MSIA Case Law Update
June 2012 – September 2012

by

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Rajkowski Hansmeier
providing a clear direction

Anderson v. Frontier Communications

- Employee (EE) claimed *Gillette-type* injury to back
  - Worked as a lineman from 1987 to 2007 (July 4) and never reported a back injury during that time
  - Hearing testimony established Employee knew in May 2007 that his job was causing/aggravating his low back problems (diagnostic tests were done and his provider diagnosed him with DDD)
    - Repeated bending down to mark lines with flags ("discs were wore out")
  - Employee told Employer in June 2007 he was having back surgery but did not state it was work related (ultimately had 3 surgeries over 3 months)

Anderson continued

- Employee's attorney wrote to medical providers in April 2009 as to whether Employee's work activities were a substantial contributing factor in Employee's need for surgeries
  - General practitioner and surgeon opined yes
- Employer provided with written notice of claim in May 2009
- CJ found Employee sustained *Gillette*-type injury culminating on last day of work (July 4, 2007) but found that timely notice was not provided and the Employee did not have actual notice

Anderson continued

- WCCA reversed CJ
  - Ignored testimony of Employee re: May 2007 knowledge and his discussions with medical providers re: nature of work performed
- Minn. Sup. Ct. reversed WCCA (was subst. evid.)
  - Whether EE provided notice more than 180 days after it became reasonably apparent to the EE that the injury had resulted in, or was likely to cause, a compensable disability (citing *Issacson*)
    - No requirement that there be documentation in medical records
    - Diagnosis of DDD was not inconsistent with a work-related injury

Anderson continued

- Employer did not have actual knowledge
  - Knowledge of such information as would put a reasonable person on inquiry
  - Knowledge of disability following injury not sufficient
- EE did not tell Employer that he sustained an injury
- Mere knowledge of the "demands" of the EE's job is not enough

Giersdorf v. A & M Construction

- Issue: whether WC courts have authority to hear petition of alleged insured to determine whether an alleged insurer has a duty to defend and indemnify under a workers compensation insurance policy
  - Insurer moved to dismiss the Petition for Declaration of Insurance Coverage for lack of subject matter jurisdiction
    - Insurer alleged Petition asserted Breach of Contract claim, not a claim arising under WC laws

Giersdorf v. A & M continued

- CJ denied Insurer's motion
  - Breach of contact claim really a coverage issue (e.g. there is coverage if there was a breach of contract)
- WCCA affirmed (interlocutory appeal)
- Background
  - Insurer increased A & M's annual premium
  - Billed A & M for the entire premium owed
    - Prior agreement as to installments v. lump sum
  - A & M did not pay premium and Insurer cancelled the Policy on 12-18-08
  - A & M EE injured (allegedly) on 1-20-09
  - A & M was subcontractor on a construction project

Giersdorf v. A & M continued

- Minn. Sup. Ct. affirmed
  - Relied on Minn. Stat. § 176.215
    - General contractor liable for benefits if subcontractor failed to obtain workers compensation insurance
    - Statute grants WC courts authority to "determine the respective liabilities" of the parties
    - CJ needs to know if A & M has coverage to do so
  - Holding: must examine the "real nature of the action" to determine whether court has jurisdiction over claim
    - Not outcome determinative that Petition alleged breach of contact because the Petition sought a determination that subcontractor was covered by a policy of insurance

Yennie v. Benchmark Electronics

- Nature of Appellate Dispute: entitlement to Roraff fees
- Compensation Judge ("CJ") awarded PPD, denied PTD, determined reimbursement to intervenor was premature (insufficient documentation)
- Counsel for Employee sought contingent fees, costs, and Roraff fees
- Roraff fees denied as no medical benefits were awarded to the Employee

Ware-Cox v. First Student, Inc.

- Claimed Injury: low back
- Employee sought TTD, TPD, PPD (per 10% whole body impairment), and medical benefits
  - Rating: Minn. R. 5223.0390, subp. 4E
    - "objective radicular findings" (none were found)
    - Imaging findings "correlate" with the findings on neurologic examination (neurological examinations were normal)
- CJ awarded everything sought
- WCCA reversed 10% impairment determination
- CJ failed to address any of the subpart's express requirements
- Lesson: WCCA will give great deference to CJ in some areas but not others (compare to Cherry v. Duininck Bros.)

Strohecker v. Mike's Auto Repair & Tire

- Employee claimed right knee injury (meniscus tear)
- Issue: Primary Liability
- Employee claimed he sustained the injury at 4:45 p.m. on February 7, 2011 but surveillance video recorded at that time on that day showed no injury
- CJ found that the Employee had sustained a work injury
- WCCA affirmed
- Lesson: appeals that involve criticisms of CJ credibility determinations are not likely to be successful
  - *See also* Preston v. Hitchin Rail (June 4, 2012)

Jensen v. Northern States Power

- Employee sustained an admitted injury
- Employee sought PTD benefits and a Stipulation for Settlement was entered into
- Stipulation explicitly closed out "psychiatric expenses"
- Employee subsequently sought payment of Wellbutrin (depression medication)
- CJ denied reimbursement and WCCA affirmed
- Holding: what constitutes a "psychiatric expense" is based on the medical evidence of why a medication was prescribed not an Employee's self-serving testimony (i.e. look to the medical records)
    - Pain relief
    - Sleep aid

Bankston v. Second Harvest Heartland

- Issue: whether Employee had reached MMI
- CJ considered a proposed surgery (three level fusion) in determining whether the Employee had reached MMI (Employee had not decided whether to proceed)
- Holding: A final determination on a surgery is not necessary for a proposed surgery to be considered in the MMI analysis
- Holding: Determining what constitutes "unreasonable delay" in obtaining medical treatment to stave off MMI is a fact-intensive inquiry
  - Employer argued "unreasonably delay" because did not pursue until 90 day period expired
  - WCCA disagreed

Betcher v. Modern Tool, Inc.

- Petition to Vacate an Award on Stipulation (low back injury)
- Award on Stipulation was filed in July 1987
  - Substantial change in condition
    - Diagnosis (stable fusion L3 to S1 v. now including T12-L2 spinal levels), ability to work, additional PPD (35% v. 50%, need for more care (additional surgeries req.), causation, whether contemplated
  - Need not show change in condition was unanticipated
- Employer/Insurer offered no evidence on any of the "substantial change" factors
- Holding: A hearing request pursuant to Minn. Stat. § 176.521, subd. 3 will be denied unless there are disputed medical or credibility issues and a referral to a CJ is not mandatory

Tollefson v. Rice County

- Employee sent letter to Employer that he would be retiring on January 7, 2011
  - Employer sought to discontinue TTD based on retirement and withdrawal from the labor market
- Employee received PERA benefits
  - Employee needed to rebut retirement presumption
- Holding: WCCA reaffirmed well-known principle of law that retirement from date of injury employer is not dispositive of whether the Employee has permanently retired from the labor market
- Testimony, financial need, adequacy of other monies, whether sought rehabilitation assistance, whether sought employment, whether was working, etc.

Olson v. Fine Impressions

- Admitted injury to left knee on March 2, 2010
- Only issue at Hearing was whether the Employee's current left knee condition (and need for further surgery) was related to the work injury
- CJ went beyond that issue
  - Found Employee sustained cervical injury in 2005 requiring fusion
  - Found Employee struck her head at work in 2011
- Holding: WCCA vacated the peripheral findings
- Lesson: Consider whether peripheral findings are helpful or adverse to client (*res judicata*) and appeal if adverse

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