COMPACT

for workers' compensation professionals

February 2011

Minnesota Department of Labor and Industry

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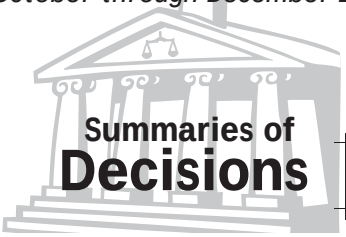

D-1

Ken Peterson appointed as new DLI commissioner

Governor Mark Dayton has appointed **Ken Peterson**, pictured at right, as the commissioner of the Department of Labor and Industry, a position Peterson also had from 1988 to 1990.

Ken Peterson

"I have known, worked with and respected Ken Peterson for almost 30 years," Dayton said. "He is one of the most dedicated and effective public servants I have ever known. He brings exceptional experience and expertise back to the agency he has led before."

"It is a thrill to be back serving the people of Minnesota," said Peterson. "I look forward to aiding Governor Dayton in his commitment to protecting the hard-working men and women of Minnesota in the workplace, and ensuring Minnesota stays the great place to work that it is."

Peterson has served the people of Minnesota in multiple capacities for several decades. He was the executive director of the Minnesota Public Interest Research Group (MPIRG), deputy commissioner of the Minnesota Department of Public Service and the Department of Labor and Industry, commissioner of the Department of Labor and Industry, deputy mayor and mayor's chief of staff of the city of St. Paul, and director of the St. Paul Department of Planning and Economic Development. His most recent public service was in the Minnesota Attorney General's office, where he was deputy attorney general for Government Operations.

Kris Eiden

Gary Hall

Kris Eiden named deputy commissioner; Gary Hall returns as assistant commissioner

Kris Eiden is the Department of Labor and Industry's new deputy commissioner. She is an attorney who has worked in both the private and public sectors.

Eiden served as chief deputy attorney general in the Minnesota Attorney General's Office from 2003 to 2007, and deputy attorney general for four years prior to that. She was an attorney in private practice from 1991 to 1998, primarily representing regulated businesses. Most recently, Eiden taught paralegal students at a local business college.

Gary Hall is the new assistant commissioner for the department's Safety and Workers' Compensation Division. He was also the agency's assistant commissioner for workers' compensation in 2001.

Prior to that, Hall served as a workers' compensation judge at the Department of Labor and Industry and at the Office of Administrative Hearings since 1991. He also worked at DLI from 1984 to 1991, as an attorney and workers' compensation specialist.

2010 updates to annual reports released

***Collection and Assessment of Fines and Penalties* report**

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.

- The department has continued to improve and increase its efforts to find employers that have never obtained or fail to maintain required workers' compensation coverage. There was a 31 percent increase in the number of penalties issued from fiscal-year 2009 to fiscal-year 2010, and a 32 percent increase in the amount of penalties collected.
- The number of penalties assessed due to the late filing of special fund assessment reports continues to decrease, in part because of the institution of an online filing system versus reliance on paper correspondence.

Prompt First Action Report on Workers' Compensation Claims

Minnesota Statutes §176.223 directs the DLI 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 or denial of benefits is timely. In fiscal-year 2010, 90.3 percent of the 22,512 lost-time claims had a timely first action. This is an increase from fiscal-year 2009, where 89.3 percent of the 23,958 lost-time claims had a timely first action.

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

Updated brochure available:

Work comp claim characteristics

The Department of Labor and Industry's (DLI's) Policy Development, Research and Statistics unit has updated its annual Minnesota workers' compensation claims characteristics brochure.

The brochure provides statistics at a glance about injury, illness and fatality claims for 2009, such as the number of claims, nature of injury or disease, occupation of injured workers and other injured worker characteristics. The brochure also provides resources for further workers' compensation statistical information.

The brochure is available on the DLI website at www.dli.mn.gov/RS/ClaimCharac.asp. For more information, contact DLI's Policy Development, Research and Statistics unit by e-mail at dli.research@state.mn.us or by telephone at (651) 284-5025.

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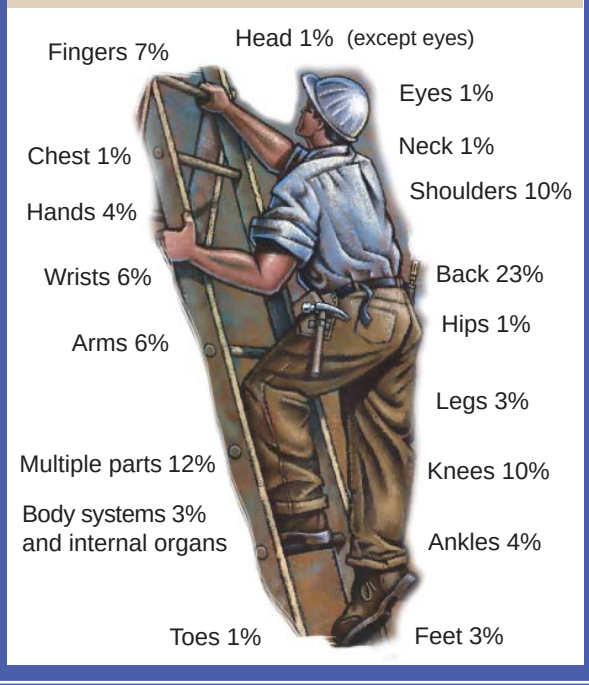


DISPUTE ISSUE TRACKING STUDY

Third report focuses on claim petition disputes

By David Berry, Policy Development, Research and Statistics

The Department of Labor and Industry (DLI) recently released *Dispute Issue Tracking Report 3*. This report, the third from the department's dispute issue tracking study, deals with claim petition disputes. This article summarizes that report; the full report is available on the department's website at www.dli.mn.gov/RS/WcDispTrack.asp.[1]

Although the DLI workers' compensation database contains a large amount of information to assist in the dispute-resolution process, it does not provide all of the data needed to monitor the performance of that process. In consideration of this, DLI began an issue-tracking project in the fall of 2006. The project has tracked individual dispute issues through the dispute-resolution system, using a database and coding structure separate from the main DLI database. The coded data comes primarily from imaged documents in the DLI database, but also from an electronic log of dispute-resolution activities. The project has tracked medical and rehabilitation disputes filed in 2003 and in 2007, and claim petition disputes filed in 2003.

