Survey shows slight increase in Minnesota injury, illness rate

Minnesota’s estimated workplace injury and illnesses rate for 2020 rose slightly from that of 2019. According to the annual Survey of Occupational Injuries and Illnesses, the state had an estimated 3.5 OSHA-recordable, nonfatal, workplace injuries and illnesses per 100 full-time-equivalent (FTE) workers in 2020; the estimated rate for 2019 was 3.2 cases per 100 FTE workers, the lowest ever recorded since 1973.

The survey estimated Minnesota had 76,700 workers with OSHA-recordable, nonfatal, workplace injuries and illnesses in 2020, compared to 73,600 estimated cases for 2019. There were 17,400 illnesses in 2020 and, of these, 14,500 were respiratory illnesses, including 14,300 COVID-19 cases. In 2019, there were 400 respiratory cases and in 2018, 200.

In 2020, Minnesota’s employment covered by the survey was approximately 2.78 million workers. In 2019, employment covered by the survey was 2.87 million workers.

“These survey results show the importance of employers taking measures to keep the workplace safe from the hazards of COVID-19 and other injuries and illnesses,” said Roslyn Robertson, Department of Labor and Industry (DLI) commissioner. “We appreciate the good-faith efforts employers in Minnesota are taking to provide a safe and healthful workplace for their employees.”

Nationally, an estimated 3,229,200 nonfatal workplace injuries and illnesses were reported in private- and public-sector workplaces for 2020, resulting in a rate of 2.9 cases per 100 FTE workers.

Other results from the Minnesota survey

The industry divisions with the highest total injury and illnesses rates were: state government health care and social assistance (11.1 cases per 100 FTE workers); private health care and social assistance (7.3); and local government public administration (5.9).

An estimated 34,900 worker injuries, 1.6 cases per 100 FTE workers, had one or more days away from work after the day of injury. In 2019, this rate was 0.9. Additional statistics about the characteristics of the cases with days away from work are highlighted below.

- The median number of days of work disability for workers with one or more days away from work was 10 days. In comparison, the median number of days away from work was six days in 2019.
- COVID-19 accounted for 41% of all injuries and illnesses. Sprains, strains and tears accounted for 20%, followed by soreness and pain (14%).
- The most affected body parts were body systems (43%). This is the category that contains the body parts affected by COVID-19. COVID-19 accounted for 97% of the body systems. Upper extremities (19%) was second and trunk (16%) third.
- The most common injury event was exposure to harmful substances or environments (43%). This category includes exposures to COVID-19. Ninety-five percent of the cases in this category were COVID-19. The second most common injury event was overexertion and bodily movement (24%), followed by falls, slips and trips (13%).
- Viruses, including COVID-19, were the source of 41% of workplace illness cases in 2020. Other common sources of injury included: the injured or ill worker (10%); persons other than the injured or ill worker (10%); and floors, walkways and ground surfaces (9%).
Work Comp Campus continues to support stakeholders, provide resources

Work Comp Campus, DLI's workers' compensation claims portal that launched Nov. 2, 2020, continues to support internal and external stakeholders through:

- posting of FAQs specific to each stakeholder group – see [www.dli.mn.gov/business/workers-compensation/work-comp-campus-faqs](http://www.dli.mn.gov/business/workers-compensation/work-comp-campus-faqs);
- online availability of training materials and video resources – see [www.dli.mn.gov/business/workers-compensation/work-comp-campus-training](http://www.dli.mn.gov/business/workers-compensation/work-comp-campus-training);
- an anonymous feedback form – see [https://secure.doli.state.mn.us/stakeholderfeedback/](https://secure.doli.state.mn.us/stakeholderfeedback/); and
- staffing the Workers’ Compensation Division Help Desk, which is available by phone or email Monday through Friday from 8 a.m. to 4:30 p.m. Contact the help desk at 651-284-5005 (press 3), 800-342-5354 (press 3) or helpdesk.dli@state.mn.us.

Reminder: Charges for medical records

Health care providers may charge fees for copies of existing medical records related to a current workers’ compensation claim. However, health care providers or their vendors cannot charge retrieval fees for copies of medical records when medical records do not exist.

