

Rehabilitation rules update

The workers' compensation rehabilitation rules relating to service fees and costs, Minnesota Rules 5220.1900, were updated and went into effect Sept. 24. The new rules simplified the billing structure, increased the limit on payment to qualified rehabilitation consultants (QRCs) for services during job development and job placement, and more clearly defined services and activities that are either not billable or require insurer approval.

The \$10 an hour fee reduction for lengthy and costly plans was eliminated and the maximum hourly rate for QRC services was adjusted to maintain cost neutrality. The maximum hourly rates for QRC services and job development and job placement services were further adjusted for services on or after Oct. 1, 2018, for the annual adjustment under Minnesota Rules 5220.1900, subp. 1b. For more information about the maximum hourly rehabilitation rate adjustments, see the August/September edition of *COMPACT* at www.dli.mn.gov/sites/default/files/pdf/0818c.pdf.

The limit on payment to QRCs for services during job development and job placement was increased from two to six hours a month, excluding travel time and wait time. The insurer can still assert services were not reasonable and necessary. Also, the Department of Labor and Industry (DLI) commissioner or a compensation judge can still determine services beyond the six-hour limit were reasonable and necessary.

Case activities under subpart 7 are now in two categories: those requiring approval from the insurer; and those that are not billable. See www.revisor.mn.gov/rules/5220.1900 for a list of services and activities.

DLI is currently in the process of rewriting the registration sections, Minn. Rules 5220.1400 through 5220.1700, to enhance clarity and provide a simpler process for rehabilitation provider registration. A draft proposal is online at www.dli.mn.gov/sites/default/files/pdf/5220draft1410-1700.pdf.

In addition to updating the registration sections, DLI will continue drafting rules related to DLI's Workers' Compensation Modernization Program. Changes will reflect the move to a modernized electronic system and new processes. When needed, the rules will be amended to reflect a new electronic system that reduces complexity and enhances efficiencies.

DLI welcomes comments during the rulemaking process. Comments can be directed to Matt Jobe via email at dli.rules@state.mn.us, phone at 651-284-5006 or fax at 651-284-5725.

Reminder: 2017 SCF 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 were 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.

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



Alternative Dispute Resolution unit adds two new mediators

The Alternative Dispute Resolution (ADR) unit seeks early intervention in workers' compensation disputes through conferences and mediations. It handles calls from the workers' compensation hotline and responds to questions from injured workers, employers, health care providers, attorneys and qualified rehabilitation consultants.

Meet the newest mediators

Christie Ahern joins ADR with more than 20 years of experience as a workers' compensation attorney. She is a graduate of North Dakota State University and obtained her juris doctor degree from Mitchell Hamline College of Law in St. Paul, Minnesota.

Brian Mak joins ADR with more than 20 years of experience as a workers' compensation attorney and claims adjuster. He is a graduate of Thomas Aquinas College and obtained his juris doctor degree from Mitchell Hamline College of Law in St. Paul, Minnesota.

The ADR team

In addition to the new employees, ADR mediators/arbitrators include: Dave Bateson, Walter Bowser, Aaron Frederickson, Steve Gilmore, Debra Heisick, Lee Keller, Ken Kimber, Frances Li, Keith Maurer, Nell Nere, Chris Raymond and Steve Sullivan.

ADR mediators/arbitrators can be reached directly through the workers' compensation hotline at 651-284-5032 or 800-342-5354, press 3 and then press 1.

OSHA recordkeeping training offered in January: Reviewing the basics

Maintaining an accurate OSHA log of recordable work-related injuries and illnesses is an important skill that benefits employers, workers, safety professionals and government agencies. The Department of Labor and Industry is offering three free introductory-level training sessions about OSHA recordkeeping.

When: Jan. 3, 9 to 11:30 a.m.; Jan. 22, 1 to 3:30 p.m.; or Jan. 25, 9 to 11:30 a.m.

Where: Minnesota Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN (see directions, parking at www.dli.mn.gov/about-department/about-dli/directions-st-paul-office-free-visitor-parking)

Register: To register, visit <https://secure.doli.state.mn.us/events>



More information

For questions or assistance with OSHA log recordkeeping, contact:

- Minnesota OSHA (MNOSHA) Compliance at 651-284-5050 or osha.compliance@state.mn.us;
- MNOSHA Workplace Safety Consultation at 651-284-5060 or osha.consultation@state.mn.us; or
- Department of Labor and Industry's Research and Statistics at 651-284-5025 or dli.research@state.mn.us.

