

# CASE SUMMARIES FALL OF 2013

MSIA Seminar  
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**Temporary Total Disability Benefits Were Appropriate Where, Despite Conflicting Evidence, The Employee Reasonably Followed His Treating Physician And QRC's Instructions**

Seelen v. Savanna Pallets, Inc., No. WC13-5578 (W.C.C.A. September 12, 2013)

*Compensation Judge: John R. Baumgarth*

The Workers' Compensation Court of Appeals affirmed the compensation judge's determination that the employee's work injury contributed to his cervical condition and that an award of temporary total disability benefits was appropriate where, despite conflicting evidence, the employee reasonably relied on his treating physician and QRC.

First, the W.C.C.A. affirmed the compensation judge's determination that the employee's work incident was a substantial contributing factor to his ongoing cervical condition. The employer and the insurer argued that the compensation judge improperly shifted the causation burden on them, ignored evidence of preexisting conditions, and relied on medical opinions lacking in foundation.

The W.C.C.A., however, pointed out that the compensation judge appropriately placed the burden on the employer and insurer where they raised defenses to causation. The compensation judge did not require them to disprove causation; rather, it required them to prove their defenses. Further, the W.C.C.A. pointed out that the compensation judge specifically acknowledged the preexisting condition in his memo, and thus did not ignore this evidence. Finally, the W.C.C.A. elucidated the fact that the compensation judge relied on all available medical evidence in determining there was causation. He did not rely on one particular source. Therefore, any alleged foundational issue was moot.

Second, the W.C.C.A. affirmed the compensation judge's award of temporary total disability. The employer and insurer argued that the employee refused suitable employment when they offered him his pre-injury job based on one doctor's opinion that the employee did not need restrictions. They also contended that he subsequently failed to complete a proper job search. However, the W.C.C.A. was not convinced.

The W.C.C.A. explained that the employee reasonably rejected the job offer based on his treating doctor's recommendations that he limit his activities. Furthermore, the employee reasonably interpreted the employer's communications that it would provide him with light duty work if he obtained updated restrictions.

Additionally, the W.C.C.A. confirmed that the employee's temporary total disability claim did not fail for a lack of a proper job search. The employee's rehabilitation plan did not require that he look for other employment. The W.C.C.A. reiterated that when an employee has a rehabilitation plan, "the issue is not so much whether the employee conducted a diligent job search as whether the employee made a good-faith effort to cooperate with rehabilitation efforts." In this case, there was no evidence that the employee had failed to cooperate with the QRC.

**The Employee's Explicit Violation Of His Weight-Bearing Restrictions Constituted A Superseding, Intervening Event In Light Of His Injury And His Requested Surgery Was Appropriately Denied**

Couette v. Parsons Elec., LLC, No. WC13-5552 (W.C.C.A. September 20, 2013)

*Compensation Judge: Cheryl LeClair-Sommer*

The Workers' Compensation Court of Appeals affirmed the compensation judge's determination that an employee's need for surgery arose from an independent, intervening cause when the employee exceeded his weight-bearing restrictions on numerous occasions.

The employee's primary argument on appeal was that the compensation judge applied an incorrect legal standard in determining that his injury was the result of his "unreasonable and negligent behavior" and "a superseding, intervening cause of his need for surgery." Rather, according to the employee, the compensation judge should have concluded that his behavior, including his weight-bearing activities, were "normal and reasonable." The employee contended that subsequent surgeries are compensable even if workers reinjure themselves through "normal activity" that might be at odds with their medical restrictions. He cited *Eide v. Whirlpool Seeger Corp.*, *Nelsen v. American Lutheran Church*, and *Johnson v. Waseca ISD* in support.

The W.C.C.A. did not agree. It first explained that where a "subsequent aggravation of the initial injury arises from an independent intervening cause not attributable to the employee's customary activity in light of the employee's condition, then such additional medical care for the aggravation is not compensable." This determination is a question of fact for the compensation judge. In this case, the compensation judge concluded that the employee exceeded his medical restrictions by committing the weight-bearing activities before his doctor authorized them. As such, the W.C.C.A. affirmed the compensation judge's determination that the causal link between the employee's work injury and his need for a third surgery was broken.

Moving forward, the W.C.C.A. made efforts to distinguish the employee's cited cases suggesting that his activities were "normal" and

not a superseding, intervening event. The W.C.C.A. clarified that in cases involving intervening, superseding injuries, the key question for the compensation judge is "whether there was an independent intervening cause not attributable to the employee's customary activity in light of the employee's condition." "In light of the employee's condition" was the key language. In *Eide*, *Johnson*, and *Nelsen*, the activities were still reasonable in light of each employee's condition. More specifically, the employees were never explicitly told to abstain from the activity that caused their need for additional treatment.