The third report from the project deals with claim petition disputes filed in 2003.[2] Claim petition disputes differ from medical request and rehabilitation request disputes in that their resolution process generally occurs entirely at the Office of Administrative Hearings (OAH), unless the parties pursue mediation at DLI, or OAH refers the dispute back to DLI as provided in rule.[3] The recent report analyzes the paths taken by the issues in the 2003 claim petition disputes through the resolution process at the Office of Administrative Hearings (OAH). It also analyzes the time the issues take to travel these different paths.

Following are some of the main findings for the 2003 claim petition disputes.

Dispute characteristics

- About 81 percent of the disputes involved sprains, strains, tears and pain. This compares with 60 percent of all workers' compensation paid indemnity claims for the period concerned. This difference is to be expected because this type of injury is often more difficult to verify than more objective injuries such as fractures.

[1]The report is also available by calling (651) 284-5025, 1-800-342-5354 or TTY (651) 297-4198. Alternative formats, such as Braille, large print or audio, can also be made available.

[2]The first two reports deal with medical and rehabilitation disputes respectively; they are available on the department's website at www.dli.mn.gov/RS/WcDispTrack.asp.

[3]For 2003 disputes, Minnesota Rules, part 5220.2620, subp. 2 provided that a claim petition containing only medical issues could be treated in the same manner as a medical request if the insurer was not denying primary liability. Currently, Minnesota Rules, part 1415.3700, subp. 10 provides that a claim petition containing only medical or rehabilitation issues shall be dealt with by DLI unless DLI refers the dispute to OAH.

- About 91 percent of these claim petition disputes had an indemnity benefit at issue, most often temporary total disability (TTD) benefits. About 68 percent had a medical service at issue and 41 percent had a vocational rehabilitation (VR) service at issue (usually eligibility for consultation).

- About 83 percent of the disputes had primary liability or causation (or both) at issue.

Major dispute-resolution paths

- About 69 percent of the disputes were initially scheduled for settlement conference; of these, 40 percent were then certified for hearing.[4]

- About seven percent of the disputes were initially certified for hearing, while another 15 percent were initially scheduled for hearing without certification.

- The remaining 10 percent of disputes were neither certified for hearing nor scheduled for a proceeding; most of these disputes were resolved via an award on stipulation or other agreement.

- In all, 52 percent of the disputes had a hearing scheduled at some point.

- Findings-and-orders were issued in 10 percent of the disputes; awards on stipulation occurred in another 75 percent; of the remaining 15 percent of the disputes, about half were resolved by agreement of the parties, and most of the others were dismissed or withdrawn.

Effects of dispute characteristics on resolution paths and outcomes

- An analysis of factors affecting dispute resolution paths found the following.
  - Disputes with more issues are more likely to have a hearing scheduled.
  - The likelihood of a dispute being scheduled for hearing without certification (the shortest path to hearing) was substantially higher if the dispute had a surgery-not-yet-provided issue or there was an affidavit of significant financial hardship. Both findings are expected in view of the OAH practice of scheduling expedited hearings in these situations.[5]
  - The presence of a permanent total disability issue or of payor or provider intervenors substantially raised the likelihood that the dispute would follow the path of being certified for hearing after settlement conference (the longest path to hearing).

Timelines

- For disputes initially scheduled for settlement conference, the time from the claim petition to the first scheduled conference date was 212 days (7.0 months) at the median and 236 days (7.8 months) at the 90th percentile.

[4]In this article, "certified for hearing" means the issuance of a notice by OAH that the dispute has been assigned to an OAH judge to be scheduled for hearing. This is entirely separate from the dispute certification process at DLI under Minnesota Statutes § 176.081, subd. 1(c).

[5]Minnesota Rules, part 1420.2150, subp. 1, effective 2005, provides for expedited hearings on not-yet-provided surgery issues. Minnesota Statutes § 176.341, subd. 6 provides for expedited hearings in cases of financial hardship.

- For disputes initially scheduled for hearing without certification (the shortest path to hearing), the time from claim petition to first scheduled hearing date was 169 days (5.6 months) at the median and 339 days (11.1 months) at the 90th percentile.

- For disputes scheduled for hearing after settlement conference and certification for hearing (the most common and the longest path to hearing), the time to first scheduled hearing date was 409 days (13.4 months) at the median and 690 days (22.7 months) at the 90th percentile.

- The time to a findings-and-order for all paths combined was 452 days (14.9 months) at the median and 586 days (19.3 months) at the 75th percentile.[6] Where the hearing was scheduled after certification following a settlement conference, the median time was 563 days (18.5 months).

- The time to an award on stipulation for all paths combined was 339 days (11.1 months) at the median and 685 days (22.5 months) at the 90th percentile. Among cases where a hearing and/or settlement conference had been scheduled, the median time ranged from 267 days (8.8 months) where a hearing was initially scheduled without certification to 553 days (18.2 months) where a hearing was scheduled after certification following a settlement conference.

