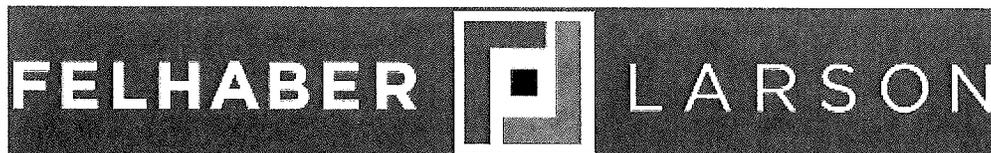


CASE LAW UPDATE

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CASE LAW UPDATE

A. Kayla Lein v. Eventide and Meadowbrook Claims Services, No. WC17-6101 (WCCA Dec. 29, 2017)

The employee was injured while descending a flight of stairs on the employer's premises. The employer and insurer denied liability, asserting the injury did not arise out of her employment. The employee presented evidence that the stairs did not have anti-slip treads. The compensation judge denied the employee's claim, concluding that the employee failed to establish that she had been exposed to an increased risk.

The employee appealed and the WCCA reversed, stating the compensation judge improperly used doctrine from general tort liability, which is specifically prohibited in the Workers' Compensation Act. The employer and insurer appealed to the Minnesota Supreme Court.

Following a stay, an Order was issued vacating the decision of the WCCA and remanding the matter for reconsideration in light of the Supreme Court's decision regarding the "increased-risk" test in Hohlt and the standard of review issue in Kubis.

The WCCA held in Roller-Dick v. CentraCare Health Sys., No. WC17-6051 (WCCA Oct. 19, 2017), that stairs located on an employer's premises constitute an increased risk and an injury on the stairs is sufficient to show causal connection to conclude the injury arose out of the employment. In light of the Kubis, Hohlt, and Roller-Dick decisions, the WCCA reversed and remanded, finding that the stairs themselves, regardless of the lack of anti-slip tread, were adequate to show the increased risk, thus the employee's injury arose out of her employment and her claim was compensable.

The employer and insurer have appealed to the Minnesota Supreme Court.

B. Kenneth Hinkle v. Ruan Transp. Inc., and Ace Ins. Co., No. WC17-6083 (WCCA Jan. 5, 2018)

Employee who was hired as an over-the-road truck driver by Ruan Transportation after responding to an ad in a Georgia newspaper. He lived in Decatur, Georgia, had a commercial driver's license from Georgia, and was assigned to an account with a home terminal in Georgia upon his hiring in 2008. In 2014 he was assigned to an account with a home terminal in Brooklyn Park, Minnesota, which later moved to Otsego, Minnesota. There was another terminal for this account in Lake City, Georgia. He received route assignments from dispatcher in Otsego and attended mandatory safety and training meetings there. He rented trucks for his assignments from a facility near his home in Georgia.

On October 28, 2014, the employee voluntarily resigned and was rehired about 45 days later when he was flown by the employer to Otsego to complete paperwork to be rehired. He attended a safety meeting there and picked up a load of products. From December 2014 through October 2015, he picked up or delivered products in 20 states, picking up and delivering in Minnesota locations more than any other state. He traveled through Minnesota about eight times per month and would pick up paperwork and attend classes in Minnesota.

On October 27, 2015, the employee was injured in Georgia. The employer filed a first report of injury in Georgia, which listed the employer's address in Elk River, Minnesota. Employer and insurer accepted primary liability by filing a notice of insurer's primary liability determination in Minnesota and initially paid temporary total disability pursuant to Minnesota's workers' compensation law. In July 2016, the employer and insurer began paying benefits under Georgia's workers' compensation law.

The employee filed a claim petition in Minnesota requesting benefits under Minnesota's workers' compensation law. The compensation judge found that the work injury was compensable under Minnesota workers' compensation law. The employer and insurer appealed.

The employer and insurer argued that the amount of time the employee spent and amount of work performed in Minnesota are negligible compared to his overall employment activity. The WCCA disagreed because the statute does not require that more of the employee's time be spent in Minnesota than elsewhere, only that the employee regularly perform 'primary' job duties in this state.

