

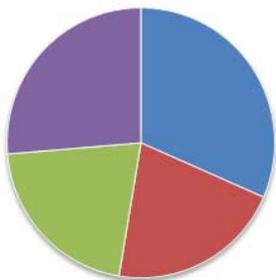


August 2012

Minnesota Department of Labor and Industry

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Year in review: New
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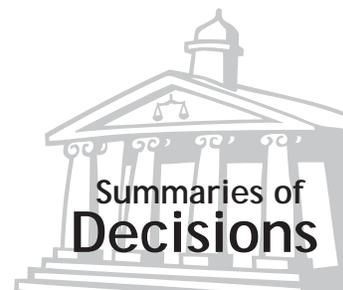
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Successful summit showcased
knowledge, expertise



8

Court decisions:
April through June 2012



D-1

New benefit and provider fee levels effective October 2012

By Brian Zaidman, Research Analyst, Research and Statistics, and Kate Berger, General Counsel

The statewide average weekly wage (SAWW) effective Oct. 1, 2012, is \$916, a 2.23 percent increase from the current SAWW of \$896, which has been in effect since Oct. 1, 2011. [See the table on this page.] The levels for minimum and maximum weekly benefit payments are presented in the table on page 3. The statewide annual average wage will change to \$47,616 on Jan. 1, 2013.

The new SAWW is based on 2011 payroll and employment figures supplied by the Department of Employment and Economic Development and the calculation procedure in Minnesota Statutes § 176.011, subd. 1b. The change in the SAWW is the basis for the M.S. § 176.645 annual benefit adjustment. The time of the first adjustment is limited by M.S. § 176.645, subd. 2.

Pursuant to Minnesota Rules 5220.1900, subp. 1b, the maximum qualified rehabilitation consultant (QRC) hourly fee will increase by 2 percent, to \$96.57 Oct. 1, 2012. The maximum hourly rate for rehabilitation job development and placement services, whether provided by rehabilitation vendors or by QRC firms, will increase to \$73.31 on Oct. 1, 2012.

Pursuant to M.S. § 176.136, subd. 1a, which provides for annual adjustments of the medical fee schedule conversion factor by no more than the change in the statewide average weekly wage, the conversion factors will be increased by 1.5 percent, which is the percent change in the producer price index for offices of physicians (PPI-P) developed by the U.S. Department of Labor, Bureau of Labor Statistics.

Statewide average weekly wage
Effective Oct. 1 of the indicated year

	Statewide average weekly wage	
1999	\$615	6.22%
2000	\$642	4.39%
2001	\$680	5.92%
2002	\$702	3.24%
2003	\$718	2.28%
2004	\$740	3.06%
2005	\$774	4.59%
2006	\$782	1.03%
2007	\$808	3.32%
2008	\$850	5.20%
2009	\$878	3.29%
2010	\$868	-1.14%
2011	\$896	3.23%
2012	\$916	2.23%

Effective Oct. 1, 2012, as approved by an administrative law judge at the Office of Administrative Hearings, the new conversion factors will be:

- medical/surgical services in part 5221.4030.....\$69.87
- pathology/laboratory services in part 5221.4040\$41.16
- physical medicine/rehabilitation services in part 5221.4050.....\$54.41
- chiropractic services in part 5221.4060.....\$55.58

Minnesota Rules, part 5219.0500, subp. 4, provides for adjustment of the maximum fees for independent medical examinations in the same manner as the adjustment of the conversion factor. Therefore, the maximum independent medical examination fees will be increased by 1.5 percent for services provided on or after Oct. 1, 2012.

An official notice of the medical fee schedule conversion factors and independent medical examination fees as approved by the administrative law judge will be published in the *State Register* in September.

Compensation rates as of Oct. 1, 2012

Statewide average weekly wage (SAWW) = \$916 Percentage change in SAWW from previous year = 2.23% (Apply Minn. Stat. §176.645 adjustment as necessary based on date of injury.)

Maximum under M.S. §§176.101 and 176.111

<i>100% of SAWW</i>	
10-01-88	\$391.00
10-01-89	\$413.00
10-01-90	\$428.00
10-01-91	\$443.00
<i>105% of SAWW</i>	
10-01-92	\$481.95
10-01-93	\$508.20
10-01-94	\$516.60
<i>Set by statute</i>	
10-01-95	\$615.00
10-01-00	\$750.00
10-01-08	\$850.00

Minimum under M.S. §176.101, subd. 1(2)

<i>50% of the SAWW or gross wage, whichever is less, but in no case less than 20% of the SAWW</i>			
<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">50%</td> <td style="width: 50%; text-align: center;">20%</td> </tr> </table>		50%	20%
50%	20%		
10-01-88	\$195.50 (gross wage – \$293.25) .. \$ 78.20		
10-01-89	\$206.50 (gross wage – \$309.75) .. \$ 82.60		
10-01-90	\$214.00 (gross wage – \$321.00) .. \$ 85.60		
10-01-91	\$221.50 (gross wage – \$332.25) .. \$ 88.60		
<i>20% of the SAWW or the employee's actual weekly wage, whichever is less</i>			
10-01-92	\$91.80		
10-01-93	\$96.80		
10-01-94	\$98.40		
<i>Set by statute, the listed amount or the employee's actual weekly wage, whichever is less</i>			
10-01-95	\$104.00		
10-01-00	\$130.00		

Supplementary benefits under M.S. §176.132

(Minnesota Statutes 1994)	
M.S. §176.101, subd. 4	
(for injuries 10-1-95 and later)	
10-01-94	\$319.80 (rounded to \$320)
10-01-95	\$328.25 (rounded to \$329)*
10-01-96	\$340.60 (rounded to \$341)*
10-01-97	\$359.45 (rounded to \$360)*
10-01-98	\$376.35 (rounded to \$377)*
10-01-99	\$399.75 (rounded to \$400)*
10-01-00	\$417.30 (rounded to \$418)*
10-01-01	\$442.00 (round)
10-01-02	\$456.30 (rounded to \$457)*
10-01-03	\$466.70 (rounded to \$467)*
10-01-04	\$481.00 (round)
10-01-05	\$503.10 (rounded to \$504)*
10-01-06	\$508.30 (rounded to \$509)*
10-01-07	\$525.20 (rounded to \$526)*
10-01-08	\$552.50 (rounded to \$553)
10-01-09	\$570.70 (rounded to \$571)*
10-01-10	\$564.20 (rounded to \$565)*
10-01-11	\$582.40 (rounded to \$583)*
10-01-12	\$595.40 (rounded to \$596)*

*Rounding applies to supplementary benefits.