Work comp costs trend downward

By David Berry, Research and Statistics

Workers' compensation benefits paid by year of injury have declined relative to payroll since 1997¹. In the voluntary market (insured employers not in the Assigned Risk Plan), indemnity benefits declined from \$.46 to \$.32 per \$100 of payroll between injury years 1997 and 2017, while medical benefits declined from \$.53 to \$.38 per \$100 (Figure 1). (During the period shown, both indemnity and medical benefits peaked relative to payroll in the early 2000s.)

These decreases occurred because falling claim rates more than offset increases in benefits per claim. After adjusting for average wage growth, indemnity and medical benefits per paid claim were stable after 2008, but only after rising rapidly between 1997 and 2008. In 2016, as compared with 1997, indemnity benefits per paid claim were 50 percent higher and medical benefits were 68 percent higher. However, total paid claims per 100 full-time-equivalent employees fell 53 percent from 1997 to 2017, more than offsetting the increases in indemnity and medical benefits per claim.

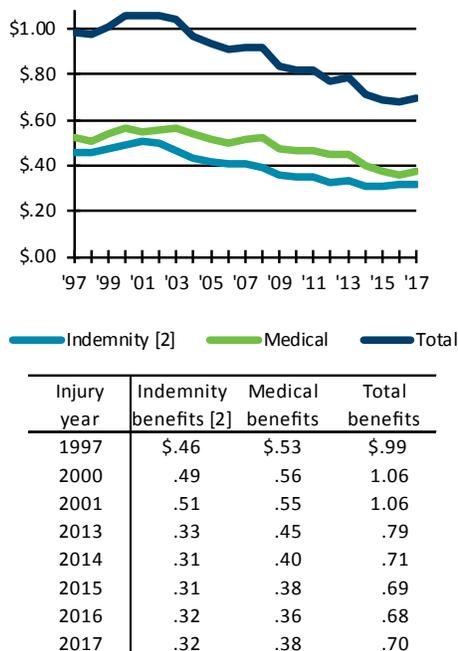
Because of decreasing benefits per \$100 of payroll, the long-term trend in system cost relative to payroll has been downward (Figure 2). This is true even though system cost (primarily a premium-based figure) follows a nationwide insurance pricing cycle. The relative low-point of \$1.21 per \$100 of payroll reached in 2010 was significantly below the relative low of \$1.31 for 2000. Seven years after the 2010 low-point, the 2017 figure was \$1.08; seven years after the 2000 low-point, the 2007 figure had been \$1.54. During the 20 years from 1997 to 2017, system cost dropped from \$1.61 per \$100 of payroll to \$1.08.

Another indicator of system cost changes is the annual pure premium rate change filed by the Minnesota Workers' Compensation Insurers Association (MWCIA) with the Minnesota Department of Commerce.² From 1997 to 2019, the average pure premium rate fell 42.2 percent. Despite some annual fluctuations (including a 1.2-percent increase for 2019), the overall downward trend has been consistent.

¹See note 1 in Figure 1.

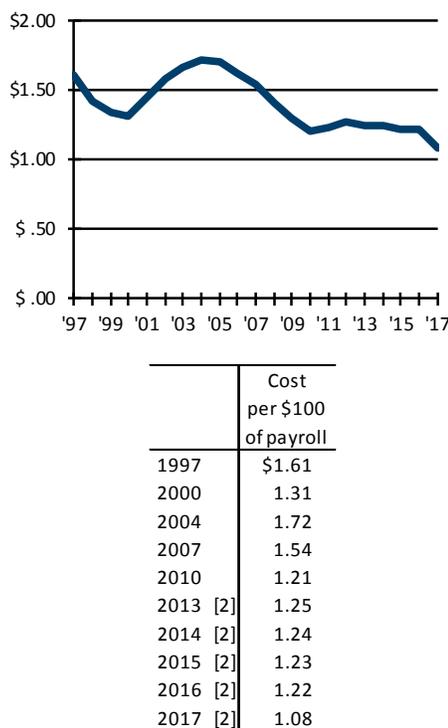
²MWCIA is Minnesota's workers' compensation rating bureau and data service organization. Insurers use the pure premium rates as the starting point in setting their own workers' compensation insurance rates.