The employer and insurer also argued that the employer was an Iowa employer because its home office is in Iowa. The WCCA disagreed because the employer had terminals in Otsego and Elk River, Minnesota and its employees perform services for hire in Minnesota.

The employer and insurer claimed that the employee was not hired in Minnesota because he was originally hired in Georgia, and his voluntary termination was not intended to be permanent. The WCCA determined that the compensation judge could reasonably conclude that the employee had been hired in Minnesota in 2014.

C. John Devos v. Rhino Contracting Inc., No. WC17-6075 (WCCA Jan. 8, 2018)

This case involves an employee who was working for Rhino Contracting, which was based in Grand Forks, North Dakota. The issue was whether the employee was recalled or rehired in 2012, and whether that occurred in North Dakota where the employer is based, or in Minnesota where the employee lived.

The employee filed an amended claim petition naming the Special Compensation Fund as the insurer. The Special Compensation Fund filed a motion to dismiss, asserting that the employee's claim was barred by Minn. Stat. §176.041, subd. 5b, because he was an employee hired in North Dakota by a North Dakota employer and his alleged injury arose out of temporary work in Minnesota.

A special term conference was held by the Compensation Judge. No witness testimony was received, but exhibits were submitted. The employee's attorney noted that he misunderstood the nature of the proceeding. The record was kept open, on employee's counsel's request, for submission of additional evidence on the issue of whether the employee was hired in Minnesota or in North Dakota in 2012. The employee did not submit additional testimony or evidence, but submitted a formal objection to the motion to dismiss due to factual disputes. The employee argued that the Special Compensation Fund failed to prove that the employee was recalled in 2012, that he was hired in North Dakota, and that the employer was a North Dakota employer.

The compensation judge issued a Findings and Order granting the Special Compensation Fund's Motion to Dismiss. The judge found that the employee had been recalled in 2012, that he had been hired in North Dakota by a North Dakota employer, and because the work performed in Minnesota was temporary, the employee's claim is barred under Minn. Stat. § 176.041, subd. 5b. The employee appealed, arguing that because factual disputes exist as to the circumstances of his hiring and where it occurred, as well as to whether the employer is a North Dakota employer, the compensation judge's dismissal without an evidentiary hearing was inappropriate.

The WCCA held that the compensation judge made factual determinations for which there is either no evidence or it is unclear what evidence he had considered. The dismissal was vacated and remanded for fact finding on the issues of when and where the employee was hired in 2012, and whether the employer is a North Dakota employer.

Judge Milun dissented, reasoning that based on the exhibits in the record, the employee completed an application in Grand Forks, North Dakota and was hired the same day, that the employer is a North Dakota corporation, and that the employee worked 44.5 hours in Minnesota in the calendar year 2012 and those did not fall over 15 consecutive days. Therefore, the employee does not qualify for benefits under the Minnesota Workers' Compensation Act per Minn. Stat. § 176.041, subd. 5b.

D. Pamela J. Beguhl v. Supportive Living Solutions/Whittier PL., and Meadowbrook Claims Servs., No. WC17-6078 (WCCA Jan. 11, 2018)

The Worker's Compensation Court of Appeals affirmed a modified decision of the compensation judge finding that the employee's work-related injuries were substantial contributing factors to her left foot/ankle and right shoulder conditions, but that any work-injury that affected her neck condition caused only a temporary sprain/strain and resolved within 12 weeks.

Employee sustained from two separate work-related injuries to her left foot/ankle and right shoulder, neck, low back, and hips. Following the work injuries, the employee treated with and received medical opinions from multiple providers.

The matter was heard on March 28 and 30, 2017. The compensation judge found that the November 5, 2015 work injury was a substantial contributing factor to the employee's left foot/ankle condition; that the April 5, 2016 work injury was a substantial contributing factor to the employee's right shoulder condition; and that any low back/neck condition sustained as a result of the April 5, 2016 work injury had resolved within 12 weeks after the injury. She awarded temporary disability benefits, payment of outstanding and ongoing rehabilitation bills, and payment of intervenors' claims as they related to the left foot/ankle and right shoulder treatment.