Independent contractors:

New law requires registration for some contractors

A law enacted in 2012 creates a two-year pilot project for the registration of construction contractors.

This new registration is free and is **required of any contractor that is not already licensed, registered or certified by the Department of Labor and Industry (DLI).**

The law will enable state agencies to more effectively investigate employee misclassification in the building and construction industry, help ensure that workers are being appropriately classified as employees or independent contractors and to level the playing field for legitimate construction businesses.

To determine the effectiveness of the pilot project, the agency will analyze registration information, worker misclassification complaints, investigations and enforcement actions.



Learn
more
and
register

For more information about the contractor registration project and to register visit www.dli.mn.gov/register.

Questions?

Contact DLI by phone at (651) 284-5074 or by email at dli.register@state.mn.us.

Contractor registration project overview

- Building construction contractors, including independent contractors and business entities, are required to be registered with DLI by Sept. 15, 2012.
- The registration requirement does not apply to workers and businesses that are already licensed, registered or certified by DLI, nor does it apply to employees.
- No fee will be charged for initial registration.
- Registration will be done online and requires information about the business and its owners and officers. Registration requires similar information currently required for licensed residential building contractors, electrical contractors and plumbing contractors.
- General contractors will be able to verify that subcontractors are registered on the searchable DLI License Lookup at www.dli.mn.gov.
- The law provides for penalties for contractors who hire unregistered subcontractors, fail to register, misclassify employees or coerce others to form a business entity. The penalty for failing to register will be forgiven if registration is achieved within 30 days after notice from DLI.
- The pilot project replaces the Independent Contractor Exemption Certificate program (ICEC), although those with current ICECs do not need to register until the ICEC expires.

Year in review:

New ombudsman program helps injured workers, small businesses

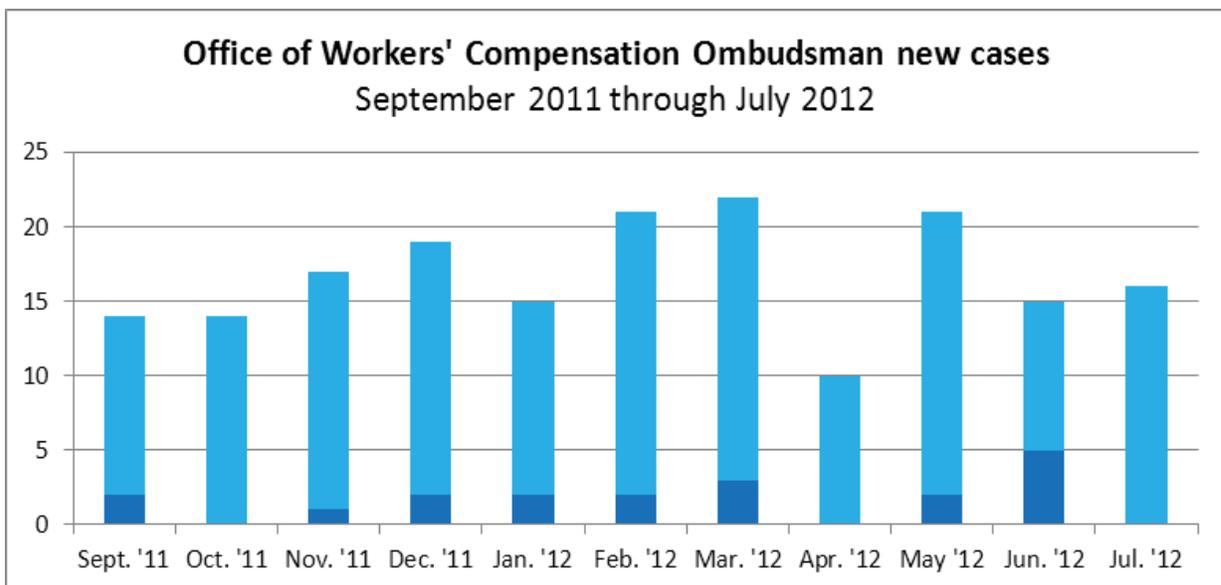
By Philip Moosbrugger, Ombudsman

Background

The Office of Workers' Compensation Ombudsman was established Sept. 1, 2011, to address the needs of injured workers and small businesses. Various stakeholders had long sought an ombudsman to help injured workers who are often at a disadvantage because they know very little about how the sometimes complex benefit entitlement system works in workers' compensation. In February 2009, the Minnesota Office of the Legislative Auditor issued a report that recommended the establishment of an ombudsman to "help those injured workers who are overwhelmed with the workers' compensation process."¹

The Department of Labor and Industry's (DLI's) ombudsman program has now been in operation for nearly a year. At this point, the office has already provided services to more than 180 customers. In a relatively short period of time, it has become recognized as an important service and is relied upon by an ever-increasing number of injured workers and small businesses. Referrals come from a variety of sources, both within and outside the department: DLI mediators, claimant attorneys and qualified rehabilitation consultants (QRCs) are among those regularly referring cases to the ombudsman; one injured worker was referred by the Workers' Compensation Court of Appeals.

The chart below shows the number of individuals and small businesses requesting the assistance of the ombudsman since last year's inception of the program. Small-business issues are represented by the dark blue portion of the bars and injured workers are represented by the light blue portion.