Re-sets of proceeding dates

- Re-sets of proceeding dates occurred for 32 percent of settlement conferences and 26 percent of hearings.

- Where re-sets occurred, the median time between subsequent scheduled proceeding dates was 76 days for both settlement conferences and hearings.

- Where there were multiple re-sets, the total time taken by re-sets was, for settlement conferences, 86 days at the median and 299 days at the 90th percentile, and for hearings, 98 days and 204 days, respectively.

Association between timing of scheduled proceedings and agreements

- A statistical analysis was performed to analyze the possible correlation between the scheduling of proceedings and the timing of agreements where the proceeding is canceled because of agreement of the parties. The analysis found that earlier scheduling of hearings is associated with earlier resolution by the parties where the hearing is canceled because of an award on stipulation or informal agreement. The agreement tends to occur about one day earlier for each day earlier the hearing was scheduled to occur.

[6]Insufficient sample size prevents the presentation of data at the 90th percentile for these cases.

- No association between proceeding scheduling and timing of agreements was found for settlement conferences.

Observations

The data analysis in this report leads to the following observations.

- **The amount of time from the claim petition to the first scheduled hearing varies greatly according to the major dispute path.** It may be helpful to explore whether some disputes that now follow the longer major paths to a scheduled hearing may be amenable to shorter paths to the same end.

- **The time to resolution varies even when the path is the same.** It may be helpful to explore whether it is possible to shorten the time consumed in resolving those disputes that take significantly longer than the usual time for a given resolution path.

- **Re-sets add time to the process.** Consequently, their use should be limited as much as possible. As provided in statute and rule, "continuances are disfavored and will be granted only upon a showing of good cause."[7]

- **The timing of scheduled hearings affects the timing of resolution by the parties where they reach agreement outside of the proceeding.** This is in addition to the expectation that earlier scheduling should bring about earlier findings-and-orders where the parties do not reach agreement. It adds to the value of scheduling hearings as promptly as possible with sufficient time for the parties to prepare.

[7]Minnesota Statutes § 176.341, subd. 4; Minnesota Rules, part 1415.2800 (in effect in 2003); Minnesota Rules, part 1420.2800, subp. 1 (currently in effect). In the report and in this article, the term "re-set" means an advance rescheduling of the proceeding continued on a later date after beginning on the originally scheduled date. Both cases are included in the term "continuance" as used in the statute and rule parts just cited.

Year in review:

Professional conduct complaints involving rehabilitation providers, 2010

By Mike Hill, Rehabilitation Policy Specialist

Vocational rehabilitation is intended to restore an injured employee to a job related to his or her former employment or to a job in another work area that produces an economic status as close as possible to that which he or she would have enjoyed without disability. Rehabilitation providers are registered with the Department of Labor and Industry (DLI) to provide services with the goal of attaining a positive rehabilitation outcome. Rehabilitation providers include: qualified rehabilitation consultants (QRCs); QRC interns; QRC firms; and registered rehabilitation vendors, such as job placement specialists.

Rules established by DLI govern the delivery of services within the workers' compensation system, which include communications with employers, insurers, injured workers, health care providers, legal representatives and the department. 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 a party believes a rehabilitation provider is not following the statutes or rules, a written complaint may be filed with the department. Upon receipt of a complaint, DLI performs an investigation to determine if a violation of statutes or rules has occurred and whether disciplinary action is warranted. Table 1 details closed complaint files and sources of complaint origination.

Table 1. Source of complaints, 2008 through 2010

Year	Employer/ insurer	Attorney	Employee	Rehabilitation provider	DLI/internal	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

**The complaint was from a former qualified rehabilitation consultant.*

Complaint outcomes

A single complaint may allege violations of several workers' compensation statutes or rules. During the course of an investigation, additional issues may be identified. The most serious outcomes are recorded in the complaint file.

Outcomes are determined by the findings of the investigation. There are three possible outcomes.

1. 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.

2. Letter of instruction – If the investigation reveals the subject did not act optimally, the alleged conduct is identified. A letter of instruction is then developed and placed as a private document in the provider's file. Although the letter is not considered formal discipline, the information is retained by the department in case there are any subsequent inquires into a provider's conduct.

3. Discipline/stipulation – If the result of an investigation supports the allegation, 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(s) have caused harm or if the subject has demonstrated a pattern of noncompliance with workers' compensation statutes and rules.

Sixteen complaint files were closed during calendar-year 2010. Table 2 identifies the outcomes by subject type.

Table 2. Professional conduct and accountability outcomes

Year	No jurisdiction	Unsubstantiated	Letter of instruction	Stipulation/fine	Total files
2008	0	24	16	21	61
2009	3	11	15*	8*	36
2010	1	4	5	6	16

**In 2009, one of the provider complaints resulted in a letter of instruction and a stipulation.*

During 2010, six complaints were closed that resulted in formal discipline for the following violations.

- Data privacy.....5220.1802, subp. 5
- Delay in reporting pertinent information.....5220.1801, subp. 9 K (2)
- More than one QRC on the rehabilitation file .....5220.1801, subp. 2
- Failure to monitor performance of a person working at the provider's direction..... 5220.1801, subp. 9 E
- Failure to notify IR before providing services.....5220.1805, E
- Not knowledgeable about the laws and rules .....5220.1803, subp. 2
- Misrepresenting self, duties or credentials .....5220.1805, B
- Engaging in conduct likely to deceive..... 5220.1801, subp. 9 F
- Failure to see that employee is in a job w/in limitations .....5220.1801, subp. 9 N
- Noncooperation with disciplinary proceedings .....5220.1806, subp. 4
- Failure to disclose potential conflicts of interest .....5220.1801, subp. 10
- Failure to remain professionally objective .....5220.1801, subp. 4a

The text of the rules that were violated may be reviewed in the Minnesota Administrative Rules, part of the Office of the Revisor of Statutes website, at https://www.revisor.mn.gov/rules/?id=5220.