On appeal, the self-insured employer argued that the treating doctor's opinion, which the compensation judge had relied upon in her ruling on the left foot/ankle, lacked foundation and that the IME opinion, which supported the employer, was more complete. The WCCA noted that "[a] compensation judge's choice between expert opinions is generally upheld unless the facts assumed by the expert are not supported by the record." Nord v. City of Cooks, 360 N.W. 2d 337, 37 W.C.D. 364 (Minn. 1985). The compensation judge's decision was affirmed.

The employee argued that the compensation judge relied upon preexisting neck problems which were unsupported by the record. However, the WCCA found that the decision was in fact supported by "substantial evidence" and affirmed the decision.

E. Teresa C. Santelli v. Wal-Mart and Claims Management, No. WC17-6085 (WCCA Jan. 24, 2018)

The employee sustained an injury to her left shoulder on October 11, 2012 when lifting a box of frozen bread in the bakery department. She treated and was found to be at maximum medical improvement and released with no restrictions and 0% permanent partial disability on July 9, 2013.

On October 12, 2014, she was throwing cardboard into a baler and noticed increased left shoulder symptoms. The symptoms were in the same location as those in 2012. She returned to her doctor who concluded she had exacerbated her earlier injury. She treated for the injury including physical therapy and was given a QRC. The treating doctor opined that she would be a candidate of left shoulder replacement surgery.

On May 29, 2015, she fell on her left shoulder in a non-work-related incident and sustained a left shoulder displaced surgical neck fracture. She was off work for five months and eventually returned to work with restrictions and continued with her QRC.

An IME doctor opined that the shoulder problems were a result of a pre-existing degenerative process, that the October 2012 injury had resolved by July 2013, and that the October 2014 injury was a temporary aggravation and resolved as of March 2015. The employee was terminated for excessive absences and tardiness.

The employee filed a medical request for approval of left shoulder replacement surgery recommended by the treating doctor. The employer and insurer also filed a request to terminate vocational rehabilitation services, which was granted. The employee filed a claim petition for temporary total disability benefits, vocational rehabilitation benefits, and attorney's fees.

A hearing was held and the compensation judge found that the surgery was reasonable, necessary, and causally related to the work injuries, awarded temporary total disability benefits, awarded vocational rehabilitation services, and intervention claims. The employer and insurer appealed.

The WCCA affirmed the compensation judge's determination on causation because substantial evidence in the form of the treating doctor's opinion supported the finding on the issue.

The WCCA also rejected an argument by employer and insurer that the surgery is not allowed under the treatment parameters because treatment parameters do not apply after an insurer has denied liability for the injury.

The WCCA affirmed the award of temporary total disability because the employee testified as to her ongoing limitations to find appropriate employment and the QRC testified that a job search before shoulder replacement was not practical.

The WCCA also affirmed the award of medical expenses based upon the opinion of the treating doctor regarding causation and vocational rehabilitation services based upon the employee's condition and need for surgery related to her work injuries.

F. Wayne A. Armstrong v. Clyde Machines, Inc., and RTW Group, No. WC17-6044 (WCCA Jan. 30, 2018)

The Worker's Compensation Court of Appeals affirmed the decision of compensation judge in which he approved treatment at the Center for Pain Management, despite medical treatment being closed out in the prior stipulation for settlement.

Employee suffered a work-related injury on September 19, 2007 in the form of a sharp pain between his shoulder blades that shot into his neck, right arm, and left leg. He sought medical attention and was given physical restrictions, narcotic and non-narcotic medications, and participated in physical therapy. He continued to work in a light-duty capacity until his symptoms forced his employment with Clyde Machine to terminate. He would apply for and receive Social Security disability benefits. The parties entered into a stipulation for settlement in the summer of 2009, in which the employee's claims were closed out on full, final, and complete basis, with claims for future medical limited by foreclosure of claims for various medical modalities including formal in or out patient pain programs, as defined by the treatment parameters.