Figure 1
Benefits per \$100 of payroll in the voluntary market, injury years 1997-2017 [1]



1. Statistics from data from the Minnesota Workers' Compensation Insurers Association projected to a uniform maturity of 28 years. Excludes self-insured employers, the Assigned Risk Plan and those benefits paid through DLI programs (for example, supplementary and second-injury benefits).
2. Includes vocational rehabilitation benefits.

Figure 2
System cost per \$100 of payroll, 1997-2017 [1]



1. Data from several sources. Includes insured and self-insured employers.
2. Subject to revision.

Ask the ADR pro

DLI's Alternative Dispute Resolution unit answers frequently asked questions

By Deb Heisick, 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, their employers and others.

Q. What services are offered to the public by ADR?

A. The Minnesota Department of Labor and Industry's (DLI's) Alternative Dispute Resolution (ADR) unit, offers help to injured workers who have denied claims, medical disputes, vocational disputes, dependency benefits issues and more.

It also offers help to small businesses that have questions about when workers' compensation insurance is required, who must be insured, what to do when an employee is injured on the job and more. ADR also makes appropriate referrals to other agencies when needed.



Q. Who can I call with questions about or issues with a work comp claim?

A. DLI has a workers' compensation customer service hotline at 651-284-5032. Employees, employers, insurers and the general public can call this number to speak directly with a mediator regarding any issue under the Minnesota workers' compensation law. The public can also get detailed information and help from the Office of the Workers' Compensation Ombudsman at 651-284-5013.

Q. How does DLI assist the public in resolving current workers' compensation claims?

A. DLI's ADR unit offers: free mediation services at all phases of a case; administrative conferences for medical and rehabilitation disputes; and information about all aspects of workers' compensation cases.

Mediation is free facilitated settlement negotiation. ADR provides trained mediators who are knowledgeable about workers' compensation laws to mediate workers' compensation cases. Mediations can take place throughout the state of Minnesota – in an attorney's office, a courthouse or other government facility, or at DLI's St. Paul office. To request mediation services call 651-284-5005, email mediation.dli@state.mn.us or visit <https://secure.doli.state.mn.us/adrmediation/Mediation.aspx>.

Mediation should be set up whenever the parties are ready to mediate or anticipate being ready.

Comparing Minnesota medical payments, service use with 17 other states

The Workers' Compensation Research Institute's (WCRI's) most recent report for Minnesota, *CompScope Medical Benchmarks for Minnesota, 19th Edition*, was released in October. This report uses insurer claim files to compare Minnesota's medical payments and service use with those of 17 other states, including Iowa and Wisconsin. The report is available for purchase from WCRI at www.wcrinet.org.



The report focuses on results for workers injured in 2016 and on trends for the 2011 to 2016 period, for claims with more than seven days of lost time, measured at an average of one year following the injury. Here are some of the major findings.

- Minnesota's average adjusted medical payment per 2016 claim was 10 percent lower than the median of the 18 study states. Payments per claim for nonhospital providers were 17 percent lower, while hospital outpatient payments were 29 percent higher and payments per hospital inpatient episode were 6 percent higher than the median.
- From 2011 through 2016, the average annual growth in medical payments in Minnesota was 1.1 percent, similar to the 1.3 percent median increase among the study states.
- Sixty-six percent of the 2016 Minnesota claims had payment to a hospital (typical of the study states) and hospitals accounted for 49 percent of the medical payments, higher than the median of 44 percent.
- Minnesota's average hospital outpatient payments for 2016 claims were higher than the median state (\$5,700 Minnesota and \$4,429 median value).
- Average hospital inpatient payments per episode for 2015 claims (for two years average claim maturity) were higher in Minnesota than the median study state value (\$35,120 vs. \$32,994).
- Among Minnesota's 2016 claims, 29 percent had surgery (either inpatient or outpatient), which was lower than the median value of 33 percent.
- Of injured workers in Minnesota, 5.4 percent had hospital inpatient care, lower than the median value of 6.1 percent. More than half, 54 percent, of Minnesota's inpatient episodes involved surgery, which is 3.3 percent of all claims with more than seven days of lost time, the same as the median value.
- Among claims at one-year maturity, hospital inpatient care decreased from 24 percent of Minnesota's total medical payments for 2013 claims to 17 percent of total payments for 2016 claims.

