

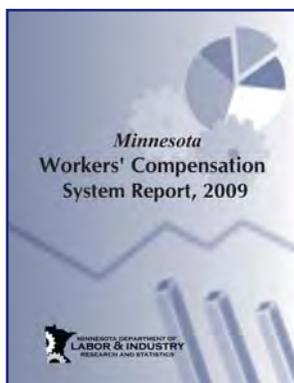


August 2011

Minnesota Department of Labor and Industry

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Minnesota Workers' Compensation System Report, 2009



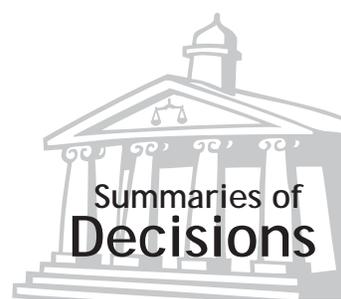
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Study finds Minnesota drug costs relatively low



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Legislature adopts advisory council recommendations

Summary of the statutory amendments adopting the recommendations of the Workers' Compensation Advisory Council

2011 Minn. Laws, Chapter 89

Overview

The amendments recommended by the Workers' Compensation Advisory Council address the use and timing of settlement conferences before a hearing; the need for flexibility in scheduling to avoid unnecessary resets; and the need for the use of experienced and independent decision-makers at hearing. All changes would be at the Office of Administrative Hearings where judges decide cases after efforts at the Department of Labor and Industry have failed. The law also makes technical changes incorporating existing workers' compensation law changes, enacted in 1998, that were never codified in Minnesota Statutes, Chapter 176.

In addition, the amendments increase the amount of money available for remodeling or alteration of an injured worker's residence, and specify when an architect's certification and supervision is not required. They also allow a change in the formula used to establish

maximum fees for drugs used to treat a workers' compensation injury.



The entire session law is on the Minnesota Office of the Revisor of Statutes website at www.revisor.mn.gov/laws/?id=89&doctype=chapter&year=2011&type=0.

Section by section summary

A section by section summary of the statutory amendments is available on the Department of Labor and Industry website at www.dli.mn.gov/Wcac.asp.

Minnesota Workers' Compensation System Report, 2009

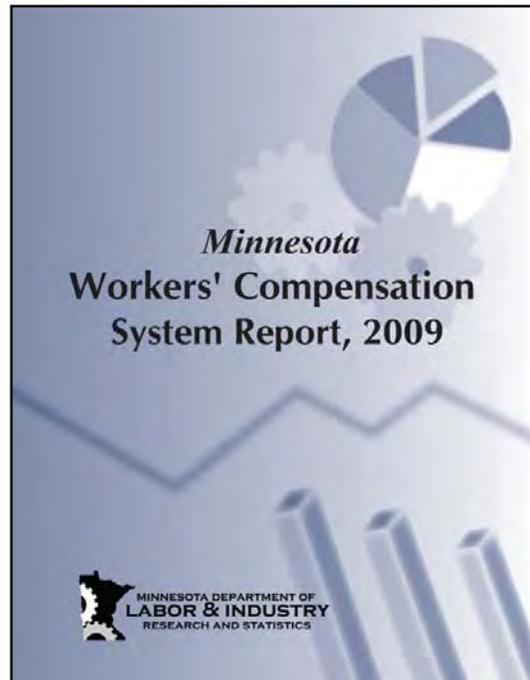
By David Berry, Research and Statistics

The Department of Labor and Industry has released its 2009 *Minnesota Workers' Compensation System Report*. It is available on the department's website at www.dli.mn.gov/Research.asp.¹

The report, part of an annual series, presents data from 1997 through 2009 about several aspects of Minnesota's workers' compensation system – claims, benefits and costs; vocational rehabilitation; and disputes and dispute resolution. The purpose of the report is to describe statistically the current status and direction of workers' compensation in Minnesota and to offer explanations where possible for recent developments.

These are the report's major findings.²

- From 1997 to 2009, the overall claim rate declined from 8.7 to 4.9 paid claims per 100 full-time-equivalent workers, a decrease of 44 percent.
- The total cost of Minnesota's workers' compensation system was an estimated \$1.4 billion for 2009, or \$1.35 per \$100 of payroll. The latter figure was nearly the lowest since 1997.
- In 2009, on a current-payment basis, the three largest components of total workers' compensation system cost were medical benefits (35 percent), insurer expenses (31 percent) and indemnity benefits (30 percent).³
- Pure premium rates for 2011 were down 26 percent from 1997, their lowest level since that year.
- Adjusting for average wage growth, medical benefits per insured claim rose 94 percent from 1997 to 2008 while indemnity benefits rose 39 percent. All of the increase in indemnity benefits per claim occurred by 2002.
- Relative to payroll, medical benefits fell 4 percent between 1997 and 2009 while indemnity benefits fell 16 percent; this reflects the net effect of the falling claim rate and higher benefits per claim.
 - By counteracting the increasing trend in benefits per claim, the falling claim rate has kept system cost per \$100 of payroll at historically low levels.



¹The report is also available by calling (651) 284-5025. For alternative formats, call 1-800-342-5354 or TTY (651) 297-4198.

²The time periods in these findings vary because of data availability.

³Indemnity benefits are monetary benefits paid to the injured worker.

- From 1997 to 2009, after adjusting for average wage growth, per paid indemnity claim:

- total disability benefits rose 26 percent;
- temporary partial disability benefits fell 8 percent;
- permanent partial disability benefits fell 18 percent; and
- stipulated benefits rose 133 percent (stipulated benefits include indemnity, medical and vocational rehabilitation benefits).

- In vocational rehabilitation:
 - the participation rate increased from 15 to 23 percent of paid indemnity claimants from 1997 to 2009; and
 - average cost per vocational rehabilitation participant rose 40 percent from 1998 to 2009 after adjusting for average wage growth.



- Vocational rehabilitation accounted for an estimated 2.8 percent of total workers' compensation system cost in 2009.
- The overall dispute rate rose 40 percent from 1997 to 2009.
 - The leading components of this increase were medical disputes, up 144 percent, and vocational rehabilitation disputes, up 87 percent.
 - The percentage of paid indemnity claims with claimant attorney involvement rose 42 percent during the same period.⁴
- The total number of dispute resolutions at the Department of Labor and Industry was 14 percent higher in 2010 than in 1999.
- At the Office of Administrative Hearings since 2001, the numbers of settlement conferences, discontinuance conferences, and medical and rehabilitation conferences have fallen, but the number of hearings has shown little net change.

⁴The claimant attorney fees counted here are those calculated as a percentage of indemnity benefits, and claimant attorney involvement is determined according to the presence of these fees.

Adopted exempt amendments to workers' compensation rules

By Kate Berger, General Counsel

Minnesota Statutes § 14.388 permits an agency to adopt rules using an expedited process to incorporate specific changes set forth in statute when no interpretation of law is required or to make changes that do not alter the sense, meaning or effect of a rule.



