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ATTORNEYS AT LAW

Minnesota Workers' Compensation Update

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DECISIONS OF THE MINNESOTA SUPREME COURT

Attorney Fees

***Bjornson v. McNeilus Cos., Inc.*, No. A24-0454 (Minn. 2025)**. The key question in this case on appeal was whether the Employee's attorney presented sufficient evidence to prove that he recovered an ascertainable dollar amount of medical benefits to support a *Roraff* fee recovery. The employee sustained two injuries while employed for the employer. He received treatment at the Mayo Clinic, and his bills were paid out of a self-funded health insurance plan managed by United Healthcare Services. In a stipulation for settlement, employer and insurers agreed that the treatment received was causally related to the work-related incident, and agreed to defend and indemnity the employee from any claim for reimbursement or subrogation by Mayo or United HealthCare. The settlement documents noted that the employee claimed that United had paid $327,257.37 in medical benefits to Mayo Clinic, but indicated that the records were not attached because they were voluminous. The settlement expressly reserved a *Roraff* fee claim. At Hearing before the compensation judge, the attorney claimed that he recovered an ascertainable dollar amount of $327.257.37, noted that there were two dates of injury, and claimed $26,000.00 in fees for each date of injury. In support of the claim, the employee submitted an itemization of benefits created by the attorney. The compensation judge found that United paid Mayo an ascertainable amount of $327,257.37, and awarded $52,000.00 in attorney fees, less a $3,000.00 contingency fee already received, for a total attorney fee of $49,000.00. The matter was appealed to the WCCA, which concluded that the "itemized bills" were not

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About Our Attorneys

Our group of workers' compensation law attorneys has extensive experience representing employers, insurers, third-party administrators, and self-insured employers in all phases of workers' compensation litigation. Contact us today to discuss your workers' compensation needs.

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in the record, and that there was a "paucity of evidence" regarding those bills. The WCCA modified the Roraff fee award to $500.00, the statutory amount allowed for unascertainable benefits. (There was, apparently, a dispute regarding whether the itemized bills were actually submitted into evidence.) The employee appeal to the Minnesota Supreme Court which reversed and remanded to the WCCA. The Supreme Court noted that the WCCA, on appeal, is required to determine whether, in the context of the record as a whole the findings of the compensation judge are supported by evidence that a reasonable mind might accept as adequate. *Lagasse v. Horton*. Here, the WCCA did not make this determination. On remand, the WCCA was directed to remand the case to the compensation judge to clarify whether the "itemized medical bills from the Mayo Clinic" were the actual bills or a summary document. It was noted that the record should not be reopened to accept additional evidence. Then, after this clarification, the WCCA was to review the evidence in the record and determine whether a reasonable mind might accept the evidence as adequate to support the compensation judge's conclusion.

Interveners

***Johnson v. Concrete Treatments, Inc.*, No. A23-0543, A23-0544 (Minn. 2024)**. The Minnesota Supreme Court reversed and remanded the WCCA's determination that the employee could not bring a direct claim for payment of medical bills. The underlying facts on this issue included that various providers were placed on notice of their potential intervention rights. Two providers did not timely file intervention claims, and, by Order prior to the Hearing, Compensation Judge Wolkoff extinguished those potential intervention claims. At trial, the employee sought to make a direct claim for payment of the bills of the extinguished providers. In his Findings and Order, the Judge allowed the direct claim and ordered payment of the bills. On appeal to the WCCA, the WCCA determined that the, once the potential interveners' interests had been extinguished, the employee could not bring direct claims on behalf of the providers unless his attorney unequivocally established that he was representing both the providers and the employee. The Supreme Court reversed the WCCA on this issue, and concluded that the employee has a right to bring a direct claim for payment of his medical bills, even if the intervention rights of the provider have been extinguished. The Supreme Court determined that the interests of the providers were properly extinguished. However, the Supreme Court found that an injured employee has the right to assert a direct claim for unpaid medical expenses, and that this is not barred by the providers failure to intervene. The matter was remanded to the WCCA, and then remanded to the Compensation Judge for determinations regarding what medical bills needed to be reimbursed and by whom.

Retirement

***Simonson v. Douglas County*, 19 N.W.3d 447 (Minn. 2025)**. The employee was injured at work in 1996, and in a settlement agreement, the parties stipulated that she was permanently and totally disabled because of the injury. In 2023, the employee turned 67 and the employer stopped paying her PTD benefits based on a previous version of Minn. Stat. 176.101 Subd. 4, which held for the purposes of ceasing PTD benefits, an employee retires from the labor force at 67. The statute indicated that this was a rebuttable presumption. The employee asserted that she rebutted the retirement presumption by introducing evidence that she would have worked past age 67. A compensation judge disagreed and found that she had not rebutted the presumption. The WCCA reversed, concluding that an employee must rebut the presumption by a preponderance of the evidence and that, under application of *Davidson v. Thermo King*, found that she had rebutted the retirement presumption. The WCCA noted that without her PTD payments, she was in a dire financial position, noting that her monthly expenses totaled approximately $1,900.00, whereas her only income was Social Security retirement, of $815.00. The employer appealed from the WCCA decision, arguing that the WCCA applied the improper legal test for determining whether the retirement presumption was rebutted. On appeal, the Minnesota Supreme Court (Justice McKeig) found that the standard of proof necessary for rebutting a retirement presumption for a pre-October 1, 2018 date of injury is the preponderance of evidence. The Minnesota Supreme Court went on to state that the question relevant to workers compensation courts in determining whether an employee has rebutted the retirement presumption is whether retirement would have happened anyway, even if the employee had not been disabled. The Court held that the burden was on the employee to rebut the presumption by a preponderance of the evidence, and that rather than treating the factors like a checklist and tallying them against one another, compensation judges should consider the strength of each factor and assess how the factors interact with each other in a difficult and sensitive balancing process. In this case, the Court ultimately concluded that the employee may well have rebutted the statutory presumption, but that a compensation judge as a trier of fact needed to decide that, such that this portion of the WCCA's decision was reversed and remanded for findings consistent with this opinion. ✦

Decisions of the Minnesota Workers' Compensation Court of Appeals

Arising Out Of

Grouni v. Transdev, Inc., File No. WC24-6577, Served and Filed March 5, 2025. The employee alleged that he was injured on February 28, 2022, due to his bus driving duties requiring him to sit for long hours. The employee had a history of an injury to his low back in 2009, and his low back treatment since 2009, included surgery, physical therapy, medications, injections, and work restrictions. The employer and insurer denied liability for the alleged February 28, 2022 injury. The employee underwent an IME with Dr. Wicklund who opined that the employee's symptoms were caused by his 2009 low back injury, and that his alleged low back complaints on February 28, 2022, were not caused by a work-related injury, but by his longstanding low back condition. The case was heard before Compensation Judge Kimber, who found that the employee failed to meet his burden of proof to establish a work injury on February 28, 2022, to the lumbar spine, causing bilateral radiculopathy. The pro se employee appealed. The WCCA (Judges Christenson, Sundquist and Carlson) affirmed the determinations of Judge Kimber. The WCCA held that Judge Kimber reviewed medical records from numerous providers in making his decision, and that the medical records and evidence supported Judge Kimber's adoption of Dr. Wicklund's opinion. The employee then argued that driving a bus for long hours was the cause of his sciatica, disability, and the need for medical care beginning in February 2022. The WCCA affirmed Judge Kimber's findings on the basis that there was no causation opinion showing that the employee's sitting and driving caused his symptoms, and that in contrast, the IME report found that the symptoms were a manifestation of the 2009 injury and subsequent surgery.

Attorney Fees

Hitchins v. Fed. Express Corp., File No. WC24-6578, Served and Filed March 28, 2025. The employee sustained a work-related injury to her left hip on November 28, 2018, after falling on ice in a parking lot. Federal Express accepted liability for the injury and paid for her wage loss and medical expenses. On December 28, 2021, the employee suffered another admitted injury to her right shoulder, again due to a fall on ice while delivering a package. She underwent right shoulder surgery on August 30, 2022, which included arthroscopy, rotator cuff repair, subacromial decompression, and biceps tenodesis. She remained off work during 2023, receiving temporary total disability benefits, and the employer covered her medical treatment for the shoulder injury. In early 2023, the employee retained attorney Thomas Atkinson to represent her in workers' compensation matters under a retainer agreement capping attorney fees at $26,000.00. Following negotiations, a tentative $135,000.00 settlement was proposed at mediation in July 2023, contingent upon an employment separation agreement. Shortly thereafter, the employee told her attorney that she wanted to put settlement discussion on hold pending her concerns about her ability to received LTD benefits. She also suggested counter proposals of $166,000.00 with open medical or $190,000.00 to close medical, and indicated that, if these were not accepted she planned to proceed with revision surgery on her shoulder. Both proposals were declined by the employer. As the employee prepared for revision shoulder surgery and considered applying for SSDI, disagreements apparently arose regarding legal strategy and communication, ultimately prompting the attorney to terminated representation and file an attorney fee lien. Ultimately, the employee executed a $135,000.00 settlement agreement and agreed to a voluntary resignation. The settlement held $26,000 in escrow pending resolution of the fee dispute, and an award on stipulation was entered on March 20, 2024. A hearing was held on the employee's objection to the attorney lien on June 28, 2024. Compensation Judge Daly found that the attorney had shown good cause for his withdrawal from representing the employee and, after considering the factors for excess fees set forth in *Irwin v. Surdyk's Liquor*, found that the escrowed amount of $26,000 was a reasonable fee for his efforts. The *pro se* employee appealed to the WCCA, which affirmed the fee award (Judges Sundquist, Christenson and Carlson). The WCCA noted that the judge found there was a genuine dispute over the employee's 2018 injury and related medical treatment, supported by the parties' conflicting claims and defenses. The former attorney negotiated and obtained a $135,000 settlement offer which was, ultimately, accepted by the employee. The Stipulation for Settlement contained essentially all of the settlement terms discussed at the prior mediation. Therefore, the employee's former attorney was entitled to a statutory contingent fee calculated on the settlement he obtained.

