

COMPACT

for workers' compensation professionals

May 2011

Minnesota Department of Labor and Industry

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From the *State Register*:
Provider participation list available



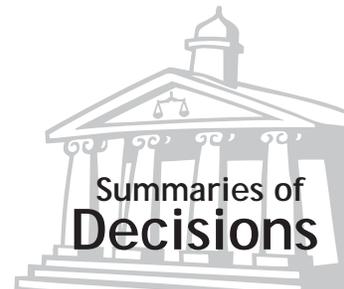
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Summaries of
Decisions

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Electronic service of notices on attorneys

By AnnMarie S. O'Neill, Court Administrator, Office of Administrative Hearings



In January, the Office of Administrative Hearings (OAH) and the Department of Labor and Industry (DLI) implemented a new email service for attorneys involved in workers' compensation matters, which allows the two agencies to serve proceeding notices and documents in an electronic format secured by the state of Minnesota's Enterprise Email system on attorneys who have agreed to participate in the program.

The new electronic service has been very successful and OAH reminds attorneys they can sign up for this service at any time. To receive proceeding notices and documents issued by OAH and DLI in an electronic format, attorneys must complete an authorization form and forward it to OAH. To access the authorization form, go to www.oah.state.mn.us/wcdocs/E-serviceInsert.htm.

To receive electronic notices, the workers' compensation image system prohibits more than one email address to be associated to an attorney. OAH advises new participants to create a generic email address to allow staff members and attorneys access to electronic notices.

Contact LeeAnn Shymanski at OAH, at (651) 361-7832 or at leeann.shymanski@state.mn.us, with questions about participating; authorizations may also be emailed to her at that address.

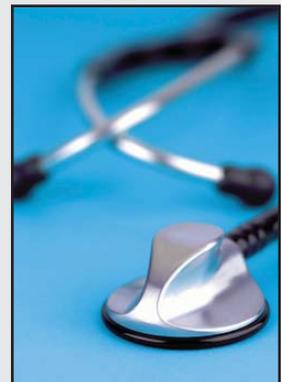
From the *State Register*

Provider participation list available

Minnesota Statutes § 256B.0644 and Minnesota Rules parts 5221.0500, subp. 1, and 9505.5200 to 9505.5240, also known as DHS "Rule 101," require health care providers that provide medical services to an injured worker under the workers' compensation law to participate in the Medical Assistance Program, the General Assistance Medical Care Program and the MinnesotaCare Program.

Notice is hereby given that the Minnesota Health Care Programs provider participation list for April 2011 is now available. The provider participation list is a compilation of health care providers that are in compliance with the Department of Human Services (DHS) Rule 101. If a provider's name is not on the list, DHS considers the provider noncompliant.

The list of providers is separated by provider type, each section is in alphabetical order by provider name and there is no additional information on the list other than the provider's name. This list is distributed on a quarterly basis to Minnesota Management and Budget, the Department of Labor and Industry, and the Department of Commerce. To obtain the list, call Julie Hervas, DHS Rule 101 specialist, at (651) 431-2707 or toll-free at 1-800-366-5411. You may fax requests to (651) 431-7462 or mail them to the Department of Human Services, P.O. Box 64987, St. Paul, MN 55164-0987.

