

Summary: 2014 workers' compensation bill signed into law

On April 30, Gov. Mark Dayton signed the workers' compensation bill, which was based on the recommendations of the Workers' Compensation Advisory Council. This is a summary of the amendments; it is not a substitute for the actual law (Minnesota Laws, Chapter 182), which is available online at www.revisor.mn.gov/laws/?id=182&doctype=Chapter&year=2014&type=0.

Section 1 amends Minnesota Statutes § 176.011, subd. 15; Occupational disease – This provides that multiple claims of post-traumatic stress disorder (PTSD) arising out of a single event or occurrence constitute a single loss for purposes of the Workers' Compensation Reinsurance Association retention limit.

Effective date: This amendment is effective for employees with dates of injury on or after Oct. 1, 2013 (the same as the effective date for PTSD workers' compensation coverage).

Sections 2 and 3 amend Minn. Stat. § 176.129, subd. 2a and 3; Payments to the special compensation fund – The amendment to subdivision 2a provides that if the commissioner estimates the portion of the total assessment allocated to insured employers using the earned standard premium from the previous calendar year, he must make a final determination of the amount owed by Dec. 1 annually based on the insurer's actual earned standard workers' compensation premium. Terminology is amended for consistency with other subparts. Section 3 amends subdivision 7 to allow an insurer to claim a refund within three years of the final determination date (reconciliation date).

Effective date: These amendments are effective for assessments due under Minn. Stat. § 176.129, subd. 2a, paragraph (a), on Aug. 1, 2013, and Feb. 1, 2014, and for the first reconciliation and final determination under Minn. Stat. § 176.129, subd. 2a, paragraph (c) due on or before Dec. 1, 2014.

Section 4 amends Minn. Stat. § 176.135, subd. 7; Medical bills and records – This authorizes the Department of Labor and Industry to update references in workers' compensation rules and forms to the ICD-10 (International Classification of Diseases) diagnostic and hospital procedure codes so that the workers' compensation system uses the same coding system used by the general health care system.

Effective date: Because ICD-10 implementation was delayed by Congress until at least Oct. 1, 2015, the amendment provides that the ICD-10 coding system must be used for workers' compensation only when required by the U.S. Department of Health and Human Services for federal programs.



Section 5 amends Minn. Stat. § 176.136, subd. 1a; Relative value fee schedule – The amendment deletes paragraphs (c) to (f), which established the initial four conversion factors for the workers' compensation relative value fee schedule. These are no longer needed because paragraph (g) provides the process for subsequent updates to the four conversion factors.

Effective date: Aug. 1, 2014.

Section 6 amends Minn. Stat. § 176.231, subd. 2; Initial report, written report – The word "telegram" is deleted because submission of reports to the Department of Labor and Industry by telegram is obsolete.

Effective date: Aug. 1, 2014.

Section 7 amends Minn. Stat. § 176.305, subd 1a; Settlement and pretrial conferences; summary decision – The amendment deletes a reference to 176.2615, establishing a "small claims court" for workers' compensation disputes of \$5,000 or less.

Effective date: Aug. 1, 2014.

Section 8; Repealer – This repeals or amends unnecessary, outdated or redundant language in workers' compensation laws.

- Section 175.006, subd. 1; Division of workers' compensation. (Duplicates other statutes.)
- Section 175.08; Office. (Unnecessary.)
- Section 175.14; Traveling expenses. (Other statewide laws govern state employee travel expenses.)
- Section 175.26; Violation of local ordinances. (Outdated and not used.)
- Section 176.1311; Second injury fund data. (Unnecessary. The data is protected by other laws.)
- Section 176.136, subd. 3; Report. (Unnecessary. The department's system report and other studies address medical costs specific to workers' compensation. Also repealed is outdated language – from 33 years ago – requiring a report about qualifications and background of qualified rehabilitation consultants and vendors to determine professional standards.)
- Section 176.2615; Small claims court. (Unnecessary. The small claims court option is not used.)
- Section 176.641; Accidents or injuries arising prior to effective date. (Unnecessary. All amendments to the workers' compensation law have an effective date and long-standing case law also established this same principle on constitutional grounds.)

Effective date: Aug. 1, 2014.

TELEGRAM

No longer accepted. Stop.

Musielewicz is new DLI workers' compensation ombudsman



David Musielewicz

The Department of Labor and Industry (DLI) named David Musielewicz as its new workers' compensation ombudsman, April 9. Musielewicz has been with DLI for the past three years, mediating and deciding workers' compensation disputes. He has been an attorney for 32 years and has 26 years of experience with workers' compensation law.

Since September 2011, the department has had an Office of Workers' Compensation Ombudsman to provide advice and assistance to employees and employers who need help understanding and navigating the workers' compensation system, to help resolve problems they encounter. The ombudsman also recommends statute or rule changes to improve the effectiveness of the workers' compensation system.

Contact the ombudsman at dli.ombudsman@state.mn.us, (651) 284-5013 or 1-800-342-5354. More information and a printable brochure are online at www.dli.mn.gov/WC/Ombudsman.asp.

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 the Department of Human Services (DHS) "Rule 101," require health care providers to 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 2014 is now available. The provider participation list is a compilation of health care providers that are in compliance with 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 the DHS Provider Call Center at (651) 431-2700 or 1-800-366-5411. Requests may also be faxed to (651) 431-7462 or mailed to the Department of Human Services, P.O. Box 64987, St. Paul, MN 55164-0987.

Second requests for information to be sent to 'claim manager'

Because of programming limitations, the Department of Labor and Industry's Compliance, Records and Training unit will no longer send second requests for information to a particular person. The letters will now be addressed to "claim manager."

Failing to respond to an information request within 30 days, whether it is a first or second request, may result in prohibited practices penalties of as much as \$6,000 for each violation. If you are unable to provide the requested information within the 30-day period, respond in writing explaining the delay and when you anticipate sending the information or contact the author of the letter directly.



Form reform: Using clear, understandable language makes it easier for all

Notice of Intention to Discontinue Workers' Compensation Benefits – NOID

The Notice of Intention to Discontinue Workers' Compensation Benefits (NOID) form is used to notify an employee of a reduction or discontinuance of their workers' compensation wage-loss benefits, the amount of benefits paid on the claim and their right to an administrative conference. Using more understandable language that clearly explains the reasons for discontinuance will help give the claimant better information.