Average Weekly Wage

Buckwalter v. Fahrner, File No. WC24-6557, Served and Filed September 17, 2024. The employee worked on a crack-filling road crew during asphalt season, and she was paid hourly. She also earned overtime after working forty hours per week, as well as a higher hourly rate when working on a prevailing wage job. Her usual rate was $25.00 per hour, but her prevailing wage rate was $35.50 per hour. At the time of her injury, on June 21, 2022, she was working a prevailing wage job. The employee sustained significant injuries when she was run over by an asphalt kettle truck, sustaining eight broken vertebrae, five broken ribs, a ruptured bladder, broken femurs, a broken pelvis, road rash down her entire back and on her elbow, and a laceration above her left eye. The employer and insurer admitted the injury. In the 26 weeks prior to the date of injury, the employee worked 35.76 days, at least half of which were on prevailing wage jobs, and earned $22,567.00. The employer and insurer initially paid the employee's wage loss benefits based on a weekly wage of $3,155.40 pursuant to Minn. Stat. § 176.011, subd. 8a. Subsequently, however, the employer and insurer obtained the opinions of a vocational consultant who opined that the weekly wage calculated by the employer and insurer, was an inaccurate representation of the employee's earning capacity due to the prevailing wage rate, and was not realistic or attainable relative to the employee's skills and labor market. The vocational consultant found that the employee's demonstrated past work wages of $1,375.00, per week, based on her earnings in 2021, were a more accurate reflection of the employee's earning capacity. The employer and insurer filed a petition for discontinuance, seeking to pay future wage loss benefits at the AWW of $1,375.00, and arguing that a departure from a strict application of Minn. Stat. § 176.011, subd. 8a, was warranted since the strict application of the statute resulted in a weekly wage that did not fairly approximate the employee's earning capacity and was unfair to the employer and insurer. Compensation judge Kirsten Marshall denied the petition for discontinuance and found that the employee's weekly wage was $3,155.40. On appeal, the WCCA (Judges Carlson, Milun, and Christenson) affirmed and found that the statute mandated that the employee's average weekly wage be calculated according to her being in the construction industry, which involves determining the average daily wage and multiplying that wage by five. On appeal, the employer and insurer's argued that this case was more in line with cases which considered fairness and accuracy to depart from the statutory formula. *See e.g. Koziolek v. Aconite Corp.*, *Bradley v. Vic's Welding, and Johnson v. D.B. Rosenblatt, Inc.* The WCCA found that the cases cited were distinguishable due to differences in the circumstances of employment in each case that were not similar or comparable to the employee's. The WCCA found that there was ample evidence of the employee's earnings and number of days worked from the beginning of the 2022 construction season to her date of injury, such that a departure from strict application of the statutory formula was not warranted. The WCCA noted that Judge Marshall found that the statutory formula did not unfairly inflate the employee's earning capacity because prior to the injury, the employee could have taken her skillset to an employer that only worked on prevailing wage jobs, such that it was a fair approximation of her probable earning power. The WCCA cited *Palkowski v. Lakehead Constructors*, in referencing that calculations resulting in disparities between the employee's average weekly wage and actual earnings were mandated by statute, and noted that the question of whether the result was reasonable and fair was for the legislature.

English v. Reliable Property Services, File No. WC24-6571, Served and Filed March 12, 2025. (For additional information on this case please refer to the causal connection section.) The employer and insurer argued that the employee's job performing snow removal was not seasonal employment, but rather on-call employment. Therefore, they argued that the statutory provision requiring multiplication of five times the daily rate for work affected by seasonal conditions should not apply. Minn. Stat. 176.011, subd. 8a. The evidence submitted showed that the employee worked 30.46 hours over the course of 2.25 days prior to the injury. Utilizing this information, the WCCA (modifying Compensation Judge Bateson's Order) concluded that the daily wage was $297.83. The WCCA also determined that snow removal is "seasonal" under the statute and rejected the argument that the employee was on-call, even though he testified to this status. Therefore, for his earnings with the employer, the WCCA determined that the AWW was $1,489.83. In addition, the employee held a second job on the date of injury. The WCCA determined that the second job was regular and produced a weekly wage of $314.61. Therefore, the WCCA determined that the employee's overall weekly wage was $1,803.76. The WCCA rejected the employer and insurer's arguments that this wage was not reflective of the employee's earning capacity at the time of the injury and was patently unfair. *See Bradley v. Vic's Welding*. The WCCA agreed that the calculated AWW was in excess of the employee's actual

earnings from his employer combined. However, they noted that the judge could have departed from the strict application of the statute, and the fact that he did not do so was not an abuse of his discretion. The determined that the Judge's determinations regarding the AWW (as modified) were supported by substantial evidence and affirmed.

Causal Connection

Almeida-Prado v. Atlas Staffing, Inc., File No. WC24-6547, Served and Filed July 15, 2024. The employee sustained a right wrist injury on June 13, 2022, that was reported to her employer on the same date. The employee did not immediately seek medical attention, and she continued to work after this date. The employee filed claim petition alleging an injury occurring on June 21, 2022. She did not make a claim for benefits for the date of injury of June 13, 2022. The employee later testified that on June 21, 2022, she was using a drill, which caused her right arm to jerk up or twist, and the drill to drop. The employee sought medical attention and was given work restrictions. The employer questioned her about the date of injury because a report of workability indicated a date of injury of June 20, 2022, and not June 13 or 21. In response, the employee stated that the injury of June 13, 2022, continued to be painful and causing her to seek medical care. Dr. Cederberg issued an IME report finding that the employee sustained injuries to her right wrist, right hand, right shoulder, and neck on June 21, 2022, while using a drill. Dr. Wengler issued an IME report and found that she had sustained right hand grip weakness, a chronic sprain of the right wrist, and partial thickness tears and inflammatory changes of the rotator cuff, due to a work incident on June 21, 2022. At a hearing, Compensation Judge Surges denied the employee's claims, finding that she did not sustain an injury arising out of and in the course of employment on June 21, 2022. On appeal, the employee argued that the compensation judge committed errors of law requiring reversal, because she did not expand the hearing to include her claim of an acute injury on June 13, 2022, nor a consequential or *Gillette* injury. The employee argued that substantial evidence did not support the judge's finding that she failed to meet her burden of proof that the work injury on June 21, 2022, was a substantial contributing cause of her right-hand condition. The WCCA (Judges Christenson, Quinn, and Carlson) affirmed the determinations of Judge Surges. The WCCA discussed that Judge Surges reviewed the testimony of the witnesses and the reports of Dr. Cederberg and Wengler, but did not explicitly adopt their opinions, and based on the evidentiary record, concluded that the employee failed to prove she was injured on June 21, 2022. The WCCA found that it was the responsibility of the compensation judge to weigh the evidence and assess the probative value of witness testimony. The WCCA indicated that the Judge Surges found that the employee was injured on June 13, 2022, based on the report to the employer, the witness testimony, and the medical records, and cited that where the evidence reasonably allows different inferences, the inference drawn by the compensation judge is generally upheld. Next, the WCCA held that Judge Surges was limited to resolution of issues raised at trial, and that the only issue raised at the hearing was primary liability for an injury occurring on June 21, 2022, such that Judge Surges did not err by failing to expand the issues to include a claim of an acute injury on June 13, 2022, or a consequential or *Gillette* injury. Finally, the employee argued that Judge Surges erred by failing to sufficiently explain her findings. The WCCA held that in this case, the question on appeal was not whether there was evidence by which the judge might have reached a different conclusion, but whether there was sufficient evidence in the record to support the decision, and

that compensation judges are not required to discuss all of the evidence in their decision. The court found that Judge Surges made sufficient findings on the claimed date of injury and that the basis for her decision was clearly articulated. In conclusion, the WCCA affirmed Judge Surges' findings because the finding that the employee did not sustain a work injury occurring on June 21, 2022, was not manifestly contrary to the weight of the evidence.

Goerndt v. Fam. Healthservices Minn., File No. WC24-6555, Served and Filed August 27, 2024. The employee was diagnosed with COVID-19 after a work-related exposure on December 31, 2020. She had a history of psychological conditions, including major depressive disorder, post-traumatic stress disorder (PTSD), generalized anxiety disorder, social phobia, binge eating disorder, and drug and alcohol abuse at various times. The employee claimed wage loss due to her COVID-19 diagnosis beginning March 11, 2021, and the employer and insurer admitted liability. The employee began to struggle cognitively, including having difficulties driving, remembering to do chores, and reading a recipe when cooking. The employee underwent several evaluations and examinations, and numerous providers issued differing reports as to her injury. She underwent a neuropsychological evaluation that determined she had psychiatrically decompensated and experienced a significant exacerbation of her mood symptoms as a result of the infection and subsequent symptoms. The employee had a psychiatric evaluation that found that her symptoms, including fatigue and the inability to work or socialize, were exacerbated after contracting COVID-19. The employee later underwent an independent psychiatric evaluation with Dr. Scott Yarosh, who found that she had suffered a temporary exacerbation of her pre-existing mental health conditions that had resolved as of the date of the examination. The employee then underwent several re-evaluations. Dr. Slavik, on behalf of the employee, found that her condition was significantly exacerbated by her COVID-19 exposure and continued to impair her daily functioning. Dr. Whiteside, a treating provider to whom the employee was referred, determined that her cognitive function was below the expected limits and sometimes below chance level performance, such that he was unable to assess her cognitive function. Dr. Whiteside found that she suffered from significant depressive and anxiety symptoms and met the diagnostic criteria for moderate to severe major depressive disorder, and that the depression and sleep deprivation were significantly impacting the employee's function. Dr. Ikramuddin, another treating provider, opined that the employee's symptoms of lethargy, cognitive deficits were consistent with other diagnoses including bipolar depression, rather than long COVID syndrome. Dr. Schmitz, another treating provider, found that since contracting COVID-19, that the employee had a severe decline in cognitive functioning and a worsening of her pre-existing psychiatric symptoms. Dr. Zhang issued a narrative letter, finding that the employee had long COVID. Dr. Yarosh and Dr. Zhang issued additional reports with unchanged opinions after reevaluation of the employee. Dr. Slavik issued a second report and found that the employee had reached MMI and sustained 20 percent PPD pursuant to Minn. R. 5223.0360, subp. 7(D)(2). The employer and insurer filed NOID to discontinue TTD benefits. After prevailing at an administrative conference, they stopped paying TTD benefits. The Employee filed an Objection to Discontinuance (which was consolidated with her Claim Petition seeking medical and vocational rehabilitation benefits) which proceeded to Hearing before Compensation Judge Daly. Judge Daly determined that the employee continued to experience long COVID-19 symptoms and that her underlying mental health diagnoses were substantially aggravated by her work-related COVID-19 occupational disease. Judge Daly found the opinions of Drs. Schmitz, Zhang, and Slavik more persuasive than those of Dr. Yarosh. He then ordered the employer and insurer to reinstate wage loss benefits, pay medical bills and provide ongoing medical and vocational rehabilitation benefits. The employer and insurer appealed and argued that Judge Daly committed reversible error in granting the employee's claims, and that the employee's evidence was so flawed that it did not meet the burden of proof. On appeal, the employer and insurer argued that the employee attempted to alter the medical record by emailing Dr. Zhang's clinic and requesting edits to the medical record. More specifically, the employer and insurer argued that this action was a "calculated attempt to improperly influence the content of her medical records to bolster her claim . . . ." because the "brazen scheme to generate factitious evidence destroys the employee's credibility regarding the nature and cause of her ongoing symptoms." The WCCA (Judges Quinn, Milun, and Carlson) affirmed the determinations of the Judge Daly. The WCCA cited its usual position that credibility determinations are to be made by compensation judges. *Even v. Kraft*. The WCCA went on to note that "even if the employer and insurer's characterization of the employee's motives is to be believed, Dr. Zhang did not change the medical record, and the employee's alleged intent does not automatically negate the employee's credibility on all matters material to