The employee continued to receive treatment for chronic right shoulder and neck pain through 2016. Over this time period, the treating physician tried to decrease his use of narcotic pain medication and encouraged him to seek alternative treatment, including physical therapy. After the employee filed a medical request seeking approval for physical therapy, it was denied at an administrative conference. The matter then went to hearing, along with a new request for approval of a recommended right shoulder MRI and pain clinic consultation.

At hearing, the Compensation Judge denied the claims for physical therapy and the MRI, but approved the referral for the Center for Pain Management (“Center”). In his memorandum, he noted that since the referral did not say exactly what type of treatment was sought, the consultation would fail to meet the requirements of a pain program under the treatment parameters and had not been closed out in the stipulation. The WCCA found that this interpretation was reasonable based on the record, as the stipulation did not close out referrals to pain centers for all potential services. The employee had already treated at the Center, including receiving steroid injections. The Center offered other services in addition to the ones specifically foreclosed by the agreement. While the treatment sought by the employee was not known to be further steroid injections, neither was it known to be the sort of treatment that had been foreclosed. WCCA affirmed that the referral to the Center was not closed out by the settlement language.

G. Azuz v. Vescio’s, No. WC17-6086 (WCCA Feb. 1, 2018)

The employee slipped and fell causing low back pain while at work. Liability was admitted and benefits were paid. Years prior to the injury, the employee underwent medical treatment for her lower back pain. A prior x-ray revealed that the employee had degenerative disc disease at the L3-5 levels. There were numerous medical records referencing lower back pain and treatment pre-dating the alleged work injury.

The employee eventually underwent surgery. She was then examined by Dr. Robert Wengler, who assigned a 37% permanent disability rating based on the findings in the medical records. The employee was also examined by Dr. William Simonet on behalf of the employer and insurer. Dr. Simonet found that the employee had reached MMI and required no restrictions. He also found that the employee had a 10% PPD rating unrelated to the injury. The case proceeded to a hearing where the compensation judge denied the employee’s claim for wage loss benefits and a 37% PPD. The employee appealed.

The WCCA affirmed the compensation judge’s decision. They noted that the compensation judge properly weighed the opinions of the experts and that Dr. Simonet’s report was supported by adequate foundation.

H. Grabosky v. ISD 720, No. WC17-6099 (WCCA Feb. 9, 2018)

The employee slipped on a staircase at work on February 8, 2016 and felt pain in her upper shoulder and upper neck. She also claimed that the incident caused headaches and numbness in her left hand. The employee had a significant history of pre-existing left shoulder, neck, and headache pain dating back many years. She treated for left shoulder pain two weeks prior to the alleged injury. The employer and insurer denied liability and employee filed a Claim Petition.

An independent medical examination concluded that the work injury did not significantly aggravate the pre-existing condition or need for treatment. He further concluded that the incident of February 8, 2016 caused a temporary aggravation of [the employee’s] pre-existing condition and left thoracic outlet syndrome complaints, which has not yet resolved. The matter went to a hearing where the compensation judge concluded that the employee’s work injury was a temporary aggravation of her pre-existing condition that had resolved by March 1, 2016.

On appeal, the employee argued that the compensation judge's conclusion was not supported by substantial evidence in the record. In its decision, the WCCA took note that the employee admitted that she experienced the same symptoms both before and after the work injury. Also, the WCCA found that the compensation judge properly concluded that the medical records did not provide confirmation for the employee's increased symptoms. The WCCA interpreted "which has not yet resolved" to be referring to the employee's pre-existing condition rather than a temporary aggravation.

I. Wilson v. Twin Town Logistics, No. WC17-6022 (WCCA Feb. 9, 2018)

The employee sustained a work injury and filed a Claim Petition seeking attorney fees, however, the insurer was subsequently declared insolvent and claims were submitted to Minnesota Insurance Guaranty Association (MIGA). The claim for attorney fees was for \$30,572.00 as excess fees under Irwin. The employer and insurer contended that the claim was excessive and that some of the itemized time had already been paid.

