CASE LAW UPDATE

Minnesota Employers Workers Compensation Alliance (MEWCA)

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MINNESOTA WORKERS' COMPENSATION CASE LAW UPDATE

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Minnesota Supreme Court Cases

Blomme v. Indep. Sch. Dis. No. 413, No. A16-0439 (Minn. 2016)

The facts of the case in this matter are unimportant, as the issue is the procedural requirements for an appeal to the Supreme Court of Minnesota. Employer and Insurer filed a timely petition for a Writ of Certiorari. However, Employer and Insurer did not serve a cost bond on the W.C.C.A. or pay a filing fee, and instead filed a Stipulation for Waiver of Appeal Bond signed by all parties. Despite there being a long and accepted practice of filing waivers of the cost bond to perfect an appeal to the Minnesota Supreme Court, the Court found that the statute is unambiguous and required that a cost bond be appropriately filed. Moreover, statutory requirement to perfect an appeal cannot be waived. Therefore, the Minnesota Supreme Court had no jurisdiction and refused the appeal.

Now it's clear that every appeal to the Minnesota Supreme Court requires the filing of a cost bond.

Gianotti v. Independent School District 152, A16-0629 (Minn. 2017)

The Employee, a school bus monitor, sustained an injury after falling forward and hitting her head and left upper extremity. The Employer and Insurer admitted an injury and paid benefits. Subsequently, the Employee claimed to be suffering from post-concussive syndrome. Benefits were denied after the Employer and Insurer acquired the independent psychological evaluation report of Dr. Paul Arbisi, who opined that the Employee did not suffer a concussive injury and interpreted an MMPI-2 which indicated that the Employee was intentionally attempting to exaggerate, if not feign, her severe psychological and cognitive deficits.

At trial, the Compensation Judge rejected the opinions of the Employee's treating physicians and found that the Employee did not suffer from a concussive injury, relying principally on Dr. Arbisi's report. The Employee appealed, asserting that Dr. Arbisi did not have factual foundation for his opinion, and that the Judge's findings were not supported by substantial evidence.

The W.C.C.A. reversed the compensation judge on two grounds. First it ruled that Dr. Arbisi, as is a psychologist and not a medical doctor, is incompetent to provide expert opinion on a physical injury like a concussion. Secondly, the W.C.C.A. found that Dr. Arbisi did not have factual foundation for his opinion, because he had not viewed school bus video of the incident and that Dr. Arbisi misunderstood the Employee's post injury symptoms.

The Employer and Insurer appealed to the Minnesota Supreme Court and argued that the W.C.C.A. improperly raised the issue of expert competency, noting that it was agreed by the parties that Dr. Arbisi's competency was never raised. Further, Dr. Arbisi did have factual foundation for his opinion and the W.C.C.A. improperly applied Hengemuhle in its decision.

The Supreme Court reversed the W.C.C.A.. First, the Minnesota Supreme Court avoided the merits of the competency argument by finding that the Employee had failed to raise the issue, which was therefore forfeit. Consequently, W.C.C.A. improperly raised the issue of expert competency. The Minnesota Supreme Court also found Dr. Arbisi's report to have sufficient factual foundation, as he enjoyed "as solid factual foundation as any other expert." It is noted that the W.C.C.A. "mischaracterized a sentence of Dr. Arbisi's report" to discredit the entire report. The Supreme Court also took issue with the contention that Dr. Arbisi's failure to view the video made his opinions inadmissible when none of the employee's treating physicians had reviewed that same video.

As the W.C.C.A. was reversed in full, the Compensation Judge's Findings and Order were reinstated.

Workers' Compensation Court of Appeals

- ***Arising Out Of - Dykhoff***

Kayla Lien v. Eventide, No. WC16-5961 (W.C.C.A. Dec. 7, 2016)(On Appeal to Minnesota Supreme Court)

This case involved an employee working at an assisted living facility alleging an injury which occurred while descending a stairwell. According to the background of the case, the Employee's right foot slipped out from underneath her, she fell backwards, struck her head and back on several steps as she fell down the stairs. She had numerous injuries including concussion, ankle injury, and contusion to her left forearm and back. Both the Employer and Insurer's and the Employee's architectural experts were asked to render opinions as to whether the stairs would be a special hazard. The Employer and Insurer's expert indicated that they were consistent with building code requirements and not a special hazard or an increased risk to users.

