

New DLI program helps injured workers explore low-back treatment options

By Philip B. Moosbrugger, Workers' Compensation Ombudsman

The Department of Labor and Industry (DLI) began its new Patient Advocate Program for injured workers with serious low back injuries, Oct. 1. The program is a two-year pilot program offered through the DLI Office of the Workers' Compensation Ombudsman to assist injured workers with serious back injuries, who may be considering lumbar fusion surgery, to understand their treatment options and receive treatment according to accepted medical standards. The pilot program was created by new legislation signed into law by Governor Mark Dayton on May 16, 2013 (Laws 2013, chapter 70, article 2, section 12).

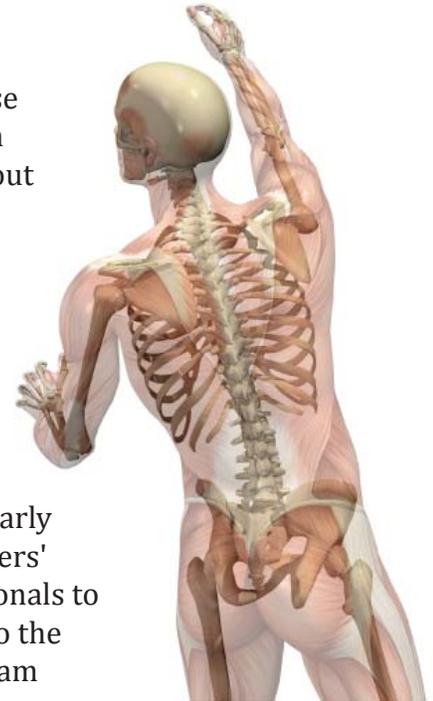
The Patient Advocate Program is staffed by Francisco Gonzalez, a DLI mediator/arbitrator whose experience mediating and deciding medical issues during the past seven years with DLI makes him very familiar with the medical issues facing injured workers in Minnesota's workers' compensation system. As the patient advocate, he helps injured workers understand their medical treatment options, as well as DLI's regulations and procedures regarding medical treatment.

The patient advocate disseminates information to injured workers through a variety of channels, including resources posted on the DLI website at www.dli.mn.gov/WC/OmbudsmanPatientAdvocate.asp, which include contact information, a description of the program's purposes, audience and goals, as well as links to other information resources.

To be optimally effective, the educational efforts of the Patient Advocate Program should be initiated as early as possible in the course of an injured worker's treatment. For that reason, DLI plans to contact injured workers with serious low back injuries by using injury data to identify injured workers who may benefit from these services.

The patient advocate will also reach out to the insurance, legal and qualified rehabilitation

consultant (QRC) communities to let these workers' compensation professionals know about the existence of the program, so injured workers facing important treatment decisions can be referred to the patient advocate for information and assistance. DLI particularly encourages these workers' compensation professionals to refer injured workers to the Patient Advocate Program whenever appropriate.



For further information, visit the program's Web page or contact Gonzalez at (651) 284-5202 or francisco.gonzalez@state.mn.us.

Required employee guide updated

Recent workers' compensation legislative changes prompted an update of the Department of Labor and Industry booklet, *An employee's guide to the Minnesota workers' compensation system*.

The 14-page booklet is mailed to each injured worker upon the department's receipt of a First Report of Injury (FROI) form. It briefly explains how current Minnesota laws apply to work-related injuries or illnesses and how the injured worker can get his or her questions answered.

The new edition of the guide is available online at www.dli.mn.gov/WC/EmpGuide.asp in English and in Spanish.

2013 law amendments: Scheduling vocational rehabilitation conferences

By Mark McCrea, *Alternative Dispute Resolution*

The 2013 Minnesota Legislature amended Minnesota Statutes § 176.102, subd. 3, in part, to provide that administrative conferences regarding vocational rehabilitation issues "must be held within 21 days, unless the issue involves only fees for rehabilitation services already provided or there is good cause for holding the conference later than 21 days." Implementation of this amendment impacts changes in the Department of Labor and Industry's (DLI's) procedures for certifying disputes and scheduling administrative conferences involving about 2,000 Rehabilitation Request forms filed annually.

The procedural changes set forth below are necessary to enable DLI to fully comply with the amendment while continuing the delivery of cost-effective dispute-resolution services. The practice tips are intended to assist parties and representatives in managing these changes.

Procedural changes

- Administrative conferences involving all Rehabilitation Request forms received on or after Oct. 1, 2013, will be scheduled to be held within 21 days of their receipt by DLI unless: the calendar submitted to the Office of Administrative Hearings (OAH) shows one or more parties or their representative are not available; the issue involves only fees for rehabilitation services already provided; DLI learns there is a similar issue pending at OAH; or other circumstances exist that constitute "good cause."
- If the Rehabilitation Request form received by DLI on or after Oct. 1, 2013, was not previously certified, the dispute certification process will be conducted by DLI after the administrative conference has been scheduled. If a noncertification letter regarding the issue specified on the Rehabilitation Request form is issued by DLI before the date of the conference, the administrative conference will be canceled. No further action will be taken regarding the Rehabilitation Request form, except where the dispute was not certified because litigation is pending at OAH, in which case the Rehabilitation Request form will be forwarded to OAH. Because of the expedited time frame, in some rehabilitation disputes, a certification determination may not be made until the administrative conference is convened.