Conclusion

The purpose of a professional conduct investigation is to determine if a violation of the rules and statutes has occurred and to correct the behavior to prevent future problems. Overall, during the past three years, rehabilitation providers are credited with improved compliance as noted by the reduction of closed complaint files each consecutive year.

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. DLI's website offers resources for rehabilitation providers at www.dli.mn.gov/WC/RehabProv.asp. DLI staff members can be reached at (651) 284-5005 or 1-800-342-5354 to discuss questions and concerns.

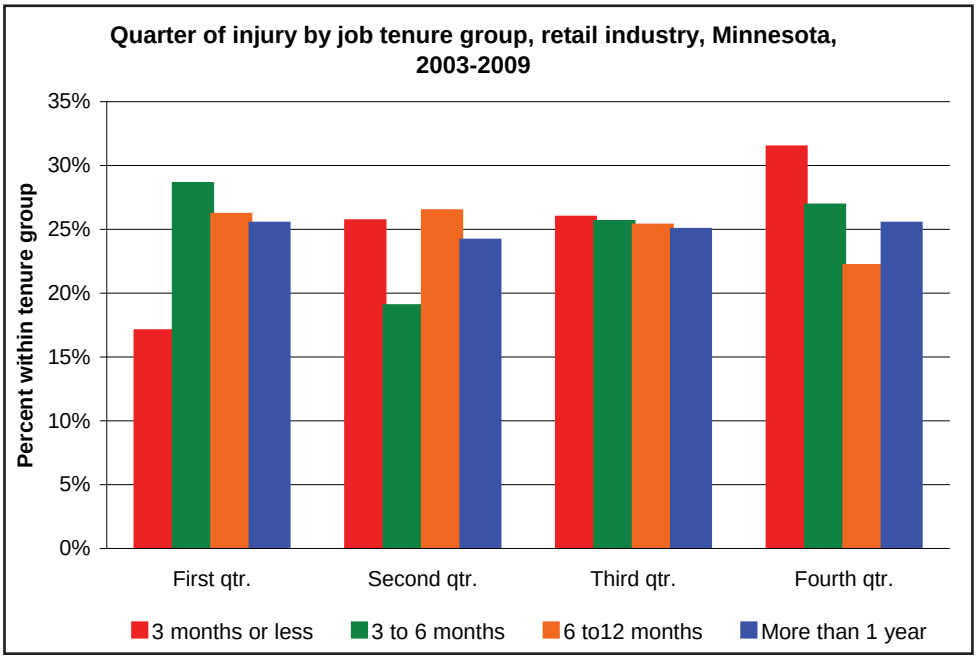
CompFact

Retail hiring makes imprint on work comp claims

Retail trade, as a whole, goes through an annual cycle of hiring to add workers for the busy holiday season. For the period from 2003 through 2009, retail employment added 84,000 new hires in the first quarter, 164,000 in the second quarter, 110,000 in the third quarter and 193,000 in the fourth quarter. This pattern of adding workers during the fourth quarter can be followed by tracking workers' compensation indemnity claims by job tenure.

The figure below shows the percentage of claims within each job tenure group that had an injury date within each quarter of the year. The claims are for the entire period from 2003 through 2009, a total of 15,637 claims. The percentages are shown within each job tenure group to highlight the variation between the quarters; in terms of the number of claims, 68 percent of claims are reported by workers with more than one year of job tenure.

The figure shows that claims among workers with up to three months of job tenure, who were hired shortly before the injury occurred, was highest in the fourth quarter (31 percent, 587 claims) and lowest during the first quarter (17 percent, 318 claims). These results are consistent with the counts of new hires. However, the impact of the workers hired during the fall months reaches further into the year. These workers didn't suddenly become amazingly safe workers, because if they were hired during the fall months and remained employed, they became workers with three to six months of job tenure during the first quarter. This tenure group reported its highest percentage of claims during the first quarter.



In contrast, the six- to 12-month job tenure group showed much less quarterly variation and workers with more than a year of job tenure showed almost no quarterly variation. These results show safety training is critical for new retail employees, especially if they are entering the workplace during the busiest season, when the time available for training may be at its minimum.

Rehabilitation plan forms updated, available now

By Mike Hill. Rehabilitation Policy Specialist

The Department of Labor and Industry (DLI) Workers' Compensation Division has revised its rehabilitation plan forms. The updated forms, released Jan. 31, 2011, are available to qualified rehabilitation consultants (QRCs) through both the regular online submission system – at https://secure.doli.state.mn.us/wc/Login.aspx – and via the PDF formats available on DLI's website – at www.dli.mn.gov/WC/Wcforms.asp.

The update includes the R-2 Rehabilitation Plan, R-3 Rehabilitation Plan Amendment and R-8 Notice of Rehabilitation Plan Closure forms. The revisions incorporate rehabilitation provider requests that the department prelist the 20 service categories, to allow providers to specify each service they intend to use and their individualized costs, enabling faster completion of the forms. QRCs will no longer have to lump several service categories into one space, under one cost.

Additional changes to the rehabilitation forms include the following.

R-2 Rehabilitation Plan form: reporting the physical demands of the pre-injury job; listing the cost of the rehabilitation consultation; addition of a QRC intern supervisor signature line and date; and form instructions.

R-3 Rehabilitation Plan Amendment: re-ordering of change-of-QRC information; listing plan costs and duration after service category information; addition of a QRC intern supervisor signature line and date; and form instructions.