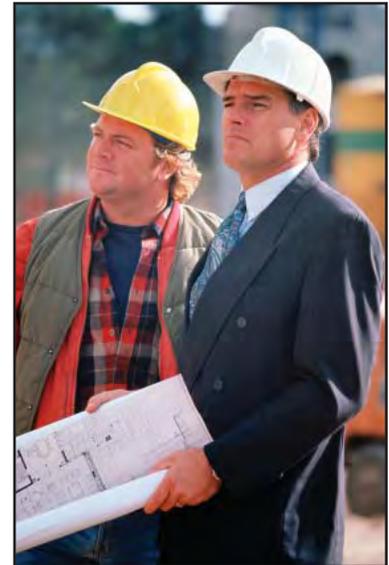


CompFact

The advancing tide of older workers

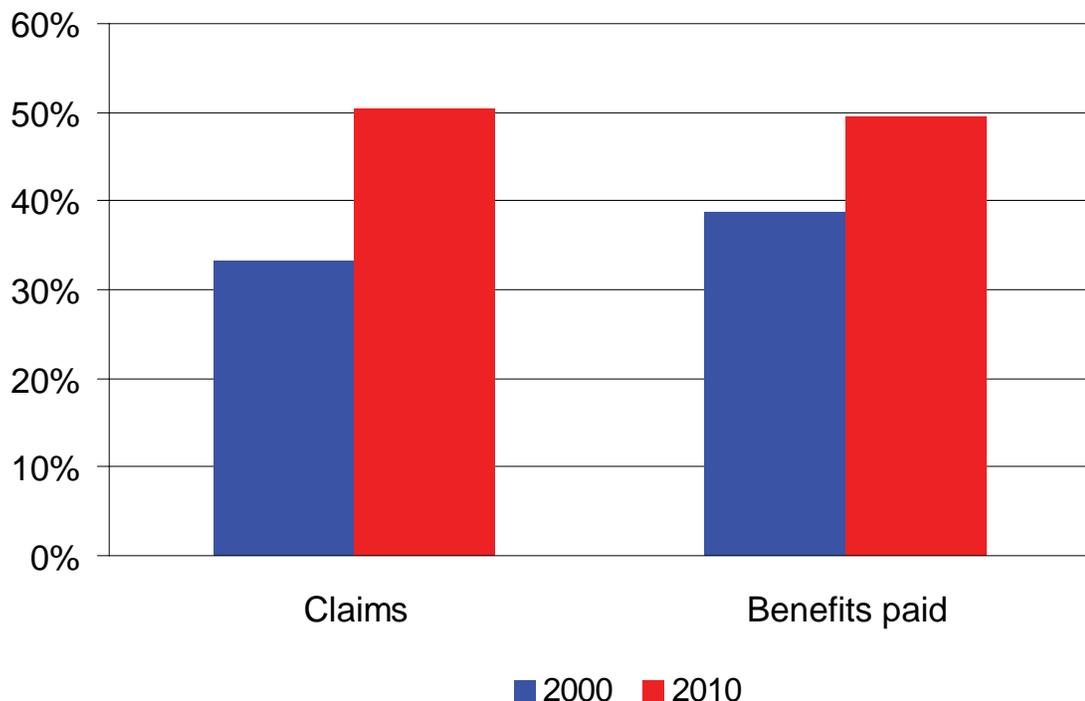
It seems that every week there's a news story or a study released about the graying of Americans. Well, here's another tidbit to add to your growing collection of how the baby boomers are throwing their weight around.

Comparing workers' compensation indemnity claims closing in 2000 and 2010 (through September), there are noticeable increases in the percentage of claims for workers age 45 and older and to the percentage of indemnity benefits paid to those workers. The figure shows that injured workers age 45 and older increased from 33 percent of the claims closing in 2000 to 50 percent of the claims closing in 2010, and that the percentage of indemnity benefits increased from 39 percent in 2000 to 50 percent in 2010.



Looking at the numbers of claims, the estimated annual count for 2010 for workers 44 years and younger shows a 39 percent decrease compared to the count of claims in 2000, while the number of claims closing for workers 45 years and older shows a 23 percent increase.

Increases in percentages of claims and benefit payments to workers 45 years and older



CompScope report shows Minnesota's relative standing

By Brian Zaidman, Research and Statistics

In January, the Workers' Compensation Research Institute (WCRI) released its most recent study of Minnesota's workers' compensation system, *Benchmarks for Minnesota, CompScope™ 11th edition*. The study looks at indemnity and medical benefits, vocational rehabilitation and claims expenses,



comparing Minnesota's statistics with those from 15 other states. This article presents a few of the comparisons concerning indemnity benefits. Email the DLI Research and Statistics unit at dli.research@state.mn.us if you'd like to receive the full report.

WCRI is a nonprofit organization based in Cambridge, Mass., that conducts research about workers' compensation policy issues. Its *CompScope* project uses claims data directly from insurers and self-insured employers to provide statistics comparable across states.