Technical amendments to workers' compensation rules to incorporate statutory changes, replace obsolete terms and references, and make other changes that do not alter the meaning or effect of the rules have been approved by the Office of Administrative Hearings and were adopted effective June 27, 2011.

The adopted amendments can be viewed at www.dli.mn.gov/PDF/docket/5220_21_22_adopted.pdf. Additional information about the rule amendments is on the Department of Labor and Industry website at www.dli.mn.gov/PDF/docket/5220_21_22_docket.pdf.

Updates of note: **mileage rate rises, authorization form revised**

Mileage rate – A new, higher mileage rate became effective in Minnesota on July 1. The rate changed from 51 cents a mile to 55.5 cents a mile.

Authorization form – DLI's Safety and Workers' Compensation Division has revised the authorization form to review or obtain copies of a workers' compensation claim file. The form and instructions are online at www.dli.mn.gov/WC/WcformsOp.asp.

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 insurer, one labor representative and one licensed or registered health care provider. It has “alternate member” openings for one employer/insurer and one labor representative. To apply for a position, complete and submit the application found on the Secretary of State's website at www.sos.state.mn.us/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 Safety and Workers' Compensation Division provides oversight for all vocational rehabilitation services provided to injured workers, covered by the Minnesota workers' compensation statutes.

Mandatory coverage:

Enforcement actions rise dramatically

By Carol Pankow, Director, Special Compensation Fund unit

The number of Minnesota's workers' compensation mandatory coverage enforcement actions rose dramatically during the past four years due to an increased agency focus and improved access to a data warehouse.

The Minnesota Department of Labor and Industry's Special Compensation Fund (SCF) unit manages the claims of injured workers whose employers did not have workers' compensation insurance at the time of injury and has the additional responsibility of enforcing mandatory workers' compensation coverage. Recently, the unit realigned the duties of its staff members and improved its use of technology to result in a 441 percent increase in the number of penalties issued to employers.

The number of penalties jumped from 210 in fiscal-year 2007 to 1,137 in fiscal-year 2011. The amount of penalties collected also increased, from \$711,941 in fiscal-year 2007 to \$1,684,982 in fiscal-year 2011.

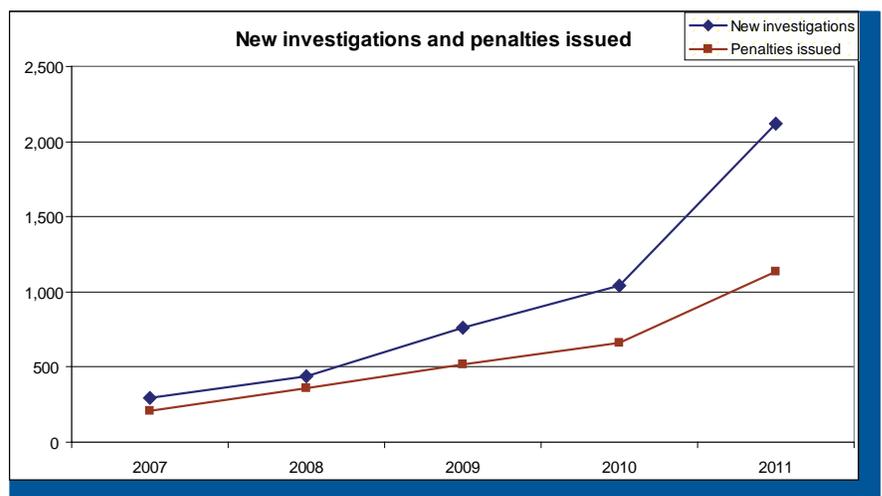
Mandatory coverage fiscal-years 2007 through 2011					
	2007	2008	2009	2010	2011
New investigations	298	438	761	1,045	2,121
Penalties issued	210	357	516	663	1,137
Penalty \$ collected	\$711,941	\$803,430	\$1,056,329	\$1,392,235	\$1,684,982

Penalty dollars go into the Assigned Risk Safety account, which provides safety grants to qualified employers for projects designed to reduce the risk of injury or illness to their employees, and to other related safety and health initiatives at the Department of Labor and Industry.

In the past, five SCF unit investigators handled both uninsured claims investigations and mandatory coverage enforcement cases using time-consuming methods involving telephone books and multiple lists of employers to conduct investigations. Now, three SCF unit staff members focus specifically on mandatory coverage enforcement cases and have access to a database of Minnesota employers that have reported labor to the Department of Employment and Economic Development (DEED).

Employer names found in the DEED database are matched to the Minnesota Workers'

Compensation Insurers Association (MWCIA) database to verify whether each employer has a current or past workers' compensation insurance policy in effect. If no match is found, a letter of inquiry is sent to the employer that appears to lack workers' compensation insurance. After learning

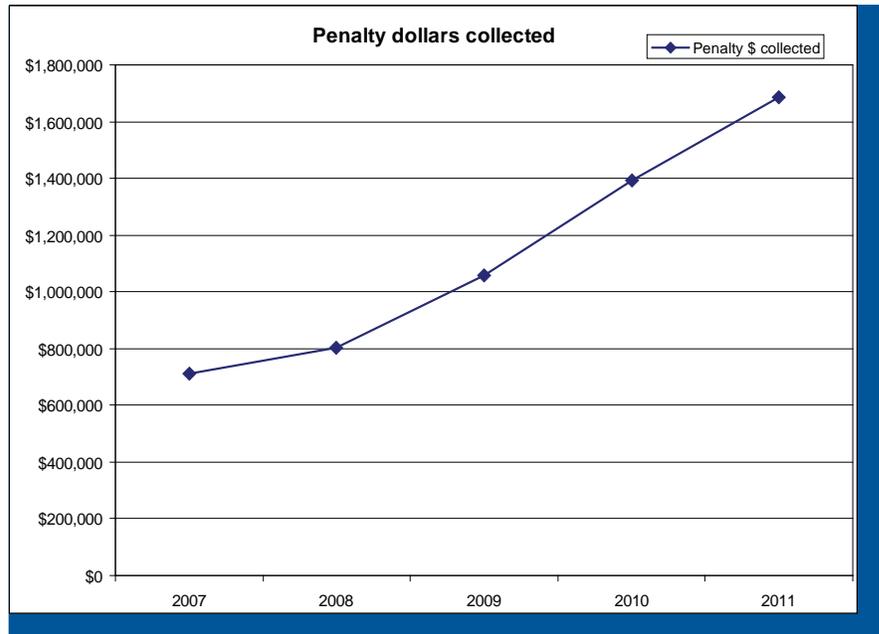


about the need for a workers' compensation insurance policy, most employers get a policy immediately and keep it in force for the life of the business.

While the SCF unit penalizes those employers that don't have workers' compensation insurance, it tries to keep the penalties as small as possible while still following legal guidelines, to minimize the financial impact on the employer. The SCF unit's goal is to get the employer insured, not put them out of business.

