



November 2011

Minnesota Department of Labor and Industry

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Work comp coverage for family farms



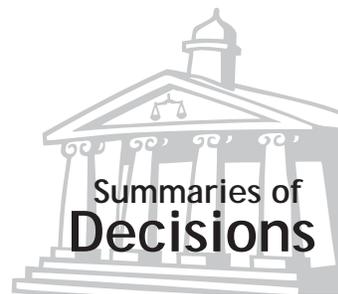
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D-1

Decoding encrypted email from the department



The Department of Labor and Industry (DLI) uses the state of Minnesota's encryption system for email. If you receive an encrypted email message, open the HTML attachment message_zdm.html through your standard Web browser.

Click on "Read Message," which will direct you to the Microsoft Exchange Hosted Encryption website to unlock the encrypted message.

When you receive your first encrypted message via this system, you will be required to register through Microsoft Exchange Hosted Encryption by entering your name and choosing a password. After the initial registration, you will only be asked to authenticate yourself to view encrypted messages. Your password should work for all encrypted email you receive from DLI. If you forget your password, there is an easy-to-find link on the login page to reset your password.

Any documents DLI emails to you are encrypted if they are attached to an encrypted email message.

If you hit the "Reply" button after reading an encrypted email message from DLI, your reply to DLI and any documents you attach will also be encrypted. If you add a "cc," the person copied will need to follow the process described above to read your encrypted email message.

Rehabilitation Review Panel seeks new members

By Mike Hill, Rehabilitation Policy Specialist

The Rehabilitation Review Panel (RRP) was created in 1981, by Minnesota Statutes §176.102, to offer vocational rehabilitation rule advice and to make determinations, including sanctions, related to contested cases about rehabilitation provider registration and professional conduct.

Currently, the panel has a "regular member" opening for an insurer representative and an "alternate member" opening for an employer/insurer representative. To apply for a position, complete and submit the application found on the Secretary of State's website at www.sos.state.mn.us/index.aspx?page=5.

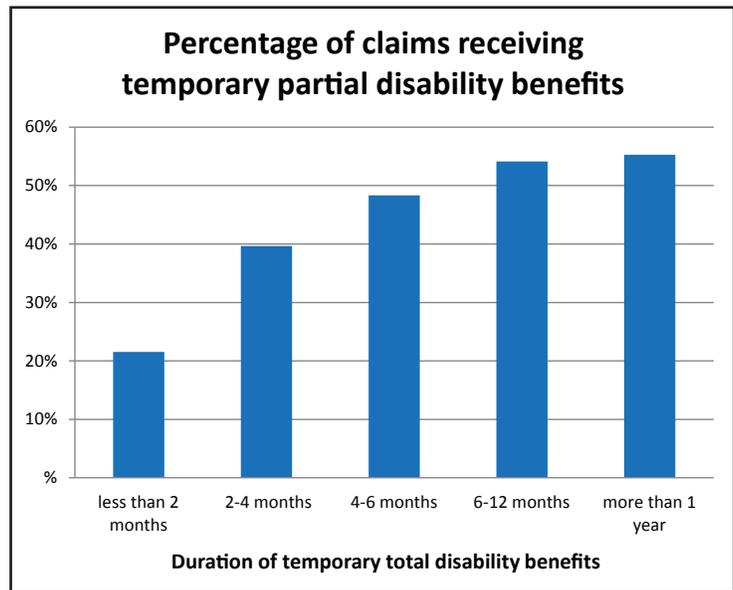
The panel meets quarterly at the Department of Labor and Industry to resolve issues pertaining to rehabilitation provider registration or professional conduct issues. (The panel may meet more often if needed.) The meeting schedule, agendas and minutes are online at www.dli.mn.gov/Rrp.asp.

The Minnesota Department of Labor and Industry's Safety and Workers' Compensation Division provides oversight for all vocational rehabilitation services provided to injured workers covered by the Minnesota workers' compensation statutes.