A NOID form must be filed within 14 days of the date the insurer receives notice that the employee has returned to work (numbers 1 or 2 on the form) or at the time of discontinuance for reasons other than return to work (number 3 on the form). It must be served on parties as noted on the form.

When an employee's benefits are being discontinued for reasons other than a return to work, remember the reason for discontinuance must be:

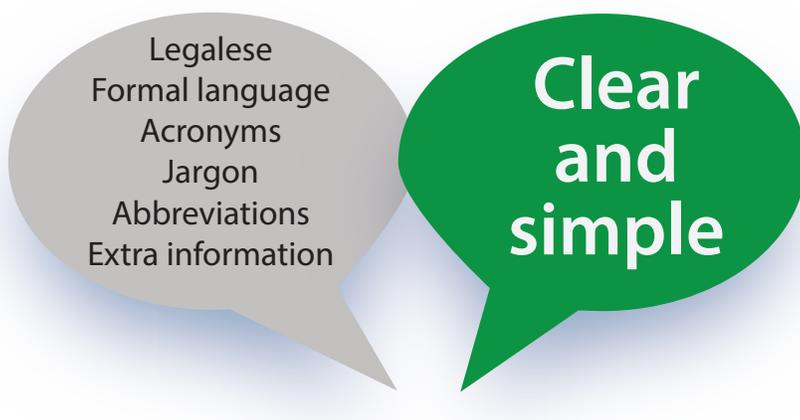
- clearly specified in the space provided on the form or on an attached piece of paper if more room is needed; and
- factual, legal and easily understood by someone not familiar with workers' compensation laws or language.

Best practices

- Do not simply state a case name or citation because that will have little meaning to the injured worker. Instead, explain what the case law is and why it allows discontinuance of benefits.
- Avoid using acronyms and abbreviations that make sense to workers' compensation professionals but may be confusing to the claimant. Instead of "TTD discontinued because employee is at MMI," write "We notified you on Jan. 1, 2014, that you had reached maximum medical improvement (MMI). The law allows us to discontinue your temporary total disability (TTD) benefits 90 days after that date, as stated in Minnesota Statutes § 176.101, subd. 1 (j). Therefore, we are stopping your TTD benefits on April 1, 2014."
- Do not attach an independent medical examination (IME) report with "see attached" as your reason for discontinuance. Be specific about what exactly in the IME report allows you to discontinue benefits: "As stated in the attached independent medical examination report, the employee was released to return to work without restrictions."
- If you are using a medical report as basis for your discontinuance, always attach a copy of the report to your NOID form. If you have not yet received the medical report, state in your reasoning for discontinuance how you got the information: who you talked to, at what clinic, on what date and what you were told.

Remember that in cases other than return to work, "the liability of the insurer to make compensation payments continues at least until the notice of intention to discontinue benefits is received by the division and served on the employee ...," under Minnesota Statutes § 176.238, subd. 2(b) and Minnesota Rules Part 5220.2630 and 5220.2720. (*In re Mary Douville v. JoAnn Stores Inc.*, 62 W.C.D. 593 at 596, 652 N.W. 2d 536 (Minn. 2002).) Keep this in mind when you are proposing a discontinuance of benefits for reasons other than a return to work, because your obligation to pay benefits continues until the Department of Labor and Industry receives the NOID form.

Providing NOID form information in clear, simple language should result in fewer phone calls from claimants asking for an explanation and, potentially, reduce the number of discontinuance conference requests.



Attention construction contractors:

What you don't know about workers' compensation can hurt you

- If your subcontractor or one of their workers gets hurt on the job, you might have to pay their bills.
- Your business and you personally could be liable.
- Workers' compensation insurance can protect your business and personal assets.

The Minnesota Department of Labor and Industry (DLI) has put together a brief, handy fact sheet about workers' compensation insurance laws as they apply to construction contractors. The flier answers common questions, gives a worksite example, offers resources and supplies contact information. The flier and further information about workers' compensation coverage in general is available online at www.dli.mn.gov/WC/AboutCov.asp.

Get answers to these questions and more

- Do I need workers' compensation insurance?
- What if I only have subcontractors and don't have any employees?
- How do I make sure my subcontractor has workers' compensation insurance?
- Isn't business insurance enough?
- How do I get workers' compensation insurance?

Get these resources and more

- About workers' compensation coverage
- Workers' compensation liability of contractors
- Is your subcontractor really an employee?
- Verify subcontractors are registered or licensed with DLI
- Check workers' compensation insurance coverage for a business

A GUIDE TO MINNESOTA'S LAWS ABOUT
WORKERS' COMPENSATION INSURANCE

**ATTENTION CONSTRUCTION CONTRACTORS:
WHAT YOU DON'T KNOW ... CAN HURT YOU**

- If your subcontractor or one of their workers gets hurt on the job, you might have to pay their bills.
- Your business and you personally could be liable.
- Workers' compensation insurance can protect your business and personal assets.

What is workers' compensation insurance?
A workers' compensation insurance policy pays for benefits, including health care costs, lost wages and, possibly, permanent disability benefits when an employee is hurt on the job.

Do I need workers' compensation insurance?

- Workers' compensation insurance is usually required if you have any employees.
- If you are not sure, call us at (651) 284-5032 or 1-800-342-5354.

What if I only have subcontractors and don't have any employees?
You could still be liable for any injury if you don't have workers' compensation insurance.

- Sometimes a subcontractor is considered to be an employee by law.
- If your subcontractor does not have workers' compensation insurance and your subcontractor or one of the workers hired by your subcontractor is injured, you could be liable.

Are my personal assets at risk even if I formed a corporation or LLC?
You could be personally liable and have to pay the bills for your subcontractor's injury if:

- you are an owner or officer of the corporation or LLC, and
- the subcontractor is found to be an employee of the corporation or LLC.

A construction remodeler's tale

Sam is a residential remodeler. Sam has no employees, so he is not required to have workers' compensation insurance. Because Sam is so busy, he decides to subcontract out the exterior painting of one of the homes he is remodeling. Sam's friends recommend a reliable, experienced painter named Melissa. Sam agrees to pay Melissa \$1,000 to paint the exterior of the home.