Minnesota Statutes § 176.135, subdivision 7, states that health care providers may charge for copies of any records or reports that are “in existence and directly relate to the items for which payment is sought under this chapter.”

Minnesota Rules 5219.0300, subpart 2, reiterates the fact that fees can only be charged for existing medical records. Under Minn. R. 5219,0300, subp. 1, a health care provider may be reimbursed no more than 75 cents a page for an appropriate record to substantiate the service being billed. Subpart 2 states, “For all other copies of existing medical records or data ...” a charge not to exceed 75 cents a page is reasonable and a maximum $10 retrieval fee can be charged. Actual postage, Minnesota sales tax and notary fees may also be charged.

If you have questions about reimbursement for medical records under Minnesota law, contact DLI’s medical policy staff at 651-284-5052 or medical.policy.dli@state.mn.us.

State agencies and the U.S. Bureau of Labor Statistics (BLS) compile the survey data. This is the primary source of workplace injury and illness statistics at the state and national levels. DLI collects injury and illness records from randomly sampled Minnesota establishments in the private and public sectors (excluding federal agencies). Approximately 3,500 establishments provided usable responses for the 2020 survey.

The Minnesota Department of Labor and Industry appreciates the thousands of employers that fulfilled their mandate to make the survey a success and enabled the publication of injury and illness rates.

Kate Daly named new assistant commissioner; two new ADR mediators

New assistant commissioner to lead DLI's Workers' Compensation Division
Kate Daly has been named the Department of Labor and Industry's (DLI's) new assistant commissioner for the Workers' Compensation Division. Daly comes to DLI from the St. Paul City Attorney's Office and has almost two decades of workers' compensation experience in both the private and public sectors.

Her private practice experience was devoted to workers' compensation defense. She advised employers and insurers, and arbitrated, mediated and litigated cases before DLI, the Office of Administrative Hearings (OAH) and the Workers' Compensation Court of Appeals (WCCA). Daly then joined the Hennepin County Attorney's Office, where she led the workers' compensation teams for both Hennepin County and the Hennepin County Medical Center. She advised and counseled on liability determinations and litigated cases before DLI, OAH and WCCA. Daly received her undergraduate degree from the University of St. Thomas and her law degree from William Mitchell College of Law.

Two new ADR mediators
Patti Provencher and Nancy Wallrich recently joined the Alternative Dispute Resolution (ADR) unit as mediators and arbitrators at the Department of Labor and Industry's main office in St. Paul, Minnesota.

Provencher joins ADR with than more eight years of experience as a workers' compensation attorney. She is a graduate of the University of Minnesota, Carlson School of Management, and obtained her Juris Doctor from the University of Minnesota Law School.

Wallrich has many years of workers' compensation and personal injury litigation experience. She is a graduate of Skidmore College and obtained her Juris Doctor from the William Mitchell College of Law.

ADR seeks early intervention in workers' compensation disputes through conference and mediation. It responds to questions from injured workers, employers, health care providers, attorneys and qualified rehabilitation consultants. In addition to the two new employees, ADR mediators and arbitrators include: Christie Ahern, Walter Bowser, Aaron Frederickson, Steve Gilmore, William Hauck, Debra Heisick, Ken Kimber, Frances Li, Keith Maurer, Nell Nere, Chris Raymond and Steve Sullivan.

ADR supervisors are Donna Olson (donna.p.olson@state.mn.us, 651-284-5343) and Brian Mak (brian.mak@state.mn.us, 651-284-5344).

Turn to Office of Workers' Compensation Ombudsman for help with claims
The Department of Labor and Industry's Office of Workers' Compensation Ombudsman informs, assists and empowers injured workers and small businesses having difficulty navigating the workers' compensation system. It also recommends statute or rule changes to improve the effectiveness of the workers' compensation system. To request assistance, contact the Office of Workers' Compensation Ombudsman at dli.ombudsman@state.mn.us, 651-284-5013 or 800-342-5354.