Practice tips

- Attorneys' availability during the 21-day scheduling period will be determined based on the attorney calendar maintained by OAH or other relevant documentation. Accordingly, attorneys are strongly urged to ensure calendar information submitted to OAH is current regarding their availability.
- Attorneys should file requests for certification of dispute using the new online Attorney Request for Certification of Dispute form before filing Rehabilitation Request forms. Use of the online form is optional. However, requests for certification of dispute filed before Rehabilitation Request forms are filed enable DLI to avoid scheduling administrative conferences for claims that are not, in fact, disputed. Courtesy copies of requests for certification of dispute should also be sent to claims adjusters or attorneys representing insurers to facilitate prompt and meaningful communication between insurers' representatives and DLI staff members. The online Attorney Request for Certification of Dispute form can be accessed at <https://secure.doli.state.mn.us/dispute> or www.dli.mn.gov/WC/WcForms.asp. Additional information about the dispute certification process can be obtained at www.dli.mn.gov/WC/DispRes2.asp.

- The new online Rehabilitation Request form and Rehabilitation Response form should be used to address all disputes regarding vocational rehabilitation issues. Use of these online forms is optional. Increased use of these online forms potentially reduce inherent delays and costs associated with the submission and processing of paper documents. These forms can be accessed at <https://secure.doli.state.mn.us/adrforms/main.aspx>. General instructions and directions for completion and submission of these forms can be accessed at www.dli.mn.gov/WC/PDF/mq03.pdf and at www.dli.mn.gov/WC/PDF/rq03.pdf.
- Parties and representatives should promptly notify DLI's Alternative Dispute Resolution (ADR) unit if a similar issue involving the same claim develops at OAH after the Rehabilitation Request form is filed with DLI. Pursuant to Minnesota Rules 1415.3700, subp. 5, Rehabilitation Request forms with similar issues pending at OAH will be routed to OAH by the ADR unit staff. Administrative conferences scheduled to be held at DLI regarding these claims will be subsequently canceled. The ADR unit staff may be reached at (651) 284-5030 or 1-800-342-5354.
- The ADR unit will send written notices to all parties and representatives regarding the cancellation of administrative conferences. Due to the shortened time frame for processing rehabilitation issues, attorneys are advised to notify their clients of cancellations of administrative conferences occurring three or fewer days from the date it was scheduled to be held.

WCRI report compares Minnesota with 15 other states

By Brian Zaidman, Research and Statistics

The Workers' Compensation Research Institute's (WCRI's) most recent report for Minnesota, *CompScope Benchmarks for Minnesota, 14th Edition*, was released in October. This report uses insurer claim files to compare Minnesota's medical payments, indemnity benefits and insurer expenses with those of 15 other states, including Iowa and Wisconsin. The report is available for purchase from the WCRI website at www.wcrinet.org. Some of the major findings in the report include the following.

- Total costs for all paid claims, measured at an average of 36 months after the injury, were 22 percent lower in Minnesota than the 16-state median.
- Total costs for Minnesota claims have been stable from 2009 to 2011. Analysis of claims with more than seven days of lost time, measured an average of 12 months after the injury, shows medical costs, indemnity benefits and claims expenses all decreased by less than 1 percent.
- Adjusted medical payments for Minnesota claims with more than seven days of lost time, at an average of 36 months after the injury, were 3 percent less than the median.
- Adjusted indemnity benefit payments for Minnesota claims with more than seven days of lost time, at an average of 36 months after the injury, were 17 percent below the median.
- Adjusted benefit delivery expenses, which include medical cost containment expenses, defense attorney fees and independent medical examination costs, for Minnesota claims with more than seven days of lost time, at an average of 36 months after the injury, were 6 percent lower than the median.

Summing up the Summit

"Great speakers." "Very informative." "It was a highlight to meet Joe Paduda in person!"

Those were just some of the comments received by the Department of Labor and Industry (DLI) from the more than 250 attendees following the 2013 Workers' Compensation Summit on Sept. 12, in St. Paul, Minn. The Summit was sponsored by DLI and the Workers' Compensation Advisory Council and commemorated 100 years of workers' compensation in Minnesota.

Fifteen breakout sessions featured topics ranging from post-traumatic stress syndrome to violence prevention in the workplace to opioid abuse and addiction. General session speakers Joe Paduda, Margaret Spence and Jennifer Wolf-Horejsh provided entertaining and informative perspectives about the Affordable Care Act, return-to-work and workers' compensation in the next century.



Thank you to all the sponsors, exhibitors, speakers and attendees who made the event such a great success! View a slideshow of the event at www.dli.mn.gov/Summit.

