

Ebola: Ensuring workplace safety for those who may have contact

The Minnesota Department of Labor and Industry (DLI), in partnership with other state and federal agencies, has studied Ebola virus disease information and planned for necessary measures to keep Minnesotans safe and protected. DLI has posted Ebola information and resources at www.dli.mn.gov/Ebola.asp.

Workplace safety is a key consideration under any circumstance and it is of particular importance when employees in the course of their work could come into contact with those suffering from a potentially deadly and communicable disease such as Ebola.

Workers in Minnesota who could potentially come into contact with Ebola-infected people or their body fluids in the workplace are protected under the Occupational Safety and Health Administration (OSHA) Bloodborne Pathogens (BBP) Standard, 29 CFR 1910.1030. Minnesota OSHA's expectation is that employers will comply with this standard through screening and planning, engineering controls, training and the proper use of personal protective equipment.



Centers for Disease Control and Prevention image

Employers in need of assistance may contact or request a free consultation visit from Minnesota OSHA Workplace Safety Consultation – www.dli.mn.gov/Wsc.asp or (651) 284-5060. Employees who believe there is a safety hazard at their workplace may file a complaint with Minnesota OSHA Compliance – www.dli.mn.gov/Mnosha.asp or (651) 284-5050.

Update about ICD-10 implementation for workers' compensation



The federal Department of Health and Human Services (DHHS) has adopted a final rule establishing Oct. 1, 2015, as the new compliance date for implementation of the ICD-10 coding system. ICD-10 replaces the ICD-9 codes currently in use. The International Classification of Diseases (ICD) consists of thousands of numerical codes developed by the World Health Organization to provide a uniform classification of medical diagnoses and hospital inpatient procedures.

In 2014, the workers' compensation law was amended to require the use of ICD-10 codes when required by DHHS. The law also requires the Minnesota Department of Labor and Industry to update references from ICD-9 to ICD-10 in workers' compensation rules and forms when ICD-10 is implemented. Therefore, the workers' compensation *Health Care Provider Report* and rules that refer to ICD-9 will be updated to reference ICD-10 codes effective Oct. 1, 2015.

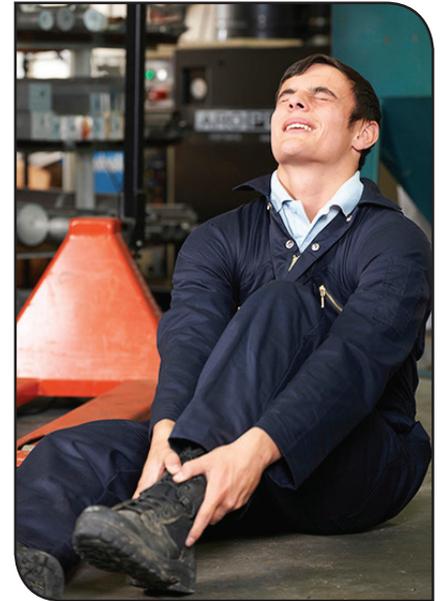
The workers' compensation law that requires the transition to ICD-10 is Minnesota Statutes § 176.135, subd. 7. Visit www.cms.gov/Medicare/Coding/ICD10/Latest_News.html for current information about the implementation of ICD-10 by DHHS.

Start 2015 off right: Recordkeeping training offered in January

The ability to maintain an accurate OSHA log of recordable work-related injuries and illnesses is an important skill that benefits employers, workers, safety professionals and government agencies. Recording the correct cases and accurately including the required information leads to higher quality injury and illness rates that enable employers to better understand their relation to the benchmark rates and help government agencies to properly direct resources.

Register now for an introductory-level training session about OSHA recordkeeping requirements on Thursday, Jan. 15, from 9 to 11:30 a.m., at www.dli.mn.gov/OSHA/Recordkeeping.asp. This free review will be at the Minnesota Department of Labor and Industry (DLI) in St. Paul, Minnesota. Topics will include a review of the fundamental requirements of OSHA recordkeeping and will expose the most common OSHA log errors. If you have questions about the training session or about recordkeeping, call the DLI Research and Statistics unit at (651) 284-5025.

If you are already beyond the introductory level of recordkeeping but still have questions from time to time, refer to the Recordkeeping 101 and Recordkeeping 201 series online for answers at www.dli.mn.gov/OSHA/Recordkeeping.asp. These brief articles will take you from learning about classifying recorded injuries to knowing when to record injury recurrences and episodic illnesses.



