SUMMARY OF TOP FIVE

MINNESOTA WORKERS' COMPENSATION CASES

01/01/2020-05/31/2020

By Chris Celichowski

O'Meara, Leer, Wagner & Kohl, P.A.

<u>Aguilar-Prado v. W. Zintl Construction</u>, (WCCA 05/15/2020)

https://mn.gov/workcomp-stat/2020/Aguilar-Prado%20-%2005-15-20.html

The parties litigated this case under the Union Construction Workers' Compensation Program (UCWCP). Employee worked as a drywaller/taper for the employer. At the end of his workday, he left the construction site through one of three gates abutting the street. There was no designated parking area for workers. As he exited one of the gates, using the gate used by most of the other workers on the worksite, he stepped into a street abutting the worksite and walked diagonally down the street toward his vehicle. While doing so, the passenger side mirror of a passing truck hit him on his left arm.

The employee alleged he sustained injuries to his left shoulder, low back and neck arising out of and in the course of employment. The employer alleged the injuries did not arise out of and in the course of employment, disputed the nature and extent of the work injuries and denied they were causally related to the work incident. The UCWCP arbitrator concluded the employee sustained a left shoulder injury arising out of and in the course of employment. The arbitrator also found his alleged neck and back injuries were not causally related to the work incident. She awarded TTD benefits and medical expenses related to the left shoulder condition. The employer/insurer and the employee appealed.

The Minnesota Workers' Compensation Court of Appeals (WCCA) affirmed the arbitrator's decision that the left shoulder injury arose out of and in the course of employment and her assessment of the case as a safe ingress-egress case. They also affirmed her conclusion that the employee's alleged neck and low back conditions were not causally related to the work incident.

However, *they reversed the arbitrator's decision on the nature and extent of the left shoulder injury because the arbitrator concluded she could not rely on the opinion of a physician (Dr. Becker) not on the UCWCP's "Exclusive Provider Organization" (EPO) list of approved physicians. The WCCA concluded that the UCWCP's EPO list only limits which medical providers the employer and insurer must pay but does not limit whether the arbitrator may consider the providers' opinions as evidence. The WCCA*

vacated the arbitrator's decision and adopted the opinions of Dr. Becker that the work incident caused damage to the left shoulder, which required surgery.

Ewing v. Print Craft (Minnesota Supreme Court 01/02/2020)

https://mn.gov/workcomp-stat/sup/Ewing%20-%20sup%2020.html

The employee sustained an admitted injury to his left ankle in December 2015. He claimed he developed CRPS as a consequence of the injury. The employee subsequently began working with a QRC and the employer and insurer paid for rehabilitation benefits. The employer and insurer subsequently obtained an IME, which concluded that the employee sustained a left ankle sprain, but did not have CRPS, and needed only physical therapy treatment. Litigation ensued and the compensation judge, William Marshall, concluded that the employee's left ankle injury resolved as of April 2016, and he did not develop CRPS or any other consequential injury. The compensation judge also denied the QRCs request for payment of rehabilitation bills after the left ankle injury resolved in April 2016.

The QRC appealed to the WCCA. The WCCA reversed the compensation judge, stating that employers and insurers must provide notice and show good cause to terminate a rehabilitation plan, The WCCA concluded the "cutoff date for services" was April 6, 2017, when the employer filed its from rehabilitation request seeking to discontinue rehabilitation services. The employer and insurer appealed to the Minnesota Supreme Court.

The Supreme Court reversed the WCCA. *It concluded the WCCA erred in reversing the compensation's decision and in ordering the employer to pay for rehabilitation services provided after the date his injury resolved*. It reinstated compensation Judge Marshall's finding that the employer did not have to pay for rehabilitation services after April 2016 when the employee's left ankle injury resolved. The Supreme Court concluded the QRC was on notice that the employer/insurer disputed her services long before the employer and insurer filed a rehabilitation request in April 2017. They noted, "By continuing to provide rehabilitation services rather than pursuing other options available to her, including filing her own rehabilitation request for assistance or discontinuing services, she assumed the risk of non-payment."