In contrast, the Employee's expert found that the stair system did not have anti-skid material and there was paint uniformity which made it difficult to discern the different steps from each other.

The compensation judge found that this injury did not occur due to an increased risk on the staircase and paid specific attention to the fact that there was no OSHA investigation, failure to show a defect in the stairs, and that the Employer was in compliance with building code.

The W.C.C.A. reversed and remanded this because the case was tried as a "negligence action" based on failure to comply with safety codes and standards. The W.C.C.A. found that the judge applied an incorrect legal standard because the statute requires determinations of liability without regard to questions of negligence. This is a major aspect of the historical bargain between employers and employees with respect to having a no-fault system.

The W.C.C.A. notes the determination of an injury arising out of employment depends on consideration of the case law relied upon by the Supreme Court in Dykhoff and that the increased risk analysis is not the same as proving a defect or negligence on the part of the employer. Instead, the W.C.C.A. pointed to the Dykhoff case and its discussion of Kirschner in which the employee in Kirschner fell when his knee gave out while descending a staircase when he could not use a handrail because other people were using it. Similar to that case, because there is uncontroverted evidence that the stairs did not have anti-slip treads and the Employee's foot slipped which caused her to fall, there is a causal connection between the staircase and her injury sufficient to meet the increased risk standard.

Because this case was reversed and remanded, the W.C.C.A. found a work injury and now on remand the only findings will be what benefits she is awarded. This case is on appeal to the Minnesota Supreme Court and, as we know, there are numerous cases pending after oral argument last Halloween. The defense attorney for this case has indicated that they are still in the briefing process but have requested oral argument.

Legatt v. Viking Coca-Cola Bottling, Co., No. WC16-5994 (W.C.C.A., Jan. 26, 2017)

The Employee, an operations manager, was walking through a warehouse when she twisted her right ankle. It was part of her daily duties to take an inventory of the warehouse. The Employer and Insurer denied the injury, asserting that it did not arise out of Employment. The Compensation Judge found that the Employee's injury did arise out of the course and scope of her employment.

The Employer and Insurer appealed the finding that the ankle injury was compensable. They alleged, per Dykhoff v. Xcel Energy, that the Employee must establish that the warehouse floor was hazardous or increased her risk beyond everyday non-work life. Specifically, they alleged the facts were identical to Dykhoff.

Noting that the issue for the Judge was "whether the Employee's injury resulted from a hazard which originated on the premises", the W.C.C.A. affirmed the Compensation Judge citing a finding that the warehouse floor was damaged or crumbling causing the Employee to twist her right ankle.

- ***Narcotic Medication***

Tina Castro v. Super America, No. WC16-5958 (W.C.C.A., Jan. 9, 2017)

The Employee had an admitted low back injury which resulted in two discectomies at L5-S1. The Employee's surgeon prescribed Percocet after surgery but then discontinued it after the Employee sought emergency room care, which was outside of the pain management plan. She then began receiving Percocet from her treating physician. After the Employee reached MMI she was referred to MAPS Pain Clinic and taking four to six Percocet per day. The Employee was recommended by MAPS to taper opioid medication. She requested a second opinion, which she received at Twin Cities Pain Clinic.

The Employee began treatment at Twin Cities Pain Clinic on January 26, 2012. During the next year the Employee's use of prescription opioid medication substantially increased. Employer and Insurer obtained an IME on January 22, 2015, recommending tapering of opioid medication and opining that it was not reasonable or necessary.

At hearing, it was stipulated that the procedural requirements of treatment parameter Minn. Rules 5221.6110 regarding opioid medication were satisfied. The Employer and Insurer argued that at no time was there any objective improvement in pain or function, and that opioid medication was unreasonable and unnecessary. The Employee argued that treatment parameters were not in force in 2012 at the beginning of the opioid treatment pain program. The Compensation Judge found that the treatment was reasonable and necessary and that the treatment parameter's requiring an improvement in pain and function did not apply retroactively to the pain program.

