

Two annual reports updated, online

Collection and Assessment of Fines and Penalties report



FISCAL-YEAR 2014
COLLECTION AND ASSESSMENT
OF FINES AND PENALTIES
IN THE WORKERS' COMPENSATION SYSTEM

Minnesota Statutes § 176.222 directs the commissioner of the Department of Labor and Industry (DLI) to submit an annual report regarding the

assessment and collection of fines and penalties under the workers' compensation law. Some of the results of the current report include the following findings.

Failure-to-insure penalties and the amount collected have declined from fiscal-year 2012. Increased outreach to new business owners has reduced the number of uninsured Minnesota employers, thereby decreasing penalties.

Although there was a marked increase in penalties issued for late filing of the first report of injury in fiscal-year 2014, it is anticipated this will decrease in fiscal-year 2015, as reporters become acclimated to electronic reporting.

Prompt First Action Report on Workers' Compensation Claims



FISCAL-YEAR 2014
PROMPT FIRST ACTION REPORT ON
WORKERS' COMPENSATION CLAIMS
IN THE WORKERS' COMPENSATION SYSTEM

Minnesota Statutes § 176.223 directs the Department of Labor and Industry commissioner to publish an annual report providing data about the

promptness of all insurers and self-insurers in making first payments or denials on a claim for injury.

The department evaluates data submitted on the First Report of Injury and Notice of Insurer's Primary Liability Determination forms to determine whether the first payment of denial of benefits is timely. In fiscal-year 2014, 89.6 percent of the 24,116 lost-time claims had a timely first action. This percentage is the same as fiscal-year 2013, where 89.6 percent of the 23,093 lost-time claims had a timely first action.

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

Access the reports

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

SAVE THE DATES

Work Comp Summit June 17 and 18, 2015 Brainerd, Minnesota

Keeping Minnesota Safe and Healthy

Join us at the DLI 2015 Workers' Compensation Summit – Keeping Minnesota Safe and Healthy – at Cragun's Conference Center in beautiful Brainerd, Minnesota, June 17 and 18.

Current issues affecting the workers' compensation system, plus ways to improve processes and services that affect Minnesota's employers and injured workers, will be addressed and discussed in general sessions and breakout sessions.

Watch www.dli.mn.gov/Summit for registration information and more news about the event.

Exhibitor and sponsor opportunities

We are again excited to offer organizations two ways to showcase their company and support this important event, as an Exhibitor or as a Sponsor. For more about these packages visit www.dli.mn.gov/Summit.

To become an Exhibitor or Sponsor, contact Lisa Wichterman at lisa.wichterman@state.mn.us or (651) 284-5173.

No taxpayer dollars will be used to fund this event.

Kris Eiden, DLI Deputy Commissioner, succumbs to cancer

Kris Eiden, the Department of Labor and Industry's Deputy Commissioner, passed away Dec. 10, 2014. She had served in the position since January 2011. She had also headed up the Workers' Compensation Division since March 2012. In the latter role, Kris was instrumental in winning approval of major changes in the workers' compensation law in 2013: requiring first reports of injury to be electronically submitted; and initiating efforts to establish a DRG system to reimburse hospitals. She was universally respected for her ability to work with a variety of people and for her analytical powers. Prior to joining DLI, she had served as chief deputy attorney general and assistant commissioner of the Department of Commerce.

In announcing her death to the DLI staff, Commissioner Ken Peterson said, "Kris was an exceptional public servant, one of the finest I have known. Our state and the Department of Labor and Industry have lost a leader of great depth and character." She is survived by her husband Mark Skubic and two adult sons, Ben and John.



Rehabilitation Review Panel seeks new members

By Mike Hill, Rehabilitation Policy Specialist

The Rehabilitation Review Panel (RRP) was created in 1981 by Minnesota Statutes § 176.102 to offer vocational rehabilitation rule advice and to make determinations, including sanctions, related to contested cases about rehabilitation provider registration and professional conduct.

Currently, the panel has "regular member" openings for one chiropractor, one labor representative and one licensed or registered health care provider. It has an "alternate member" opening for one labor representative. To apply for a position, complete and submit the application found on the Secretary of State's website at www.sos.mn.gov/index.aspx?page=5.

The panel meets quarterly at the Department of Labor and Industry to resolve issues pertaining to rehabilitation provider registration or professional conduct issues. (The panel may meet more often if needed.) The meeting schedule, agendas and minutes are online at www.dli.mn.gov/Rrp.asp.