Compensation for rehabilitation services

The workers' compensation bill passed last session included a provision that requires conferences on rehabilitation requests to be scheduled within 21 days, unless there is good cause for a delay. The law also requires qualified rehabilitation consultants (QRCs) to continue to provide "reasonable services" under the rehabilitation plan until the date that the conference was initially scheduled to be heard. See Minnesota Statutes § 176.106, subd. 3. The department has been asked whether insurers and other payers must compensate QRCs for these services.

The plain language of the statute requires QRCs to continue to provide reasonable services until the date of the originally scheduled conference, and there is no language that requires QRCs to provide those services free-of-charge. In fact, it would be unreasonable – and likely unconstitutional – for the Legislature to order QRCs to provide free services. Therefore, insurers and other payers must compensate QRCs for providing these services unless the commissioner or compensation judge determines they were not reasonable.

Anyone with questions regarding the provision should contact Deputy Commissioner Kris Eiden at kris.eiden@state.mn.us.

Department revising the R-2, R-3 and R-8 rehabilitation forms

The Department of Labor and Industry is in the process of revising its Rehabilitation Plan (R-2) form, Rehabilitation Plan Amendment (R-3) form and Notice of Rehabilitation Plan Closure (R-8) form to address recent changes to Minnesota Statutes § 176.102, subd. 5. The definition of job development was amended and job development services have been limited for dates of injury on or after Oct. 1, 2013.



Service code 10 previously represented job development/placement services. That service code is being split into two categories: service code 10A (job development) and 10B (job placement). The new service codes are to be reflected on both the rehabilitation forms and the rehabilitation provider invoices.

The revised forms will be available in PDF and through the department's rehabilitation form filing Web portal. For additional information, call Mike Hill at (651) 284-5153.

Request for comments

Possible rules governing long-term use of opioids or other scheduled medication, Minnesota Rules 5221.6600

Subject of rules – The Minnesota Department of Labor and Industry requests comments about its possible adoption of rules governing the long-term use of opioids or other scheduled medication to alleviate intractable pain and improve function for individuals with workers' compensation injuries. The rules may include the use of written contracts between the injured worker and the health care provider who prescribes the medication.

Persons affected – The rules would likely affect injured workers, health care providers who treat injured workers, employers of injured workers and workers' compensation insurers.

Statutory authority – Minnesota Statutes § 176.83, subd. 5 (b) (7), authorizes the commissioner of the department to adopt rules, in consultation with the Medical Services Review Board (MSRB), that establish standards and procedures for health care provider treatment. The rules must be used to determine whether a provider of health care services and rehabilitation services is performing procedures or providing services at a level or with a frequency that is excessive, unnecessary or inappropriate under Minn. Stat. § 176.135 based upon accepted medical standards for quality health care and accepted rehabilitation standards. An amendment to Minn. Stat. § 176.83, subd. 5, enacted during the most recent legislative session, authorizes the adoption of rules governing long-term use of opioids or other scheduled medication and written contracts between the injured worker and the health care provider who prescribes the medication.

Public comment – Interested persons or groups may submit comments or information about these possible rules in writing or orally until further notice is published in the *State Register* that the department intends to adopt or to withdraw the rules. The department will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments.

Rules drafts – The department has drafted possible rules, which are under discussion with the MSRB. A draft of the possible rules is available on the department's rulemaking Web page at www.dli.mn.gov/PDF/docket/5221_6020_8900TrtmPar_2.pdf. The dates and agenda of MSRB meetings are on the department's website at www.dli.mn.gov/Msrb.asp.

Agency contact person – Written or oral comments, questions, requests to receive a draft of the rules and requests for more information about these possible rules should be directed to Kate Berger at the Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN 55155; phone (651) 284-5295; fax (651) 284-5725; or email dli.rules@state.mn.us.

Alternative format – Upon request, this information can be made available in an alternative format, such as large print, Braille or audio. To make such a request, contact the agency contact person listed above.

Note: Comments received in response to this notice or previous notices will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure the administrative law judge reviews the comments, you should resubmit the comments after the rules are formally proposed.



Workers' compensation coverage for farms

By Brian Zaidman, Research and Statistics

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



If the farm operation has a farm liability insurance policy with \$300,000 total liability coverage and \$5,000 medical payment coverage for farm laborers, then the farm operation is not required to maintain workers' compensation insurance if the total wages to farm laborers during the previous calendar year were less than the statewide average annual wage.¹ If the farm operation does not maintain the specified liability insurance, then the farm operation must maintain workers' compensation insurance unless the total wages to farm laborers during the previous calendar year were less than \$8,000.²

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

Family farm coverage

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

Average annual wage under M.S. § 176.011 subd. 20	Services rendered (roughly payroll) year	Policy written year
\$40,636	Jan. 1-Dec. 31, 2006	Jan. 1-Dec. 31, 2007
\$41,996	Jan. 1-Dec. 31, 2007	Jan. 1-Dec. 31, 2008
\$44,154	Jan. 1-Dec. 31, 2008	Jan. 1-Dec. 31, 2009
\$45,618	Jan. 1-Dec. 31, 2009	Jan. 1-Dec. 31, 2010
\$45,095	Jan. 1-Dec. 31, 2010	Jan. 1-Dec. 31, 2011
\$46,572	Jan. 1-Dec. 31, 2011	Jan. 1-Dec. 31, 2012
\$47,616	Jan. 1-Dec. 31, 2012	Jan. 1-Dec. 31, 2013
\$49,134	Jan. 1-Dec. 31, 2013	Jan. 1-Dec. 31, 2014

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

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

Number of workers' compensation claims, cost of insurance premiums continues to drop

Annual Minnesota Workers' Compensation System Report released

The number of paid workers' compensation claims fell 48 percent relative to the number of employees from 1997 to 2011 and pure premium rates were down 29 percent since 1997, according to the *2011 Minnesota Workers' Compensation System Report*, just released by the Minnesota Department of Labor and Industry (DLI).