CompFact: More TTD means TPD more likely

Temporary partial disability (TPD) benefits are paid to injured workers who are working with wages that are reduced due to the effects of their work-related injury or illness. While some workers receive TPD benefits without missing full days of work due to their injury, analysis of claims data shows that injured workers with long durations of temporary total disability (TTD) are more likely to receive TPD benefits upon their return to work.

During the past decade, the overall percentage of injured workers with indemnity benefits who receive TPD benefits has stayed at about 29 percent.¹ For injuries between 2003 and 2008², the percentage of indemnity claims with TPD benefits increases with TTD benefit duration, leveling off at about 55 percent for claims with more than six months of total disability.



¹See Figure 3.2 of the *Minnesota Workplace System Report, 2009* to see a chart of the percentage of claims receiving each indemnity benefit type from 1997 through 2009, www.dli.mn.gov/RS/WcSystemReport.asp.

²Claims for 2009 and 2010 were not included in this analysis due to the small number of claims currently reporting more than six months of TTD benefits. The percentages of claims with TPD for durations of shorter than six months are consistent with the results of the earlier years.

'Oh darn, what were those department email notices again?'

By Mike Hill, Rehabilitation Policy Specialist

The Department of Labor and Industry maintains three workers'-compensation-related email lists, used for sending infrequent updates to subscribers about adjuster information, medical provider information and rehabilitation information.



The department also offers an archive of messages that have been sent to subscribers of the three email lists, which goes back a rolling three years.

The adjuster, medical provider and rehabilitation provider archives may be viewed by thread, subject, author or date.

To subscribe to an email list or to view list archives, visit www.dli.mn.gov/EmailLists.asp.

Workers' compensation coverage for farms

By Bill Boyer
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

M.S. § 176.011, subd. 11a (a)(2)

Average annual wage under M.S. §176.011 subd. 20	Services rendered (roughly payroll) year	Policy written year
\$38,441	Jan. 1-Dec. 31, 2004	Jan. 1-Dec. 31, 2005
\$40,203	Jan. 1-Dec. 31, 2005	Jan. 1-Dec. 31, 2006
\$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

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. 11 and 12](#). Other farm employees excluded from workers' compensation coverage in certain circumstances are described in [Minnesota Statutes § 176.041, subd. 1](#).

Survey shows Minnesota workplace injury rate near all-time low

A recent survey estimates Minnesota's workplace injury and illness rate to be near an all-time low. According to the annual Survey of Occupational Injuries and Illnesses, the state had an estimated 3.9 nonfatal workplace injuries and illnesses per 100 full-time-equivalent (FTE) workers in 2010. This is up slightly from the 2009 estimate of 3.8 cases per 100 FTE workers, but substantially below the rate of 5.1 from five years ago (2005). It is also the second-lowest since the survey began in 1972.

The survey estimated the number of Minnesota's nonfatal workplace injuries and illnesses to be 76,700 for 2010, down from 78,100 for 2009 and 104,100 for 2005.

"We are encouraged by these results," said Ken Peterson, Minnesota Department of Labor and Industry commissioner. "They are a positive sign that more worksites continue to make employee safety and health an integral part of their day-to-day operations."

For the survey, the Minnesota Department of Labor and Industry collects injury and illness records from randomly sampled Minnesota employers in the private and public sectors (excluding federal agencies). Approximately 4,700 employers participated in the 2010 survey. State agencies and the U.S. Bureau of Labor Statistics (BLS) compile the nationwide survey data, which is the primary source of workplace injury and illness statistics at the state and national levels.



Nationally, an estimated 3.9 million nonfatal workplace injuries and illnesses were reported in private- and public-sector workplaces for 2010, resulting in a rate of 3.8 cases per 100 FTE workers.

Other results from the Minnesota survey

- The 2010 Minnesota survey estimated 37,200 injuries and illnesses resulting in days away from work, job transfer or restrictions after the day of injury. The rate of these cases was 1.9 per 100 FTE workers, slightly up from the 2009 estimated rate of 1.8 but down from the 2005 rate of 2.4.
- An estimated 1.1 cases per 100 FTE workers in 2010 led to one or more days away from work after the day of injury. This is slightly above the 2009 estimated rate of 1.0 but down from the 2005 estimate of 1.3.
- The industry divisions with the highest total injury and illness rates were: transportation and warehousing (5.8 cases per 100 FTE workers), health care and social assistance (5.6), and construction (5.3).