When Melissa shows up at the worksite, she brings along a helper named Dave. Melissa gives Dave instructions about where to set up their scaffolding. Suddenly, Sam hears a yell for help. Sam runs outside and sees Dave sprawled at the bottom of the scaffolding, unconscious. Dave is taken away by ambulance.

Then Sam finds out Melissa's workers' compensation insurance was canceled earlier that month. Sam and Melissa are now both personally responsible for paying the bills for Dave's workers' compensation benefits including wage-loss payments, medical bills and more.

If either Sam or Melissa had workers' compensation insurance, these costs would have been covered.



The best protection is to get your own workers' compensation policy.



Department of Labor and Industry experts available for speaking engagements

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

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



EDI, eFROI news and updates

Reminder of business process changes following Jan. 1, 2014, mandate of electronic filing of the First Report of Injury

As previously publicized in the February *COMPACT*, paper First Report of Injury (FROI) forms submitted by reporting entities have been returned to the submitter with a cover letter reminding the submitter of the electronic filing mandate and explaining that the FROI is not considered filed with the Department of Labor and Industry.

Reporting entities that have received a returned paper FROI will be subject to late filing penalties if the FROI is not received electronically within existing reporting timelines, even if a timely paper FROI was submitted. Although the number of paper FROIs received by the department is steadily decreasing, some reporting entities are still attempting to file original paper FROIs.

As a reminder, paper FROIs should not be filed with the department in addition to an electronically filed FROI. Paper FROIs should not be attached to other required filings with the department (e.g. Notice of Insurer's Primary Liability Determination).

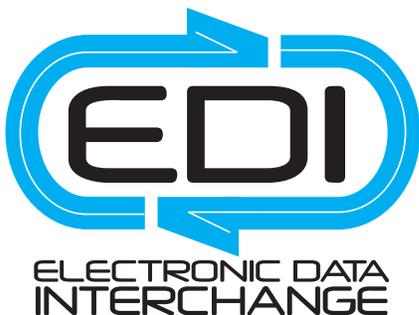
The only paper FROIs that will be processed by the department are those filed by the employer, pursuant to the provisions of Minnesota Statutes § 176.231, subs. 1 and 2, relating to serious or fatal injuries; those filed by the employee; or those requested by the department for another business purpose.

Additional information about the mandate can be accessed on the department's newly revised EDI Web page at www.dli.mn.gov/WC/Edi.asp. To receive the most recent news and updates pertinent to trading partners, subscribe to DLI's specialty email list entitled "Workers' compensation – trading partners" at www.dli.mn.gov/EmailLists.asp.

Any questions, comments or concerns can be directed to the EDI/eFROI Team at dli.edi@state.mn.us.

97.38

**Percentage of FROIs received
by the department that were
submitted electronically, as
of April 30, 2014.**



2014 Rehabilitation Update Conference



Unlocking Barriers to Success

Conference and Video-stream event

Sept. 25, 2014 • 8:30 a.m. to 3:45 p.m.

Topics

Retraining – Advocating for the plan
MNsure vs. Minnesota workers' compensation
Job placement – A criminal history
Social media: An employment nightmare
Online R-form filing review
Registration renewal and completion of internship
DLI's ombudsman and Patient Advocate Program

This year, the conference is being offered in two ways to accommodate busy schedules – participants may attend in person or via the Internet! **All** participants must pre-register; the cost is \$75.

Attendance at the rehabilitation update session is required of all qualified rehabilitation consultants (QRCs) and QRC interns. Registered placement vendors must have at least one representative from their firm participate in the session.

Seating at the conference is limited to 200 participants; all other registered rehabilitation providers wishing to receive CEUs may participate through live video-streaming in the convenience of their office that same day. (Video-stream participants will be provided with a Web address to sign in; viewing of the video stream will be available through Oct. 23, 2014.)

The cost includes access for those choosing video-streaming and includes parking, continental breakfast, lunch and refreshments for those attending in person. Training is at the Continuing Education and Conference Center, University of Minnesota, St. Paul campus. For complete information and access to registration, visit www.dli.mn.gov/WC/TrainingRp.asp.



MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY

New documents for injured workers explain dispute, settlement, hearing processes

To help injured workers become more informed about their claims, their disputes, and the settlement and hearing process, the Department of Labor and Industry (DLI) now sends an injured worker a letter and an FAQ sheet after an Employee's Claim Petition form has been filed on their behalf. The letter explains the claim petition, the litigation process and the assistance offered by DLI's Vocational Rehabilitation unit. The FAQ sheet explains the litigation process and related terms; the FAQs are also online at www.dli.mn.gov/WC/FaqLitigation.asp.

Both documents are the result of discussions with representatives of employers, labor leaders and attorneys following DLI's 2013 *Workers' Perspectives on Settlements and Hearings* report, which summarized results of a study of injured workers whose cases had been resolved through either settlement or hearing.

During the study, injured workers were asked to comment on a number of topics, including the extent to which they considered themselves to have been informed about their claims, their disputes, and the settlement and hearing processes. Among other things, the responses showed the injured workers felt they could benefit from receiving more information about the dispute-resolution process and possible outcomes. Both documents are informational and neither provides legal advice.



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 conference and mediation. It handles calls from the workers' compensation hotline and responds to questions from injured workers and their employers.

Q. Why was an administrative conference to approve a four-year retraining plan scheduled before I had a chance to even look at the proposed plan?

A. In 2013, the Legislature directed that administrative conferences about a rehabilitation issue must be held within 21 days, unless the issue involves fees for rehabilitation services or there is good cause for holding the conference later than 21 days. The statute also requires that the conference notice be served on all parties no later than 14 days prior to the conference. Consequently, the conference notices are sent shortly after receiving the Rehabilitation Request form. If the employee requests approval of a retraining plan on a Rehabilitation Request form, then a conference will be scheduled to address the approval.

One way to make sure the conference is productive is to follow the dispute-certification process. Dispute certification is required to claim attorney's fees in medical and rehabilitation disputes. The dispute-certification process is a useful tool for confirming a dispute exists and identifying tasks that need to be completed prior to certifying a dispute. For example, a retraining plan can be proposed and either accepted or rejected by the parties. In the dispute-certification process, a mediator will contact the claim representative or the employer and insurer's attorney to determine if a dispute exists. If further discovery or a vocational evaluation is needed to assess the proposed plan, the dispute will most likely not be certified and the necessary discovery can be completed prior to an administrative conference, if needed. Certification helps the parties make sure the dispute is ripe for resolution sooner rather than later.