Remarkably, the Compensation Judge then took "judicial notice" that "long term opioid medication should not be a lifetime use for a young person, unless absolutely necessary." Additionally, he required the treating physician to consider developing a treatment plan for tapering or weaning the Employee or to file a narrative report explaining why such an approach would be inappropriate.

On appeal, the W.C.C.A. found that the treatment parameter's requirement that there be an improvement in the pain and function of an employee applies solely to the first six months of long term treatment and that the Employee at this stage in her program only needs to maintain her current level of pain and function. Further, the W.C.C.A. found treatment was reasonable and necessary citing the Employee's subjective reports and her continued employment. Finally, the W.C.C.A. ruled that the Compensation Judge's "judicial notice" that the Employee should not be utilizing opioids for her lifetime and that her physician should explain why weaning is not appropriate was mere dicta and unenforceable.

- ***Mental-Physical Injury***

Romens v. Ballet of the Dolls, Inc., No. WC16-5952 (W.C.C.A. Jan. 9, 2017)

The Employee, Michael Romens, was the managing director at the Ballet of the Dolls. Due to the recession, the theater was having trouble raising sufficient revenue for operation. The theater had to make significant staffing cuts, the remaining managers had to take on a multitude of work duties, and work long hours, which meant the employee was losing sleep. He was also tasked with going from concessions manager to running the non-profit. After six to eight months of this, on March 10, 2011, the Employee was cleaning a bathroom when co-workers heard him fall and experience a seizure. He experienced a second seizure in the presence of emergency medical technicians and was taken to Hennepin County Medical Center. After his stay, he returned to his duties with the Employer.

The Employee clamed three additional work related seizures on July 6, 2012, December 10, 2012, and March 15, 2013. On December 10, 2012, he was removed from the managing director's position and was unable to work until February 2013, when he returned on a part-time basis. The Employee has been unable to work since March 15, 2013.

The Employee's treating neurologist, Dr. Miguel E. Fiol, was aware of his previous history of a seizure in 1979 when he had an arterial venous malformation ("AVM") rupture and excision. Dr. Fiol opined that the Employee's job stresses were a substantial contributing cause of his seizures beginning in March 2011 and was totally disabled and unable to carry out work-related activities.

The Employer and Insurer then acquired an Independent Medical Examination of the Employee by Dr. Ansar Ahmed. Dr. Ahmed agreed with the total disability but did not agree with the causation opinion. Dr. Ahmed concluded that Employee's seizure disorder was due to the 1979 AVM rupture and excision. The Employee also had other contributing stress factors including relationship problems, alcohol abuse, poor sleep, and non-compliance with medications.

At hearing, the Compensation Judge found the Employee sustained a work-related injury on March 10, 2011, but found the Employee failed to prove he sustained the separate seizure injuries arising out of and in the course of his employment in 2012 and 2013.

The Employer and Insurer appealed the Compensation Judge's finding that the Employee experienced unusual and extraordinary job stress arising out of his employment producing a seizure. The Employee cross-appealed the denial of the work-related injuries on July 6, 2012, December 10, 2012, and March 15, 2013.

The Workers' Compensation Court of Appeals noted that cases involving mental or emotional stress are divided into three categories:

(1) Cases in which mental stress produces physical injury.
(2) Cases in which physical injury produces mental injury.
(3) Cases in which mental stress produces mental injury.

The first two categories are compensable. The third is only available recently for PTSD. There is a two-step test for determining causation of stress-induced injuries:

(1) Whether there is sufficient factual evidence to support a finding of legal causation under the act.
(2) Whether there is sufficient medical evidence to support the conclusion that the mental stress and strain were medically related to the seizure – the physical component.

Additionally, legal causation is analyzed whether the stress experienced by the Employee was beyond that of the ordinary day to day stress of other employees, not only those in management.

The Workers' Compensation Court of Appeals affirmed the Compensation Judge's holding and concluded the Employee submitted substantial evidence that he experienced unusual and extraordinary levels of job stress – the appropriate legal causation for the mental-physical claim. The Workers' Compensation Court of Appeals also affirmed the Compensation Judge's holding that the Employee failed to prove he sustained the other three separate injuries because of a lack of evidence to support these claims.

