September 2024 *Volume 119*

STRONG LEGACY✦STRONGER FUTURE

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

Minnesota Workers' Compensation Update

In This Issue

Workers' Compensation Practice Group

James S. Pikala, Emeritus
Raymond J. Benning, Partner
Christine L. Tuft, Partner
Susan K. H. Conley, Partner
Susan E. Larson, Partner
Ken J. Kucinski, Partner
Shannon A. Nelson, Partner
Jennifer R. Augustin, Associate
Erica A. Weber, Associate
Samantha R. Johnson, Associate
Selma Demirovic-Portesan, Associate
Anton Ragozin, Associate
Nhoa K. Stanton, Associate

Brenda M. Stacken, Paralegal
Bao Vang, Paralegal
Sheila M. Moe, Paralegal
Lori L. Hansen-Schwartz, Paralegal
Lynne M. Holm, Paralegal
Jessica J. Stevens, Paralegal

New Faces in the Arthur Chapman Workers Compensation Group

Meet Jennifer Augustin, Selma Demirovic-Portesan, Anton Ragozin, Erica Weber, Samantha Johnson, and Nhoa Stanton

Getting to Know Jennifer Augustin

Why did you decide to practice worker's compensation law?
My interest in worker's compensation began while taking an elective course on the subject in law school. For some reason, the topic grabbed me in a way that my other law classes did not. Around the same time, by chance, a local worker's compensation firm was looking for a law clerk so I jumped on the opportunity and haven't looked back since. That law clerk position lead to an attorney position in the same area upon graduation and now 13 years later I am still enjoying the topic and all the nuances I've learned along the way.

What are you most excited for in your role at ACKSP?
I am excited to join a great team of colleagues at ACKSP. They truly are a team and everyone works together so well to help support each other. It has been one of the warmest welcomes I've received in any position.

continued on next page . . .

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.

500 Young Quinlan Building
81 South Ninth Street
Minneapolis, MN 55402
Phone 612 339-3500 Fax 612 339-7655

811 1st Street
Suite 201
Hudson, WI 54016
Phone 715 386-9000 Fax 715 808-0513

ArthurChapman.com

New Faces in the Arthur Chapman Workers Compensation Group

Meet Jennifer Augustin, Selma Demirovic-Portesan, Anton Ragozin, Erica Weber, Samantha Johnson, and Nhoa Stanton *(continued)*

What is an interesting fact about you?
Every spring I help my daughters' Girl Scout troops manage their Girl Scout Cookie programs. Our house becomes a cookie storage warehouse with cases of Thin Mints piled floor to ceiling. So if you ever need a Girl Scout cookie hook-up, I can help!

Getting to know Selma Demirovic-Portesan

Why did you decide to practice law?
I felt called to practice law because I am a first generation American who watched her parents navigate the complicated path to citizenship, combined with having an undying curiosity for the world and its inhabitants. I am curious and love a good debate. I also truly love working with people and find that even in times of conflict, there is such beauty and humanity in acknowledging differences and working through them with the goal of a mutually agreeable outcome in mind.

What are you most excited for in your role at ACKSP?
I am most excited to gain experience in the courtroom; specifically with evidence presentation and opening/closing arguments. I love the theatric nature of litigation and feel grateful to have the opportunity to hone those skills and become more comfortable in the courtroom

What is an interesting fact about you?
Bosnian is my first language so I am bilingual, but the really interesting thing is that I have a Pug named Romeo who is subsequently also bilingual.

Getting to Know Anton Ragozin

Anton's practices focuses in worker's compensation as well as civil litigation. He has experience representing insurance companies in general liability and worker's compensation matters.

Why did you decide to practice law?
I have always been interested in the law and its role in being a pillar of societal structure. Additionally, I wanted to help people. After interning at a medical malpractice law firm throughout college, I knew I wanted to practice law.

What are you most excited for in your role at ACKSP?
I am excited to expand the firm's footprint into the eastern Wisconsin area.

What is an interesting fact about you?
I was born in Minsk, Belarus, and my brother and I were born on the same day but nine years apart (8/19/1995 vs 8/19/2004).

New Faces in the Arthur Chapman Workers Compensation Group

Meet Jennifer Augustin, Selma Demirovic-Portesan, Anton Ragozin, Erica Weber, Samantha Johnson, and Nhoa Stanton *(continued)*

Getting to Know Erica Weber

Why did you decide to practice law?
When I decided to go to law school we were fighting with a landlord about a broken refrigerator, and I was frustrated that I did not know my legal options. Besides, what else can you do with a degree in "Government?"

What are you most excited for in your role at ACKSP?
I look forward to opportunities to grow my practice at ACKSP.

What is an interesting fact about you?
So far, I have stepped foot on 5 of the seven continents on this planet.

Getting to Know Samantha Johnson

Why did you decide to practice law?
I went to law school following a year of service in AmeriCorps because I wanted to have the tools to effect change for members of my community in meaningful ways.

What are you most excited for in your role at ACKSP?
I am looking forward to learning from the shareholders and associates in my group. I am glad to be at a firm that prioritizes mentorship and professional growth.

What is an interesting fact about you?
Myself, along with my two siblings, are all left-handed. So far, it appears my toddler may be as well.

Getting to Know Nhoa Stanton

Why did you decide to practice law?
I decided to practice law because I wanted to help others.

What are you most excited for in your role at ACKSP?
I am most excited about the mentorship program at ACKSP. I look forward to learning from other awesome work comp attorneys!

What is an interesting fact about you?
An interesting fact about me is that I was born in Ho Chi Minh City, Vietnam.

Decisions of the Minnesota Supreme Court

Apportionment

***Johnson v. Concrete Treatments, Inc.,* Case Nos. A23-0543 and A23-0544 (Minn. Supreme Court May 29, 2024)**. (For a summary of the essential facts of this case, please refer to the "Arising Out Of" section.) On appeal, Concrete Treatments, Inc. argued that the lower courts incorrectly relied upon the apportionment opinions of Dr. Engasser, because he indicated that he agreed with the apportionment opinions of Dr. Johnson, and Dr. Johnson did not actually apportion any liability to the October 2018 injury. As it did with respect to the erroneous information contained in Dr. Banks' opinions regarding liability, the Court referred to Dr. Engasser's opinions as a "mistake" and agreed with the WCCA that the judge could have reasonably inferred that Dr. Engasser misread Dr. Johnson's report (even though the judge did not say this). The Court, therefore, concluded that the determination of the compensation judge, as affirmed by the WCCA, was not manifestly contrary to the evidence.

For additional information regarding this case, see the "Arising Out Of" and "Intervener" categories.

Arising Out Of

***Guzman Morales v. Installed Building Products, Inc.,* File. No Q23-0601 (Minn. Supreme Court, December 6, 2023)**. In a decision dated March 27, 2023, the WCCA affirmed the determination of the compensation judge that the employee's claim was not barred by the "intoxication defense" found in Minn. Stat. §176.021, subd. 1. The Minnesota Supreme Court affirmed the decision of the WCCA, without opinion.

A complete summary of this matter is contained in the 2022-2023 Minnesota Case Law Update.

***Johnson v. Concrete Treatments, Inc.,* Case Nos. A23-0543 and A23-0544 (Minn. Supreme Court May 29, 2024)**. The employee sustained his first work-related injury in 2005, following which an MRI showed a herniated disc at L5-S1. The employer/insurer for that date of injury accepted liability and paid various benefits. The employee testified that he continued to have symptoms in his back and leg following this injury, which he primarily managed with self-care treatments. In October 2018, the employee experienced additional symptoms when, while at work, he reached down to remove a door hinge. He sought treatment a month later, with Dr. Banks. Dr. Banks diagnosed a lumbar strain and told the employee to return for an MRI if his symptoms did not improve in two months. The employee testified that, after the visit with Dr. Banks, his symptoms returned to "baseline." The employee did not seek additional treatment until April 2021. At that time, he experienced a significant increase in his symptoms. An MRI showed that he still had the same L5-S1 disc herniation, but also severe spinal canal stenosis with compression of the causa equine nerve roots. Surgery was recommended and performed. The employers/insurers for all dates of injury denied the employee's claims for benefits. Reports from various experts were submitted, including from Dr. Banks who opined to 50/50 apportionment of liability, Dr. Johnson, who did not apportion any liability to the 2018 event, but instead apportioned 40% to the 2005 injury and 60% to a car accident occurring in December 2018, Dr. Engasser, who said he adopted Dr. Johnson's opinions, and Dr. Deal, who concluded that there was no substantial injury in 2018 and apportioned all liability to the 2005 incident. The matter proceeded to hearing before Compensation Judge Wolkoff who found that both injuries were substantial contributing factors in the employee's condition, that the employee sustained a permanent injury in October 2018, and apportioned liability for benefits 40% to the 2005 injury and 60% to the 2018 injury. The WCCA affirmed these determinations. The Supreme Court also affirmed these determinations. The Supreme Court rejected the arguments that Dr. Banks' report lacked foundation because it referred to a 2018 MRI as the basis for his apportionment opinion. The Court concluded that a "single misstated fact" does not discredit an entire opinion. The Court then concluded that, considering all of the evidence, the compensation judge's findings regarding the 2018 injury and apportionment were not manifestly contrary to the evidence.

For additional information regarding this case, see the "Apportionment" and "Intervener" categories.

Causal Connection

***Thompson v. On Time Delivery Services, Inc.*, File No. A23-0672 (Minn. Supreme Court, January 23, 2024)**. In a decision dated April 12, 2023, the WCCA affirmed a decision of a compensation judge that the effects of an injury on April 16, 2018, had resolved by August 20, 2018. The Minnesota Supreme Court affirmed the decision of the WCCA, without opinion.

A complete summary of this matter is contained in the 2022-2023 Minnesota Case Law Update.

Evidence

***Guzman Morales v. Installed Building Products, Inc.*, File. No Q23-0601 (Minn. Supreme Court, December 6, 2023)**. The Minnesota Supreme Court affirmed the decision of the WCCA, without opinion.

A complete summary of this matter is contained in the 2022-2023 Minnesota Case Law Update.

Interveners

***Johnson v. Concrete Treatments, Inc.,* Case Nos. A23-0543 and A23-0544 (Minn. Supreme Court May 29, 2024)**. In this case of first impression, the MN Supreme Court more specifically, interpreted Minn. Stat. §176.361, subd. 2, and, more specifically, whether it allows an employee to bring a direct claim for unpaid medical expenses, even where the provider did not intervene and the provider's interests were extinguished. The Supreme Court concluded that employees are allowed to bring direct claims for medical expenses under these circumstances. It is well established that a claimant has the right to assert a direct claim for medical expenses. *Adams v. DSR Sales, Inc.* 64 Minn. Workers' Comp. Dec. 396 (WCCA 2004). In this case, the compensation judge extinguished the potential claims of the providers, for failure to timely intervene, but, allowed the employee to bring a direct claim for the medical bills, and ordered payment of the bills. On appeal, the WCCA reversed the order for payment of the bills, on two bases: the prior order extinguishing the claims, and the fact that the employee's attorney failed to establish dual representation of both the employee and the provider. In analyzing these issues, the Supreme Court first looked at the language in §176.361, subd. 2, which indicates that a person desiring to intervene, including a health care provider, must serve and file a motion within 60 days after being served with notice of their right to intervene, and that failure to do so extinguishes the potential claim, and that the potential intervener may not collect, or attempt to collect, the extinguished interest. The Supreme Court held that, the plain language of the statute, extinguishes the potential intervention claims of any provider that does not timely assert an intervention claim. The Court then turned to the question of whether this extinguishment impacts the employee's right to assert a direct claim for unpaid medical expenses. The Court concluded that nothing in this section of the statute impairs the right of the employee to seek direct payment of medical expenses. Therefore, the Supreme Court held that: "the plain language of section 176.361 does not limit an employee's right to seek direct payment of medical expenses, even when a medical provider has failed to intervene to assert a claim in accordance with the statute." The Supreme Court also appears to have adopted the WCCA opinion from *Adams*, that failure to intervene does not prevent the non-intervening medical provider from collecting, if the claimant asserts a direct claim. The Court concluded by stating: "The extinguishment provided in section 176.361, subdivision 2(a), related to the Providers' procedural right to intervene in the workers' compensation matter, not the employee's freestanding substantive right to have their qualifying medical expenses paid by the employer." (Emphasis in original.)

The Supreme Court then turned to the question of whether dual representation of the provider and employee is required in order to assert a direct claim for payment of medical bills. The Court first noted that a dual representation requirement is not explicitly contained in the Statute. Rather, this requirement was created in WCCA decisions. At the time of two of the three prior decisions of the WCCA on this issue, interveners were required to appear at the Hearing. This requirement is no longer in the statute. In addressing the third case, *Duehn v. Connell Car Care, Inc.*, 77 Minn. Workers' Comp. 201 (WCCA 2017), the Supreme Court found that the requirement of dual representation, coming out of that case, conflicts with the WCCA's own holding in *Adams*, as well as the Supreme Court's determination in this case, that the claimant can assert a direct claim for medical expenses, even if the provider cannot.

