Case Law Update:
Minnesota Self Insurers Association

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June 3, 2011

***Trautner v. Minnesota State Highway Patrol*, (W.C.C.A. November 12, 2010)** - *Physical disability arising from job-related stress (*Lockwood*).*

In this case, the issue was whether work-related stress had caused post-traumatic stress disorder leading to a purported physical injury to the brain. The Employee was a Minnesota State Highway Patrol officer who was placed on medical retirement leave after 20 years of service. Over his career, he had been subjected to a number of high-stress incidents including the killing and/or suicide of suspects ("suicide by cop"), the deaths of fellow officers, and "gruesome" injuries and death to citizens, including children. He was placed on medical retirement leave after being diagnosed with major depressive disorder and PTSD. In May 2008, he filed a Claim Petition alleging work-related PTSD. At Hearing, the Judge considered extensive evidence and testimony concerning the contribution of the Employee's work activities to his diagnosis of PTSD but, relying on the rule *Lockwood v. Independent School District #877*, found the condition non-compensable[1]. At the Hearing, evidence had been introduced whereby the Employee claimed physical impairments from the PTSD, ranging from headaches and chest pains to probable "physiological changes in the brain." Therefore, the Employee appealed on the basis that he had, indeed, suffered physical injury to the brain resulting in "objectively verifiable impairment". The W.C.C.A. was unconvinced, holding PTSD claims fast to the Lockwood rule. Furthermore, the Court held that if such impairment did exist, there was no evidence it was caused by the alleged chemical changes in the brain.

***Burlingame v. Becker Bros., Inc.*, (W.C.C.A. February 2, 2011)** - *Compensability of injuries arising under the "coming and going" rule.*

Burlingame is another ruling on compensability of time coming and going to work; and a seemingly further erosion of or modification to this rule. The Employee was provided a company-owned van for visiting work sites. Like most employees in these cases, he was allowed to use the van for travelling to and from home; however, he did not get paid for any of these trips. Generally, he was only paid for his time on the job site. Since his job involved overseeing flooring installations, he used the van primarily for loading then delivering supplies and equipment to various job sites and for hauling waste back to the Employer's shop for disposal. On October 15, 2009, he was injured when he was involved in a motor vehicle accident during his trip home from a worksite. An arbitrator ruled that the accident fell under the "coming and going rule" and his injuries were not compensable. In reversing this determination, the W.C.C.A. relied on *Gilbert v. Star Tribune/Cowles Media* and its holding that travelling in the vehicle becomes compensable if the journey itself provides a service to the employer. (In *Gilbert* the "job" was delivering newspapers.)

[1] In *Lockwood*, the Court had determined that mental injuries resulting from job-related mental stress are not compensable. In *Johnson v. Paul's Auto & Truck*, the Court did allow, under a complex test, treatment of physical conditions proven to have been caused by stress.

Although the arbitrator found nothing analogous to *Gilbert* in this case, the Court concluded that the express purpose of transporting supplies and employer-provided equipment in the company van made travelling an element essential to the Employee's job.

***Johnson v. Midwest Precision Machining*, (W.C.C.A. February 16, 2011)** *Procedure: Disqualification/reassignment of the same judge who had ruled previously in administrative conference.*

This case is one of a handful which involves a challenge to the same compensation judge hearing a matter in formal hearing that he/she had ruled upon an earlier administrative proceeding. Here, the W.C.C.A. ruled that the appeal of a denial to remove the judge was interlocutory in nature and beyond their jurisdiction. In *Johnson v. Midwest Precision Machining*, the Employee and Insurer had filed a Notice of Intention to Discontinue disability benefits (NOID) based on a medical opinion. An administrative conference followed at which Judge John Ellefson presided. In his Order, Judge Ellefson rejected the Employer and Insurer's arguments for discontinuing benefits and the Employee prevailed. In response to the Order, the Employer and Insurer filed a Petition to Discontinue. A Hearing was scheduled and the OAH assigned Judge Ellefson to hear the matter. The Employer and Insurer filed a Motion to Disqualify on the basis of prejudice and sought reassignment. An Order denying the Petition for Disqualification was issued and the Employer and Insurer appealed to the W.C.C.A. The Court turned back the appeal entirely on the basis of lack of jurisdiction. Specifically, they considered the appeal interlocutory in nature. Without our getting into an extensive discussion here about law and procedure, the Court essentially held that the matter had not yet been fully adjudicated and the appeal did not involve an order affecting the merits of the case. Since Minnesota Statute specifically limits their jurisdiction to such matters on an appeal, the W.C.C.A. concluded it lacked jurisdiction. The Court cited other appellate courts who had also ruled appeals of a denial to disqualify judges were interlocutory and non-appealable. At this time there is some legislative initiative (S.F. No. 1159) to require that a formal *de novo* hearing on a matter previously ruled on by a compensation judge in an administrative be held before a different judge.