WCRI report compares Minnesota medical payments, utilization with 15 other states

By Brian Zaidman, Research and Statistics

The Workers' Compensation Research Institute's (WCRI) most recent report for Minnesota, *CompScope Medical Benchmarks for Minnesota, 15th Edition*, was released in October. This report uses insurer claim files to compare Minnesota's medical payments and service utilization with those of 15 other states, including Iowa and Wisconsin. The report is available for purchase from WCRI at www.wcrintet.org.

The report focuses on results for workers injured in 2012 and on trends for the 2007 to 2012 period, for claims with more than seven days of lost time, measured at an average of one year following the injury. Here are some of the major findings.

- Comparing 2009 and 2012 claims, the overall medical payment per claim decreased at an annual average rate of -0.1 percent for claims. Medical costs per claim grew 8 percent per year for the 2007 to 2009 period. Both hospital and nonhospital payments followed this pattern.
- There was slower growth in payments per claim for most hospital outpatient services.
- Following the fee schedule adjustment in 2010, prices and utilization for nonhospital services have remained stable since 2009.
- Hospital inpatient payments, especially those for surgical episodes, grew rapidly from 2007 to 2012. However, because fewer than 4 percent of the claims have inpatient surgery, these increases have not driven medical costs higher for the system as a whole.
- Minnesota's overall adjusted medical payments per 2012 claim was 8 percent lower than the median of the 16 study states. Payments per claim for nonhospital providers were 14 percent lower and payments for hospital providers were 1 percent lower.

Workers' compensation coverage for farms

By Brian Zaidman, Research and Statistics

A farm operation must provide workers' compensation insurance for its employees, unless it paid or was obligated to pay cash wages to farm laborers during the previous calendar-year less than a certain dollar amount. That threshold dollar amount depends on whether the farm operation maintains specified liability insurance.



If the farm operation has a farm liability insurance policy with \$300,000 total liability coverage and \$5,000 medical payment coverage for farm laborers, then the farm operation is not required to maintain workers' compensation insurance if the total wages to farm laborers during the previous calendar year were less than the statewide average annual wage.¹ If the farm operation does not maintain the specified liability insurance, then the farm operation must maintain workers' compensation insurance unless the total wages to farm laborers during the previous calendar year were less than \$8,000.²

The chart below may be used to determine if the farm operation's wages to farm laborers (roughly payroll) during the previous calendar year are less than the statewide average annual wage for the year in which the farm liability policy is written.

Family farm coverage

Minnesota Statutes § 176.011, subd. 11a (a)(2)

Average annual wage under M.S. § 176.011 subd. 20	Services rendered (roughly payroll) year	Policy written year
\$41,996	Jan. 1-Dec. 31, 2007	Jan. 1-Dec. 31, 2008
\$44,154	Jan. 1-Dec. 31, 2008	Jan. 1-Dec. 31, 2009
\$45,618	Jan. 1-Dec. 31, 2009	Jan. 1-Dec. 31, 2010
\$45,095	Jan. 1-Dec. 31, 2010	Jan. 1-Dec. 31, 2011
\$46,572	Jan. 1-Dec. 31, 2011	Jan. 1-Dec. 31, 2012
\$47,616	Jan. 1-Dec. 31, 2012	Jan. 1-Dec. 31, 2013
\$49,134	Jan. 1-Dec. 31, 2013	Jan. 1-Dec. 31, 2014
\$49,924	Jan. 1-Dec. 31, 2014	Jan. 1-Dec. 31, 2015

¹The statewide average annual wage is received from the Department of Employment and Economic Development and is the number from which the statewide average weekly wage is derived.

²Farm laborer does not include machine hire and other persons specified in [Minnesota Statutes § 176.011, subds. 11a and 12](#). Other farm employees excluded from workers' compensation coverage in certain circumstances are described in [Minnesota Statutes § 176.041, subd. 1](#).

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. I am a claims adjuster and want to settle a claim with an unrepresented employee. Do we need to have attorneys to settle a claim in Minnesota? Will the department mediate a case with unrepresented parties?

A. There is no requirement that a party retain legal counsel to resolve a particular dispute or to settle an entire case. The Department of Labor and Industry (DLI) mediates cases with unrepresented parties.

However, an unrepresented employee is likely to be unfamiliar with the benefits potentially available, as well as what losses are not compensated for in the workers' compensation system. Without such knowledge it is difficult for an injured worker to know when settlement negotiations might make sense and what the reasonable settlement value is of a particular issue or the entire claim.

A mediator does not advocate for either party but attempts to facilitate the negotiation process in a manner that informs the unrepresented injured worker of: the potentially available benefits and associated calculations; the defenses being asserted; the potential intervenor claims; and the issues currently ripe for decision by a judge if a settlement is not reached. When both parties have legal representation, each party has the benefit of an advocate who is advancing their interests during the course of any negotiated settlement.