SCF unit staff members are also improving awareness and communication with several other state agencies to ensure new license holders and businesses receive information about their obligations regarding workers' compensation insurance. They are also contacting cities and counties to discuss licensing processes, asking those entities to verify workers' compensation coverage where possible.

The increased awareness about mandatory workers' compensation requirements and compliance with the law will ultimately reduce the number of uninsured workers' compensation claims received by DLI. It will also eventually help employers throughout the state by lowering the insurer premium surcharge paid on workers' compensation premiums, due to a reduction in expenditures made because of a decrease in uninsured claims.



The name game:

DLI's CSI to SCF, BMR to ADR, DMT to CRT



Three Minnesota Department of Labor and Industry (DLI) work units within the Safety and Workers' Compensation Division were renamed, effective July 1.

CSI to SCF

The Claims Services and Investigations (CSI) unit has become the Special Compensation Fund (SCF) unit.

BMR to ADR

The Benefit Management and Resolution (BMR) unit has become the Alternative Dispute Resolution (ADR) unit.

DMT to CRT

The Data Management and Training (DMT) unit has become the Compliance, Records and Training (CRT) unit.

For more about the services and duties of each unit, visit www.dli.mn.gov/OverviewSWC.asp.

State's fatal work-injuries increase in 2010

Sixty-nine fatal work-injuries were recorded in Minnesota in 2010, an increase of nine cases from 2009, but three fewer cases than in 2008. The 2010 total is below the average of 73 cases a year for 2005 through 2009. These and other workplace fatality statistics come from the annual Census of Fatal Occupational Injuries (CFOI), conducted by the Bureau of Labor Statistics, U.S. Department of Labor.

The CFOI also provided the following statistics for Minnesota's workplace fatalities during 2010.

Industries

- Agriculture, forestry, fishing and hunting had the highest number of fatalities, with 27 cases, compared to 20 cases in 2009, which was also the highest number of fatalities. Most of the fatalities were caused by either contact with objects and equipment or transportation incidents.
- Construction recorded the second-highest number of worker fatalities, with nine cases, up from seven cases in 2009, but below the 13 cases in 2008.
- Retail trade had the third-highest number of fatalities, with seven cases.

Types of incidents

- Transportation incidents accounted for 25 fatalities and continued to be the most frequent fatal work-injury event. Fatalities resulting from transportation incidents increased from 22 cases in 2009, but remained below the 28 cases in 2008.
- Contact with objects and equipment continued to be the second-highest event category, with 17 fatalities, an increase from 14 cases in 2009, but well below the 26 cases in 2008. The most common incidents in this category were being struck by a falling object and getting caught in or crushed in collapsing materials.
- Fatalities due to assaults and violent acts increased from three cases in 2008, to 10 cases in 2009 and to 13 cases in 2010.
- There were 10 fatalities resulting from falls in 2010, compared to nine fall fatalities in 2009.



Worker characteristics

- Men accounted for 63 of the 69 fatally injured workers in 2010.
- Workers age 55 and older accounted for 24 fatalities. Twelve of these fatalities were in the agriculture, forestry, fishing and hunting industry division.
- Self-employed workers accounted for 23 fatalities, including 18 fatalities to workers in agriculture, forestry, fishing and hunting. There were 21 fatalities to self-employed workers in 2009.

The Census of Fatal Occupational Injuries, part of the Bureau of Labor Statistics' occupational safety and health statistics program, provides the most complete count of fatal work-injuries available. Workplace fatalities due to illnesses are not included.

The program uses diverse data sources to identify, verify and profile fatal work-injuries. Information about each workplace fatality (occupation and other worker characteristics, equipment being used and circumstances of the event) is obtained by cross-referencing source documents, such as death certificates, workers' compensation records, and reports to federal and state agencies. This method assures counts are as complete and accurate as possible. The Minnesota Department of Labor and Industry collects the information about Minnesota's workplace fatalities for the CFOI.

Minnesota CFOI tables are available at www.dli.mn.gov/RS/StatFatal.asp. National data from the CFOI program is available at www.bls.gov/iif/oshcfoi1.htm.

New benefit and provider fee levels effective October 2011

By Brian Zaidman, Research Analyst, Research and Statistics, and Kate Berger, General Counsel

The statewide average weekly wage (SAWW) effective Oct. 1, 2011, is \$896, a 3.23 percent increase from the current SAWW of \$868, which has been in effect since Oct. 1, 2010. [See the table on this page.] The levels for minimum and maximum weekly benefit payments are presented in the table on page 7. The statewide annual average wage will change to \$46,572 on Jan. 1, 2012.

The new SAWW is based on 2010 payroll and employment figures supplied by the Department of Employment and Economic Development and the calculation procedure in Minnesota Statutes § 176.011, subd. 1b. The change in the SAWW is the basis for the M.S. § 176.645 annual benefit adjustment. The time of the first adjustment is limited by M.S. § 176.645, subd. 2.

Pursuant to Minnesota Rules 5220.1900, subp. 1b, the maximum qualified rehabilitation consultant (QRC) hourly fee will increase by 2 percent, to \$94.68, Oct. 1, 2011. The maximum hourly rate for rehabilitation job development and placement services, whether provided by rehabilitation vendors or by QRC firms, will increase to \$71.87 on Oct. 1, 2011.

Pursuant to M.S. § 176.136, subd. 1a, which provides for annual adjustments of the medical fee schedule conversion factor by no more than the change in the statewide average weekly wage, the conversion factors will be increased by 2.4 percent, which is the percent change in the producer price index for offices of physicians (PPI-P) developed by the U.S. Department of Labor, Bureau of Labor Statistics.

Year	Statewide average weekly wage	Change (%)
1998	\$579	4.70%
1999	\$615	6.22%
2000	\$642	4.39%
2001	\$680	5.92%
2002	\$702	3.24%
2003	\$718	2.28%
2004	\$740	3.06%
2005	\$774	4.59%
2006	\$782	1.03%
2007	\$808	3.32%
2008	\$850	5.20%
2009	\$878	3.29%
2010	\$868	-1.14%
2011	\$896	3.23%

Effective Oct. 1, 2011, the new conversion factors will be:

- medical/surgical services in part 5221.4030.....\$68.84
- pathology/laboratory services in part 5221.4040\$40.55
- physical medicine/rehabilitation services in part 5221.4050.....\$53.61
- chiropractic services in part 5221.4060.....\$54.76

Minnesota Rules, part 5219.0500, subp. 4, provides for adjustment of the maximum fees for independent medical examinations in the same manner as the adjustment of the conversion factor. Therefore, the maximum independent medical examination fees will be increased by 2.4 percent for services provided on or after Oct. 1, 2011.

An official notice of the medical fee schedule conversion factors and independent medical examination fees as approved by the administrative law judge will be published in the *State Register* in September.