The Supreme Court, therefore, reversed the WCCA's determination that the employee cannot bring a direct claim for payment of the medical bills, and remanded this issue to the WCCA "to determine whether additional factual findings are necessary regarding Johnson's direct claim for his unpaid medical expenses."

For additional information regarding this case, see the "Arising Out Of" and "Apportionment" categories.

COMMENT: First, it is notable that, in its recitation of Minn. Stat. 176.361, subd. 2, the Supreme Court did not cite the entire provision regarding the ability of the provider to collect or attempt to collect. The Supreme Court ends its quotation of this statutory provision at the statement that the provider

cannot collect from the employee. However, the statute states that the provider cannot collect, or attempt to collect, from the "employee, employer, insurer, or any government program." This leaves open, perhaps the question of, even if the bills are ordered to be paid, whether they are actually "payable" as the provider is prohibited from "collecting" the unpaid bills.

Also, not all petitioner's attorneys pursue payment of medical bills, if providers fail to intervene. However, this case provides significant incentive for them to do so, as it potentially increases the amount that is "recovered," thereby increasing attorney fees. If a petitioner's attorney asserts a direct claim for payment of medical bills, Minn. Stat. 176.361, subd. 2 is rendered meaningless by the Supreme Court decision in this case.

Intoxication

***Guzman Morales v. Installed Building Products, Inc.*, File. No Q23-0601 (Minn. Supreme Court, December 6, 2023)**. The Minnesota Supreme Court affirmed the decision of the WCCA, without opinion.

A complete summary of this matter is contained in the 2022-2023 Minnesota Case Law Update.

Psychological Injury

***Tea v. Ramsey County*, Case No. A23-1207 (Minn. Supreme Court April 17, 2024)**. The employee was employed as a social worker for the County. She claimed PTSD, resulting from exposure to the "grisly details" of a murder, described as an act of horrific brutality, committed by one of her clients, occurring in February 2020. The employer initially paid workers' compensation benefits, but discontinued the benefits after a licensed psychiatrist concluded that she did not have PTSD. The employee claimed that she began having symptoms immediately after learning the details of the murder. In addition, she was involved in many calls and meetings, as part of her employment, related to the murder, and saw details about the murder on the news. She reported the mental health claim five days after she learned of the murder. Initially, the employee was diagnosed with acute stress disorder. She was off work for a period of time, then returned to work, after which her symptoms began to increase. In February 2021, a year after the murder, the employee was diagnosed with PTSD, and again taken off of work. The employer initially requested that the employee undergo psychologist testing with Dr. Hung, who determined that the employee had PTSD and was psychologically unable to perform her job as a social worker. Subsequently, the employee underwent an independent medical evaluation with Dr. Gratzer, who opined that the employee's complaints were consistent with her history of anxiety, depression, and ADHD, and were likely the result of "burn out." Dr. Gratzer opined that the employee did not meet the criteria for a diagnosis of PTSD because she was not exposed to any actual or threatened death, serious injury, or sexual violence. The employee's treating psychologist and psychiatrist wrote letters disagreeing with Dr. Grazter, and the employee's attorney had her undergo an evaluation with Dr. Michael Keller, who concluded that she met the DSM criteria for the diagnosis of PTSD. Compensation Judge Lund concluded that the employee sustained a work-related psychological injury, beginning the day after the murder, in the nature of PTSD and Major Depressive Disorder. The WCCA affirmed (July 28, 2023). The Minnesota Supreme Court considered the matter without oral argument and affirmed. The Supreme Court framed the issue as: "the question is not whether Tea definitively has PTSD, but rather whether the WCCA's affirmance of the compensation judge's findings that Tea sustained work-related PTSD was manifestly contrary to the evidence." *See Lagasse v. Horton,* 982 N.W.2d 189 (Minn. 2022). Compensation for PTSD can only be awarded (in a situation in which the statutory presumption does not apply) if the employee proves that a licensed psychiatrist or psychologist has diagnosed the employee with PTSD, and the professional based the diagnosis on the latest version of the DSM. *See Chrz v. Mower County,* 986 N.W.2d 481 (Minn. 2023). If there are competing opinions, the judge is to determine whether the expert diagnoses have adequate foundation, and if both do, decide which of the professional diagnoses is more credible and persuasive. *Juntunen v. Carlton County*, 982 N.W.2d 729 (Minn. 2022). In this case, foundation of the various opinions was not at issue. The compensation judge provided an explanation for her choice between the conflicting medical experts, specifically determining that Dr. Gratzer only attached significance to information conforming with his opinions, and that Dr. Gratzer failed to address PTSD Criterion A(4) which was the basis for Dr. Keller's opinions. The Supreme Court indicated that, while a different judge might have reached a different conclusion, their ruling was not based upon the premise that Tea unequivocally has PTSD, but rather, the fact that nothing in the evidence presented "clearly required reasonable minds to adopt a contrary conclusion." *Lagasse*. ✦

Decisions of the Minnesota Workers' Compensation Court of Appeals

Appeals

Gayle v. Parasole Restaurant Holdings, Inc., File No. WC23-6490 and WC19-6264, Filed and Served July 10, 2023. Compensation Judge Wolkoff issued his original Findings and Order in 2019, denying the employee's claims. The employee (pro se) timely filed a notice of appeal with the OAH, but allegedly, failed to timely serve the employer and insurers with the notice of appeal. The employer and insurers sought dismissal of the appeal, and the WCCA remanded the matter to the compensation judge for findings on the issue of timely service on the parties. On referral, the compensation judge issued Findings concluding that the evidence failed to show that the notice of appeal was timely served on the employer, insurers and their counsel. The employee (still pro se) appealed this determination, and his appeals were consolidated by the WCCA. The WCCA (Judges Christenson, Milun and Quinn) affirmed the determination that the employee failed to timely serve notice of appeal on the employer, insurers and their counsel, and, therefore, found that the employee failed to perfect the appeal in 2019. Because perfecting the appeal is a jurisdictional requirement, the appeal was dismissed.

Arising Out Of

Olson v. Total Specialty Contracting, Inc., File No. WC23-6510, Served and Filed November 9, 2023. The employee suffered a slip and fall on November 8, 2021 while walking to a meeting at a construction project at the University of Minnesota. He was instructed regarding where to park and where to walk to get to a gate to enter the building. He walked on a dimly lit path he was unfamiliar with, in PPE, and the path was covered in wet and frosty leaves. Additionally, a fence encroached on the walkway. He slipped and fell about 5-10 feet from the gate entrance. The Employee sustained injuries to his left ankle and low back. An IME opined that the left ankle and low back injuries were temporary in nature but that a left peroneal nerve injury was due to the work injury and could be permanent. The employer/insurer denied that the injury arose out of and in the course/scope of employment because the employee was unsure of the cause of injury, no evidence connected the injury to employment, the injury occurred outside the perimeter of the construction site, and the injury occurred 15 minutes before the actual meeting time. Compensation Judge Bouman found that the injury arose out of and in the course of employment, and ordered the employer/insurer to pay benefits. The WCCA (Judges Sundquist, Quinn and Christenson) affirmed. The Court noted that the judge determined that the location where the employee fell was "used as an extension of the jobsite." The Court rejected the arguments of the employer and insurer that the injury was simply an unexplained fall which occurred outside the work premises and prior to the work day. Therefore, they argued that the injury did not arise out of, nor was it in the course of employment. The employer and insurer also argued that the judge inappropriately found that the employee's injury fell under the ingress and egress exception. First, the Court noted that the injury was not really unexplained, as the employee testified that he assumed that he fell on the wet leaves, and the judge found the employee to be credible. The court cited *Tomah v. Good Samaritan Soc'y*, No. WC21-6436 (WCCA March 31, 2022), in explaining that the standard of causal connection between injury and employment rests on whether the employee faced a hazard with circumstances originating on part of the working environment that increased the risk of injury to the employee. The Court then indicated that, collectively, the circumstances, including the wet leaves, dim lighting, unfamiliarity with the area, limited entry, an encroaching fence, and the fact that the employee was wearing PPE supported the determination that the injury arose out of the employment.

For additional information regarding this case, refer to the "In The Course Of" category.

The decision of the WCCA was affirmed, without opinion, by the Minnesota Supreme Court on July 8, 2024.

Ortega v. Installed Building Solutions, File No. WC23-6515, Served and Filed January 8, 2024. The Employee was hired as a home insulation installer for the employer. On his fourth day of work, March 1, 2021, he slipped and fell on a cement walkway while entering the work building. He landed on his back, buttocks, and right arm. He reported the fall but continued working his regular hours, lifting 60-70 pounds of insulation. He sought medical care two weeks later complaining of right arm pain. He was diagnosed with right arm strain and taken off of work for four days. He was given lifting and carrying restrictions. On April 26, 2021, the employee returned to Allina complaining of tailbone pain. He reported improvement of his right arm pain. He had a significant history of low and mid back injuries. In October

2021, he underwent revision surgery of the left L4-5 hemilaminotomy, proximal foraminotomy, and discectomy for treatment of his recurrent left L4-5 disc herniation. The employee was evaluated by Dr. John Sherman at the request of the employer/insurer, who opined that the employee did not suffer an injury to the back due to the March 1, 2021 fall at work. Rather, Dr. Sherman opined, the employee developed a spontaneous recurrent disc herniation consistent with the natural history of disc herniation. He noted that the initial medical record only included complaints of arm pain. Dr. Bert performed an evaluation of the employee and opined that the employee had suffered a permanent aggravation of his preexisting condition with recurrent disc herniation as a result of the March 1, 2021 injury. Compensation Judge Surges found that the employee did not sustain a work-related back injury and denied his wage loss claims. The WCCA (Judges Sundquist, Milun and Carlson) affirmed. The Court deferred to the compensation judge's choice between conflicting medical opinions. *Nord v. City of Cook*, 360 N.W.2d 337 (Minn. 1986). The Court noted that the judge weighed the medical opinions of the two experts and determined that Dr. Bert incorrectly stated that the employee had immediate back and leg pain at the time of the work injury, and that Dr. Bert did not address the employee's failure to mention back pain at the initial clinical visit. The compensation judge's decision that the employee had not injured his lower back on the date of injury was supported by substantial evidence. The employee also argued that the admitted right arm injury and resulting restrictions entitled the employee to TPD and TTD benefits. The employee testified that he continued to work full time after the slip and fall, and that any variation in wages was not because of his injury. It was thus reasonable to determine that the employee did not suffer wage loss as a result of the March 1, 2021 right arm work injury.

Attorney Fees

Repke v. Jacobs Engineering Group, File No. WC23-6508, Served and Filed October 3, 2023. The employee sustained an admitted work-related injury. The parties entered into litigation over the reasonableness and necessity of proposed L1-2 fusion surgery. The employee's treating doctor indicated that fusion surgery was appropriate, but, that the employee would need to be nicotine free prior to surgery. An IME disagreed with the necessity of the surgery, opining that the employee's condition would improve if he were nicotine free. Ultimately, the parties entered into a settlement regarding the disputed surgery. The employer and insurer agreed to approve surgery, subject to the employee producing three nicotine-free blood tests at agreed-upon intervals, before the surgery. The Stipulation contained a specific provision indicating that, since no specific benefits were being paid at that time, the employee's attorney was reserving any fee claim until after the employee underwent the surgery. Approximately four years after this agreement was approved, the employee had not undergone surgery, but, the employee's counsel filed a statement of attorney fees, seeking excess fees. Compensation Judge Grove denied the claim for attorney fees, and the WCCA (Judges Christenson, Sundquist, and Quinn) affirmed. The employee's attorney was attempting to extend the applicability of the *Lagasse* case, arguing that because there was a genuine dispute regarding the surgery, fees should be payable, even though the surgery had not occurred. The Court disagreed, noting that this case involves a request for payment of attorney's fees controlled by unambiguous language in a stipulation for settlement, which was bargained for and agreed to by the parties, and reviewed and approved by the compensation judge.