Call DLI's mediators at (651) 284-5032 or visit www.dli.mn.gov/WC/DispRes.asp for more information.

Q. I am an attorney representing injured workers. I sometimes get calls from injured workers whose injury is admitted and whose benefits are being voluntarily paid, but who is having problems with the timeliness of the payments. Can I refer these individuals to DLI for assistance?

A. Yes, you can refer the employee to DLI's Alternative Dispute Resolution (ADR) unit for help with this type of issue. ADR will get details from the injured worker and communicate with the insurance company representative. The result may be identification of an easily remedied issue, such as reminding the employee to put a claim number on the fax when submitting paystubs, or reminding the insurer a penalty may be assessed if there are more than three checks more than three business days late within a 12-month period (see Minnesota Rules 5220.2790).

To help document any late payments, DLI recommends injured workers always keep the envelopes from their workers' compensation checks, copies of fax confirmations when they send in their paystubs, and copies of their paystubs and checks.

2013 workplace fatality statistics released

By Brian Zaidman, Research and Statistics

Statistics from the Census of Fatal Occupational Injuries (CFOI) are now available on the Department of Labor and Industry (DLI) and U.S. Department of Labor websites. Minnesota 2013 CFOI tables are available at www.dli.mn.gov/RS/StatFatal.asp. National fatality figures from the CFOI program available at www.bls.gov/iif/oshcfoi1.htm.

The 2013 estimated numbers and rates of nonfatal work-related injuries and illnesses by industry will be released in December. These will be followed by the release of the case and demographic statistics for cases with days away from work. Minnesota statistics will be available at www.dli.mn.gov/RS/StatWSH.asp. The Minnesota Workplace Safety Report, 2012, which presents 2012 fatality tables and nonfatal work-related injury and illness estimates, is available at www.dli.mn.gov/RS/WorkplaceSafety.asp.



Fatality statistics

The CFOI program shows a preliminary total of 67 fatal work-injuries in Minnesota in 2013, a decrease of three cases from the final count of 70 fatal work-injuries in 2012. The 2013 total is above the average of 65 cases a year for 2008 through 2012. Final 2013 data from the CFOI program will be released in spring 2015.

The CFOI also provides the following statistics for Minnesota's workplace fatalities during 2013.

Industries

- Trade, transportation and utilities recorded the highest number of worker fatalities, with 16 cases, an increase from 15 cases in 2012.
- Agriculture, forestry, fishing and hunting had the second-highest number of fatalities, with 15 cases, compared to 20 cases in 2012. Most of the fatalities were caused by either transportation incidents or contact with objects and equipment.
- Construction had the third-highest number of fatalities, with 12 cases, compared with 13 cases in 2012.

Types of incidents

- Transportation incidents accounted for 32 fatalities, the most for any incident type. Eight of those fatalities occurred in the agriculture, forestry, fishing and hunting industry sector and 10 fatalities occurred in trade, transportation and utilities.
- Contact with objects and equipment was the second most frequent fatal work-injury event in 2013, with 12 fatalities. Most of these cases involved the worker being struck by an object or equipment.
- Eleven of the fatalities were due to falls, with five in construction.
- There were six fatalities resulting from violence in 2013, compared with 11 fatalities in 2012.

Worker characteristics

- Men accounted for 63 of the 67 fatally injured workers in 2013.
- Workers age 55 and older accounted for 34 fatalities, with 10 of these fatalities in the agriculture, forestry, fishing and hunting industry sector.
- Self-employed workers accounted for 16 fatalities, including 12 fatalities to workers in agriculture, forestry, fishing and hunting and three in construction. There were 21 fatalities of self-employed workers in 2012.