The parties can also agree to reschedule the conference to a later date to allow review of the retraining plan and any additional discovery, including vocational evaluations. Mediation is also an option to consider. Mediation services are available through the Department of Labor and Industry Alternative Dispute Resolution unit.

Q. For prompt service, is it best to file Medical Request and Rehabilitation Request forms by U.S. mail, by fax, in person or online?

A. The Department of Labor and Industry accepts Medical Request forms by all of those methods. As soon as the request is received it is processed and made available for review by the Alternative Dispute Resolution staff. Online submission is available for the convenience of the parties. Do not send the same information to the department more than once; for example, do not fax the form and then mail a hard copy. Multiple copies of the same request will only hinder the prompt handling of your request.



Do you have a question for DLI's ADR unit?

Contact ADR at (651) 284-5032, 1-800-342-5354 or dli.workcomp@state.mn.us if you have a question for DLI's ADR professionals. The question and answer may also be featured here at a later date.

2012 Workers' Compensation System Report to be released

By David Berry, Research and Statistics

The Department of Labor and Industry (DLI) will soon release its *2012 Minnesota Workers' Compensation System Report*. The report will be available at www.dli.mn.gov/Research.asp.¹ The report, part of an annual series, presents trend data beginning with 1997 about several aspects of Minnesota's workers' compensation system – claims, benefits and costs; vocational rehabilitation; and disputes and dispute resolution.²

These are some of the report's findings.

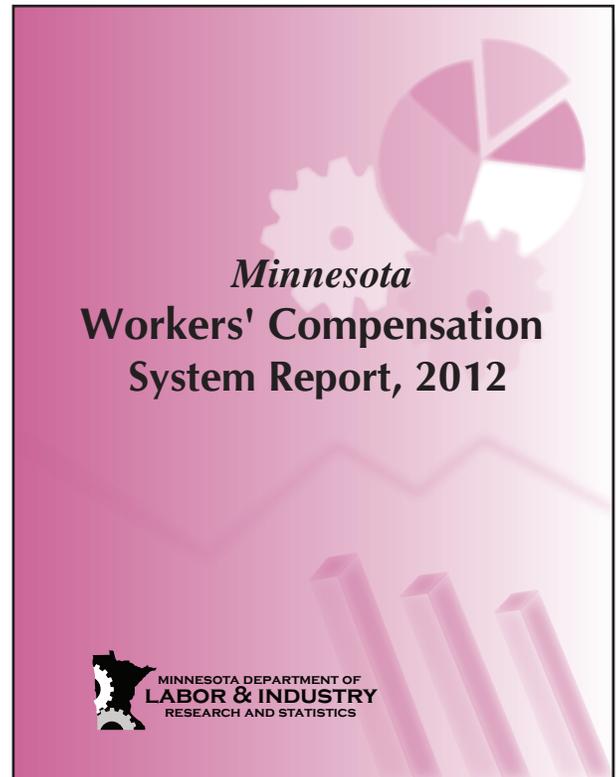
- The overall claim rate – the number of paid claims per 100 full-time-equivalent workers – declined from 8.7 to 4.6 from 1997 to 2012, a 47-percent decrease.
- The total cost of the workers' compensation system was an estimated \$1.33 per \$100 of payroll in 2012, somewhat above the low-point of \$1.23 reached in 2010.
 - Total system cost partly reflects the cost of benefits and other expenses, and it partly reflects a nationwide insurance pricing cycle.
 - Total system cost for 2012 was an estimated \$1.57 billion.
- On a current-payment basis, medical benefits accounted for an estimated 35 percent of total system cost in 2012, followed by insurer expenses at 31 percent and indemnity benefits (cash benefits to injured workers or survivors) at 29 percent.

Benefit levels

- Medical benefits averaged \$5,800 per insured claim in 2011, and indemnity benefits, \$3,900. After adjusting for average wage growth, medical benefits per insured claim were 91 percent higher in 2011 than in 1997; indemnity benefits were 41 percent higher.
- Stipulated benefits – benefits paid under an award on stipulation – rose 72 percent per paid indemnity claim from 1997 to 2010, after adjusting for average wage growth. (An award on stipulation usually occurs in a claim settlement.) This resulted from a 34-percent increase in the proportion of indemnity claims with stipulated benefits and a 29-percent increase in the average amount of these benefits where they were paid.
- Relative to payroll, indemnity benefit costs were down 22 percent between 1997 and 2011, while medical benefit costs were down 8 percent, reflecting the net effect of a falling claim rate and higher benefits per claim.

¹This report will also be available in print or alternate formats, call (651) 284-5025 or 1-800-342-5354.

²Many of the trend statistics in the report are presented by year of injury or by "policy year" – the year in which the insurance policy under which the claim was covered took effect. The statistics so presented are projected to a uniform claim maturity for comparability over time. DLI periodically reviews these statistics to determine their stability over time and, thus, their suitability for publication. Through this process, DLI has determined some of the trend statistics from its own data for the most recent injury years are not sufficiently stable for publication. As a result, several of the trends from DLI data in the report extend only through 2010 or 2011.



Regarding vocational rehabilitation

- The vocational rehabilitation participation rate – the percentage of paid indemnity claims with a vocational rehabilitation plan filed – increased from 15 percent to 23 percent between 1997 and 2012.
- The average cost of vocational rehabilitation services per participant was \$8,790 for 2011. Adjusting for average wage growth, this was higher than 1998 and about the same as 2000. Vocational rehabilitation service costs accounted for an estimated 2.9 percent of total workers' compensation system cost for 2012.
- The percentage of vocational rehabilitation plans closed because of plan completion fell from 54 to 47 percent between 2005 and 2012; during the same period, the percentage of closures resulting from claim settlement or agreement of the parties increased from 43 to 49 percent.