The Minnesota Department of Labor and Industry's Workers' Compensation Division provides oversight for all vocational rehabilitation services provided to injured workers covered by the Minnesota workers' compensation statutes.

Training: Orientation session for rehabilitation providers Aug. 19



There will be a 2015 orientation training session Aug. 19. The session is only for qualified rehabilitation consultant (QRC) interns, QRC intern supervisors, newly registered job placement vendors or rehabilitation providers re-entering the field, if absent for two years or more.

The training session is from 7:30 a.m. to 3:30 p.m. at DLI's St. Paul office. The cost is \$75. Complete information about and registration for the training session is at www.dli.mn.gov/WC/TrainingRP.asp.

Reconciliation and final determination of 2013 SCF assessment 'true-up'

By John Kufus, Financial Services

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



Currently, the 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.

Insurer premium surcharge rate

The original insurer premium surcharge rate applied for the purpose of estimating the 2013 Special Compensation Fund assessment was 7.5211 percent. The rate was determined by dividing the insurer portion of the Special Compensation Fund state-fiscal-year 2014 liability (\$61,407,514) by the 2012 designated statistical reporting pure premium reported by all insurers to the Minnesota Workers' Compensation Insurers Association (\$816,468,641).

The revised insurer premium surcharge rate applied for the purpose of determining the 2013 Special Compensation Fund assessment was 7.6546 percent. The rate was determined by dividing the insurer portion of the Special Compensation Fund state-fiscal-year 2014 liability (\$61,407,514) by the 2013 designated statistical reporting pure premium reported by all insurers to the Minnesota Workers' Compensation Insurers Association (\$802,231,556).

	Estimated liabilities	DSR pure premium	Insurer surcharge rate
Insurers estimated rate	\$61,407,514	\$816,468,641	7.5211 percent
Insurers revised rate	\$61,407,514	\$802,231,556	7.6546 percent

As a result of this "true-up," 126 insurers owed an additional \$4,528,765 in assessment to the Special Compensation Fund and 52 insurers were refunded \$4,528,765 in overpaid assessment.

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

Chris Leifeld to lead Workers' Compensation Division as assistant commissioner

Chris Leifeld has been named as the new assistant commissioner of the Department of Labor and Industry's (DLI's) Workers' Compensation Division. Prior to his new appointment, Leifeld was director of DLI's Alternative Dispute Resolution (ADR) unit.

Leifeld joined DLI in April 2011, serving as the director of the Vocational Rehabilitation unit for six months, before taking on the position of ADR director. Prior to coming to DLI, he was executive director of the Minnesota Catholic Conference for nine years. Leifeld has a master's degree in education from the University of Minnesota.



Ask the ADR pro

DLI's Alternative Dispute Resolution unit answers frequently asked questions

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. I represent employers and insurers and I was contacted by a mediator from the Department of Labor and Industry (DLI) asking if my client would be interested in mediation of a small claim with an unrepresented employee. Can DLI take initiative to settle claims? How does a mediator avoid potential conflicts when the employee relies on DLI for guidance about their claim while also mediating the claim?

A. The Department of Labor and Industry receives requests daily from employees, employers, insurers, qualified rehabilitation consultants (QRCs) and providers seeking information about Minnesota's workers' compensation laws. Parties may seek the advice of an attorney; however, not every dispute will offer sufficient attorney's fees to interest private counsel.

DLI is required in Minnesota Statutes § 176.261 to make efforts to settle problems of employees and employers by contacting third parties, including attorneys, insurers and health care providers, on behalf of employers and employees and using the department's persuasion to settle issues quickly and cooperatively. The obligation to try to settle problems exists whether or not a formal claim has been filed with the department.

Mediators do not represent either the employee or the employer and insurer in disputes, but they do use the department's persuasion to settle issues quickly and cooperatively. Explaining the benefits payable under the workers' compensation system is part of the job, but mediators always make it clear they cannot offer legal advice or represent any party in a workers' compensation dispute. If there is a real or perceived conflict of interest for the mediator initiating the contact with the insurer or employee, DLI can provide another mediator agreeable to both parties.



Q. Do I have to pay tax on my workers' compensation benefits?

A. Neither the IRS nor the Minnesota Department of Revenue consider workers' compensation benefits to be taxable income. Some employers pay full wages for time lost due to a work injury. The employer must determine the portion that is temporary total disability compensation and assure proper income tax treatment for such payments. See Minnesota Statutes § 176.221, subd. 9, for complete information.