Minnesota data tables are available on the DLI website at www.dli.mn.gov/RS/StatWSH.asp.

National data tables are available on the BLS website at www.bls.gov/iif/oshsum.htm.

Basic Adjuster Training 2012

– *Three sessions in 2012* –

April 23 and 24 • June 14 and 15 • Oct. 30 and 31

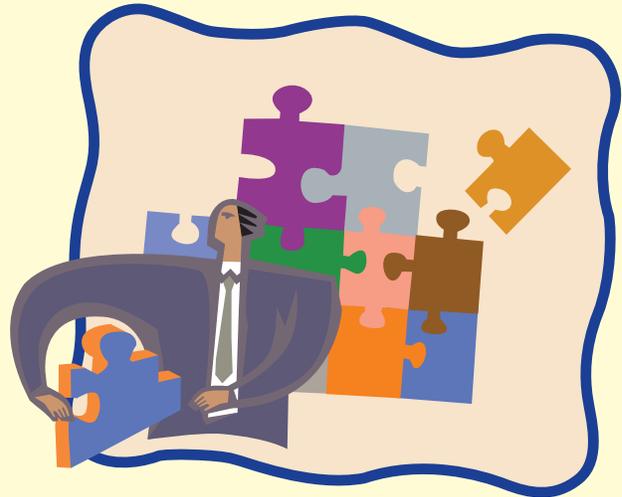
8:30 a.m. to 4 p.m.



This training is recommended for claim adjusters who have less than one year of experience in Minnesota workers' compensation.

Session topics

- Overview of Minnesota workers' compensation
- Waiting period
- Liability determination
- Indemnity benefits
- Rehabilitation benefits and issues
- Medical benefits and issues
- Penalties
- Dispute resolution
- How to file forms



Location: Minnesota Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN 55155

Cost: \$150 for the two-day session (includes lunch)

All participants must register and pay online

★ <https://secure.doli.state.mn.us/events/events.aspx?eid=15> ★

Early registration is encouraged. The sessions are limited to 28 people. Classes are filled on a first-come, first-served basis. The Department of Labor and Industry reserves the right to cancel a session if there are not enough participants registered.

Accommodation

If you need special accommodations to enable you to participate in this event or have questions about this training, call Jim Vogel at (651) 284-5265, toll-free at 1-800-342-5354 or TTY (651) 297-4198.

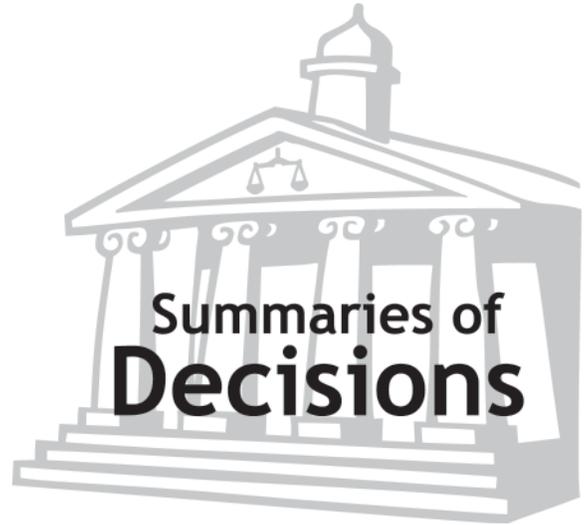
Take the pre-test

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

Workers' Compensation Court of Appeals

July through September 2011

Case summaries published are
those prepared by the WCCA



Diaz vs. Lakeville Motor Express, July 26, 2011

Vacation of Award – Substantial Change in Condition

The employee adequately established an unanticipated change in diagnosis, ability to work and permanent partial disability sufficient to warrant vacating the award on stipulation.

Application to set aside granted.

Sexton vs. Alan Ritchey, Inc., Aug. 1, 2011

Caution

The compensation judge did not err in accepting the employee's testimony as a basis for his determination that the employee's work injury was a substantial contributing factor in his ongoing low back symptoms.

