

# Summaries of 2015-2016 Workers' Compensation Rehabilitation Cases

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Prepared for 9/20/16 Rehabilitation Provider Update

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9/13/2016

Washek v. New Dimensions Home Health, No. WC15-5861 (W.C.C.A. May 16, 2016).

The employee sustained injuries when her vehicle was struck by a semi-truck, rendering her a paraplegic and confined to a wheelchair. The compensation judge denied the base cost of a 2003 Dodge Grand Caravan as a rehabilitation expense after finding that the vehicle did not enable the employee to seek or engage in employment on a sustained basis. The compensation judge found it “vocationally significant that the employee had no rehabilitation plan to return to work and inferred from the medical records from the relevant period that the employee was not then capable of working.” The WCCA affirmed.

<http://mn.gov/workcomp/2016/Washek-05-16-16.html>

Halvorson v. B&F Fastener Supply, No. WC15-5869 (W.C.C.A. May 9, 2016), *cert. granted* June 6, 2016.

On March 9, 2007, the employee was injured while working. As a result, she received rehabilitation services. On February 26, 2015, the employer and insurer filed a Rehabilitation Request seeking termination of the employee’s rehabilitation services, alleging that she was no longer a qualified employee under Minn. R. 5220.0100, subp. 22 because she had gained suitable employment. At that time, the employee was working 20 hours per week at McDonald’s. The QRC testified before the compensation judge that the McDonald’s job was not suitable gainful employment because it “provide[d] an economic status that [was] significantly below that which she had on the date of injury.” The compensation judge disagreed. He ordered discontinuance of rehabilitation services based on his conclusions that the McDonald’s job constituted suitable gainful employment and that the employee was not a qualified employee pursuant to Minn. R. 5220.0100, subp. 22.

The WCCA held that the compensation judge did not apply the correct standard in his order terminating rehabilitation benefits. The WCCA reasoned that the issue of whether an employee is a “qualified employee for rehabilitation services” pursuant to Minn. R. 5220.0100, subp. 22 goes to when rehabilitation can be implemented, but has no bearing on when rehabilitation services should be discontinued. It also stated that whether an employee has suitable gainful employment is not a basis for determining whether to terminate rehabilitation. Stated differently, the WCCA reversed “because the statute and rules governing *termination* of

the employee's rehabilitation"—Minn. Stat. § 176.102, subd. 8 (2014) and Minn. R. 5220.0510, subp. 5—"were not properly before the compensation judge." (Emphasis added.)

<http://mn.gov/workcomp/2016/Halvorson-05-09-16.html>

Gilbertson v. Williams Dingmann, LLC, No. WC15-5878 (W.C.C.A. May 2, 2016), *cert. granted* May 31, 2016.

On October 13, 2011, while moving caskets and dressing and preparing human remains as a funeral director, the employee suffered a large herniated disc in her low back. The insurer assigned the employee a QRC. The rehabilitation plan completed by the QRC noted that the employee wanted to return to work in the same industry but with a different employer. At one point, after briefly consulting her QRC, the employer rejected a job offer from the date-of-injury employer. "In July 2012, the employee filed a Rehabilitation Request seeking a change in QRC to PAR Rehabilitation." Instead, the employee's rehabilitation services were terminated on October 8, 2012 by a Decision and Order. "The employee appealed the decision. On October 29, 2012, the QRC filed a closure form (R-8) despite the pendency of the appeal."

In 2015, a compensation judge awarded temporary partial disability benefits for the period when the employee was working and awarded rehabilitation benefits through PAR Rehabilitation, but denied temporary total disability benefits. The WCCA affirmed the awards of temporary partial disability benefits and rehabilitation benefits through PAR Rehabilitation. However, it reversed the denial of temporary total disability benefits. The WCCA cited Minn. Stat. § 176.101, subd. 1(i) (2014), which provides that

[t]emporary total disability compensation shall cease if the employee refuses an offer of work that is consistent *with a plan of rehabilitation* filed with the commissioner which meets the requirements of section 176.102, subdivision 4, or, if no plan has been filed, the employee refuses an offer of gainful employment that the employee can do in the employee's physical condition.

The WCCA stated that the job offer from the date-of-injury employer was plainly inconsistent with the rehabilitation plan, so the employee's choice to refuse it was not a basis for terminating temporary total disability.

<http://mn.gov/workcomp/2016/Gilbertson-05-02-16.html>

Huderle v. Sanford Clinic Bemidji, No. WC15-5837 (W.C.C.A. July 26, 2016).

On April 16, 2012, the employee sustained a low back injury while working as a nursing assistant for the employer. After having been treated by multiple medical professionals, on April 9, 2014, she filed a claim petition for temporary partial disability benefits, permanent partial disability benefits, medical expenses, and rehabilitation services. The employee underwent a rehabilitation consultation with a QRC on October 2, 2014. “The QRC determined that the employee was a qualified employee for rehabilitation services since she had work restrictions and was working in a different position at a reduced hourly wage for more hours per week, even though [she] had no wage loss based on her weekly wage.”