The ombudsman assists injured workers by:
- providing information to help them protect their rights and to pursue a claim;
- contacting claims adjusters and other parties to resolve a dispute;
- assisting in preparing for settlement negotiations or mediations; and
- making appropriate referrals to other agencies or entities if needed.

The ombudsman assists small businesses by:
- providing information about what to do when an employee is injured;
- 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.
Ask the ADR pro

DLI's Alternative Dispute Resolution unit answers frequently asked questions

Editor’s note: The Alternative Dispute Resolution (ADR) unit at the Minnesota Department of Labor and Industry seeks early intervention in workers’ compensation disputes through conferences and mediation. It handles calls from the Workers’ Compensation Division Help Desk and responds to questions from injured workers and their employers.

Q. When does the Department of Labor and Industry (DLI) refer medical and rehabilitation disputes to the Office of Administrative Hearings (OAH)?

A. DLI refers medical and rehabilitation disputes to OAH in the following instances.

- When there is an OAH conference or hearing on a related issue already set close to the time the DLI conference would take place. A typical example is a rehabilitation dispute filed to terminate the rehabilitation plan and a "239" conference has been scheduled at OAH.

- When medical disputes exceed $7,500 at the time of filing. However, the $7,500 limit does not apply if the medical issue to be determined is whether a charge for a service, article or supply is excessive under Minnesota Statutes 176.136, subdivision 1, 1a, 1b or 1c, and corresponding Minnesota Rules.

- When medical disputes involve claims for pre-approval of surgery.

Q. Does Alternative Dispute Resolution (ADR) certify a dispute if the insurer intends to request an independent medical examination (IME) or an examination by the insurer’s or employer's physician?

A. The insurer’s intent to request an examination by the employer’s physician (or IME) is not by itself a reason to deny certification. There are typically other reasons ADR considers such as the following.

- Do the prior notice rules in the treatment parameters apply?
  - Was prior notice required under Minn. R. 5221.6050, subpart 9?
  - If prior notice was required, did the insurer receive prior notice and the corresponding information as required by the rules? Even if the insurer states it did not receive the prior notice, is there documentation that it was provided?
  - Did the insurer respond within seven days and request an examination within the rule timeframes? Has it been scheduled or held with a pending examination report? (Even then, the rules provide nonemergency surgery can be provided 45 days after the insurer’s request for an examination.)

If the treatment parameter prior notice rules do not apply, or prior notice was not provided to the insurer when it should have been, factors that are considered in certification determination include the following.

- Has the examination already been scheduled or held, and the report is due soon?

- Has the insurer had adequate time and information to take a position about liability? Did the insurer receive a request for the treatment before ADR contacted them (such as from the attorney or employee)?
  - If so, when did the insurer receive the request (is there documentation)?
- What action did the insurer take in response to the request? Did the insurer wait until ADR contacted them before stating it intends to schedule an IME even if it had previously received a request from the employee or attorney?

- What is the specific reason for the insurer's requested exam? Does it directly relate to the proposed treatment?

**Recent dispute certification statistics**

ADR's goal is to complete the dispute certification process within seven business days from the date the dispute certification request is received. In the most recent four-month period, DLI received 489 requests for certification. The average time for completing a certification has been less than seven days.

More recent complete statistics from 2020 include:

- 52% of medical disputes and 43% of rehabilitation disputes were certified at DLI;
- for disputes not certified, 66% of medical disputes and 59% of rehabilitation were not certified because they were resolved; and
- 29% of certified medical disputes and 29% of certified rehabilitation disputes were referred to OAH.


The restrictions, interruptions and work environment changes associated with the COVID-19 pandemic and the transition to Work Comp Campus (DLI's workers' compensation claims portal rolled out Nov. 2, 2020) may have caused some temporary inconsistencies. DLI is reviewing its processes to ensure its work is consistent and timely.

If you have concerns about a current dispute, contact ADR supervisors Donna Olson, at donna.p.olson@state.mn.us or 651-284-5343, or Brian Mak, at brian.mak@state.mn.us or 651-284-5344.

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**Stay in the know: Subscribe for news from DLI**

Did you know the Department of Labor and Industry offers more than two dozen email lists you can subscribe to to receive news targeted to specific groups? (You are probably on the COMPACT email list, if you're reading this newsletter.)