A hearing was held and the employee's attorney was awarded \$3,000.00 a combination of Roraff/Heaton fees and excess fees. The employee's attorney appealed the decision.

The WCCA affirmed the award concluding that the compensation judge properly determined that the issues presented were not complex or technically difficult despite the arguments that the employee's attorney presented. Further, the WCCA held that the compensation judge properly analyzed itemization of fees and concluded that some of the time was excessive and duplicative.

J. Ahmed v. Loop Parking Co., No. WC17-6074 (WCCA Feb. 13, 2018)

Pro se employee appealed the denial of a right knee MRI and payment of medical expenses. The employee had suffered a right knee injury while working as a parking lot attendant in 2012. He underwent surgery in October 2012. His orthopedic surgeon opined that he had exhausted all treatment options and reached MMI in January 2014. He was released without restrictions. In 2015, the claims were settled on a full, final, complete basis except for reasonable, necessary, and causally related medical for the right knee.

In 2016, he treated for pain in his right knee for the first time in 18 months and denied any new injury. A February 2016 MRI showed an oblique tear and parameniscal cysts. An IME opined that the symptoms were caused by the mass and meniscus tear on the 2016 MRI and were unrelated to the 2012 injury. He opined that the 2012 surgery had repaired the tear, and no tear was present on a post-surgical MRI.

WCCA affirmed the decision as the compensation judge's findings were supported by the opinions of the IME doctor.

**K. Guyton v. Hennepin County Medical Center, No. WC17-6103
(WCCA Feb. 13, 2018)**

The employee sustained an admitted low back injury on August 16, 2016. She worked as a dietary aid at HCMC, which is a .9 full time equivalent position, and frequently worked overtime. The employer paid wage loss benefits based on an AWW calculated by the human resources staff (\$627.87). A QRC prepared an R-2 Rehabilitation Form with the AWW listed as \$704.70. The employee contacted the Department of Labor and Industry, which indicated that the AWW calculation using a regular schedule method was \$562.00 and irregular earnings method was \$639.76. The employee filed a claim petition. Following hearing, the compensation judge found the AWW was \$627.87 and rejected proposed alternative calculations by the employee as unsupported or exceeding the 26-week period set out in Minn. Stat. § 176.011.

WCCA affirmed the wage calculation as being supported by substantial evidence in the record. The 26-week averaging method was appropriate as it was a fair approximation of her earning capacity.

L. Dahl v. Rice County, No. WC17-6093 (WCCA March 5, 2018)

The employee was a deputy sheriff in Rice County. He sustained four admitted work injuries that resulted in a permanent low back condition. His employment with Rice County ended because his work restrictions could not be accommodated. He was given permanent restrictions following a 2013 functional capacity evaluation. He began working with a QRC in 2006. He held multiple different jobs for varying periods of employment. The QRC developed a retraining proposal in 2016 that he obtain a 3-year teaching degree at University of Mankato with a goal of becoming a high school teacher. Employer and insurer objected to this proposal. The plan was revised to obtain a master's degree in law enforcement and later revised to become post-secondary criminal justice and law enforcement teacher.

The initial proposal of bachelor's degree in education was ultimately considered by the compensation judge. The QRC testified regarding the job search efforts by the employee throughout the eleven year period. employer and insurer retained an independent vocational examiner who opined that the plan was not viable because there were not an adequate number of positions open, was concerned that the employee expected to teach a law enforcement related subject, and it would not necessarily restore the employee's economic status. She also opined that the employee's job search was not diligent and did not fully cooperate with rehab. The compensation judge concluded he was a candidate for retraining as a high school teacher and approved the proposed retraining plan. Employer and insurer appealed.

The employer and insurer argued that the employee's job search was deficient, and it cannot be said that retraining was preferable to continued job search as there were no job logs. The WCCA held that there was substantial evidence based upon the testimony of the QRC that he had conducted a diligent job search.