Compensation rates as of Oct. 1, 2011

Statewide average weekly wage (SAWW) = \$896 Percentage change in SAWW from previous year = 3.23% (Apply Minn. Stat. § 176.645 adjustment as necessary based on date of injury.)

Maximum under M.S. 176.101 and 176.111

100% of SAWW	
10-01-86	\$360.00
10-01-87	\$376.00
10-01-88	\$391.00
10-01-89	\$413.00
10-01-90	\$428.00
10-01-91	\$443.00
105% of SAWW	
10-01-92	\$481.95
10-01-93	\$508.20
10-01-94	\$516.60
Set by statute	
10-01-95	\$615.00
10-01-00	\$750.00
10-01-08	\$850.00

Minimum under M.S. 176.101, subd. 1(2)

50% of the SAWW or gross wage, whichever is less, but in no case less than 20% of the SAWW	
50%	20%
10-01-86	\$180.00 (gross wage – \$270.00) .. \$ 72.00
10-01-87	\$188.00 (gross wage – \$282.00) .. \$ 75.20
10-01-88	\$195.50 (gross wage – \$293.25) .. \$ 78.20
10-01-89	\$206.50 (gross wage – \$309.75) .. \$ 82.60
10-01-90	\$214.00 (gross wage – \$321.00) .. \$ 85.60
10-01-91	\$221.50 (gross wage – \$332.25) .. \$ 88.60
20% of the SAWW or the employee's actual weekly wage, whichever is less	
10-01-92	\$91.80
10-01-93	\$96.80
10-01-94	\$98.40
Set by statute, the listed amount or the employee's actual weekly wage, whichever is less	
10-01-95	\$104.00
10-01-00	\$130.00

Supplementary benefits under M.S. 176.132 (Minnesota Statutes 1994)

and permanent total minimum under M.S. 176.101, subd. 4	
(for injuries 10-1-95 and later)	
10-01-93	\$314.60 (rounded to \$315)
10-01-94	\$319.80 (rounded to \$320)
10-01-95	\$328.25 (rounded to \$329)*
10-01-96	\$340.60 (rounded to \$341)*
10-01-97	\$359.45 (rounded to \$360)*
10-01-98	\$376.35 (rounded to \$377)*
10-01-99	\$399.75 (rounded to \$400)*
10-01-00	\$417.30 (rounded to \$418)*
10-01-01	\$442.00 (round)
10-01-02	\$456.30 (rounded to \$457)*
10-01-03	\$466.70 (rounded to \$467)*
10-01-04	\$481.00 (round)
10-01-05	\$503.10 (rounded to \$504)*
10-01-06	\$508.30 (rounded to \$509)*
10-01-07	\$525.20 (rounded to \$526)*
10-01-08	\$552.50 (rounded to \$553)
10-01-09	\$570.70 (rounded to \$571)*
10-01-10	\$564.20 (rounded to \$565)*
10-01-11	\$582.40 (rounded to \$583)*

*Rounding applies to supplementary benefits.

Study finds Minnesota drug costs relatively low

By David Berry, Research and Statistics



The Workers' Compensation Research Institute (WCRI) recently released a study of prescription drug utilization and costs in workers' compensation, *Prescription benchmarks, 2nd edition: trends and interstate comparisons*. This article summarizes the interstate comparisons in the study, which are based on prescriptions filled through March 2008 that were paid for by a workers' compensation insurer, for claims from October 2005 through September 2006 with seven or more days of lost time.¹ The complete study can be obtained from WCRI at www.wcrinet.org.

Findings

In general, the study finds Minnesota is substantially below average among the 17 study states for frequency and cost of prescriptions paid for by workers' compensation (see table). On the measures shown, Minnesota ranked from lowest to fourth-lowest among the study states. On the average prescription cost per claim with at least one prescription, Minnesota tallied \$347, giving it a rank of second-lowest. Contributing to this were relatively low numbers of prescriptions and pills per claim with prescriptions (fourth-lowest on both measures) and a relatively low average cost per pill (lowest). The latter, in turn, was brought about at least partly by relatively low percentages of prescriptions filled with brand names (as opposed to generics) and relatively low percentages of prescriptions that were physician-dispensed.²

Selected results for Minnesota from the WCRI prescription benchmarking study [1]

	Minnesota	Average state	Median state	Minnesota rank among 17 states (lowest=1)
Pctg. of claims with Rx paid by a WC insurer	54%	62%	62%	5
Average Rx cost per claim with Rx	\$347	\$595	\$512	2
Average number of Rx per claim with Rx	7.4	9.5	9.7	4
Average number of pills per claim with Rx	342	447	435	4
Average Rx cost per pill	\$1.00	\$1.32	\$1.33	1
Pctg. of Rx filled with brand names	11%	16%	16%	2
Pctg. of Rx filled with brand names with generic equivalents available	0.4%	1.6%	1.4%	1
Pctg. of claims with Rx that had physician-dispensed Rx [2]	6%	31%	34%	4
Pctg. of Rx that were physician-dispensed [2]	2%	14%	10%	4
Pctg. of Rx payments that were for physician-dispensed Rx [2]	1%	13%	7%	4

1. Workers' Compensation Research Institute, "Prescription benchmarks, 2nd edition: trends and interstate comparisons," July 2011. The measures refer to prescriptions filled through March 2008 and paid for by a worker's compensation insurer for injuries from October 2005 through September 2006 with seven or more days of lost time. Seventeen states were included in the study.
2. Three of the study states do not allow physician-dispensing. Minnesota was the lowest among the remaining 14 states.

¹In the study, a "prescription" includes a new prescription or a refill, but does not include a medication that was dispensed at a hospital or administered rather than dispensed.

²As shown by data in the report, physician-dispensed prescriptions tend to be more expensive than pharmacy-dispensed ones.

Minnesota drug costs, continues ...

Minnesota drug costs, continued ...

Part of the interstate variation in cost per pill may arise from variation in the mix of drugs, since the study does not adjust for this (see below). However, the study presents the average cost per pill for 20 of the most commonly used prescription drugs in the study states (for pharmacy-dispensed prescriptions). Minnesota's average cost per pill was below the interstate median for each of these.

Caveats

WCRI indicates the following caveats in the study.

1. The study does not adjust for interstate differences in industry and injury mix.
2. The study does not include the residual insurance market and also excludes some large regional insurers.
3. Because of issues concerning data completeness, the study only includes 26 to 51 percent of all claims, depending on the state (less than in CompScope™).
4. Given the data source, the study is only able to consider prescriptions paid for by a workers' compensation insurer, and claims with such prescriptions.



Regarding the last of these, WCRI expected most cases with at least seven days of lost time would be serious enough to have a prescription. However, it found that only 39 to 78 percent (depending on the state), and 54 percent for Minnesota, had at least one prescription paid for through workers' compensation (see table).