"The combination of fewer workers' compensation claims and lower workers' compensation insurance premium costs is good news for Minnesota's businesses," said Ken Peterson, DLI commissioner. "Though each workplace accident is one too many, the report underscores that Minnesota's workplaces have become much safer for employees and comparatively less costly for employers since 1997."

Significant findings

- The workers' compensation claim rate fell considerably from 1997 to 2011, from 8.7 to 4.6 claims per 100 full-time-equivalent employees.
- Pure premium rates for 2013 were down 29 percent from 1997, at their lowest level since that year.
- Because of the falling claim rate, total benefits, including medical, cash and rehabilitation, fell 7 percent relative to payroll between 1997 and 2011.
- Medical care accounts for the largest share of total system cost, 35 percent; next, insurance expenses, 31 percent; then cash benefits, 29 percent.
- The percentage of claims with disputes rose from 15.5 percent to 22.0 percent from 1997 to 2011, a 42-percent increase.
- The proportion of claimants receiving vocational rehabilitation services increased from 1997 to 2011. This may contribute to the results of findings of other studies that injured workers in Minnesota get back to work sooner than in most other states.

The report, part of an annual series, presents data from 1997 through 2011 about aspects of Minnesota's workers' compensation system. The purpose of the report is to describe the current status and direction of workers' compensation in Minnesota and to offer explanations, where possible, for recent developments. It is available online at www.dli.mn.gov/RS/WcSystemReport.asp. Copies of the report may also be obtained by calling (651) 284-5030 or 1-800-342-5354.



Workplace fatality statistics released; injury, illness rates to follow

By Brian Zaidman, Research and Statistics

Statistics from the Census of Fatal Occupational Injuries (CFOI) are now available on the Department of Labor and Industry (DLI) and U.S. Department of Labor websites. Minnesota 2012 CFOI tables are available at www.dli.mn.gov/RS/StatFatal.asp. National fatality figures from the CFOI program are available at www.bls.gov/iif/oshcfoi1.htm.

The 2012 estimated numbers and rates of nonfatal work-related injuries and illnesses by industry are scheduled to be released Nov. 7. These will be followed by the release of the case and demographic statistics for cases with days away from work. Minnesota statistics will be available online at www.dli.mn.gov/RS/StatWSH.asp. The *Minnesota Workplace Safety Report 2011*, which presents the 2011 fatality tables and nonfatal work-related injury and illness estimates is available online at www.dli.mn.gov/RS/WorkplaceSafety.asp.

Fatality statistics

The CFOI program shows a preliminary total of 70 fatal work-injuries in Minnesota in 2012, an increase of 10 cases from the final count of 60 fatal work-injuries in 2011, but the same number as in 2010. The 2012 total is above the average of 66 cases a year for 2007 through 2011. Final 2012 data from the CFOI program will be released in spring 2014.

The CFOI also provided the following statistics for Minnesota's workplace fatalities during 2012.

Industries

- Agriculture, forestry, fishing and hunting had the highest number of fatalities, with 20 cases, compared to 19 cases in 2011, which was also the highest number of fatalities. Most of the fatalities were caused by transportation incidents or contact with objects and equipment.
- Trade, transportation and utilities recorded the second-highest number of worker fatalities, with 15 cases, an increase from 10 cases in 2011.
- The number of fatalities in manufacturing increased from three in 2011 to nine fatalities in 2012.



Types of incidents

- Transportation incidents accounted for 28 fatalities, the most for any incident type. Ten of these fatalities occurred in the agriculture, forestry, fishing and hunting industry sector and nine fatalities occurred in trade, transportation and utilities.
- Contact with objects and equipment was the second most frequent fatal work-injury event in 2012, with 14 fatalities. Most of these cases involved the worker being struck by an object or equipment.
- There were 11 fatalities resulting from violence in 2012, compared with five fatalities in 2011. Nine of the fatalities were homicide by shooting.

Worker characteristics

- Men accounted for 65 of the 70 fatally injured workers in 2012.
- Workers age 55 and older accounted for 25 fatalities, with 12 of these fatalities in the agriculture, forestry, fishing and hunting industry sector.
- Self-employed workers accounted for 21 fatalities, including 16 fatalities to workers in agriculture, forestry, fishing and hunting and three in construction. There were 25 fatalities to self-employed workers in 2011.