her case." The WCCA held that failing to accept the employer and insurer's interpretation of email correspondence between patient and clinic did not in itself manifest legal error. The WCCA was also unpersuaded by the employer and insurer's argument that the employee exaggerated her symptoms to all her doctors and in her testimony. Further, the WCCA rejected the argument that Dr. Slavik's opinions lacked foundation based on her credentials, including that she attended a for-profit university and that a substantial amount of her work comes from the same law firm, usually issuing opinions favorable to the law firm's clients. The WCCA noted that it failed to see a legal basis to give zero weight to opinions of medical experts who attended for-profit universities as compared to those who received their degrees elsewhere, or any legal basis to conclude that an expert who performs work for a law firm on multiple occasions renders the expert's opinion unfounded. The employer and insurer argued that the employee's narrative reports glossed over her extensive psychiatric history, but the WCCA found that Dr. Schmitz and Dr. Slavik were well aware of the same and that Judge Daly did not abuse his discretion by adopting their opinions.

Dowling v. TheKey, LLC, File No. WC24-6559, Served and Filed September 24, 2024. The employee alleged an injury to her right ankle occurring on October 22, 2022, during her shift as a caregiver in a client's home, and allegedly due to a fall. However, the injury event occurred between shifts, and the employee was actually sleeping over at the client's home without having told her employer, because the commute would have been 45 to 60 minutes and she had to return the next day. The employer and insurer denied the claim. The matter proceeded to Hearing before Compensation Judge Bouman. At hearing, the employee testified that she told her staffing coordinator that she might sleep over at the client's house, but the employer's witness, a caregiver ambassador, confirmed that there was no documentation that the employee received permission to stay at the client's home beyond her assigned shift and that the employee had violated company policy by doing so without prior approval. The employer's witness also testified that this policy is intended to keep a professional boundary between the caregiver and client and to preserve a client's privacy. Judge Bouman denied the employee's claims, finding that the injuries did not arise out of or in the course of the employment, based on the fact that the employee stayed overnight for her personal convenience and not reasons incidental to her employment, that neither the client nor his wife requested that the employee stay overnight or provide additional care, that the injury happened seven hours after the employee's shift ended and four hours before the start of her next shift, and that the employee did not provide care or services to the client between those shifts. The employee appealed. The employee argued that the overnight stay at the client's home was reasonably related to her work and not wholly personal, that the judge's interpretation of the employee's testimony for the overnight stay was manifestly contrary to the evidence, and that the findings and order are not supported by substantial evidence. The WCCA (Judges Christenson, Sundquist, and Carlson) affirmed the determinations of Judge Bouman. The WCCA noted that the employee's principal argument on appeal was that the injury occurred "in the course of" employment because the overnight stay was incidental to her caregiver duties. The WCCA reviewed the case law regarding injuries occurring outside of work hours, noting that the general standard is that "An employee's injury is considered to have been "in the course of" employment when the injury occurs while the employee was being of service to the employer, while the employee was engaged in activities reasonably incidental to the employment, during a reasonable period beyond actual working hours, in an area considered a part of the work premises. *Blattner v. Loyal Ord. of Moose*. The WCCA noted that case law indicates that a "reasonable" time has included up to 45 minutes before the official workday begins and up to an hour after the official workday ends. *See Satack v. State, Dep't of Pub. Safety*. In this case, there was no dispute that the employee's injury occurred at the employee's place of work at a time when she was not performing work for the employer. The issue was whether the employee's injury occurred while she was "engaging in activities reasonably incidental to employment." The WCCA noted that the injury happened seven hours after the employee had stopped providing any personal care duties to the client and four hours before the start of her next shift, and that based upon the facts and evidence presented, they could not conclude that Judge Bouman erred by determining that the employee's ankle injury was not sustained as an incident of her work duties for the employer.

Appleby v. Minneapolis Park & Recreation Bd., File No. WC24-6561, Served and Filed on November 4, 2024. On February 27, 2018, the employee, slipped on ice and twisted his right knee and right ankle while in the course of his employment. Following this injury, the employee underwent multiple injuries on both the knee and ankle. The employee was later seen at the TRIA pain program and was diagnosed with CRPS. At the request of the employer, the employee was

examined by Dr. Happe. It was Dr. Happe's opinion that the employee suffered a temporary aggravation of a mild, self-limiting right ankle strain on February 27, 2018, and a minimal right knee strain "possibly" occurring on the same date. She concluded that both injuries had resolved within two to four weeks. The Employee obtained a report from Dr. Khetia who indicated that the work injury aggravated the employee's preexisting right and left knee findings of chondromalacia. Dr. Pena maintained, as he had throughout his treatment the employee, that he was unable to determine the source of the employee's pain. Further, Dr. Pena reported that, due to the complexity of the employee's condition, he could not form an opinion regarding the etiology of the employee's pain, and consequently, could not opine with any degree of medical certainty that the February 27, 2018, work injury was related to the employee's current complaints of right ankle pain. Dr. Agre diagnosed causalgia/ CRPS type II of the right ankle area. He opined that CRPS type II was a rare, but real complication of the ankle surgeries performed by Dr. Castro. He also opined that the right knee and ankle injuries were caused by the work injury while the left knee injury was a consequential injury resulting from the medical care to the right knee and ankle. The employee asserted a claim for various workers' compensation benefits as a result of the injuries sustained on February 27, 2018. The employer admitted the right knee and right ankle injuries, but asserted those injuries had resolved according to the opinion of Dr. Happe, and they denied the claimed consequential left knee injury. The matter proceeded to Hearing and a compensation judge found that the employee sustained a consequential injury to the left knee. He was not persuaded by Dr. Happe's opinion. He awarded benefits, including PPD benefits, for the bilateral knees and right ankle, but found the medical care for each of those body parts was no longer causally related to the work injury after October 8, 2018, for the right knee, April 8, 2019, for the left knee, and February 1, 2021, for the right ankle. In ab October 10, 2022, decision, the WCCA affirmed the compensation judge's decision. Following the WCCA's decision in 2022, the employee filed a new claim petition alleging entitlement to medical benefits for treatment to his bilateral knees rendered after the 2021 hearing. He also claimed entitlement to medical benefits for CRPS treatment that had been rendered prior to the 2021 hearing. Dr. Agre examined the employee a second time, at the request of the employee's attorney, and opined that the employee had ongoing chondromalacia to his bilateral knees. Dr. Agre also opined that the employee continued to suffer from CRPS which was a consequence of the ankle surgeries related to the work injury. The employer had the employee examined by Dr. Ifran Altafullah, who opined that the employee had "fragments of neurogenic pain syndrome," but "not full-blown" CRPS. He believed the employee was at MMI and needed no further care or work restrictions related to the neurological complaints. He did not express a causation opinion. The employee's new claims came on for hearing before Compensation Judge William Marshall, on January 22, 2024. The compensation judge found that the employee's work injury did not substantially cause CRPS or the need for medical treatment for such a diagnosis. He also found that the work injury did not substantially cause the need for medical care for the employee's bilateral knees on the three new claimed dates of service with Dr. Khetia. The WCCA, sitting *en banc* (Judges Quinn, Milun, Sundquist, Christenson and Carlson) affirmed the decision. After reciting the very lengthy procedural and medical history, the WCCA concluded that substantial evidence supports the determinations of the Compensation Judge, and the Judge's choice between conflicting medical opinions. *Nord v. City of Cook*.

Ludwig v. Dakota County, File No. WC24-6562, Served and Filed November 25, 2024. A primary issue in this matter was whether the employee's low back injury, occurring on September 8, 2021, suffered from a fall while she was at home loading her vehicle with office equipment arose out of and in the course of her employment. Compensation Judge Surges found that the employee's injury did not arise out of an in the course of employment because the injury occurred during her commute to work and was not compensable. The judge reasoned that both the special errand and special hazard exceptions to the commuting rule were inapplicable. The WCCA (Judges Sundquist, Quinn and Christenson) affirmed in-part and reversed and remanded in-part, determining that the special hazard exception did not apply, but, that at the time of the injury the employee was performing a special errand, and, therefore, her injury was compensable. When the employee began working for the employer, she worked in an office and used the equipment in the office. In response to the COVID-19 pandemic, she was directed to work from home, and she brought home employer-owned equipment needed for her work. In September 2021 she was directed to return to work at the office. She packed up all of the equipment she brought home, in a large bin. On the morning of the injury, she was loading the bin into her vehicle, pushed the loaded bin, and fell backward onto her lawn. The WCCA noted that, generally, injuries which

occur while commuting to or from work are not compensable. However, there are exceptions, including when an employee is engaged in a special errand or exposed to a special hazard that is causally related to the employment. *Gibberd v. Control Data Corp.* The WCCA agreed that the facts in this matter do not meet the special hazard exception, which requires that the employment exposed the employee to a hazard which originated on the employment premises, was part of the working environment, or peculiarly exposed the employee to an external hazard subjecting the employee to a greater risk than when pursuing ordinary personal affairs. *Nelson v. City of St. Paul*. However the WCCA disagreed with denial of the special errand exception. An employee engaged in a special errand for the employer is considered to be in the course of employment from the time the employee leaves home until the time the employee returns. *Bengston v. Greening*. The WCCA distinguished the case law relied upon by the Compensation Judge, noting that the employee testified that she was told to take her equipment and work from home. When she was told to return to work, it apparently followed that she needed to return the equipment to work. The fact that the Employee could not state for certain what caused her fall was not dispositive. The WCCA concluded that the employee was engaged in a special errand, and remanded the matter to the judge to determine what benefits are due.