In this case, by contrast, the W.C.C.A. emphasized that the employee exceeded his doctor-ordered restrictions on multiple occasions. Because the substantial evidence supported the compensation judge's finding that the employee violated his restrictions on numerous occasions, the W.C.C.A. affirmed the denial of the third surgery.

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**An Employee's Injury Arose Out Of And In The Course Of Employment When He Twisted His Knee Exiting His Car To Enter Work 10-20 Minutes Before The Start Of His Shift**

Villarreal v. AAA Galvanizing, No. WC13-5575 (W.C.C.A. October 4, 2013)

*Compensation Judge: Penny D. Johnson*

The Workers' Compensation Court of Appeals affirmed the compensation judge's determination that an employee's injury occurring when he twisted his knee while exiting his car 10-20 minutes before work arose out of and in the course of employment.

In appealing the compensation judge's determination, the employer and insurer first argued that the employee's injury was not in the

course of employment because there was not enough of a connection between the work conditions and the injury. The W.C.C.A. was not persuaded. It explained that an employee's injury would be compensable if it occurs "while engaged in, on, or about the premises where the employee's services require the employee's presence as a part of that service at the time of the injury." Further, "parking lots owned or maintained by the employer are considered part of the employer's premises, and travel between the employer's parking lot and the main premises is considered to be in the course of employment." It follows that the compensation judge did not err in concluding the injury was in the course of employment.

The employer and insurer also contended that the employee was not involved in a work activity and thus the injury could not be in the course of employment. Again, the W.C.C.A. disagreed. An employee is in the course of employment if he or she engages in work activities that are "reasonably incidental" to employment. Moreover, an employee's actions will be covered under workers' compensation for a reasonable period beyond the employee's actual working hours if he or she is engaging in an activity reasonably incidental to employment. In this case, the compensation judge determined that the employee's action of getting out of his car to enter the employer's building 10-20 minutes before his shift was reasonably incidental to his employment. Because substantial evidence supported this finding, the W.C.C.A. affirmed.

Finally, the employer and insurer argued that the employee's injury did not arise out of his employment because the injury-causing activity was not "unique" to his employment and there was not a sufficient work connection. The W.C.C.A. disagreed on both accounts. It first emphasized that there is "no requirement that a work injury must occur as a result of an activity unique to his employment." The W.C.C.A.

subsequently explained that the compensation judge's finding of a work connection was supported by substantial evidence. The employee's injury was a result of movements necessary to enter his place of employment.

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**An Employee Unreasonably Refused A Job Offer Where It Was Within His Physical Restrictions And He Did Not Demonstrate At Hearing That His Language Limitations And Family Obligations Inhibited His Ability To Understand And Respond To The Offer**

Ahmed v. Loop Parking Co., No. WC13-5585  
(W.C.C.A. October 15, 2013)

*Compensation Judge: Gary P. Mesna*

The Workers' Compensation Court of Appeals affirmed the compensation judge's determination that an employee was not entitled to temporary total disability benefits where he refused a job offer that was within his physical restrictions.

On appeal, the employee first argued that there was no evidence in the hearing transcript that confirmed that the employee would or would not accept the job. The W.C.C.A. held that the employee's assertion was not entirely true. The employee's manager testified that the employee communicated over the telephone that he would not accept the light-duty position. Although the employee disputed the manager's testimony, questions of fact, the W.C.C.A. noted, are distinctly the province of the compensation judge. Because the employee did not submit evidence at hearing controverting the manager's testimony, the compensation judge's finding was supported by substantial evidence.

Second, the employee contended that the compensation judge's determination was unsupported because it failed to include a rehabilitation plan. Therefore, it would have

been impossible to assess whether the job offer was consistent with such a plan. By contrast, the W.C.C.A. explained, there was no evidence that a rehabilitation plan had been filed. It was certainly within the compensation judge's scope to analyze whether the offered job was one that the employee could physically perform.

Finally, the employee argued that the reasonableness of the acceptance or rejection of a job offer must be analyzed in light of the facts and circumstances of the situation. In this case, the employee alleged, he only had nine days to make a decision and that was insufficient considering his limited English language skills and need to obtain child care. Still, the W.C.C.A. pointed out, the employee never asserted at hearing that he did not understand the nature and time requirements of the job offer. Additionally, he never testified that he was ultimately unable to find child care.

With all of these factors in mind, the W.C.C.A. determined that substantial evidence supported the compensation judge's conclusion that the employee refused a suitable job offer.

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**A Traveling Employee's Injury While Assisting In A Roadside Motor Vehicle Accident Arose Out Of And In The Course Of Employment Despite The Supervisor Advising Otherwise**

Weismann v. Tierney Bros. Constr., No. WC13-5583 (W.C.C.A. October 18, 2013)

*Compensation Judge: Kathleen Behounek*

The Workers' Compensation Court of Appeals affirmed the compensation judge's determination that an employee's injuries sustained as a result of rescuing an injured motorist arose out of and in the course of his employment as a storm damage estimator. The employee was a "traveling employee" and the

accident scene was on the route from his work site to the motel where he was staying. Those factors rightfully allowed the compensation judge to infer that the employer had implicitly instructed the employee to provide assistance.