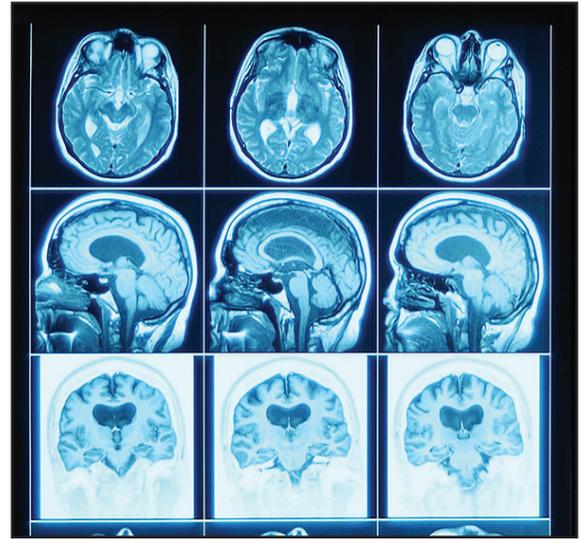
CompFact

Concussions: fact or fad? A headache for workers' compensation

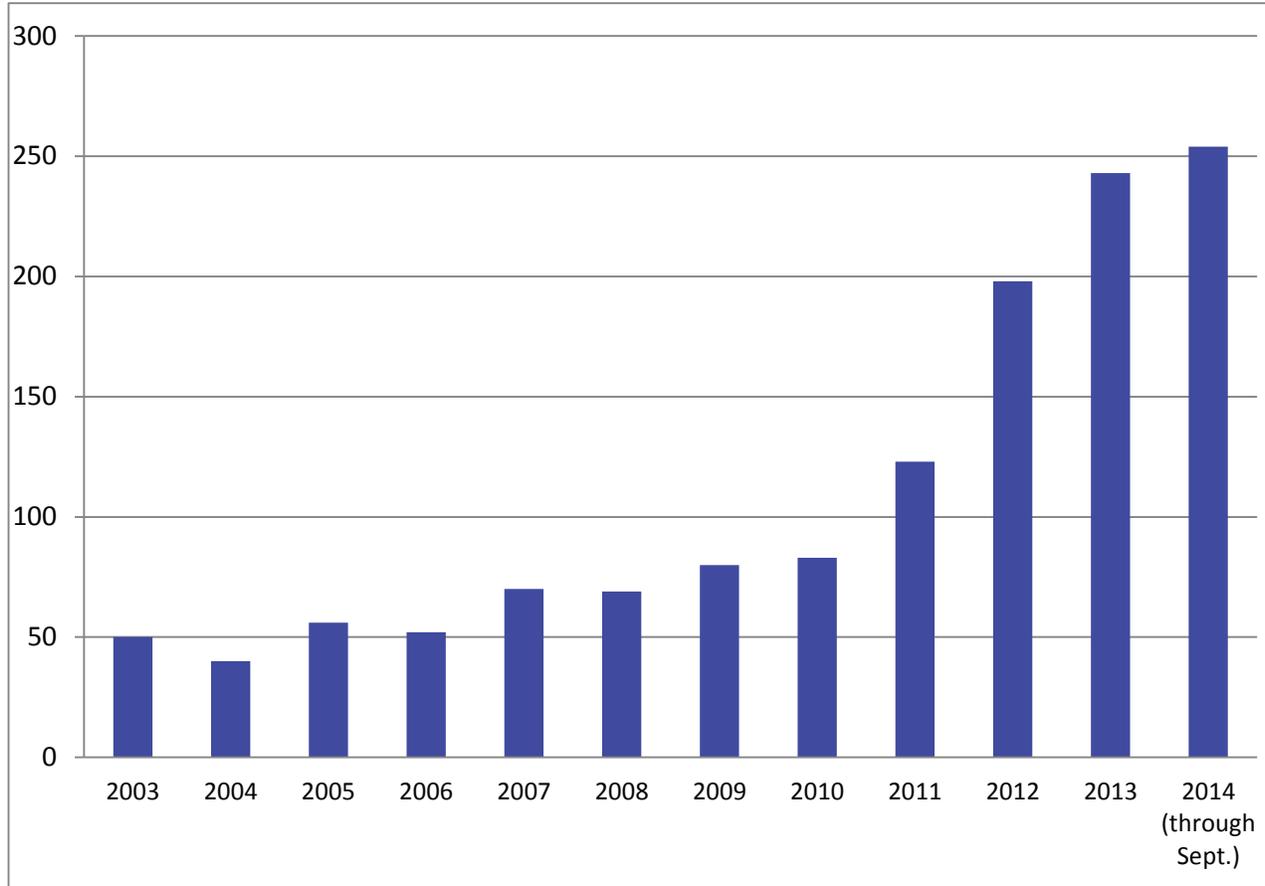
By Brian Zaidman, Research and Statistics

Concussions have become a common topic of conversation in the past few years, although the discussion has mainly focused on sports injuries, both to youth and professional athletes. Concussions aren't only a sports injury though; the number of concussions reported for workers' compensation indemnity claims has tripled in the past four years (see chart below). The number reported for the first nine months of 2014 shows concussions will have the highest number reported in Minnesota since the computerized database began in 1983.

While the increase in reported concussions may be due to an actual increase in blows to the head, the increase may also be due to heightened sensitivity of employers and employees about concussions and their long-term effects as a result of the increased media attention to this injury. A decade ago, employers may have described an injury due to fall, where the worker bumps her head on the pavement, as a bruise or as head pain. Now, employers are much more likely to characterize the injury as a concussion. The descriptions the employers enter on their First Report of Injury forms are used to code the injury characteristics in the workers' compensation claims database.