Lindsay v. Minneapolis Public Schools, File No. WC24-6567, Served and Filed January 30, 2025. The employee worked as a math teacher. Three students in her class asked her to play basketball with them after school. When she arrived at the gym, the team's coach asked her to instead attend practice the next day. She testified that she received permission from the coach and principal to play basketball with her students. While doing so, she sustained an injury to her left knee. The Employee required surgery, was off work for about a month, and then was released without restrictions. Evidence was submitted regarding the curriculum at the school at which the employee worked, and including that teachers were expected to build relationships and connections with students through interaction in and around the school. At the time of the injury, the employee was not a coach of the basketball team, nor was she paid to participate in the practice. She was not assigned or ordered to play basketball with the team. She testified that she played basketball with her students to support the school's social emotional learning curriculum and to benefit, encourage, and make connections with her students. The employer denied the claim on the basis that the injury occurred during a recreational activity after work hours which was not related to her job duties as a math teacher, and therefore barred by Minn. Stat. §176.021, subd. 9. Compensation Judge Colling found that the injury arose out of and in the course of employment. The WCCA sitting *en banc* (Christenson writing for the Court) affirmed. The WCCA noted that an employee's injury is considered to have been "in the course of" employment when the injury occurs while the employee is being of service to the employer, while the employee was engaged in activities reasonably incidental to the employment, during a reasonable period beyond actual working hours, in an area considered a part of the work premises. *Blattner v. Loyal Order of Moose*. The judge reasoned that the employee's injury occurred within a reasonable 30-minute period after the workday as permitted in her contract of employment, while participating in a basketball practice which advanced the self-insured employer's interests and philosophy, which was reasonably incidental to her employment. This was not manifestly contrary to the evidence and therefore, was affirmed. The Court also rejected the argument that liability for the injury should be precluded under Minn. Stat. §176.021, subd. 9, which provides, in-part, that injuries incurred while participating in voluntary recreational programs sponsored by the employer, including athletic events, do not arise out of and in the course of the employment. The WCCA agreed with the compensation judge that the basketball practice was "not a recreational program sponsored to promote employee health and fitness, psychological or social well-being, or goodwill between the self-insured employer and its employees. Rather, as the evidence shows, the basketball practice was for the benefit of the students, was part of the school's curriculum, and furthered the self-insured employer's interests and the school's mission." This case has been appealed to the Minnesota Supreme Court and oral argument occurred on June 4, 2025.

Krumseig v. Bloomington Metro, File No. WC24-6573, Served and Filed February 24, 2025. (For additional information regarding this matter, please refer to the Experts and Permanent Partial Disability categories.) The employee alleged an injury occurring on April 9, 2007, as the result of falling off a ladder, resulting in a traumatic brain injury. The injury was admitted, and the employer and insurer ultimately stipulated that the employee was permanently and totally disabled, and paid workers' compensation benefits. After the 2007 work injury, the employee's pre-existing obesity and sleep apnea conditions worsened, and he developed type II diabetes, high cholesterol, high blood pressure, and low testosterone,

all of which he attributed to the TBI. The employer and insurer admitted liability for the employee's previous claims for lymphedema, dental health issues, epilepsy, psychological or psychiatric care, traumatic brain injury and treatment, behavioral skills deficits, and venous insufficiency. However, the employer and insurer disputed the employee's claim that his diabetes, obesity, high cholesterol, high blood pressure, sleep apnea, and low testosterone conditions were related to the April 9, 2007, work injury. The matter was heard before Compensation Judge Kirsten Marshall. Judge Marshall found that the employee's diabetes and high blood pressure were causally related to the work injury, but that the employee's obesity, high cholesterol, sleep apnea, and low testosterone conditions were not causally related to the work injury. The WCCA (Judges Sundquist, Christenson, and Carlson) affirmed. The WCCA discussed that Judge Marshall found that the employee was obese before the injury and reasonably concluded that the obesity was not causally related to the work injury, that there was no causal link between the employee's pre-existing sleep apnea and the work-related TBI, that there was a paucity of evidence connecting the work-related TBI to his low testosterone. This case is on appeal to the Minnesota Supreme Court.

English v. Reliable Property Services, File No. WC24-6571, Served and Filed March 12, 2025. (For additional information on this case please refer to the AWW section.) The employee sustained significant injuries when he was using a toolcat to remove snow from the sidewalk on Nicollett Avenue and the toolcat hit a concrete barrier. The employer and insurer denied primary liability based upon the prohibited act defense; the employee was not wearing the shoulder harness portion of his seatbelt at the time of the accident. The employee claimed that he knew that he was supposed to wear the seatbelt, but, that he could not because there were no side mirrors on the vehicle, and that if he had the seatbelt on he could not look over his shoulder. Video of the incident indicated that the employee was driving forward at the time of the incident, and in a manner which the employer consider to be reckless. Compensation Judge Bateson found that the Employee was not engaged in a prohibited act at the time of the injury, and the WCCA (Judges Quinn, Christenson, and Carlson) affirmed. The WCCA noted that the standard for proving the affirmative defense of a prohibited act is that the employer and insurer must show that there was a prohibition of a specific act, that the prohibition was clearly and unequivocally communicated to the employee, that the employer enforced the prohibition, that the employee nevertheless committed the prohibited act, and that the commission of this act caused the injury. *See Bartley v. C-H Riding Stables, Inc.* The WCCA found that the evidence as submitted did not establish a specific prohibition against operating the vehicle without the shoulder harness. In addition, the WCCA noted that this defense does not apply when an employee is engaged in a permissible act, but in a prohibited manner. Here, the Employee was engaged in a permissible act, so, even if the manner in which he was performing the work was prohibited, because he was engaged in a permissible act at the time, the defense did not apply.

Ahmed v. Avis Budget Grp., Inc., File No. WC24-6570, Served and Filed March 19, 2025. The Employee sustained an admitted injury to his low back on August 14, 2019, when he slipped between the front and back seats while vacuuming an SUV. Following the work injury, the Employee presented to the emergency department at Fairview Southdale Hospital. After an examination, he was diagnosed with acute left-sided thoracic back pain and was discharged with Robaxin and ibuprofen. At the employee's first visit for physical therapy, he reported pain in his neck, low back and mid back. The employee was then seen at HealthPartners on April 21, 2021, reporting mid- to low-back pain and left-sided sciatica, and, the employee also reported injuring his left shoulder "due to a fall a few weeks prior." At a subsequent visit, a treating doctor noted that the employee's shoulder condition *did not* appear to be related to his original back injury. The employee continued working full time for the employer until March 24, 2020, when he was laid off along with 110 other employees due to a reduction in business as a result of the COVID-19 pandemic. The employee was called back to work twice, in May and in June of 2020, but could not return to work as he had tested positive for COVID-19 on both occasions. When the employee recovered from COVID-19 there was no longer a position available. In April 2021, the employer recalled its staff to work, including the employee, but they were not then able to accommodate the employee's restrictions. On November 2021, Dr. Ross Paskoff examined the employee, diagnosed a rotator cuff strain and expressed concerns about a possible rotator cuff tear and subacromial bursitis, recommending an open-sided MRI of the left shoulder. However, as of the hearing date, the employee had not undergone any MRI scans of the left shoulder, thoracic, or lumbar spine. In April 2022, Dr. Brooks discontinued work restrictions due to a lack of objective evidence preventing the employee from performing his job. Dr. Wicklund conducted an IME. He found no objective findings related to the employee's thoracic or lumbar spine or lower extremities, diagnosing

subjective back pain and numbness without objective signs, and resolved thoracic pain. He concluded that the employee reached MMI by November 14, 2019, did not sustain permanent injury, and required no further treatment or activity restrictions. In a supplemental report Dr. Wicklund reaffirmed his previous opinions and noted that the employee had not mentioned a left shoulder injury during a 2022 examination. He opined that the employee did not sustain a left shoulder injury on August 14, 2019, highlighting the absence of any shoulder complaints until years after the claimed injury. The employee filed a claim seeking wage loss benefits and payment of medical bills for a low back and left shoulder injury. At a May 1, 2024 hearing, the employee appeared without an attorney. Compensation Judge Bouman found that the evidence did not support a diagnosis of left leg radiculopathy or a left shoulder injury related to the employee's work on August 14, 2019. The judge also determined that the admitted mid- to low-back strain had resolved by November 14, 2019. As a result, the claims for wage loss benefits and medical expenses were denied. The WCCA (Judges Carlson, Sundquist and Christenson) affirmed. The WCCA found that substantial evidence supported the compensation judge's findings. The compensation judge, as trier of fact, has discretion to choose between competing and conflicting medical experts' reports and opinions. In this case, Dr. Wicklund had adequate factual foundation for his opinions. As such, the compensation judge did not abuse her discretion by adopting those opinions.

Experts

Krumseig v. Bloomington Metro, File No. WC24-6573, Served and Filed February 24, 2025. (For additional information regarding this matter, please refer to the Causal Connection and Permanent Partial Disability categories.) The employee argued on appeal that Dr. Burgarino, who prepared an IME report, lacked necessary foundation to issue his report. The WCCA was not persuaded, noting that Dr. Burgarino reviewed extensive medical records, conducted an examination of the employee, and took a medical history from the employee's spouse, such that the necessary foundation was established. The employee then argued that sanctions were appropriate because evidence was destroyed during litigation, in the form of Dr. Burgarino destroying his notes after the examination. The WCCA, again, was not persuaded, because the employee did not make an adequate showing as to how the medical expert's work product was relevant or how this destruction was prejudicial. The WCCA held that Judge Marshall's denial of the motion for sanctions was not an abuse of discretion for this reason. This case is on appeal to the Minnesota Supreme Court.

