MSIA Case Law Update

Workers' Compensation Exclusivity Can Be An Employer's Best Friend

December 7, 2012

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WCA Exclusive Remedy Provision

If the Minnesota Workers' Compensation Act (WCA) applies, then it is exclusive of all other remedies, absent any exceptions.

- *See* Minn. Stat. § 176.031

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Case Law:

- McGowen v. Our Savior's Lutheran Church
- Fu v. Owens
- Stallone v. Ameriprise Financial Services, Inc.
- E.E.O.C. v. Product Fabricators, Inc.

McGowen v. Our Savior's Lutheran Church

527 N.W.2d 830 (Minn. 1995)

- Employee brought a negligence claim seeking damages for injuries she sustained as a result of being sexually assaulted while working at a homeless shelter.
- Employer argued the exclusivity provision of the WCA barred the lawsuit.
- Employee argued the "assault exception" to the exclusivity provision of the WCA allowed her to maintain the lawsuit.

ISSUE

Whether the “assault exception” applies to the specific facts of the case.

Assault Exception Rule

The WCA excludes from coverage injuries "caused by the act of a third person or fellow employee intended to injure the employee because of personal reasons, and not directed against the employee as an employee, or because of the employment."

- *See* Minn. Stat. § 176.011, subd. 16

Based on the Facts, the Court Must Determine . . .

Whether the Employee's injuries resulted from an assault arising solely out of the Employee's activities as an employee or whether they were personal in nature .

FACTS

- Employee was raped by a shelter client while working in her office at the church's homeless shelter.
- Employee had come into contact with her assailant on two prior occasions, both in conjunction with her work responsibilities.
- Employee never had any contact with her assailant outside of the shelter.

Based on the Facts, the Court Concluded . . .

Employee's injuries were covered under the WCA because they resulted from an assault arising out of the employee's work activities and the "assault exception" did not apply.

CONCLUSION

The Employee's negligence action was barred by the exclusive remedy provision of the Workers' Compensation Act because the "assault exception" did not apply.

Fu v. Owens

622 F.3d 880 (8th Cir. 2010)

- Employee brought several tort-based injury claims seeking damages for injuries she sustained after another employee physically attacked her at work.
- Employer argued the exclusivity provision of the WCA barred the lawsuit.
- Employee argued that under McGowan v. Our Savior's Lutheran Church, the "assault exception" to the exclusivity provision of the WCA allowed her to maintain the lawsuit.

ISSUE

Under McGowan, does the "assault exception" apply?

That is . . .

When applying the exclusivity provision of the WCA "the central question is not whether the employee was injured merely while at his or her employment, *but whether the injury occurred because the employee was at the job 'in touch with associations and conditions inseparable from it.'*"

Based on the Facts, the Court Must Determine . . .

Whether the Employee's injuries occurred because the Employee was at the job in touch with associations and conditions inseparable from it.

FACTS

- Employee was physically assaulted by co-worker at work.
- Employee had no contact with her assailant outside of work.
- Assault occurred during work hours while Employee performed her duties.
- Assailant harbored racial animus toward Employee.
- Assailant disliked employee for specific, work-related reasons.

Based on the Facts, the Court Concluded . . .

The Employee's injuries were covered by the WCA because she was "at the job in touch with associations and conditions inseparable from it" when the assault occurred and thus the "assault exception" did not apply.

CONCLUSION

The Employee's tort-based claims were barred by the exclusive remedy provision of the Workers' Compensation Act.

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Stallone v. Ameriprise Financial Services, Inc.

11-cv-1619 PJS/JSM, 2012 WL 5494928 (D. Minn. Nov. 13, 2012)

- Employee brought disability-discrimination claim under the Minnesota Human Rights Act (MHRA).
- Employer argued the exclusivity provision of the WCA barred the Employee's MHRA claim.
- Employee argued that the exclusivity provision of the WCA did not apply because her disability was not the result of work-related injuries.

ISSUE

Are the Employee's disability-discrimination claims under the MHRA precluded by the exclusivity provision of the WCA?

RULE

According to the Minnesota Supreme Court, if an employee "becomes disabled as a result of work-related injuries," then the employer can be held liable to that employee for any conduct related to that disability only under the WCA, and not under the MHRA.

In other words . . .

- An employee cannot bring a MHRA disability-discrimination claim against her employer if her disability resulted from a work-related injury.
- The employee need not have applied for or received workers' compensation benefits.
  - "The relevant inquiry is whether workers' compensation benefits were *available* to the employee."

Based on the Facts, the Court Must Determine . . .

Whether the Employee's disability was the result of a work-related injury.