Work on DLI's new workers' compensation technology system underway

Work has begun on the Department of Labor and Industry's (DLI's) Workers' Compensation Modernization Program (WCMP). DLI is partnering with CapTech, a national IT consulting firm with extensive experience in building software and modernizing state workers' compensation systems.

We expect to see the following benefits from this new system.

- Online filing replacing the current paper-based system will ensure a better user experience.
- An integrated system with a guided user-experience means users will be better able to do and get what they need quickly and easily.
- Users will have secure and easy access to data regarding claims, benefits and disputes.
- The system will enable improved customer service.
- Real-time information will allow faster, more efficient and more cost-effective dispute resolution.
- Internally, the system will allow DLI to maximize efficiencies of business processes, allowing more resources to be available to focus on customers.



DLI DEPARTMENT OF
LABOR AND INDUSTRY
WORKERS' COMPENSATION
MODERNIZATION PROGRAM

DLI and CapTech will be working with internal and external stakeholders during the next two years of development to ensure the system will meet the needs of all parties. Watch for regular project updates in this newsletter.

New medical fee schedule training offered at DLI Nov. 27

The Department of Labor and Industry (DLI) is hosting an in-person training program about the hospital outpatient fee schedule (HOFS) and ambulatory surgical center payment system (ASCPS). The training is Tuesday, Nov. 27, 9 a.m. to noon, at DLI (443 Lafayette Road N., St. Paul).

Training will include a review of the hospital inpatient DRG payment system, instructions and provisions about the HOFS and ASCPS payment systems, and an overview of other billing and dispute-resolution changes from recent legislation, with additional information about submitting medical requests for disputes about a workers' compensation medical issue.

Who should attend?

Insurers, self-insured employers, hospitals, ambulatory surgical centers, third-party administrators and clearinghouses are encouraged to have a representative attend the training. Space is limited, so sign up as soon as possible <https://secure.doli.state.mn.us/events>.

The workers' compensation fee schedules and instruction are located on the DLI website at www.dli.mn.gov/business/workers-compensation/work-comp-medical-fee-schedules.

If you have any questions, contact DLI's medical policy staff at 651-284-5052 or medical.policy.dli@state.mn.us.

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.¹ 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 \$8,000.²

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
\$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
\$55,978	Jan. 1-Dec. 31, 2018	Jan. 1-Dec. 31, 2019

¹The 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.

²Farm 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.

CompFact:

Reporting industry NAICS codes on the first report of injury

By Kathleen Winters and Brian Zaidman, Research and Statistics

Why the NAICS code is important

Assigning workers' compensation claims to an industry is necessary for understanding work-related injuries and illnesses and improving workplace safety. Minnesota requires employers to include their industry on the First Report of Injury (FROI) form, by including the North American Industry Classification System (NAICS) code into field 44 on the form.

A Research and Statistics unit review of data in FROI form field 44 reveals that at least 34 percent of the claims submitted to Department of Labor and Industry (DLI) since 2011 have invalid NAICS codes. This does not include instances where a six-digit code is provided on the FROI form, but is not an accurate descriptor of the industry in which the injury occurred, which means the rate of NAICS code error on the FROI form may be higher than 34 percent.



The most common industry code validity issues include the following:

- reporting a four-digit Standard Industrial Classification (SIC) code, which was replaced by NAICS codes on the FROI form in 2002;
- reporting fewer than six digits;
- leaving field 44 blank;
- reporting a "999999" (nonclassifiable) NAICS code; and
- reporting a NAICS code that begins with "0."

With fully one-third of FROI forms since 2011 being submitted without a valid NAICS code, this significantly limits the ability of DLI (and those who rely on DLI data) to compare injury counts, injury rates or injury types across industries.

NAICS code background

NAICS is an industry classification system that groups establishments into industries based on the similarity of their production processes. It is a comprehensive system covering all economic activities. There are 20 sectors and 1,057 industries in the 2017 version of NAICS. Employers use their NAICS codes to report unemployment insurance information and the Quarterly Census of Employment and Wages to the Minnesota Department of Employment and Economic Development. Nearly all state and federal economic data is reported using the NAICS codes.