Services provided

Injured workers and small businesses face a variety of issues when navigating the workers' compensation system. The most common issues faced by injured workers are the employer's failure to report the injury, the insurer's denial of the injury or the insurer's denial of a specific benefit. Less common, but equally important, are injured workers' requests for assistance in relating with their

¹Office of the Legislative Auditor, Oversight of Workers' Compensation (February 2009), p. 66.

attorneys and in considering settlement offers where they are not represented by legal counsel. Examples of cases where the ombudsman was able to help injured workers include the following:

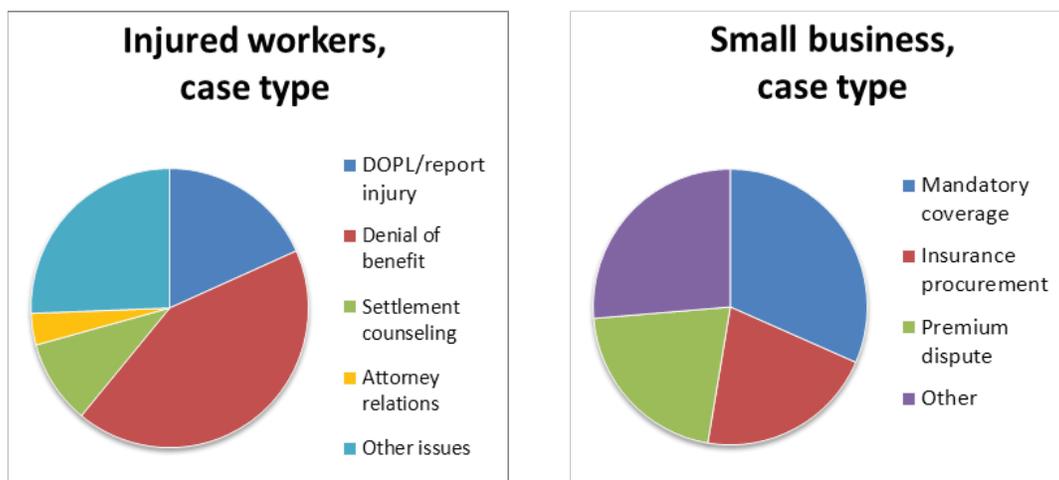
- assisted employees in initiating claims with the Special Compensation Fund where the employees' employers were uninsured;
- with the Attorney General's office, is seeking the appointment of a guardian/conservator to assist an individual pursue his work-related brain injury claim (because of the effects of his brain injury, this individual has been unable to effectively pursue his claim on his own);
- assisted the widow of a deceased employee in obtaining dependency benefits on the basis that the injured worker's death ultimately resulted from his work injury (this was accomplished without litigation);
- assisted an employee in obtaining a referral for a specialist;
- secured the payment of permanency benefits to the widow of a police officer who died of injuries sustained in the course of his law enforcement duties; and
- assisted injured workers in obtaining mileage reimbursement, filing claim petitions, obtaining reimbursement for medical treatment and in generally moving their claims forward.

Small-businesses' issues generally consist of questions about mandatory coverage, procuring an insurance policy or resolving a dispute about the premium assessed by the insurer. Specialized assistance provided to small businesses by the ombudsman since the inception of the program has included the following:

- after an ombudsman investigation revealed the insurer had erroneously double-counted some of the business's payroll during the relevant policy year, obtained a review of a premium audit for a small business, resulting in a reduced workers' compensation premium being charged to that business;
- helped several small businesses understand workers' compensation insurance coverage issues and their options in procuring coverage;
- provided information and direction to individuals seeking to start a business in Minnesota; and
- helped insurance agents and agencies understand some of the more complex components of the Minnesota workers' compensation system, including independent contractor issues and Assigned Risk Plan requirements.

Case types

The charts below illustrate the relative incidence of the primary issues the Office of Workers' Compensation Ombudsman has helped with during the first 11 months of its operation.



The Office of Workers' Compensation Ombudsman works cooperatively with the units in the DLI's Safety and Workers' Compensation Division to provide a comprehensive set of services to people with questions or those needing help navigating Minnesota's workers' compensation system.

In addition to the individualized assistance provided to injured workers and small businesses discussed above, the Office of Workers' Compensation Ombudsman makes statute, rule and policy recommendations to the DLI commissioner to improve the effectiveness of the workers' compensation system. The ombudsman is also presently involved in the department's efforts to resolve recurring issues arising out of the medical bill payment system in Minnesota workers' compensation matters.

Complete information about the DLI ombudsman program is at www.dli.mn.gov/WC/Ombudsman.asp.

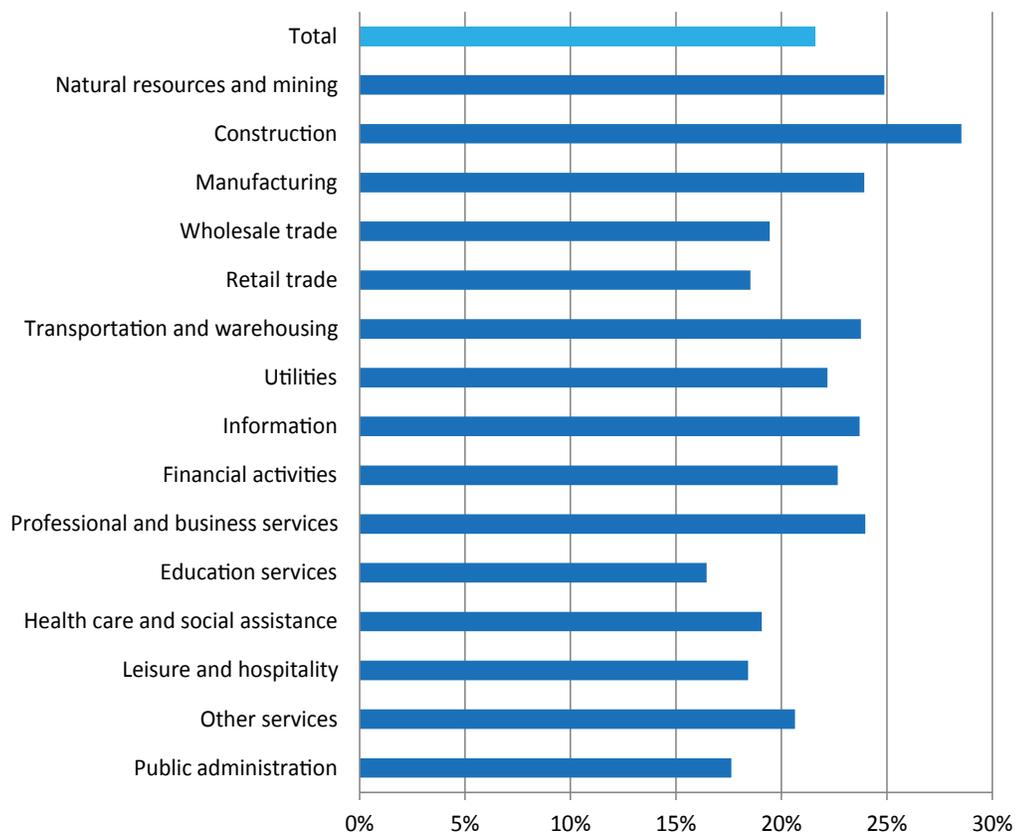
CompFact

Vocational rehabilitation utilization by industry

By Brian Zaidman, Research and Statistics

Vocational rehabilitation utilization measures the percentage of indemnity claims with a vocational rehabilitation plan filed. For this analysis, the vocational rehabilitation status of indemnity claims for injuries and illnesses occurring in 2008, 2009 and 2010 was determined as of Oct. 1, 2011. Overall, 13,315 claims out of 61,726 indemnity claims (21.6 percent) used vocational rehabilitation services. The highest utilization rate was in the construction industry, with 28.5 percent of the indemnity claimants receiving vocational rehabilitation services, while education services had the lowest rate, at 16.5 percent.