WCRI explains this by noting three factors: First, chiropractors are the sole treating provider in some states more often than in others and they do not prescribe. Second, some prescriptions paid for by workers' compensation may not be captured by the data, as when the injured worker pays out of pocket and is then reimbursed by the workers' compensation insurer without the cost being identified as a prescription. Third, some prescriptions may be paid for by non-workers'-compensation payors. WCRI presents evidence suggesting this factor is large.

WCRI acknowledges that some of the interstate differences it finds in measures of prescription frequency and cost per claim may arise from prescriptions being paid for outside of workers' compensation. However, the report indicates certain tests suggest such bias is unlikely to be large.

“At minimum,” the report states, “the benchmark metrics in this study should be thought of as measuring trend and interstate differences in the costs, prices and utilization of prescription drugs paid under workers' compensation. The sensitivity analysis suggests that these results are likely to be reasonable measures for characterizing the trend and interstate differences in all prescriptions received by the average patient.”

Because of these issues, the study does not focus on prescription drug costs as a percentage of total workers' compensation claim costs or medical costs.

Results of 2011 Special Compensation Fund assessment

By John Kufus, Accounting Officer, Financial Services

The Special Compensation Fund (SCF) assessment funds Minnesota's workers' compensation programs. Seventy percent of the assessment dollars go to funding the supplementary and second-injury benefit programs. The assessment also pays the operating expenses of the Workers' Compensation Division of the Department of Labor and Industry, the Office of Administrative Hearings and the Workers' Compensation Court of Appeals.

As a result of legislation enacted in 2002, the assessment process has changed. Companies are no longer required to report on a semi-annual basis. The report is now being done on an annual basis. The report form is mailed to companies at least 45 days before the due date of April 1.

The Special Compensation Fund assessment is directly invoiced by the Minnesota Department of Labor and Industry.

	2010 indemnity	Ratio	Estimated liabilities	DSR pure premium
Insurers	\$310,102,135	76.23%	\$68,304,226	\$767,354,846
Self-insurers	\$96,683,117	23.77%	\$21,295,774	
Total	\$406,785,252	100.00%	\$89,600,000	\$767,354,846

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

The estimated state-fiscal-year 2012 funding requirement for the SCF was determined to be \$89,600,000. The liability was divided between the insurers and self-insurers by the ratio of their 2010 indemnity payments to the total indemnity reported by both groups.

Insurer premium surcharge rate

The insurer premium surcharge rate applied for the purpose of determining the Special Compensation Fund assessment was 8.9013 percent. The rate was determined by dividing the insurer portion of the SCF state-fiscal-year 2012 liability (\$68,304,226) by the 2010 designated statistical reporting pure premium reported by all insurers to the Minnesota Workers' Compensation Insurers Association (\$767,354,846).

Percentage for assessments due for insurers and self-insurers			
Year assessed	Basis for assessment	Insurers	Self-insurers
2003	2002	12.5457%	27.4374%
2004	2003	11.0335%	25.6801%
2005	2004	10.1742%	24.2958%
2006	2005	9.2312%	23.6870%
2007	2006	8.7176%	24.0396%
2008	2007	8.6050%	23.8969%
2009	2008	8.5347%	23.3185%
2010	2009	8.6636%	22.4319%
2011	2010	8.9013%	22.0264%

Self-insured assessment rate

The imputed self-insured assessment rate was 22.0264 percent. It was determined by dividing the self-insured portion of the Special Compensation Fund state-fiscal-year 2012 liability (\$21,295,774) by the total 2010 indemnity reported by the self-insured employers (\$96,683,117).

More information

For further information, contact John Kufus at (651) 284-5179 or john.kufus@state.mn.us.

DLI launches work comp ombudsman program

By Philip B. Moosbrugger, Workers' Compensation Ombudsman

The Department of Labor and Industry (DLI) has established a new Office of Workers' Compensation Ombudsman, as of Sept. 1, 2011, to provide advice and assistance to employees and employers who need help understanding and navigating the workers' compensation system, to help resolve problems they encounter. The ombudsman also recommends statute or rule changes to improve the effectiveness of the workers' compensation system.



Various stakeholders have long sought an ombudsman function to help injured workers who are often at a disadvantage because they know very little about how the sometimes complex benefit entitlement system works in workers' compensation. In February 2009, after studying DLI's oversight of workers' compensation, the Minnesota Office of the Legislative Auditor issued a report that encouraged the establishment of an ombudsman function to "help those injured workers who are overwhelmed with the workers' compensation process."¹

Small businesses, which often do not have human resources specialists on staff, are also sometimes unsure of their rights and obligations within the workers' compensation system. They may need help understanding insurance requirements and the claims process when an employee is injured.

The ombudsman assists injured workers by:

- providing advice and information to help them protect their rights and to pursue a claim;
- contacting claims adjusters and other parties to help resolve disputes;
- assisting in preparing for settlement negotiations or mediation; and
- making appropriate referrals to other agencies or entities when further resources are needed.

The ombudsman assists small businesses by:

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



The Office of Workers' Compensation Ombudsman works cooperatively with the Alternative Dispute Resolution unit and Compliance, Records and Training unit of DLI's Safety and Workers' Compensation Division to ensure a comprehensive set of services to parties who require the department's assistance in resolving disputes arising under workers' compensation laws.

To request services, contact the ombudsman at (651) 284-5013, 1-800-DIAL-DLI (1-800-342-5354), TTY (651) 297-4198 or dli.ombudsman@state.mn.us; visit www.dli.mn.gov/WC/Ombudsman.asp.

¹Office of the Legislative Auditor, *Oversight of workers' compensation* (February 2009), p. 66.

Basic Adjuster Training 2011

– Last 2011 session –

Oct. 27 and 28

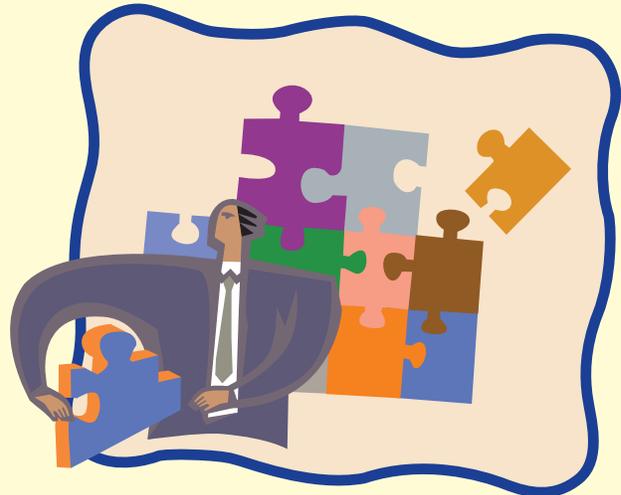
8:30 a.m. to 4 p.m.



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. The session is limited to 28 people. Classes are 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.

