

CASE LAW UPDATE

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Workers' Compensation Decisions – June 1, 2016 – Present

Minnesota Supreme Court

- 1) *Ryan v. Potlach Corp.*, 2016 Minn. LEXIS 424 (Minn. 2016)
 - A workers' compensation settlement agreement may close out not only future benefits claimed for the compensable injury, but also claims for conditions and complications arising out of that injury that were reasonably anticipated by the parties at the time of the settlement agreement.

Workers' Compensation Court of Appeals

- 1) *Block v. Exterior Remodeling, Inc.*
 - The employee petitioned the court to vacate an Award on Stipulation on grounds that there had been a substantial change in his condition since the issuance of the award and that the award was entered into based upon a mutual mistake of fact.
 - The court found the employee adequately demonstrated all the factors outlined in *Fodness v. Standard Café*, 41 W.C.D. 1054 (W.C.C.A. 1989) to show that he has experienced a substantial change in his medical condition constituting good cause to grant the employee's petition to vacate the 1992 award on stipulation.
 - However, the employee's subjective belief that he was "cured" by surgery only to later require a multiple level fusion does not constitute a basis for vacating an award due to a mutual mistake of fact where there was no medical evidence available at the time of settlement to indicate that a later fusion would be required. See *Monson v. White Bear Mitsubishi*, 663 N.W.2d 534; 63 W.C.D. 337 (Minn. 2003).
- 2) *Crushshon v. New Am. Hospitality, Inc.*
 - The employer and insurer appealed the compensation judge's determination that the employee's injury of August 22, 2014, arose out of and in the course of her employment.
 - Where the employee was injured in a fall when her foot stuck on an irregular concrete surface while she was entering the employer's premises, substantial evidence supported the compensation judge's finding that the injury was caused by the condition of the walkway which constituted an increased risk. Based upon *Dykhoff v. Xcel Energy*, 840 N.W.2d 821, 73 W.C.D. 865 (Minn. 2013) and related case law, an employee's trip and fall on an irregular concrete surface on the employer's premises arose out of her employment.
- 3) *Yupa v. Prime Home Constr., LLC*
 - The employee appealed the compensation judge's determination that the employee failed to prove he was entitled to an additional 10% permanent partial disability for a permanent inner ear injury, and the compensation judge's finding that the employee was not permanently and totally disabled as of the date of hearing.
 - Substantial evidence supported the compensation judge's finding that the employee's claim for an additional 10% permanent partial disability for vertigo, pursuant to Minn. R. 5223.0360, subp. 5.A, was premature "at this time."

- Where the compensation judge denied the employee's claim for an additional 10% permanency, the judge's determination that the employee failed to prove he is permanently and totally incapacitated from gainful employment is vacated as the employee did not meet the 17% permanent partial disability required for permanent total disability eligibility under Minn. Stat. § 176.101, subd. 5.(2)(i).
- 4) *Bach v. Upper Mississippi Mental Health Ctr.*
- Where the employee did not have evidence to support her claim of regular employment with a second employer, the compensation judge did not err by finding that the employee did not regularly work for multiple employers on the date of injury, and therefore, no claimed additional earnings from the second employer would be included in determining the employee's weekly wage.
 - Where the employee's proposed weekly wage calculation erroneously included incorrect amounts for weeks where the employee did not work for the employer or had worked only part time, the compensation judge did not err by declining to adopt the proposed calculation.
- 5) *Myers v. Super 8*
- Where an employee does not exhibit impairment of regular activities of daily life including regular vocational activities, there is no basis for considering Minn. R. 5221.6600 (chronic management) in an application for medical treatment.
 - Where a compensation judge adopted an independent medical expert opinion that the employee suffered a temporary aggravation which resolved with no residual impairment of regular vocational activities or regular activities of daily life, discontinuance of rehabilitation services and temporary total disability benefits was appropriate.
 - Where substantial evidence supports the temporary nature of the employee's work injury, the compensation judge's findings that the employee is not entitled to ongoing temporary total disability or vocational rehabilitation benefits were affirmed.
- 6) *Zillmer v. Karen Lamb*
- Where there were material facts at issue regarding the type of employment relationship between an alleged employer and the employee, there were other employment theories raised by the respondents, and there were no stipulated facts by the parties, the compensation judge erred by making the determination that the alleged employer was not the employee's employer without an evidentiary hearing and by dismissing that party from the matter.
- 7) *Cobb v. Continental Hydraulics*
- Substantial evidence supported the compensation judge's finding that the employee failed to prove that his notice of appeal was timely filed under the requirements of Minn. Stat. §§ 176.421 and 176.275.
- 8) *Giles v. Montu Staffing Solutions*
- Where an employee was not working for a second employer at the time of the work injury and substantial evidence supported a finding that the employee would have been

scheduled to work concurrently at the second employer with the date of injury employer, calculating the average weekly wage figure sequentially was appropriate.

9) *Newgard-Gray v. The Travelers Cos., Inc.*

- Substantial evidence in the form of well-founded medical opinion supported the compensation judge's decision as to the extent of the employee's admitted cervical injury and her denial of the employee's claim of a bilateral carpal tunnel Gillette injury.