Lists related to workers' compensation news include the following:

- Adjusters updates
- Employer updates
- Rehabilitation providers updates
- Attorney updates
- Medical providers updates
- Trading partner updates

Other email lists are available for:

- Agency news
- Construction codes, licensing and building trades
- Minnesota OSHA and workplace safety
- Apprenticeship, dual-training and Youth Skills Training
- Labor standards, worker rights, wage and hour
- Rulemaking

CompFact: First responder claims for PTSD, denials increase

By Brian Zaidman, Research and Statistics

A change to Minnesota Statutes § 176.011, subdivision 15(e), effective Jan. 1, 2019, provides first responders with a rebuttable presumption of work-relatedness for post-traumatic stress disorder (PTSD) claims without any accompanying physical injury when diagnosed by a licensed psychologist or psychiatrist according to the Diagnostic and Statistical Manual of Mental Disorders. From Oct. 1, 2013, through Dec. 31, 2018, first responders (police officers, fire fighters, paramedics, emergency medical technicians, corrections officers, licensed nurses employed to provide emergency medical services outside of a medical facility, public safety dispatchers, sheriffs, deputy sheriffs and Minnesota State Patrol members) needed medical evidence to prove their claims were work related, the same as all other workers.

This article examines the number of claims for indemnity benefits filed for mental disorders, such as anxiety, stress and PTSD, on the basis of their description filed on the First Report of Injury (FROI) and coded into the DLI workers’ compensation claims database. Although the statute only applies to PTSD, mental illnesses described as anxiety and stress disorders are included because the FROI description is often not based on a diagnosis; many claims initially described as anxiety and stress disorders are evaluated for compensability as PTSD claims. It is possible additional claims for PTSD injuries have been filed using claim petitions, which sometimes result in the injury characteristics not being coded.

As shown in Figure 1, in 2012 (the year before mental illnesses resulting from a mental stimulus were compensable), workers filed claims for 17 PTSD (and related mental illnesses). Most, if not all, of these claims had a physical component, such as a violent attack. The claims numbers increased nearly every year after PTSD became compensable as its own illness, reaching 290 claims in 2020. There were 160 claims filed during the first six months of 2021.

Figure 1 also shows the number of claims for the two worker groups with the most PTSD claims filed – first responders and health care workers – and for all other workers. Police officers, which includes county sheriffs and the Minnesota State Patrol, account for 80% of the first responders with PTSD claims. First responders and health care workers had similar numbers of PTSD claims from 2013 through 2017. The number of first responder PTSD claims in 2018 nearly doubled the 2017 total, a year before the first responder rebuttable presumption of work-relatedness became effective. Since the presumption became effective in January 2019, there have been 390 first responder PTSD claims and 94 health care worker claims. The decrease in the number of PTSD claims for all other workers in 2020 is likely due to employment changes caused by the COVID-19 pandemic.
The trend in PTSD claims from 2012 through 2021 can also be examined by looking at claims by the law then in effect and taking account of the situation before and after the killing of George Floyd in Minneapolis. Figure 2 shows the percentage of lost time PTSD claims where the worker received indemnity benefits, including settlements. The percentages are shown for three worker groups – first responders, health care workers and all other workers – and for four time periods: before PTSD became compensable as a stand-alone (mental-mental) illness (January 2012 through September 2013); when PTSD became compensable, but before the first responder presumption became effective (October 2013 through December 2018); when the first responder presumption became effective and before the killing of Floyd (Presumption A, January 2019 through May 2020); and after the killing of Floyd (Presumption B, June 2020 through June 2021). It is very likely that some of the claims filed in 2021 are still in dispute, so the primary liability determination numbers should be considered preliminary.

Several trends are visible in Figure 2, showing differences in time and comparing worker groups. For first responders, the percentage of claims accepted or paid indemnity benefits has decreased during the time periods, with the lowest percentage of paid claims occurring when these workers had a rebuttable presumption of work-relatedness for PTSD. While the number of first responder claims filed has increased, as shown in Figure 1, currently only 7% of the PTSD claims filed by first responders after the killing of Floyd have been accepted for benefits or paid a settlement.