The employer and insurer argued that the employee failed to establish a likelihood that he would succeed in the program. The WCCA held that there was substantial evidence in the record that supported the finding that he had the ability to succeed based upon vocational testing, opinions of QRC, and testimony of the employee.

The employer and insurer argued that the employee did not establish that the proposed plan was likely to restore his economic status. The WCCA held that there was substantial evidence to support the judge's finding, given that the judge explicitly rejected arguments of proposed alternatives as unreasonable and irrelevant to analysis of whether proposed retraining will place the employee in an economic status as close as possible to what he would have enjoyed if not for his work injuries.

M. Miller v. Valley Paving Inc., No. WC17-6098 (WCCA Mar. 6, 2018)

The employee, a construction worker, sustained a personal injury to his right knee after stepping backwards into a hole on August 31, 2015, arising out of and in the course of his employment.

The issue was whether the employee's work injury was a temporary aggravation of a pre-existing knee condition or a permanent injury substantially contributing to the employee's ongoing disability.

Medical records revealed the employee had right knee treatment in April and May of 2014 after an injury playing basketball. Following an MRI, the employee was diagnosed with a medial meniscus tear and ACL laxity. A meniscectomy was recommended but he did not pursue this treatment thereafter until the work injury.

Following the work injury, he was diagnosed with a tear of the medial meniscus and underwent an arthroscopy. The employee was eventually laid off by the employer in July 2016.

The treating doctor prepared a report attributing the right knee problems to the August 31, 2015 work injury and gave a 2% PPD rating. An independent medical examination opined the torn meniscus was present before the August 31, 2015, work injury, the work injury was a temporary aggravation of the employee's pre-existing condition and no permanency was related to the work injury.

The compensation judge found the work injury to be permanent in nature and awarded benefits to the employee. The employer and insurer appealed the matter and raised issues with both the credibility of the employee and the adoption of the treating doctor's narrative report.

The WCCA noted the compensation judge had made a specific finding that he "found the hearing testimony of the employee to be credible." The Court held that a compensation judge is in the best position to consider the credibility of witnesses and while different conclusions can be drawn from conflicting evidence, there was no basis to reverse the credibility determination of the compensation judge.

The Court also stated that one of the central functions of a compensation judge is to weigh competing medical opinions and the WCCA will uphold the compensation judge's choice of medical opinion where there was adequate foundation for the opinion.

N. Karkanen v. Univ. of Minn., No. WC17-6117 (WCCA Mar. 14, 2018)

The employee filed a petition to vacate an award based on a substantial and unanticipated change in medical condition under Minn. Stat. § 176.461.

The employee worked as a veterinary technician for the University of Minnesota. She had a claimed back injury on April 17, 2010, when she was assisting in surgery being performed on a horse and was pulling and lifting large bags of fluid. The employee had a significant history of prior back injuries and treatment. In June 2010, she underwent a posterior lumbar interbody fusion at L5-S1.

The employer and insurer denied the claimed injury and the parties eventually settled the matter in April 2012, pursuant to a stipulation for settlement wherein the employee accepted a sum in exchange for a full, final and complete settlement of all claims with the exception of future medical expenses and permanent total disability benefits after 15 years.

Prior to settlement, the employee was working full-time under restrictions. She continued to have pain, which she rated at a 7/10 in records just prior to her settlement and was on several pain medications.

Following the issuance of an award, the employee continued to treat for the back, including multiple additional surgeries, injections, pain medication and physical therapy.

In its analysis, the Court outlined the multiple factors set out in Fodness v. Standard Café, 41 W.C.D. 1054 (WCCA 1989) for evaluation of whether there has been a substantial and unanticipated change in medical condition: a change in diagnosis; change in the employee's ability to work; additional permanent partial disability; necessity for more costly and extensive medical care than originally anticipated, a causal relationship between the covered work injury and the worsened conditions and the contemplation of the parties at the time of settlement.

The WCCA held the employee failed to provide evidence to demonstrate the work injury was causally related to her present condition. Therefore, the Court did not go into an analysis of any other Fodness factors and denied the employee's appeal for a vacation of the award. The Court rejected the employee's argument that whether a causal relationship exists is a factual determination that should be made by a compensation judge at a hearing after the WCCA vacates the award.