- ***Rehabilitation Benefits***

Bode v. 3M Co., No. WC16-5910 (W.C.C.A., Dec. 9, 2016)

The Employee sustained a Gillette injury to her shoulders while working at a 3M plant. Subsequently, she was provided with work restrictions and provided modified duty by the Employer. These work restrictions included lifting restrictions as well as no overhead work. Eventually, a QRC was assigned by the Employer and Insurer to assist with the file. The QRC later testified that she received the majority of her assignments from insurance companies.

Subsequent to the assignment, the Employee became unsatisfied with the QRC and made a motion for change of QRC based on "the best interests of the parties."

At hearing, it was found that the Employer had consistently failed to honor the Employee's work restrictions. The QRC's advice to the Employee was that she speak up to her supervisors and refuse to do work outside of her restrictions. While the QRC communicated these allegations to the Employer, these issues regarding accommodation were not resolved. Additionally, the Employee objected to the conduct of the QRC at two doctors' appointments. At the first, the QRC pressed the doctor to decrease the Employee's work restrictions. At the second, she pressed the doctor to lift the Employee's work restrictions at the behest of the Employer and Insurer. Upset about these and other issues, the Employee wrote a letter to the QRC noting that she was feeling harassed by the Employer and pressured to work outside of her work restrictions. That letter was provided to the Employer and Insurer, which the Employee felt was a betrayal of trust. The Compensation Judge, however, found that there was nothing in the record to reasonably justify the Employee's lack of trust in the QRC and that the QRC provided "professional, prompt and necessary" services to the Employee.

Despite citing the deferential Hengemuhle standard of review, the W.C.C.A. declared that the facts in the case were undisputed and that the issues may be considered de novo. The W.C.C.A. goes on to reverse the Compensation Judge on the grounds that the QRC failed to more forcefully attempt to implement a return to work at modified duty and had failed to ensure that the Employee was consistently assigned to work within her restrictions. They found it was not unreasonable for the Employee to lose faith in the QRC and that a change in QRC would be in the best interests of the parties.

Here, the W.C.C.A. is disregarding the neutrality of the QRC position in favor of an employee-advocate model.

- ***Foundation for Expert Opinions***

Sara Willy v. NW Airlines Corp., No. WC16-5956 (W.C.C.A. Dec. 14, 2016)

This is a case involving an airplane cleaner for Northwest Airlines. She sustained numerous injuries leading to complex regional pain syndrome/reflex sympathetic dystrophy of the left leg. Procedurally, the Employee had been determined to suffer from CRPS/RSD of the left leg in a Findings and Order from July 5, 2003, but then a Findings and Order from February 3, 2010, found that she no longer had that condition. This was never appealed.

Even after that litigation, the Employee continued to treat with an orthopedic doctor and a pain doctor and was recommended for additional knee surgery, and treated for ongoing symptoms for CRPS and RSD in the leg and in the right upper extremity and right lower extremity. She reported to Dr. Hess of the United Pain Center and then also noted symptoms in her left upper extremity by late 2014. She was recommended for significant ongoing treatment for what was described as severe bilateral lower extremity CRPS/RSD.

On behalf of the Employer and Insurer, Dr. Zeller opined that the Employee did not suffer from CRPS/RSD. Dr. Zeller found Dr. Hess' treatment as unreasonable and unnecessary. She recommended the Employee undergo mental health treatment. The Compensation Judge adopted the opinion of Dr. Zeller. The Employee appealed.

The W.C.C.A. affirmed the Compensation Judge noting that the judge has discretion in which medical opinions to adopt, especially those with adequate foundation and appropriate competency.

The Employee challenged Dr. Zeller's competency even though Dr. Zeller has a same or similar competency as Dr. Hess. She also challenged foundation, but the W.C.C.A. dismissed that indicating the Employee was examined, a history was taken, and there were the appropriate medical records reviewed and incorporated into the report. The W.C.C.A. took issue with the Employee's attorney's argument that Dr. Zeller did not understand or adequately consider indicators of CRPS and RSD. The conflicting evidence in the record was addressed by the Compensation Judge who found that Dr. Zeller's report was more persuasive, despite the Employee's testimony that Dr. Zeller did not examine her arms. Also, the Employee raised no objection to Dr. Zeller's report being introduced and, therefore, waived any foundational or competency objection. The W.C.C.A. also rejected the Employee's footnote argument that the Compensation Judge may not have reviewed everything in the case in rendering his Findings and Order.