R-8 Notice of Rehabilitation Plan Closure: additional employment status at closure option to provide return-to-work employer contact information; identifying the physical demands of the job; addressing the number of weeks a plan may have been suspended outside the control of the QRC; listing training services provided; identifying of the number of QRCs handling the file; clarifying each service category cost by previous and current placement firms and prior and current QRC firms; addition of a QRC intern supervisor signature line and date; and form instructions.

QRCs and QRC firms should begin using the revised forms immediately, to enable more accurate data to be collected and provided to stakeholders about the work and services provided. For help using the revised forms, call (651) 284-5093 to speak with a DLI staff member.

Note: Spanish versions of these forms are being developed and will be posted on the DLI website when available.

Mileage reimbursement rate adjustment

Effective Jan. 1, the Internal Revenue Services (IRS) mileage reimbursement rate increased from 50.0 cents a mile to 51.0 cents a mile.

A chart of common Minnesota workers' compensation benefits adjustments is on the department's website at www.dli.mn.gov/WC/Xls/annladj0111.xls.

MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY
WORKERS' COMPENSATION DIVISION

Basic Adjuster Training 2011

– Two two-day sessions in 2011! –

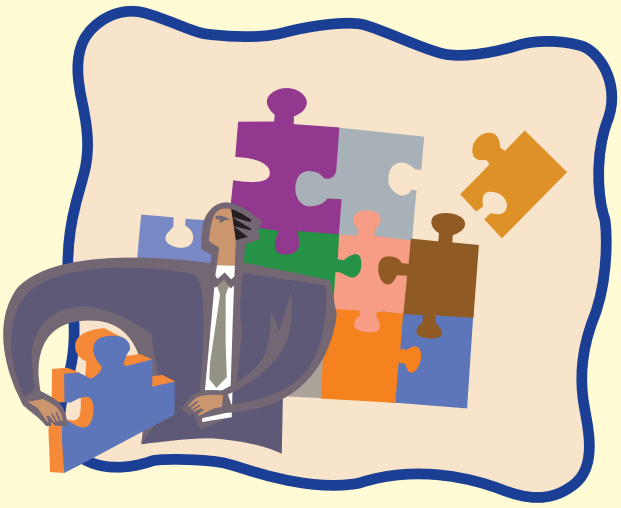
April 25 and 26 Oct. 27 and 28

8:30 a.m. to 4 p.m.

This training is recommended for claim adjusters who have less than one year of experience in Minnesota workers' compensation.

Session topics

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



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

Cost: $150 for the two-day session (includes lunch)

All participants must register and pay online

https://secure.doli.state.mn.us/events/events.aspx?eid=15

Early registration is encouraged. Each session is limited to 28 people. Classes 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.

Accommodation

If you need special accommodations to enable you to participate in this event or have questions about this training, call Jim Vogel at (651) 284-5265, toll-free at 1-800-342-5354 or TTY (651) 297-4198.

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.

Workers' Compensation
Court of Appeals

October through December 2010

Case summaries published are
those prepared by the WCCA

Troyer v. Vertlu Management Company/Kok & Lundberg Funeral Homes, **10/4/10***

Medical Treatment and Expense – Surgery
Minnesota Statutes § 176.011, subd. 24
Minnesota Rules Part 5221.0700, subp. 2.A.(2)

Where the hardware components surgically implanted in treatment of the employee's work injuries were ordered by the hospital and provided by the manufacturer for use by the surgeon in surgery performed at the hospital, and the employee had no direct contact with the manufacturer, the hospital was the health care provider "actually furnishing" the service or supply to the employee under Minnesota Rule Part 5221.0700, subp. 2.A.(2), and the entity "who furnishes" the service under Minnesota Statutes § 176.011, subd. 24, and the compensation judge properly found the hospital was entitled to bill the insurer for the implant components.

Medical Treatment and Expense – Excessive Charge
Minnesota Statutes § 176.136, subd. 1b

Minnesota Statutes § 176.136, subd. 1b, limits the employer's liability for treatment provided at a hospital with greater than 100 beds to either 85 percent of the hospital's usual and customary charge *or* 85 percent of the prevailing charges for similar treatment or supplies, whichever is lower. Where the parties stipulated to the hospital's usual and customary charge for the hardware components used in the employee's surgery, and did not attempt to establish prevailing charges, the compensation judge did not err in finding the reasonable charge for the implant components was 85 percent of HealthEast's usual and customary charge, and that he did not have authority to determine the reasonable value of the surgical implant hardware at less than 85 percent of the hospital's usual and customary charge.

Affirmed.

*This case is on appeal to the Minnesota Supreme Court.

Anderson v. Wherley Moving & Storage, Inc., 10/14/10

Causation – Substantial Evidence
Evidence – Expert Medical Opinion

Where the facts assumed by the employee's treating surgeon were consistent with the facts found by the compensation judge, the doctor's opinion was not lacking in foundation. Substantial evidence, including expert medical opinion, supports the compensation judge's determination that the employee's low back condition was permanently aggravated by the work-related accident and was a substantial contributing cause of the employee's need for treatment, including fusion surgery.

Temporary Partial Disability

The compensation judge erred in awarding temporary partial disability benefits where the employee, who had been released to return to full-time work, failed to show his part-time work was the only work available to him and, consequently, failed to establish his wage loss from September 2009 to January 2010 was causally related to the work injury.

Affirmed in part and reversed in part.

Finn v. Homecrest Industries, Inc., 10/14/10

Permanent Total Disability – Discontinuance
Permanent Total Disability - Retirement

Where the right to discontinue permanent total disability benefits pursuant to the presumptive retirement provision of Minnesota Statutes § 176.101, subd. 4, was incorporated into the parties' stipulation for settlement, the employer and insurer were entitled to discontinue payment of permanent total disability benefits to the employee when he reached the age of 67 years.