10) *Hendricks v. AVR, Inc.*

- Assessment of a witness's credibility is the unique function of the trier of fact. The record, including the employee's chiropractic and medical treatment post-injury, adequately supported the compensation judge's acceptance of the employee's testimony that he was never pain free following the admitted April 4, 2014, work injury until October 28, 2015.
- Substantial evidence, including the employee's post-injury chiropractic and medical treatment records, supported the compensation judge's finding that the April 4, 2014, work injury is a substantial contributing factor to the employee's ongoing cervical spine condition.
- The question of whether the employee's epidural steroid injection was reasonable and necessary was clearly at issue at the hearing, and the compensation judge did not err in awarding payment for the procedure.

11) *McGrath v. Kemps, LLC.*

- Substantial evidence, including adequately founded expert medical opinion, supports the compensation judge's finding that the employee did not sustain a Gillette injury to his right hip while working for the employer.

12) *Allen v. Minn. Vikings Football Club*

- Where expert medical opinion indicated that a full battery of psychometric testing was necessary to diagnose a traumatic brain injury and the employee had not completed such testing, substantial evidence supports the compensation judge's finding that the employee had not proven that he had sustained a traumatic brain injury as a result of concussion injuries, the judge's determination that the employee had not established a causal relationship between the work injuries and the employee's reduced wages, and the judge's denial of the employee's claim for temporary partial disability benefits.

13) *Williams v. Minn. Vikings Football Club*

- Substantial evidence in the form of a well-founded medical opinion, the employee's testimony, and the employee's medical records supported the compensation judge's determination that the employee's injuries while employed by the employer were substantial contributing causes of the employee's disability.

14) *Goble v. Leisure Hills of Hibbing*

- Common law governing the effect of notice between a principal and agent does not supplant the notice requirement under Minn. Stat. § 176.361, subd. 2.(a). A request to

extinguish an intervention interest under Minn. Stat. § 176.361, subd. 2.(a), must comply with the statutory notice requirement to be granted.

15) *Garcia v. Wal-Mart*

- Timely notice of a Gillette-type injury was provided where the employee, as a reasonable person, credibly testified that she was not aware that a compensable injury could arise through work activities absent a specific, identifiable incident, the employee's symptoms were not plainly arising out her employment, and the employee promptly notified the employer upon being told by a physician that the employee's condition was a compensable work injury.

16) *McKinley v. Target Corp.*

- Where an employee, who had been wheelchair bound with multiple medical conditions and consequential issues and needed personal care services for over 15 years, suddenly went into remission and was able to walk and care for herself, there had been an unanticipated substantial change in the employee's medical condition sufficient to vacate the awards on stipulation.

17) *Schuette v. City of Hutchinson II*

- Where the issue of whether the November 12, 2008, incident resulted in a compensable injury was raised in the 2012 proceeding and a judgment on the merits was issued in that case; the claim asserted by the employee in the current proceeding was ripe in 2012 and the information necessary to establish the claim was available; the factual circumstances giving rise to the claim are identical to the operative facts underlying the employee's claim in the first proceeding and the employee submitted the same documentary evidence to support his claims in both proceedings, the compensation judge properly determined the employee's current claim is precluded by the doctrine of res judicata.
- When the employee's claim in a proceeding is predicated on a separate claim or action, new and independent from that made in the original proceeding (and therefore not precluded by res judicata), the claim presently before the court was not filed within the three-year statute of limitations and is accordingly barred.

18) *Erven v. Magnetation, LLC*

- Substantial evidence supported the compensation judge's finding that the employee's injury arose out of his employment when it occurred as the employee was distracted and walking rapidly to respond to an emergency situation he was responsible for handling.
- Where the intervention motion of a health care provider was not filed within 60 days of being notified of its right to intervene, the motion was not timely under Minn. Stat § 176.361, subd. 2(a), and the compensation judge erred in allowing the intervention claim.

19) *Moen v. North Metro Asphalt, LLC*

- Substantial evidence, including expert medical opinion, medical records, and lay testimony, supported the compensation judge's finding that the employee had failed to prove a cervical injury on October 22, 2013.

20) *Warner v. Kath Bros. Fuel Oil Co.*

- The absence of explicit findings regarding a proposed surgery does not require a remand where substantial evidence and competent medical expert opinion supports the denial of surgery and the compensation judge fully explains the reasons for denial of the requested medical procedure in the memorandum.

21) *Oglesby v. Metro. Transit Auth.*

- Substantial evidence, including medical records and expert medical opinion, supported the compensation judge's finding that the employee's work activities were not a substantial contributing cause of her right shoulder condition.

22) *Engren v. Majestic Oaks Golf Club*

- Where the employer and insurer failed to acknowledge the employee's claim for payment of a medication and orthotics made four months before the hearing, went to hearing on the issue, tried and lost the issue, and did not appeal the issue, there is sufficient evidence that a genuine dispute existed.
- Where the record below did not establish that the medical benefits approved were recovered by the employee, the employee's attorney is not entitled to Roraff fees solely for obtaining approval of the medical benefits, and the matter is remanded to the compensation judge for a determination regarding whether or not medical benefits were "recovered" by the employee justifying an award of attorney fees.
- Where the employee's attorney had previously received fees in excess of the \$13,000.00 cap, the compensation judge properly applied the Irwin factors in determining the amount of a reasonable fee.