O. Weiss v. St. Mary's Med. Ctr., No. WC17-6097 (WCCA Mar. 15, 2018)

The WCCA affirmed the compensation judge's determination that the employee had sustained Gillette injuries to her cervical spine and right shoulder where substantial evidence supported the finding.

The employee worked for Essentia Health/St. Mary's Medical Center cleaning and sterilizing IV poles and associated pumps and equipment. The work involved her pushing around a supply cart throughout the hospital, which she did for over 13 years. At the time of the alleged injuries, the employee had been working a second, part-time job for Walmart as a cashier. The employee claimed Gillette injuries to her cervical spine, right shoulder and left knee, with a culmination date of August 8, 2016.

Medical records showed sporadic treatment for her shoulders, hands and cervical spine, including a 1991 cervical strain which she attributed to pulling a heavy cart and a 2007 right shoulder sprain after trying to pull IV poles into an elevator. Her treatment ramped up in 2016 and she reported having neck, upper back pain and bilateral arm tingling for years and that her jobs aggravated her pain.

One of the employee's treating physicians provided a narrative report diagnosing right shoulder rotator cuff impingement and tearing and multilevel degenerative changes to the cervical spine and concluded the findings were significantly aggravated by her work for Essentia.

The independent medical examiner agreed with the diagnoses of a right shoulder rotator cuff tear and acromioclavicular joint arthritis as well as multilevel degenerative disc disease of the cervical spine. He opined all were chronic degenerative conditions and the employee's work activities at Essentia did not constitute a substantial cause of their development, aggravation, or acceleration.

The WCCA held that substantial evidence supported the judge's finding that the employee sustained Gillette injuries to her cervical spine and right shoulder culminating on or about August 8, 2016.

P. Mellgren v. Minn. Dep't of Corr., State of Minn., No. WC17-6110 (WCCA Mar. 21, 2018)

The employee sustained a non-work-related tear of the ACL, a medial meniscus tear, and degenerative changes of the medial compartment in the right knee was indicated in an MRI scan. She underwent arthroscopic surgery, then returned to work without restriction. After having a pain in the right knee in 2006 that was treated with a cortisone injection, she experienced no symptoms and was given no restrictions or treatment for her right knee from 2006 until 2016.

In 2016, the employee was involved in an inmate altercation. Following this incident, she experienced soreness and then severe pain in her right knee. A work-related injury was admitted and wage loss and medical expenses were paid.

A March 2016 x-ray showed significant arthritis in the right knee, and the symptoms were opined to be a flare-up of either arthritis or a minor knee sprain. Conservative care and a cortisone injection were recommended. A second opinion was that the pain was from a torn ACL graft. A third opinion given in a July 2016 IME was that the employee had suffered a temporary aggravation of a pre-existing condition. The same IME found the employee to be at MMI with no PPD, need for further medical treatment, or restrictions.

In February 2017 the employee sought treatment, claiming that her symptoms had gradually returned. A Synvisc injection was recommended, but denied by work comp based on the findings of the IME report. In June 2017, the IME doctor added to his initial report that the employee's condition was likely due to "chronic failure of a non-healing previous graft," and that any further treatment would be to treat the underlying condition, not a condition brought about by the work injury.

The compensation judge agreed with the employer that the work injury was not a substantial contributing factor for the employee's condition or need for treatment. On appeal, the employee argued that the aggravation of a pre-existing condition had never resolved, that the need for the Synvisc injection was therefore related to her work injury, and that as she only required treatment because of the work injury, the compensation judge erred. She pointed out six factors the Court had used to assess aggravations of pre-existing conditions: "1) the nature and severity of the preexisting condition and the extent of restrictions and disability resulting therefrom; 2) the nature of the symptoms and extent of medical treatment prior to the aggravating incident; 3) the nature and severity of the aggravating incident and the extent of restrictions and disability resulting therefrom; 4) the nature of the symptoms and extent of medical treatment following the aggravating incident; 5) the nature and extent of the employee's work duties and non-work activities during the relevant period; and 6) medical opinions on the issue."