Petition to discontinue permanent total disability benefits granted.

Hayes v. Dey Appliance Service, Inc., 10/14/10

Evidence – Expert Medical Opinion
Medical Treatment and Expense – Reasonable and Necessary
Medical Treatment and Expense – Surgery

Where the sole issue before the judge was the reasonableness and necessity of certain proposed surgery, where the judge's denial of the employee's request for that surgery was supported by expert medial opinion, and where the employee raised no dispositive legal challenges to that opinion but rather simply reiterated fact-based arguments made to the judge at the hearing below, the compensation judge's denial of certain proposed surgery was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

Jennings v. Allina Medical Clinic, **10/14/10***

Medical Treatment and Expense – Excessive Charge
Minnesota Statutes § 176.136, subd. 1b

Minnesota Statutes § 176.136, subd. 1b, limits the employer's liability for treatment provided at a hospital with greater than 100 beds to either 85 percent of the hospital's usual and customary charge *or* 85 percent of the prevailing charges for similar treatment or supplies, whichever is lower. Where the parties stipulated to the hospital's usual and customary charge for implant components used in the employee's surgery, and did not attempt to establish a prevailing charge, the compensation judge did not err in finding that HealthEast was entitled to be paid 85 percent of HealthEast's usual and customary charge for the surgical implants, and in concluding that he did not have authority to determine the reasonable value of the implant components at less than 85 percent of the hospital's usual and customary charge.

Affirmed.

Luskey v. Rahr Malting Company, **10/14/10**

Minnesota Statutes § 176.137

The compensation judge did not err by determining that the $5,866.83 fee, paid to an architectural firm for certification that remodeling to an employee's home and alterations to a new home design were reasonable to accommodate the employee's disability as required by Minnesota Statutes § 176.137, subd. 1, should be included in the $60,000 statutory limit for such projects under Minnesota Statutes § 176.137, subd. 5.

Affirmed.

Lardani v. Lardani Stucco, L.L.C., **10/18/10**

Rehabilitation – Retraining

Substantial evidence supports the determination of the special master that the retraining plan was appropriate for the employee.

Affirmed.

Matykiewicz v. Denny Hecker's Rosedale Dodge, et al, **10/18/10**

Apportionment – Permanent Partial Disability

Where the employee's condition met all the requirements for a 22 percent whole body rating prior to the employee's 2003 work injury, and where the employee's preexisting disability was clearly evidenced in medical records made prior to that injury, the compensation judge erred in awarding the employee permanent partial disability benefits based on the difference between the employee's current 22 percent whole body impairment and a rating of 20 percent of the back assigned prior to

*This case is on appeal to the Minnesota Supreme Court.

the 2003 injury. Under the circumstances of this case, there was no causal connection between the employee's 22 percent whole body impairment and the 2003 work injury.

Reversed.

Herman v. Polka Dot Dairy, et al, **10/25/10**

Practice and Procedure – Remand

Where certain surveillance videos had been relied upon by the rejected independent medical examiners, had been properly admitted into evidence, and were clearly relevant to the credibility of the employee's claim for benefits, but where the judge in her memorandum erroneously indicated that the videos had not been admitted into evidence, the compensation judge's decision awarding benefits was vacated and remanded to the judge for new findings upon consideration of the videos.

Vacated and remanded.

Rozell v. LTV Steel Mining Company, **10/25/10**

Causation – Psychological Condition
Mental Injury

Where there was expert medical opinion that the employee's psychological problems were related to his layoff from the employer, and where there was evidence that the employee's psychotherapy sessions dealt not with stress related to the employee's work injury but mostly with the employee's interaction with family members, the compensation judge's conclusion that the employee did not sustain a psychological injury consequent to his physical work injury was not clearly erroneous and unsupported by substantial evidence.

Permanent Total Disability – Substantial Evidence

Where, based on expert medical opinion, the judge had rejected the employee's claim that he had sustained a disabling psychological injury as a result of his work-related foot, ankle, and hip injuries, where there was evidence that suitable jobs were available to the employee, where the employee's job search had been limited essentially to posting his resume online, and where the employee had unreasonably declined suitable job offers, the compensation judge's denial of permanent total disability benefits was not clearly erroneous and unsupported by substantial evidence.

Causation – Temporary Injury

Where the employee himself had testified that his injury was to his neck and mid-back and not to his lower back, and where there was expert medical and chiropractic support for the conclusion that the employee's neck and mid-back injuries were only temporary, the compensation judge's conclusion that the employee sustained only a temporary injury to his mid and upper back and no injury to his lower back was not clearly erroneous and unsupported by substantial evidence.

Settlements – Interpretation

Where the judge had found that the parties' stipulation for settlement had closed out "all claims related to the big toe," but where the language of the stipulation closed out only "medical expenses related to the toe surgery that [was] the subject of the pending Medical Request," the compensation judge's finding that "all" big toe-related claims were closed out was vacated.

Affirmed in part and vacated in part.

***Zurn v. Miners, Inc., d/b/a Super One Foods*, 10/25/10**

Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence supports the compensation judge's determination that a neurosurgical consultation requested by the employee was reasonable.

Affirmed.

***Cameron v. The Fish Guys, Inc.*, 10/27/10**

Appeals – Notice of Appeal
Jurisdiction – Subject Matter

The service and filing of an amended findings and order does not extend the time to appeal issues that could have been raised on appeal from the original findings and order. Where the employer and insurer's appeal was filed on August 4, 2010, the thirty-second day after service of the original findings and order, an appeal was timely filed from the amended findings and order, the issues raised on appeal clearly could have been raised by an appeal from the original findings and order, and the employer and insurer did not contest the amount of contingent fees corrected in the amended findings and order, the employer and insurer failed to timely appeal from the original July 2, 2010, Findings and Order on Attorney Fees, and this court lacks jurisdiction to consider the appeal.