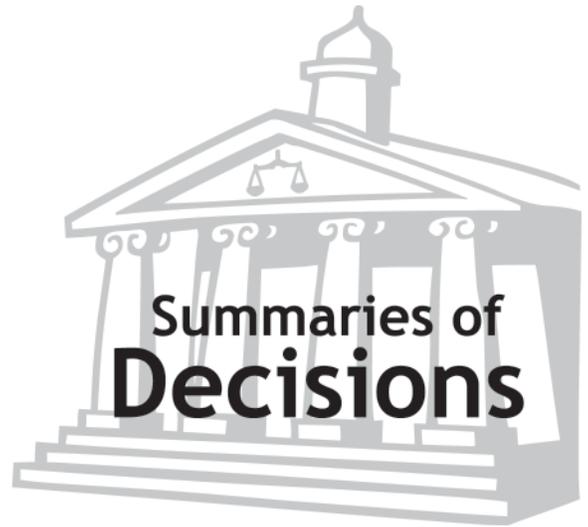
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Do you administer Minnesota workers' compensation claims? Not sure if you need training? Take the pre-test at www.dli.mn.gov/WC/PDF/quiz.pdf and see how you do.

Workers' Compensation Court of Appeals

April through June 2011

Case summaries published are
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Parales-Rodriguez vs. ERMIC, 4/1/2011

Attorney Fees – Contingent Fees;
Attorney Fees – Heaton Fees;
Attorney Fees – Irwin Fees;
Attorney Fees – Roraff Fees

Where ongoing wage-loss benefits were still producing contingent fees, the compensation judge erred in concluding that it was not premature to determine the adequacy of contingent fees to reasonably compensate the employee's attorney and, concluding that they would be inadequate, in awarding a specific Roraff/Heaton fee.

Affirmed in part and vacated in part.

Griffin vs. Kindred Hosps, 4/4/2011

Rules Construed – Minn. R. 5221.6600, Subp. 2.E.;
Settlements – Interpretation;
Medical Treatment and Expense – Reasonable and Necessary;
Medical Treatment and Expense – Treatment Parameters

Where the parties agreed that the treatment barred under the stipulation for settlement was that described in Minnesota Rules 5221.6600, subpart 2.E., and where the treatment at issue did not appear to the court to be described by the provisions of that rule, the compensation judge's finding that the treatment at issue was barred by the parties' stipulation for settlement was reversed, and the judge's denial of that treatment was vacated and the matter remanded, pending the judge's determination on the unaddressed issues of the reasonableness and necessity of the treatment and its compliance with the Minnesota treatment parameters.

Reversed in part, vacated in part, and remanded.

*Anderson vs. Frontier Communications, 4/11/2011**

Notice of Injury – Gillette Injury

Timely notice of Gillette injury was provided where the employee did not have sufficient information of the compensable injury before this attorney obtained reports from his treating doctors and where the medical records before that time had provided an alternate explanation for his symptoms.

Reversed.

Johnson vs. McDowall Cos., April 11, 2011

Practice and Procedure

Where the employer filed a motion for joinder of another employer and its insurer, shortly before a scheduled hearing, the compensation judge did not err by denying the motion where the employer has the option to file a petition for contribution and reimbursement against the other employer and insurer, and therefore there was no prejudice to the employer.

Causation – Substantial Evidence

Substantial evidence, including medical evidence and the employee's testimony, supports the compensation judge's findings that the employee's 2004 and 2005 work injuries were substantial contributing factors to the employee's current low back condition and need for treatment.

Affirmed.

Lensegrav vs. M.E. Robinson, 4/12/2011

Causation – Temporary Aggravation;
Causation – Substantial Contributing Cause

Substantial evidence, including well-founded medical expert opinion, supports the compensation judge's finding that the employee suffered a temporary aggravation of his pre-existing low back condition on Sept. 17, 2008, while employed by Osseo Brooklyn School Bus Company, insured by SFM. Substantial evidence further supports the compensation judge's determination that Osseo Brooklyn and SFM were 100 percent liable during the three months of the employee's temporary aggravation, and that M.E. Robinson and its insurer, EMC, were 100 percent liable for the employee's disability after the temporary aggravation subsided based on the pre-existing, ongoing effects of the employee's May 12, 1995, low back injury at M.E. Robinson.

Wages – Calculation

Where the employee's earnings prior to and on the date of his September 2008 injury included wages earned as a full-time bus driver during the school year and wages for part-time work during the summer months, the compensation judge erred in calculating the employee's wage on a 40-hour week times his hourly wage based on potential full-time work in 2009. Calculation of the employee's

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weekly wage requires findings of fact that are the province of the compensation judge, and the matter is remanded for computation of the employee's weekly wage.

Affirmed in part, and reversed and remanded in part.

*Drury vs. YRC International f/k/a Roadway Express, April 18, 2011**

Causation

Substantial evidence in the record, including witness testimony and medical records, supports the compensation judge's decision that the employee's medical treatment and disability since October 2008 were not causally related to his work injury in October 2008.

Affirmed.

Tooker vs. Taymark Corp., 4/21/2011

Temporary Benefits – Work Restrictions

Where the judge's decision was supported by expert medical opinion that the employee could work full time to the extent that she was able, and where it was the employee's testimony that she had been physically unable to work full time, the compensation judge's denial of discontinuance on grounds that the employee had returned to her job with the employer full time was not clearly erroneous and unsupported by substantial evidence, notwithstanding the fact that the employer had accommodated all of the employee's restrictions.

Discontinuance – Matters at Issue; Practice and Procedure – Matters at Issue

Where the parties had specifically identified only the employee's ability to work full time as the single issue for the judge's determination, and where the judge made unnecessary findings pertaining also to the employee's diagnosis and prospective treatment, the compensation judge's findings as to the employee's diagnosis and prospective treatment were vacated.

Affirmed in part and vacated in part.

Paape vs. City of St. Paul, 4/21/2011

Attorney Fees – Roraff Fees

The compensation judge erred in concluding that the employer had notified the employee of its approval of surgery within the 45-day period contemplated by the medical treatment parameters governing requests for nonemergency surgery. The 45-day period is calculated by calendar days, not working days. Because there was a genuine dispute over the employee's entitlement to surgery, the employee's attorney is entitled to Roraff fees for work performed in connection with that surgery.

Reversed.

Brown vs. Minneapolis Public Schools, Special School District #1, 4/22/2011

Causation – Substantial Evidence

Substantial evidence, including expert opinion, supported the compensation judge's decision that the employee's work-related accident permanently aggravated the employee's pre-existing knee condition.

Affirmed.

Armstrong vs. RJ Sport & Cycle, 4/22/2011

Medical Treatment and Expense – Chronic Pain Management;
Rules Construed – Minn. R. 5221.6040, Subp. 3.D.
Pursuant To Minn. R. 5221.6040, Subp. 3.D.

Appropriate medical treatment must be provided for any known organic syndrome causing pain before a diagnosis of chronic pain syndrome may be considered. The employee has received extensive treatment for his underlying degenerative disc disease, without resolution of his pain, and the compensation judge's decision is not reversible on this basis.