CompFact: Settlements and permanent partial disability levels

By Brian Zaidman, Research and Statistics

Injury severity and the need for engaging the dispute-resolution process are two influences on the cost and duration of workers' compensation benefits. Permanent partial disability (PPD) benefits can be used as a measure of injury severity. The payment of a stipulated settlement can be used as an indicator of involvement with the dispute-resolution process. The dispute-resolution process is an indicator of disagreement between the parties that can affect the payment of benefits and return-to-work options for the injured worker.

The influence of PPD levels and settlement activity on vocational rehabilitation outcomes was also explored in the CompFact published in the May 2014 edition of *COMPACT*, where figures showed that plan duration increased with PPD levels and for settlements above \$10,000 and that return-to-work outcomes and wage recovery were also affected. This article shows the combined effects of injury severity and dispute-resolution involvement on the trend and levels of the duration of vocational rehabilitation services.

Figure 1 shows the trend from 2003 through 2013 in the mean duration of vocational rehabilitation services by year of vocational rehabilitation plan closure for claims without payment of stipulated settlements. Only claims with closures within five years of the injury date are included. Figure 2 shows the trends for claims that received stipulated settlements.

As shown in Figure 1, the mean duration of vocational rehabilitation services remained relatively flat for claims without settlements or PPD benefits and increased at an accelerating rate as the percentage of PPD increased. Figure 2 shows a similar set of trends, but the vocational rehabilitation costs start at a much higher level and the costs are increasing as a more rapid rate. These figures show:

- the average duration of vocational rehabilitation services is much longer for claims with settlements than for claims without settlements (9.1 months and 15.9 months, respectively);
- the duration of services increases as the PPD percentage increases; and
- the growth in duration is greater among claims with higher levels of PPD (with the exception of the claims with settlements and PPD levels above 15 percent).

Figure 1. Mean duration of vocational rehabilitation services among claims without stipulated settlement payments by percentage of permanent partial disability

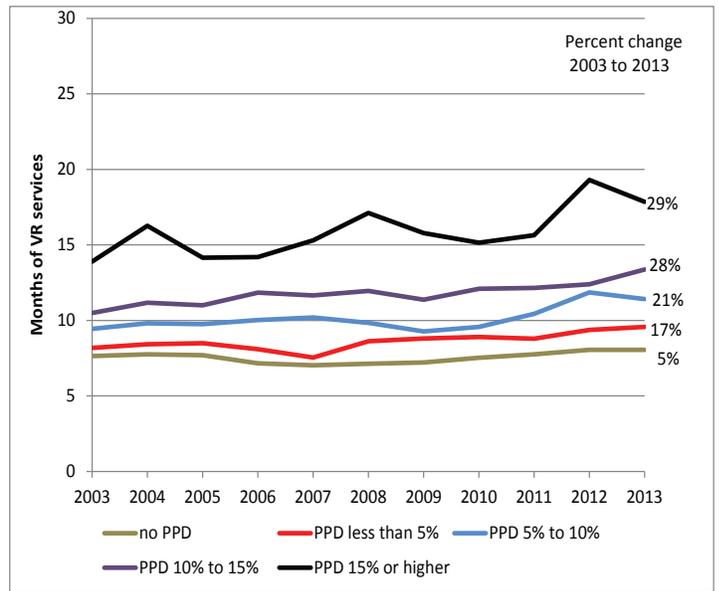
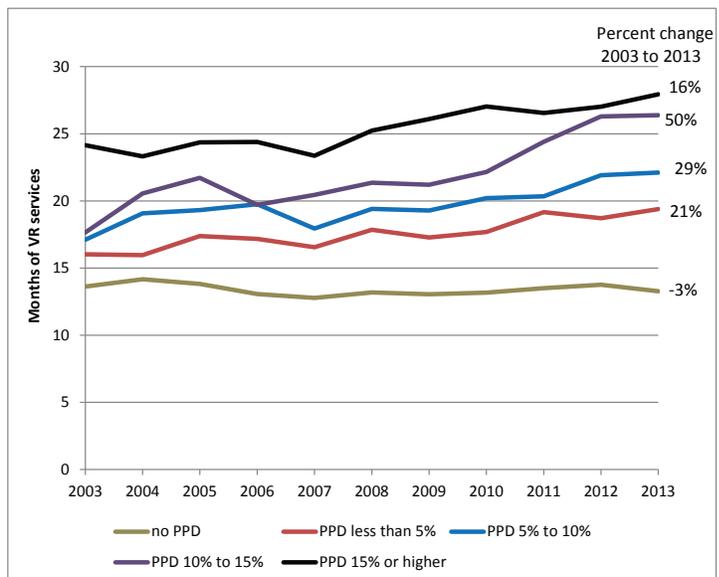


