept. 20, 2017***

1. Minnesota Statutes § 176.102, subd. 6(a) (2016), which addresses an employee's initial eligibility for rehabilitation services, does not provide an independent mechanism for an employer to terminate rehabilitation benefits.
2. Minnesota Rules 5220.0100, subps. 22 and 34 (2015), does not allow an employer to terminate the employee's rehabilitation benefits.

Affirmed.

### ***Daniel M. Anello v. Wisconsin Central, Ltd., A17-0340 – Aug. 9, 2017***

1. The Workers' Compensation Court of Appeals correctly concluded that the compensation judge has jurisdiction over respondent's claims because an employee who receives workers' compensation benefits under the federal Longshore and Harbor Workers' Compensation Act may bring a claim for benefits under the Minnesota Workers' Compensation Act related to the same injury.
2. The Workers' Compensation Court of Appeals correctly concluded that the compensation judge abused his discretion by dismissing respondent's claims on the theory of *forum non conveniens*.

Affirmed.

### ***Debra K. Mattick v. Hy-Vee Foods Stores, A16-1802 – July 12, 2017***

1. The Workers' Compensation Court of Appeals (WCCA) erred when it held that the expert opinion upon which the compensation judge relied lacked adequate factual foundation.
2. The WCCA clearly and manifestly erred when it reversed the compensation judge's factual finding that the respondent's work injury was not a substantial contributing cause of her surgery that addressed a pre-existing arthritis condition.

Reversed.