How to determine a NAICS code

Employers need to determine their NAICS codes at the establishment level. An "establishment" is often defined as a single location of the employer. This means an employer with many locations may have multiple

NAICS codes. For example, an employer may have one location where its primary business activity is meat processing, a second location involved in raising cattle and a third location where both management and the sales team are based. When submitting a FROI form, the physical location where the injured worker is based should be used when selecting an accurate NAICS code. If an injured worker has no permanent physical location, the employer should use the NAICS code of the location where it posts the OSHA log summary that includes the employee's injury. The establishment's NAICS code is also a field on the OSHA log summary form; thus, the NAICS code for the establishment should be readily available by looking at the establishment's OSHA log summary.

NAICS codes are six-digit numbers based on a hierarchical structure. The first two digits of the structure designate the NAICS sectors that represent general categories of economic activities, such as construction, manufacturing and educational services. The remaining digits further refine the processes involved, grouping establishments into narrower categories, as shown in Table 1 below. The last digit is often "0," except in manufacturing.

Table 1. NAICS coding level example

NAICS level	Code	Name
Sector	23	Construction
Subsector	238	Specialty trade contractors
Industry group	2383	Building finishing contractors
NAICS industry	23832	Painting and wall covering contractors
National industry	238320	Painting and wall covering contractors



Resources

If you are unsure of what NAICS code to use, ask your office's human resources or safety coordinator, or refer to your OSHA log. If you are unsure about your NAICS code, you can determine your code using the resources below or by contacting the Census Bureau at naics@census.gov.

To determine your NAICS code, visit www.bls.gov/iag/tgs/iag_index_naics.htm.

The NAICS manual is available at www.census.gov/eos/www/naics.

Workers' compensation events calendar

November 2018

- Nov. 21 Workers' Compensation Insurers' Task Force
- Nov. 27 Training: Hospital outpatient fee schedule (HOFs), ambulatory surgical center payment system (ASCPS)

December 2018

- Dec. 19 Medical Services Review Board – PTSD Workgroup

January 2019

- Jan. 3 Seminar: OSHA recordkeeping requirements
- Jan. 10 Rehabilitation Review Panel
- Jan. 17 Medical Services Review Board
- Jan. 22 Seminar: OSHA recordkeeping requirements
- Jan. 25 Seminar: OSHA recordkeeping requirements

February 2019

- Feb. 13 Workers' Compensation Advisory Council

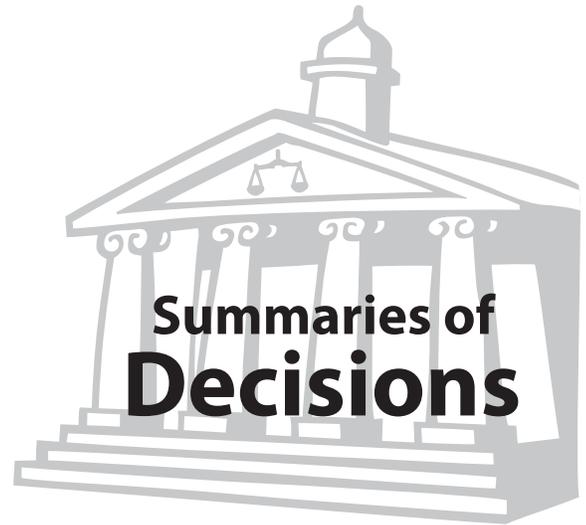
March 2019

- March 20 Workers' Compensation Insurers' Task Force

Workers' Compensation Court of Appeals

July through September 2018

Case summaries published are
those prepared by the WCCA



Ernesto Herradora-Briones v. Building Resources Corp., July 3, 2018

Evidence – Expert Medical Opinion

Where a physician examined the employee and reviewed extensive medical records, that physician's opinion is adequately founded and may be relied upon by the compensation judge.

Practice and Procedure – Record

The compensation judge did not abuse her discretion in closing the record and rejecting the employee's request to conduct further discovery following the hearing.

Affirmed.

Jennifer Krumwiede v. GGNSC Slayton, July 10, 2018

Evidence – Expert Medical Opinion

Where the medical opinion relied upon by the compensation judge was given prior to the actual surgery performed and that surgery differed from the procedure described in the medical opinion, the opinion could not support a conclusion that the surgery was not necessary or reasonable.

Permanent Partial Disability

Where there is no evidence that an employee's decision to go ahead with surgery was unreasonable under the circumstances, denial of an additional permanent partial disability award resulting from fusion surgery that significantly relieved the employee's low back pain and improved the employee's functioning was improper.