Figure 2. Mean duration of vocational rehabilitation services among claims with stipulated settlement payments by percentage of permanent partial disability



Avoid headaches, fines: file NOID forms in a timely manner

The question of when to file a Notice of Intention to Discontinue Workers' Compensation Benefits (NOID) form seems like a pretty straightforward question and easy answer. Minnesota Statutes § 176.238, subd. 2, states: "... if the reason for discontinuance is that the employee has returned to work, temporary total compensation may be discontinued effective the day the employee returned to work. *Written notice shall be served on the employee and filed with the division within 14 days of the date the insurer or self-insurer has notice that the employee has returned to work*" [emphasis added].

One of the functions of the Department of Labor and Industry's (DLI's) Compliance, Records and Training unit is to make sure forms are filed with the Workers' Compensation Division when they are required.

From July through September 2014, a monthly average of 1,945 NOID forms that indicated a return to work were filed with the division. Of these:

- 64 percent were received within 14 days after the return-to-work date;
- 11 percent were received between 31 and 90 days;
- five percent were received between 90 and 180 days; and
- five percent were received beyond 180 days after the return-to-work date.

Changing from percent to number of claims, there was a monthly average of 442 files where DLI received the NOID form later than 30 days after the return-to-work date.

These numbers reflect NOID forms that were received by DLI. For cases where DLI had to write to the insurer for the missing form, the numbers are significantly worse.

From Aug. 26 through Nov. 25, 2014, the Department of Labor and Industry sent 276 requests asking for either a Disability Status Report form or NOID form. One hundred NOID forms were received in response to the requests; 94 of these were received more than 30 days after the benefits ended.

In May 2014, DLI sent requests for either an Interim Status Report form or NOID form for 169 files. DLI received 75 NOID forms (44 percent) in response; the average number of days late for receipt of these NOID forms was 447 days. Only four forms were received less than 100 days after the return-to-work date. Based on



**PAYMENT
DUE**

the "date served on the employee" information on the NOID form, the vast majority of them appear to have been created after DLI's request for information. Very few copies of NOID forms were submitted with a date of service that predated DLI's request. This raises the question about whether the employees were really served NOID forms at the time of the discontinuance.

Besides – obviously – compliance with the law, what's in timely filing for everyone?

- The injured worker will receive a timely NOID form that then gives the worker a chance to review the benefit payments and ask the insurer any related questions.
- The Compliance, Records and Training unit gets the opportunity to review the NOID forms and ask for corrections or additional clarification before many months have passed.
- The insurer can avoid two huge potential liability issues:
 - 1) in Minnesota Rules 5220.2630, subp. 4C, liability of the insurer to make compensation payments continues at least until the notice of intention to discontinue benefits is received by the division and served on the employee and the employee's attorney, except that benefits may be discontinued on the date the employee returned to work and temporary partial benefits may be discontinued as of the date the employee ceased employment; and
 - 2) penalties may be assessed for failing to file a required report in manner or within time limits provided. The penalties range from \$125 if more than 30 days after the date due, \$375 if more than 90 days after the due date and \$500 if more than 180 days after the date due (see Minnesota Rules 5220.2830). Additionally, the files may still be in the insurer's possession, which will make it easier to respond to DLI inquiries.



Mileage rate shifts up a cent-and-a-half

A new, higher mileage rate became effective in Minnesota on Jan. 1. The rate changed from 56 cents a mile to 57.5 cents a mile.

Professional conduct complaints about rehabilitation providers

By Mike Hill, Rehabilitation Policy Specialist

Rehabilitation is intended to restore an injured employee to a job related to their former employment or to a job in another work area that produces an economic status as close as possible to that which they would have enjoyed without disability. The Department of Labor and Industry (DLI) has established rules governing the delivery of services within the workers' compensation system. When all parties are working toward the same rehabilitation plan goals, injured employees move through the workers' compensation system in a quicker and more cost-effective manner.