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FACTS

- In 2009, Employee received WC benefits after being treated for carpel-tunnel syndrome.
- Subsequently, the Employee was diagnosed with cervical stenosis.
- Employee applied for WC benefits based on her cervical stenosis, claiming it was work-related.
- Employer denied Employee's application for WC benefits, claiming the cervical stenosis was not work-related.

Based on the Facts, Employee Argued . . .

- She was disabled because of her cervical stenosis.
- Cervical stenosis was not a work-related injury for which she could receive WC benefits because Employer had denied her claim for WC benefits, claiming the cervical stenosis was not related to work injury.

Based on the Facts, Employer Argued . . .

- Cervical stenosis was work-related because Employee sought WC benefits for it and in doing so contended her condition was work related.

Based on the Facts and Arguments, the Court Concluded . . .

- That it could not determine whether the Employee's disability arising from her cervical stenosis was work-related.
- The Court was unable to resolve the matter on summary judgment as the evidence regarding whether the cervical stenosis was work-related was sparse and in dispute.

CONCLUSION

At trial, if the Employee's cervical stenosis disability is determined to be the result of a work-related injury, then the Employee's MHRA claim is barred by the exclusivity provision of the WCA.

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E.E.O.C. v. Product Fabricators, Inc.

11-cv-2071 MJD/LIB, 2012 WL 2775009, ---F.Supp.2d---
(D. Minn. July 10, 2012)

- EEOC filed suit under the Americans with Disabilities Act (ADA) claiming the Employer retaliated against the Employee by terminating him due to his request for an accommodation and participating as a witness in prior EEOC investigation.
- Employer argued the exclusivity provision of the WCA barred the lawsuit.
- EEOC argued the Employer's argument ignores Supremacy Clause of the United States Constitution and is not barred by the WCA.

ISSUE

Whether the exclusivity provision of the WCA bars the EEOC's ADA claim.

Based on Law, the Court Concluded . . .

A state's workers' compensation statute cannot preempt a federal cause of action under the ADA.

CONCLUSION

The EEOC's ADA claim is not barred by the exclusivity provision of the WCA.

WORKERS' COMPENSATION CASE LAW UPDATE

- Last year, we focused on three main trends that were prominent:
  - **Petitions to Vacate**
  - **Psychological injuries**
  - **PTD claims**

- **Let's see what changed in 2012....**

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Petitions to Vacate-

- January – October 2011:
  - **7** cases were heard
  - **5** were granted

- January – October 2012:
  - **4** cases were heard
  - **3** were granted

Petitions to Vacate-

- The rate of vacation has increased, but the number of attempts has decreased

- *Why?*
  - Perhaps Plaintiff's bar feels the risk and cost is greater than the reward
  - Perhaps Defense bar has become more thorough with medically complex Stipulations
    - We list all body parts treated post injury, not just those claimed

PTD claims-

- January – October 2011:
  - **12** cases were heard

- January – October 2012:
  - **4** cases were heard

PTD claims-

- *Why the decrease*?
  - Frandsen v. Ford may be the answer
    - WCCA held the ER/IR may cease payment of PTD benefits when EE attains age 67 without taking further action
  - This is contrary to the procedures outlined in Minn. R. 5220.2630 *AND* Judge Milun's due process concerns
    - We are surprised the Plaintiff bar did not push for an appeal

NEW TRENDS IN 2012

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- **IME reports are being given more weight**
  - In **19** cases, the judge and/or WCCA accepted the opinions of the IME over that of the treating physician

- **Increased litigation regarding fees and penalties**
  - In **9** cases, the Plaintiff's attorney sought additional fees and/or penalties
  - Perhaps more than ever, the Plaintiff bar has been quick to pursue penalties

- **Retraining**
  - Often being threatened to bolster demand amounts
    - However, **only 1** claim was heard at the WCCA this year

- **New Judges want their voices heard**
  - Judge Milun has authored a separate or dissenting opinion **5** times this year
  - Judge Hall, who was recently appointed, has already dissented **once**

WHAT DOES IT ALL MEAN?

- Struggling economy + aging workforce =
  - Continual increase in claims related to:
    - Diabetic neuropathy
    - Complications of obesity
    - Repeat surgeries
    - Penalties!

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- Expect to see more claims for PTD and retraining
- Expect to see more settlements with medical left open to avoid Medicare complications

THE LIKELY RESULT?

- An increase in claims
- An increase in claim costs

SO, HOW CAN WE PREPARE?

- Attend the MSIA case law updates
- Knowledge = power

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Quarterly Case Law Update
Minnesota Self-Insurer's Association
December 7, 2012

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