Gillette Injuries

Manty v. Miner's Inc., File No. WC24-6564, Served and Filed on November 15, 2024. On December 21, 1988, the employee sustained an injury to her low back while twisting to lift a case of candy. Following the injury, the employee returned to work for the employer as a cashier. On March 11, 2021, Dr. Heren noted that the employee had left-sided sacroiliac (SI) joint dysfunction, chronic back pain, and osteoarthritis involving multiple joints, for which she had been prescribed a nonsteroidal anti-inflammatory. The employee returned to Dr. Benson for assessment of her chronic left-sided low back pain reporting recent worsening of her symptoms. Dr. Benson diagnosed a segmental and somatic dysfunction of the sacral region with muscle spasm. On August 13, 2021, the employee lifted a box of pork weighing between 90 and 120 pounds at the beginning of her shift. She testified that when she moved the box a couple of feet, she felt a strange discomfort in her lower back. The employee completed her shift without any change in her work activity and left work when her shift ended. After completing her work shift, the employee went home to plan and organize for a cabin vacation scheduled for the following week. She testified that initially she did not "know anything was wrong . . . until when the numbness started." Subsequently, the employee filed a claim petition alleging injuries to the spine on December 21, 1988, and August 13, 2021. The employee also asserted a possible "*Gillette* injury with an unknown culmination date." At the request of the employer, the employee was seen for IME by Dr. David Fey. Dr. Fey opined that the employee's December 21, 1988, injury was a temporary lumbar sprain/strain which resolved without ongoing sequelae and stated that there was no reasonable medical basis to support that the employee has any complaint, condition, or diagnosis related to her 1988 or 2021 injuries. Further, Dr. Fey concluded that the employee did not sustain a *Gillette* injury as a result of her work activity at the employer. He noted that the etiology of the employee's neurologic complaints did not fit any objective or anatomic orthopedic condition. In his view, the employee's degenerative spine disease and low back pain were pre-existing and unrelated to the claimed work injury on August 13, 2021. Finally, Dr. Fey noted that, had the employee suffered a low back lifting injury on that

day, her neurologic symptoms would have appeared acutely rather than spontaneously two days later. At the request of the employee's counsel, Dr. Heren issued a report. Dr. Heren commented that the exact etiology of the employee's symptoms had never been defined, making it difficult to determine a cause of her condition. However, Dr. Heren suggested that because the employee's symptoms occurred within days of a heavy awkward lift, that incident "may have substantially contributed to the onset of her current medical problems." The matter went to Hearing and Compensation Judge Hartman denied the employee's *Gillette* injury claims, finding the employee's testimony to be unreliable and adopted the opinions of Dr. Fey as persuasive. The WCCA (Judges Christenson, Quinn and Milun) affirmed and found that Substantial evidence supports the compensation judge's finding that the employee's work activities did not cause a work-related specific or *Gillette* injury sustained or culminating on August 13, 2021. Regarding the Employee's work activities and testimony, the WCCA noted that it is the employee's burden to establish a causal connection between the work activities and the ensuing disability. The employee's testimony alone is generally not sufficient to prove this connection. While the employee's testimony can be a factor, the compensation judge found the employee's testimony was unreliable in this case and was insufficient evidence to demonstrate a connection under a *Gillette* injury theory. Further, the WCCA noted that, in reviewing the submitted medical reports, the judge was not presented with any medical opinion that the employee's low back condition in 2021 was related to the injury in 1988 nor attributable to work activities resulting in a *Gillette* injury culminating in August 2021. The employee did not substantiate her *Gillette* injury claim with a corroborating medical opinion.

Interveners

Brunner v. Post Consumer Brands, File No. WC24-6569, Served and Filed January 15, 2025. This matter involved a denied work injury to the employee's left shoulder. Following at hearing, Compensation Judge Hartman found that the employee sustained a work-related injury and awarded various benefits. Also at issue at the hearing was the employee's request to submit a direct claim for reimbursement to Anthem Blue Cross Blue Shield, her health insurer. The insurer was put on notice of their intervention rights, as required by Minn. Stat. 176.361, and failed to timely intervene. The employee's attorney actually called the insurer to try to get them to intervene. In response, Anthem submitted a letter indicating that it would not be intervening, and, that if it was determined that the condition was work-related, it expected to be reimbursed. The compensation judge extinguished the potential intervention claims of Anthem, denied the employee's efforts to submit a direct claim for reimbursement of Anthem, and indicated that, pursuant to Minn. Stat. §176.361, subd. 3a, Anthem cannot collect from any of the parties. The only issue on appeal to the WCCA concerned the employee's efforts to bring a direct claim for payment to Anthem. The WCCA (Judges Sundquist, Quinn and Carlson) determined that the compensation judge committed an error of law in extinguishing the potential claims of Anthem, determined that the employee can bring a direct action for reimbursement to her health insurer, and ordered reimbursement to Anthem. The WCCA relied on Minn. Stat. §176.191, subd. 3, which providers that a health insurer must pay for treatment, when a workers' compensation claim is denied, and, if the claim is subsequently found to be compensable, that the insurer "shall" be reimbursed. The WCCA acknowledged that Minn. Stat. §176.361, subd. 3a allows for extinguishment of insurers who pay under §176.191, subd. 3. However, the WCCA concluded that such a result would "offend a basic principle of the Workers' Compensation Act, to place the burden of economic loss resulting from work injuries upon industry." Therefore, the WCCA determined that §176.191, subd. 3 "overrides" §176.361, subd. 3a. The WCCA also expressed concern that the arguments of the employer and insurer were submitted with the expectation that they would be relieved of their obligation to pay medical expenses if the health insurer fails to timely intervene. This issue has been appealed to the Minnesota Supreme Court and oral argument occurred on June 3, 2025.

Austin v. Dayton Rogers Mfg. Co., File No. WC24-6581, Served and Filed April 28, 2025. (For additional information regarding this matter, please refer to the Medical Issue category.) Two potential interveners attempted intervention after the records closed in the matter. The Compensation Judge denied their claims. The WCCA remained the matter for factual findings on these claims, noting that they should be afforded the opportunity to be heard prior to denial of payment, pursuant to *Kulenkamp v. Timesavers, Inc.*

Jurisdiction

Castillo v. Loma Bonita Supermercado, File No. WC24-6590, Served and Filed April 1, 2025. The employee was injured at work on July 7, 2023. His employer received a report from an independent medical examination and sought to terminate his rehabilitation plan. An administrative

conference took place and the request to terminate the rehabilitation plan was granted. The Decision was served on September 4, 2024. On October 7, 2024, the employee's counsel requested a formal hearing, asserting the employee was still eligible for rehabilitation and had ongoing medical issues. On October 8, 2024, Compensation Judge Kenneth Kimber issued an order dismissing the employee's request for formal hearing. The compensation judge based his dismissal on Minn. Stat. § 176.106, subd. 7, which provides that any "party aggrieved by the decision of the … compensation judge may request a formal de novo hearing by filing the request at the office and serving the request on all parties no later than 30 days after the decision." The employee filed a motion for reconsideration on October 18, 2024, arguing he did not receive proper notice of the earlier decision. Before a determination on the motion was made, the employee filed a notice of appeal to the WCCA from the order dismissing the employee's request for formal hearing. On appeal, the employee argued that he missed the deadline for requesting a formal hearing due to not receiving notice of the administrative order. He asked the court to either consider his request timely and remand for a hearing or refer the case for an evidentiary hearing. The WCCA (Judges Christenson, Milun, and Quinn) rejected these arguments, concluding it lacked jurisdiction to rule on the interlocutory order. The WCCA reiterated that, Any party aggrieved by the decision of the commissioner's designee under Minn. Stat. § 176.106, may request a de novo hearing before a compensation judge at the Office of Administrative Hearings (OAH) no later than 30 days after the decision. It has long been held that the 30-day period for filing a request for formal hearing following an administrative conference decision is a jurisdictional requirement and failure to properly file the request within the time period precludes de novo review. *See, e.g., Rosendahl v. P.B. Distrib., Inc.*

Medical Issue

Beguhl v. Bridgeway to Indep., Inc., File No. WC24-6576, Served and Filed April 11, 2025. The employee was injured when she was aggressively pushed from behind by a stranger when entering an elevator of a client's apartment building, resulting in head and left shoulder injuries. In light of several medical experts supporting the opinion that the employee no longer suffered any lingering effects from the work injury, the employer and insurer petitioned to discontinue the employee's workers' compensation benefits. The petition was heard by Compensation Judge Kirsten Marshall who found that the employee had recovered from the effects of the work-related concussion by June 1, 2024, and that she did not require restrictions or additional medical treatment for her head injury. However, Judge Marshall also found that the employer and insurer failed to prove by a preponderance of the evidence that the employee had fully recovered from the effects of the work-related left shoulder injury. However, Judge Marshall nevertheless found that because the effects of the work injury did not substantially contribute to the employee's current restrictions and wage loss, the employer and insurer had shown that they were entitled to discontinue benefits and to terminate the rehabilitation plan. The employer and insurer's petition to discontinue benefits was granted. The employer and insurer, nevertheless, appealed, it appears on the basis that there was an implicit finding in the Compensation Judge's Memorandum that the shoulder injury was permanent. The WCCA (Judges Quinn, Christenson, and Carlson) affirmed the determinations of Judge Marshall allowing discontinuance of benefits. The Court's decision includes a lot of discussion regarding the implicit finding in the Memorandum, with the WCCA noting that the statement made in the memorandum was not a finding. The Compensation Judge found only that the employer and insurer did not prove that the injury was temporary. The WCCA noted that the Compensation Judge did not find that the injury was permanent. In somewhat of a convoluted matter, the WCCA found that the Judge was within her discretion in rejecting the opinions of the IME. But, also agreed with the employer and insurer that the employee's treating provider lacked foundation to reach his conclusion of an alleged permanent aggravation of the employee's left shoulder, because he had not reviewed any of the employee's prior medical records, and provided no explanation or reference to the work injury as the cause of the aggravation. However, the Judge's determination allowing discontinuance of benefits was not premised on this foundational issue.

Austin v. Dayton Rogers Mfg. Co., File No. WC24-6581, Served and Filed April 28, 2025. (For additional information regarding this matter, please refer to the Interveners category.) The employee was injured on December 29, 1998, and sustained compensable injuries to his low back. Over the next 25 years, he underwent extensive medical treatment, including multiple surgical procedures to his low back. The Employee filed a medical request seeking approval for a SI joint fusion and left-sided SI joint treatment injections. This was denied by the employer and insurer on the basis of the independent medical examination

report of Dr. John Sherman, who found that there was nothing in the employee's examination that pointed to SI joint mediated pain, that the employee's prognosis was poor regardless of any interventions, that SI joint injections had a high placebo effect, and that the employee was a smoker, which was a contraindication to the procedure. The employee's treating provider, Dr. Saeger, opined that the SI joint appeared to be the predominant source of pain, and that the employee needed to be completely nicotine-free for at least six weeks prior to the fusion. Following a hearing, Compensation Judge Murillo denied the SI joint fusion and the intervention claims of multiple providers. The WCCA (Judges Milun, Christensen, and Carlson) affirmed in part, modified in part, and remanded in part. Citing *Smith v. Carver Cnty*. The WCCA concluded that both expert opinions had adequate foundation, and held that it was within Judge Murillo's discretion to accept Dr. Sherman's opinion over Dr. Saeger's, and that substantial evidence in the record supported Judge Murillo's finding. Because substantial evidence in the records supported the reliance on the opinions of Dr. Sherman, the WCCA affirmed the denial of the fusion surgery.