Temporary total disability Temporary partial disability

Where there is no disagreement that surgery is necessary to address an employee's low back pain, temporary total disability and temporary partial disability benefits are payable for the period that the employee is off of work for surgery, even where the prior approval for the surgery as performed was denied.

Vacated in part, reversed in part, remanded.

Donald E. Jungwirth v. YRC International, Inc., July 13, 2018

Evidence – Credibility

Assessment of credibility is the unique function of the compensation judge, and this court will not disturb the credibility findings and reasonable inferences made in the findings.

Evidence – Expert Medical Opinion

Where the treating physician had enough facts to form a reasonable opinion, and his opinion was not based upon speculation or conjecture, that opinion is adequately founded and may be relied upon by the compensation judge.

Affirmed.

Debra K. Larson v. Independent School District 465, July 18, 2018

Evidence – Expert Medical Opinion

Where a doctor’s opinion states the facts and data upon which it is based with explanation and support in the record, the court considers that opinion to be well-founded.

Affirmed.

Lorrie J. Froemel v. Douglas Machine, Inc., July 19, 2018

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

Where an award of an intervention interest is potentially controlled by Minnesota Statutes 176.191, subd. 3, through a denial of liability, the compensation judge must ascertain if the intervenor falls within any of the listed categories of insurer to determine if the amount awarded is to be limited by the fee schedule or awarded in its entirety.

Affirmed and remanded.

Clarence Johnson v. Skil-Tech, Inc., July 23, 2018

Vacation of Award

The employee’s allegations fail to establish fraud, mutual mistake of fact or newly discovered evidence and his petition to vacate is denied.

Denied.

Clarence Johnson v. A Touch of Class Painting, Inc., July 23, 2018

Evidence – Res Judicata

Res judicata applies to bar an employee from petitioning to vacate an award based on claims raised in prior litigation.

Denied.

Clarence Johnson v. University of Good Samaritan, July 23, 2018

**Jurisdiction
Statutes Construed – Minnesota Statutes 175A.01, subd. 5**

The authority of this court is limited to the consideration of questions in law and fact arising under the workers' compensation laws of the state. Minnesota Statutes 175A.01, subd. 5.

Vacation of Award

Where the petitioner does not adequately identify the basis for the petition to vacate as required by Minnesota Statutes 176.461, the petition is denied.

Denied.

Joshua F. Flicek v. Lincoln Electric Co., July 24, 2018

Substantial Evidence

Substantial evidence, including medical records, expert medical opinion and lay testimony, support the compensation judge's determination that certain medical expenses relating to the post-traumatic stress disorder were reasonable and necessary and causally related to the employee's work injury.

Affirmed.

Denise Gelhar v. Universal Hospital Services, Aug. 7, 2018

Vacation of Award – Substantial Change in Condition

Where the petitioner had essentially satisfied all of the factors identified in *Fodness v. Standard Café*, 41 W.C.D. 1054 (W.C.C.A. 1989), the absence of a recommended MRI does not render the employee's subsequent multiple fusions to be foreseeable. The employee's petition to vacate is properly granted on the ground that she has experienced a substantial change in medical condition.

Petition to vacate granted.

Anna Marie Aguirre v. St. Croix Hospital, Aug. 14, 2018

Substantial Evidence

Substantial evidence, including medical records and expert medical opinion, supports the compensation judge's determination that the employee's work injuries were temporary and had resolved, and that the employee's claimed medical expenses were not causally related to the employee's work injuries.

Wages – Multiple Employments

Where the employee did not have any income or scheduled assignments from a second employer during a 10-month period around the work injury, the compensation judge did not err by finding that the employee did not regularly work for multiple employers on the date of injury and by excluding any claim for additional earnings from the second employer from the determination of the employee's average weekly wage.

Evidence – Res Judicata Practice and Procedure

The compensation judge properly refused to apply res judicata to any portion of a Findings and Decision issued under Minnesota Statutes 176.106 where the employee appealed that Findings and Decision. As the hearing in that appeal is de novo, there is no force or effect in the underlying order appealed from.

Affirmed.

Guy A. Plung v. Tag Aviation, Aug. 14, 2018

Rules Construed – Minnesota Rules 1420.3700

Substantial evidence in the record supports the compensation judge's conclusion that the stipulation for settlement was not timely filed due to delay of the employer and insurer's attorney, and ordering sanctions against the attorney was not an abuse of discretion.