Jurgensen v. Dave Perkins Contracting, Inc., File No. WC23-6534, Served and Filed March 5, 2024. The employee sustained an admitted work injury to his left shoulder on July 29, 2021. The claim was admitted, and wage loss and medical benefits were paid, including for shoulder surgery. The employee returned to work in October 2022, at a significant wage loss. Also, in October of the same year, the employer/insurer obtained an IME who indicated that the employee was at MMI and that no further medical treatment was necessary. The employer/insurer discontinued benefits based on this report. The parties then settled the claim, at a mediation, for $150,000.00 for full, final, and complete settlement, including future medical. $26,000 of this sum was to be paid as the attorney's contingency fee. An additional $4,000.00 was to be paid to the employee's attorney as an excess fee, resulting in a net payment to the employee of $120,000.00. The employee's attorney filed an Excess Fee Exhibit with the Stipulation, showing a value for his time spent of $9,972.50. Compensation Judge Surges issued partial award on the stipulation, approving the stipulation with the exception of the portion of attorney's fees exceeding $26,000. At an attorney fee hearing, the employee testified that he felt his attorney was entitled to the $4,000.00. The employer/insurer agreed that the close out of future medical and rehabilitation was a significant aspect of the settlement. The compensation judge reviewed

the *Irwin* factors, and found that $26,000 adequately compensated the employee's attorney for his time, and that fees in excess of the statutory maximum were not warranted. The employee's attorney appealed. The WCCA (Judges Carlson, Sudquist and Christenson (concurring)) affirmed the denial of excess fees. On appeal, the employee's attorney argued that the judge did not have jurisdiction to disapprove a stipulation's provision for excess fees or to then review the claim for those fees, and that, even if review was appropriate, the judge abused her discretion in denying the excess fee. The WCCA disagreed, noting that, regardless of the agreement of the parties to the stipulation's terms, Minn. Stat. § 176.521, subd. 2, requires that when a settlement purports to close out the employee's right to medical or rehabilitation benefits, it must be reviewed by a compensation judge, and should only be approved if the provisions of the settlement are in conformity with the Workers' Compensation Act. Additionally, the compensation judge is required to approve attorney's fees higher than $26,000 under Minn. Stat. § 176.081, subd. 1, and thus had jurisdiction to review. Additionally, for excess fees to be awarded, a compensation judge must review the claim and determine whether they are warranted. *Clark v. Dick's Sanitation*, slip op. (W.C.C.A. May 16, 2000). The Court found that the judge properly evaluated the *Irwin* factors, and that substantial evidence supported her conclusion that the $26,000.00 fee was adequate to compensate the employee's attorney, and that a denial of the claim for the excess fee was appropriate.

Bjornson v. McNeilus Cos. Inc., File No. WC23-6530, Served and Filed March 11, 2024. The Employee suffered two injuries while working for the employer. The first on May 29, 2019, to the lower extremities, low back, and right hip, occurred while insured by Travelers and was admitted. The second, on June 24, 2021, to the low back and right hip, occurred while insured by Hartford and was not admitted. The employee had surgery at Mayo Clinic on July 9, 2021, and suffered complications, which required extensive medical treatment. The employee retained David Wulff, who filed a claim petition for both dates of injury seeking at least $317,063.47 in medical benefits. An intervention notice was sent to United Healthcare but they did not intervene. No evidence was offered as to the amount paid or whether United Healthcare had paid benefits. The employer and insurer paid $15,000 to settle all indemnity, vocational rehabilitation, and medical expenses up to the date of award. Of that amount, Attorney Wulff was paid $3,000 for attorney fees. On February 15, 2023, Attorney Wulff filed a statement of attorney fees claiming 20% of the alleged $317,063.47 on the basis that he recovered a lump sum "to date" settlement for wage loss benefits, medical expenses, and more for the employee. The employer/insurer objected on the grounds that there was no recovery of medical benefits which would give rise to the award of attorney's fees, that the fees were unreasonable, and that the fees were excessive. The issue was heard before Compensation Judge Pearson, in June 2023, who found that the intervention interest of United Healthcare was recovered within the meaning of Minn. Stat. § 176.081, subd. 1(a)(1), and ordered that Attorney Wulff be paid $49,000 in attorney fees. The employer and insurer appealed, contending that there was no evidence supporting the recovery of any medical expenses. They also disputed the intervention interest claimed by United Healthcare and the awarding of attorney fees to Attorney Wulff. The WCCA (Judges Sundquist, Quinn and Christenson) affirmed, in part, reversed in part, and remanded, in-part. The Court upheld the

compensation judge's decision that Attorney Wulff had indeed obtained a benefit for the employee. This was because the employer and Hartford had admitted that the treatment given was causally related to curing the effects of the injury in the stipulation, and they agreed to defend, indemnify, and hold harmless the employee from any claims made by medical providers. The court defined "recovery" as "getting back something lost or spent," and because the employer and Hartford initially denied primary liability but later admitted it, this admission constituted a recovery under Minnesota statute. However, although Attorney Wulff was entitled to attorney fees, the amount awarded was not supported by substantial evidence. The Court found that the awarded fees did not comply with the language of the relevant statute. The statute provides a method for determining attorney fees in medical disputes. If the contingent fee is inadequate, attorney fees are assessed against the employer or insurer, based on the dollar value of the medical benefits awarded, when ascertainable. The WCCA found that the medical benefits were not reasonably ascertainable due to insufficient evidence regarding the existence of bills and the reasonableness and necessity of the treatment. Therefore, the court reversed the part of the decision that indicated the intervention interest amount and the attorney fees awarded. It awarded $500 in attorney fees, pursuant to the statute, as the dollar value of the medical benefits was not determinable. Because there are two separate insurers, the matter is remanded for a compensation judge to apportion how much each will pay in fees.

Causal Connection

Kramm v. Lund Food Holdings, Inc., File No. WC23-6503, Served and Filed June 30, 2023. The employee has worked for Lund Food Holdings since 1988. He had no significant medical issue with his low back prior to the DOI. He did experience a sore back in 1988 and a slip and fall injury to his low back in 2012, which quickly resolved without medical treatment. On December 31, 2019, the employee was retrieving a 60-70 pound case of meat from a cooler off of a low shelf. As he lifted the case, he twisted his body to set the case on a cart, and felt a pulling sensation followed by sharp pain in the low back. He continued to work and experienced increased pain and stiffness. He experienced left leg symptoms over the next few weeks, which continued to worsen. Ultimately, an MRI showed severe disc degeneration, bulging, and osteophytic rigging contacting and impinging the traversing S1 nerve roots, left greater than right, without stenosis at L5-S1, among other concerns. A disc herniation at the L4-5 level was also identified. The employee slowly improved through March 2020, but with his work duties increasing during the COVID-19 pandemic, his symptoms were aggravated. Another MRI was performed in February 2021, which showed disc degeneration at L5-S1, L4-L5, L3-L4, and L2-L3. The disc herniation at L4-5 was no longer present. At the request of the employer/insurer, the employee was seen by Dr. Eric Deal. He opined that the employee's only work injury was left sided L4-5 disc herniation which spontaneously resolved by time of the 2021 MRI. He further concluded that no further medical care or work limitations were necessary. This led to the employer no longer accommodating the employee's restrictions. Dr. Novak wrote a report per employee's request, which rated the employee as 10% PPD because of ongoing involuntary muscle tightness and spasm, and positive orthopedic tests. Dr. Deal wrote a supplemental report, which diagnosed chronic back pain. Dr. Deal opined that the multi-level degenerative disc disease did not correlate with the work injury. He further opined that the employee required no additional restrictions for his work injury, and that the employee had reached MMI. The Employee filed a claim petition seeking PPD benefits and payment of chiropractic care. Compensation Judge Daly found that the employee sustained 10% PPD and ordered payment of benefits and including a chiropractic bill. The WCCA (Judges Quinn, Sundquist and Christenson) affirmed the award of PPD. The key determination of the WCCA was that an employer and insurer are responsible for a resulting condition when a work injury aggravates or accelerates a preexisting condition. *Vanda v. Minn. Mining & Mfg. Co.*, 300 Minn. 515, 218 N.W.2d 458, 27 W.C.D. 379 (1974). Substantial evidence, the WCCA ruled, supported the finding of the compensation judge that the employee suffered a herniated disc and multi-level degenerative disc disease, which was permanently caused or aggravated by the work injury. Evidence that the employee had no significant injuries to his low back prior to the work injury and evidence of multi-level degenerative disc disease were used to support such finding.

Chandler v. Driveline Specialists, Inc., File No. WC23-6517, Served and Filed December 20, 2023. The employee is an automobile repair worker, who sustained a work injury to his left wrist and elbow when he was struck by a spring-loaded control arm on the end of a vehicle bumper on November 2, 2021. It was stipulated that he recovered from the wrist injury, and the ultimate issue became the nature and extent of the elbow

injury. The first IME obtained by the employer and insurer diagnosed the employee with left ulnar neuropathy and lateral epicondulitis. Another IME was performed by Dr. William Call who concluded that the employee suffered from healed avulsion fracture at the left wrist and other symptoms with mild ulnar neuropathy of the left elbow. Dr. Call opined that the ulnar nerve condition was not work related. Compensation Judge Kulseth found that the employee sustained an elbow injury as diagnosed by IME Carlson and the employee's treating doctors.

The WCCA (Judges Quinn, Sudquist and Carlson) affirmed. The WCCA found that substantial evidence, bolstered by the employee's credible testimony and comprehensive medical records, supported the judge's choice between conflicting medical opinions. *Nord v. City of Cook*.

Gurrola v. Metropolitan Council, File No. WC23-6522, Served and Filed January 16, 2024. The primary issue in this matter was the nature and extent of an admitted work-related injury. Compensation Judge Grove relied upon the opinions of the employee's treating physician and awarded benefits. On appeal, the employer sought reversal, primarily based upon the argument that the opinions of the treating physician lacked foundation, as that doctor did not personally review the initial medical records following the surgery. The WCCA (Judges Quinn, Christenson and Carlson) affirmed the compensation judge's determination. The Court found that treating doctor's opinions were well-founded, based upon his review of relevant medical records, the IME report, which discussed, in detail, the initial medical records, and history taken from and treatment of the employee. The Court did discuss all of the potentially conflicting evidence, but found that there was substantial evidence to support the determinations of the compensation judge, and no basis to disturb the judge's determinations regarding credibility and choice between conflicting medical opinions. *Even v. Kraft*, 445 N.W.2d 831 (Minn. 1989) and *Nord v. City of Cook*, 360 N.W.2d 337 (Minn. 1985).

Cienfuegos v. Lucky's 13 Pub, File No. WC23-6524, Served and Filed February 1, 2024. The WCCA (Judges Quinn, Milun and Sudquist) affirmed Compensation Judge Bouman's determination that the employee's work injury was temporary and that he did not sustain a consequential mental health injury. The injury in this matter occurred in December 2014. The employee was seen in the emergency room following the injury. He did not have additional treatment for eleven months. Thereafter, he received a lot of treatment from multiple different types of providers, and over the next eight years, leading up to the 2023 hearing. During this same time frame, the employer and insurer obtained multiple IME reports concluding that any work-related injuries were temporary in nature. The employee obtained his own IME, from Dr. Hanson, and also acquired reports from treating doctors supporting his causation arguments. The compensation judge relied on the opinions of the employer and insurer's IMEs in making her determinations. On appeal, the employee argued that the judge's credibility determinations were flawed and influenced the outcome, seeking reversal and remand. He argued that he did not have an interpreter at his initial medical visit, which led to the inconsistencies in the injury description, found in the medical records and noted by the IMEs. In affirming the determination, the Court concluded that, under the facts of the case, the compensation judge's credibility determinations were not ultimately material to the findings and order or outcome. The IME, on the orthopedic issues predicated his conclusion of a temporary injury on the absence of professional medical treatment for nearly a year after the initial ER visit. Further, it was undisputed that the employee continued to work in two concurrent labor-intensive positions, including working overtime, until he was laid off due to the COVID-19 pandemic. Based on the employee's ability to work and the prolonged lack of medical care, it was reasonable for the judge to conclude that the work injury was temporary, and this determination was supported by substantial evidence.

Zabel v. Gustavus Adolphus College, File No. WC23-6533, Served and Filed March 27, 2024. The employee, Lori Zabel, slipped and fell on ice while working for Gustavus Adolphus College as a post office clerk on April 18, 2013. She suffered a brain/concussion injury. Wage loss benefits were paid until employer ceased payment, claiming the injury had been resolved. The employee objected, and the compensation judge found the injury temporary and fully resolved, and denied the claim for temporary total disability benefits. This was not appealed. The employee continued to work for the employer, and on July 13, 2015, the employee experienced dizziness. She claimed that she lightly hit her head during this spell, and was assessed with vertigo. She returned to work and, on July 30, 2015, experienced dizziness again. Her coworkers intervened when she appeared to be losing consciousness. The employee was examined by Dr. Surdy in March 2016 and by Dr. Alm in August 2017, both of whom assessed post concussive syndrome. The employee filed a claim petition seeking benefits related to the July 2015 work injury. The compensation judge concluded

that the claim was barred by *res judicata*. The WCCA reversed on the basis that it was a different claimed injury. She continued to pursue her 2015 claims thereafter. In October 2019, the employee underwent an independent psychological examination by Dr. Beniak, who ruled out any traumatic brain injury from the July 2015 incident, assessing the employee's description of the event to be implausible. Dr. Alm in February 2023 opined that the three incidents were work related. Compensation Judge Hartman determined that the employee did not sustain work-related injuries on July 13, 2015 or July 30, 2015. The WCCA (Judges Milun, Quinn and Christenson) affirmed. The WCCA explained that it was the role of the compensation judge to determine whether an injury occurred independent of the 2013 injury, because that was determined to be temporary and resolved. The eyewitness testimony of the coworker on the July 13, 2015 incident indicated that the employee did not strike her head. It was uncontested that the employee did not strike her head on July 30, 2015. Thus, substantial evidence supported the compensation judge's finding.