Regarding disputes and dispute resolution

- The percentage of filed indemnity claims with a dispute of any type rose from 16 percent to 20 percent from 1997 to 2010, a 32-percent increase.
 - The percentage of paid indemnity claims with any type of claimant attorney involvement rose from 17 percent to 23 percent from 1997 to 2010. Claimant attorney fees account for an estimated 3.0 percent of total system cost. (DLI does not collect defense attorney fee data.)
 - Despite the increase in the dispute rate from 1997 to 2010, the total number of disputes fell because of a decrease in the number of claims.
- The percentage of filed medical and vocational rehabilitation disputes that were certified by DLI dropped from 66 percent to 47 percent from 1999 to 2013. (In a medical or vocational rehabilitation dispute, before an attorney may charge for services, DLI must certify that a dispute exists and that informal intervention did not resolve the dispute.³) This resulted almost entirely from an increase in the percentage of disputes not certified because they were resolved.
 - From 2006 to 2013, the number of DLI mediations rose by 320 while the number of DLI administrative conferences fell by 300. This coincides with an increased DLI emphasis on mediation and other early dispute-resolution activities.

³Minnesota Statutes § 176.081, subd. 1(c).



New video:

How to get your medical bills paid in workers' compensation

The Department of Labor and Industry's dispute resolution staff members frequently answer questions and resolve issues that arise in specific workers' compensation claims.

One area of frequently asked questions involves how injured workers can get their workers' compensation medical bills paid. Agency staff members compiled a list of questions and put together a video that outlines the common reasons for delay. The short video can be viewed at www.dli.mn.gov/Video/MedicalBillsPaid/MedicalBillsPaid.wmv.

CompFact

Injury severity, settlements affect vocational rehabilitation measures

By Brian Zaidman, Research and Statistics

Measures of injured workers' vocational rehabilitation service duration and outcomes are strongly affected by injury severity, as measured by the permanent partial disability (PPD) percentage, and by the presence of a settlement (or stipulation payment).

The following figures are based on workers with vocational rehabilitation plans closed in 2011 and 2012, for injuries and illnesses occurring in 1997 and later, with most of the claims from the 2009 to 2011 period and nearly half the vocational rehabilitation plans starting in 2010. In these analyses, the claims with settlements have no PPD percentages reported; claims with both a PPD percentage and a settlement are counted only in their PPD category. Settlements are further divided into two groups, above and below \$10,000 in the settlement award. It is very likely that workers with higher settlement values have more severe injuries.

Vocational rehabilitation plan duration

The percentage of injured workers with total plan duration of 18 months or longer increased consistently as the PPD percentage increased, indicating that workers with higher degrees of impairment required longer durations of vocational rehabilitation services (Figure 1). While only 10 percent of workers without a permanent partial disability and without a settlement had plans of 18 months or longer, this increased to 67 percent for workers with PPD ratings of at least 20 percent. Compared to workers with settlements of at least \$10,000, a much lower percentage of injured workers with settlements of less than \$10,000 (and no PPD rating) had plan durations of at least 18 months.

Return to work

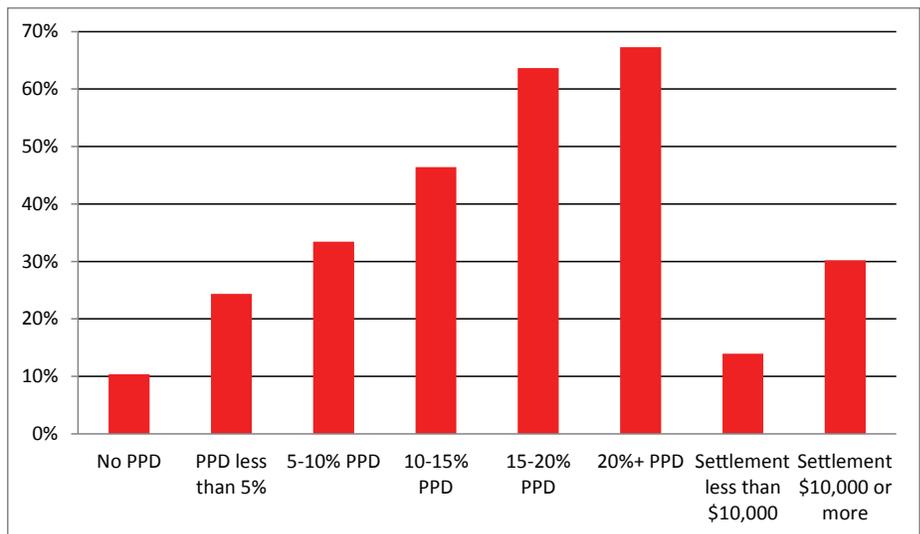
Injury severity affected workers' employment status following vocational rehabilitation services.

The percentage of injured workers within each PPD percentage

category who returned to work with their pre-injury employer decreased consistently as PPD percentage increased (Figure 2). The percentage decreased from 61 percent among workers without a PPD percentage to 33 percent among workers with a PPD rating of at least 20 percent. While this result may show the difficulty of employers' ability to accommodate workers with severe injuries, and the necessity of workers with severe injuries to find alternative work arrangements, it is noteworthy that one-third of the most severely injured workers were able to return to their pre-injury employer.

The percentage of workers who were not employed at the close of their vocational rehabilitation plan increased as the PPD percentage increased. Nearly half of the workers with PPD percentages of 15 percent or higher were not employed. Many of these workers are also eligible for permanent total

Figure 1. Percentage of workers with vocational rehabilitation plans closed in 2011 and 2012 with plan durations of at least 18 months