Dismissed.

***Papesh v. Kandersteg, Inc*, 11/1/2010**

Arising Out Of and In the Course Of – Substantial Evidence

Substantial evidence supports the compensation judge's finding that the employee's work injury arose out of her employment.

Affirmed.

Tafs v. Observation Hill Daycare, 11/2/2010

Causation – Substantial Evidence

Substantial evidence, including expert opinion, supported the compensation judge's decision that the employee's work injuries did not substantially contribute to the employee's need for fusion surgery.

Affirmed

Michog v. Wal-Mart Stores, Inc., 11/4/2010

Permanent Partial Disability – Schedule, Rules Construed
Minnesota Rules 5223.0450.

Where, contrary to the court's decision in *Grashorn v. Boise Cascade Corp.*, slip op. (W.C.C.A. Mar. 6, 2002), the judge apparently believed that he could not find impairing conditions under both subpart 2, "exclusive categories," and subpart 3, "combinable categories," of Minnesota Rules 5223.0450, and where the judge therefore did not make a determination as to whether the employee had sustained a separate impairing condition ratable under the "combinable categories" of the rule, the matter was reversed and remanded for a determination of all impairing conditions sustained by the employee and, if an impairing condition should be discovered in subpart 3, a determination as to whether that impairing condition was a substantial contributing factor in the employee's functional loss described in subpart 4 of the rule.

Permanent Partial Disability – Schedule, Rules Construed
Minnesota Rules 5223.0450, subp. 4.

Where the examining chiropractor's ratings for functional loss were derived by use of computerized inclinometry and not through examination with a goniometer, and where it appears that the judge may not have been aware of the court's decision in *Houle v. Abbott Northwestern Hosp.*, slip op. (W.C.C.A. Jan. 16, 2001), when considering application of Minn. R. 5223.0450, subp. 4, that portion of the judge's memorandum referencing examination with a goniometer was vacated and remanded for reconsideration.

Reversed in part, vacated in part, and remanded.

Kanieski v. Perche Millwork, Inc., 11/9/2010

Permanent Total Disability – Discontinuance,
Permanent Total Disability – Retirement

Where the right to discontinue permanent total disability benefits pursuant to the presumptive retirement provision of Minn. Stat. § 176.101, subd. 4, was incorporated into the parties' stipulation for settlement, the employer and insurer are entitled to discontinue payment of permanent total disability benefits to the employee when he reached the age of 67 years.

Petition to discontinue permanent total disability benefits granted.

Jackson v. Robbinsdale Rehab, Care Ctr, **11/10/2010**

Causation – Temporary Injury

Substantial evidence, including expert medical opinion, supports the compensation judge's finding that the employee's 2006 work injury was a temporary injury that had resolved as of December 7, 2006, and was no longer a substantial contributing factor to the employee's claimed ongoing disability.

Causation – Psychological Injury

Substantial evidence, including expert opinion and medical records, supports the compensation judge's finding that the employee's 2006 work injury did not result in a consequential psychological injury.

Temporary Total Disability – Substantial Evidence

Substantial evidence, including expert medical opinion and medical records, supports the compensation judge's findings that the employee was not temporarily totally disabled after November 12, 2006.

Rehabilitation – Substantial Evidence

Substantial evidence, including expert medical and vocational opinions and medical and vocational rehabilitation records, support the compensation judge's denial of the employee's request for rehabilitation services.

Penalties

Under the factual circumstance of this case, the evidence adequately supported the compensation judge's denial of penalties.

Affirmed.

Trautner v. State, Minnesota Highway Patrol, **11/12/2010**

Causation – Psychological Injury

Substantial evidence supports the compensation judge's finding that the employee's psychological injury was not compensable under the decision in *Lockwood v. Independent Sch. Dist. #877*, 312 N.W.2d 924, 34 W.C.D. 305 (Minn. 1981).

Affirmed.

Deutz v. Lone Wolf Logistics, Inc., **11/15/2010**

Vacation of Award

The employee's petition to vacate is denied where he has failed to establish cause as required by Minn. Stat. § 176.461.

Petition to vacate award on stipulation denied.

Rittenour v. E.J. Ajax & Sons, Inc., **11/24/2010**

Vacation of Award – Substantial Change in Condition

Because the employee failed to establish that her current condition is related to her work injury, good cause to vacate had not been shown.

Petition to vacate award on stipulation denied.

Ceja-Cisneros aka. Gonzalez v. Cold Spring Granite, **11/29/2010**

Attorney Fees – Roraff Fees
Attorney Fees – Genuine Dispute

Where two medical bills were presented to the self-insured employer well before the hearing, and were not paid, the bills were in dispute and the compensation judge erred in denying a contingent *Roraff* fee for obtaining these benefits.

Attorney Fees – Genuine Dispute
Practice and Procedure – Record

In contested attorney fee cases, this court will consider only exhibits submitted to the judge and admitted into evidence at the hearing. Unidentified documents in the imaged file will not be considered on appeal. Where no evidence was submitted to establish the employer was provided with a bill or charges for certain medical expenses prior to the day before the hearing, the compensation judge properly concluded the employee failed to establish there was a genuine dispute with respect to these medical expenses.

Attorney Fees – Roraff Fees

Where the employee did not prevail on any contested issues at the hearing, and recovered only medical benefits stipulated to at the hearing, of which of two only were proved to be in dispute prior to the hearing, the compensation judge reasonably denied *Roraff* attorney fees for obtaining payment of medical expenses.