The reported number of concussion injuries among indemnity claims, Minnesota, 2003 to 2014



Source: Minnesota workers' compensation claims database

CompFact continues ...

CompFact continued ...

Analysis of the concussion injuries from 2012 through 2014 shows the events, industries and occupations where concussions are most prevalent. Among the demographic characteristics, women were more likely to report concussions, accounting for 48 percent of the concussion injuries and for 38 percent of all other injury types, and workers younger than 25 years accounted for 17 percent of the concussions compared with 10 percent of all other injury types.

Events

- Thirty-nine percent were due to falls, half were falls on the same level caused by slipping.
- Twenty percent were due to being struck by an object or equipment.
- Assaults accounted for 14 percent of the cases.

Industries

- Twenty percent of the injuries were in health care and social assistance.
- Thirteen percent were in retail trade.
- Eleven percent were in educational services.



Occupations

- Transportation and material moving occupations accounted for 16 percent of the concussions.
- Production workers, sales workers, and office and administrative support workers each accounted for 9 percent of the concussions.

Reminder: 2013 Special Compensation Fund assessment 'true-up'

Minnesota Statutes § 176.129, subd. 2a, now provides for an adjustment – or “true-up” – of the assessment paid by insurers for deposit into the Special Compensation Fund (SCF).



Now when the commissioner of the Minnesota Department of Labor and Industry estimates each insurer's share of the assessment using the insurer's earned standard premium from the previous calendar year, the commissioner must also later make a final determination of the amount owed based on the insurer's actual earned standard workers' compensation premium for the current year, after those figures become available. As a result of this true-up, insurers will likely owe additional monies to the SCF or be refunded monies that were overpaid. Invoices for additional funds will be mailed to insurers by Nov. 15, with payment due Dec. 15. Refunds will be processed by Dec. 1. To be issued a refund, insurance companies that are not currently registered as vendors with the state of Minnesota will be required to file a W-9 Request for Taxpayer Identification Number and Certification form.

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

Basic Adjuster Training 2015

March 26 and 27 • May 6 and 7 • Sept. 24 and 25
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 each two-day session (includes lunch)

Early registration is encouraged. The sessions are 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 a 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.



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.



Breaking news – Stay up-to-date with the Department of Labor and Industry by signing up for its email newsletter at www.dli.mn.gov/Email.asp. The agency sends occasional messages to subscribers to share news about DLI activities.

Specialty and rulemaking news – DLI also maintains five specialty email lists and 11 rulemaking lists to which interested parties may subscribe. The specialty email lists are: prevailing-wage information; workers' compensation adjuster information; workers' compensation EDI trading partners; workers' compensation medical providers information; and workers' compensation rehabilitation information. Learn more about DLI's specialty email lists, subscribe or review previously sent messages online at www.dli.mn.gov/EmailLists.asp.

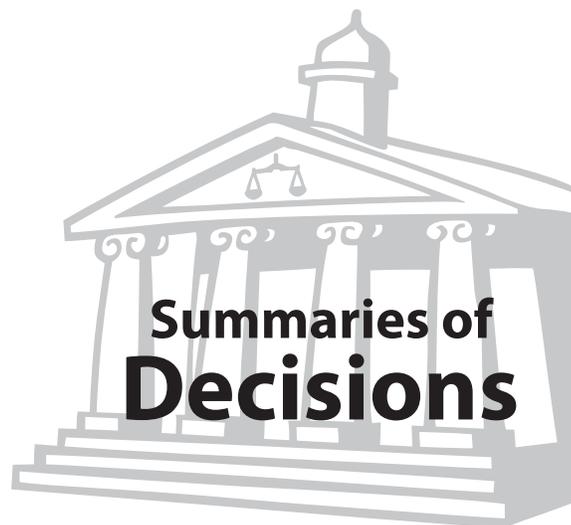
The rulemaking lists are required to be maintained for people who have registered with the agency to receive notices of agency rule proceedings via email or U.S. mail. The rulemaking lists topic areas are: apprenticeship; boats/boats-for-hire; electrical; fire code; high-pressure piping; independent contractor; labor standards/prevaling wage; Minnesota OSHA; plumbing; state building code; and workers' compensation. Learn more or subscribe at www.dli.mn.gov/Rulemaking.asp.

Subscribing to *COMPACT* – Interested parties may subscribe or unsubscribe from the *COMPACT* email list at <https://webmail.mnet.state.mn.us/mailman/listinfo/wc-compact>. Subscribers receive emailed notices about editions of the quarterly workers' compensation newsletter and other periodic updates from DLI.

Workers' Compensation Court of Appeals

July through September 2014

Case summaries published are
those prepared by the WCCA



Burns vs. Walmart Stores, Inc., July 1, 2014

Causation – Medical Treatment

Substantial evidence supports the compensation judge's determination that the employee's injury resolved as of Aug. 6, 2012, and supports the denial of medical treatment after Aug. 6, 2012.