Machado Rivera v. Installed Building Products, File No. WC23-6538, Served and Filed May 6, 2024. The employee sustained an admitted injury to multiple body parts. By the time the matter reached the Hearing, and in unappealed findings, the employee had recovered from injuries to his neck, back and left knee. The issues at the hearing focused on whether the employee sustained a dental injury, and if so, the nature and extent of that injury, causation for and reasonableness and necessity of dental treatment, MMI, and entitlement to vocational rehabilitation. The employee also asserted wage loss and PPD claims, however, these were denied and not appealed. Dental records from five months prior to the injury established that the employee had advanced periodontitis, cavities in multiple teeth, and approximately 15 missing teeth. The employee also had a partial retainer. The record establishes that, at that time, his dentist recommended extraction of all teeth, with the option for dentures, periodontal treatment with composited upper dentures, or implants with over dentures. The employee chose the second option, but did not return for additional case until after the injury. When seen in urgent care following the injury, the employee complained of one loose tooth, mouth pain, and that his dental retainer broke in the fall. When the employee returned to his dentist after the accident, the dentist again reported missing teeth - although reporting some teeth being present which he previously reported as missing, and severe mobility of several of the teeth. A CT scan showed a fracture of the alveolar bone. The dentist recommended a multi-stage plan of stabilization, surgery and prosthetic phases, including providing 24 implants. Independent medical opinions, in multiple reports and deposition testimony, called into question causation for the employee's dental issues, and the reasonableness and necessity of the proposed treatment, due to the employee's poor dental history. Therefore, the employer and insurer denied liability for the dental condition, and proposed treatment. By the time the matter went to hearing, the employee had a bone graft procedure, all but a few teeth had been removed, and posts were implanted for the eventual implants. Compensation Judge Bouman found that the injury aggravated the employee's pre-existing dental condition, accelerating his previous plans for dental work, and awarded the claimed dental expenses. The WCCA (Judges Carlson, Sundquist and Quinn) affirmed the causation determination. Essentially, while agreeing that the employee had significant prior dental issues, the court found that there was adequate foundation for the opinions of the treating dentist, and, therefore, deferred to the compensation judge's choice between conflicting medical providers.

For additional information regarding this case, see the "Medical Issues" and "Rehabilitation" categories.

Evidence

Beste v. Centracare Health Long Prairie, File No. WC23-6536, Served and Filed April 15, 2024. The WCCA (Judges Carlson, Quinn and Christenson) affirmed the determination of Compensation Judge Bateson that the employee's injury had resolved. In reaching his conclusion, the compensation judge relied on the medical experts of the employer and insurer. The employee sustained an injury to her left shoulder on February 15, 2020. She underwent surgery in November 2020, and, eight weeks post-surgery reported a return in her symptoms, along with various other symptoms. In February 2021, she was seen in the ER for thoracic pain and possible diverticulitis. Also in February 2021 repeat MRI of her shoulder was performed, showing no significant findings other than AC joint arthrosis. She was subsequently diagnosed with possible pectoralis minor syndrome and possible thoracic outlet syndrome. She then underwent a left shoulder distal clavicle excision with pectoralis minor release, following which she had continued and worsening symptoms, and was diagnosed with adhesive capsulitis and lateral and medical epicondylitis. The employee subsequently claimed additional symptoms from a July 2022 work incident, and, by September 2022, the list of diagnosis included: lateral

and medial epicondylitis of the left elbow, compensatory right shoulder pain, carpal tunnel syndrome of the left wrist, thoracic outlet syndrome, cervicalgia, and cervical foraminal stenosis. Further, in February 2023, Dr. Karimi diagnosed neurgenic thoracic outlet syndrome. The employer and insurer obtained two IME opinions. Dr. Wojciehoski, in August 2021, opined that the original injury was a shoulder strain and resolved by approximately February 19, 2021. Dr. Simonet, in November 2022, opined that there was no evidence that the employee sustained injuries as a result of either alleged work incident. He opined that there was no objective evidence of injury to any body part, and questioned the diagnosis of thoracic outlet syndrome. The employee relied, primarily, on a record from Dr. McCarty stating that she had "arthritic acromiclavicular joint aggravated by work injury." Judge Bateson adopted the opinions of the IMEs and denied all of the employee's claims for additional and ongoing benefits. The WCCA rejected the argument that the IME opinion of Dr. Wojciehoski lacked foundation, noting that his reported detailed the history provided by the employee, that he reviewed and summarized medical records, and detailed his examination findings.

The Court also noted, in contrast, that the record of Dr. McCarty did not provide opinions as to causation, reasonableness and necessity, or detail information reviewed. "A failure to explain the mechanism of injury or the underlying reasons for a causation opinion may certainly go to the persuasiveness or weight that may be afforded that opinion."

Tolbert v. Ramsey County Care Center, File No. WC23-6537, Served and Filed May 7, 2024. The key issue in this case was causation for the Employee's asserted cervical spine injury occurring in 2017. Although not specifically stated in the decision, it appears that the employer and insurer denied primary liability for the alleged injuries, based upon notice and causation defenses. When the employee filed her claim petition, in 2019, she asserted that the Director of Nursing accompanied her to the emergency room on the date of injury. In 2020, the deposition of the now-retired Director of Nursing was taken. She testified that she had no recollection of the employee being injured, no recollection of talking to the employee about an injury, and no recollection of accompanying the employee to the emergency room. The Director of Nursing's deposition was admitted into evidence, over the objection of the employee's attorney. Compensation Judge Hartman denied the employee's claims, essentially concluding that her testimony regarding the events surrounding her injury was not credible, and also accepting the opinions of the IME doctors over the expert opinions offered by the employee. The WCCA (Judges Christenson, Milun, and Sundquist) affirmed. A key factor on appeal was the employee's argument that the judge's finding that her testimony was not credible was based upon the deposition testimony of the Director of Nursing, and that admission of that transcript was clearly erroneous. The employee argued that the deposition testimony was hearsay testimony, and that the employer and insurer should have produced the witness for cross-examination, or provided proof that she was unavailable. Acknowledging that there are various statutes and rules which might provide a basis for disallowing the deposition transcript, the Court noted that the Judge did not admit the transcript until the employee testified regarding the reported conversation with the Director of Nursing, that workers' compensation proceedings are not subject to the rules of evidence, and, that the judge did not rely solely on the deposition testimony in denying the claim. Under these circumstances, admission of the transcript was not an abuse of discretion.

Henchal v. Fed Express Corp., Cowan v. Black Sea Enterprises, Inc., File No. WC23-6544, Served and Filed May 31, 2024. The employee appealed Compensation Judge K. Marshall's determination that his injuries, resulting from a motor vehicle accident, were temporary in nature, arguing that the Judge should not have accepted the opinions of the IME doctors. The WCCA (Judges Milun, Sundquist and Carlson) affirmed. Regarding the IME opinions, the employee first argued that they were admitted in error, because they referenced a record from a provider that called the accident into question. The Court noted that report did not conclude that the accident occurred, but, rather, questioned the employee's report as to how it happened. Further, given that the neurologist IME concluded that there was an injury, no erroneous factual assumptions influenced the IME reports. The employee then argued that, although the IME saw him one time, his two subsequent record review reports should not be considered because the IME offered opinions without again examining the employee. The WCCA concluded that there was proper foundation for the IME reports to be admitted, and that the employee's arguments really went to the weight that should be given to the reports. Based upon all of the evidence, and citing to *Even v. Kraft*, and *Nord v. City of Cook*, the WCCA found no reason to disturb the compensation judge's choice between conflicting medical opinions, or credibility determinations.

In The Course Of

Olson v. Total Specialty Contracting, Inc., File No. WC23-6510, Served and Filed November 9, 2023. The employee suffered a slip and fall on November 8, 2021 while walking to a meeting at a construction project at the University of Minnesota. He was instructed regarding where to park and where to walk to get to a gate to enter the building. He walked on a dimly lit path he was unfamiliar with, in PPE, and the path was covered in wet and frosty leaves. Additionally, a fence encroached on the walkway. He slipped and fell about 5-10 feet from the gate entrance. The Employee sustained injuries to his left ankle and low back. An IME opined that the left ankle and low back injuries were temporary in nature but that a left peroneal nerve injury was due to the work injury and could be permanent. The employer/insurer denied that the injury arose out of and in the course/scope of employment because the employee was unsure of the cause of injury, no evidence connected the injury to employment, the injury occurred outside the perimeter of the construction site, and the injury occurred 15 minutes before the actual meeting time. Compensation Judge Bouman found that the injury arose out of and in the course of employment, and ordered the employer/insurer to pay benefits. The WCCA (Judges Sundquist, Quinn and Christenson) affirmed. The Court noted that the judge determined that the location where the employee fell was "used as an extension of the jobsite." The Court rejected the arguments of the employer and insurer that the injury was simply an unexplained fall, which occurred outside the work premises and prior to the workday. Therefore, they argued that the injury did not arise out of, nor was it in the course of employment. The employer and insurer also argued that the judge inappropriately found that the employee's injury fell under the ingress and egress exception. The Court considered the employer and insurer's "In The Course Of" arguments, that the injury occurred outside the construction area and outside work hours. The Court noted that employees are covered during ingress and egress of the workplace when the injury occurred at a time when 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, on an area considered a part of the work premises, and within a customary route of ingress and egress. *Blattner v. Loyal Ord. of Moose, Moose Club Lodge No. 1400,* 264 Minn. 79, 177 N.W.2d 570 (1962). Again, the Court turned to the totality of the circumstances, as noted by the judge, as supporting the determination that the employee was in the course of his employment at the time of the injury. Specifically, the employee was instructed to cross the street, walk between the buildings to the jobsite fence, and follow the fence. Further, the employee was instructed to wear the PPE necessary to enter the job site. And, finally, the injury happened immediately before the start of a meeting regarding the specifics of the job. The Court found that, given these circumstances, the judge did not abuse her discretion in determining that the employee's injury was within the time and place requirements of the statute.

This decision was summarily affirmed by Order of the Minnesota Supreme Court on July 8, 2024.

Thompson v. Minn. Trial Courts – Dist. 4 and State of Minn. Department of Admin., File No. WC23-6519, Served and Filed January 26, 2024. The employee worked as a court operations supervisor for the Minnesota Fourth District Trial Courts. The employer leases space for its operations in the Hennepin County Government Center, but did not reimburse employees for parking, nor did they specify how employees should commute to or from the work place. The employee walked to work in warmer weather, and in the winter drove his car and parked in a public ramp across the street. He would then use the skyway system to walk to work. In December 2021, access to the building was limited to a single public entrance at ground level due to a high-profile trial. On December 23, the employee was told to take his things and work from a place of his choosing. The employee packed up some equipment, including his laptop and paperwork, and headed home. The employee stipulated that, while these were items he used for his job, he had backup equipment at home. On December 27, the employee drove to work, bringing his equipment with, and had to use the public entrance because the skyway entrance was closed. On his walk from the parking ramp, the employee slipped and fell, landing on his back. He was on a public plaza adjacent to the courthouse at the time of the fall. He was diagnosed with various injuries. The employer and insurer denied primary liability on the basis that the injury occurred while commuting and that he was not in the course of his employment at the time of the injury. Compensation Judge W. Marshall denied the employee's claims, and the WCCA (Judges Milun, Sundquist, Quinn, Christenson and Carlson) affirmed. The employee claimed three exceptions to the general rule that injuries on the commute to

work are not compensable: 1) arising from exposure to a "special hazard," 2) sustained while engaged in a "special errand," or 3) arising from exposure to a "street risk." The WCCA analyzed each exception. Under the special hazard exception, the employee argued that Hennepin County's security measures, resulting in a single entrance to the courthouse, exposed him to a "special hazard" of his employment. However, the court found that the hazardous conditions were due to freezing rain, not a work-related factor. It concluded that the special hazard exception did not apply. *Nelson v. City of St. Paul*, 249 Minn. 53, 81 N.W.2d 272 (1957). Regarding the special errand exception, the employee claimed that his task of bringing work equipment back to the office constituted a special errand. However, the court noted that this was not explicitly requested by the employer and that back-up equipment was available on-site. Additionally, the "dual purpose" doctrine did not apply, as the employee's commute would have occurred regardless of returning equipment. Finally, regarding the argument that the injury resulted from a "street risk," the court found that the employee's presence on the sidewalk was solely due to his commute, not a duty of employment.