On appeal, the employer and insurer argued that the compensation judge overlooked longstanding precedent in determining that the employee's injury arose out of and in the course of employment. Specifically, the employer and insurer contended that the employee exceeded the boundaries of his employment when he exited his car on the freeway to assist with a serious car accident. They emphasized that the employee's supervisor, who was in the car, advised the employee to not get out and help. The W.C.C.A. was not convinced.

The W.C.C.A. reviewed three seminal cases in analyzing the compensation judge's determination: *Weidenbach v. Miller*; *Carey v. Stadther*; and *Stringer v. Minnesota Vikings Football Club, LLC*. The W.C.C.A. explained that *Weidenbach* was determined on, among other factors, whether the employer had given the employee an implicit direction to assist in the rescue of a person in danger. They ultimately left the determination based on that standard to the compensation judge, and that judge did not find implicit direction.

The W.C.C.A. also acknowledged that *Carey* supported an expansion of coverage based on policy grounds. The idea was that one of the purposes of the workers' compensation act is to spread the burden of paying for accidents. In *Carey* specifically, the W.C.C.A. opined that it would be against policy to force an employee to pay for their injuries when there was evidence that the employer implicitly supported his actions.

In this case, the W.C.C.A. noted that the employee was already the subject of expanded coverage because he was a traveling employee.

He was on the road frequently and it was reasonably foreseeable that he would come across accidents. Further, it was reasonably foreseeable that he would be called on to render aid. As to the actual incident, the employee was never required to leave the road. Therefore, this case was factually distinguishable from *Weidenbach*. Because of all of those factors, the compensation judge was reasonable in determining that the employee's supervisor had implicitly directed him to provide assistance and the employee's injury arose out of and in the course of employment.

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**An Employee's Fall On Employer Premises Arose Out Of Employment, Despite His Significant Intoxication, Because Employee Demonstrated That His Intoxication Was Not A Proximate Cause Of His Injury**

*Bitterman v. Safe Way Bus Co., Inc.*, No. WC13-5581 (W.C.C.A. October 31, 2013)

*Compensation Judge: William J. Marshall*

The Workers' Compensation Court of Appeals affirmed the compensation judge's determination that the employee's intoxication was not a proximate cause of his injury, and that he did in fact suffer a work injury after falling on the employer's premises.

The employer and insurer first argued that the employee's injury did not arise out of employment because it was an unwitnessed fall and its only support was the employee's inconsistent and "non-credible testimony." In fact, the employer and insurer pointed out that the employee, at different times, testified that he had anywhere between six and fifteen beers the night before the injury. Furthermore, the medical records did not provide objective evidence of his fall.

The W.C.C.A. was not convinced. The court explained that although the employer and insurer raised valid inconsistencies with the nature of the fall, they did not provide persuasive evidence controverting the employee's evidence that a fall did in fact happen. Additionally, it was fully within the province of the compensation judge to determine the degree of credibility of the employee's testimony. In this case, the compensation judge found the employee's testimony credible as to the mechanism of the fall.

Second, the employer and insurer argued that the employee's intoxication was a proximate cause of his fall. Indeed, the employee's intoxication at the time of fall was not disputed. Medical records suggested that his blood-alcohol content was between 0.25 and 0.28. Because the employee's intoxication was not disputed, the employer and insurer contended that it was necessarily the proximate cause of his fall.

The W.C.C.A. was not persuaded by the employer and insurer's argument. The court emphasized that "statute and case law make it clear that it is not enough for intoxication to be a contributory cause of an employee's injury; intoxication must be the proximate cause." Moreover, determinations as to proximate cause must take individual characteristics into consideration. "Although forensic evidence has been deemed an essential requirement for proving intoxication, the employee's blood alcohol level is not necessarily determinative." Besides medical evidence, the compensation judge may consider observations from witnesses, an employee's actions prior to the injury, and an employee's tolerance to alcohol in general.

In this case, the employee was intoxicated; however, that did not mean that he was

impaired. A witness for the employer testified that the employee did not seem impaired while working on the day of the injury. Additionally, one doctor explained that the employee's BAC was likely very high, and thus not entirely indicative of impairment, because of his poor alcohol filtration ability (the employee was eventually diagnosed with Cirrhosis). The compensation judge assessed all evidence. In concluding that the employee's intoxication was not a proximate cause, the compensation judge did not create new precedent. Rather, the W.C.C.A. noted, he made a factual determination based on all available evidence. Because substantial evidence supports that determination, the W.C.C.A. affirmed it.

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