For health care industry workers, the percentage of claims paid did not change significantly during this time period, keeping between 20% and 26%. The trend for all other workers shows a decreasing trend in the percentage of claims paid, decreasing from 30% when PTSD first became compensable (in October 2013) to only 17% among claims filed in June 2020 or later.

PTSD claim filing is also a topic of current interest because of the increased filing of PTSD claims by police officers for workers’ compensation and Public Employees Retirement Association benefits. An examination of workers’ compensation PTSD claims by month of FROI filing during 2020 shows 17 claims were filed in June, more than the number of claims filed in the previous three months combined. This number further increased to 40 claims in July, and high claims filing volume continued through November.

Figure 3 shows the payment and denial status for these monthly filings, which total 186 claims. The majority (82%) of these claims were denied and not paid, while another 8% were initially denied but later received a payment. Only three claims filed in 2020 were paid benefits without an initial denial.
WCRI report compares Minnesota medical payments, utilization with 17 other states

The Workers Compensation Research Institute’s (WCRI’s) most recent report for Minnesota, *CompScope Medical Benchmarks for Minnesota, 22nd Edition*, was released in October. The report uses insurer claim files to compare Minnesota’s medical payments and service utilization with those of 17 other states, including Iowa and Wisconsin. The report is available for purchase from WCRI at [www.wcrinet.org](http://www.wcrinet.org).

The report focuses on results for workers injured in 2019 and on trends for claims from 2014 to 2019, with experience through 2020. Most statistics relate to claims with more than seven days of lost time, measured at an average of one year following the injury. The report results cover the time period up to 18 months after the introduction of the hospital outpatient and ambulatory survey center fee schedules. The following are some of the major findings.

- For claims with more than seven days of lost time, Minnesota’s average adjusted medical payment for 2019 claims measured in 2020 was $11,659, 18% lower than the median of the 18 study states.
  - Average payments per claim for nonhospital providers were 26% lower than the 18-state median.
  - Average hospital outpatient payments were 22% higher than the 18-state median.
  - Average payments for hospital inpatient services were 18% lower than the median.

- Medical payments per claim showed little change during the period from 2014 through 2019. The average annual growth in medical payments in Minnesota was 0.8%, lower than the 2.2% median annual growth among the study states.

- Two-thirds of the 2019 Minnesota claims had payment to a hospital (typical of the study states) and hospitals accounted for 51% of the medical payments, above the median of 45%.

- Minnesota’s average adjusted hospital outpatient payments for 2019 claims ($6,200) were higher than the median state’s value ($5,100). Hospital outpatient payments remained stable for 2019 claims, compared with 2018 claims at one year’s maturity (-0.8% change). In comparison, more than half of the study states saw increases of at least 3%.

- Among 2018 claims (at two years average claim maturity), 5.0% of injured workers in Minnesota had hospital inpatient care, slightly lower than the median value of 5.6%. Among workers with inpatient episodes, 44% involved surgery, which is 2.5% of all claims with more than seven days of lost time, below the median value of 2.9%.

- Minnesota’s average adjusted hospital inpatient payments per inpatient episode for 2018 claims (at two years average claim maturity), $36,300, was very close to the median state value ($36,900).

- Among claims at an average of one year maturity, hospital inpatient care accounted for 16.5% of total medical payments for 2019 claims, lower than the 19.9% median of the study states. Hospital outpatient payments accounted for 34.5% of total medical payments, higher than the 21.0% median.

- For arthroscopic knee and shoulder surgeries performed at ambulatory surgical centers, Minnesota’s average payment for workers injured in 2019 was the median value for the 18 states.
Rehabilitation Review Panel seeks new members

Current openings
The Rehabilitation Review Panel (RRP) currently has openings for:
• one chiropractor member (four-year term);
• two union labor members (four-year term);
• one employer member (four-year term);
• one union labor representative alternate member (annual term);
• one chiropractor/health care provider/rehabilitation provider;
and
• one employer/insurer alternate member (annual term).