For most measures, only claims with more than seven days of lost time are compared (because waiting periods vary among states) and these claims are adjusted for injury and industry mix and wages. The *CompScope* database for Minnesota represents 57 percent of the claims. (A full presentation of the methodology is available in the report.)

The *CompScope* statistics are not comparable with those in the Department of Labor and Industry's *Minnesota Workers' Compensation System Report* because of the adjustments used by WCRI to make the statistics comparable between states and because WCRI does not develop the claims to a high maturity. The statistics in the current *CompScope* report focus on claims from October 2007 through September 2008, evaluated as of March 2009 (called 2008/09 claims) and



claims from October 2005 through September 2006, evaluated as of March 2009 (called 2006/09 claims).

The report shows that compared to the other 15 states studied, Minnesota's claims on average receive their first benefit payments sooner, receive indemnity benefits for less time, have lower total indemnity payments and lower benefit-delivery expenses. This article compares Minnesota's results with those for the median of the 16 states studied.¹

¹The median is the point where half the states are above and half are below. With 16 states, it is the halfway point between the eighth- and ninth-ranked states.

CompScope report, continues ...

For all 2008/09 claims (medical only and lost-time claims), WCRI found that for Minnesota:

- total cost per claim was 25 percent below the median; and
- the percentage of claims with more than seven days of lost time was 19 percent below the median.



For 2008/09 claims with more than seven days of lost time, WCRI found that for Minnesota:

- average total cost per claim was 15 percent below the median;
- average indemnity benefits were 24 percent below the median;
- average temporary disability payments were 21 percent below the median;
- average permanent partial disability and lump-sum payments were 19 percent below the median; and
- the average duration of temporary disability was 21 percent below the median.

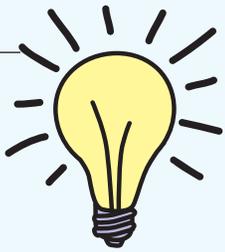
For all 2006/09 claims (medical only and lost-time claims), WCRI found that for Minnesota:

- total cost per claim was 29 percent below the median; and
- the percentage of claims with more than seven days of lost time was 19 percent below the median.



For 2006/09 claims with more than seven days of lost time, WCRI found that for Minnesota:

- average total cost per claim was 6 percent below the median;
- average indemnity benefits were 24 percent below the median;
- average temporary disability payments were 10 percent below the median;
- average permanent partial disability and lump-sum payments were 3 percent below the median; and
- the average duration of temporary disability was 11 percent below the median.



TIPS FROM THE TRENCHES

Forms, faxing, statutes and rules

Are you having trouble accessing the most recent workers' compensation forms? Accessing statutes and rules of practice? Accessing case law? Faxing to DLI?

Our first quick tip is to bookmark the DLI website – www.dli.mn.gov – on your "favorites" list.

Forms

Are you aware the current version of all workers' compensation forms are available on the DLI website? We notice older versions of the forms are sometimes still being used. To get the most recent forms on the DLI website, go to www.dli.mn.gov/WC/Wcforms.asp (consider bookmarking this page).



Faxes

If you are having problems faxing documents to the department, here are some helpful tips that address the problems we see most often.

- **Blank faxes** – You may be surprised how many blank faxes come through our office because, most likely, the original was placed in the fax machine with the printed side facing the wrong direction. When this happens there is generally no way for the department to contact you to let you know your fax was full of blank pages. Even though you may have a fax confirmation showing a seven-page fax was "successful," nothing but blank pages came through and, therefore, nothing can be placed in a file. Please make sure everyone in your office knows the correct paper orientation for your fax machine.
- **Unreadable copies** – If your document is on colored paper or if your fax machine or scanner needs cleaning, the copy that comes through to the agency will be even darker and harder to read. Likewise, copies on your end that already aren't very clear will only deteriorate by the time they print from a DLI fax machine. If we can't read the document, we will not be able to place it in the correct file. Please fax the highest quality copy you can. If no other copy is available, try mailing the document so we can attempt to read it.
- **Email to fax** – Some offices now have the ability to email documents directly to fax machines. (Reminder: DLI does not currently accept email submission of documents, but if your email system can direct documents to DLI fax machines they can be accepted.) Many submissions such as these arrive with only a cover sheet from the sender's email system and do not have any of the attachments that are intended. Be sure to check your confirmation to see the number of pages successfully transmitted. If you send an email-to-fax with several forms attached but your confirmation sheet only shows one or two pages transmitted successfully, it indicates the attachments did not arrive.