***Ceja-Cisneros v. Cold Spring Granite* (SI), (W.C.C.A. November 29, 2010) -** *Reasonableness* in Roraff *fees*

Rooted in the principal that fees may not be calculated on any undisputed portion of a compensation award, the Court in this case drew some definitive parameters around the awarding *Roraff* fees. The Employee had sustained an admitted injury in 2001 and claimed a new injury in March of 2007, adding temporary total disability, temporary partial disability, permanent partial disability, medical expenses from the Injured Workers Pharmacy (IWP) and medical mileage expenses. The self-insured Employer denied liability for the claimed benefits. At the January 6, 2010 hearing, the parties represented that the self-insured Employer had agreed, on January 5, to pay the outstanding IWP and medical mileage claims along with a number of other medical expenses presented to them at that time. The Judge then ordered payment of these medical expenses but denied all the other indemnity claims. The Employee did not appeal the Findings. Instead the Employee's attorney filed a statement for $12,773.50 in *Roraff* fees. At the fee hearing, the Compensation Judge reduced the time devoted to the contested medical issues to 0.4 hours, then denied the attorney fees on the basis that the medical expense were not the primary matter of importance at the January 2010 hearing. Furthermore, the Employee had failed to establish evidence of any genuine dispute. On appeal,

the W.C.C.A. held that there had been a genuine dispute but only to the extent of the IWP and mileage expenses. Any other medical expenses presented on January 5, 2010 were thereto unknown to the Employer. The Employee argued that under *Peterson v. Everything Clean, Inc.*, all time spent on obtaining an award of benefits should be factored into the fee. The Court distinguished this case from *Peterson* noting that the 2001 injury had already been admitted; and that the Employee had basically lost on the 2007 claim and had failed to secure any of the indemnity benefits. Those medical issues that the Employee had prevailed on were neither novel nor complex and amounted to an insignificant amount of time.

***Stranberg v. Carver County Sheriff*; *Thomas Fadden v. Carver County* (SI), (W.C.C.A. March 9, 2011)** - *Application of the fee schedule*

This consolidated case involved two Employees each of whom had received treatment in the emergency department of Ridgeview Medical Center (RMC). In the course of their treatment each employee received various professional services including x-rays and CT scans and durable medical equipment. The self-insured Employer applied the relative value fee schedule for each procedure as well as to the corresponding facility fee for RMC. The Employer paid $71.05 of the $322.00 facility bill for the first Employee and $200.24 of the $631.00 for the second Employee's bill. The hospital filed Medical Requests seeking 85% reimbursement in each case. At the Hearing, the Compensation Judge held that the relative value fee schedule did not apply to the hospital's facility fee and ordered reimbursement of 85% of the reasonable and customary fee. The Self-Insured Employer appealed. The W.C.C.A. immediately identified the issue as being whether the relative value fee schedule applied the facility charge at the hospital. Hospital expenses are billed on a form UB-92 which is universally recognized as including facility charges – but not professional fees. The Employer called attention to the fact that the UB-92 included CPT codes – to which they issued payment based on the corresponding fee schedule. The hospital explained that a revenue code is generally assigned for the emergency room facility services and supply costs – 0450 – but most other payors (i.e. Medicare/Medicaid) also require a descriptor for the level of care received during the visit. Because the best indicator for this is the corresponding CPT code for the professional care, such coding is required. Recognizing that it's not possible for both the medical professional and the hospital to be reimbursed for the same professional services, the Court concluded the CPT code on the UB-92 was purely illustrative and not subject to the fee schedule.

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On May 22, 2011 Senate Bill 1159 was passed by a vote of 126 - 4. It will enact various Workers' Compensation Advisory Council recommendations. Effective dates: August 1, 2011; except §176.137 amendments effective the day following final enactment. Below are some highlights of the bills:

§14.48, subd. 3	Only Compensation Judges may conduct workers' compensation proceedings that are within jurisdiction of OAH.
§14.49	Compensation Judges must be employees of the state, except when the regular Compensation Judges are disqualified from a case.
§14.50	Administrative Law Judge (ALJ) is no longer allowed to conduct hearings under Chapter 176.
§176.106, subd. 7(a)	• Requires that when a certain Compensation Judge issued an administrative decision, a formal de novo hearing on the matter must be held before a different Compensation Judge. • If a Compensation Judge presides over an administrative conference that Judge will not conduct the *de novo* hearing if one is requested.
§176.137, subd. 4	• Costs of obtaining architectural certification and supervision are included in the $75,000 limit. • Certain remodeling or alteration projects don't require an architect's certification and supervision.
§176.137, subd. 5	Amount Employee may receive for remodeling or alteration of principal residence is increased from $60,000 to $75,000.
§176.238, subd. 6(e)	When a Compensation Judge issues an interim decision on a request to discontinue benefits, the de novo hearing on a petition to discontinue or objection to discontinue must be held before a different Compensation Judge.
§176.305, subd. 1	Commissioner must refer all petitions over which they lack jurisdiction to the Office of Administrative Hearings.
§176.305, subd. 1(a)	• Chief ALJ is required to assign a petition to a Compensation Judge and schedule a settlement conference by a compensation judge within 180 days of filing of a claim petition or 45 days after a Petition to Discontinue, Objection to Discontinue or Request for Formal Hearing. • Parties shall serve and file a pretrial statement before the settlement conference. • Hearings to be scheduled within 90 days of settlement conference if not settled. • Continuances will be granted on showing of good cause.
§176.307	Chief ALJ **may** assign cases using block system, with exceptions. Block system is the preferred means of assigning cases. Changes old language indicating cases must be block assigned.
§176.341, subd. 4	• Settlement conference may be cancelled if all parties agree. • Medical fee review; wholesale acquisition cost standard requires commissioner to replace the "average wholesale price" standard with the "wholesale acquisition cost" standard in Minn. R. 5221.4070 (relating to pharmacies). • Up to $600,000 appropriated from special compensation fund to implement case management system and electronic filing system.