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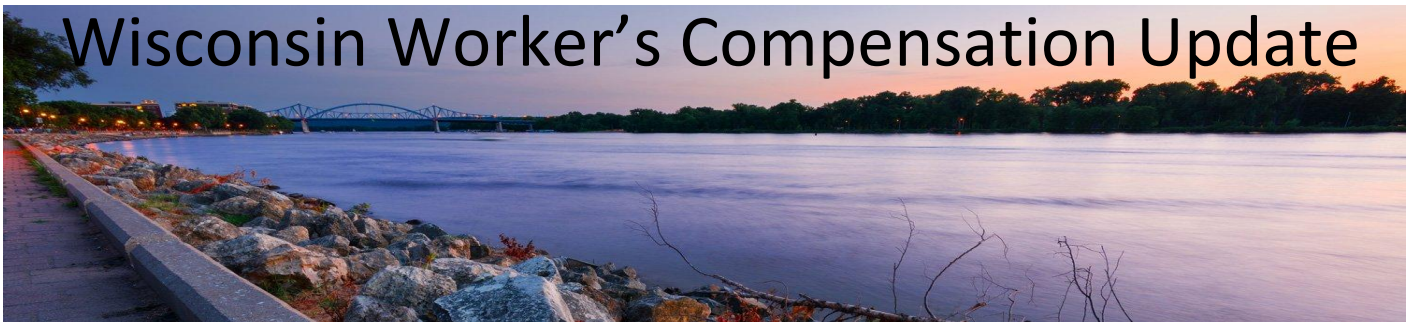
ARTHUR CHAPMAN
KETTERING SMETAK & PIKALA, P.A.
ATTORNEYS AT LAW

Wisconsin Worker's Compensation Update



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RECENT DECISIONS OF THE WISCONSIN COURT OF APPEALS

INDEPENDENT CONTRACTOR

Glothon v. Labor and Industry Review Commission, slip op. 2024AP2102 (May 20, 2026). In an unpublished decision, the Wisconsin Court of Appeals affirmed a Labor and Industry Review Commission decision that held the injured worker (an over the road trucker) was an independent contractor rather than an employee. As such, he was not covered under the workers' compensation insurance of the asserted employer, CEVA Logistics. On appeal the applicant claimed that he did not meet two of the 9 factors for establishing independent contractor status. Specifically, he argued that: (1) he did not maintain a separate business office with equipment, and (2) he did not control the means of performing the work at issue. The applicant testified that he was provided routes to drive from CEVA, and had to notify dispatch of any deviation from those routes. The CEVA representative testified that drivers were provided a "fuel-efficient" recommended route to calculate the payment per job, but the drivers (per their contract) were free to accept or reject the job and could drive other routes.

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ABOUT OUR ATTORNEYS

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

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The CEVA representative testified that drivers were never required to notify dispatch if a route other than the "fuel-efficient" route was elected. Addressing whether the applicant maintained a separate business office, the Court of Appeals focused on case law that an actual physical office was "irrelevant" and not dispositive. They noted that the profession of over-the-road trucking did not lend itself to a physical brick and mortar office. Under existing law, the Commission's decision was not in error on this factor of the independent contractor test. The Court of Appeals also found substantial evidence in the records to support the Commission's determination that the applicant controlled the means of performing the delivery services under his contract. They discussed evidence that: the applicant could choose the routes he traveled; he could refuse loads when offered by CEVA; he chose the days he wanted to work; putting CEVA identification on his truck did not equate to making him an employee; and hours driven were tracked only for DOT tracking requirements, not for pay or compensation. Ultimately, the applicant met all 9 criteria for independent contractor test under the statute, Wis. Stat. § 102.07(8)(b). The Court of Appeals affirmed the denial of his workers' compensation claim.