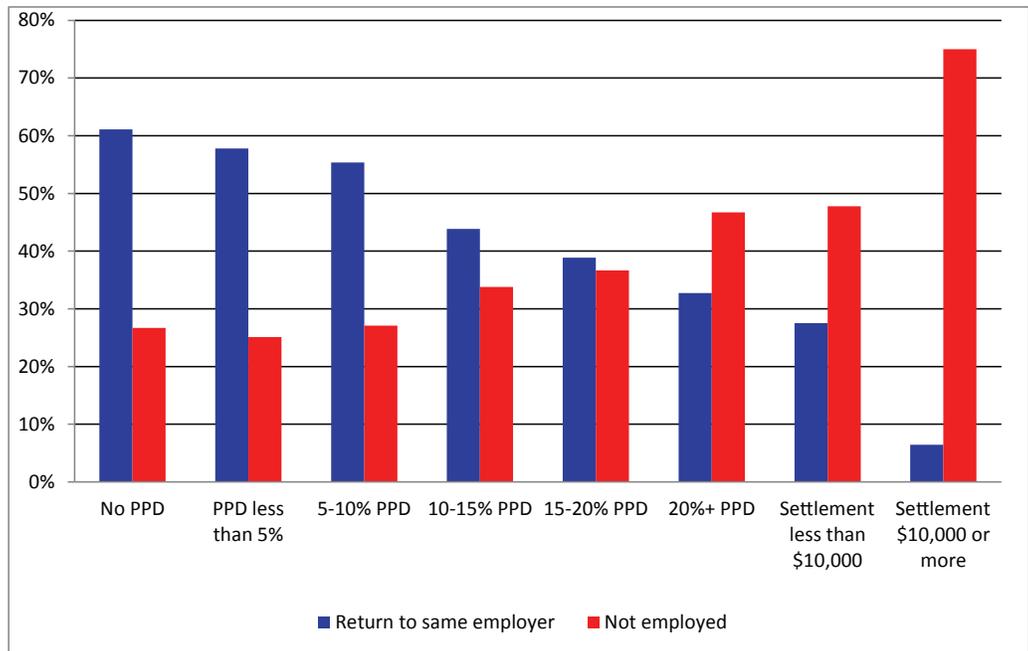


Source: Minnesota workers' compensation claims database, Minnesota Department of Labor and Industry

disability benefits. However, the percentage of workers not returning to work was greater than the percentage returning to the pre-injury employer only among the workers with PPD percentages of at least 20 percent.

Among workers with settlements but no PPD benefits, many fewer workers returned to their pre-injury employer than the number not employed. This was especially evident among workers with settlements of \$10,000 or more.

Figure 2. Percentage of workers with vocational rehabilitation plans closed in 2011 and 2012 returning to the pre-injury employer or not employed



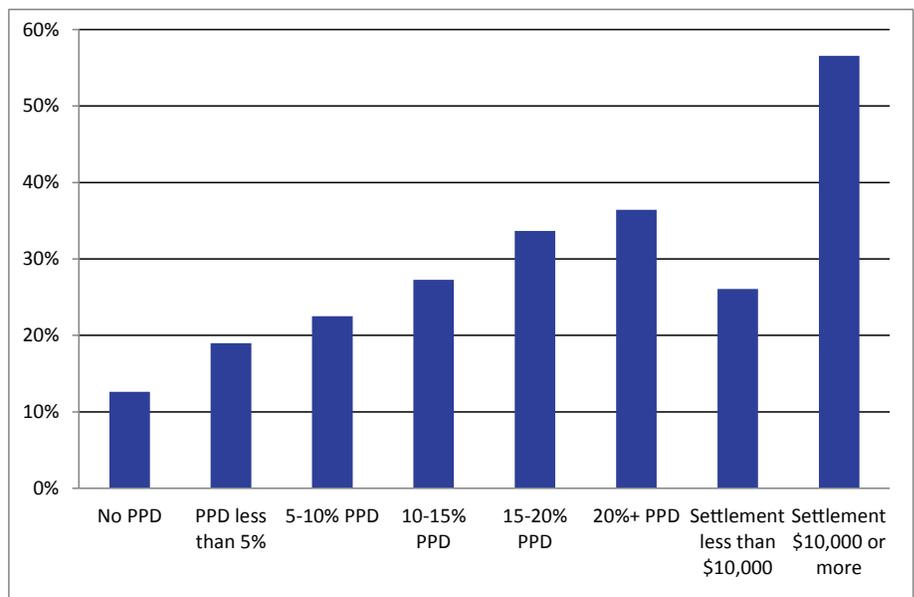
Source: Minnesota workers' compensation claims database, Minnesota Department of Labor and Industry

The percentage of workers who returned to work with a different employer did not show any trend with injury severity.

Low return-to-work wage

Among workers who were employed at the close of their vocational rehabilitation plans, the ratio of their return-to-work wage to their pre-injury wage was a measure of their success in securing employment that restores their financial well-being. Most injured workers returned to jobs that paid at least 80 percent of their pre-injury wage. Figure 3 shows that the percentage of workers employed with wages that are less than 80 percent of their pre-injury wage increased with injury severity.

Figure 3. Percentage of workers with vocational rehabilitation plans closed in 2011 and 2012, employed at plan closure with wages of less than 80 percent of their pre-injury wage



Source: Minnesota workers' compensation claims database, Minnesota Department of Labor and Industry

Among workers with settlements of \$10,000 or more (and no PPD benefits), only 25 percent were employed at the close of their plans (see Figure 2) and the majority of those who were employed earned less than 80 percent of their pre-injury wage.

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

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

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



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Basic Adjuster Training 2014

• Oct. 6 and 7 •
8:30 a.m. to 4 p.m.

Recommended for claim adjusters who have less than one year of experience in Minnesota workers' compensation

Session topics

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

CEU credits

This educational offering is recognized by the Minnesota commissioner of commerce as satisfying 10.5 hours of credit toward continuing insurance education requirements.

Location

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

Cost

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

Early registration is encouraged. The session is limited to 30 people and the class will be filled on a first-come, first-served basis. The Department of Labor and Industry reserves the right to cancel this session if there are not enough participants registered.

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.

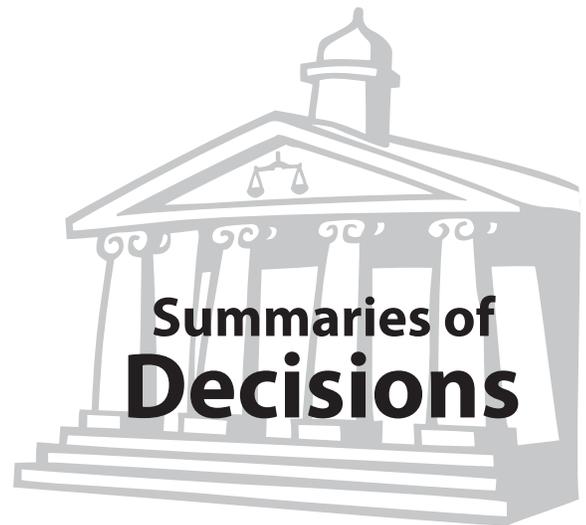
If you need special accommodations to enable you to participate or have questions about this training, call Lisa Smith at (651) 284-5273 or toll-free at 1-800-342-5354.