Affirmed.

Lance W. Schmidt v. Crow Wing and Minnesota Counties Intergovernmental Trust, Aug. 15, 2018

Temporary Total Disability Job Search

While a lack of vocational rehabilitation services is an element considered in evaluating the diligence of a job search, it does not relieve the employee's burden of proving a reasonable and diligent job search. Substantial evidence supports the compensation judge's finding that the employee did not conduct a reasonable and diligent job search.

Temporary Total Disability – Medically Unable to Continue

Recommencement of temporary total disability benefits where an employee is medically unable to work is only allowed under Minnesota Statutes 176.101, subd. 1(e)(2), when the employee is "actively employed" at the time the employee becomes medically unable to work.

Affirmed.

Ellen Forrest v. Children's Health Care, Aug. 16, 2018

Arising Out Of And In The Course Of

Substantial evidence in the record supports the compensation judge's determination that the employee's injury, sustained on stairs located on the employer's premises while she was in the course of her employment, arose out of her employment and is compensable.

Affirmed.

Daniel D. Kopischke v. Food Services of America, Aug. 20, 2018

Mental Injury – Substantial Evidence

Substantial evidence, including medical records, expert medical opinion and lay testimony, support the compensation judge's determination that the employee did not meet the standards of Minnesota Statutes 176.011, subd. 15(d), for demonstrating post-traumatic stress disorder resulting from the employee's work injury.

Affirmed.

Tessa M. Washek v. New Dimensions Home Healthcare, Aug. 24, 2018

Rehabilitation – Rehabilitation Plan

The base cost of an accessible vehicle is compensable as a vocational rehabilitation expense where the vehicle would enable an employee with paralysis to function independently and to seek and engage in employment compatible with the employee's education, employment skills and disability. In this case, substantial evidence supports the compensation judge's findings that an accessible vehicle enabled the employee to seek and engage in employment on a sustained basis and that the cost of the vehicle was reimbursable.

Affirmed.

Gerald A. Grace v. Smith Foundry Co., Aug. 30, 2018

Maximum Medical Improvement – Substantial Evidence

Substantial evidence, including the employee's medical record and determination by a treating physician, supports the compensation judge's finding that the employee had reached maximum medical improvement from his compensable work injury.

Rehabilitation – Eligibility

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

Evidence – Expert Medical Opinion

Where the physician had sufficient facts to form reasonable opinions, and these opinions were not based upon speculation or conjecture, the opinions are adequately founded and may be relied upon by the compensation judge.

Affirmed.

Richard W. Oseland (deceased) by Terrence Oseland, Richard Oseland and Karen Hayhoe v. Crow Wing County, Aug. 30, 2018

Interest

Statutes Construed – Minnesota Statutes 176.1292, subd. 2

Pursuant to Hop v. Northern States Power Co., 56 W.C.D. 73 (W.C.C.A. 1996), there can be no accrual of interest until the obligation to pay is both fixed and ascertainable by the obligor. Where the insurer took an offset from PTD for government retirement benefits between 1987 and 2013 pursuant to a rule then in effect, and where the rule was first invalidated in 2014 by two supreme court decisions, there was no notice to the insurer of a fixed and ascertainable obligation to pay and interest did not accrue. Minnesota Statutes 176.1292, subd. 2(d) (3), controls the obligation to pay the underpayments pursuant to Hartwig and Ekdahl in this case. The statutory due date for payment in this case was 270 days from May 30, 2017. Since the insurer made payment within that date, no interest is owed.

Penalties

Statutes Construed – Minnesota Statutes 176.225, subd. 1

Substantial evidence supports the compensation judge's determination that the employer or insurer did not inexcusably delay reimbursement to the employee's heirs for underpayments due to the employee's heirs, and the denial of penalties is therefore affirmed.

Costs and Disbursement

Statutes Construed – Minnesota Statutes 176.511, subd. 2

Where the workers' compensation attorney for the deceased employee's heirs retained probate counsel to obtain a decree of descent needed to prove who was entitled to receive reimbursement for an underpayment of benefits to the employee, the compensation judge did not err in determining that the costs for obtaining the decree of descent were not taxable under Minnesota Statutes 176.511, subd. 2.

Affirmed in part and reversed in part.