Hill v. Fed. Express Corp., File. No. WC24-6585, Served and Filed May 5, 2025. The employee's injury occurred when he was stepping out of his delivery truck and felt a pull or strain in his left calf extending to his left foot. The employee's symptoms worsened, and he told his doctor that he was unaware of any trauma but that he did a lot of walking in his job. He was initially diagnosed with a calf strain, but, shortly after the injury, he developed discoloration in his left foot and diminished pulses. His doctor recommended that he have his circulation check and stop smoking. An ultrasounds showed an occluded segment of the left distal femoral artery and he was referred to a vascular surgeon, who diagnosed atherosclerosis of the left leg arteries and recommended treatment in the nature of a thrombotic/embolic occlusion. The employer and insurer initially accepted the injury, but after the vascular issues were diagnosed denied ongoing liability. They attempted to discontinue benefits using an IME performed by Dr. Simonet as support. Dr. Simonet indicated that there was not a work injury, and diagnosed the employee with vascular claudication secondary to an occluded femoral artery. However, Dr. Simonet also indicated that he was not a vascular expert. Following a .239 conference, the employer and insurer were ordered to pay ongoing benefits and filed a Petition to Discontinue. The matter was heard by Compensation Judge Kirsten Marshall who also denied the request to discontinue benefits. This was despite the fact that the employer and insurer produced reports from multiple experts opining that the employee's vascular disease was not work-related, and that there was not a work-related condition causing his disability. The treating doctors provided opinions that the vascular issues were not work-related, but, given the acute onset of symptoms, there could be a work injury and CRPS. The WCCA (Judges Quinn, Milun, and Sundquist) affirmed and ordered ongoing TTD payments. The WCCA's analysis of the medical causation issues was essentially limited to concluding that it would not overturn the judge's choice between founded conflicting medical opinions. *See Mattick*. The WCCA noted that the medical evidence would support the position of the employer and insurer, but that there was contrary medical evidence upon which the judge reasonably relied.

Permanent Partial Disability

Krumseig v. Bloomington Metro, File No. WC24-6573, Served and Filed February 24, 2025. (For additional information regarding this matter, please refer to the Causal Connection and Experts categories.) Relying on Minn. Rules 5223.0360, subp. 7C(5) and 5223.0360, subd. 7G(1), the employee claimed a permanent partial disability rating of 95 percent, plus 20 percent based upon the opinions of Natalia Dorland, M.D. At the hearing, the parties stipulated that the employer and insurer had issued payment of PPD benefits for 56.2 percent in 2014 and that weekly PPD benefit payments had been made to the employee since June 29, 2023, ongoing until 81.568 percent had been paid. Compensation Judge Kirsten Marshall denied the employee's claims for additional PPD benefits and the WCCA affirmed this determination. The WCCA found that it was reasonable for the compensation judge to conclude that the employee did not meet his burden in proving entitlement to the 95 percent PPD rating. The employee argued that he did not need to show total or significant assistance for ADLs to qualify for the 95 percent PPD rating. However, Judge Marshall reasoned that the employee's condition had deteriorated since his Parkinson's diagnosis, which was not claimed as a work injury, and which had caused some loss of motor function in eating and dressing. Judge Marshall further characterized the report of Dr. Dorland, upon which the employee relied, as ill-supported. The WCCA found that the employee's spouse's testimony showed he could participate in his activities of daily living, and that Dr. Burgarino's opinion as to PPD was more persuasive, such that Judge Marshall's finding that the employee did not meet his burden in proving entitlement to the 95 percent PPD rating was affirmed. This case is on appeal to the Minnesota Supreme Court.

Permanent Total Disability

Edelman-Hoecherl v. Minneapolis Public Schools, File No. WC24-6579, Served and Filed February 26, 2025. The employee sustained an admitted injury to her low back on August 16, 2016. Following the injury, she had two surgeries, and was eventually released to return to work with restrictions. She did return to the school for a period of time, but that position ended. Thereafter, she collected TTD until those benefits were exhausted, and then found full-time, light duty employment with the Salvation Army in the summer of 2020. She continued in this position until she was taken off of work in February 2021, pending additional surgery. By August 2022, the employee was released without restrictions. The employee was provided with vocational rehabilitation services, including placement services. In June 2023 she requested that the placement services be put on hold due to personal concerns. The employee then secured part-time employment, in August 2023. Shortly thereafter, she reported an increase in her pain, and her doctor removed her from work. However, he reported that he did not intend to keep her off work permanently. As of the date of hearing, the employee had not again looked for work. The employee began receiving SSDI in 2019. The employee continued to receive medical treatment, with her doctor noting that she was not at MMI because she continued to report improvement. IME Wicklund, for the employer and insurer, opined that the employee was capable of working 40 hours per week, with restrictions, and that she was at MMI. IME Agre, for the employee, reported that it was unlikely that the employee could support herself in competitive employment and that she qualified for "total and permanent incapacitation." Vocational expert Hokness, for the employee concluded that a job search would be futile and that the employee could not find competitive employment in the labor market. Vocational expert Magoffin, for the employer, opined that there was employment available for the employee in the competitive labor market. The employee sought various benefits, including PTD benefits. Compensation Judge Murillo determined, among other things, that the employee was not at MMI and that she was not PTD at the time of the hearing. The WCCA (Judges Carlson, Sundquist and Christenson) affirmed. The WCCA noted that the question here was whether the employee's physical disability, in combination with her age, education, training, and experience, render her unable to secure anything more than sporadic employment resulting in insubstantial income. *Schulte v. C.H. Peterson Construction Company*. The WCCA noted that the judge considered all of the medical and vocational experts. Both vocational experts agreed that the employee did not conduct a diligent job search. Further, there was testimony and evidence regarding the employee's pain behaviors and non-exertional limitations. The compensation judge, after observing the employee at hearing and reviewing the evidence, found that the employee's testimony regarding her work duties exceeding her restrictions and causing significant pain was unsupported by the medical records and inconsistent with recent medical treatment records. The WCCA noted that the judge relied upon a founded vocational opinion, and that the judge's determinations regarding credibility were not to be disturbed, and affirmed the determination denying permanent total disability.

Psychological Injury

Rowe v. City of Minneapolis Police Department, File No. WC24-6550, Served and Filed on August 16, 2024. The employee was a police officer for the Minneapolis Police Department. The employee experienced several significant traumatic events during his 25-year career as a police officer. On March 3, 2022, Kasey Aleknavicius, Psy.D., L.P., evaluated the employee as part of a retirement disability evaluation. Using the DSM 5, Dr. Aleknavicius opined the employee met the criteria for PTSD. Dr. Aleknavicius concluded that the severity of the employee's PTSD symptoms precluded him from working as a police officer or first responder in any capacity. On August 16, 2022, the employee filed a claim petition seeking workers' compensation benefits in the form of wage loss, medical benefits, and vocational rehabilitation for his PTSD diagnosis. On November 3, 2022, Kenneth Young, Psy.D., L.P., conducted an independent psychological evaluation of the employee at the request of the self-insured employer. Using the DSM 5, Dr. Young found "no clear and consistent evidence that Mr. Rowe meets, or has ever met, the criteria for PTSD." In a report dated July 18, 2023, Dr. Aleknavicius diagnosed the employee with PTSD, major depressive disorder, and AUD per the DSM-5-TR. The employee's claims came on for hearing before Compensation Judge William Marshall. Both Dr. Young and Dr. Aleknavicius testified at hearing. Each restated and explained the opinions expressed in their respective reports. The compensation judge found that the employee was entitled to the presumption of compensability for a PTSD work injury in Minn. Stat. § 176.011, subd. 15(e). Relying on the opinion of Dr. Young, the judge also found that the self-insured employer

provided substantial factors rebutting the presumption, and the employee had never met the diagnosis of PTSD under the DSM-5. The WCCA, sitting *en banc* vacated the Findings and Order. The WCCA explained its Decision noting that, inn this case, Dr. Young utilized the DSM-5, not the current DSM-5-TR which is the most recently published edition of the DSM at the time of his evaluation of the employee. Although the diagnostic criteria for PTSD are the same in the DSM-5 and DSM-5-TR, the diagnosis is dependent on more than those criteria. The major revisions and changes in the DSM 5 TR edition from the DSM-5 include the narrative text for each disorder, changes in codes, changes in terms used to describe the disorders, and clarity in identifying and evaluating criterion factors. The WCCA concluded that Dr. Young's failure to utilize the current DSM-5-TR is contrary to Minn. Stat. § 176.011, subd. 15(d) and (e) and his opinion should not have been considered by the judge. As such, Dr. Young's opinion and testimony fail to rebut the opinions of Dr. Aleknavicius that the employee met the PTSD diagnosis as stated in the DSM-5-TR, as required by Minn. Stat. § 176.011, subd. 15(d) and (e). Because Dr. Young's opinion was not based on the DSM-5-TR, accepting the opinion was error and the judge's denial of the employee's statutorily presumed, established, and unrebutted PTSD diagnosis was manifestly contrary to the evidence. The WCCA concluded the employee established the presumption of PTSD applied under Minn. Stat. § 176.011, subd. 15(e), and this presumption was not rebutted by substantial factors, the denial of benefits in the Findings and Order is vacated.