Affirmed.

Handy vs. Walmart, Inc., Aug. 5, 2011

Permanent Total Disability – Retirement;
Permanent Total Disability – Discontinuance

Given the language of the stipulation for settlement and the employee's attainment of age 67, the employer and insurer were entitled to discontinue permanent total disability benefits.

Petition to discontinue granted.

Person vs. Glacial Ridge Hospital, Aug. 9, 2011

Evidence – Expert Medical Opinion

The compensation judge did not err in basing his causation decision on the opinion of the employee's treating physician where that physician's opinion was not based on any assumptions clearly not supported by the record.

Affirmed.

Sovell vs. Minneapolis Special School District #1, Aug. 17, 2011

Evidence – Expert Medical Opinion

The compensation judge did not err in basing his causation decision on the opinion of the employee's treating physician where that physician's opinion was not based on any assumptions clearly not supported by the record.

Affirmed.

Pfoser vs. City of St. Paul, Aug. 22, 2011

Permanent Partial Disability – Substantial Evidence

Substantial evidence, including expert medical opinion, supports the compensation judge's finding that the employee sustained a 10 percent permanency rating for his lumbar spine condition under Minnesota Rules 5223.0390, subp. 3C(2).

Permanent Partial Disability – Weber Rating – Substantial Evidence

Substantial evidence, including expert psychological opinion, supports the compensation judge's finding of a 20 percent permanency rating using Minnesota Rules 5223.0360, subp. 7D(2) as a basis for a Weber rating for the employee's psychological condition. See Weber v. City of Inver Grove Heights, 461 N.W.2d 918, 43 W.C.D. 471 (Minn. 1990).

Permanent Total Disability – Substantial Evidence

Substantial evidence, including expert vocational opinion, supports the compensation judge's findings that the employee had made good faith attempts to return to light duty work with the employer, cooperated with his rehabilitation plan and conducted an adequate job search, that he was not competitively employable, and that he was permanently and totally disabled.

Affirmed.

Pechacek vs. St. John's Hospital/Healtheast, Aug. 25, 2011

Practice and Procedure – Reopening Record

Where the judge had found the employee to be permanently and totally disabled and the record had closed in the matter on Nov. 5, 2010, where the judge had declined to reopen the record upon the employer's subsequent showing that the employee had returned to work on Nov. 29, 2010, and where the employer had requested that its brief on appeal also be considered a petition to vacate the judge's findings and order, the judge did not err in declining to reopen the record, and the WCCA declined to consider the brief a petition to vacate, noting that a petition to vacate requires a formal application and that the employer was not required to pay permanent total disability benefits while the employee was working.

Permanent Total Disability – Substantial Evidence

Where the judge accepted the testimony of the employee and her QRC that the employee had fully cooperated with her rehabilitation plan and had conducted a diligent job search for 16 months, and where the judge had noted that the nurse employee was 60 years old and was competing for jobs against much younger candidates with better nursing credentials in a very difficult job market, the compensation judge's conclusion that the employee was unlikely to find work for an indefinite period of time, and so had demonstrated permanent total disability, was not clearly erroneous and unsupported by substantial evidence.

Permanent Partial Disability – Combined Ratings;
Permanent Partial Disability – Knee;
Rules Construed – Minnesota Rules 5223.0510

A compensation judge is responsible for determining under which category of the rules an employee's disability falls, based on all relevant evidence; and, where expert medical interpretation of the rule pertaining to total knee arthroplasty was conflicting, the compensation judge's adoption of a rating based on the opinion of the treating physician was supported by substantial evidence and a proper application of the permanent partial disability schedules.

Affirmed.

Eike vs. Fairview Ridges Hospital, Aug. 29, 2011

Temporary Total Disability

Where an employee with work restrictions has looked for appropriate work under the direction of her QRC but has been unable to find employment, substantial evidence supports the compensation judge's denial of the employer's petition to discontinue temporary total disability benefits.

Affirmed.