Medical Treatment and Expense – Chronic Pain Management;
Rules Construed – Minn. R. 5221.6600, Subp. 2.E.

Although in this case the treatment parameters do not apply where the employer and insurer denied the employee suffers from a chronic pain syndrome, the treatment parameters do provide guidance for analyzing whether a chronic pain management program is reasonable and necessary medical treatment. At a minimum, an admission evaluation should be performed to confirm the diagnosis of chronic pain syndrome and the willingness and ability of the employee to benefit from a chronic pain management program as described in Minn. R. 5221.6600, subp. 2.E.

Affirmed in part, modified in part and vacated in part.

*Baragar vs. Jordan Transformer L.L.C., 4/27/2011**

Wages – Multiple Employments;
Wages – Self-employment;
Statutes Construed – Minn. Stat. § 176.011, Subd. 18.

Where it appeared that the employee had essentially given up his self-employment by the time he took his job with the employer, and where there was no evidence that he ever followed up on any intention to continue in self-employment during his employment with the employer, the compensation judge's conclusion that the employee was "regularly employed" at both jobs at the time of his work injury, and so was entitled to have earnings from his self-employment included in his weekly wage, was clearly erroneous and unsupported by substantial evidence.

Reversed.

Ounasser vs. Golden LivingCenter – Rochester West, 4/28/2011

Causation – Medical Treatment;
Medical Treatment and Expenses – Reasonable and Necessary

Substantial evidence supports the compensation judge's determination that the medical expenses claimed by the employee are related to the work injury and were reasonable and necessary.

Practice and Procedure

Where the parties agreed as to the scope of the compensation judge's award, the compensation judge's decision is modified to reflect that understanding.

Affirmed in part, modified in part and vacated.

Conklin vs. Becker County Developmental Achievement Center, 4/28/11

Evidence

Exhibits that contain hearsay are not thereby necessarily inadmissible. The compensation judge's admission of certain testimony and exhibits even not directly relevant to the underlying legal issue was not improper where there is no indication that the compensation judge relied on this material in her decision.

Rehabilitation – Substantial Evidence

Substantial evidence supported the compensation judge's finding that the employee was not a qualified employee and was not eligible for rehabilitation services.

Affirmed.

Jensen-Linnel vs. ISD #831 Forest Lake, 4/29/2011

Arising Out Of and In The Course Of

Where the employee parked her school bus near her home during a brief break, a practice that had been approved by her supervisor, and where she exited the school bus, walked alongside the bus, slipped and fell on an icy surface near the bus, and broke her arm, the compensation judge's determination that the employee's injury did not arise out of and in the course and scope of her employment with the employer is not consistent with the law, and is therefore reversed.

Reversed.

Larson vs. Hutchinson Public Utilities, 4/29/11

Vacation of Award – Substantial Change in Condition

Pursuant to application of the factors contained in Fodness v. Standard Cafe, 41 W.C.D. 1054 (W.C.C.A. 1989), the employee established good cause to vacate the award on stipulation based on a substantial change in condition.

Petition to vacate granted.

Cartagena Quijada vs. Heikes Farm, Inc., May 4, 2011

Causation – Psychological Condition

Substantial evidence, including adequately founded expert opinion, supports the compensation judge's determination that the employee's depression was a result of psychosocial stresses, including unemployment and related financial stresses, separate from any physical stresses resulting from the personal injury and that the employee did not suffer a psychological injury as a consequence of his work-related injury.

Temporary Benefits – Work Restrictions;
Temporary Benefits – Fully Recovered

Substantial evidence, including the opinions of three adequately founded medical experts, supports the compensation judge's finding that the employee had no restrictions secondary to his work injury. Since the employee has no disability or restrictions caused by his work injury, he has no entitlement to workers' compensation benefits.

Affirmed.

Ellingboe vs. Lowes Home Centers, Inc., May 13, 2011

Practice and Procedure – Expedited Hearing

Where the issue of job search was not raised in the notice of intention to discontinue and where the employee had no notice that the employer was attempting to raise this issue at hearing, the issue of job search was not properly before the compensation judge and not considered by this court.

Affirmed.

Seel vs. Walmart, May 13, 2011

Earning Capacity – Substantial Evidence

Substantial evidence did not support the compensation judge's decision that the employee's reduction in earnings was unrelated to the employee's work injury.

Reversed.

Peterson vs. North Memorial Health Care, May 15, 2011

Causation – Permanent Injury

Where the employee had performed physically demanding work without problems for nearly two years before his work injury, where the judge had credited the employee's testimony that his back never returned to pre-injury status following his injury, and where the judge had accepted the treating doctor's opinion that the injury had not entirely resolved before the employee went back to work, the compensation judge's conclusion that the employee's injury was permanent in nature was not clearly erroneous and unsupported by substantial evidence.

Gillette Injury – Substantial Evidence;
Evidence – Expert Medical Opinion

Where the issue turned largely upon the compensation judge's resolution of conflicting expert medical opinion, where the accepted opinions were from doctors who had treated the employee over an extended period of time, and where those doctors had been provided by the employee's attorney with a history that was in evidence before the judge, the compensation judge's conclusion, in reliance on the treating doctors' opinions, that the employee had sustained a Gillette-type injury was not clearly erroneous and unsupported by substantial evidence, and there was no basis for reversal on foundational grounds.

Affirmed.

Trompeter vs. Boise Cascade Corp., May 18, 2011

Temporary Partial Disability – Earning Capacity;
Credits and Offsets – Credit for Overpayment

The compensation judge did not err in using the income reported on the employee's income tax returns for purposes of determining the employee's actual earnings and, consequently, the employer's entitlement to a credit for overpayment of benefits.

Affirmed.

Fellbaum vs. Northern Habilitative Services, Inc., May 18, 2011

Causation – Substantial Evidence

Substantial evidence supported the compensation judge's denial of medical expenses and permanent partial disability benefits, for tooth loss, on causation grounds. However, because the compensation judge gave inadequate rationale for denying the employee's claim for testing for hearing loss, the matter was remanded for reconsideration of that issue.

Affirmed in part, reversed in part and remanded.

Johnson vs. AmeriPride Linen and Apparel Services, May 19, 2011

Causation;
Temporary Partial Disability

Substantial evidence, including expert medical opinion, supports the compensation judge's finding that the employee's 2005 work is not a substantial contributing factor in the employee's wage loss from and after Aug. 13, 2007.

Affirmed

Peterson vs. Hibbing Taconite Mining Co., May 20, 2011

Discontinuance – Matters at Issue

The compensation judge did not err in concluding that the employer and insurer were entitled to discontinue temporary total disability benefits allegedly paid for a 1998 work injury, pursuant to Minnesota Statutes § 176.101, subd. 1(k), despite the employee's denial that such an injury had ever occurred. Nothing in the judge's decision precludes the employee from establishing, in future litigation, that his disability during the period at issue was instead due to a different work injury.

Affirmed.