Jurisdiction

Faughn v. Northern Improvement Company, File No. WC23-6525, Served and Filed January 10, 2024. The Employee, Troy Faughn, sustained a work-related injury to his left lower extremity while working for Northern Improvement Company ("NIC"), a North Dakota-based employer with operations in Minnesota, North Dakota, and Wyoming. This included leasing two gravel pits in Minnesota. The employer had workers' compensation coverage in all three states at all relevant times. The employee applied for a position with the company through Indeed.com while he was in Minnesota. He received a phone call from the employer discussing employment details while he was still in Minnesota. The employee completed paperwork and a drug test while in Minnesota. Later, he met with NIC's foreman in South Dakota to finalize paperwork before commencing work in North Dakota. The Employee worked at various job sites in North Dakota and Wyoming between May and October 2019. On October 3, 2019, while working in Casper, Wyoming, the employee sustained an admitted left lower extremity injury. The employee filed a claim petition on July 7, 2022, in Minnesota. The employer and insurer argued that Minnesota does not have jurisdiction over this matter. Compensation Judge Murillo determined that the employee was hired in Minnesota, by a Minnesota employer, and that the employee was injured while temporarily employed outside of Minnesota, and therefore, found that jurisdiction for the claim did exist in Minnesota. The injury was found to be compensable under the Minnesota Workers' Compensation Act. The WCCA (Judges Carlson, Sundquist and Christenson) affirmed. They analyzed each element individually. As for the hired in Minnesota element, the WCCA cited *Summers v. N. Indus. Erectors, Inc.*, 70 W.C.D. 605 (WCCA 2010), stating that where an offer of employment is made to an employee in Minnesota via telephone, and the offer is accepted during that call, the employee is deemed hired in Minnesota. Here, the employee testified to being in Minnesota at the time of the acceptance call, and substantial evidence supports the finding of his credibility. As for the "Minnesota employer" element, NIC's activities in Minnesota, including maintaining workers' compensation coverage and having employees at the leased pits, were sufficient to establish them as a Minnesota employer. Finally, the Court analyzed the "temporarily employed outside Minnesota" factor. The court cited *Vaughn v. Nelson Bros. Constr.*, 520 N.W.2d 395 (Minn. 1994), in explaining that, when an employee does not have a permanent situs of employment, his employment in any state is temporary. There was no dispute that the employee did not have a permanent work site. Additionally, the seasonal nature of the employment, the court analyzed, made his position temporary employment.

Jordan v. Minn. Vikings Football Club, No. WC23-6545, Served and Filed May 28, 2024. The employee was a professional football player, who played in the league for approximately eight years, and, for all but two seasons of his career played for the Vikings. He retired in 2002. In 2009, he commenced a workers' compensation action in California, asserting head injuries, along with injuries to his neck, arms, shoulder, elbows, wrists, hands, thumbs, fingers, mid and low back, legs, hips, knees, ankles, feet, and toes, gastritis and irritable bowel syndrome. As a part of the California workers' compensation system, the employee underwent "agreed medical evaluations." These physicians concluded that the employee suffers from post-traumatic head syndrome, and multiple orthopedic conditions, apparently attributing these issues to his professional football career. In 2011, the employee entered into a settlement of his California claims, settling the claims on a full, final and complete basis, including future medical. The California case did not specify a particular date of injury, but referred to a "cumulative injury" from May 15, 1994 through January 7, 2002 (the entirety of the employee's professional career). In

2023, the employee commenced a Minnesota workers' compensation action, alleging 12 specific dates of injury, as well as a *Gillette* injury with a culmination date different from the date identified in the California case. All body parts alleged were also alleged in his California case. The employer and insurer filed a motion to dismiss, arguing that, under Minn. Stat. §176.041, subd. 4, the employee had already pursued his claims in California, and therefore, Minnesota does not have jurisdiction. In response to the motion, the employee provided an affidavit indicating that half of the games he played occurred in Minnesota, as did all practices, meetings, and off-season camps and workouts. Compensation Judge Murillo denied the Motion to Dismiss for lack of jurisdiction. The WCCA (Judges Quinn, Sundquist and Carlson) affirmed. Minn. Stat. §176.041, subd. 4 states that, if an employee who regularly performs the primary duties within the state, is injured outside of the state, the Minnesota Workers' Compensation Act applies. The provision also indicates that, if an employee who regularly performed the primary duties of his employment outside the state, is injured within the state, the injury shall be covered by the Minnesota act, "if the employee chooses to forego any worker's compensation claim resulting from the injury that the employee may have the right to pursue in some other state…" In this case, there was not clear evidence as to where each of the alleged injuries occurred. However, because the evidence supports the compensation judge's determination that the employee performed the primary duties of his employment in Minnesota, the denial of the motion to dismiss was affirmed.

Medical Issue

McKeever v. Cub Foods, File No. WC22-6499, Served and Filed August 8, 2023. The employee suffered an injury to her low back while working for employer on May 7, 2010. Since the injury, the employee has had several surgeries to the lower back. She also participated in physical therapy and other pain management treatment. In 2014, following her sixth surgery, the employee was diagnosed with chronic regional pain syndrome affecting her left leg. Sympathetic block injections provided her significant, temporary relief. The employee was treated by Dr. Todd Hess beginning in March 2015. By 2017, Dr. Hess diagnosed the employee with Chronic Regional Pain Syndrome ("CRPS") in all four extremities. On June 12, 2018, a compensation judge agreed that the employee developed CRPS in all four extremities as a result of the May 7, 2010 injury, and ordered the insurer to pay for various treatments, including the sympathetic block injections. She continued to receive these injections on an as need basis through 2019. Dr. Hess noted that the employee's pain was difficult to treat, that she was permanently and totally disabled, and that injections helped her retain her job. The employee was examined by Dr. Paul Biewen on January 11, 2021 at the request of the employer/insurer. Dr. Biewen opined that the employee has failed back surgery syndrome and chronic low back and left leg pain as a result of the May 7, 2010 injury. Additionally, he opined that she had subjective pain without objective findings in the other three extremities, and that injection therapy was not reasonable or necessary because her relief only lasted one to two months. The employer and insurer discontinued payment for sympathetic block injections following this report. On December 1, 2021, Dr. Hess administered the injection despite the insurer's denial. The employee reported very good relief from the injection, and that she would like more injections closer together. The employee filed a claim petition seeking payment for the ongoing treatment with Dr. Hess. Compensation Judge W. Marshall found that the sympathetic block injection therapy was reasonable and necessary and was payable under the "rare case exception" to the treatment parameters. The WCCA (Judges Quinn, Milun and Christenson) affirmed this decision. The WCCA analyzed whether this matter constitutes a rare case exception because the factual findings of the case were not appealed or disputed. The WCCA cited *Jacka v. Coca-Cola Bottling Co.*, 580 N.W.2d 27 (Minn. 1998), as the defining case for the rare case exception, stating that a compensation judge may depart from the parameters in "those rare cases in which departure is necessary for the employee to obtain proper treatment." The WCCA also cited to *Johnson v. Darchuks Fabrication, Inc.*, 963 N.W.2d 227 (Minn. 2021), explaining that reasonable and necessary is not enough to be a "rare case exception", and an explanation is needed as to why compliance with the parameters is not possible. The WCCA, demonstrating its dislike for the *Darchuks* decision, distinguished that decision, concluding that, in this case, Dr. Hess adequately explained various unsuccessful treatments, and that all other treatment options have been exhausted. The WCCA also explained that per *Asti v. Northwest Airlines*, 588 N.W.2d 737 (Minn. 1999), an employee's condition need not deteriorate to total disability before the "rare case exception" can be applied. Given the extensive history of the injury, numerous failed treatments, the established success of the injections, and the employee's refusal to deem herself unable to work, the "rare case exception" is applicable. The WCCA additionally used the *Darchuks* identification of reducing

dependency on narcotics as a rare case exception factor in their determination. Here, the employee was able to reduce the amount of OxyContin she took by 10 mg per day with injections. Because the employee has been suffering with CRPS in all four extremities for nearly ten years, and injection therapy has been the only method of significant improvement, the compensation judge did not err in applying the "rare case exception."

Engblom v. Gateway Foods of MN, Inc., File No. WC23-6506, Served and Filed September 20, 2023. The Employee sustained an admitted injury on May 22, 1989, during a slip and fall while working for Gateway Foods. He underwent extensive medical treatment including a left laminotomy at L4-5 and medial facetectomy and discectomy in April 1991, followed in January 1992 by a decompression at L5-S1, laminectomies at L4-S1, and fusion at the L4-5 and L5-S1 levels. He continued to have symptoms despite these surgeries. He underwent various other therapies, including regular epidural steroid injections ("ESIs") and Radiofrequency Neurolyses ("RFNs"). Two independent medical evaluations were conducted on behalf of the employer and insurer by Dr. Paul Biewen and Dr. Teresa Gurin. Both concluded that the ESIs and RFNs were not reasonable and necessary treatments, offering only temporary and limited benefits. The employee, however, presented reports from his treating physicians, Dr. Christopher Davies and Dr. Timothy Seidelmann, advocating for the effectiveness of the treatments. They argued that the ESIs and RFNs provided significant relief and improved the employee's ability to function, even though they exceeded standard treatment parameters. The employee sought payment of medical bills and reimbursement of out-of-pocket expenses. Compensation Judge Bateson denied the employee's claim for payment of the treatments on the grounds that the ESIs and RFNs are not reasonable and necessary treatment, are outside the applicable treatment parameters, and do not qualify for exception. The WCCA (Judge's Milun, Sundquist and Christenson) affirmed in part and remanded, in part, and the remand being stayed for 60 days. On appeal, the employee argued that the judge erred in concluding that the treatments did not meet the departure criteria or qualify for a rare case exception. The WCCA upheld the compensation judge's decision, emphasizing that "progressive improvement" in symptoms, as required by the departure criteria, requires that the disputed treatments be shown to have provided a cumulative degree of lasting improvement. The intermittent relief provided by the treatments did not meet this standard. Additionally, the court affirmed that the case did not qualify for a rare case exception because the treatments were deemed not reasonable and necessary. The Court noted that the judge explicitly found the therapeutic injections were not reasonable and necessary treatment, relying on the opinion of Dr. Gurin, and that this finding was not appealed. However, in what should be considered cautionary dicta, the Court expressed concerns about the rigid interpretation of treatment parameters in recent cases. The Court specifically cited to the Decisions of the Minnesota Supreme Court in *Johnson v. Darchuks Fabrication, Inc.*, 963 N.W.2d 227 (Minn. 2021); *Leuthard v. Indep. Sch. Dist. 912-Milaca*, 958 N.W.2d 640 (Minn. 2021); and *Sullinger v. KIW Constr.*, No. WC22-6489 (WCCA April 21, 2023). The Court emphasized its belief that the Treatment Parameters are intended to be a "flexible guide" for compensation judges. In this case, the Court noted that the employee had spent three decades seeking pain relief, that he discontinued his use of opioids, and that the treatment, even if beyond the treatment parameters, allowed him to keep working, which is a core policy of the Workers' Compensation Act, and could present a rare case exception. The Court stated that, "in cases such as this, non-compliance better achieves the objectives of the workers' compensation system than strict compliance with the treatment parameters." It seems, therefore, that if the Finding that the treatment was not reasonable and necessary had been appealed, the Court would have determined that a rare case exception should be found. The Court remanded the issue of reimbursement for a heating pad prescribed, as the compensation judge had not made a determination on this claim. This remand was stayed because, following oral argument, the parties advised the Court that the employer and insurer agreed to pay for the heating pad.

Hoodie v. Wells Concrete, Inc., File No. WC23-6509, Served and Filed October 6, 2023. The WCCA (Judge's Quinn, Milun and Christianson) affirmed Compensation Judge Lund's award of L4-S1 revision fusion surgery. The Court discounted the argument that awarding PTD benefits and surgery were inconsistent, given that the employee could improve after fusion surgery, impacting his employability. The Court emphasized the obligation to provide necessary medical care, and that an injured employee's work ability neither compels nor precludes additional medical care, surgical or otherwise. The Court also upheld the compensation judge's reliance on Dr. Garvey's opinion, despite the argument that this opinion relied upon the erroneous conclusion of significant relief from a transforaminal injection, indicating the need for

surgery due to pseudoarthrosis. The Court noted that the positive effects of the injection only dissipated after a 300-mile drive from his home to his workers' compensation hearing. The Court concluded that substantial evidence supports the award of surgery.