Affirmed.

Frederick vs. Divine Home Care, Inc., July 1, 2014

Practice and Procedure – Matters at Issue

The compensation judge improperly expanded the scope of the issues presented at hearing, i.e., "nature and extent of the employee's injuries," when he determined, without providing sufficient notice to the parties, that he could decide that there was no injury whatsoever and, thus, no primary liability.

Discontinuance Rehabilitation – Discontinuance

The record contains substantial evidence to support the compensation judge's decision to discontinue compensation and to terminate rehabilitation services.

Credits and Offsets – Credit for Overpayment

There was sufficient evidence to support the compensation judge's conclusion that although he believed that the employee was malingering, there were questions about whether the employee's state of mind was directed toward fraudulent conduct. In addition, the NOID, as submitted, was not sufficient to meet the procedural requirements of Minnesota Rules 5220.2580.

Affirmed in part and vacated in part.

Meyer vs. Walmart Stores, Inc., July 2, 2014

Jurisdiction – Subject Matter

Where the issue raised on appeal is not ripe for review by this court, no justiciable controversy exists and the employee's appeal is dismissed.

Dismissed.

Hellgren vs. St. Mary's Medical Center, July 9, 2014

Causation – Gillette Injury
Gillette Injury – Date of Injury

There is sufficient medical evidence, including the opinions of the employee's medical expert, to support the compensation judge's determination that the employee's work activities were a substantial contributing factor in the development of Gillette injuries to the low back and to the lower extremities in the nature of Achilles tendinitis.

Permanent Total Disability – Retirement
Permanent Total Disability – Withdrawal From the Labor Market

Substantial evidence, including the employee's testimony and the opinions of the employee's medical and vocational experts, supports the compensation judge's determination that the employee stopped working because she was no longer physically able to continue working due to her work injuries and that she did not voluntarily retire or withdraw from the labor market.

Permanent Total Disability – Effective Date

Substantial evidence, including the employee's testimony and the opinions of the employee's medical and vocational experts, supports the compensation judge's determination that the employee was permanently and totally disabled as of Dec. 5, 2011.

Affirmed.

Atkins vs. Chase Tree and Outdoor Services, Chase Tree and Landscaping, July 14, 2014

Arising Out Of and In The Course Of

The compensation judge's resolution of conflicting testimony and other evidence in this case provides substantial evidence to support the determination that the employee failed to prove that his injury arose out of and in the course and scope of employment with the employer(s).

Affirmed.

Ilemsky vs. Japs-Olson Co., July 17, 2014

Causation – Gillette Injury

Substantial evidence, including adequately founded medical opinion, supports the compensation judge's findings that the employee sustained Gillette injuries to his neck, low back and right wrist.

Maximum Medical Improvement
Temporary Total Disability – Substantial Evidence

Where there was no medical opinion indicating that the employee was at maximum medical improvement, substantial evidence supports the compensation judge's award of temporary total disability benefits.

Affirmed.

Beck vs. Lowe's Home Centers, Inc., July 23, 2014

Causation – Permanent Aggravation

Substantial evidence, including the employee's medical treatment records, her testimony and her lack of symptoms, medical treatment or work restrictions for approximately four years before the first work injury, supports the compensation judge's finding that the employee's work injuries permanently aggravated/accelerated the employee's pre-existing, but asymptomatic, degenerative disc disease and therefore that the employee's low back condition and need for fusion surgery are causally related to her work injuries.

Affirmed.

Guevara vs. BT-PCE, July 29, 2014

Appeals – Standard of Review

The determination of which entity employed an employee is a question of fact for the compensation judge and is reviewed under the substantial evidence standard.

Employment Relationship – Joint Employers
Contribution and Reimbursement

Substantial evidence supports the compensation judge's findings that the employee was not jointly employed and therefore that the employer and insurer petitioning for contribution and reimbursement was not entitled to payment from the other alleged employer.

Affirmed.

Kainz vs. Arrowhead Senior Living Community, Aug. 6, 2014

Arising Out Of and In The Course Of

The compensation judge did not err in determining that the employee's ankle injury, which occurred on a stairway in the employer's facility, arose out of her employment when considering the case under the increased risk test.

Affirmed.

Polfliet vs. Northern Lights Distributing, Aug. 7, 2014

Causation – Gillette Injury

Substantial evidence in the form of a well-founded medical opinion supports the compensation judge's decision that the employee did not sustain a Gillette injury to his low back.

Causation

Substantial evidence supports the compensation judge's determination that the 2003 work injury continues to be a substantial contributing factor in the employee's disability and need for treatment.