Schweder vs. Covalence Specialty Materials Corp., May 26, 2011

Temporary Total Disability – Withdrawal From Labor Market

A voluntary move to a labor market with fewer employment opportunities does not automatically constitute a withdrawal from the labor market.

Affirmed in part and reversed in part.

Neff vs. SuperValu, Inc./Cub Foods, May 27, 2011

Causation – Gillette Injury;
Gillette Injury – Date of Injury;
Gillette Injury – Ultimate Breakdown

Given, especially, the record of the employee's medical treatment with her two treating physicians, supported as it was by the testimony of the employee herself at hearing, the compensation judge's finding of a Gillette-type carpal tunnel injury on the date when a one treating doctor related the condition to the employee's work was not clearly erroneous and unsupported by substantial evidence.

Rehabilitation – Consultation

Where it would not have been unreasonable for the judge to conclude that the employee's restrictions pertained as much to her work-related carpal tunnel syndrome as to her other, nonwork-related,

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upper extremity disorders, the compensation judge's award of a rehabilitation consultation was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

Johnson vs. Microcontrol Co., June 2, 2011

Causation – Substantial Evidence;
Permanent Aggravation

Substantial evidence, including adequately founded expert medical opinion, supports the compensation judge's finding that the employee's 2007 work injury was a permanent aggravation of the employee's pre-existing spinal condition.

Medical Treatment and Expense – Surgery;
Reasonable and Necessary;
Substantial Evidence

Substantial evidence, including adequately founded expert medical opinion, supports the compensation judge's finding that the proposed fusion surgery was reasonable and necessary medical opinion.

Affirmed.

White vs. Instantwhip Foods, June 7, 2011

Wages – Seasonal Work

Given the lack of evidence indicating that the employee's job was affected by seasonal conditions, the compensation judge did not err by failing to calculate the employee's weekly wage using the method applicable to seasonal workers.

Causation – Temporary Aggravation

Substantial evidence, including expert opinion, supported the compensation judge's decision that the employee's work injury was a temporary strain. However, the record did not support the compensation judge's decision that the employee had reached full healing from that work injury.

Maximum Medical Improvement – Substantial Evidence

Given the opinion of the employer and insurer's examiner and the lack of other evidence to support the judge's decision, the record as a whole did not support the conclusion that the employee had reached maximum medical improvement from the effects of his work injury.

Affirmed in part and reversed in part.

Kim vs. MoneyGram International Inc., June 14, 2011

Causation – Psychological Counseling

Substantial evidence, in the form of a well-founded medical opinion, supports the compensation judge's denial of the employee's claim for psychological counseling.

Affirmed.

Schatz vs. Interfaith Care Center, June 16, 2011

Causation – Psychological Counseling

Substantial evidence, in the form of a well-founded medical opinion, supports the compensation judge's denial of the employee's claim for psychological counseling.

Affirmed.

Baumgart vs. Monarch Wood Products, June 22, 2011

Evidence – Expert Medical Opinion

Based on the hypothetical questions asked of him by the employee's attorney, the employee's treating orthopedist had adequate foundation for his opinion that the employee's work activities substantially contributed to the employee's shoulder condition and resulting need for surgery.

Affirmed.

Wegner vs. American Legion Post 50, June 22, 2011

Causation – Substantial Evidence

Where it was not legally improper to find the employee's work injury a substantial contributing factor in accelerating or aggravating her right knee condition notwithstanding the indefinite cause of that condition, and where the treating doctor's causation opinion supportive of that finding was not without sufficient foundation, the compensation judge's conclusion that the employee's work injury was a substantial contributing cause of her current disability was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

Vargas-Velasquez vs. Hernandez Expert Roofing, Inc., June 23, 2011

Employment Relationship – Substantial Evidence;
Insurance – Coverage;
Statutes Construed – Minn. Stat. § 176.041, Subd. 1(G);
Statutes Construed – Minn. Stat. § 176.011, Subd. 11

Where the only two witnesses at hearing were the Spanish-speaking petitioner and the bilingual independent agent/consultant who assisted him and his business partners in preparing their business papers, and where the testimony of both of those witnesses was both externally and internally inconsistent and vague and unreliable, the compensation judge's reliance on the face value of the company's articles of incorporation and other documentary evidence to conclude that the work-injured petitioner was not an employee but was an executive officer of the corporation, excluded from personal insurance coverage, was not clearly erroneous and unsupported by substantial evidence.

Statutes Construed – Minn. Stat. § 176.205, Subd. 1

Where the petitioner had not, in his argument before the compensation judge, borne his burden of proving any intentional misrepresentation of any specific fact or identified any other clear element of fraud, and where he had not appealed from the judge's failure to address the issue in her findings or memorandum and had asserted his claim under a different statute, the compensation judge's conclusion that the employee was a corporate officer, as indicated in the articles of incorporation, and not an employee of his business associate, was not clearly erroneous and unsupported by substantial evidence, based on any claim of fraud by the business associate.

Insurance – Coverage

Where the prospective corporation was billed by the independent insurance agent for payment for its prospective workers' compensation coverage on Jan. 23, where the insurer acknowledged receipt of payment for coverage on Jan. 28, and where, in its policy mailed on Jan. 30, the insurer pre-dated coverage back to 12:01 on Jan. 27, the date requested in the insurance application, the fact that the corporation's articles of incorporation were not signed until later in the day on Jan. 27 did not render the covered business as unincorporated entity, such that one of the corporation's officers was an employee rather than a corporate officer, as named in the articles of incorporation.

Affirmed.

Rudolph vs. Minnesota Twist Drill, June 28, 2011

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 granted.

Hoover vs. ISD #84, June 29, 2011

Temporary Partial Disability – Substantial Evidence;
Earning Capacity – Substantial Evidence

To establish an earning capacity different from actual earnings, the employer may not present testimony from a vocational expert of a hypothetical job paying a theoretical wage. Such testimony does not rebut the presumption that actual earnings are an accurate measure of the employee's diminished earning capacity.

Temporary Total Disability – Substantial Evidence

Where the employee's restrictions from a non-work condition did not change the restrictions given for the work injury, the work injury continued to be a substantial contributing factor in the employee's continuing disability and, on a showing of cooperation with rehabilitation, the employee was entitled to temporary total disability for the period beginning with her job search and ending with the date she found and started employment within her restrictions.

Reversed.

Hert vs. Carlson Cos., June 30, 2011

Vacation of Award – Mistake

The petitioner established good cause to vacate the award on stipulation on grounds of mistake where the Medicare set-aside account contemplated by the agreement had still not been established more than three years after issuance of the award.

Petition to vacate granted.

Minnesota Supreme Court

April through June 2011

Case summaries published are
those prepared by the WCCA



- Michael J. Burlingame vs. Becker Brothers, Inc., A11-286, June 1, 2011

Decision of the Workers' Compensation Court of Appeals filed Feb. 2, 2011, affirmed, and the same is affirmed without opinion.