Jimmy J. Loupe, Jr. v. McNeilus Steel, Inc., Sept. 11, 2018

Medical Treatment and Expense – Treatment Parameters

Rules Construed – Minnesota Rules 5221.6100

Where the employee had a good recovery from surgery in 2013, where post-surgical X-rays that year showed a stable replacement, where annual examinations and X-rays each year through 2016 showed no new or altered findings and where there were no new symptoms or knee issues reported in 2017 requiring radiographic

findings for diagnosis or treatment, substantial evidence supported the finding that a further X-ray at the 2017 annual examination was simply a routine, repeat X-ray that was not authorized under the medical treatment parameters.

Affirmed.

Patrick J. Blomme v. Independent School District 413

Permanent Total Disability – Substantial Evidence

Substantial evidence, including expert medical opinion, expert vocational opinion and the employee's testimony, supported the finding that the employee is permanently totally disabled.

Job Search – Substantial Evidence

The compensation judge's conclusion that a job search was futile is substantially supported by the record in this case, where the employee credibly testified regarding his physical limitations, the employee had not been released to work for any significant period, a qualified rehabilitation consultant opined that the employee was not qualified for rehabilitation services and a job survey showed positions available for which the employee lacked both required experience and skills.

Permanent Total Disability – Insubstantial Income

Where the employee's highest net income from rental properties came to no more than \$42.77 a week and he was otherwise unable to work, the compensation judge correctly determined that the employee's earnings were insubstantial and the employee was permanently totally disabled.

Affirmed as modified.

Alapati Noga v. Minnesota Vikings Football Club, Sept. 19, 2018

Causation – Gillette Injury

Substantial evidence, including lay testimony, medical records and expert medical opinion, supports the compensation judge's finding that the employee's work activities while playing for the Vikings, in the form of repeated head injuries, were a substantial contributing factor to the employee's Gillette injury.

Gillette Injury – Date of Injury

The compensation judge did not err as a matter of law in setting the date of culmination of the employee's Gillette injury on the last date worked for the employer.

Notice of Injury – Substantial Evidence

Substantial evidence supports the compensation judge's finding that the employer in 2004 was aware of the contents of Dr. Fruean's report and that the information contained in that report was sufficient to put a reasonable employer on inquiry that the employee might have a workers' compensation injury relating to concussions or head injuries sustained playing football for the employer. We accordingly affirm the judge's finding of adequate notice.

Practice and Procedure – Statute of Limitations

Substantial evidence supported the compensation judge’s determination that the provision of treatment by the Vikings’ training room staff for head traumas and concussions sustained by the employee while playing for the team was a “proceeding” initiated prior to the running of the statute of limitations, and that the statute of limitations does not bar the employee’s claim.

Affirmed.

Bonnie J. Rosar v. Southview Acres Health Care Center, Sept. 21, 2018

Arising Out Of and in the Course Of

Substantial evidence in the record supports the compensation judge’s determination that the employee’s hurrying was not a causative factor in her fall, that her fall was unexplained and that her injury did not arise out of her employment.

Affirmed.

Lori Krull v. Divine House, Inc., Sept. 27, 2018

Arising Out Of and in the Course Of

An employee who was walking in a direct line, using normal gait, and also testified that nothing about the work that she was performing in any way changed her manner of walking has not met her burden of proof to establish that her knee injury arose out of her employment.

Affirmed.

Minnesota
Supreme Court

July through September 2018

Case summaries published are
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Janet Hufnagel v. Deer River Health Care Center, A17-2064, July 18, 2018

1. Where the evidence demonstrated that a dispute exists between two or more employers or insurers as to which employer or insurer is liable in a proceeding regarding an employee's claim for benefits for a work-related injury, it was error for the compensation judge to deny a request for an award for reasonable attorney fees under Minnesota Statutes 176.191, subd. 1 (2016).
2. An award of reasonable fees should adequately compensate the employee's attorney for the representation provided, recognizing the attorney's obligation to be appropriately prepared to address alternative theories.

Affirmed.

Laurie A. Roller Dick v. CentraCare Health System, A17-1816, Aug. 8, 2018

1. An employee's injury arises out of employment when there is a causal connection between the injury and the employment, including when an employee is exposed to a hazard that originates on the premises as part of the working environment.
2. An employee's injury was causally connected to her workplace, and thereby arose out of employment, when the employee, while carrying a plant from her desk and not using the handrails, fell down workplace stairs.

Affirmed.