Vocational rehabilitation utilization by industry, 2008-2010 claims



Successful summit showcased knowledge, expertise

By Kris Eiden, DLI Deputy Commissioner

The Minnesota Department of Labor and Industry and the Workers' Compensation Advisory Council presented the 2012 Workers' Compensation Summit on June 12 and 13 at Cragun's Conference Center in Brainerd, Minn.

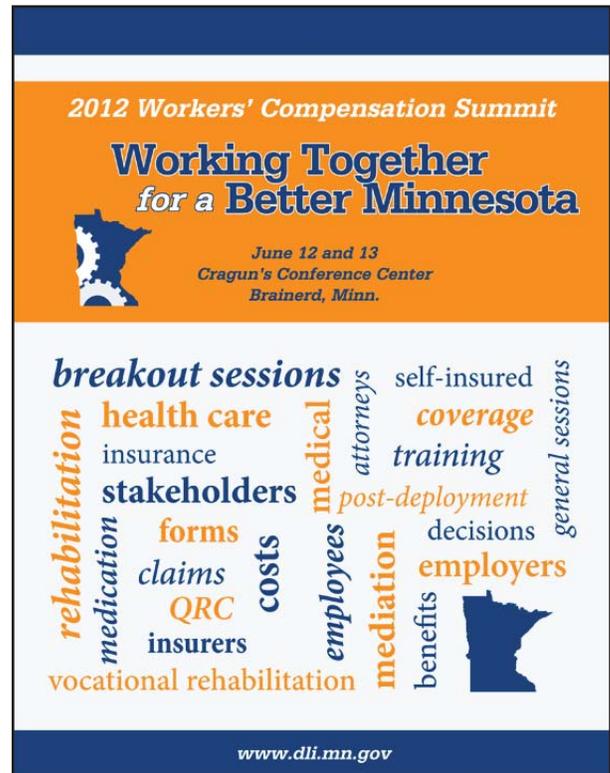
About 220 attendees representing employers, insurers, health care providers, rehabilitation providers, attorneys and government agencies attended the conference.

The general sessions included a presentation by Kyle Uphoff, regional analysis and outreach manager at the Minnesota Department of Employment and Economic Development, who provided attendees with an informative and eye-opening look at how Minnesota's workforce is changing and what that means for employers and employees. Gregory Krohm, past executive director of the International Association of Industrial Accident Boards and Councils (IAIABC), gave participants a comprehensive look at workers' compensation trends around the country and what emerging issues are developing.

Breakout sessions were hosted by a range of professionals who shared their knowledge and expertise about issues ranging from opioids, prescription medication and addiction, to stress reduction and healthy lifestyles, to workplace violence prevention. Conference attendees said they found the conference to be "informative and entertaining," and they enjoyed hearing the people they work with – judges, QRCs and others—share their views.

Thank you to all the presenters who donated their time and talent to make the 2012 Workers' Compensation Summit such a success. Thank you also to the sponsors that helped defray costs and make the conference affordable for everyone.

Plans are already underway for the 2013 Workers' Compensation Summit, which will commemorate 100 years of workers' compensation in Minnesota. Stay tuned for more information!



View a slideshow of the event

– www.dli.mn.gov/Summit –

Settlement and hearings survey update

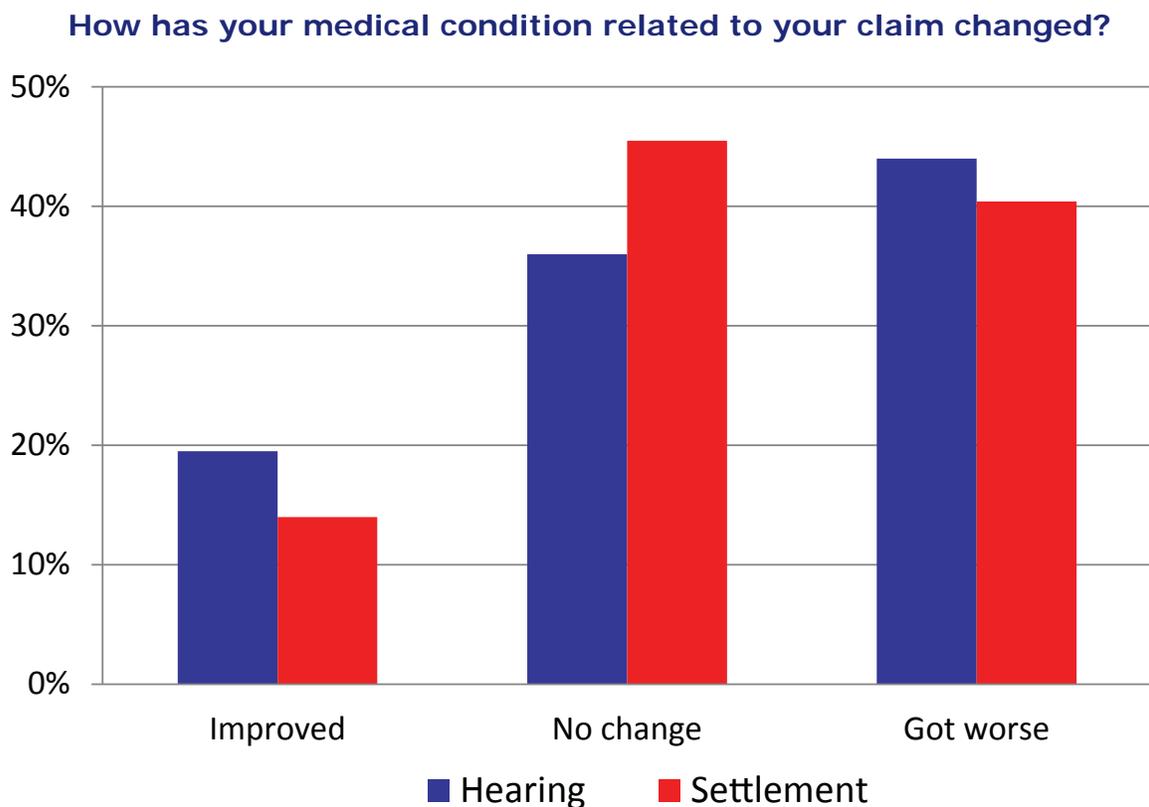
By Brian Zaidman, Research and Statistics

During the spring of 2012, the Department of Labor and Industry (DLI) conducted a survey of workers with recent settlements or findings and orders from a hearing. Surveys were mailed to nearly 1,600 workers; 531 workers responded to the survey request.