Vaneps vs. Blandin Paper Co., Aug. 29, 2011

Calculation of Benefits; Attorney Fees; Penalties

Under the circumstances of this case, the compensation judge erred in concluding that the employer was entitled to withhold ongoing attorney fees after fee payment had been made in accordance with a stipulation for settlement. As a result, the employer's improper withholding resulted in an underpayment of benefits for one of the two weeks in question, and remand was necessary to allow the judge to consider the employee's penalty claim for that one week.

Reversed and remanded.

Williamson vs. Comcast, Aug. 31, 2011

Causation – Substantial Evidence

Substantial evidence, including expert medical opinion, supported the compensation judge's decision that the employee's work activities did not substantially contribute to the employee's wrist and arm condition and, the employee's arguments notwithstanding, the case was simply one involving the compensation judge's choice between conflicting expert opinions.

Affirmed.

Tourville vs. TNT Floor Sanding, Inc., Sept. 6, 2011

Wages – Construction Industry

Where the employee's daily wage was undisputed and there was also no argument, on appeal, that the employee's work did not qualify as construction for purposes of applying the statutory formula applicable to construction workers, the compensation judge did not err by calculating the employee's weekly wage by multiplying the employee's daily wage by five.

Temporary Total Disability – Recommencement

The employee was entitled to recommencement of temporary total disability benefits when he became medically unable to work, even though he was not actively working at the time, where he had not yet reached maximum medical improvement.

Affirmed in part, reversed in part and remanded.

Dalrymple vs. Electrolux Home Products, Sept. 9, 2011

Vacation of Award – Substantial Change in Condition

The evidence submitted with the petition, evaluated in light of the factors in Fodness v. Standard Cafe, 41 W.C.D. 1054 (W.C.C.A. 1989), does not justify vacating the award on stipulation on grounds of substantial change in condition.

Medical Treatment and Expense – Reasonable and Necessary; Causation

Where medical expenses were submitted for conditions without medical opinions relating them to the employee's work injury, the compensation judge did not err by denying payment for those expenses, and we affirm. Where medical expenses were submitted for expenses that could be related to the employee's work injury, we reverse the compensation judge's denial of those expenses and remand to the compensation judge for additional findings.

Affirmed in part, reversed in part and remanded. Petition to vacate denied.

Olson vs. 3M Co., Sept. 12, 2011

Permanent Total Disability – Retirement; Evidence – Res Judicata

A prior finding as to the employee's permanent total disability was not res judicata as to whether the statutory retirement presumption was applicable to allow the employer and insurer to discontinue permanent total disability benefits when the employee turned 67, and the record as a whole supported the judge's decision that the employee did not rebut the presumption.

Affirmed.

Perez vs. Arby's Restaurant Group, Sept. 12, 2011

Evidence – Credibility

Given the testimony of the witnesses, including the employee, and the judge's assessment of the credibility of these witnesses, the compensation judge did not err in rejecting the employee's claim that he developed a hernia as a result of his work activities with the employer.

Affirmed.

Nguyen vs. Audio Communications, Sept. 12, 2011*

Attorney Fees – Gruber Fees

The compensation judge did not err by denying attorney fees payable by the employer and insurer pursuant to Gruber v. Independent School Dist. No. 625, 57 W.C.D. 284 (W.C.C.A. 1997), summarily aff'd (Minn. Nov. 29, 1997), where there has been a stream of benefits paid to the employee and the employee's attorney may file a claim for excess fees.

Attorney Fees – Contingent Fees

An employee may be considered a prevailing party when less than the claimed overpayment was awarded. Success in reducing the claim for an overpayment is a positive result that preserved the employee's benefits and minimized liability for reimbursement.

Affirmed.

*Schwalbe vs. American Red Cross, Sept. 14, 2011**

Arising Out Of and In the Course Of

Where the employee supervised blood collection efforts on behalf of the employer at two locations more than 80 miles from the employer's office and was provided with lodging and per diem by the employer for her overnight stay, the injuries sustained by the employee on her drive home were in the course and scope of her employment.

Affirmed.

Perez vs. Lisandro Berrera Jr., Sept. 16, 2011

Causation – Substantial Evidence

Substantial evidence supports the compensation judge's denial of causation of the employee's left wrist condition.