To apply for one of these positions, visit www.sos.state.mn.us/boards-commissions on the Secretary of State website.

About RRP
The Rehabilitation Review Panel is composed of employer, insurer, labor, medical and rehabilitation representatives and:
• advises the Department of Labor and Industry (DLI) about workers' compensation vocational rehabilitation and its issues;
• develops and recommends vocational rehabilitation rules;
• studies vocational rehabilitation services and their delivery;
• assists the DLI commissioner in accomplishing public education; and
• makes final decisions about certification approval or disciplinary matters of qualified rehabilitation consultants and vendors in conjunction with contested hearings.

Panel members participate in person or via Webex online meetings. Members of the public may also attend meetings in person or via Webex. The meetings are quarterly and generally last one to two hours. If issues warrant, meetings may occur more often. The panel’s meeting schedule, agendas and minutes are online at www.dli.mn.gov/about-department/boards-and-councils/rehabilitation-review-panel.

Training: Two January sessions of OSHA recordkeeping basics offered
The Department of Labor and Industry is offering two sessions of its free, introductory-level training seminars about OSHA recordkeeping requirements:

• Wednesday, Jan. 12, at 4 p.m.
• Friday, Jan. 14, at 8 a.m.

Maintaining an accurate OSHA log of recordable work-related injuries and illnesses is an important skill that benefits employers, workers, safety professionals and government agencies.

Topics covered
• Recordability of injuries and illnesses
• Counting time
• How many logs to keep
• Creating a log summary
• Recording COVID-19 cases
• Classifying cases
• Privacy cases
• Maintaining logs
• Reporting log data to OSHA
• Differences between OSHA cases and workers' compensation claims

Workers' compensation events calendar

Note: Event dates may change. Always check the online calendar at www.dli.mn.gov/about-department/about-dli/events-workers-compensation.

January 2022

Jan. 6  Rehabilitation Review Panel
Jan. 12  Training: The basics of OSHA recordkeeping
Jan. 13  Workers’ Compensation Advisory Council
Jan. 14  Training: The basics of OSHA recordkeeping
Jan. 20  Medical Services Review Board
Jan. 26  Workers’ Compensation Advisory Council

February 2022

Feb. 11  Orientation session for rehabilitation providers

April 2022

April 7  Rehabilitation Review Panel
April 21  Medical Services Review Board
April 25-26  Workers’ Compensation Institute, Minnesota CLE
Scott Roux v. R.J. Reynolds Tobacco, Aug. 3, 2021

Medical Treatment and Expense – Treatment Parameters
  Rare Case Exception

Substantial evidence in the record supports the compensation judge’s finding that the employee’s acupuncture treatment was reasonable and necessary and met a rare case exception.

Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence in the record, including medical records and the employee’s credible testimony, supports the compensation judge’s determination that recommended treatment modalities were reasonable and necessary to treat the employee’s CRPS condition.

Evidence – Res Judicata

The employee’s current claim for prescription medications were not barred by res judicata because those medications were prescribed to treat the employee’s current CRPS condition and the prior denial of those medications applied only through the date of the prior hearing.

Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence in the record, including references in other treatment records and the prior findings and order, supports the compensation judge’s award of psychotherapy treatment without the specific treatment records submitted into evidence.

Affirmed.


Practice and Procedure – Matters at Issue

The compensation judge did not err in declining to address the issues of permanent partial disability (PPD) benefits or penalties because neither were raised at hearing.
Evidence – Expert Medical Opinion

This court affirms the compensation judge’s choice between competing expert opinions where the chosen opinion is adequately founded.

Affirmed.


Causation – Substantial Evidence

Substantial evidence, including expert medical opinion, supports the compensation judge’s findings that the employee had not shown that she had sustained work-related head or neck injuries and that other claimed injuries were temporary.

Evidence – Expert Medical Opinion

The compensation judge was not required to accept the treating doctors’ diagnoses and impressions over the opinion of the employer and insurer’s medical expert.

Affirmed.

_Jake Long v. Minnesota Vikings Football Club, Sept. 1, 2021_

Temporary Partial Disability – Earning Capacity

Substantial evidence supports the compensation judge’s conclusion that the employee is entitled to temporary partial disability benefits based upon post-injury earnings from rental property income received as a result of the employee’s work activities.