The surveys asked questions about workers' decisions to go to trial or pursue a settlement, how well they understood their current or potential workers' compensation benefits, additional information they would like to have known and their comments about the dispute-resolution system. The survey results are being analyzed by DLI Research and Statistics and will be presented in a formal report later in 2012.

A PowerPoint presentation of the preliminary results, shown at the 2012 Workers' Compensation Summit in June, is available on the DLI website at www.dli.mn.gov/RS/WcSurvey.asp.

The figure below shows the responses to a question about changes in the workers' medical condition after the settlement or findings and order.



Minnesota Workplace Safety Report available

By Brian Zaidman, Research and Statistics

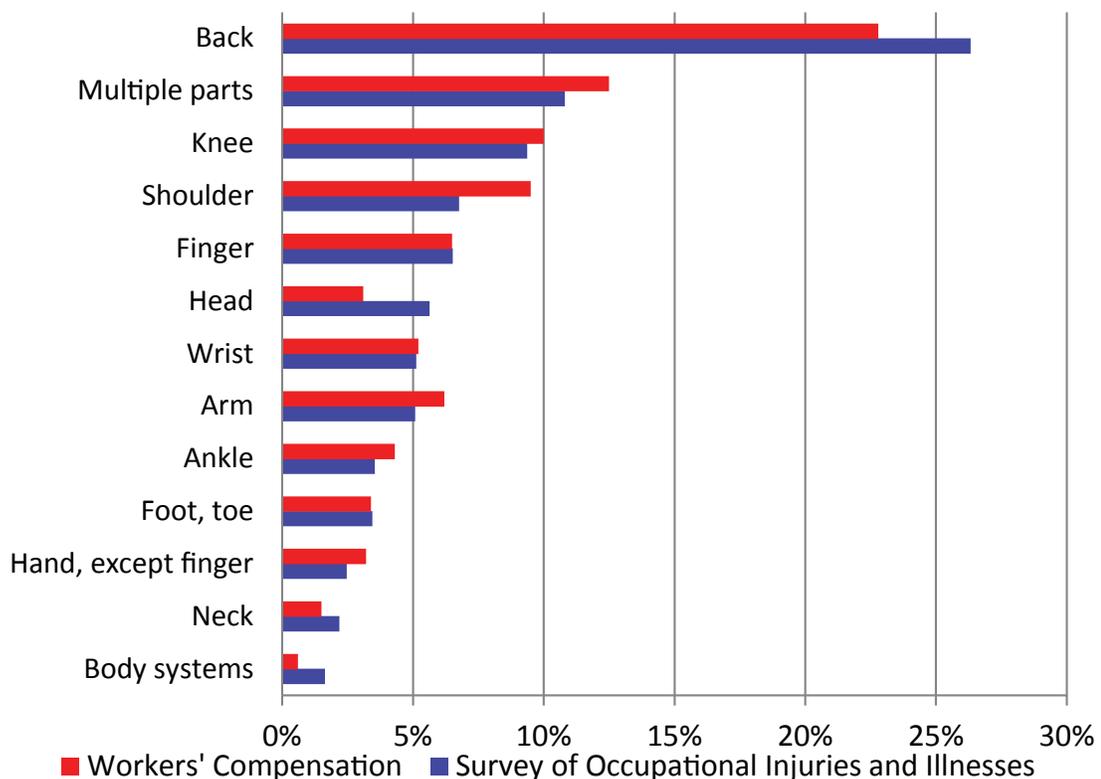
Based on estimates from the Survey of Occupational Injuries and Illnesses (SOII), the number of injury and illness cases in Minnesota's workplaces continued its long-term downward trend. The most recent occupational injury and illness figures show that during 2010, there were an estimated 76,700 recordable injury and illness cases; about 21,500 cases involved one or more days away from work. The comparable figures for 2009 were 78,100 total cases and 21,000 days-away-from-work cases. There were 70 work-related fatalities in 2010, an increase from 61 fatalities in 2009, but below the annual average of 73 fatalities for the 2005 to 2009 period.

These statistics, and many more detailing injury and illness rates and workplace fatalities for 2010, are available in the recently updated

Minnesota Workplace Safety Report on the Department of Labor and Industry website at www.dli.mn.gov/RS/WorkplaceSafety.asp. The report presents statistics from the U.S. Bureau of Labor Statistics' SOII and Census of Fatal Occupational Injuries, Minnesota OSHA and the Minnesota Department of Health's Center for Occupational Health and Safety.

A new appendix has been added to the report, showing how the characteristics of cases with days away from work reported in the SOII compare with the characteristics of workers' compensation indemnity claims. The figure below compares the distribution of cases by part of body injured. Along with other comparisons, this appendix shows that the two systems provide similar information about Minnesota's injured workers and their injuries and illnesses.

Percentage of cases by part of body injured, Minnesota, 2010



Results of 2012 Special Compensation Fund assessment

By John Kufus, Accounting Officer, Financial Services

The Special Compensation Fund (SCF) assessment funds Minnesota's workers' compensation programs. Seventy percent of the assessment dollars go to funding the supplementary and second-injury benefit programs. The assessment also pays the operating expenses of the Workers' Compensation Division of the Department of Labor and Industry, the Office of Administrative Hearings and the Workers' Compensation Court of Appeals.

As a result of legislation enacted in 2002, the assessment process has changed. Companies are no longer required to report on a semi-annual basis. The report is now being done on an annual basis. The report form is mailed to companies at least 45 days before the due date of April 1.