Continues ...



TIPS FROM THE TRENCHES *continued ...*

- **Over-sized faxes** – Documents may be filed with the department by fax if the document is 15 pages or fewer. (See Minnesota Rules, Part 1415.0700; Service and Filing.) Documents of more than 15 pages should be mailed.

Statutes and rules

Do you need to review a workers' compensation law or rule, but don't have your own copy? These can be accessed from the DLI website at www.dli.mn.gov/StatRule.asp.

At the bottom of that page, you'll find links to: Minnesota Statutes chapters 175, 175A and 176; court decisions (Minnesota Supreme Court and Workers' Compensation Court of Appeals decisions from 1996 to the present); rehabilitation rules; medical rules; the medical fee schedule; treatment parameters; permanent partial disability (PPD) rules for injuries prior to July 1, 1993; and PPD rules for injuries on or after July 1, 1993.



Many of the links will take you to the official publication of the rule or statute on the Office of the Revisor of Statutes website. The links to court decisions will take you to the websites for the Minnesota Supreme Court and the Workers' Compensation Court of Appeals.

For more information, contact Ralph Hapness at (651) 284-5226 or ralph.hapness@state.mn.us.

Workers' Compensation Court of Appeals

January through March 2011

Case summaries published are
those prepared by the WCCA



Chermak v. Great W. Recycling Indus., Inc., 1/24/2011

Permanent Partial Disability – Substantial Evidence

Substantial evidence supports the compensation judge's determination of the extent of permanent partial disability given the employee's extensive, complex, and unusual injuries.

Affirmed.

Bauer v. Heppner's Auto Body, 1/5/2011

Maximum Medical Improvement – Substantial Evidence
Temporary Total Disability – Work Restrictions

Substantial evidence, including expert opinion, supported the compensation judge's decision that the employee had reached maximum medical improvement and no need for restrictions for the claimed period of temporary total disability.

Affirmed.

Ornberg v. Beckman's Appliance & TV, 1/12/2011

Causation – Substantial Evidence

Substantial evidence, including adequately founded expert medical opinion, supports the compensation judge's finding that the employee's 1986 work-related right ankle injury was not a substantial contributing cause of the employee's need for right knee replacement surgery.

Affirmed.

Hogan v. Cedar Valley Servs., Inc., 1/13/2011

Causation – Substantial Evidence

Substantial evidence in the record as a whole, including expert medical opinion, supports the compensation judge's finding that the employee sustained a contusion of the left knee that resolved by October 2005.

Permanent Total Disability – Work Restrictions

Substantial evidence, including expert medical opinion, supports the compensation judge's finding regarding the employee's work restrictions.

Permanent Total Disability – Substantial Evidence

Substantial evidence of record, including expert vocational testimony, supports the compensation judge's determination that the employee failed to prove he was permanently and totally disabled as a result of his work-related injury.

Affirmed.

Bruns vs. The Zerke Co., 1/13/2011

Maximum Medical Improvement – Substantial Evidence; Discontinuance

Where he was treating only the employee's bilateral shoulder condition, expressly did not treat cervical conditions, and had referred the employee to other physicians and ultimately to a chronic pain specialist for treatment of his neck, the treating orthopedist's opinion that maximum medical improvement had been achieved applied only to the employee's shoulder conditions, and the compensation judge's denial of discontinuance on grounds that the employee had not yet reached MMI with regard to "all compensable injuries" was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

Swanson vs. Permac Indus., 2/1/2011

Causation – Substantial Evidence

Substantial evidence, including a well-founded medical opinion, supports the compensation judge's conclusion that the employee's right shoulder condition was the result of his work-related fall on Jan. 5, 2009.

Affirmed.