Peterson v. City of Minneapolis, File No. WC23-6527, Served and Filed on June 28, 2024. The employee was hired in 1999 by the employer, the City of Minneapolis, as a community service officer. Over the next 21 years, the employee experienced several significant traumatic events as a police officer. On April 20, 2021, Dr. Dahlstrom diagnosed the employee with anxiety related to multiple work-related stressors. On May 3 and May 10, 2021, the employee met Mr. Weidner for a mental health diagnostic assessment. Mr. Weidner diagnosed PTSD and generalized anxiety disorder. He recommended the employee continue therapy. On May 20, 2021, Dr. Cronin deemed the employee unfit for police work and the employee stopped working as a police officer as of May 26, 2021. Dr. Cronin opined that the employee had diagnoses of PTSD as defined by the DSM-5, generalized anxiety disorder, and major depressive disorder, all of which were caused by his employment as a police officer for the employer, and again found that the employee was not fit for duty. After receiving Dr. Cronin's report, the employer filed a notice of primary liability determination on September 16, 2021. The employer denied liability for the employee's workers' compensation claim, asserting that the employee did not have PTSD under the DSM-5 and that the employee was not entitled to a presumption of compensability. Thereinafter, a series of expert reports were issued, including by Dr. Young for the employer, and Dr. Aleknavicius for the employee. The employee's claim petition came on for hearing before Compensation Judge Daly. Both Dr. Aleknavicius and Dr. Young testified at the hearing, reiterating and further explaining their opinions as described in their reports. Dr. Aleknavicius modified her opinion to find that the employee had a PTSD diagnosis at the time of her examination in May 2022 pursuant to the updated edition of the DSM, the DSM-5-TR, published in March 2022, and its reference to "lifetime PTSD." Meanwhile, Dr. Young testified that because the DSM-5-TR did not change the criteria for a PTSD diagnosis, the new language did not create a new diagnosis of "lifetime PTSD." Judge Daly found that the employee suffered a compensable PTSD work injury, that he was entitled to the presumption of compensability, that the employer did not rebut the presumption, and that the employee continued to meet the diagnosis of PTSD under the DSM-5-TR. The employer appealed to the WCCA, and, in 2024, the WCCA referred the matter back to the compensation judge to make further findings on the alternative issue of whether, if the employee no longer had PTSD, he has OSTD, and if so, whether the OSTD condition was a consequence of the PTSD condition. On February 8, 2024, the compensation judge issued Findings on Referral. He found that the opinions of Dr. Aleknavicius were more persuasive than those of Dr. Young and that the employee sustained a consequential mental health injury, specifically OSTD, as a result of his PTSD condition. In his memorandum, he adopted the opinion of Dr. Aleknavicius that the employee's persistent PTSD symptoms caused OSTD. The employer again appealed. The WCCA affirmed the findings and order and findings on referral of the compensation judge. The WCCA's Decision contains a lengthy discussion regarding the differences between the DSM-5 and the DSM-5-TR. The WCCA was mindful of the Supreme Court's instruction in *Smith* that they are to leave the interpretation of the DSM to the medical experts. The WCCA further noted that in *Tea*, the Supreme Court noted that under *Smith*, "compensation judges are not precluded from reviewing the criteria of the DSM when considering

which competing expert opinion is most persuasive and credible, but are precluded from independently interpreting the DSM to make their own diagnoses of injured workers. However, the supreme court clarified that "[w]here the compensation judge is asked to determine which of two or more expert opinions is most credible and persuasive, the [compensation] judge may consider all the evidence before them—including the DSM criteria." Id. at 122. Here, Dr. Aleknavicius offered an interpretation of the meaning of the additional text in the DSM-5-TR. Dr. Young disagreed with this interpretation but offered no other interpretation. The compensation judge resolved that dispute by finding Dr. Aleknavicius' opinion more persuasive. Doing so was not legal error and was supported by substantial evidence." In addressing the claim of a consequential injury, in the nature of OSTD, the employer argued that this is essentially an additional mental injury claim, and that it must meet the criteria for mental injury claims in Minnesota, that being that only claims for PTSD are compensable. The employer argued that neither the statute nor caselaw provides that a mental injury consequential to a PTSD injury is compensable. The WCCA disagreed and affirmed the compensation judge on this issue. The WCCA noted that compensability of consequential injuries has long been recognized in Minnesota workers' compensation cases; where an underlying work injury is compensable, medical conditions consequential to that injury are also compensable. The WCCA concluded that, in this case, it was reasonable for the compensation judge to find that the employee's OSTD condition, which consequentially arose from his compensable occupational injury of PTSD, to be compensable.

Rehabilitation / Retraining

Dilley v. Carver County, File No. WC23-6539, Served and Filed July 10, 2024. The employee, while working as a deputy sheriff, sustained several work-related injuries, ultimately leading to permanent restrictions, including no further work as a deputy sheriff. The parties agreed to a three-year retraining program for the employee to obtain a Bachelor of Science degree in cyber security. This plan was approved in 2018, and the employee began the program in October 2018. However, due to severe ongoing symptoms, the employee required additional surgery, and, during the summer of 2019 took a medical leave from the program, returning to course work in July 2020. The employer attempted to discontinue weekly retraining benefits during the time period the employee was not involved in classes nor working, but, following the employee's objection to the discontinuance, the employer and insurer reinstated benefits. On October 5, 2021, the employer and insurer filed another NOID to discontinue TTD benefits and retraining benefits, asserting that the statutory maximum of 156 weeks of retraining benefits were paid. They included in the 156 week period the 25.6 weeks that the employee was not in school, but during which the continued benefits. Following a .239 conference, a judge ordered ongoing benefits on the basis that the employee was still enrolled in the retraining program and that the cessation of benefits would run counter to the purpose of retraining. In April 2022, the employer and insurer filed another NOID on the basis that 156 weeks had been paid and that the employee had graduated with two degrees. The employer and insurer asserted that it overpaid retraining benefits by $25,883.69. There was no objection to this discontinuance. Following graduation, the employee declined vocational rehabilitation assistance and in August 2022, took a job driving a garbage truck for Waste Management, where he previously worked, and earning less than his pre-injury wage. The employee claimed TTD from the end of retraining until the start of his job with Waste Management. The employer and insurer denied these claims on the basis that the employee withdrew from the labor market and failed to conduct a reasonable and diligent job search. Compensation Judge Murillo found that the employee was entitled to retraining benefits for the period during which he was not in school due to surgery, effectively extending retraining benefits beyond 156 weeks. She further found that benefits paid during that time were not paid under mistake of fact. Finally, she found that the employee was entitled to TTD for 90 days after the end of the retraining plan. The WCCA (Judges Sundquist, Quinn and Christenson) affirmed in-part and reversed, in-part. Minn. Stat. §176.102, subd. 11(a) indicates that retraining is limited to 156 weeks. This provision also indicates that an employee may petition for additional compensation, not to exceed 25% of the compensation otherwise payable, if warranted due to unusual or unique circumstances of the employee's retraining program. The WCCA held that the "extension" language does not allow for an extension beyond the 156 weeks. The WCCA noted that the plain language of the statute indicated a limitation to 156 weeks. Therefore, the WCCA reversed the award of any retraining benefits beyond 156 weeks, and further determined that the employer and insurer did not pay benefits under mistake in fact. The WCCA did affirm the award of TTD for the 90 day period following completion of the retraining plan and pursuant to Minn. Stat. §176.102, subd. 11(b). This provision does indicate that TTD benefits are payable for up to 90 days at the end of a retraining plan, subject to various

cessation events found in Minn. Stat. §176.101. The employer and insurer argued that the employee was not entitled to this 90 day period of benefits because he failed to conduct a reasonable and diligent job search, withdrew from the labor market, and declined job search assistance. However, the employee testified that he was conducting a job search, had already been trained on how to do this on his own, and did not keep track of his job search because he had not been told to do so. The compensation judge accepted these facts and awarded the benefits. The WCCA found that there was substantial evidence supporting the award of the additional 90 days of TTD, and affirmed this part of the determination.

Settlements

Mike v. CBI Services, File. No. WC24-6757, Served and Filed April 1, 2025. In 2005 the parties entered into a stipulation for settlement which included payment of a lump sum, and then five additional periodic payment funded by a guaranteed annuity agreement. These payments were to be issued by the annuity company in 2008, 2011, 2013, 2018, and 2023. The stipulation contained provisions indicating that the insurer could assign their duties and obligations to make the annuity payments, and that, once assigned, the insurer would have no further obligation to make the periodic payments. In 2023, the Employee served a Claim Petition noting that he had not received the 2018 payment. He also sought penalties and interest for this late payment. By the date of the hearing, the 2023 payment had also not been made. Compensation Judge Walther determined that the annuity payments were the responsibility of the Assignee, and not the obligation of the employer and insurer. Therefore, she denied the claim for payment, penalties and interest. The WCCA, sitting *en banc*, reversed. The WCCA noted that, nowhere in the WCA is there a suggestion that the assignment language in an annuity abrogates an employer and insurer's liability under the statute. Rather, to the contrary, parties are not allowed to waive mandatory provisions of the WCA. However, the WCCA noted that Minn. Stat. §176.171 allows an employer and insurer to deposit the sums with a bank, mutual savings bank, savings association, or trust company, to be held in trust for the employee (or dependents) and that the employee will then have no further recourse against the employer. This provision goes on to indicate that the employer's payment of this sum is evidence by a receipt of the trustee filed with the Commissions of the DOLI. The WCCA determined that, in this case, no information was filed with the commissioner as designated by the statute.