The compensation judge found, among other things, that the employee was not a qualified employee for rehabilitation services because she had returned to suitable gainful employment with the employer and did not have a wage loss. *See* Minn. R. 5220.0100, subp. 22.B. On appeal, the WCCA affirmed. The WCCA noted that “[a]n employee’s eligibility for rehabilitation services is determined by comparing the employee’s ‘economic status’ pre- and post-injury and applying the factors outlined in the statute and applicable rules,” and that “[e]valuation of the employee’s economic status includes comparison of the employee’s wages, fringe benefits such as health, life and disability insurance, the opportunity for future income and advancement, and other factors such as the employee’s age, education, interests, skills and employment history.” The WCCA then concluded that the fact that the employee had to do a *different* job with the date-of-injury employer after her injury did not mean that she was a qualified employee for rehabilitation services because there was no evidence as to any differences between the positions in terms of “opportunity for future income,” “advancement,” or “fringe benefits.”

<http://mn.gov/workcomp/2016/Huderle-01-26-16.html>

Contreras v. Jennie-O Turkey Store, Inc., No. WC15-5822 (W.C.C.A. November 24, 2015).

WCCA Headnotes:

TEMPORARY TOTAL DISABILITY - SUBSTANTIAL EVIDENCE. Substantial evidence supports the compensation judge’s finding the employee failed to prove she had restrictions that precluded her from continuing to work light-duty at the employer between May 22 and August 11, 2014. The compensation judge reasonably concluded the employee was

entitled to temporary total disability benefits commencing on the date of her orthopedic surgeon's initial left shoulder examination of August 12, 2014.

EVIDENCE - EXPERT MEDICAL OPINION; TEMPORARY TOTAL DISABILITY - SUBSTANTIAL EVIDENCE. The compensation judge did not err in accepting the adequately founded opinion of the independent medical examiner with respect to the employee's work restrictions, and substantial evidence supports the compensation judge's finding that the employee was physically capable of performing the light-duty job offered by the employer. Substantial evidence supports the compensation judge's determination that the employee's entitlement to temporary total disability benefits ceased on February 20, 2015, when the job offered expired. Where the employee was not receiving or being paid temporary total disability benefits at the time of the employer's job offer, the provisions of Minn. Stat. § 176.101, subd. 1(i), (which prohibits further temporary total disability if the employee rejects a suitable job offer), are not applicable.

<http://mn.gov/workcomp/2015/Contreras-11-24-15.html>

Rivera v. Cargill Kitchen Solutions, Inc., No. WC14-5726 (W.C.C.A. March 17, 2015).

The employee sustained an umbilical hernia injury in 2011 and a left shoulder injury in 2012. The employee began working with a QRC intern for disability case management services after the shoulder injury. The employee filed a claim petition on June 10, 2013 for temporary total disability benefits and rehabilitation benefits based on his left shoulder and hernia injuries. The employer and insurer filed a request for termination of rehabilitation services on August 6, 2013 based on a denial of primary liability. Among its other decisions, the compensation judge denied the employee's claim for temporary total disability benefits "based on findings that the employee did not cooperate with rehabilitation assistance, did not conduct a reasonable and diligent job search, and had withdrawn from the labor market."

The employee appealed, and the WCCA affirmed in part and reversed in part. The WCCA reversed the compensation judge's denial of temporary total disability benefits from May 23, 2013 through June 18, 2013 because it concluded that the compensation judge erred in finding "that the employee was not cooperating with rehabilitation services" at that time. The WCCA noted that the employee's "only obligation up to that point was to establish a rehabilitation plan." However, the WCCA stated that there was "evidence to support the

compensation judge's findings that the employee did not make a good faith effort to participate in the rehabilitation plan and did not conduct a diligent job search" after June 18, 2013. The WCCA agreed with the compensation judge that the employee "did not submit job logs as noted in the placement specialist's records, did not follow up on job leads, and limited his search to his hometown." Finally, the WCCA affirmed the finding that "the employee had voluntarily withdrawn from the labor market" because he turned down a job offer while he was attending truck driving school.

<http://mn.gov/workcomp/2015/Rivera-03-17-15.html>

Medlock v. Masterson Personnel, No. WC14-5732 (W.C.C.A. March 20, 2015).

The employee sustained an injury to his low back while working. Following a hearing, a compensation judge found, among other things, that the employee was "temporarily and totally disabled from January 30 through September 24, 2013," and "was a qualified employee for purposes of receiving rehabilitation assistance" after September 24, 2013. The employer and insurer appealed.