Maximum Medical Improvement

Where the treating doctor has recommended treatment for a work injury and where there was a medical opinion that the employee had not reached maximum medical improvement for his current condition, substantial evidence supports the compensation judge's finding that the employee has not reached maximum medical improvement.

Temporary Total Disability

Where the compensation judge found the employee had failed to make a reasonably diligent search for employment, substantial evidence supports a denial of temporary total disability benefits.

Attorney Fees – .191 Fees

Where the compensation judge found that a dispute between the insurers was not the primary issue at hearing, substantial evidence supports the denial of attorney fees under Minnesota Statutes § 176.191.

Affirmed.

Allen vs. R.D. Offutt Co., Aug. 12, 2014

Permanent Total Disability – Threshold

The compensation judge erred by failing to include the employee's 10 percent permanent partial disability rating for complete loss of teeth under Minnesota Rules 5223.0320, subp. 7, in determining whether the employee met the threshold level of permanent partial disability for permanent total disability set forth in Minnesota Statutes § 176.101, subd. 5(2)(a).

Reversed and remanded.

Gilles vs. Paul Bunyan Tree Service., Inc., Aug. 19, 2014

Wages – Self-employment
Wages – Imputed Wage

On the particular facts of this case, where the employee had not paid himself a wage in the 27 years he worked in his tree business, the compensation judge did not err in basing his weekly wage decision on the wage of the tree trimmer hired to take over the work the employee could no longer perform due to his injury.

Temporary Partial Disability – Earning Capacity
Practice and Procedure – Matters at Issue

Where the employee's entitlement to wage-loss benefits and a potential underpayment/overpayment claim was expressly submitted to the compensation judge for decision, the compensation judge did not improperly expand the issues by determining the employee's post-injury earning capacity. And the compensation judge could reasonably conclude that the insurer failed to rebut the presumption raised by the employee's post-injury earnings.

Affirmed.

Brown vs. North Memorial Medical Center, Aug. 20, 2014

Appeals – Interlocutory Order

The compensation judge's order denying a motion to dismiss a claim petition on grounds that the claim is foreclosed by the language of a prior stipulation for settlement is an interlocutory order and not separately appealable to this court.

Appeal dismissed.

Schintz vs. Ratner Steel Supply Co., Aug. 21, 2014

Causation – Temporary Injury

Substantial evidence, including expert opinion, supports the compensation judge's conclusion that the employee's work injury was temporary, ending as of Feb. 4, 2011, and the judge's resulting denial of benefits after that date.

Affirmed.

Breeze vs. FedEx Freight, Aug. 26, 2014

Rehabilitation – Change of QRC

Under the circumstances of the case, the compensation judge did not err in denying payment of bills for services provided by the QRC following an administrative decision granting the employer's request to change QRCs.

Affirmed.

Dahlheimer vs. Qwest Corp., Sept. 2, 2014

Causation – Intervening Cause

Where the employee has ongoing restrictions due to his work injuries, and may be capable of some limited employment despite significant restrictions from his nonwork tinnitus and vertigo, the employer and insurer failed to prove that the employee's nonwork conditions were a superseding, intervening cause of the employee's disability.

Rehabilitation – Eligibility

The court need not reach the question of whether a superseding, intervening cause may defeat liability for a rehabilitation consultation, where the employer and insurer failed to prove that the employee's nonwork tinnitus and vertigo were a superseding, intervening cause of the employee's disability; accordingly, the judge's award of a rehabilitation consultation was appropriate.

Rehabilitation – Work Restrictions

Substantial evidence, including expert medical opinion, medical records and lay testimony, supports the compensation judge's finding that the employee has ongoing physical restrictions as a result of his work injury.

Affirmed.

Casper vs. City of Fergus Falls, Sept. 9, 2014

Permanent Partial Disability – Substantial Evidence
Permanent Total Disability – Threshold

Substantial evidence supports the compensation judge's finding that the employee had not met the requirements for a permanent partial disability rating, and therefore that the employee had not met the permanent partial disability threshold for permanent total disability benefits under Minnesota Statutes § 176.101, subd. 5(2)(a).

Affirmed.

Lehnen vs. Process Displays Co., Sept. 10, 2014

Causation – Permanent Aggravation
Permanent Partial Disability

A work injury that produces determinable permanent physical impairment pursuant to the Workers' Compensation Permanent Partial Disability Schedules is, by definition, a permanent injury, and the finding that the injury was temporary in nature is, accordingly, reversed.

Reversed.

Phipps vs. Bamboo Betty's, Sept. 10, 2014

Medical Treatment and Expense – Diagnostic Testing

Because the compensation judge found the employee's work injury had resolved, the compensation judge did not err in refusing to award diagnostic surgery to rule out alternate explanations for the employee's symptoms.