The Special Compensation Fund assessment is directly invoiced by the Minnesota Department of Labor and Industry.

	2011 indemnity	Ratio	Estimated liabilities	DSR pure premium
Insurers	\$298,014,543	75.84%	\$64,464,350	\$777,073,921
Self-insurers	\$ 94,936,201	24.16%	\$20,535,650	
Total	\$392,950,744	100.00%	\$85,000,000	\$777,073,921

The first half of the assessment is invoiced by June 30 of each year, and is due Aug. 1 of that year. The second billing is due Feb. 1 of the following year, and is mailed approximately 30 days before the due date.

The estimated state-fiscal-year 2013 funding requirement for the SCF was determined to be \$85,000,000. The liability was divided between the insurers and self-insurers by the ratio of their 2011 indemnity payments to the total indemnity reported by both groups.

Insurer premium surcharge rate

The insurer premium surcharge rate applied for the purpose of determining the Special Compensation Fund assessment was 8.296 percent. The rate was determined by dividing the insurer portion of the SCF state-fiscal-year 2013 liability (\$64,464,350) by the 2011 designated statistical reporting pure premium reported by all insurers to the Minnesota Workers' Compensation Insurers Association (\$777,073,921).

Percentage for assessments due for insurers and self-insurers			
Year assessed	Basis for assessment	Insurers	Self-insurers
2003	2002	12.5457%	27.4374%
2004	2003	11.0335%	25.6801%
2005	2004	10.1742%	24.2958%
2006	2005	9.2312%	23.6870%
2007	2006	8.7176%	24.0396%
2008	2007	8.6050%	23.8969%
2009	2008	8.5347%	23.3185%
2010	2009	8.6636%	22.4319%
2011	2010	8.9013%	22.0264%

Self-insured assessment rate

The imputed self-insured assessment rate was 21.631 percent. It was determined by dividing the self-insured portion of the Special Compensation Fund state-fiscal-year 2013 liability (\$20,535,650) by the total 2011 indemnity reported by the self-insured employers (\$94,936,201).

More information

For further information, contact John Kufus at (651) 284-5179 or john.kufus@state.mn.us.



Reengineering Rehabilitation for Tomorrow

Rehabilitation update conference 2012



Offered Sept. 27 and Oct. 18

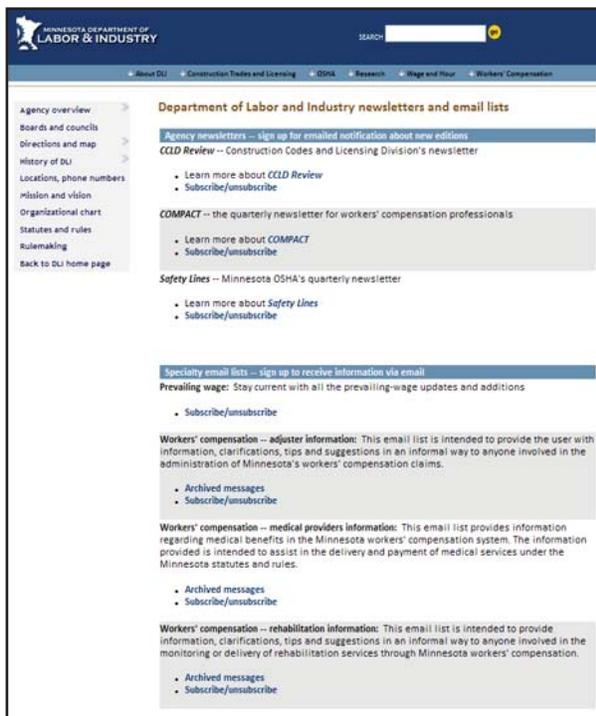


MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY

www.dli.mn.gov/WC/TrainingRp.asp

More resources from DLI: newsletters, email lists

Besides *COMPACT*, the Minnesota Department of Labor and Industry (DLI) offers two other quarterly publications: *CCLD Review* and *Safety Lines*.



MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY

SEARCH

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Locations, phone numbers
Mission and vision
Organizational chart
Statutes and rules
Rulemaking
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Department of Labor and Industry newsletters and email lists

Agency newsletters -- sign up for emailed notification about new editions.

CCLD Review -- Construction Codes and Licensing Division's newsletter

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COMPACT -- the quarterly newsletter for workers' compensation professionals

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Safety Lines -- Minnesota OSHA's quarterly newsletter

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Specialty email lists -- sign up to receive information via email

Prevailing wage: Stay current with all the prevailing-wage updates and additions

- Subscribe/unsubscribe

Workers' compensation -- adjuster information: This email list is intended to provide the user with information, clarifications, tips and suggestions in an informal way to anyone involved in the administration of Minnesota's workers' compensation claims.

- Archived messages
- Subscribe/unsubscribe

Workers' compensation -- medical providers information: This email list provides information regarding medical benefits in the Minnesota workers' compensation system. The information provided is intended to assist in the delivery and payment of medical services under the Minnesota statutes and rules.

- Archived messages
- Subscribe/unsubscribe

Workers' compensation -- rehabilitation information: This email list is intended to provide information, clarifications, tips and suggestions in an informal way to anyone involved in the monitoring or delivery of rehabilitation services through Minnesota workers' compensation.

- Archived messages
- Subscribe/unsubscribe

- **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 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 to the quarterly newsletter at www.dli.mn.gov/WC/SafetyLines.asp.

DLI also maintains four specialty email lists to which interested parties may subscribe:

- prevailing wage information;
- workers' compensation adjuster information;
- workers' compensation medical providers information; and
- workers' compensation rehabilitation information.

Learn more about each of DLI's specialty email lists, subscribe or review previously sent messages at www.dli.mn.gov/EmailLists.asp.

Basic Adjuster Training 2012

– *One session left in 2012* –

Oct. 30 and 31

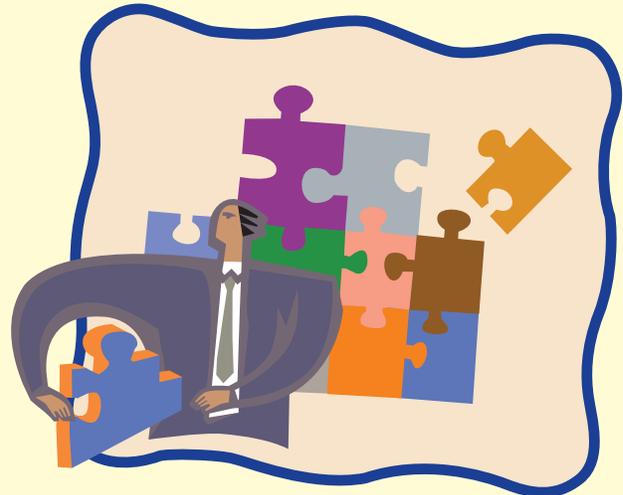
8:30 a.m. to 4 p.m.