The employer argued that the compensation judge's ruling was supported by the IME opinion that the employee's condition was a temporary aggravation of a pre-existing osteoarthritic condition. The Court found that the compensation judge did not error by relying on the IME doctor's opinion, as the doctor's opinion was "not based on speculation or conjecture..." Additionally, no medical opinions found the work injury to be a substantial contributing factor to the right knee condition or need for the Synvisc injection, and the employee failed to prove this connection.

Although the Court also noted that the employee's arguments were supported by evidence, it was not the Court's role to determine whether such substantial evidence exists. Rather, the Court was to determine only if the compensation judge's findings were supported by substantial evidence. As they found such evidence to exist, they affirmed.

Q. Loos v. White Bear Lake Superstore, WC17-6108 (WCCA March 28, 2018)

The employer and insurer appealed the compensation judge's determination that the employee was unable to maintain suitable gainful employment. The employee, working in car sales, sustained two injuries to his ankle that required him to be placed into sedentary work. The employer offered him a position that complied with his restrictions but changed his compensation from

commission based to an hourly wage that would be taken out of any commission earned. The employee asked the Department of Labor and Industry staff about the job offer due to his concerns with the compensation change. DOLI staff told him the job offer was not viable and the employee's QRC was told by DOLI that there was a question as to whether the job offer was "meaningful work." He refused the job offer.

The employer and insurer appealed, arguing that the job offer was gainful employment that the employee could perform. Because a R-2 Rehabilitation Plan was not filed, the standard for discontinuance of benefits is whether the employee refuses an offer of gainful employment that he would be able to do within his restrictions. In this case, the WCCA affirmed the compensation judge's finding that the job offer was not gainful employment as he was unable to engage in traditional sales activities necessary for selling cars. The Court also noted that "meaningful" and "gainful" have been used in identical context in their previous opinions, and thus the wrong legal standard was not applied, as argued by the employer and insurer.

R. Corey C. Fenske v. Steel Erection, Inc., No. WC17-6107 (WCCA April 16, 2018)

The employee petitioned to vacate the award on stipulation served and filed January 26, 2011 on grounds of a substantial change in medical condition that was clearly not anticipated.

On November 3, 2008 the employee fell from a ladder while at work for the employer, Western Steel Erection, Inc. The employee suffered fractures in his left tibia and fibula near his ankle. A closed fixation of the fractures was attempted and was unsuccessful. Several weeks later the employee underwent open fixation surgery and hardware was installed. The procedure resulted in an infection soon after the surgery. The employee underwent revision surgery and the hardware was removed on June 10, 2009. The employee was diagnosed with depression arising from the ongoing problems with his left leg. The employee received temporary total disability benefits. The employee was rated a 9% whole body impairment due to the condition of his left leg.

In January 2011, the parties settled the employee's workers' compensation claims on a full, final and complete basis. Future medical treatment to the left ankle was reserved.

From January 2011 to August 2017, the employee worked full time in the iron work industry performing ironworker duties, although the employee continued to experience pain in his left lower extremity. The employee was examined and diagnosed with a neuroma of the left ankle.

On August 18, 2017, the employee underwent a subtalar amputation of his left leg, several inches below the knee. The employee was taken off of work for three months post surgery and was advised that he was permanently restricted from iron work. The employee petitioned to vacate the January 26, 2011 award on stipulation.

The employee was medically released to work with no anticipated medical care or plan of treatment. The employee has subsequently required significant surgery that arose from the work injury and has resulted in substantially increased permanent disability and potential loss of earning capacity. There was no evidence presented by the employer and insurer that any of these outcomes

were reasonably within the contemplation of the parties at the time of settlement. The employee has shown that this factor favors vacating the award.

Having concluded that the employee had shown a substantial change in his medical condition since the time of the award that was clearly not anticipated and could not reasonably have been anticipated, the court granted the employee's petition to vacate the January 26, 2011 award on stipulation.