If, during the process, a party believes a rehabilitation provider is not following the statutes or rules, they can file a written complaint with the department. Upon receipt and review of the information provided, DLI may perform an investigation to determine if disciplinary action is warranted. Table 1, below, details closed complaint files and where the complaints originated.

Table 1. Source of complaints

Year	ER/IR	EE	Attorney	Rehabilitation	DLI	Other	Total
2008	14	8	3	4	30	1	60
2009	7	4	5	1	16	0	36
2010	8	0	4	2	2	0	16
2011	0	2	1	79	3	0	85
2012	5	3	3	18	27	0	56
2013	2	0	5	6	1	0	14
2014	1	2	0	3	24*	1	31

*Twenty-one of 24 complaints: non-attendance at September 2014 mandatory training.

Complaint outcomes

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

- **Unsubstantiated** – If the department lacks jurisdiction, the complainant fails to provide necessary information or the allegations are not supported by the information obtained, the complaint may be dismissed.
- **Letter of instruction** – If the investigation reveals the subject did not act optimally a letter of instruction is sent to the provider. While the letter is not considered to be formal discipline, the information is retained by the department in case subsequent inquiries into a provider's conduct are undertaken.

- **Discipline/stipulation** – If the result of an investigation supports the allegation, then formal disciplinary action may be warranted. Discipline, in the form of a stipulated agreement, involves corrective action and a fine. The severity of the disciplinary action may be increased if the subject has a history of similar violations, if the violation has caused harm or if the subject has demonstrated a pattern of noncompliance with workers' compensation statutes and rules.
- **Inactive rehabilitation provider** – If the rehabilitation provider made their registration inactive during the investigation, before the rehabilitation provider is re-registered, the complaint must be resolved.

Table 2. Professional conduct and accountability outcomes

Year	No juris.	Unsub.	Ltr. of Ins.	Stip/fine	No appeal	Inactive	Total
2008	0	24	16	21	0	0	61
2009	3	11	15*	8*	0	0	36
2010	1	4	5	6	0	0	16
2011	0	6	3*	2	0	0	10
2012	0	13	23*	4	3	6	47
2013	0	5	19	3	0	1	28
2014	1	45	40	7	0	6	99

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

2014 rehabilitation violations of Minnesota Rules, Minnesota Statutes

Lack of knowledge about workers' compensation laws and rules..... 5220.1803, subp. 2

Only one registered rehabilitation provider may work with an injured worker at a time 5220.1801, subp. 2

Failure to obtain a written medical release prior to contacting the treating physician..... 5220.1802, subp. 5

A rehabilitation provider shall maintain security of all information obtained and monitor any person working at their direction with access to that information 5220.1802, subp. 5 and 5220.1801, subp. 9E

Failure to file a rehabilitation consultation narrative report, explaining the basis for the qualified rehabilitation consultant's (QRC's) determination, with the Rehabilitation Consultation Report form.....5220.0130, subp. 3C (4)

Failure to file an initial evaluation report with the R-2 Rehabilitation Plan form and/or a report that covers the eight required points..... 5220.1803, subp. 5

Failure to list employee's name, worker identification (WID) number or Social Security number and date of injury on all required reports and progress records..... 5520.1802, subp. 1

Failure to provide copies of all required reports and progress records, including email messages, to all parties..... 5220.1802, subp. 3,
.....5220.0100, subp. 30 and
..... 5220.0100, subp. 31

Failure of QRC/vendor to attend DLI's mandatory September 2014 update either in-person or via video stream session 5220.1500, subp. 3a

Failure to maintain separate roles and functions; a rehabilitation provider cannot act as a claims agent..... 5220.1801, subp. 8 A

Rehabilitation provider identified self as a QRC while acting as disability case manager..... 5220.1805 B

After Oct. 1, 2013, the registered rehabilitation provider conducted a rehabilitation consultation for the injured worker after having worked as the disability case manager 176.102, subd. 10(b)

Statutes and rules are available on the Office of the Revisor of Statutes website at www.revisor.mn.gov.

Conclusion

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

Rehabilitation providers are encouraged to visit www.dli.mn.gov/WC/RehabProv.asp for information to enhance their work. Stakeholders may also contact DLI staff members at 1-800-342-5354 with any questions or concerns.

Department of Labor and Industry experts available for speaking engagements

Department of Labor and Industry (DLI) staff members regularly speak to community, industry and school groups about issues that affect employees, employers and other DLI stakeholders.