DECISIONS OF THE LABOR AND INDUSTRY REVIEW COMMISSION

BAD FAITH

Evitch v. Parker-Hannifin Corp., 2022-014870 (LIRC Mar. 19, 2026). The Applicant filed a Hearing Application alleging the self-insured Employer, Parker-Hannifin Corporation, acted in bad faith when it denied her claim by letter dated July 13, 2022. The Applicant alleged she sustained a right elbow injury due to her work activities as a material handler for Parker-Hannifin. She began treating in November 2021 with PA-C Pisarcik, whose notes describe right-side symptoms arising while the Applicant loaded and unloaded materials weighing up to 50 pounds. PA-C Pisarcik referred the Applicant to Dr. Miranowski, whose notes reflect that the Applicant attributed her symptoms to "overuse at work." Following an MRI in March 2022, the Applicant was referred to Dr. McCormick for a surgical consultation. Dr. McCormick diagnosed a tear of the common extensor tendon and arthritis, recommended extensor tendon repair surgery, and performed that surgery on April 14, 2022. Dr. McCormick's notes contained no causation opinion. Following surgery, the Applicant was seen by Dr. Cronrath in Occupational Health, who prescribed temporary restrictions and opined the Applicant had not reached end of healing. Dr. Cronrath further stated that "causation has been determined by a physician in this case and I will not be evaluating for causation." The Applicant was then seen by NP Wohlk in Occupational Medicine, who issued continued work restrictions. NP Wohlk's notes repeatedly stated that "all determinations of causation [are] deferred to the treating physician." The adjuster issued a written denial on July 13, 2022, stating:

> Based on information we have reviewed in regard to your workers compensation claim, at this time we are denying your claim as being compensable as worker's compensation. If you have any questions regarding this matter, feel free to contact me.

The denial letter neither advised the Applicant of her right to appeal nor identified what information was required to reinstate benefits. On October 21, 2022, Dr. Sherman opined that the Applicant's right elbow condition was directly caused by work exposure and that work exposure was a material contributory causative factor. Dr. Sherman also rated end of healing and assessed 1% PPD. In January 2023, the Applicant filed a Hearing Application seeking benefits. Parker-Hannifin filed an Answer denying the claim and alleging "a

lack of medical support regarding the cause, nature, and extent of disability." Parker-Hannifin then commissioned a record review by Dr. Kummer, who also found that the Applicant's work activities directly caused her right elbow condition. The parties subsequently entered into a stipulation, submitted to the Department, in which Parker-Hannifin agreed to pay TTD, PPD, and medical expenses, with bad faith claims expressly reserved. Following a hearing on the bad faith claim, ALJ Jordahl assessed a 200% bad faith penalty. The Applicant appealed to the Commission, arguing that the penalty should have been $30,000.00 and that the bad faith award should be based on the full, unadjusted price of all medical expenses, regardless of whether portions were written off or paid by group health. Parker-Hannifin cross-appealed the bad faith finding. The Commission affirmed ALJ Jordahl's decision in its entirety, holding that Dr. Cronrath's note "eliminate[d] any reasonable basis for denying the claim," and that even if that note were ambiguous as to causation, Dr. Sherman's October 2022 report provided a "separate and equally compelling basis for finding bad faith." As to the penalty amount, the Commission declined to use the full, unadjusted medical expenses as the basis for the penalty, noting that Parker-Hannifin was self-insured for medical expenses and had paid for all treatment regardless of whether the workers' compensation claim was accepted, that there was no evidence the amounts paid were reduced as a result of the denial, and that there was no evidence the providers sought to collect any written-off or adjusted amounts from the Applicant.

CONSEQUENTIAL INJURY

Reetz v. Mayo Clinic, Claim No. 2017-001204 and 2018-002522 (LIRC January 29, 2026). The applicant worked for the employer as a full-time housekeeper. She alleged an injury in late July 2016 when she picked up a large bag of trash that she believed was paper recycling but actually contained heavier material. The weight within the bag shifted when she got it part way up. She experienced right arm pain as she leaned over to try and catch the bag. The applicant did not treat until ten weeks post injury. Compensability for that incident was conceded and medical treatment was approved, including physical therapy. In early November 2016, the applicant alleged that she developed low back pain and numbness to her foot while doing therapy for her right shoulder. Specifically, she alleged the symptoms occurred when she stood, slightly bent at the waist, and leaned forward as part of a pendulum exercise. Further, following extensive medical treatment for the right shoulder and low back, in January 2018, the applicant reported left shoulder pain as a result of overcompensating for her right shoulder. Dr. Fitzgerald provided causation opinions for both shoulders and her back, on a specific and repetitive theory. Dr. Kulwicki performed an independent medical examination, and opined the bilateral shoulder conditions were all chronic, pre-existing, and degenerative conditions. He opined that there was no aggravation or other impact on these conditions by her job duties or any specific incident. Dr. Monacci also performed an independent medical examination to address the back condition and also opined the applicant did not sustain any consequential work-related injury to her back as a result of the shoulder injury. He specifically opined that the alleged activity of doing a pendulum exercise would not be a significant factor in her low back syndrome. Administrative Law Judge Luedtke determined the applicant did not sustain any work-related injury and denied all benefits. The Labor and Industry Review Commission affirmed in part and reversed in part. While the administrative judge confirmed to the Commission that she did not find the applicant credible and did not believe it was reasonable that she waited for ten weeks to treat if she had sustained a right shoulder injury, the Labor and Industry Review Commission disagreed. Instead, the Commission determined that she was the type of person who would reasonably wait to see if her symptoms resolved before going to treat.