Flores vs. Maxine I. Shaw and Ryan Roofing & Const. of Woodbury, Inc., 2/1/2011

Practice and Procedure – Default Award

Where the petitioner, and alleged uninsured employer, has shown that he has a reasonable case on the merits and reasonable excuse for his failure to act, that he acted with due diligence after the notice of the entry of judgment, and that there would be no substantial prejudice to the Special Compensation Fund if the petition to set aside the default judgment is granted, the petition is granted.

Petition to vacate granted.

*Berlingame vs. Becker Bros., Inc., 2/2/2011**

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

Where the employer provided the employee with a company van expressly to haul materials, supplies and equipment to jobsites, the injuries the employee sustained in an accident occurring on his way home from a jobsite arose out of and in the course of his employment.

Reversed.

Hansen vs. Dayton's N/K/A Macy's, 2/2/2011

Practice and Procedure

Where the employee presented no claim for car provided by her family doctor, it was error for the compensation judge to determine that the care represented an unauthorized change of physician.

Medical Treatment and Expense – Medication

Where the employee failed to produce evidence to support her claim for payment of medications, substantial evidence supports the compensations judge's denial of the claim.

Jurisdiction

Where the employee and the employer stipulated that a medical bill was not necessary or reasonable treatment, the compensation judge had no jurisdiction to consider the bill further.

Intervenors

Where the group insurer was granted intervention status by the Office of Administrative Hearings and was thereafter sent multiple notices and orders as an intervenor, the group insurer was an intervenor, even though there was no pending litigation where the group insurer filed its motion to intervene.

Intervenors

A group insurer making payment of medical bills pursuant of Minnesota Statutes 1763.191, subd. 3, is entitled to interest on its reimbursement from the date it paid the bills.

Affirmed in part, reversed in part, vacated in part and remanded.

Kariesch Anker v. Hinrick's Custom Cabinets, 2/8/2011

Vacation of Award – Substantial Change in Condition

The employee established a change in diagnosis, a change in ability to work, additional permanent partial disability and causal connection between the work injury and her current condition sufficient to warrant vacating the award on stipulation.

Petition to vacate granted.

Shoemaker vs. Route 52 Truck & Car Wash, 2/9/2011

Causation – Gillette Injury

Substantial evidence, including expert medical opinion, supports the compensation judge's finding that the employee's work activities were a substantial contributing cause of Gillette low back condition and weakened leg, which led to fall and a disc herniation on Dec. 4, 2008.

Affirmed.

Newman vs. Flagship Athletic Club, A.K.A Restaurant No Limit, Inc., 2/9/2011

Vacation of Award – Substantial Change in Condition

Where the employee did not make a sufficient showing of good cause under the factors set forth in Fodness v. Standard Cafe, the employee's petition to vacate two awards on stipulation issued more than 18 years ago was denied.

Petition to vacate denied.

Onyemekeihia vs. Guardian Angels Health and Rehabilitation Ctr., 2/11/2011

Causation – Substantial Evidence
Expert Medical Opinion

Where the employee's medical records indicate the employee continued to have symptoms and restrictions related to his injury, substantial evidence supports the compensation judge's finding that the employee's 2008 injury to his low back substantially contributed to his low back condition, despite the lack of an expert medical opinion in the record expressly supporting that finding.

Maximum Medical Improvement

Where the sole medical opinion in the record on the issue of maximum medical improvement (MMI), that the employee had reached MMI from his work injury, was rendered by the independent medical examiner, and where the compensation judge instead relied on the additional medical treatment recommendations for the employee assigned by a treating physician and agreed to by the independent medical examiner, substantial evidence supports the compensation judge's finding that the employee has not yet reached MMI.

Temporary Total Disability

The evidence in the record, including medical records, job search records and the employee's testimony, supports the compensation judge's findings that the employee's work injury was a substantial contributing cause of his continued work restrictions and that the employee conducted a diligent job search sufficient to support his entitlement to the awarded temporary total disability benefits.

Affirmed in part and modified in part.