EDI, eFROI news and updates

Mandatory electronic filing of the First Report of Injury as of Jan. 1, 2014

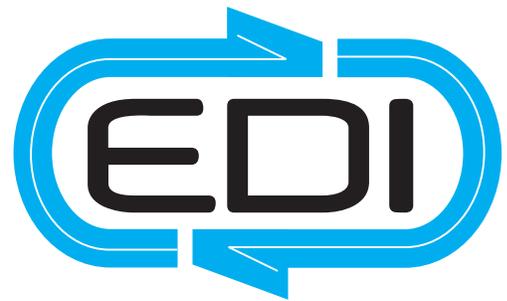
The Department of Labor and Industry (DLI) is in the final phase of preparation for the Jan. 1, 2014, implementation date for mandatory electronic filing of the First Report of Injury (FROI) form in Minnesota. All eFROI and electronic data interchange (EDI) trading partners should have submitted a trading partner profile and test files prior to the publication of this article, as all eFROI and EDI trading partners must complete testing by Dec. 1, 2013, to meet the Jan. 1, 2014, implementation date.

Any reporting entities required to file first reports of injury with DLI that have not yet begun testing should contact the EDI/eFROI Implementation Team immediately at dli.edi@state.mn.us to discuss next steps.

It is anticipated a revised version of the Minnesota Electronic Filing of First Report of Injury Implementation Guide will be available in January 2014 on DLI's EDI Web page at www.dli.mn.gov/WC/Edi.asp. Also included on the website is additional information regarding the mandatory EDI/eFROI implementation, including frequently asked questions and a link to the trading partner profile.

DLI's proposed rules related to electronic filing of first reports of injury have been approved by an administrative law judge at the Office of Administrative Hearings. It is anticipated the amended rules will be published in the State Register in November, with an effective date of Jan. 1, 2014. For more information about the proposed rules, see the DLI rulemaking docket at www.dli.mn.gov/PDF/docket/5220_25_29_Docket.pdf.

To receive the most recent news and updates pertinent to trading partners, subscribe to DLI's specialty email list entitled "Workers' compensation – trading partners" at www.dli.mn.gov/EmailLists.asp. Any questions, comments or concerns regarding implementation can be directed to the EDI/eFROI Implementation Team at dli.edi@state.mn.us.



ELECTRONIC DATA
INTERCHANGE



ELECTRONIC FIRST
REPORT OF INJURY

Department of Labor and Industry experts available for speaking engagements

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

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



Size of stipulated benefits varies by worker age

By Brian Zaidman, Research and Statistics

Stipulated benefits include indemnity and medical benefits specified in a "stipulation for settlement," which states the terms of settlement of a claim among the affected parties. A stipulation usually occurs in the context of a dispute, but not always. The stipulation may be reached independently by the parties or in a settlement conference or associated preparatory activities. A stipulation is approved by a judge at the Office of Administrative Hearings. It may be incorporated into a mediation award or an award on stipulation, usually the latter. The stipulation usually includes an agreement by the claimant to release the employer and insurer from future liability for the claim other than for medical treatment. Stipulated benefits are usually paid in a lump sum.

Although stipulated benefits can exceed \$200,000, most stipulated benefit amounts are less than \$25,000. An analysis of the 5,654 stipulated benefits based on settlements reported to the Department of Labor and Industry between Jan. 1, 2012, and Aug. 31, 2013, shows that only 4 percent of the stipulated benefit amounts were \$100,000 or more (see Figure 1).

Figure 1. Distribution of stipulated benefit amounts, settlements filed January 2012 through August 2013

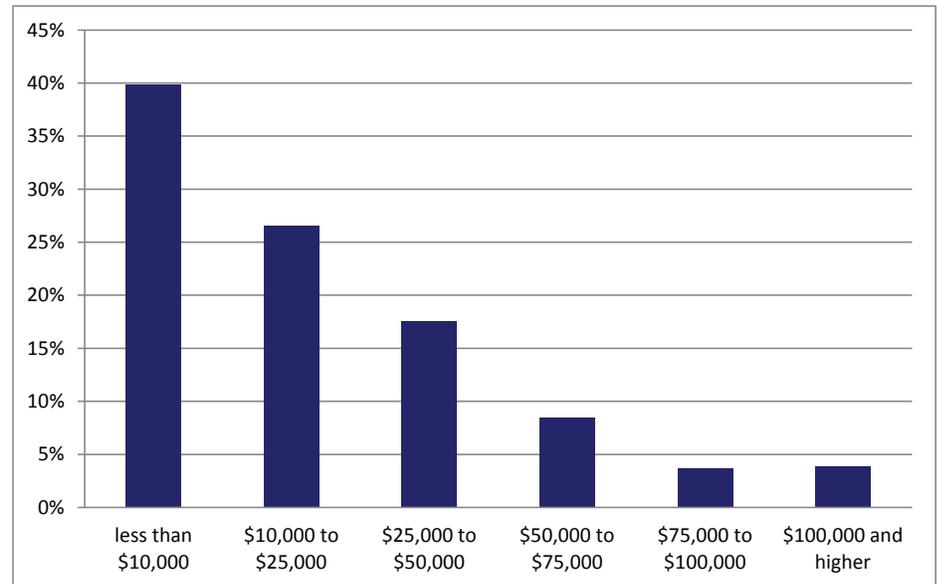


Figure 2. Mean and median stipulated benefit amounts by age at settlement, settlements filed January 2012 through August 2013

