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# MINNESOTA WORKERS' COMPENSATION CASE LAW UPDATE

By  
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## MINNESOTA WORKERS' COMPENSATION CASE LAW UPDATE

*Rengblom v. Gateway Foods and Gallagher Bassett*

September 20, 2023—WCCA Judges Patricia Milun, Deborah Sundquist, and Thomas Christenson

ER/IR: Craig Larson

EE: Stephanie Balmer

Comp. Judge: David Bateson

Facts: The Employee sustained an injury to his low back in 1989. He had many low back surgeries which did not alleviate his pain. In 2010, he started having epidural steroid injections and RFNs. The Employee was seen for the purposes of IMEs in 2014 (Dr. Biewen) and 2016 (Dr. Gurin) who opined that the treatment was not reasonable and necessary as the treatment only provided temporary relief. The Employee brought a medical request requesting payment of medical bills. The matter went to hearing, and the compensation judge found that the treatment was not reasonable or necessary, was outside the treatment parameters and did not qualify as a rare case exception. Specifically, the compensation judge thought that the treatment did not result in progressive improvement as required by the departure criteria outlined in Minn. R. 5221.6050, Subp. 8 (D). The Employee appealed.

Issue: Whether Employee's treatment satisfied the departure criteria as outlined in Minn. R. 5221.6050, Subp. 8 (D).

Rule: "Progressive improvement" per Minn. R. 5221.6050, Subp. 8 (D) meant that treatment must be shown to have provided cumulative degree of lasting improvement. The improvement need not be entirely continuous, but overall, there must be a forward momentum of the improvement.

EE's Argument/Analysis: On appeal, the Employee contends that the temporary nature of the relief should not automatically disqualify the treatment because neither statute nor rule define the term "progressive," and that periodic improvements which return the employee to baseline constitute progressive improvement under the departure criteria. The issue on appeal to the WCCA boiled down to what "progressive improvement" meant by the Rule. The WCCA found that "progressive improvement" meant that treatment must be shown to have provided cumulative degree of lasting improvement. That improvement need not be entirely continuous, and certainly some degree of "backsliding" may occur following treatment. The improvement need not be entirely continuous, but overall, there must be a forward momentum of the improvement.

Conclusion: Therefore, the WCCA upheld the compensation judge's decision to deny the requested treatment for the ESIs and RFNs.

*Repke v. Jacobs Engineering Group and Ace USA*  
October 3, 2023 – WCCA Judge Thomas Christenson  
ER/IR: Christine Tuft  
EE: Jeremiah Sisk and Maxwell Riebel  
Comp. Judge: Sandra Grove

Facts: The Employee sustained an injury to his low back and was recommended lumbar surgery. The parties agreed, pursuant to a Stipulation for Agreement, that the Employee had to satisfy certain requirements before he was to undergo the lumbar surgery, and that attorney's fees from the surgery would be reserved until after the surgery was completed. The Employee failed to satisfy those requirements, and never undergone the surgery. After the decision in the *Lagasse* case, Employee's attorneys filed a Statement of Attorney's Fees relative to the incomplete surgery.

Issue: Whether Employee's attorneys were entitled to attorney's fees for a surgery the Employee had not undergone?

Rule: Attorney fees for medical treatment must be ascertainable and is based on the amount of the procedure, which presumes that the treatment must be completed.

EE's Argument/Analysis: Employee's attorneys are entitled to fees under the *Lagasse* case because there was a genuine dispute as to the surgery although the Employee had not undergone the surgery. Simply, the Employee's attorneys should be awarded attorney's fees because they procured the benefit of the fusion surgery. There was unambiguous language in the Stipulation for Settlement that said attorney's fees for the surgery were reserved until after the Employee underwent the surgery. That Award had not been vacated.

Conclusion: Therefore, the WCCA affirmed the compensation judge's decision to deny the requested attorney fees.

*Hoodie v. Wells Concrete, Inc. and CCMSI*

October 6, 2023 – WCCA Judges Patricia Milun, Sean Quinn, Thomas Christenson

Employer and Insurer attorney: Janet Monson.

Employee's attorney: DeAnna McCashin.

Comp. Judge: Kristina Lund.