Vacating Awards

Lehet v. Roofers Advantage Program, File No. WC24-6549, Served and Filed on October 29, 2024. On August 16, 2001, the employee suffered a work injury to his low back when struck by a 50,000-pound aerial lift arm. He continued working but developed pain and stiffening in his low back over the course of the day and was later seen at a local emergency room. Following an MRI scan, he was diagnosed with an L5-S1 annular tear and spondylolistheses. He returned to work with restrictions. In 2003, the employee settled his workers' compensation claim with the understanding that surgery was recommended to alleviate his ongoing low back symptoms. The stipulation for settlement left open future medical expenses and an award on stipulation was filed. Three years later, in 2006, the employee underwent an L5-S1 fusion surgery. The employer and insurer paid reasonable and necessary medical expenses related to the low back surgery and treatment. The employee returned to work as a carpenter with a different employer, Lakehead Constructors, and in 2011, he began working as a millwright, which he described as less physical than his previous job. Beginning in 2011, the employee complained of ongoing low back pain and continued to treat. As of December 2013, the pain had not resolved, and Dr. Pinto explained to the employee that if his symptoms were severe, unrelenting, and unresponsive to conservative care, then removal of the surgical hardware would be an option. On May 15, 2019, the employee suffered a low back injury while working for Lakehead Constructors. He reported the injury to his supervisor and completed an injury report, but did not file a workers' compensation claim petition. On May 30, 2019, the employee saw Dr. Pinto, who noted that the employee's symptoms had changed in that he not only had pain with transitional movement, but also with arching and extending his back, with prolonged sitting, and in the morning. Dr. Pinto made no mention of a new injury in the medical record from that date. Over the course of the next four years, the employee underwent three additional surgeries. Following each of the surgeries, the employee continued to complain of significant low back pain and suffered lower extremity pain and numbness. Dr. Pinto restricted the employee from work and the employee's last day of work was in May 2022, after which the employee applied for and began receiving social security disability income. Three medical experts were asked to address the employee's diagnosis and its cause. On February 25, 2021, Dr. Pinto noted that he was not aware of the May 15, 2019, injury. However, he opined that if the employee became more symptomatic

after May 15, 2019, then the new injury caused an aggravation of a pre-existing condition. In a letter dated October 10, 2022, Robert Wengler, M.D., who was retained by the employee, opined that the employee had a pre-existing condition of L5-S1 spondylolisthesis which was destabilized by the August 16, 2001, injury and necessitated the original fusion. Dr. Wengler noted that the incident of May 15, 2019, led to a recurrence of back pain with sciatica for which hardware was removed in 2020 without relief of symptoms. After reviewing additional records, Dr. Wengler concluded in a letter dated January 16, 2023, that the pathology at the L4-5 level and all medical, surgical, and disability ramifications are a consequence of the original August 16, 2001, injury. Finally, the employer and insurer sought the opinion of Dr. Mary Dunn, who reviewed medical records, conducted a physical examination of the employee on March 12, 2024, and took a medical history. Dr. Dunn disagreed with Dr. Wengler, stating that she was "not sure that he even received all the records. If he had, he would have noticed that [the employee] had a failed back syndrome and that he had been well managed for almost 18 years with medications that are frequently used in the management of chronic low back pain" which escalated with the May 2019 injury. Dr. Dunn noted that the employee had a substantial increase in symptomology after the injury on May 15, 2019, which led to multiple surgeries, and concluded that the employee sustained a significant new injury on May 15, 2019, which led to all treatment thereafter through 2024. The employee petitioned the WCCA to vacate the 2003 award on stipulation based on a substantial change in medical condition since the time of the award that was not anticipated and could not reasonably have been anticipated at the time of the award. Citing *Fodness v. Standard Café*, the employee asserted that he had experienced a change in diagnosis, a change in his ability to work, additional permanent partial disability, and the necessity of costly and more extensive medical care than was initially anticipated. He also asserted that his 2001 work injury caused his current worsened condition. The WCCA (Judges Sundquist, Christenson and Carlson) reviewed the evidence as related to the *Fodness* factors. They noted that the employee's diagnosis has changed since the time of the 2003 award. At that time, the employee's diagnosis was limited to an L5-S1 annular tear and disc degeneration with spondylolysis and spondylolistheses. Since 2021, the employee's diagnosis has included severe facet arthritis at the L4-5 level, impingement of the inferior L4-5 facet into the pars defect at L5, persistent severe low back pain, and failure of extensive conservative care. The employer and insurer argued that the change in diagnosis is related either to a progression of the employee's previous diagnosis that led to more care or to his subsequent May 15, 2019, work injury. They also argued that the employee's change in ability to work, additional permanent partial disability, and need for more extensive medical treatment are unrelated to the original 2001 work injury and are due to the 2019 work injury. While the employer and insurer continued to pay for the employee's medical treatment through 2023, they were not aware of the employee's 2019 injury until the employee filed the petition to vacate at issue on January 19, 2024. The employer and insurer maintained that the May 2019 work injury was a superseding intervening cause of the employee's worsened condition because the employee underwent significant diagnostic testing and three additional surgeries, and was disabled from working, after that injury. Given that the employee has sustained a subsequent work injury to the same body part while working for a different employer which has not been litigated, and given that there is conflicting medical evidence, the WCCA indicated that, in order to reach a determination on the Petition to Vacate, it required findings on the issue of whether the employee's condition is causally related to the 2019 work-related injury in order to obtain a full and fair resolution of the petition to vacate the 2003 award on stipulation. The WCCA referred this matter to the Office of Administrative Hearings for assignment to a compensation judge to conduct an evidentiary hearing on the issue of causation.

Johnson v. Univ. Good Samaritan, File No. WC24-6584, Served and Filed on January 10, 2025. The employee, filed a workers' compensation claim for injuries to his lower back and left leg sustained in the course of his employment on June 14, 2003. The dispute was settled in 2004 through a Mediation Resolution/Award that incorporated a stipulation for settlement. At the time of settlement, the employer and insurer denied liability and argued the injuries had resolved, but both parties agreed to a full and final settlement, including any permanent partial disability, with legal representation for both sides. Since the 2004 settlement, the employee, now representing himself (pro se), has filed multiple petitions to vacate the award, citing grounds such as newly discovered evidence, mutual mistake of fact, fraud, and substantial change in medical condition. These petitions were filed in 2007, 2014, 2018, and most recently again, but all were denied by the court. The earlier denials were based on findings that the evidence was either not new, the issues were outside the court's jurisdiction, or the legal requirements to overturn the settlement were not met. In his latest petition, the

employee claimed fraud, arguing that the parties relied on a zero percent permanent partial disability rating at the time of the settlement, whereas a 2007 medical report showed a seven percent permanent partial disability rating. He also raised issues involving union support and unemployment benefit procedures. Under Minnesota law (Minn. Stat. § 176.461), a workers' compensation award based on a settlement agreement can be set aside "for cause." For awards issued on or after July 1, 1992, "cause" includes a mutual mistake of fact, newly discovered evidence, fraud, or a substantial change in the employee's medical condition that was not anticipated at the time of the award. To prove fraud, specific legal elements must be met: there must be a knowingly false representation of fact, intended to induce action, which causes actual damage to the other party. In this case, the employee alleged fraud based on discrepancies in permanent partial disability ratings and other unrelated issues, the court found no evidence of fraud because the medical evidence underlying the 2007 rating was available and known before the 2004 settlement. Moreover, the court ruled that questions related to union representation and unemployment benefits fell outside its authority, consistent with prior rulings. The employee also argued that there was a substantial change in his medical condition based on a social security disability determination. Regarding a substantial change in medical condition, the court compares the employee's condition at the time of the original settlement to the condition at the time of the petition. Factors considered include changes in diagnosis, ability to work, medical treatment needs, or worsening related to the original injury. The court reviewed this claim and concluded that the determination reflected a disability status existing prior to the 2004 settlement and did not show any new or worsened medical condition. Furthermore, other evidence presented did not demonstrate a change significant enough to justify setting aside the original settlement. The WCCA (Judges Carlson, Sundquist and Christenson) determined the employee had not shown good cause to set aside the 2004 award on stipulation and his petition to vacation the award was denied.

Johnson v. Skil-Tech, Inc., File No. WC24-6583, Served and Filed on January 15, 2025. The employee suffered bilateral knee injuries after falling from a ladder at work in April 2006. The employee initially filed a workers' compensation claim seeking benefits for his knees and penalties for the employer's alleged frivolous denial. Independent medical examinations found meniscus tears and temporary aggravation of pre-existing knee arthritis, resulting in a 4% permanent partial disability rating per knee. In 2007 the parties entered into a Stipulation for Settlement, with the employee receiving $30,000.00 leaving future medical open. In 2015, the parties entered into a second settlement creating a $12,500 medical pool for knee-related expenses. In 2018 the employee petitioned to vacate the 2007 Stipulation, and this was denied by the WCCA. At issue now is the employee's petition to vacate both the 2007 and 2015 settlements, alleging fraud and a substantial change in medical condition. The WCCA (Judges Christenson, Sundquist and Carlson) referred the matter to the OAH for additional findings. Regarding the fraud claim, the employee asserted that, at the time of the 2007 stipulation he was seeking penalties, and that this was not addressed by the compensation judge. The WCCA rejected this argument in 2018 and indicated that it would not address it again. The employee also claimed fraud in that the stipulations did not address a thumb injury he alleged occurred at the time of the 2006 fall. The WCCA noted that during a deposition prior to the 2007 settlement, he reported that he had recovered from the thumb injury. Further, the stipulation indicated that, in addressing the knee injuries, the parties were addressing all known injuries. Therefore, the WCCA found that there was no basis to vacate based upon fraud. With respect to the alleged substantial change in condition, the WCCA noted that, while the employee demonstrated ongoing knee problems and surgeries, he failed to submit medical opinions showing increased disability or worsened work capacity post-surgery. There is also a disputed causal relationship between the 2006 work injury and his current knee condition, with conflicting expert opinions. Because of these unresolved factual disputes including causation, permanency, work restrictions, and accounting for medical expenses from the settlement's medical pool the WCCA referred the case back to a compensation judge for further fact-finding.

Johnson v. A Touch of Class Painting, Inc., File No. WC24-6580, Served and Filed February 07, 2025. The employee claimed work-related injuries occurring on October 15, 2003, and November 13, 2003. This matter was settled on September 19, 2006. In exchange for $6,000.00, the employee settled all past, present, and future workers' compensation benefits arising from the two alleged dates of injury. In the years after settling his case, the employee tried vacate this award on stipulation five times, and filed two claim petitions seeking benefits that were determined to be covered under the stipulation for settlement. On September 9, 2024, the employee filed the most recent petition to vacate the 2006 award on stipulation, alleging fraud and substantial change in

medical condition, and seeking penalties and civil damages against the respondents. In response to the petition, the employer and insurer argued that the employee offered no proof of an alleged fraud and failed to establish any elements of fraud, that the employee provided no new evidence and relied on the same arguments with medical records previously submitted in support of past petitions to vacate, that the penalty claim was not supported by evidence, and that the claims should be barred by res judicata. The WCCA again denied the employee's efforts to vacation the stipulation. Citing *Weise v. Red Owl Stores Inc.* and *Bramscher v. City of Perham Police Dep't*, the WCCA (Judges Sundquist, Christenson and Carlson) held that the employee's argument as to fraud was unpersuasive because the employee was represented by counsel at the time of his original settlement such that the settlement was presumptively fair and reasonable, and no new evidence was submitted for review of this issue that had been addressed previously. Citing *Fodness*, the WCCA held that there was no new evidence in support of a substantial change in his medical condition such that this argument was also denied. Finally, citing Minn. Stat. §§ 176.221 and 176.225, the WCCA found that there was no basis to award penalties to the employee, because there was no evidence that the employer and insurer failed to pay benefits. ✦

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