Affirmed in part and reversed in part.

Lee v. U.S. Bank, 12/3/2010

Practice and Procedure – Remand

Where the parties raised multiple issues on appeal, the issues were particularly interrelated, and the compensation judge erred in her reasoning as to at least some of those issues, the entire decision was reversed and the matter remanded for new findings on all disputed issues.

Reversed and remanded.

Garcia v. Allina Laboratory Servs., 12/3/2010

Causation – Reflex Sympathetic Dystrophy
Evidence – Medical Expert Opinion

Where the diagnosis of the employee's orthopedist upon examination was only of "possible" RSD, where the RSD diagnosis of the employee's family practitioner was based almost exclusively on the employee's complaints rather than on objective clinical findings, and where the employee's pain specialist had not been permitted to examine the employee's injured hand closely by touch and had not been shown surveillance videos taken of the employee the day before and the day after his examination of her, the compensation judge's granting of discontinuance in reliance on the opinion of the employer's neurologist, who had seen the videos and had found no causally related RSD, was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

Meysembourg v. University of Minn., 12/7/2010

Practice and Procedure, Statutes Construed – Minnesota Statutes § 176.371

The intent of Minn. Stat. § 176.371 is to promote the complete and prompt determination of matters pending before a compensation judge. The statute does not provide a remedy to a party if a decision is not issued within the prescribed period. The post-hearing delay, in this case, did not require a new trial for failure to issue a decision within the statutory time limit.

Evidence – Credibility

The compensation judge's inability to personally observe the testimony of witnesses did not impair the judge's ability to make a reasonable credibility determination on the facts of this case, particularly where resolution of disputed medical evidence, crucial to the case, was submitted by report and deposition.

Practice and Procedure, Statutes Construed – Minnesota Statutes § 176.307

Minnesota Statutes § 176.307 specifically allows a system of case assignment other than the block system to insure cases are timely decided. The chief administrative law judge properly acted within his discretion and reassigned the matter to a different judge in this case.

Evidence – Expert Medical Opinion

Where the compensation judge found the employee's job duties did *not* require repetitive extreme reaching away from the body, a finding supported by substantial evidence in the record, and the employee's physician's opinion – that the employee sustained a *Gillette* injury – was based on this premise, the compensation judge did not err in rejecting the opinions of the employee's doctor.

Affirmed.

***Laudenbach v. Blandin Paper Co.*, 12/13/2010**

Practice and Procedure, Appeals

A compensation judge has no authority to refer a case to the Workers' Compensation Court of Appeals for determination of a claim or petition. Where no appeal was filed from the judge's order, and no petition to discontinue permanent total disability benefits was filed with the court, the judge's order for referral is vacated and the matter remanded for further proceedings.

Vacated and remanded.

***Boothby v. Divine House, Inc.*, 12/16/2010**

Causation – Temporary Aggravation

Substantial evidence, including expert medical opinion, supports the compensation judge's finding that the employee's 2006 work injury was a temporary aggravation of a pre-existing condition.

Temporary Total Disability – Substantial Evidence

Substantial evidence, including expert medical opinion and medical records, supports the compensation judge's finding that the employee failed to establish entitlement to temporary benefits from and after July 12, 2009.

Rehabilitation – Substantial Evidence

Substantial evidence, including expert medical and vocational opinions and medical and vocational rehabilitation records, supports the compensation judge's denial of the employee's request for rehabilitation services.

Maximum Medical Improvement – Service of MMI Report

Where the parties stipulated to service of the medical opinion on which the compensation judge relied in finding that maximum medical improvement [MMI] had been reached, the finding that the employer and insurer failed to prove service of MMI is vacated.

Affirmed as modified.

Hampson v. Rapat Corp., 12/21/2010

Causation – Substantial Evidence

Substantial evidence, including expert opinion, supported the compensation judge's decision that the employee's work-related low back injury substantially aggravated or accelerated the employee's underlying ankylosing spondylitis.

Affirmed.

Conn v. Aramark Servs., 12/22/2010

Permanent Total Disability, Job Search

Substantial evidence, including expert medical and vocational testimony, supports the compensation judge's finding that the employee is permanently and totally disabled, even where the employee did not conduct a job search after being laid off from his last employer. A job search is not a prerequisite to a finding of permanent total disability where other evidence in the record establishes the disability and sufficiently demonstrates that a job search would be futile.

Affirmed.

Strzelecki v. PMR, Inc., 12/22/2010

Vacation of Award – Substantial Change in Condition

Where the employee did not establish a change in diagnosis, continues to recuperate from additional surgeries since the time of the award, and no doctor has yet determined that he has reached MMI nor assigned a permanency rating, it is premature to grant a vacation of the award on stipulation.

Petition to vacate award on stipulation denied.

Frandsen v. Ford Motor Co., 12/22/2010

Permanent Total Disability – Discontinuance
Permanent Total Disability – Retirement

Where the parties did not, in the stipulation for settlement, specifically incorporate the provisions of Minn. Stat. § 176.101, subd. 4, or include any language from which the court could reasonably conclude the parties intended that permanent total disability benefits would cease when the employee reached 67 years of age, the petitioner is not entitled to discontinue benefits on that basis.

Petition to discontinue permanent total disability benefits denied.

Minnesota Supreme Court

October through December 2010

Case summaries published are those prepared by the WCCA

- **Lynn Dorr v. National Marrow Donor Program, and CNA Insurance Company, A10-1324, November 29, 2010**

Decision of the Workers' Compensation Court of Appeals filed July 7, 2010, affirmed without opinion.