As part of its outreach efforts to stakeholders, DLI's speakers bureau can provide interested parties with a knowledgeable speaker in an array of topics. Visit www.dli.mn.gov/Speakers.asp for more details.



Basic Adjuster Training 2015

March 26 and 27 • May 6 and 7 • Sept. 24 and 25
8:30 a.m. to 4 p.m.

**Recommended for claim adjusters who have less than one
year of experience in Minnesota workers' compensation**

Session topics

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

CEU credits

This educational offering is recognized by the Minnesota commissioner of commerce as satisfying 10.5 hours of credit toward continuing insurance education requirements.

Location

Minnesota Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN 55155

Cost

\$150 for each two-day session (includes lunch)

Early registration is encouraged. The sessions are limited to 30 people and the class will be filled on a first-come, first-served basis. The Department of Labor and Industry reserves the right to cancel a session if there are not enough participants registered.

Take the pre-test

Do you administer Minnesota workers' compensation claims? Not sure if you need training? Take the pre-test at www.dli.mn.gov/WC/PDF/quiz.pdf and see how you do.

If you need special accommodations to enable you to participate or have questions about this training, call Lisa Smith at (651) 284-5273 or toll-free at 1-800-342-5354.



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

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

- ***Apprenticeship Works*** is the newsletter from DLI's Apprenticeship unit. Its purpose is to inform the public of the goals, plans and progress of the Apprenticeship unit. Learn more or subscribe online at www.dli.mn.gov/Appr/Works.asp.
- ***CCLD Review*** is the newsletter from DLI's Construction Codes and Licensing Division. Its purpose is to promote safe, healthy work and living environments in Minnesota and to inform construction and code professionals about the purpose, plans and progress of the division. Learn more or subscribe online at www.dli.mn.gov/CCLD/Review.asp.
- ***Safety Lines***, from Minnesota OSHA, promotes occupational safety and health, and informs readers of the purpose, plans and progress of Minnesota OSHA. Learn more or subscribe online at www.dli.mn.gov/OSHA/SafetyLines.asp.



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

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

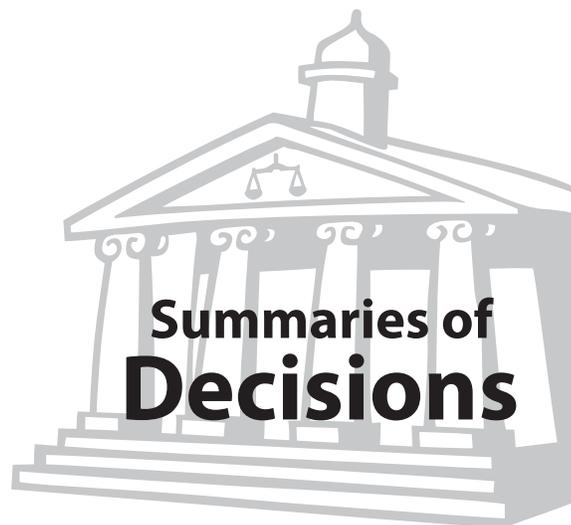
The rulemaking lists are required to be maintained for people who have registered with the agency to receive notices of agency rule proceedings via email or U.S. mail. The rulemaking lists topic areas are: apprenticeship; boats/boats-for-hire; electrical; fire code; high-pressure piping; independent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

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

Workers' Compensation Court of Appeals

October through December 2014

Case summaries published are
those prepared by the WCCA



Hagos vs. LSG Sky Chefs, Inc., Oct. 7, 2014

Causation – Temporary Injury
Practice and Procedure – Matters at Issue

Where there was no contention that the employee's admitted work injury was merely temporary and that the parties agreed the employee had a 5 percent impairment attributable to the injury, and the judge used language indicating the injury had "resolved," the judge's decision is modified to clarify that the employee's work-related knee injury had *not* fully resolved without residual disability.

Affirmed as modified.

Petermeier vs. Centimark Corp., Oct. 14, 2014

Rehabilitation Plan

Where the compensation judge did not make specific findings with respect to the sole issue in the case, that is, whether the employee was entitled to revision of his rehabilitation plan to include job placement assistance and job search for employment in Minnesota on the basis that his post-injury job as a flooring installer with Questmark prevented him from maintaining established, regular weekend visitation with his son, the findings and order is vacated and the matter is remanded for reconsideration.