Temporary Total Disability; Practice and Procedure – Remand

Where the underlying basis for an award of temporary total disability compensation is unclear from the record on appeal, and there are factors that could suggest the possibility of an oversight or error in the award, the award of temporary total disability compensation is vacated and the issue remanded for reconsideration.

Affirmed in part, vacated in part and remanded.

*Giersdorf vs. A&M Construction, Inc., Sept. 20, 2011**

Insurance – Coverage

Where the essential issue was whether the employer had workers' compensation insurance coverage on the date of the employee's alleged injury, not whether the insurer had breached its contract with the employer to provide insurance coverage, the compensation judge properly concluded that he had subject matter to resolve the controversy.

Appeals – Interlocutory Order

Decisions granting or denying motions to dismiss on subject matter jurisdiction grounds are immediately appealable.

Affirmed.

Sanderson vs. Arrowwood Radisson Resort, Sept. 21, 2011

Medical Treatment and Expense; Evidence – Collateral Estoppel

The compensation judge's order to pay outstanding medical bills for treatment to work injuries, excluding the specific medical bills that had earlier been determined noncompensable in a Decision and Order by the designee at the Department of Labor and Industry, is not an error of law under the doctrine of collateral estoppel.

Termination of Employment – Misconduct

The employee's actions leading to her termination did not constitute misconduct under Minnesota Statutes § 176.101, subd. 1(e)(1), so as to bar recommencement of temporary total disability benefits.

Medical Treatment and Expense – Treatment Parameters;
Rules Construed – Minnesota Rules 5221.6200, subp. 6C(1).

Substantial evidence, including expert medical opinion, supports the reasonableness and necessity of a trial screening of a spinal cord stimulator. The requirements of the treatment parameters prior to implantation of a spinal cord stimulator are not prerequisites to a trial screening of the device.

Temporary Total Disability – Substantial Evidence

Substantial evidence, including expert vocational opinion, the employee's good faith effort to participate in a rehabilitation plan, very limiting work restrictions and ongoing pain symptoms, support the compensation judge's award of temporary total disability benefits without evidence of a diligent job search.

Affirmed.

Anderson vs. Glencoe Regional Health Services, Sept. 21, 2011

Intervenors – Medical Providers

Where intervenor HealthEast St. John's Hospital [HealthEast] filed its motion to intervene on March 5, 2009, based on a period of treatment ending Jan. 29, 2009, and where intervenor Medical Advanced Pain Specialists [MAPS] filed its motion to intervene on Nov. 22, 2010, based on a period of treatment commencing on July 20, 2009, billings in the claim by MAPS could not have been duplicative of billings in the claim by HealthEast, notwithstanding the fact that the medical records in evidence from MAPS doctors were on HealthEast letterhead, and the compensation judge's denial of MAPS's claim based on a finding of such duplication was unsupported by substantial evidence and required reversal and remand.

Reversed and remanded.

• Summaries of Decisions

Wiehoff vs. Independent School District #15, Sept. 28, 2011

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

Substantial evidence, including adequately founded medical opinion, supports the compensation judge's findings that the proposed discectomy and fusion surgery was reasonable, necessary and causally related to the employee's work injury.

Affirmed.

Minnesota Supreme Court

July through September 2011

Case summaries published are
those prepared by the WCCA



- **Ronald E. Troyer vs. Verlu Management Company/Kok & Lundberg Funeral Homes and State Auto Insurance Company, A10-1930**

Decision of the Workers' Compensation Court of Appeals filed Aug. 17, 2011, affirmed.

- **George E. Frandsen vs. Ford Motor Company, Self-Insured, A11-0126**

Decision of the Workers' Compensation Court of Appeals filed Aug. 10, 2011, reversed and remanded.

- **Brian K. Martin vs. Morrison Trucking, Inc., and Travelers Insurance Company and Minnesota Department of Labor and Industry, Special Claims Section, Special Compensation Fund, A10-0446**

Decision of the Workers' Compensation Court of Appeals filed Aug. 3, 2011, reversed.