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

April through June 2012

Case summaries published are
those prepared by the WCCA



Richardson vs. Hot Shot Prods., Inc., April 3, 2012

Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence supports the compensation judge's decision that the employee's pool therapy at her current health club was reasonable and necessary even though there were other health clubs closer to the employee's home, and the compensation judge's award of mileage and penalties is affirmed.

Affirmed in part and vacated and remanded in part.

Christensen vs. Burns Manor Nursing Home, April 4, 2012

Permanent Partial Disability

Substantial evidence, including expert opinion, supported the judge's findings as to the extent of the employee's permanent partial disability.

Practice and Procedure – Independent Medical Examination

Under the circumstances of this case, the compensation judge did not err in admitting into evidence the report of the employer and insurer's medical examiner, despite the fact that the report was not completed within 120 days of the filing of the employee's claim petition.

Affirmed.

Nickerson vs. Planesman Construction, April 4, 2012

Vacation of Award

In 1984, the employee sustained a significant injury to his low back with Planesman Construction, insured by Travelers Group, which he settled in 1986. The employee then sustained two Gillette injuries, in 2005 and 2010, arising from his employment at Black's Greenhouse, a family corporation for which workers' compensation coverage was not statutorily mandated and was not elected.

Where an employee has no claim against the subsequent employer and no potential of receiving full recovery for claimed benefits from the employer on the risk for subsequent injuries, the principles enunciated in Johnson v. Tech Group, Inc., 491 N.W.2d 287, 47 W.C.D. 367 (Minn. 1992) and Kinnunen v. Brockway Glass, slip op. (W.C.C.A. Jan. 27, 2000), are not applicable. As the employee otherwise meets the statutory requirements, vacation of the 1986 award on stipulation is granted.

Petition to vacate award on stipulation granted.

Larson vs. Viking Automatic Sprinkler Co., April 9, 2012

Appeals – Notice of Appeal;
Jurisdiction – Subject Matter

The pro se employee's document, acknowledged as an appeal of the compensation judge's orders for dismissal, is dismissed as untimely filed under Minn. Stat. § 176.421, since it was filed more than 30 days from the orders and no request for an extension of time for filing an appeal was made within that interval. The compensation judge's later order for dismissal was not properly appealed and this court does not have jurisdiction to review the order on appeal.

Dismissed.

Baldwin vs. Independent Sch. Dist. #877-Buffalo, April 10, 2012

Arising Out Of And In The Course Of – Ideopathic Condition;
Causation – Pre-existing Condition;
Causation – Consequential Injury

Where the employee was very overweight, and the condition of her knees bilaterally was very poor, where there was expert medical opinion to the effect that the employee's right knee condition was attributable in part both to the employee's previous left knee injuries and to a more recent separate right knee injury, and where there was case law precedent to the effect that even mere standing at work may reasonably constitute an increased risk of injury, the compensation judge's conclusion that the employee's right knee condition, which began worsening when the knee suddenly buckled while she was walking at work, was work-related and neither idiopathic nor solely arthritic was not clearly erroneous and unsupported by substantial evidence.

Apportionment – Equitable

Where the judge expressly credited the employee's testimony that her right knee pain had been long standing, that she had associated it with her earlier left knee injuries, and that it grew worse after her right knee suddenly buckled at work, and where there was expert medical opinion to the effect that the employee's right knee condition was consequent to both her earlier left knee injuries and a subsequent right knee injury at the time of the buckling episode, the compensation judge's apportionment of liability for the employee's right knee condition equally between the earlier, left knee, injuries and the later, right knee, injury was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

Foster vs. Northwest Airlines d/b/a Delta Airlines, Inc., April 11, 2012

Attorney Fees – Roraff Fees

The compensation judge properly denied counsel’s petition for Roraff fees where counsel failed to secure payment of medical expenses or approval of requested surgery. The establishment of an ongoing injury, standing alone, provides no grounds for a fee award.

Affirmed.

Dibble vs. Northern States Power d/b/a Xcel Energy, April 13, 2012

Causation – Substantial Evidence

Substantial evidence, including expert medical opinion, supports the compensation judge’s finding that the employee’s 1992 personal injury was not a substantial contributing cause of his urethral meatal stenosis.

Affirmed.

Jetland vs. Wal-Mart Stores, Inc., April 19, 2012

Vacation of Award – Substantial Change in Condition

The employee sufficiently established an unanticipated substantial change in diagnosis, ability to work, additional permanent impairment, and more costly and extensive medical care causally related to the subject of the October 2007 Stipulation for Settlement to warrant vacation of the award on stipulation.

Petition to vacate award on stipulation granted.

Lawrence vs. Branch Mfg., April 23, 2012

Causation – Substantial Evidence

Substantial evidence, including expert opinion, supported the judge’s decision denying proposed surgery on grounds that the employee’s claimed work injuries were merely temporary.

Affirmed in part and reversed and remanded in part.

McCarty vs. Andersen Windows, May 7, 2012

Penalties

Substantial evidence supports the compensation judge’s award of penalties, as modified, under Minn. Stat. § 176.225, subd. 1, for late payment of an award on stipulation, and the compensation judge’s denial of penalties under Minn. Stat. § 176.225, subd. 5.

Affirmed as modified.

Shirkey, Jr. vs. J & R Schugel Trucking, Inc., May 10, 2012

Temporary Injury – Substantial Evidence

Substantial evidence supports the finding that the employee's admitted injury to the T12 thoracic vertebra was ongoing through the date of hearing where the judge accepted as credible the employee's testimony that he had ongoing pain and spasms in the mid-back through the day of hearing, and found this testimony consistent with the medical records and with permanent injury to T12 as rated by employer's physician.

Arising Out Of And In the Course Of – Prohibited Act

The employee's conduct in leaving his truck and trailer at a truck stop while he walked to a restaurant in a neighboring town was not a prohibited act taking the employee out of the course of his employment.