Facts: The Employee sustained a low back injury on May 9, 2019, and ultimately underwent a two-level fusion with Dr. Abbasi on February 5, 2020. The surgery improved his leg pain, but made his low back pain worse. Dr. Abbasi recommended staged SI joint fusions. He was later evaluated by Dr. Swiontkowski (TRIA) for a second opinion, and he agreed. The Employer and Insurer had an IME with Dr. Frederick Harris who thought the Employee's work injury was a temporary aggravation of his pre-existing condition, and his subsequent surgery was not related. He also did not think that the Employee's proposed SI joint fusion surgeries were causally related; he thought they were reasonable and necessary. The Employee was later seen by Dr. Garvey who recommended a revision of the original fusion.

The Employee applied for SSDI, and was found eligible. The Employee made a claim for PTD benefits. The QRC opined that the Employee was trending toward PTD. The Employer and Insurer had her seen for the purposes of an IVE by Lori Magoffin who found that she was not PTD.

The matter went to hearing before Judge Lund on January 31, 2023 to address the Employee's PTD claim and revision of her fusion. The Employee testified that he would like to return work, but did not think he could do so given his symptoms. He wanted to try the proposed fusion surgery to see if it would help him be able to do things again including being able to work. Judge Lund found that he was PTD and approved the surgery.

Issues: Whether substantial evidence supported the judge's findings that the Employee was PTD and that the proposed revision surgery was reasonable and necessary. Whether the record should have been re-opened due to newly discovered evidence.

Rules: The possibility that the Employee might return to employment following additional medical care or vocational training does not preclude a finding of PTD. Generally, a determination of PTD status is upheld so long as the employee's work-related condition, medically and vocationally, is likely to exist for "an indefinite period of time."

A compensation judge may choose between competing well-founded opinions in awarding benefits.

Conclusion: The Employee was PTD, and surgery was awarded.

*Olson v. Total Specialty Contracting and Federated Mutual*

November 9, 2023 – WCCA Judge Deborah Sundquist

ER/IR: William Moody and Sydney Harris

EE: Michael Scully and Marcia Miller

Comp. Judge: Stacy Bouman

Facts: The Employee sustained a left ankle injury and neuropathy as a result from a fall while entering his jobsite. He was provided specific instructions to access the jobsite. The walkway to enter the site was covered with wet and frosty leaves, the walkway was dimly lit, the Employee was unfamiliar with the area, this was the only entry to the site, the walkway was also used to transport materials for construction at the jobsite, and the Employee was wearing PPE gear at the time of the injury.

Issue: Whether the Employee's injury arose out of and in the course of his employment?

Rule: Arising out of includes circumstances that place an employee at an increased risk which provides a causal link between the injury and the workplace. In the course of means the time, place, and circumstances of the incident causing the injury, including those incidental and/or customary to the employment.

Analysis: Based on the totality of the circumstances, the Employee was placed at an increased risk when he sustained his injury, and that served as the causal connection between the injury and his employment.

Conclusion: The WCCA affirmed.

*Strege v. Com. Drywall, Inc. and Federated Mutual Insurance*  
November 15, 2023 – WCCA Thomas Christenson  
ER/IR: David O. Nirenstein - Fitch Johnson Larson  
EE: Adam Strege - *Pro Se*

Facts: On March 18, 2004, the Employee was pushed by a co-worker and sustained a head, neck, left upper extremity injury, and TBI from the fall. He also claimed consequential emotional damage as an injury. He sought TTD benefits. The matter went to hearing, and the Compensation Judge issued a Findings and Order on October 20, 2006, that the injury to the neck was temporary and healed by July 15, 2004; that the TBI and emotional injuries were not related to the work injury; and that the Employee was not credible regarding his emotional injury claim since he had behavioral difficulties that existed prior to the work injury. In March 2023, the Employee filed a Petition to Vacate the 2006 Findings and Order due to a substantial change in his medical condition that could not be anticipated, or that he was incompetent due to the TBI.

Issue: Whether the Court could vacate a previous Findings and Order on the basis that the Employee showed a substantial change in his medical condition or that he was incompetent as a result of a TBI.