Gritz v. State of Minnesota Department of Human Services (WCCA 02/04/2020)

https://mn.gov/workcomp-stat/2020/Gritz%20-%2002-04-20.html

In 2018, the employee and a co-employee completed a mandatory training session and began walking back to their desks using a flight of stairs consisting of 10 steps, a landing and 10 more steps. The employee began walking down the right side of the stairwell. His coworker walked on the left side, a couple steps behind. The employee claimed he carried paperwork in his right hand, but his coworker could not verify that.

They reached the landing and the employee began taking a step off the landing down the remaining stairs. He stepped too far and his heel hit the edge of the step. He lost his balance and tumbled down the steps. He sustained injuries to his left shoulder and neck. The employer admitted the incident occurred "in the course of" his employment but denied it "arose out of" his employment. The stairs were not defective and had no obvious other hazards. The case went to hearing and Compensation Judge Baumgarth, relying on the WCCA's decision in Forrest, concluded that the use of the stairwell itself constituted an "increased risk" of employment and therefore the injury arose out of employment.

The WCCA, in a 5-0 decision authored by Judge Quinn, affirmed the compensation judge and *reaffirmed its position that "the use of stairs, in and of itself, creates an increased risk of injury regardless of the condition of the stairs*." (Emphasis added).)

Note: The Minnesota Supreme Court, although given the opportunity, has never explicitly adopted the WCCA's position that the use of stairs *per se* creates an increased risk of injury.

Leuthard v ISD 912 (WCCA) 05-26-2020

https://mn.gov/workcomp-stat/2020/Leuthard%20-%2005-26-20.html

Compensation Judge Kristina Lund concluded facet joint injections for the claimant's admitted cervical spine condition were not reasonable or necessary treatment and exceeded the applicable treatment parameters. The judge also concluded the treatment did not meet the "departure" criteria for the applicable treatment parameter.

In a 2-1 decision, authored by Judge Hall, the WCCA vacated and remanded for reconsideration a compensation judge's conclusion that medical treatment for the claimant's cervical spine condition was not reasonable or necessary to cure or relieve the effects of her injury and did not meet the requirements for the treatment parameter for therapeutic injections for neck pain (MR 5221.6050, subp. 5). The WCCA concluded the compensation judge appropriately analyzed the employee's treatment under the "departure standards" from MR 5221.6050, subp.8 and properly concluded the employee did not meet those standards. However, *the WCCA held that the compensation judge failed to consider the "rare case" exception to the treatment parameters under Jacka. The WCCA also found there was not substantial evidence in the record to support the compensation judge's conclusion that the treatment was not reasonable or necessary to cure the effects of the employee's condition*.

Judge Stofferahn dissented, concluding the compensation judge properly considered the treatment parameters and the evidence and the WCCA should have affirmed her decision.

The Self-Insured Employer is considering whether to appeal the WCCA's decision.

<u>Ouellette v. Wal-Mart Stores, Inc.</u> (WCCA 02/19/2020)

https://mn.gov/workcomp-stat/2020/Ouellette%20-%2002-19-20.html

Employee sustained an admitted left foot injury in 2011. He subsequently developed CRPS and paraplegia. The employer and insurer requested an IME and their IME doctor concluded that, based on the employee's claim for paraplegia, he was entitled to a 75% PPD under MR 5223.0360, subparts 6A and 7E (3)(d). The employer and insurer commenced payment of weekly PPD benefits for 75% PPD. The employee later filed a claim petition seeking payment of his PPD in a lump sum and penalties, because the employer and insurer refused to pay the PPD in a lump sum. The employer and insurer filed a petition to discontinue benefits. The compensation judge heard the claims and concluded that the preponderance of evidence did not support a claim for 75% PPD. The employee appealed to the WCCA, which affirmed, and the Supreme Court, which also affirmed.

In February 2019, the employee filed a new claim petition asserting a whole body rating of 83%, which included the ratings previously given by the IME doctor and additional ratings under different PPD categories. The employer and insurer moved to dismiss the claim petition arguing that res judicata barred the PPD claims. Compensation Judge William Marshall granted the motion, dismissing the claim petition with prejudice. The employee appealed.

The WCCA concluded that res judicata barred the PPD claims based on the 75% PPD ratings given by the IME doctor, but res judicata did not bar the additional claims for PPD based on the different categories of the PPD schedule. The WCCA vacated and remanded the case to the compensation judge for consideration of those new claims.