Wages – Self-employment

Where the compensation judge used a reasonable method to determine post-injury wages, the judge’s calculations were supported by substantial evidence.

Affirmed.

_Joan E. Hurst v. Caledonia Haulers, Inc., Sept. 27, 2021_

Evidence – Expert Medical Opinion

The compensation judge did not abuse her discretion in relying on expert medical opinion that had adequate foundation and was consistent with the employee’s medical record.

Causation – Psychological Injury

Mental Injury

Substantial evidence supports the compensation judge’s determination that the employee’s aggravation of her pre-existing mental conditions arose from physical stimuli and physical trauma and is therefore compensable under Minnesota Statutes § 176.011, subdivision 16, as a physical/mental injury.
Temporary Total Disability – Work Restrictions
Temporary Partial Disability – Work Restrictions

An employee taken off of work by a treating psychologist is eligible for wage loss benefits when subject to employment restrictions related to the work injury, even where those restrictions are later modified.

Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence in the record, including well-founded medical opinion, supports the compensation judge’s award of payment for medical treatment as that medical treatment was reasonable, necessary and causally related to the work injury.

Affirmed.

*Gerald Grace v. Smith Foundry Co., Oct. 5, 2021*

**Attorney Fees – Roraff or Irwin Fees**

Where the compensation judge weighed all Irwin factors, it was within her discretion to give more weight to the factor regarding the difficulty of the issues than to that of the results obtained factor. It was not an abuse of the judge’s discretion to conclude that the contingent fees were inadequate to reasonably compensate the employee’s attorney and the excess fees awarded were reasonable.

Affirmed.


**Causation – Gillette Injury**

Substantial evidence, including expert medical opinion, supports the compensation judge’s finding that the employee had not sustained Gillette injuries to her low back or right hip while working for the employer.

**Evidence – Expert Medical Opinion**

The compensation judge was not required to accept the treating doctors’ diagnoses and impressions over the opinion of the employer’s medical expert.

Affirmed.

*Greg Denisen v. Hormel Foods Corporation, Oct. 12, 2021*

**Causation – Gillette Injury**

Substantial evidence, including expert medical opinion, supports the compensation judge’s finding that the employee failed to establish that he sustained a Gillette injury to his cervical spine.

Affirmed.

Respondent's treatment with opioid medication, which is noncompliant with the long-term opioid treatment parameter promulgated by the Department of Labor and Industry, does not qualify as a rare exception to the treatment parameters and is, therefore, not compensable treatment under Minnesota's workers' compensation system.

Reversed.

Daniel Bierbach v. Digger’s Polaris, A20-1525

1. Because resolving a claim asserting that a conflict exists between federal law that prohibits cannabis possession and state law that requires an employer to pay for an injured employee's reasonable and necessary medical treatment would require the Workers' Compensation Court of Appeals to interpret and apply federal law, that court lacks subject matter jurisdiction to decide the preemption issue presented by that claim.

2. The prohibition in the Controlled Substances Act, 21 U.S.C. §§ 801-971, on the possession of cannabis preempts an order made under Minnesota's workers' compensation law, Minnesota Statutes § 176.135, subdivision 1 (2020), that requires an employer to reimburse an injured employee for the cost of medical cannabis used to treat a work-related injury.


Susan K. Musta v. Mendota Heights Dental Center, A20-1551

1. Because resolving a claim asserting that a conflict exists between federal law that prohibits cannabis possession and state law that requires an employer to pay for an injured employee's reasonable and necessary medical treatment would require the Workers' Compensation Court of Appeals to interpret and apply federal law, that court lacks subject matter jurisdiction to decide the preemption issue presented by that claim.

2. The prohibition in the Controlled Substances Act, 21 U.S.C. §§ 801-971, on the possession of cannabis preempts an order made under Minnesota's workers' compensation law, Minnesota Statutes § 176.135, subdivision 1 (2020), that requires an employer to reimburse an injured employee for the cost of medical cannabis used to treat a work-related injury.