Miller v. St. Mary's Reg'l Health Ctr., 2/14/2011

Arising Out Of and In the Course Of – Going To and From Work

The employee, a home health care aide, was compensated by the employer for her travel time and mileage, including travel to the home of the first client at the beginning of the day from either the employee's home or the employer's office, and travel from the home of the last client to either her home or the office. Although, generally, injuries sustained while traveling to and from work are not compensable under the Workers' Compensation Act, when the employer compensates the employee for time spent in traveling to and from work, the trip is within the course of employment and is compensable as the travel is part of the service for which the employee is paid.

Arising Out Of and In the Course Of – Deviation from Employment

Where the employee's brief personal deviation was completed at time of the accident and the employee had returned to the route which would have taken her either to the office or her home, the compensation judge erred in concluding the employee's accident did not arise out of and in the course of her employment.

Reversed and remanded.

Koppen v. Knowlen's Super Market, 2/15/2011

Rehabilitation – Retraining Rehabilitation – Economic Suitability

Where the four-year retraining plan awarded by the compensation judge would better realize the goal of returning the employee as closely as possible to his pre-injury economic status than an alternate two-year program, the compensation judge's award is affirmed.

Affirmed.

Johnson v. Midwest Precision Machining, 2/16/2011

Appeals – Interlocutory Order

The Workers' Compensation Court of Appeals lacks jurisdiction under Minnesota Statutes 176.421 to consider or determine the employer and insurer's appeal from an order denying their motion for disqualification, for cause and removal, of the judge assigned to hear the case, as the order is an interlocutory order that does not "affect the merits of the case" nor is it an order preventing a later determination on the merits.

Dismissed.

Kujawa v. Coborn's Inc., 2/16/2011

Discontinuance – Matters at Issue

Where, in the NOID, the employer and insurer had themselves raised the issue of causation of the cyst in the employee's hip by referring to it as "a personal health condition" basic to the employee's refusal of the employer's job offer, the compensation judge could not fully address the NOID without resolving that causation issue in addition to the reasonable refusal issue, and the employer and insurer could not argue on appeal that they were prejudiced by the judge's findings on the causation issue as an improper expansion of issues in an expedited hearing.

Job Offer – Physical Suitability
Job Offer – Refusal

The employee is the person most familiar with the severity of her symptoms, and where the employee's testimony that she could not perform the offered job due to pain was credited by the judge and supported by expert medical opinion, the compensation judge's conclusion that the employee's refusal of the offered job was reasonable was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

Fadden vs. Carver County, 3/9/2011

Medical Treatment and Expense – Fee Schedule
Statutes Construed – Minnesota Statutes 176.136
Rules Construed – Minnesota Rules 5221.40300, subp. 2b.I. (11)

A hospital may charge a facility fee for the use of its emergency room for outpatient treatment. The compensation judge properly found the relative value fee schedule does not apply to the hospital's charge for the use of its emergency room for treatment provided to the employee, and the hospital is entitled to be paid 85 percent of its usual and customary charge for the use of its emergency room.

Affirmed.

Stranberg vs. Carver County Sheriff, 3/9/2011

Medical Treatment and Expense – Fee Schedule
Statutes Construed – Minnesota Statutes 176.136
Rules Construed – Minnesota Rules 5221.40300, subp. 2b.I. (11)

A hospital may charge a facility fee for the use of its emergency room for outpatient treatment. The compensation judge properly found the relative value fee schedule does not apply to the hospital's charge for the use of its emergency room for treatment provided to the employee, and the hospital is entitled to be paid 85 percent of its usual and customary charge for the use of its emergency room.

Affirmed.

Egly vs. Anoka Co. Corrections, 3/9/2011

Causation – Substantial Evidence

Substantial evidence in the form of a well-founded medical opinion supports the compensation judge's decision that the employee's treatment and disability in 2008 was not causally related to his work injury in 2006.

Affirmed.

Holm vs. Country Manor, 3/10/2011

Vacation of Award – Substantial Change in Condition

Where the petitioner had essentially satisfied five of the six factors identified in Fodness v. Standard Cafe, 41 W.C.D. 1054 (W.C.C.A. 1989), the court granted the employee's petition to vacate the first of her four awards on stipulation on grounds that she had experienced a substantial change in her medical condition.