Additionally, it found the mechanism of injury was plausible to be such that would cause a right shoulder injury. Therefore, the Commission reversed the determination that the applicant was not entitled to benefits for her right shoulder. However, the Commission agreed that the applicant did not demonstrate that she had sustained a left shoulder or low back compensable injury. The Commission noted the applicant did not bend all the way forward as if reaching to lift something from the ground and did not twist or turn at the waist while performing the activity that she alleged caused her back condition. Further, the Commission found it relevant that applicant acknowledged during cross examination that, during subsequent examinations by Dr. Fitzgerald, the applicant bent forward at the waist significantly further than she had while performing the pendulum exercises. Additionally, the Commission determined that, while overuse can, in some instances, constitute work exposure that is a material contributory factor in the onset or progression of a disabling condition, here, the applicant's left shoulder symptoms did not begin until well after the applicant's right shoulder restrictions were modified. By that time, the only restriction on the right shoulder was no use of a vibratory tool or torquing with the right arm. Therefore, there is no basis to conclude she was still overusing her left arm to protect her right at the time the left shoulder symptoms began. Additionally, Dr. Fitzgerald offered no explanation as to how the left shoulder injury would be related to the alleged injury or work exposure. Treatment notes which are certified but not verified by the practitioner are not considered prima facie evidence or sufficient as an adequate basis for a finding on causation or extent of disability where the statement is disputed, complex, or requires explanation. Finally, the Commission did not find the argument credible that, because Dr. Fitzgerald was employed by Mayo Clinic, his opinion should be given more or special weight. The Commission did indicate that there is no such authority in that respect, and further that there is no presumption in favor of the opinion of a treating doctor pursuant to the case law.

UNREASONABLE REFUSAL TO REHIRE

Garrison v. Kruepke Trucking, Claim No. 2023-019579 (LIRC March 19, 2026). The applicant worked as a truck driver for the employer and suffered a conceded injury on October 3, 2023, when he became dizzy and fell, striking his head on a table. He was examined by Dr. Craig Johnson, who opined the cause of the applicant's syncope was idiopathic and, while it was likely the applicant fell secondary to the effects of his uncontrolled diabetes, other causes needed to be ruled out before the applicant was allowed to resume his professional duties or even perform ADLs, including driving a vehicle. The applicant's primary provider cleared the applicant to return to work without restrictions on November 23, 2023, despite the lack of any workup to rule out other causes as recommended by Dr. Johnson. Further, on December 8, 2023, the applicant underwent a DOT exam. The paperwork from that exam indicated the applicant disclosed the work-related head injury, but denied any prior dizziness, headaches, numbness, tingling or memory loss. The DOT examiner cleared the applicant to drive for six months. On December 13, 2023, the applicant was discharged from his employment. At the hearing, representatives from the employer testified that the discharge was based on two concerns: (1) that Dr. Johnson opined further examination was necessary before the applicant could return to work, and (2) that the applicant indicated on the DOT health questionnaire that he had never had any dizziness or memory issues, when in fact he had. The employer placed a high value on safety and was concerned the applicant could become dizzy and fall again, or suffer a loss of consciousness while driving. At the hearing, the ALJ found that the employer showed reasonable cause for the discharge and denied any penalty under Wis. Stat. § 102.35(3). The applicant appealed, arguing that prior case law holds

that an employer's refusal to rehire based on restrictions from the injury is only justified if there is competent medical evidence establishing a substantial likelihood of reinjury should the employee return to work, and that there is a requirement that competent medical evidence establish that a worker's restrictions permanently prevent his or her return to work. The commission stated that the applicant's arguments stretched the actual holdings from the prior cases. What the prior cases actually held was that, where the assertion was that the applicant was physically unfit to return to work, medical proof to a reasonable probability was required to support that assertion. An employer may not rely on its own lay opinion to meet its burden of proving "reasonable cause" for a discharge or refusal to hire based on residual disability. In the case at hand, Dr. Johnson gave his opinion to a reasonable degree of medical probability that the applicant was not fit to return to truck driving absent an explanation for the cause of the syncope. The commission concluded the employer acted with reasonable cause within the meaning of Wis. Stat. § 102.35(3) in relying on Dr. Johnson's medical opinion, and the decision of the administrative law judge was affirmed.

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