This is a case in which the Employee's attorney should have raised the issue of competency and foundation as an objection to Dr. Zeller's report. She was put in a difficult position afterwards by trying to make that argument in an appellate brief. She also likely overstepped her boundaries with respect to criticism of the Compensation Judge's ability to fully review the record. Of course, if she were to object to the competency of Dr. Zeller, she would essentially be rendering Dr. Hess' opinions incompetent as well.

- ***Discontinuance of PTD***

Buley v. Polaris Indus., Inc., No. WC16-6012 (W.C.C.A., Jan. 23, 2017)

The Employee was receiving permanent total disability benefits and was turning 67 years old. Subjectively, the Employee was asserting that she was not retired and was not planning to retire at the age of 67. The Employer and Insurer petitioned the W.C.C.A. for an order discontinuing the payment of permanent total disability benefits per the presumptive retirement age. The W.C.C.A. found that the parties are permitted to discontinue PTD benefits without filing a Petition to Discontinuance according to Frandsen v. Ford Motor Co. (Minn. 2011). The Employer and Insurer may cease payment when the employee attains the presumptive retirement age without taking further action.

- ***Petition to Vacate***

Coleman v. Prof'l Res. Network, No. WC16-5942 (W.C.C.A., Feb. 3, 2017)

Employee petitions to vacate Award on Stipulation where the Employee settled her claims on a full, final, and complete basis closing out future medicals for body parts including the bilateral shoulders, neck, thoracic spine, and lumbar spine. The Employee argued that a substantial change in circumstances is supported by a post settlement shoulder surgery as well as a recommendation for fusion surgery. However, both of these events occurred about a year after the Stipulation, but three years prior to the Petition to Vacate.

The W.C.C.A. held that despite the fact that the Employee had a medical opinion noting that there had been a substantial change in circumstances, there is nothing in the record establishing a causal relationship between the Employee's 2011 work injury and her present condition. The Petition to Vacate was denied.

- ***Penalties and Interest***

Fishback v. AM. Steel & Indus. Supply, No. WC16-5943 (W.C.C.A., Feb. 3, 2017)

Descendants of the deceased Employee brought a claim seeking interest and penalties for admitted underpayments of dependency benefits. The Employee suffered a fatal injury in October 1996 leaving behind a wife and four minor children. The claim was admitted and dependency benefits were paid.

Over the ensuing years, dependency benefits were variously overpaid and then underpaid. When a probable underpayment was identified, the Employer and Insurer contacted the Widow and requested updated Social Security and dependent emancipation information. The Widow failed to provide necessary information or documentation to the Employer and Insurer, partially as a result of the Widow's deteriorating health. However, the Insurer failed to take additional action to correct the underpayment. A detailed summary of the requests for information and delays in payment is provided by the Compensation Judge and the W.C.C.A. Once the information was provided to the Insurer, and an attempt at mediation was cancelled, the Insurer promptly paid the underpayment of benefits.

At hearing, the Compensation Judge found that penalties and interest were not due as the delay in payment was largely a result of the Widow's failure to provide necessary payment information.

On appeal, the W.C.C.A. ruled that the interest was payable. The W.C.C.A. notes that interest is not a penalty nor is it based on fault; it is simply a consequence of a late payment. The interest on all late payments was ordered. However, the Compensation Judge's finding that penalties were not due was affirmed. Whether a penalty is appropriate is generally a question of fact for the Compensation Judge and the Compensation Judge's reasoning on that point was not clearly erroneous.

- ***Credibility Determinations and Admission of Evidence***

David M. Welter v. Ray N. Welter Heating Co., No. WC16-5960 (W.C.C.A. Dec. 20, 2016)

This case involves an appeal on admission of evidence with respect to a crime involving dishonesty and factual findings by a government agency were not excluded as hearsay based on Rule of Evidence 803(8)(C).