Petition to vacate granted.

Jallo vs. Villa St. Vincent, 3/10/2011

Causation – Consequential Injury

Substantial evidence, including expert opinion, supported the compensation judge's conclusion that the employee sustained a low back injury as a consequence of her work-related knee injury.

Causation – Substantial Evidence

Substantial evidence, including expert opinion, supported the compensation judge's decision that the employee's work-related knee injury substantially contributed to the employee's need for knee surgery.

Medical Treatment and Expense

The compensation judge's decision ordering the employer to pay for future, unspecified, reasonable and necessary medical care requires the employer to do nothing more than already required by statute and provides no basis for any relief on appeal.

Affirmed.

Markgraf vs. Trader Joe's Company, 3/10/2011

Causation – Substantial Evidence

Substantial evidence, primarily in the form of expert medical opinion, supported the compensation judge's decision that the employee's work activities did not cause, aggravate or accelerate the employee's plantar fasciitis.

Affirmed.

Raaen vs. Inventive Health, Inc., 3/14/2011

Causation – Substantial Evidence

Substantial evidence in the record, including expert medical opinion, supports the compensation judge's findings that the employee's work injury was a substantial contributing cause of his bilateral upper extremity condition and total disability from and after March 12, 2010.

Affirmed.

Cavegen vs. City of St. Paul, Parks & Recreation/Forestry, 3/17/2011

Permanent Total Disability

Substantial evidence supports the compensation judge's determination that the self-insured employer failed to prove the employee was permanently and totally disabled from March 1997 through February 1998. The evidence does not support the finding that the employee was not permanently and totally disabled "to the date of hearing," and the finding is vacated and the matter remanded for reconsideration.

Affirmed in part, vacated in part and remanded.

Kirk vs. Fingerhut Direct Marketing, 3/23/2011

Causation
Medical Treatment and Expense – Surgery

Substantial evidence supported the compensation judge's determination that the employee failed to prove a causal link between the 2006 work injury and surgical treatment proposed by her current physician.

Affirmed.

Jacobson vs. Power Team, 3/25/2011

Causation – Substantial Evidence

Substantial evidence, including the adequately founded opinion of the independent medical examiner, supports the compensation judge's determination that the employee failed to establish that her work activities were a substantial contributing factor to her ongoing upper extremity symptoms and disability and failed to establish that she sustained a Gillette injury causally related to her employment.

Affirmed.

Stadler vs. Marlow Floor Covering, 3/28/2011

Evidence – Burden of Proof

Where the compensation judge found the conflicting expert opinions on causation equally plausible, the judge did not err in concluding that the employee failed to meet his burden of proving that his right knee condition was causally related to his work-related left knee injury.

Affirmed.

Barten vs. Thomas Frieler, 3/30/2011

Exclusions from Coverage – Family Farm

Given the record, viewed in conjunction with the applicable statute and case law, the compensation judge properly concluded that the employer qualified as a family farm, exempt from workers' compensation liability, and that the employee's injuries were therefore not compensable under the Workers' Compensation Act. The fact that the employee was working on a farmland leased by a partnership, as opposed to an individual farmer, does not disqualify the employer from the family farm exclusion.

Affirmed.

Sorenson vs. Robert L. Carr Co., 3/2011

Arising Out Of and In The Course Of

Where it was inferable from the record that the employee twisted his knee at work in part because of the work boots he was wearing, it was reasonable from the compensation judge to conclude that the employee sustained an injury arising out of and in the course of his employment.

Affirmed.

Minnesota Supreme Court

January through March 2011

Case summaries published are
those prepared by the WCCA



- **Richard A. LaFountain v. M.A. Gedney Company and SFM Mutual Insurance Company, A10-1577**

Decision of the Workers' Compensation Court of Appeals filed Aug. 16, 2010, affirmed without opinion.

- **Charlotte A. Love v. Allina Health System, Self-Insured/Gallagher Bassett Services, Inc., A10-1675**

Decision of the Workers' Compensation Court of Appeals filed Sept.1, 2010, affirmed without opinion.