Vacated and remanded.

Ouellette vs. Wal-Mart Stores, Inc., Oct. 21, 2014

Permanent Partial Disability

An employer may petition to discontinue permanent partial disability benefits subsequent to voluntarily initiating weekly payment of those benefits.

Affirmed.

Anwiler vs. Luoma Egg Ranch, Inc., Oct. 21, 2014

Permanent Partial Disability – Neck
Permanent Partial Disability Back

Substantial evidence supports the compensation judge's award of permanent partial disability ratings related to injuries sustained to the neck and low back.

Causation – Gillette Injury

Substantial evidence supports the compensation judge's determination that the employee sustained a Gillette injury involving her left hand, as claimed, in addition to the admitted carpal tunnel syndrome.

Practice and Procedure – Matters at Issue

The compensation judge properly limited the scope of the hearing to the issues raised at hearing when she concluded that issues raised in written closing arguments were untimely and did not provide opposing counsel notice and an opportunity to be heard on those issues.

Affirmed.

Carroll vs. Allina Mercy Hospital, Oct. 31, 2014

Penalties – Substantial Evidence

Substantial evidence supports the compensation judge's denial of penalties where the credibility questions raised established that the employer's defenses were, at least, colorable defenses to the employee's claims.

Affirmed.

Mach vs. Wells Concrete Products, Co., Nov. 4, 2014

Evidence – Res Judicata

Where there had been no finding that the employee's work injury had resolved, a prior denial of the employee's claim for medical expenses related to implantation of a neurostimulator did not bar his subsequent claim for removal and replacement of that neurostimulator where that treatment was rendered after the prior hearing.

Reversed.

Michal-Allen vs. St. Luke's Hospital and Regional Trauma Center, Nov. 5, 2014

Causation – Gillette Injury

Substantial evidence in the form of medical records and expert medical opinion supported the compensation judge's finding that the employee's disc herniation at home on March 19, 2012, was a non-work acute injury rather than the culmination of a Gillette injury process.

Affirmed.

Bennetts vs. Allina Health System, Nov. 10, 2014

Medical Treatment and Expense – Treatment Parameters

Substantial evidence supports the finding that the certain procedures performed in 2012 were not given in conjunction with active treatment modalities directed to the employee's neck and/or low back, as required by Minnesota Rules 5221.6200, subps. 5A and B, and Minnesota Rules 5221.6205, subps. 5A and B.

Medical Treatment and Expense – Substantial Evidence

Substantial evidence supports the compensation judge's denial of the employee's claim for medical expenses related to medial branch block and radio frequency neurotomy treatments.

Affirmed.

Chelmo vs. Grinnell Mut. Group, Nov. 14, 2014

Practice and Procedure – Matters at Issue

Where the compensation judge seemingly based his decision denying discontinuance of temporary partial disability benefits at least in part on his conclusions as to liability for the employee's low back condition, which was not at issue or to be determined at this hearing, and the judge also failed to decide issues related to the employee's post-injury earnings, even though the employer and insurer had expressly submitted those issues to the judge for consideration, remand for reconsideration and further findings was necessary.

Affirmed in part, reversed in part and remanded.

Johnson vs. Mainline Transp., Inc., Nov. 18, 2014

Evidence – Exclusion

The employee failed to demonstrate prejudice or an error warranting reversal based on counsel's assertions on appeal, in the absence of an offer of proof or other record at the hearing, with respect to the exclusion of the testimony of a proposed witness for the employee.

Causation – Substantial Evidence

Substantial evidence, including the credible testimony of the employer's human resources/safety assistant, CD copies of videos dated Nov. 14, 2012, and Sept. 23, 2013, contemporaneous medical records and the adequately founded opinion of the independent medical examiner, support the compensation judge's determination that the employee did not sustain a work-related injury on Nov. 14, 2012, and failed to establish that he sustained a work-related injury or aggravation or acceleration of a pre-existing condition on Sept. 23, 2013.

Affirmed.

Willy vs. Northwest Airlines Corp., Dec. 3, 2014

Medical Treatment and Expense – Travel Expenses

Substantial evidence supports the compensation judge's finding that the employee failed to establish that the employee's total claim for medical mileage from her residence in Wisconsin to her providers in Minnesota, as submitted, was reasonable.

Jurisdiction – Constitutional Issues

This court does not have jurisdiction to determine whether denial of a portion of an employee's claimed medical travel expenses from Wisconsin to Minnesota is an infringement of a constitutional right to travel.