The Employee was previously convicted of felony fraud for false claims of unemployment benefits and incarcerated for that conviction due to a parole violation. His claimed work injuries involved a Gillette-type right wrist injury in February 2013 and a subsequent January 7, 2014, injury involving his right ankle. The Employee claimed the February 2013 in Minnesota, but filed the January 7, 2014 injury in North Dakota initially. But, because the January 7, 2014 right ankle injury was accepted by North Dakota Workforce Safety and Insurance (WSI) and subsequently reversed based on evidence from a co-worker who indicated the Employee injured his ankle on January 6, 2014, while returning from a bar in North Dakota, the employee claimed both injuries in Minnesota.

The Employee had significant medical treatment for his right wrist, including a four bone arthrodesis.

The Employer and Insurers for the two dates of injury denied the claims. Specifically, they asserted a notice defense and nature and extent for the right wrist injury; and they asserted denial of the ankle injury from January 7, 2014, based on the fact that it did not occur at a worksite and instead on the way home from a bar the night before. There is testimony taken from the Employee, a friend of the Employee, co-worker, and the Employee's uncle. The Employee's uncle was actually a supervisor. The Compensation Judge adopted the Employer witness, Joe Welter, indicating that the Employer had no knowledge of the alleged right wrist injury until the Claim Petition was filed on July 3, 2014. The Judge also found that there was no Gillette-type wrist injury. The Judge also denied the claim for the January 7, 2014, ankle injury and relied upon the testimony of the co-worker who said the Employee injured himself the night before.

The W.C.C.A. rejected the Employee's appeal with respect to the notice issue and found that the Employee did believe he injured himself by the fact that he actually told his supervisor of the injury allegedly in March 2013. Thus, there was mistake or lack of knowledge of his injury.

The W.C.C.A. did not disturb the credibility decision of the judge to believe the co-worker over the employee with respect to the injury happening the night before. Furthermore, the court found that the admission of evidence with respect to the Employee's prior felony for fraudulent claim for benefits is directly related to the Employee's credibility in making a workers' compensation claim. This evidence was not time barred because he had recently been incarcerated for that. They found nothing prejudicial with respect to the testimony regarding those crimes.

The Employee also requested that the admission of the North Dakota WSI order regarding revoking acceptance of the claim was hearsay and should not have been admitted. The hearsay issue was that the investigatory statements of others in the report were not called to testify and it

was not a final order. The compensation judge weighed the probative value against the prejudicial affect and made a specific finding with regard to the admittance of it. The judge found it was a document relating to the incident and if the Employee had wanted to have the parties interviewed as part of that investigation, they could have had them deposed or subpoenaed them to the hearing. There is no independent demonstration of lack of trustworthiness. The W.C.C.A. affirmed.

The W.C.C.A. also indicated that the final order that was provided as part of a post-hearing closing argument could not be considered because it was not available at the time of trial.

This case involves credibility determinations by the judge and fairly significant litigation with respect to evidentiary admissions. We do not see these that often in workers' compensation claims, but the judge did a very nice job of addressing those as they came up and establishing a significant record from which an appeal could be made if necessary. The W.C.C.A. correctly deferred to the judge's decision and, ultimately, this comes down to the fact that the Employee had significant credibility issues with respect to injuries. When you have that, you oftentimes win.

- ***Medical Opinions – Substantial Evidence***

Justin Elmer v. St. Paul Linoleum & Carpet Co., No. WC16-5980 (W.C.C.A. Jan. 20, 2017)

This is a case in which the Employee had admitted work injuries from July 21, 2014, and March 16, 2015, involving a lumbar spine injury to the L5-S1 disc and associated medical treatment. Interestingly, the injury from March 16, 2015, dealt with a 400-pound vinyl roll in which it was falling. The Employee had to twist to the right and try to catch it. He indicated he felt a pop and experienced immediate back pain. However, the Employee's treatment indicated that he was essentially at MMI sometime by mid-June 2015. However, shortly after that, he had a setback and things got worse. According to his testimony, the Employee was supposed to play a softball game on Wednesday, June 24, 2015. He did not play because he was experiencing tingling in his right foot, numbness, low back pain, and pain down his leg. The Employee admitted to going to the game, wearing his jersey, and bringing a glove along, but the compensation judge believed him when he stated that he did not play.

Unfortunately, there is no mention in the W.C.C.A. opinion whether or not the Employer and Insurer obtained any witness testimony with respect to the Employee actually playing in the softball game and injuring himself.