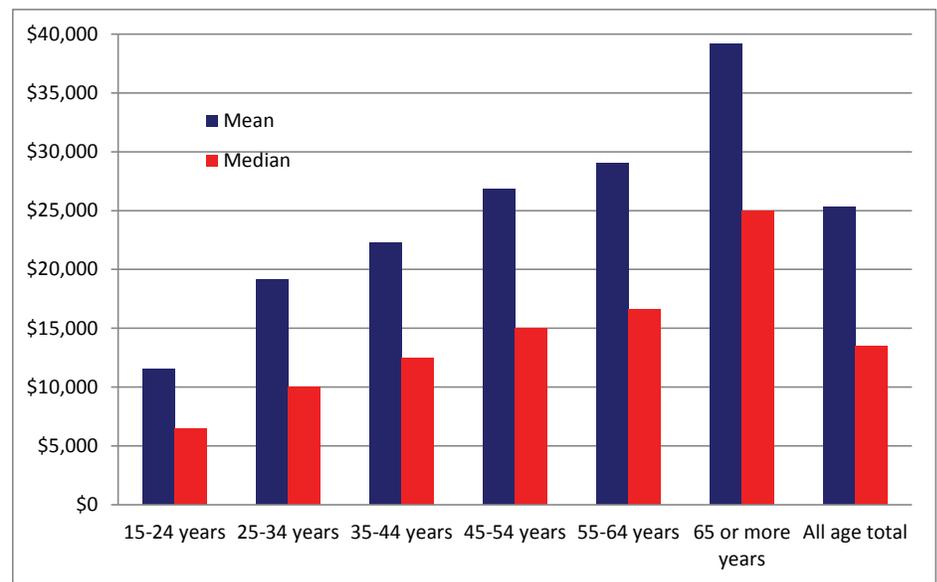


Figure 2 shows that older workers tend to receive higher stipulated benefit amounts than younger workers, especially workers age 65 years or older at the time of the settlement. While a proportion of this benefit difference by age is related to wage differences, further analysis is needed to understand the factors leading to the significantly higher amounts for the oldest worker group.

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

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

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



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

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

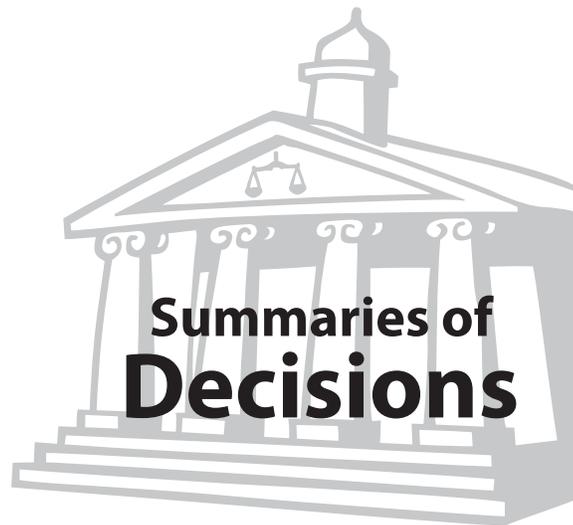
The rulemaking lists are required to be maintained for people who have registered with the agency to receive notices of agency rule proceedings. The rulemaking lists topic areas are: apprenticeship; boats/boats-for-hire; electrical; fire code; high-pressure piping; independent contractor; labor standards/prevaling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

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

Workers' Compensation Court of Appeals

July through September 2013

Case summaries published are
those prepared by the WCCA



Frovik vs. High Tech Tune, Inc., July 3, 2013

Vacation of Award – Substantial Change in Condition

Where the employee has not provided sufficient evidence to establish a substantial change in his underlying diagnoses, a change in his ability to work, additional permanent partial disability, unanticipated medical care, conditions or treatment, or a causal relationship between the injury covered by the settlement and his current condition other than what would have been reasonably been anticipated at the time of settlement, the employee's petition to vacate the award on stipulation is denied.

Petition to vacate award on stipulation denied.

Kessler vs. Upper Lake Foods, Inc., July 5, 2013

Wages – Calculation

The compensation judge erred in calculating the employee's weekly wage by including vacation pay the employee received as severance after his work injury and termination from employment.

Causation – Gillette Injury

Substantial evidence, including expert opinion, supported the compensation judge's conclusion that the employee's driving on bumpy roads for hours a day aggravated his neck condition and accelerated his need for treatment.

Permanent Partial Disability – Schedule

Where the record would have possibly supported several permanency ratings, the compensation judge did not explain why he chose the rating he did, and the judge also failed to make any findings as to the specific nature of the employee's condition or the work injury, remand was required for further findings and explanation.

Affirmed in part, reversed in part and remanded.