Rule: To vacate an award under Minn. Stat. § 176.461, the Court uses the following factors:

1. a change in diagnosis;
2. a change in the employee's ability to work;
3. additional permanent partial disability;
4. necessity of more costly and extensive medical care than initially anticipated;
5. causal relationship between the injury covered by the settlement and the employee's current worsened condition; and
6. contemplation of the parties at the time of the settlement.

Analysis: The Employee failed to produce any evidence to support his Petition to Vacate.

Conclusion: The Employee's request to vacate the Findings and Order filed on October 20, 2006, was denied.

**JIM PIKALA**



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Of counsel? Of course! Shannon comes to our firm with a wealth of experience in civil litigation including premises liability, motor vehicle accident, personal injury, construction defect, subrogation, as well as workers' compensation. Her "of counsel" designation is to indicate her level of experience, but she is not retiring any time soon. She returns to our Firm after working many years as in-house counsel for an insurance company. She is happy to be back!

Shannon is the Co-Chair of the Minnesota Defense Lawyers Association's Motor Vehicle Accident Committee. In this role, she co-authored Preventing a Nuclear Attack: Recommended Strategies in Responding to Nuclear Verdict Tactics. She has given many presentations to insurance company clients, Hennepin and Ramsey County Bar Associations, and has been a presenter at the Workers' Compensation Institute.

Do you have a motor vehicle accident or premises liability case in which the claimant was injured while in the course and scope of employment and also has a workers' compensation claim? If yes, Shannon's unique legal background makes her an excellent choice to defend both the workers' compensation and civil action. She understands the nuances of both, and as a result, can more efficiently and effectively defend both cases.

Shannon graduated from William Mitchell College of Law. Upon graduation, she clerked for the Honorable Dale B. Lindman.

She is licensed in both Minnesota and Wisconsin.

In her spare time, she enjoys biking, golfing, hiking, and listening to live music.

## Bar Admissions

Minnesota, 2001

Wisconsin, 2013

U.S. District Court, District of Minnesota, 2004

## Practice Areas

Automobile Law  
Commercial  
Transportation  
Construction  
Insurance Coverage  
Premises Liability  
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## **Education**

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*Workers' Compensation and Motor Vehicle Accident Claims*, Chapter Seventeen, Minnesota Motor Vehicle Accident Deskbook  
*Preventing a Nuclear Attack: Recommended Strategies in Responding to Nuclear Verdict Tactics* (co-author), Minnesota Defense Lawyers Association

## **Presentations**

"It's More Than Just Peanuts: How to Maximize Your Subrogation Recovery in Minnesota," "Magicians, Wizards and Fortune Tellers: Common Questions/Issues/Missteps," 2023 Workers Compensation Seminar, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., June 2023

## **Professional Associations**

2nd and 19th Judicial District Ethics Committee, Investigator  
Hennepin County Bar Association  
Minnesota Defense Lawyers Association, Workers' Compensation Committee  
Minnesota Self-Insured Association  
Minnesota State Bar Association  
Ramsey County Bar Association

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## Practice Area

Worker's Compensation

## License

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Inayah focuses her practice on Minnesota Workers' Compensation Law. She graduated from Delaware State University, where she earned her Bachelor of Arts in Criminal Justice and a Minor in Forensic Science. Prior to law school, Inayah worked in Compliance for two large financial institutions. She earned her Juris Doctor from Thomas M. Cooley Law School in December 2021. During her last semester in law school, Inayah clerked for Franklin Reed, Referee of Hennepin County District Court. This experience inspired her to accept a Law Clerk position with Toddrick S. Barnette, Chief Judge of Hennepin County District Court.

In law school, Inayah served as Chief Justice of the Moot Court Board, Resource Editor of the Law Review Board, President of the Black Law Students Association, and Vice President of Phi Delta Phi International Legal Honor Society.

Inayah is a New Jersey native. She is the oldest of four and recently became an aunt to a precious little boy. Outside the office, Inayah enjoys cooking, traveling, exercising, and outdoor activities.

## Bar Admission

Minnesota

## Education

Thomas M. Cooley Law School, J.D., 2021 (Honors: *cum laude*)  
Delaware State University, B.A., 2016 (Honors: *magna cum laude*)

## Presentations

"Balancing Acrobats: Minnesota Workers' Compensation Case Law and Legislative Update," 2023 Workers Compensation Seminar, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., June 2023

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