It is also curious because after the Employee's first injury on July 21, 2014, he had low back pain with tingling in his toes and right foot but no leg pain was ever mentioned. The Employee indicated he made a good recovery and had no ongoing symptoms after that. But, the judge found that the opinion of Dr. Bruce Bartie was more persuasive and indicated that while the Employee may have been doing better and not immediately shown radicular symptoms or impingement, that the disc could have had an internal tear that led to the ultimate disc bulging and tear/hernia.

The Employer and Insurer argued that there is no explanation for the mechanism of injury causing that or how that would actually occur.

Because, the judge also found the Employee's testimony credible with respect to not playing in the softball game – even after the Employer and Insurer made the argument that he went to the hospital shortly after the game – the W.C.C.A. would not overturn the assessment of credibility.

This is a case in which the Employer and Insurer were put in a difficult position of trying to prove a negative. It is unlikely that they would be able to get a witness to remember the specific softball game and, without anything in the medical records in which there is a mention of a specific injury at the game, proving their position would be very difficult.

Dustin Basting v. Metz Framing, Inc., No. WC16-5971 (W.C.C.A. Jan. 5, 2017)

This case involves a work injury from January 22, 2014, to numerous body parts. The Employee treated for these body parts but then subsequently started complaining about SI joint and tailbone issues. The Employee's medical treatment was extensive and the Employer and Insurer paid significant benefits. Dr. Comfort's IME opinion indicated that the Employee had reached maximum medical improvement for all alleged injuries and that he had a 7% left knee permanency and 3.5% permanency for the cervical spine. Dr. Comfort's opinions also indicated that the Employee had no injury to his SI joint or coccyx/tailbone. The Employer and Insurer cut off benefits based upon Dr. Comfort's IME. The Compensation Judge in this case found permanent injuries to the left knee and neck, permanent headache condition, and temporary injuries to the low back, mid back, right ankle, and right knee. The Judge also found that the Employee did not have a work injury to the SI joint or coccyx.

The Court found that the Judge's opinions were based on the IME report of Dr. Comfort and reasonably supported by the medical records.

There was one other major issue in this case with respect to reimbursement to certain intervenors in closing out those of Neurological Associates. Neurological Associates filed a Petition to Intervene in this matter and the Employer and Insurer filed a timely Objection. The Court found that because Neurological Associates did not appear at hearing, the Judge properly denied their claim for reimbursement. The Employee argued that he could make an independent claim for reimbursement of medical expenses, but because there was no indication that the attorney representing the Employee also represented the intervenor, there was no reason to overturn the denial of the intervention interest pursuant to Fischer.

Of course, this procedural aspect of intervention claims has changed recently. It is required that one of the other parties must to file a request for the intervenor to appear in person, by phone or other electronic medium and the judge has to sign off on that request.

- ***Jurisdiction between State and Federal Workers' Compensation***

Daniel M. Ansello v. Wis. Central, Ltd., No. WC16-5949 (W.C.C.A. Feb. 10, 2017)

This case addresses the Longshore and Harbor Workers' Compensation Act, which is a federal act, and whether or not it supplants or supersedes the Minnesota Workers' Compensation Act. The Chief Judge reversed a decision by the Compensation Judge dismissing the Employee's claim for medical expenses under the Minnesota Workers' Compensation Act because the federal and state statute, and the case law that has addressed the interaction between the two, has clearly provided that the injured workers on land but still in a capacity where the LHWCA applies can obtain benefits under both systems. The Court relied heavily upon the Sun Ship United States Supreme Court case and the Jacobson case from the Minnesota Supreme Court indicating that an injured worker whose injury occurred on land could pursue the LHWCA benefits and concurrent state workers' compensation benefits. This injury occurred while the Employee was working on the Duluth Oar Docks and was not in navigable waters at the time.

The decision by the Workers' Compensation Judge to dismiss the claim for lack of jurisdiction was clearly erroneous and reversed and remanded by the W.C.C.A. for a hearing on its merits.

The W.C.C.A. also addressed the Compensation Judge's decision to invoke the doctrine of *forum non conveniens*. This is a doctrine in equity and inapplicable to this case because the Employee is a resident of Minnesota, the injury occurred in Minnesota, and there is nothing indicating that the federal system is a more convenient choice of jurisdiction.