Dorr vs. National Marrow Donor Program, July 8, 2013

Attorney Fees – Excess Fees

The compensation judge's determination that the employee's attorney had waived his claim to additional excess contingent fees is supported by substantial evidence where the attorney had stated in a previous attorney fee hearing that he was capping his claim for contingent fees at the amount he was claiming in that proceeding.

Affirmed.

Gamble vs. Twin Cities Concrete Prods., July 8, 2013

Intervenors
Practice and Procedure – Intervention

Where the parties failed to give notice of its right to intervene to a medical provider in time for a hearing to determine the reasonableness and necessity of a surgery conducted at the provider's facility, the medical provider is entitled to full reimbursement of its charges from the employer, regardless of the reasonableness and necessity of the surgery pursuant to Brooks v. A.M.F., Inc., 278 N.W.2d 310, 31 W.C.D. 521 (Minn. 1979) and its progeny.

Reversed.

Colic vs. TCF Fin., Corp., July 11, 2013

Evidence – Burden of Proof

The existence of a personal injury may be established based on an employee's subjective complaints coupled with the opinion of a medical expert that the employee sustained a work-related injury or aggravation. A lack of a specific diagnosis or anatomical explanation for the employee's symptoms is not a bar to compensability. In this particular case, where it appears the compensation judge may have applied an inappropriate legal standard for establishing the existence of a personal injury, the compensation judge's findings and order is vacated and remanded for reconsideration.

Vacated and remanded.

Larson vs. Five County Mental Health Ctr., July 23, 2013

Permanent Total Disability – Substantial Evidence

Substantial evidence, including expert opinion, supported the judge's conclusion that the employee was permanently and totally disabled, despite her failure to look for work.

Permanent Partial Disability – Weber Rating

Substantial evidence, including expert opinion, supported the judge's award of benefits for a 25 percent whole body impairment, under Weber, for the employee's consequential psychological injury.

Affirmed.

Lara vs. Mavo Sys., Inc., July 23, 2013

Temporary Total Disability – Substantial Evidence

Substantial evidence, in the form of a medical opinion with adequate foundation, supports the compensation judge's denial of temporary total disability benefits.

Affirmed.

Bernath vs. Kantor Elec., Inc., July 23, 2013

Apportionment – Equitable

Substantial evidence, including expert opinion, supported the compensation judge's decision denying equitable apportionment of liability for the employee's disability and need for left shoulder treatment in 2009.

Affirmed.

Monson vs. Skaff Apartments, July 24, 2013

Causation – Substantial Evidence

Substantial evidence in the record supports the compensation judge's denial of permanent partial disability benefits related to the employee's December 2009 work injury.

Affirmed.

Keck vs. Independent Sch. Dist. #877, Aug. 1, 2013

Attorney Fees – .191 Fees

Substantial evidence, given the record of this unique case, supports the compensation judge's decision to award only 10 hours of attorney fees pursuant to Minnesota Statutes § 176.191 where the employee's attorney also received contingent fees under Minnesota Statutes § 176.081 and, although apportionment was one issue in the case, it was not the sole issue of importance in the case, and the primary dispute in the case involved the employee's entitlement to temporary partial disability benefits.

Affirmed.

Lomax vs. K-mart, Aug. 7, 2013

Appeals – Interlocutory Order
Practice and Procedure

Vacation of that part of an order that dismisses a claim that has not yet been made is appropriate.

Affirmed in part and vacated in part.

DeLa Cruz vs. Sunrise of Edina, Aug. 9, 2013

Medical Treatment and Expense – Treatment Parameters

Where an employer and insurer rely, at least in part, on a medical opinion indicating an injury is no longer a substantial contributing factor in the treatment at issue, the employer and insurer may not rely on the treatment parameters as a defense to the treatment at issue.

Affirmed.

Bowman vs. A & M Moving & Storage Co., Aug. 14, 2013

Causation – Consequential Injury
Causation – Substantial Evidence
Dependency Benefits – Payments to Estate

Where the employee had been prescribed Oxycodone for pain relief of a work-related injury and there was no evidence of suicide, homicide or natural causes, substantial evidence supports the compensation judge's finding that the employee's death due to Oxycodone toxicity was causally related to his work-related low back injury.

Affirmed.

Goetzinger vs. K-mart Corp., Aug. 23, 2013

Rehabilitation – Eligibility

Substantial evidence supports the compensation judge's determination that the employee was permanently precluded from engaging in the employee's usual and customary occupation and could reasonably be expected to return to suitable gainful employment through the provision of rehabilitation services, and that the employee was a qualified employee under Minnesota Rules 5220.0100, subp. 22, and was entitled to rehabilitation benefits.

Affirmed.

Linder (Everth) vs. Regis Corp., Aug. 29, 2013

Causation – Substantial Evidence

The compensation judge was aware of the potential inconsistencies and credibility concerns raised by the employer and insurer, but she determined that the testimony regarding the occurrence of the injury itself was credible. Because substantial evidence supports that determination, including the testimony and medical records presented, the compensation judge's finding of a compensable injury is affirmed.