Affirmed in part and remanded.

Niemi, Jr. vs. MA Mortenson, Dec. 4, 2014

Evidence – Expert Medical Opinion

The medical and vocational opinions of the independent medical expert, relied upon by the compensation judge, are supported by adequate foundation and evidence in the record.

Causation – Substantial Evidence

Substantial evidence supports the compensation judge's decision to credit the opinions of the independent medical examiner over those of the employee's treating physician based on the compensation judge's findings that the treating physician's opinions were based on the employee's subjective statements rather than objective findings and that the employee did not testify credibly.

Permanent Partial Disability Benefits – Reflex Sympathetic Dystrophy
Substantial Evidence

Although the compensation judge may have misapplied the legal standard for establishing reflex sympathetic dystrophy (RSD), substantial evidence supports the compensation judge's ultimate determination that the employee failed to establish that the left lower extremity RSD had migrated to other extremities or portions of his body where the resultant denial of RSD claims related to those other extremities or portions of the body.

Affirmed.

Berg vs. Maplewood Care Center, Dec. 5, 2014

Vacation of Award – Referral for Hearing

Because underlying issues of causation remain unresolved, this court will not consider whether there has been a substantial change in medical condition until there has been an evidentiary hearing at the Office of Administrative Hearings and a determination regarding the causal relationship between the employee's work injury and her current condition.

Referred to the Office of Administrative Hearings for evidentiary hearing.

Larson vs. RR Donnelley, Dec. 8, 2014

Penalties – Minnesota Statutes § 176.225, subd. 1

Where the employee was awarded a penalty of 7 percent for a one-day delay in payment to him pursuant to an award and the employee's attorney was awarded 28 percent for the delay in payment of attorney fees, substantial evidence supports the compensation judge's denial of claim for penalties of 30 percent.

Penalties – Minnesota Statutes § 176.225, subd. 5

The evidence does not provide a basis for determining that the compensation judge abused his discretion in failing to award a penalty of 25 percent against the employer and insurer for inexcusable delay.

Penalties – Frivolous Defense

Where the compensation judge found the employer and insurer had valid defenses to the penalties assessed by DLI, subsequent payment by the employer and insurer did not establish that the initial objection to the assessment constituted a frivolous defense.

Attorney Fees

The compensation judge's denial of attorney fees from penalties paid by the employer and insurer is supported by substantial evidence.

Affirmed.

Aegerter vs. Fairway Foods, Inc., Dec. 12, 2014

Causation – Substantial Evidence

Substantial evidence, including adequately founded medical opinion, supports the compensation judge's finding that the employee did not sustain Gillette injuries to his low back and neck while working at UPS.

Intervenors

Practice and Procedure – Intervention

The compensation judge did not abuse his discretion by awarding reimbursement to intervenors and medical providers who did not appear at the hearing below.

Affirmed.

Settlements

This court lacks authority to approve stipulations for settlement. Where the compensation judge denied approval of a stipulation based on a lack of proof that potential intervenors had been given notice of their right to intervene, as specified by statute and rule, and the record, such as it is, supports the judge's conclusion in that regard as of the date of the judge's order, the employee's remedy is to resubmit the stipulation, with the requisite notices, and to ask the compensation judge to reconsider.

Affirmed.

Causation – Substantial Evidence

Substantial evidence, including adequately founded expert medical opinion, supports the compensation judge's finding that the employee's 2013 work injury is a substantial contributing cause of the employee's current low back and right leg symptoms and her need for surgery.

Reasonable and Necessary – Substantial Evidence

Substantial evidence supports the compensation judge's finding that the proposed fusion surgery is reasonable and necessary where the compensation judge could reasonably infer that a successful fusion was possible for a patient who smokes or could have credited the employee's testimony of her intent to quit smoking.

Affirmed

Minnesota Supreme Court

October through December 2014

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David vs. Bartel Enterprises (Nitro Green), A13-2141 – Nov. 26, 2014

Decision of the Workers' Compensation Court of Appeals filed Nov. 26, 2014. As a matter of comity, we recognize the Legislature's formulation of attorney fees for workers' compensation cases under Minnesota Statutes § 176.081, subd. 1(a) (2012), as presumptively reasonable, and will not, absent exceptional circumstances, review whether the fee calculated using the statutory formula is excessive.

Affirmed.