For additional information regarding this case, please refer to the "Permanent Total Disability" and "Procedural Issue" categories.

McKissic v. Bor-Son Construction, Inc., File No. WC23-6528, Served and Filed February 14, 2024. The Employee, Allen McKissic, sustained severe injuries when he fell from scaffolding in 1999. His diagnoses included cauda equine syndrome, L4 burst fracture, left ankle fracture, right Colles fracture, and neurogenic bowel and bladder. He was 34 years old on the DOI. Upon his release from the hospital, his parents cared for him, and the employee was deemed entitled to permanent total disability benefits in 2001. Following a 2005 hearing, a compensation judge ordered payment of nursing services to be made directly to the employee's parents. The employee received nursing services from his mother and father until their deaths. The employee then moved to Las Vegas, Nevada to reside with his brother, Anthony McKissic. His brother provides identical nursing services to which his parents did. After the death of the employee's father, the employer discontinued payment for nursing services. The employee filed a medical request for payment of nursing services provided by his brother. In April 2022, the Compensation Judge Pham awarded the brother-provided nursing services from February 2018 and ongoing. This order did not specify to whom payment should be made, nor was the brother served with a notice of right to intervene. The employer/insurer made a direct deposit into the employee's account for the amount of nursing services - $79,067.77. A few weeks after this deposit was made, defense counsel asked the employee's attorney to whom the benefits should be paid, and the employee's attorney responded that they should be paid to the brother. A few additional deposits were made in the employee's bank account, and then, in August 2022, the employer/insurer began paying the employee's brother a monthly sum. The brother then hired an attorney to determine why the payments for services beginning in 2018 had not been paid, and, in September 2022, filed a motion for a determination that he had not received a notice of right to intervene. The employer/insurer then filed a petition to discontinue, seeking reimbursement from the employee for the money directly deposited into his account, contending that the money was received in bad faith. Compensation Judge Pham determined that the employee knew the direct deposits were going into his bank account were payment for the nursing services provided by his brother and that the employee had paid his brother $27,500.00. She made no finding that the receipt of the payments was not in good faith, but, she did find that no overpayment had occurred. Further, she found that the failure to place the employee's brother on notice did not materially prejudice him because he had participated in the hearing. The Employee's brother appealed, and the WCCA (Judges Christenson, Milun and Quinn) reversed. On appeal, the employee's brother argued that the payments the employee received constituted an overpayment. The Court noted that when the deposits were made in the employee's bank account, he was not provided with any guidance or information that the funds were meant for his brother. It was noted that the employee testified that he did not know that the funds were meant for this brother. It was further noted that the record showed that the employee had difficulty managing his finances and required assistance in paperwork and bill paying, and that when his parents were providing services, payment was issued directly to them. However, the judge found that the employee knew that the deposits were meant for his brother, therefore no overpayment occurred. The Court cited Minn. Stat. § 176.179, stating that an overpayment can be recouped if the employee received it in good faith and without fraud or knowledge of the mistake. The Court found that the judge's determination lacks substantial evidence to support the conclusion that the employee knew that the payments were for his brother's services when they were made. Therefore, the WCCA reversed the determination that there was not an overpayment, and found that the employer and insurer have a right to recoup the overpayment against the employee's future benefits. The Court ordered the employer and insurer to pay to the brother, the amounts previously deposited in the employee's account, for the services between 2018 and 2022, less the amount the employee already paid to his brother, and to pay the brother directly, on an ongoing basis.

Peterson v. NSP/Xcel Energy, File No. WC23-6520, Served and Filed March 27, 2024. The employee, Daniel Peterson, sustained an injury to the low back on May 4, 1980, while working for Northern States Power, now Xcel Energy. He moved to Florida in 1984 and has resided there since. Following the work injury, he continued to experience ongoing low back pain and his symptoms continued to worsen into the 2000s. By 2021, his symptoms included ongoing low back

pain, weakness, urinary incontinence, right foot numbness, and sensation changes to the right leg. The employer paid temporary total disability benefits from DOI to May 2020, when the parties entered into a settlement. They stipulated that the employee was permanently and totally disabled since the DOI, and temporary total disability benefits would be converted accordingly. No other benefits were closed out. Thereafter, the employee brought a claim for family nursing services dating back to 1989. There was a dispute regarding the onset of potential liability for the family nursing services, as well as a dispute regarding the value of the nursing services. Compensation Judge Daly awarded family-provided nursing services from 1989 through December 31, 2022 as valued by the employer and insurer's expert, and awarded six hours per day of services going forward. The employee appealed valuation of the family-provided services and denial of penalties, and employer appealed the date of permanent total disability and the retroactive award of family-provided nursing services. The WCCA (Judges Carlson, Quinn and Christianson) affirmed the compensation judge's determinations. The WCCA found that, per the language in the stipulation for settlement, which stipulates that "the employee has been permanently and totally disabled since the date of injury", the employee was adjudicated permanently and totally disabled on the DOI, thereby opening up the availability of services back to the date of injury, not just from the date that the parties entered into the agreement. As for nursing services, the compensation judge adopted the opinion of an expert testimony at hearing. A key difference in the valuation provided by the various experts was that the employee's expert valued the services at an hourly rate for agency –provided care. However, the employer and insurer's expert did not think that using an agency rate was appropriate as it incorporates business overhead a family member would not incur and also a profit margin. The hourly rate she used was based on the United States Bureau of Labor and Statistics, which provided median wage rates based upon the employee's geographical location. The Judge adopted these opinions, and the WCCA affirmed. The Employee argued that Minn. Stat. §176.135, subd. 3 requires use of the agency rate. The WCCA disagreed, finding that the statute does not require that the value of family nursing services by agency or replacement rates. It simply provides that the limit of the employer's liability is what it would cost the employee to replace that service in his community. Finally, the Court noted that the employee failed to raise the issue of penalties on appeal, and it cannot be considered.

Hall v. Medina Golf & Country Club, File No. WC23-6540, Served and Filed April 23, 2024. The employee sustained an admitted injury to his low back on May 9, 2022, including a large disc herniation at L3-4. Following the injury, the employee developed significant weakness in his right quadriceps, which was not substantially alleviated following low back surgery. Ultimately, the employee was referred to iSpine, which recommended a plethora of treatment considerations, including spinal cord stimulator, medial branch block, and radiofrequency ablation. In addition, iSpine recommended specialized physical therapy, the MexEx program, at iSpine. The employee underwent a transforaminal epidural steroid injection, which worsened his symptoms. The employer and insurer's IME agreed that the work injury was a substantial contributing factor to employee's condition. However, the IME opined that no further medical care was "necessary to prevent further deterioration" of the employee's condition attributable to the work injury. The employee filed a Claim Petition seeking payment for medical care, in particular, the MedEx program. Compensation Judge W. Marshall awarded payment of outstanding medical bills, including for the epidural steroid injection, and gabapentin prescription, and for payment for the therapy at iSpine. The WCCA (Judges Quinn, Sundquist and Christenson) affirmed. The employer and insurer had appealed, arguing that, pursuant to the IME opinion, further care would not help prevent deterioration of the employee's condition, and, the employee's failure to improve with PT to-date, the ESI, or to gain benefit from the gabapentin indicated that it was not reasonable and necessary. The WCCA noted that whether care will prevent further deterioration of a condition is not a factor in the standard for determining whether treatment is reasonable and necessary. Further, the WCCA noted that there was some evidence of limited relief from the prior treatment, and that the proposed treatment with iSpine was different. Ultimately, the Court also noted that it will defer to a compensation judge's choice between two adequately founded medical opinions. *Nord v. City of Cook*, 360 N.W.2d 337 (Minn. 1985).

Machado Rivera v. Installed Building Products, File No. WC23-6538, Served and Filed May 6, 2024. (For additional facts, refer to the summary of this case in the "Causal Connection" section.) The employer and insurer argued that the proposed plan for 24 dental implants was not reasonable and necessary given the employee's history of poor dental hygiene and concern about his ability

to properly care for the implants. In addition, while dentures would cost approximately $15,000.00, the implants were estimated to cost more than $100,000.00. Compensation Judge Bouman awarded the full-mouth dental implants, and the WCCA (Judges Carlson, Sundquist and Quinn) affirmed. While acknowledging that the employer and insurer raised valid complaints, the court concluded that determinations regarding reasonableness and necessity of medical treatment are factual questions for the compensation judge. *See Hopp v. Grist Mill,* 499 N.W.2d 812 (Minn. 1993). In addition, the court noted that, while opining that the treatment plan was elaborate and excessive, the IME agreed that it was a reasonable option.

For additional information regarding this case, see the "Causation" and "Rehabilitation" categories.

Permanent Total Disability

Hoodie v. Wells Concrete, Inc., File No. WC23-6509, Served and Filed October 6, 2023. The Employee suffered an injury to his low back while working for employer on May 9, 2019. The Employee underwent extensive medical treatment, and the nature and the extent of the injury was the subject of a prior Findings and Order. The current litigation is related to whether the Employee is permanently and totally disabled, and, the reasonableness and necessity of proposed revision fusion surgery. Compensation Judge Lund found the employee permanently and totally disabled since September 7, 2019, and that the proposed L4-S1 revision fusion surgery was reasonable and necessary. The WCCA (Judges Quinn, Milun and Christianson) affirmed. On appeal, the court found substantial evidence supporting the compensation judge's determination, considering factors like the employee's inability to work, limited education, rural location, and vocational experts' testimonies. Despite potential future employment prospects, the employee's current and foreseeable condition justifies PTD benefits. The Court found that the evidence in the case could have sustained a different finding, but that, substantial evidence supported the compensation judge's conclusions. Regarding the decision not to reopen the record, the court found insufficient evidence to demonstrate an abuse of discretion by the compensation judge, as the new evidence provided was not substantively different from those is his prior assessment, which were already admitted into evidence.

For additional information regarding this case, please refer to the "Medical Issue" and "Procedural Issue" categories.

Trebil v. Legacy Assisted Living, File No. WC23-6518, Served and Filed December 19, 2023. The WCCA (Judges Carlson, Milun and Sundquist) affirmed Compensation Judge Wolkoff's determination that the employee is permanently and totally disabled, but, vacated and remanded for further findings the determination of the onset date of PTD. The employee was hired by Legacy Assisted Living in 2019 as a CNA for 32 hours per week. On February 22, 2020, the employee slipped and fell, landing on her outstretched hands, while taking a resident's garbage to the trash bin. She subsequently underwent significant treatment, including multiple surgeries. At various times, post-injury, the employer was able to accommodate the employee's restrictions, which included limitations on multiple types of activities, and limitations on how many hours per day, and days per week, she could work. Ultimately, the employee was terminated on June 20, 2022 because the employer could not accommodate her restrictions. The employee was involved in a formal job search from August 31 through October 27, 2022. The QRC then opined that the employee was permanently and totally disabled from a vocational standpoint given her restrictions, labor market, education, and work history. An IME agreed that the employee needed restrictions including avoiding highly repetitive wrist motions and prolonged or repetitive hard grasping, but opined that she could work an eight-hour day. The employee's treating physician opined that she was medically unable to participate in gainful employment given her bilateral wrist and hand issues, bilateral knee issues, and increasing depression. The employee filed a claim petition in February 2022 seeking PTD. The compensation judge found the employee to be permanently and totally disabled as of January 20, 2022. The WCCA affirmed the award of permanent total disability. The Court found that there was ample evidence to support this finding by the compensation judge, given that the judge expressly noted that his conclusion indicates that considering only the restrictions from the FCE, as modified by her doctors, the judge would still find the employee permanently and totally disabled. Additionally, total disability relies on an employee's age, training, experience, and type of work available in her community. *Schulte v. C.H. Peterson Constr. Co.*, 278 Minn. 79, 153 N.W.2d 130 (1967). The compensation judge considered these factors, and the Court found the decision supported substantial evidence. The date of permanent total disability as January 20, 2022 was remanded by the WCCA, citing lack of substantial evidence to support this finding. The employee continued to work in some capacity until the employer could no longer

accommodate June 20, 2022. The wage records were not put into evidence, so there was no determination that her earnings between January and June 2022 were insubstantial. The evidence in the record of the extent of her work is insufficient to allow the court to review the determination and the decision of the judge is vacated and remanded for finding of the onset date.

Procedural Issue

Gliske v. Minneapolis Public Schools, File No. WC23-6505, Served and Filed August 2, 2023. Compensation Judge Daly found that the employee did not develop PTSD in 2021 and that the 2017 settlement barred the employee's claims. The WCCA (Judges Sundquist, Quinn and Christenson) affirmed. The employee argued that she suffered a new, separate injury in 2021, such that the settlement does not bar her claim. She argued that the 2021 event was an aggravation of the preexisting PTSD, which should be treated as a new injury. The WCCA rejected that employee's arguments and agreed with the compensation judge. The WCCA noted that any consequential PTSD claim was flowing from the original 2016 injury and any claim related to it had been closed out by the stipulation for settlement. The compensation judge's conclusion that the employee failed to prove that she met the requirements of the statute for a new mental-health injury was supported by substantial evidence.