The employer and insurer argued to the WCCA that "it was inconsistent for the compensation judge to find" both that "the employee did not have any work restrictions after September 24, 2013" and that "the employee was a qualified employee for purposes of rehabilitation services after September 24, 2013." The WCCA was not persuaded. It noted that a compensation judge "may rely on the employee's testimony alone about his physical capabilities following the injury, both where there has been an unrestricted authorization to return to work or where no medical provider or physician has issued restrictions on the employee's ability to work." The WCCA explained that "the compensation judge found credible the employee's testimony that he has never fully recovered from the 2013 work injury," and concluded that this finding was supported by substantial evidence.

<http://mn.gov/workcomp/2015/Medlock-03-20-15.html>

Sebghati v. Life Time Fitness, No. WC14-5740 (W.C.C.A. February 6, 2015).

The employee was injured at work when she slipped and fell on a pool deck. She was diagnosed with a cervical strain and mild concussion. Beginning in November 2012, the employee received rehabilitation services, including medical management, from a QRC. On June

24, 2013, the employer and insurer filed a rehabilitation request seeking termination of rehabilitation services “on the basis that the [employee’s] work injury had completely resolved” and she “no longer had work restrictions related to her injury.” In August of 2013, the Department of Labor and Industry found that there was no further need for medical management by the QRC and ordered that he cease activity on the claim and file a notice of rehabilitation closure. The employee asked for a hearing before a compensation judge. “The compensation judge . . . found that QRC services from July 22, 2013, through February 17, 2014, were not reasonable or necessary.”

The WCCA affirmed the compensation judge’s decision on the issue of vocational rehabilitation expenses. It noted that the employee had been released to return to work during the entirety of the disputed period and that the services provided at that time were not designed to help the employee return to suitable gainful employment, but rather were focused on “litigation and medical management.” The WCCA concluded that the compensation judge’s determination on the rehabilitation issue was supported by substantial evidence in the record.

<http://mn.gov/workcomp/2015/Sebghati-02-06-15.html>

Hoffman v. Timberline Sports N Convenience, No. WC14-5754 (W.C.C.A. January 6, 2015).

In 2008, the employee tripped and jammed her right knee on a ramp in a walk-in freezer at work. She was treated by medical professionals who had varying opinions about her knee pain. In November 2012, the employee filed a claim petition seeking workers’ compensation benefits. The compensation judge found that the employee had a “pre-existing degenerative condition” even before the work injury and that she “had no permanent partial disability or employment restrictions from [the] work injury.” The judge also denied the employee’s claim for a rehabilitation consultation.

On appeal, the WCCA affirmed, noting that a determination that an employee has “completely recovered from [a] work injury or has no employment restrictions from the injury may defeat a claim for a rehabilitation consultation.” The WCCA concluded that substantial evidence supported the compensation judge’s finding that “the employee did not establish she had employment restrictions as the result of her work-related injury.”

<http://mn.gov/workcomp/2015/Hoffman-01-06-15.html>

Schramel v. Belgrade Nursing Home, No. WC14-5749 (W.C.C.A. May 21, 2015).

The employee sustained an injury to her low back on February 17, 2012 while working for the employer. The compensation judge found that the employee was a qualified employee entitled to rehabilitation benefits and ordered the employer and insurer to pay for rehabilitation services in the amount claimed.

On appeal, the employer and insurer asserted that the claim should have been denied because the QRC did not appear in the case to substantiate his request for reimbursement of rehabilitation expenses. The WCCA rejected this argument, stating that attendance by an intervenor may be waived at the discretion of the compensation judge and that the “employee has a right to make a claim directly for rehabilitation benefits . . . regardless of the intervention status of any provider.”

The employer and insurer also argued that the compensation judge failed to make specific findings on multiple issues. The WCCA concluded that there was sufficient evidence in the record to support the compensation judge’s findings that “the employee was a qualified employee for the purpose of rehabilitation services,” that “a job search would have been futile,” that “the employee cooperated with rehabilitation,” and that “the QRC reasonably focused on providing medical management with the goal of enabling a return to work.”

<http://mn.gov/workcomp/2015/Schramel-05-21-15.html>

Sumner v. Jim Lupient Infiniti, 865 N.W.2d 706 (Minn. July 2015).

No. WC14-5754 (W.C.C.A. January 6, 2015).

Two healthcare providers who had moved to intervene in this workers’ compensation case failed to attend a hearing, so the compensation judge denied their claims for reimbursement. The WCCA and Minnesota Supreme Court affirmed on this issue. The Minnesota Supreme Court held that, under Minn. Stat. § 176.361, subd. 4 (2014), “a party who intervenes in a workers’ compensation matter must appear at the hearing at which a compensation judge resolves the intervenor’s claim for reimbursement,” so the compensation judge did not err when it denied the intervenors’ claims.

<http://mn.gov/law-library-stat/archive/supct/2015/OPA140726-070815.pdf>