Workers' Compensation Court of Appeals

January through March 2014

Case summaries published are
those prepared by the WCCA



Small vs. St. Louis Park Plaza Healthcare Center, Jan. 2, 2014

Settlements – Interpretation

The employer and insurer's payment of benefits did not amount to an admission of liability for a permanent injury and, given the circumstances of this case, including the language of the stipulations at issue, it was not legal error for the compensation judge to conclude that the employer and insurer never admitted to a permanent injury such that they continued to owe ongoing permanent total disability and other benefits.

Causation – Consequential Injury

Substantial evidence supports the compensation judge's determination that the employee's injury was temporary in nature, that the employee's chronic pain condition, if any, was unrelated to the employee's work injury, that the employee's mental health conditions were pre-existing, and that the employee's work injury did not substantially contribute to the employee's mental health condition as alleged.

Affirmed.

Cayo vs. Precision, Inc., Jan. 3, 2014

Causation – Medical Treatment

Substantial evidence, including the well-founded opinion of the employee's treating physician, supports the compensation judge's finding that the employee's prescription for oxycodone was reasonable, necessary and causally related to the employee's January 1997 work injury.

Affirmed.

Adams vs. Sodexo, Inc., Jan. 9, 2014

Vacation of Award

Where the employee has not provided evidence to establish a mutual mistake of fact, newly discovered evidence, fraud or a substantial change in medical condition, the employee's petition to vacate the award on stipulation is denied.

Petition to vacate award on stipulation denied.

Wiehoff vs. Independent School District, No. 15, Jan. 17, 2014

Settlements – Approval and Disapproval

A compensation judge is given discretion to approve or disapprove of a stipulation, and this court will affirm the compensation judge's approval or disapproval of a stipulation where, as here, the circumstances disclosed support the compensation judge's determination.

Affirmed.

Morin vs. Electric Mach. Co., Inc., Jan. 21, 2014

Causation – Medical Treatment

Substantial evidence, including the opinion of the independent medical examiner, supports the compensation judge's determination that the employee's current need for medical care and treatment is not causally related to her work-related injury to the low back on Oct. 2, 1989.

Affirmed.

Hillstad vs. Havenwood Care Center, Jan. 22, 2014

Medical Treatment and Expense – Excessive Charge

Where the compensation judge did not specify the basis for his determination that 20 percent of a prescription medication expense claim was excessive, we remand for reconsideration and for an explanation of medications considered excessive.

Vacated in part and remanded in part.

Spoelstra vs. Wal Mart Stores, Jan. 27, 2014

Job Offer

Statutes Construed – Minnesota Statutes § 176.101, subd. 1(i)

Where the employee was not receiving temporary total disability compensation when a job offer was made to her, Minnesota Statutes § 176.101, subd. 1(i), does not serve as a basis for a denial of future benefits.

Temporary Partial Disability – Earning Capacity

Where a job offered by the employer was no longer available and, in the absence of any rebuttal evidence showing other or further work actually available to the employee in her disabled condition, the employee was entitled to benefits based on her actual wages from her post-termination employment.

Affirmed.

Fish vs. Carlson Trucking, Inc., Jan. 27, 2014

Permanent Total Disability – Substantial Evidence

Where the employee had undergone surgery just three months prior to hearing, she had not yet received an opinion from her surgeon as to MMI or her need for restrictions, she had only had a brief period of job search since her injury, and two vocational experts, including her QRC, had indicated that a conclusion as to permanent total disability would be premature, substantial evidence supported the judge's decision that the employee's permanent total disability claim was premature.

Affirmed.

Lehto vs. Community Memorial Hospital, Jan. 28, 2014

Medical Treatment and Expense – Reasonable and Necessary

Where the compensation judge relied on a well-founded medical opinion in determining whether disputed medication was related to the employee's work injury and was reasonable and necessary treatment for that injury, the decision of the compensation judge denying the employee's claim for medication is supported by substantial evidence and is affirmed.

Affirmed.

Rasmussen vs. Imperial Plastics, Inc., Feb. 4, 2014

Evidence – Credibility

The judge did not err in concluding that the employee's testimony as to the occurrence of a work injury was not credible and in denying the employee's claim on that basis.

Affirmed.

Martinek vs. Wasp, Inc., Feb. 6, 2014

Causation – Pre-existing Condition

Substantial evidence, including expert opinion, supported the compensation judge's conclusion as to the nature and extent of the employee's work injury.

Affirmed.

Albert vs. Dungarvin Minn., LLC, and Zurich N. AM., Feb. 7, 2014

Evidence – Admission

The compensation judge did not abuse his discretion by excluding certain exhibits as irrelevant to the issues at the hearing or by admitting multiple records from a clinic as a single exhibit. The judge did not consider the excluded exhibits in making his findings.

Causation – Substantial Evidence

Substantial evidence supports the compensation judge’s finding that the employee sustained work injuries on Dec. 4, 2005, which had resolved by Dec. 13, 2005.

Affirmed.

Peterson vs. St. Paul Ramsey Medical Center, Feb. 11, 2014

Causation – Medical Treatment
Causation – Substantial Evidence

Where the compensation judge’s potentially erroneous reference to a 1997 injury was not a significant factor in her ultimate conclusions, any error present in this case with regard to the stipulations between the parties was harmless in nature, and because substantial evidence supported the compensation judge’s conclusion that a 1981 low back injury resulted in the need for ongoing treatment related to only the low back, the compensation judge’s findings and order are affirmed.

Affirmed.

Larson vs. PDI Foods d/b/a McDonalds, Feb. 18, 2014

Wages

The compensation judge’s conclusion that the employer and insurer are not allowed to reduce the employee’s weekly wage in effect on the date of injury based on a post-injury change in wage from salary to hourly is affirmed where Minnesota Statutes § 176.101, subds. 1.(a) and 2.(a) and related case law establish that the benefits calculated are based on the wage at the time of the injury.

Affirmed.

Hagen vs. Great N. Baking Co., Feb. 18, 2014

Causation – Gillette Injury

Where the employee’s treating doctor had adequate foundation for his opinion on causation, the compensation judge’s determination that the employee sustained a Gillette injury to his wrists is supported by substantial evidence.