For additional information regarding this case, please refer to the "Psychological Injury" category.

Hoodie v. Wells Concrete, Inc., File No. WC23-6509, Served and Filed October 6, 2023. The Employer and Insurer moved for an amended findings order, alleging that the treatment notes of Dr. Garvey, from a post-hearing visit, were contrary to the testimony of the employee and the QRC. The compensation judge denied the motion, concluding that evidence, which did not exist at the time of hearing, is not a basis for reopening the record. The WCCA (Judges Quin, Milun and Christianson) affirmed Judge Lund's determination not to re-open the record. The Court did review the new record, which included information specifically contradicting prior information regarding the impact of an ESI, with the impact of that ESI being a factor in a surgery recommendation. The Court acknowledged this difference, but, found that the remainder of the information and opinions in Dr. Garvey's post-hearing record were not substantially different, and were essentially duplicative of what was already before the judge. Therefore, denial of the motion to amend was not an abuse of the compensation judge's discretion.

For additional information regarding this case, please refer to the "Permanent Total Disability" and "Procedural Issue" categories.

Bauer v. Flint Hills Resources, File No. WC23-6513, Served and Filed January 26, 2024. Compensation Judge Grove dismissed Bauer's claim petition with prejudice based on his failure to rebut the retirement presumption. The WCCA (Judges Carlson, Quinn and Christenson) affirmed, noting that dismissal with prejudice did not prevent the employee from filing a subsequent claim to challenge the retirement presumption. While certain claims might be foreclosed under *res judicata* principles, the employee retained the right to pursue future claims on different grounds. Thus, the compensation judge's dismissal with prejudice was not wrongful.

For additional information regarding this case, see the "Retirement" category.

Psychological Injury

Gliske v. Minneapolis Public Schools, File No. WC23-6505, Served and Filed August 2, 2023. The employee was a teacher for Minneapolis Public Schools for 21 years. On January 29, 2016, she was attacked by a physically large and disruptive student. The attack included getting hit in the back and neck with a chair, being kicked, and being bitten. She sought treatment and was diagnosed with low back and neck pain. She was restricted from work for three months, but upon returning learned that the student who attacked her had not been removed from her classroom. In July 2016, she began treatment with David Kearn, who diagnosed PTSD as a result of the incident. In August 2017, the parties entered into a full, final, and complete settlement for the January 29, 2016 injuries. The stipulation specifically listed the injuries as being to the spine, legs, and torso, as well as consequential PTSD and depression. By the fall of 2017, the employee had returned to full-time, unrestricted work and felt that her PTSD symptoms had resolved. On May 14, 2021, the employee was told she suffered a seizure. She continued to have spells, which she described as seizures after this. The employee was hospitalized for evaluation of this condition for seven days, and her condition was considered psychogenic. The employee began seeing a new psychotherapist, Jack Hinrichs, MA, LMFT, who assessed the employee with PTSD, psychogenic nonepileptic seizures, generalized anxiety disorder, and depressive disorder. Mr. Hinrichs opined that the employee's return to the classroom in 2021 following virtual teaching from the COVID pandemic was a substantial contributing factor, which caused her need to stay away from classroom teaching. The employee testified that she suffered from anxiety

upon returning to in-person work, due to having asthma and being at high risk for COVID-19 complications. The employee was evaluated by Dr. Steven Lesk on December 24, 2021. He diagnosed PTSD and depression, and prescribed medication and ongoing psychological therapy. Nicole Slavic, Psy.D, LP, conducted a psychological evaluation and opined that the employee met the DSM-5 criteria for PTSD. She further opined that the return to the classroom in April 2021 was a substantial contributing factor that caused or aggravated the employee's PTSD symptoms, and that the employee was disabled from employment as of June 17, 2021. Dr. Thomas Gratzer examined the employee and issued a report on May 13, 2022, which opined that the employee had not developed PTSD in 2016 and that she did not meet the criteria for such. He also opined that she did not develop PTSD in 2021. The employee filed a claim petition claiming that on June 17, 2021 she sustained an occupational disease in the form of PTSD, which resulted in ongoing TTD and medical treatment. Compensation Judge Daly found that the employee did not develop PTSD in 2021 and that the 2017 settlement barred the employee's claims. The WCCA (Judges Sundquist, Quinn and Christenson) affirmed. On appeal, the employee argued that substantial evidence does not support the judge's determination, as nine experts supported her claim, and there was only one medical expert supporting the contrary position. The Court found that the compensation judge did not abuse his discretion in relying on Dr. Gratzer's opinion. Dr. Gratzer reviewed the employee's medical history and records, examined the employee, and was licensed, and thus did not lack the foundation or credentials needed to render an expert opinion. *Nord v. City of Cook*.

For additional information regarding this case, please refer to the "Procedural Issue" category.

Martinez-Cruz v. Metro Transit Police and Metro. Council, File N. WC23-6523, Served and Filed January 26, 2024. The employee worked as a peace officer for the Metro Transit Police Department beginning in 2013. The decision indicates that his duties often exposed him to potentially traumatic situations, including encounters with individuals engaged in threatening or assaultive behavior, pursuits, and the aftermath of incidents resulting in serious injuries or fatalities. Two incidents, in particular, stood out: Around 2014 or 2015, the employee responded to a scene where a woman had been struck by a light rail train. He described this incident as traumatic and involving severe injuries. In 2017 or 2018, he responded to another scene where a bicyclist was killed in a train accident. Although the deceased did not show visible signs of trauma, the employee noted the emotional impact of seeing the deceased's family members arrive. The employee reported multiple left knee injuries while pursuing people fleeing arrest. He reported that, while working during the civil unrest following the murder of George Floyd, he was directly subjected to verbal abuse and had objects thrown at him. In 2019 and 2020, the employee treated for sleep apnea and insomnia, with no mention of PTSD. The employee had a long history of substance abuse, which resulted in two incidents that led to disciplinary action by the employer, and after the second event was put on administrative leave. In 2021, the employee began seeing a therapist through the employer's employee assistance program. During one of these sessions, he mentioned that he was considering a claim for PTSD. He then began seeing psychologist Robert Hoppe, whose diagnosis included "likely" PTSD. The employee was terminated in June 2021 following disciplinary findings. On June 15, 2021, Dr. Slavik conducted a psychological evaluation and opined that the employee required treatment for PTSD and mild alcohol use disorder. The Employee filed a claim petition in March 2022 seeking temporary total and temporary partial disability benefits in addition to medical benefits. Paul Arbisi, L.P., conducted an independent psychological evaluation of the employee on behalf of the employer, and opined that the employee had longstanding alcohol abuse, unrelated to his work, and that the employee did not meet the criteria for PTSD. Dr. Hoppe provided a report in November 2022 opining that the employee met the PTSD criteria and that the employee has made progress but has ongoing symptoms. Dr. Arbisi's opinion was unchanged by this, citing that Dr. Hoppe used generic symptoms of PTSD, which were insufficient to make a determination. The WCCA (Judges Sundquist, Quinn and Carlson) affirmed Compensation Judge Surges' determination that the employer rebutted the presumption of PTSD as an occupational disease under Minn. Stat. §A176.011, subd. 15(e). The employee argued that Dr. Arbisi's opinion lacked foundation, emphasizing that the judge erred in accepting it. However, the Court noted that the judge's reliance on Dr. Arbisi's assessment must be upheld unless the opinion lacks adequate foundation. *Nord v. City of Cook*. Dr. Arbisi's critique of another expert's diagnosis did not invalidate his own opinion. Further, the WCCA found no foundational defects in Dr. Arbisi's opinion, supporting the judge's decision. It affirmed that Martinez-Cruz's PTSD resulted from disciplinary action, rendering his claim noncompensable.

Rehabilitation

Anderson v. Westmor Industries, File No. WC22-6500, Served and Filed June 26, 2023. The vast majority of the issues in this matter dealt with the nature and extent of the injury, and the WCCA (Judges Sundquist, Milun, and Quinn) affirmed Compensation Judge Bateson on those issues. One of the other issues appealed was the award of certain portions of the vocational rehabilitation charges. Specifically, the employer and insurer argued that the QRC should not be paid for traveling by car to visit the employee in-person, when the QRC could have met with the employee by phone or virtually. The WCCA was not persuaded and affirmed the award of payment of the bills. They noted that the R-3 specifically contemplated travel expenses as part of the approved program, and that since the inception of the services the QRC conducted in-person meetings. Further, the employer and insurer did not object to the in-person travel expenses, therefore, the QRC acted appropriately.

Machado Rivera v. Installed Building Products, File No. WC23-6538, Served and Filed May 6, 2024. (For additional facts, refer to the summary of this case in the "Causal Connection" section.) Compensation Judge Bouman awarded rehabilitation benefits, in the form of medical management. The WCCA (Judges Carlson, Sundquist, and Quinn) reversed. The court noted that the judge found that the employee had no lost wages or job assignments due to the injury, that he was still employed by the date of injury employer, and that he was working without restrictions or wage loss. In order to receive rehabilitation benefits, an injured worker must be determined to be a "qualified employee" pursuant to the definition found in Minn. R. 5220.0100, subp. 22. In order to meet this standard, the claimant must be permanently precluded or is likely to be permanently precluded from engaging in their usual and customary occupation; cannot reasonably be expected to return to suitable gainful employment with the date-of-injury employer; and can reasonably be expected to return to suitable gainful employment through the provision of rehabilitation services. In this case, the evidence did not support that the employee met the standard to obtain rehabilitation services, and, therefore, the award of these services was reversed.

For additional information regarding this case, see the "Causal Connection" and "Medical Treatment" categories.

Retirement

Bauer v. Flint Hills Resources, File No. WC23-6513, Served and Filed January 26, 2024. The employee worked as a production specialist at an oil refinery operated by employer for almost a decade. On June 6, 2016, at the age of 60, he sustained a right knee injury. He underwent surgery and was given permanent restrictions. The employer was unable to accommodate these restrictions, so the employee received long term disability benefits and later began receiving social security benefits. In October 2019, the parties entered into a stipulation for settlement including an agreement for payment of permanent total disability (PTD) benefits until the employee's 67th birthday on June 26, 2022. At that time, the insurer discontinued the benefits based on the retirement presumption under Minn. Stat. § 176.101, subd. 4. The employee filed a claim petition for reinstatement of PTD benefits, asserting that he rebutted the presumption and was entitled to benefits through age 72. The employee reported that he and his wife found it more difficult to pay expenses after the discontinuance. Compensation Judge denied the claim for PTD benefits, finding that the employee did not rebut the retirement presumption. Factors like expressed intent to retire, applying for Social Security benefits, financial arrangements for retirement, lack of pursuing additional income sources, and no pursuit of part-time work were considered. Despite financial arrangements for retirement, the employee claimed financial difficulties, but the judge noted they still had $1,000 left each month after necessities. Notably, the employee had not looked for work or sought additional assistance, leading to the conclusion of retirement. The WCCA (Judges Carlson, Quinn and Christensen) found the judge's decision was based on substantial evidence and was affirmed. The WCCA reviewed the compensation judge's analysis of the above factors, finding that substantial evidence supported the judge's conclusions that: the employee could have engaged in a job search if there was substantial financial need; they could have asked their financially independent adult son (who lives with the employee) to contribute financially if there was substantial need; and that the employee's original plan was to retire at age 67.

For additional information regarding this case, see the "Procedural Issues" category.