Notice of Injury – Substantial Evidence

Where there is sufficient evidence to support the compensation judge's decision to credit the employee's testimony that she reported her injury to representatives of the employer shortly after the injury, the compensation judge's determination that the employee had given proper notice of her work injury is affirmed.

Affirmed.

Galceran vs. Centrimark and Crawford & Co./Broadspire Servs., Inc., Sept. 4, 2013

Appeals – Interlocutory Order

The Workers' Compensation Court of Appeals lacks jurisdiction under Minnesota Statutes § 176.421 to consider a party's appeal from an order denying its motion for dismissal of a petition for contribution and reimbursement before a hearing.

Dismissed.

Ounasser vs. Golden Living Ctr. Rochester W., Sept. 4, 2013

Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence, including expert medical opinion and the employee's testimony, supports the compensation judge's finding that the chiropractic treatment and therapeutic massage was reasonable and necessary medical treatment.

Medical Treatment and Expense – Treatment Parameters

Under the circumstances of this case, the compensation judge did not err by addressing and awarding the employee's medical request for chiropractic treatment as a departure from the treatment parameters.

Appeals – Scope of Review

This court will not address issues raised for the first time on appeal.

Affirmed.

Stevens vs. S.T. Servs., Sept. 9, 2013

Permanent Total Disability Benefits – Substantial Evidence

Given the unusual facts of this case, the compensation judge did not err in denying the employee's claim for permanent total disability benefits, despite the employee's age, significant restrictions and relative lack of work for many years following commencement of permanent total disability benefit payment, where the employee had worked more recently at a substantial wage for a period of nearly three years, he left that job for reasons unrelated to his work injury, he submitted no recent evidence of his work injury-related restrictions, he made no job search and he submitted no vocational evidence in support of his claim.

Credits and Offsets

Given the employee's testimony that he informed the insurance investigator annually about his employment, and given his stated assumption that Social Security rules about income applied also to his entitlement to workers' compensation benefits, substantial evidence supported the compensation judge's decision that the employee did not receive permanent total disability benefits in bad faith for purposes of the employer and insurer's claim reimbursement pursuant to Minnesota Statutes § 176.179.

Affirmed.

Kranz vs. Coca Cola Enters., Inc., Sept. 9, 2013

Causation – Gillette Injury

Substantial evidence, in the form of a well-founded medical opinion, supports the compensation judge's determination that the employee sustained a Gillette injury to his right hip.

Gillette Injury – Date of Injury

Substantial evidence supports the compensation judge's finding that the employee's Gillette injury culminated on Oct. 3, 2011, when the employee first received medical treatment for his right hip.

Notice of Injury – Gillette Injury

Substantial evidence supports the compensation judge's finding that the employee provided timely notice of his injury to the employer.

Affirmed.

Palko vs. SJF Material Handling, Inc., Sept. 9, 2013

Causation – Substantial Evidence

Substantial evidence, including expert opinion, supports the compensation judge's conclusion that the employee did not sustain a cervical injury at work as claimed.

Affirmed.

Walch vs. W.L. Hall Co., Sept. 12, 2013

Arising Out Of and In The Course Of – Going To and From Work
Arising Out Of and In The Course Of – Traveling Employee

Where the employee, a union glazier, was assigned to work at a specific out-of-town jobsite, in a job expected to last two months, with regular days and hours of work, and was injured in a motor-vehicle accident on the way from his hotel accommodations to the worksite on Monday morning, before the beginning of the work week, the employee's injuries did not occur in, on or about the premises where the employee's services required his presence at the time of the injury or during the hours of his service as an employee, and did not, therefore, arise out of and in the course of employment.

Affirmed.

Seelen vs. Savanna Pallets, Inc., Sept. 12, 2013

Causation – Substantial Evidence

Substantial evidence, including records from treatment both pre- and post-injury, supported the compensation judge's conclusion that the work injury substantially contributed to the employee's cervical condition and need for treatment through the date of hearing.

Temporary Total Disability – Substantial Evidence

Substantial evidence, including expert opinion, supported the compensation judge's conclusion that the employee was subject to restrictions as a result of his injury and that he did not unreasonably reject suitable employment. Therefore, since his rehabilitation plan did not call for job search, but was instead directed at returning the employee to work at the employer, substantial evidence supported the judge's award of temporary total disability benefits, despite the employee's failure to make a job search during the period in question.

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

Couette vs. Parsons Elec., LLC, Sept. 20, 2013

Causation – Intervening Cause

Where substantial evidence supports the compensation judge's determination that the employee exceeded his weight-bearing limitations "on numerous occasions," the compensation judge's determination that the employee's need for surgery arose from an independent, intervening cause not attributable to the employee's customary activity in light of his condition is affirmed.

Affirmed.

Minnesota Supreme Court

July through September 2013

Case summaries published are
those prepared by the WCCA



Darlene Walsh v. K-Mart Corporation, A12-2273, Aug. 28, 2013

Decision of the Workers' Compensation Court of Appeals filed on Nov. 19, 2012, be, and the same is, affirmed without opinion.