Notice – Gillette Injury

Substantial evidence supports the compensation judge's conclusion that the employee provided timely notice of his injury pursuant to Minnesota Statutes § 176.141, when he provided notice to his employer on the last day of his employment.

Affirmed.

Beekman vs. JPS Lawn Service, Feb. 18, 2014

Temporary Total Disability – Work Restrictions Credit and Offsets – Credit for Overpayment

Where the return-to-work form relied upon by the compensation judge is inconsistent with the medical records from the same doctor on the same day, substantial evidence does not support the compensation judge's finding that the employee was released to work without restrictions during the period in question. That finding and the credit for overpayment of temporary total disability benefits for that period are therefore reversed.

Reversed.

Bennetts vs. United Hospital, Feb. 18, 2014

Practice and Procedure – Adequacy of Findings Medical Treatment and Expense – Treatment Parameters

Where the compensation judge's finding that the treatment at issue was not reasonable and necessary lacks essential findings of fact to support the ultimate legal conclusion reached and does not address the treatment parameters specifically raised and argued by the parties, a remand is required for consideration of whether the treatment at issue is consistent with the specified treatment parameter rules, i.e., whether the treatment and care at issue was reasonable and necessary under those rules, and, if not, whether a departure is warranted.

Vacated and remanded.

Youker vs. Chesley Truck Sales, March 4, 2014

Apportionment – Equitable

Substantial evidence supports the compensation judge's determination that the employee's ongoing need for medical treatment, including treatment for infection issues following later surgical procedures that took place after the second work injury, may be apportioned between the two work-related injuries at issue.

Affirmed.

Nelson vs. Hormel Foods Corp., March 6, 2014

Causation – Substantial Evidence

Substantial evidence, including adequately founded medical opinion, supports the compensation judge's finding that the employee's cervical condition was not causally related to her work activities for the employer.

Temporary Total Disability – Substantial Evidence

Substantial evidence supports the compensation judge's determination that the employee's chiropractor took her off work due to her noncompensable cervical condition and the judge's denial of temporary total disability from Dec. 14, 2010, to Feb. 2, 2011.

Wages – Calculation

The compensation judge erred in excluding the employee's earnings up to and including the date of injury in calculating the employee's pre-injury weekly wage, and the judge's findings are modified to reflect a pre-injury weekly wage of \$503.89 instead of \$501.61.

Affirmed as modified.

Hansen vs. Dayton's n/k/a Macy's, Inc., March 14, 2014

Attorney Fees – Excess Fees

Substantial evidence supports the compensation judge's determinations that the payments made to an intervenor were the result of the parties' failure to include that intervenor in the settlement process, that there was no genuine dispute with regard to the employee's treating physician, and that there was no genuine dispute with regard to the medical bills that the employer agreed to pay at hearing. As such, substantial evidence supported the compensation judge's denial of excess attorney fees.

Affirmed.

Herbst vs. Amano McGann, Inc., March 24, 2014

Attorney Fees – Roraff Fees

Application of the factors set out in Irwin v. Surdyk's Liquor, 599 N.W.2d 132, 59 W.C.D. 319 (Minn. 1999), and Kahn v. State, Univ. of Minn., 327 N.W.2d 21, 35 W.C.D. 425 (Minn. 1982), results in a determination that a reasonable Roraff fee in this matter is \$2,457.00.

Reversed.

Mack vs. ISD 701, March 24, 2014

Attorney Fees – Rofaff Fees

The compensation judge properly considered the factors referenced in Irwin v. Surdyk's Liquor, 599 N.W.2d 132, 59 W.C.D. 319 (Minn. 1999), in making his fee award and he did not abuse his discretion in failing to award fees calculated by multiplying the attorney's time by his usual hourly fee.

Penalties
Practice and Procedure – Matters at Issue

The compensation judge did not err by refusing to consider the employee's penalty claim where that claim was made for the first time at the beginning of the hearing on attorney fees.

Affirmed.

Marchesani vs. Buffalo Dry Cleaners & Launderers, Inc., March 24, 2014

Causation – Gillette Injury

Substantial evidence, including medical records, lay testimony and expert medical opinion, supports the compensation judge's finding that the employee failed to prove that she had sustained a Gillette injury to her left thumb and wrist due to cumulative minute trauma in her job with the employer.

Affirmed.

Moats vs. Miltona Custom Meats, March 24, 2014

Rehabilitation – Eligibility

Given the disparity in pay between the employee's pre-injury and post-injury employment and the QRC's recommendation to investigate additional skills training, substantial evidence supported the compensation judge's award of ongoing rehabilitation assistance.

Medical Treatment and Expense – Treatment Parameters

Given the employee's ability to continue working, the lack of evidence indicating that any increased symptoms were incapacitating and the lack of medical evidence to support the employee's contention that her first functional capacity evaluation was flawed, substantial evidence supported the judge's conclusion that the employee did not establish grounds for a departure from the treatment parameter limiting functional capacity evaluations to one per injury.

Affirmed.

Minnesota Supreme Court

January through March 2014

Case summaries published are
those prepared by the WCCA



Bowman vs. A&M Moving & Storage Company, Jan. 15, 2014

Decision of the Workers' Compensation Court of Appeals filed and served on Aug. 14, 2013, be, and the same is, affirmed without opinion.

Schuette v. City of Hutchinson, March 5, 2014

Syllabus (by the court)

1. The compensation judge's findings that relator's post-traumatic stress disorder is a noncompensable mental injury under *Lockwood v. Independent School District No. 877*, 312 N.W.2d 924 (Minn. 1981), are not manifestly contrary to the evidence.
2. Minnesota Statutes § 176.021, subd. 1 (2012), of the Minnesota Workers' Compensation Act, as interpreted by *Lockwood*, does not violate relator's equal protection rights.

Affirmed.

Kainz v. Arrowhead Senior Living Community, A13-0733, March 12, 2014

Decision of the Workers' Compensation Court of Appeals (WCCA) filed April 1, 2013, be, and the same is, vacated and the matter is remanded to the WCCA for further proceedings consistent with *Dykhoff v. Xcel Energy*, 840 N.W.2d 821 (Minn. 2013).