Temporary Partial Disability

Helander v. The Evangelical Lutheran Good Samaritan Society, File No. WC23-6531, Served and Filed March 28, 2024. The employee is a 77-year-old woman who began working for the employer as a part time nurse in 2002. She did four eight-hour shifts every two weeks. On August 22, 2020, the employee suffered a right shoulder injury, which

was admitted. A November 2020 MRI showed a massive full-thickness tear of the rotator cuff involving the entire distal supraspinatus and infraspinatus tendons, high-grade tearing of the upper to mid-central fibers of the subscapularis, supraspinatus and infraspinatus muscle atrophy, moderate acromioclavicular joint osteoarthritis, and rupture of the long head biceps tendon. She was given work restrictions. An IME was completed by Dr. Raskoff in January 2021, who opined that the employee's work injury caused tearing of the upper border of the subscapularis tendon and rupture of the long head of the bicep tendon. He further opined that the massive rotator cuff tear was unrelated to the work injury, and that right shoulder replacement was necessary but not work related. The surgery was performed in March 2021, and restrictions were issued several months later. The employer could not accommodate these restrictions. In October 2021, Dr. Gannon issued permanent restrictions, limiting her to light duty work. He opined that she had reached MMI. She eventually began a job in December 2021 as a part-time card merchandiser with American Greeting. This was within her restrictions. The QRC conducted a vocational evaluation and opined that the employee could do more to remedy her earning loss, and did not consider her current position to be economically suitable. The employee continued to job search but received no offers. Compensation Judge Lund awarded all of the employee's claims, including wage loss benefits, medical benefits, and PPD. The employer and insurer appealed the award of temporary partial disability benefits. The WCCA (Judges Milun, Quinn and Carlson) affirmed. The employer and insurer argued that the employee's loss of earning capacity is not related to the work injury and that they rebutted the presumption that the employee's actual earnings are representative of her earning capacity. The employer and insurer argued that the employee's actual earnings constitute only insubstantial income, which does not reflect her actual earning capacity. The Court noted that the employee worked part-time prior to the injury, therefore, it was not unreasonable for her to work part-time post injury. Additionally, the employee fully cooperated with rehabilitation services and diligently searched for jobs. She even requested more hours at her current position. Therefore, there is substantial evidence to support the compensation judge's decision and the employer and insurer did not rebut the presumption that the employee's actual earnings represented her earning capacity.

Vacation of Award

Sullivan v. Sullivan Painting, File No. WC22-6491, Filed and Served September 6, 2023. The employee suffered a severe pilon fracture of his left ankle and distal tibia in 1992 while working for his painting business. Following surgeries and rehabilitation, he reached maximum medical improvement (MMI) by 1994, with a 12 percent permanent partial disability (PPD) rating. In 1998, he settled with his employer for $72,000.00, claiming temporary partial disability (TPD) benefits, PPD benefits, and rehabilitation services. Over the years, the employee's condition worsened significantly. In 2007, he was diagnosed with an infected nonunion left tibia, leading to further surgeries, hardware removal, and complications. His ability to work decreased, and, by 2017, medical opinions deemed him unable to engage in any type of employment due to his left ankle condition. On January 29, 2021, Dr. Mark Gregerson examined the employee at the request of the employee's attorney. He opined that the employee had been permanently and totally disabled since 2007 as the result of infected nonunion and subsequent infections, which led to a severe collapse of the hardware, alteration of gait, degenerative changes to other body areas, and multiple surgeries, none of which could not have reasonably been anticipated at the time of settlement. He rated the employee 4.5% PPD for the leg discrepancy and 4% PPD for the left ankle. In 2022, Sullivan petitioned to vacate the 1998 settlement, citing a substantial change in his medical condition not reasonably anticipated at the time of the award. Dr. Wicklund performed an IME in January 2023 for the employer/insurer. He rated the employee 3% PPD for the left leg and 3% PPD for the left ankle. Dr. Wicklund opined that treatment to the right hip, right great toe, left little toe, and low back were not causally related to the 1992 injury. The employee filed a Petition to Vacate, based upon an unanticipated substantial change in his condition. The WCCA (Judges Christenson, Milun and Sundquist) granted the Petition. The WCCA considered several factors, including a change in diagnosis, change in ability to work, additional PPD, necessity of more costly medical care, causal relationship between the injury and current condition, and contemplation of the parties at the time of settlement. The court found that the employee's left ankle condition had indeed worsened since the settlement, supported by medical records and opinions. Despite initial work after the settlement, subsequent medical opinions concluded he was unable to engage in significant employment due to his left ankle condition. The court also noted the increased PPD rating and extensive post-settlement surgeries and medical care, indicating a substantial change in condition. Regarding the contemplation of the parties, the settlement did not

anticipate the employee's current state of permanent total disability. Finally, the court found a clear causal relationship between the employee's current condition and the 1992 work injury, as subsequent complications stemmed from the initial fracture and treatment. Based on these findings, the court granted the employee's petition to vacate the 1998 settlement, acknowledging the substantial change in his medical condition not reasonably anticipated at the time of the award.

Strege v. Com. Drywall, Inc., File No. WC23-6507, Served and Filed November 15, 2023. The employee was pushed by a co-worker and fell backwards against a wall, striking his head and left shoulder. The pro se employee sought temporary total disability benefits, which, at a September 2006 hearing, a compensation judge awarded payable through July 15, 2004. The compensation judge found that the employee suffered only a temporary strain to his neck, which healed July 15, 2004. The judge also found that the employee did not show his claimed traumatic brain and emotional injuries were caused by the work incident. No appeal was made by the employee. The employee filed an amended claim petition in June 2012 seeking benefits for claimed traumatic brain and neck injuries on March 18, 2004. These were dismissed in August 2012 based on lack of jurisdiction to reconsider the order. The employee did not appeal the dismissal. In June 2022, the employee (still pro se) filed a petition to vacate the 2006 findings and order. In October 2022, the WCCA dismissed that petition to vacate, without prejudice. This was appealed to the Minnesota Supreme Court, who in January 2023 dismissed the appeal for failure to timely file the petition for writ of certiorari. In March 2023, the pro se employee filed the current petition to vacate the 2006 findings and order based on substantial change in medical condition or that he was incompetent due to traumatic brain injury to represent himself in 2006. An IME was performed by Dr. Manuel Gurule, at the request of employer/insurer. This included review of the employee's medical records. Dr. Gurule concluded that the employee showed no sign of neurological impairment or disability related to the employee's work injury. Dr. Gurule diagnosed psychotic disorder unrelated to the work injury. The WCCA denied the petition to vacate. In assessing the employee's petition, the WCCA clarified the limited grounds under Minn. Stat. § 176.461, including a change in diagnosis, a change in the employee's ability to work, additional permanent partial disability, necessity of more costly medical care than initially anticipated, causal relationship between the injury covered by the settlement and the employee's worsened condition, and contemplation of the parties at the time of settlement. Regarding a change in diagnosis, the court found no evidence to support a change in diagnosis, considering that the employee's medical records contradict the employee's claim. Similarly, the employee's inability to provide information linking his current total disability to the work injury weakened his case. No evidence of increased permanent partial disability or significant medical care post-2006 supported vacating the Findings and Order. Furthermore, the absence of medical evidence establishing a causal relationship between the claimed traumatic brain injury and emotional injuries and the work incident undermined the employee's petition. Additionally, the employee's assertion of mental incompetence at the time of the hearing lacked corroborating evidence from medical professionals or lay witnesses, leading to the denial of the petition.

This decision was affirmed, without opinion, by the Minnesota Supreme Court on May 30, 2024.

Melius v. ACME Tuckpointing & Restoration, Inc., File No. WC23-6516, Served and Filed December 22, 2023. The Employee, a 57-year-old laborer, sustained two work-related injuries while working for the employer, a self-insured employer participating in the Union Construction Workers' Compensation Program. In July 2011, the employee suffered an injury to his left elbow and left shoulder when he struck the side of a building after nearly falling from scaffolding. He underwent tendon surgery in 2011, developed CRPS, and experienced pain symptoms thereafter. On July 28, 2011, the employee was struck on the head with a piece of sheetrock that had fallen from above. He was rendered unconscious. This injury led to a concussion and brain injury. After extensive treatment, including cervical spine surgeries in 2015, the employee reached a settlement with the employer in late 2015, receiving $175,000 for full, final, and complete settlement, with the exception of future medical. He was 50 years old at the time of settlement. He experienced worsening pain symptoms, leading to additional surgeries and significant medical expenses. In 2022, he underwent cervical spine surgery, resulting in quadriplegia/quadriparesis and reliance on a wheelchair. This reliance was found to be permanent in May 2023. The employee filed a petition to vacate the 2015 settlement, arguing a substantial change in his medical condition that was not anticipated at the time of settlement. The WCCA granted the petition. The WCCA evaluated the *Fodness* (*Fodness v. Standard Cafe*,

41 W.C.D., 1054 (WCCA 1989)) factors in supporting reevaluation of benefits. The employer admitted that the employee meets a change in diagnosis, additional permanent disability, and the existence of a causal connection between the work injury and the employee's current condition. The employer further admitted that the employee has incurred costly and extensive medical care, but notes that the weight of this factor should not be considered heavily because medical benefits were left open in the settlement. The WCCA determined that there was a change in the employee's ability to work because he was able to maintain part time employment at the time of settlement, but is currently unable to perform even many activities of daily living. The WCCA also determined that the second surgery and its catastrophic outcome could not have been reasonably foreseen at the time of settlement, as the extent of his condition could not have been foreseen. Finally, the court determined that the settlement amount did not rise to such a level as to negate the *Fodness* factors. Therefore, the Petition was granted.

Lykins, by George Duranske, v. Anderson Contracting, Inc., File No. WC23-6532, Filed and Served March 8, 2024. The employee, Bobby Lykins, was working as a driver for the employer when he sustained a traumatic brain injury, major facial fractures, injuries to his ears, injury to his upper body, and injury to his upper back on September 23, 2015 after an explosion. After the accident, Lykins was represented by Attorney Van R. Ellig. Lykins was moved to various care facilities, and evaluations by medical professionals indicated severe impairments in cognitive function and behavior as a result of the traumatic brain injury. The employer and insurer admitted liability for the injuries and paid temporary total disability benefits, medical expenses, and nursing services. Disputes arose regarding the extent of home nursing care needed, leading to a home care evaluation at the request of the employer and insurer in September 2016, which recommended 25.45 hours per week of supervision and assistance due to cognitive deficits. On November 28, 2016, a notice of maximum medical improvement was filed based on a report from Dr. Heuer, indicating the need for continuous supervision and personal care. A notice of intention to discontinue temporary total disability benefits was filed in February 2017, after the Social Security Administration determined that Lykins was disabled and entitled to benefits. In February 2017, Dr. Odland conducted a neuropsychological re-evaluation of the employee, and found that the employee's general cognitive function had improved but that the employee continued to have serious impairment related to executive functioning. Dr. Odland opined that the employee will require 24/7 supervision and support on a long-term basis. A settlement was reached for $438,000.00, which was a full, final, and complete settlement excluding future medical.

The Stipulation specifically closed out nursing services whether performed by a family member or by a custodial service. The Employee's attorney was paid a $93,000.00 excess fee out of the settlement. This was submitted to the Office of Administrative Hearings and approved by a compensation judge in May 2017. No medical records were included. Apparently, there was an additional stipulation, of some type, in 2018, but the nature of this stipulation is not discussed in the record. In 2022, Attorney John Bailey petitioned for the appointment of a conservator for Lykins, which was approved by the district court. The conservator then filed a petition to vacate the awards, alleging that Lykins appeared to be incapacitated at the time of the settlements, and that relevant medical reports were deliberately withheld from the compensation judge, and, had the judge seen the reports, would have referred the matter to the district court for appointment of a conservator. Minnesota law mandates that agreements to settle claims are not valid if a conservator is required for an incapacitated employee. The Court found that the evidence presented raises significant questions about Lykins' capacity at the time of the settlements, particularly regarding his ability to make personal decisions. There appears to be no dispute that the employee was unable to meet his own physical needs at the time of settlement, which is one prong of the definition of an incapacitated person under Minn. Stat. § 524.5-102, subd. 6. As a result, the case is referred to the chief judge of OAH for assignment to a compensation judge to make specific findings of fact regarding Lykins' capacity at the time of the settlements and whether the employee appeared to be incapacitated under Minn. Stat. §524.5-102, subd. 6, <u>at the time of the stipulations</u>. (Emphasis in original). If Lykins is found to have appeared incapacitated, the matter will be referred to the district court for further determination. The WCCA will then consider the petition to vacate. If the compensation judge finds that the employee did not appear to be incapacitated at the time of the settlements, the judge will return that finding to the WCCA. ✦

Arthur Chapman's Workers' Compensation Update is published by the attorneys in the Workers' Compensation Practice Group to keep our clients informed on the ever-changing complexities of workers' compensation law in Minnesota.

The experience of our workers' compensation attorneys allows them to handle all claims with an unsurpassed level of efficiency and effectiveness. Contact any one of our workers' compensation attorneys today to discuss your workers' compensation claims needs.

500 Young Quinlan Building
81 South Ninth Street
Minneapolis, MN 55402
Phone 612 339-3500
Fax 612 339-7655

811 1st Street
Suite 201
Hudson, WI 54016
Phone 715 386-9000
Fax 715 808-0513

ArthurChapman.com

Disclaimer

This publication is intended as a report of legal developments in the workers' compensation area. It is not intended as legal advice. Readers of this publication are encouraged to contact Arthur, Chapman, Kettering, Smetak & Pikala, P.A. with any questions or comments. ✦

STRONG LEGACY✦STRONGER FUTURE
50 YEARS | Arthur Chapman
Kettering Smetak & Pikala, P.A.
ATTORNEYS AT LAW