Arising Out Of And In The Course Of – Prohibited Act

Substantial evidence supports the compensation judge's determination that the employee lost his footing causing his fall off the road, and that the employee's consumption of alcohol while on layover did not contribute to the injury.

Arising Out Of and In The Course Of – Traveling Employee

Substantial evidence supports the compensation judge's determination that the employee's conduct was reasonably foreseeable, and not unreasonable, extraordinary, or unduly hazardous conduct by the employee, and that the employee's injury was covered under the traveling employee exception.

Affirmed.

Stans vs. Long Prairie Memorial Hospital, May 14, 2012

Arising Out Of And In The Course Of – Substantial Evidence

The compensation judge did not err as a matter of law in finding that the employee's work injury arose out of her employment, and substantial evidence supports that finding.

Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence supports the compensation judge's finding that the claimed medical expenses were reasonable and necessary, except for expenses claimed for a provider without documentation from that provider.

Affirmed in part and vacated in part.

Wimmer vs. Sam's Club, May 18, 2012

Permanent Total Disability – Substantial Evidence

Substantial evidence, including medical records and expert medical and vocational opinion, supports the compensation judge's finding of permanent total disability.

Affirmed.

Stevens-Stevenson vs. Greater Lakes Country Food, May 18, 2012

Practice and Procedure – Matters at Issue;
Jurisdiction – Subject Matter

Contrary to the position of the employer and insurer, the compensation judge has jurisdiction to consider claims for treatment of a consequential injury at an expedited hearing on a medical request – it was not necessary for the employee to file a claim petition to pursue that claim. However, the employer and insurer were entitled to reasonable notice of the nature of the claim. As such, a remand was ordered to allow the employer and insurer the opportunity to arrange an independent medical examination.

Vacated and remanded.

Preston vs. Hitchin Rail, June 4, 2012

Causation – Substantial Evidence

Substantial evidence, including expert opinion, supported the compensation judge's conclusion that the employee's work-related injury substantially contributed to the employee's disability and need for treatment.

Affirmed in part and vacated in part.

Myhre vs. Public Storage, Inc., June 5, 2012

Causation – Substantial Evidence

Substantial evidence, including environmental study reports and expert medical opinion, supports the compensation judge's finding that the employee was not exposed to mold in her employer-furnished apartment and was not disabled as a result of that exposure.

Evidence – Exclusion

Where the compensation judge was within her discretion to exclude exhibits of medical journal articles from evidence but discussed the articles in her memorandum, and there is no indication that the judge's consideration of these articles formed the basis for the judge's decision, any error by the judge in discussing exhibits not admitted into evidence was harmless.

Affirmed.

Summaries of Decisions

Dahlen vs. Hiway Amoco, Inc., June 7, 2012

Arising Out Of And In The Course Of – Substantial Evidence

Substantial evidence supports the compensation judge's determination that the employee failed to prove that she sustained an injury to her ankle at work.

Notice of Injury – Substantial Evidence

Substantial evidence supports the compensation judge's finding that the employee did not provide timely notice of injury as required by Minn. Stat. § 176.141.

Affirmed.

Haggerty vs. Pro Staff Personnel Servs., June 8, 2012

Causation – Substantial Evidence;
Evidence Credibility

Substantial evidence in the form of credible testimony from the employee and his mother and a medical report based on that testimony supports the compensation judge's determination that the employee sustained a work injury to his low back on Sept. 6, 2010.

Affirmed.

Olson vs. Fine Impressions, June 14, 2012

Appeals

Where the employee did not contest the appeal of the employer, the findings appealed by the employer are vacated.

Affirmed in part and vacated in part.

Yarbrough vs. First Student, Inc., June 19, 2012

Causation – Substantial Evidence

Substantial evidence, including expert medical opinion, supports the compensation judge's finding that the employee's work injury remained a substantial contributing factor in the employee's chronic pain condition.

Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence supports the compensation judge's finding that the recommended medical treatment of a TENS unit and aqua therapy is reasonable and necessary.

Affirmed.

Bowman vs. Healtheast Bethesda Rehab. Hospital, June 28, 2012

Causation – Pre-existing Condition

Where there was evidence in the medical record that the employee's ulnar nerve condition was the result of pre-existing arthritis and not the result of the work injury, the compensation judge's conclusion that the cause of the employee's wage loss, need for rehabilitation, and need for medical treatment was unrelated to her work injury was not clearly erroneous or unsupported by substantial evidence.

Affirmed.

Frederick vs. Scott Dean Winter, June 29, 2012

Attorney Fees – Roraff Fees

Where the employee's medical request was determined in a separate hearing from the employee's temporary partial disability claim, the medical request was not concurrently in dispute with that claim, and the contingent fees from the temporary partial disability benefits awarded in the earlier hearing cannot be considered in determining the employee's claim for Roraff fees for the medical request.

Reversed and remanded.

Minnesota Supreme Court

April through June 2012

Case summaries published are
those prepared by the WCCA



• ***Brenda J. Schwalbe v. American Red Cross, A11-1799***

Decision of the Workers' Compensation Court of Appeals filed April 4, 2012, affirmed without opinion.

• ***Andrea A. Schaltz v. Interfaith Care Center, A11-1171***

Decision of the Workers' Compensation Court of Appeals filed April 11, 2012, affirmed without opinion.

• ***Patty J. Jacobson v. Third World Friends, A11-2107***

Decision of the Workers' Compensation Court of Appeals filed May 2, 2012, affirmed without opinion.

• ***Nicole E. Bauer v. FedEx Freight East, A11-2021***

Decision of the Workers' Compensation Court of Appeals filed May 2, 2012, affirmed without opinion.

• ***Minh Nguyen v. Audio Communications, A11-1784***

Decision of the Workers' Compensation Court of Appeals filed May 9, 2012, affirmed without opinion.

• ***Greg S. Kovensky v. Larry's Autos Unlimited, A11-2109***

Decision of the Workers' Compensation Court of Appeals filed May 16, 2012, affirmed without opinion.

• ***Bradley J. Katzenberger v. Kelly Raph d/b/a Raph Construction, A12-0059***

Decision of the Workers' Compensation Court of Appeals filed June 13, 2012, affirmed without opinion.

• ***Julie A. Bourgoin v. The Gillette Company, A11-2288***

Decision of the Workers' Compensation Court of Appeals filed June 13, 2012, affirmed without opinion.