Affirmed.

Commodore vs. Western Precipitation, Sept. 23, 2014

Evidence – Burden of Proof

The compensation judge did not erroneously place the burden of proof on the employee to show that he had not received permanent partial disability payments as documented. Substantial evidence in the record supports the judge's finding based on the documentary evidence that the payments had been made.

Affirmed.

Roskos vs. Bauer Electric, Inc., Sept. 23, 2014

Calculation of Benefits – Commutation

Given the record as a whole, the judge's decision allowing the employer and insurer to use a 5 percent discount rate in connection with the employee's demand for lump-sum payment of permanent partial disability benefits pursuant to Minnesota Statutes § 176.101, subd. 2a(b), is not clearly erroneous or unsupported by substantial evidence.

Affirmed.

Weigand vs. Independent School District No. 2342, Sept. 23, 2014

Causation – Substantial Evidence

Substantial evidence, including adequately founded expert medical opinion, supports the compensation judge's finding that the employee's work injury was a substantial contributing cause of the employee's aggravation of her pre-existing cervical, right shoulder and lumbar conditions, and of the employee's RSD condition.

Temporary Partial Disability

Where the employee used her compensatory, vacation and sick time to cover her wage loss for medical appointments and time off for reasons related to her work injury, the employee is entitled to reimbursement for the use of leave.

Affirmed.

Brunkhorst vs. Andrews Knitting Mills, Sept. 25, 2014

Medical Treatment and Expense – Substantial Evidence

Substantial evidence, including medical records and expert medical opinion, supported the findings that the employee's narcotic medications, MS-Contin and Oxycodone, were not reasonable and necessary, and that neither these medications nor the employee's ibuprofen were causally related to the work injury.

Affirmed.

Greer vs. Minnesota Vikings Football Club, Sept. 30, 2014

Causation – Psychological Condition

Causation – Substantial Evidence

Substantial evidence supports the compensation judge's finding that the employee failed to meet his burden of proving the Aug. 4, 1989, left knee injury was a substantial contributing cause of his psychological condition where there was no medical expert opinion connecting the employee's psychological problems specifically to his Aug. 4, 1989, left knee injury or opining that the 1989 left knee injury was a substantial contributing factor to the employee's psychological condition.

Causation – Permanent Total Disability

Where the compensation judge found the employee failed to prove he sustained a compensable psychological injury consequential to the claimed 1989 work injuries, it was not necessary to address the issue of whether the employee's psychological condition contributed to his permanent total disability.

Evidence – Credibility

That a witness's testimony may be unreliable due to mental difficulties is not a basis for reversing a judge's decision. Even v. Kraft, 445 N.W.2d 831, 42 W.C.D. 220 (Minn. 1989).

Causation – Gillette Injury

Causation – Substantial Evidence

The compensation judge properly considered the length of time the employee played for the employer and the extent of the injuries sustained to the head in determining the employee did not sustain a Gillette injury to the head/brain on or about Aug. 4, 1989. Substantial evidence, including the expert opinion of the independent medical examiner, supports the compensation judge's determination that the employee failed to prove he sustained a Gillette injury to his head/brain as a result of his work activities as a defensive end for the Minnesota Vikings.

Affirmed.

Shaw vs. Supervalu, Inc., Sept. 30, 2014

Evidence – Credibility

Substantial evidence in the form of credible testimony by the employee provides substantial support for the compensation judge's determination as to the nature and extent of the work injury.

Affirmed.

Minnesota Supreme Court

July through September 2014

Case summaries published are
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Schmitz vs. United States Steel Corporation, A12-0709 – Aug. 27, 2014

Decision of the Workers' Compensation Court of Appeals filed Aug. 27, 2014, affirmed without opinion.

Gamble vs. Twin Cities Concrete Products, A13-1409 – Aug. 13, 2014

Decision of the Workers' Compensation Court of Appeals filed Aug. 13, 2014, reversed and remanded the decision of the compensation judge.

Ekdahl vs. Independent School District #213, A14-0089 – Aug. 13, 2014

Decision of the Workers' Compensation Court of Appeals filed Aug. 13, 2014, reinstate the decision of the compensation judge. Reversed.

Hartwig vs. Traverse Care Center, A14-0090 – Aug. 13, 2013

Decision of the Workers' Compensation Court of Appeals filed Aug. 13, 2014, reversed and remanded the decision of the compensation judge.

Stevens vs. S.T. Services, A13-1868 – July 30, 2014

Decision of the Workers' Compensation Court of Appeals filed Aug. 30, 2014, reversed and remanded the decision of the compensation judge.