Melanie Dowling V. TheKey, LLC, WCCA, 9/24/2024

In a unanimous decision, a three-judge panel of the WCCA found substantial evidentiary support for the compensation judge's determination that an injury sustained by a home health care worker seven hours after her work shift and four hours before her next work shift, while performing no duties for the care client, and while staying in the client's guest room overnight for her personal convenience, did not arise out of and in the course of her employment.

Daryl Drusch, By Julie Drusch, V. City of Howard Lake Fire Dep't, WCCA, 09/30/2024

A divided WCCA (3-2) reversed and remanded to OAH for further determination the compensation judge's denial of dependency benefits based on the judge's conclusion that the statutory heart attack presumption applicable to firefighters for coronary artery disease did not apply.

In 1991, at age 20, the claimant began working as an "on call" firefighter for the city fire department. He worked for them for nearly 30 years before dying of a heart attack in January 2020. The decedent, during his career as a firefighter, was also employed as a full-time electrician. He had a history of cigarette smoking, smoking a pack of cigarettes daily, since age 19. His father had died of congestive heart failure. The decedent had high cholesterol. However, there was nothing in the record indicating that at the time he began working for the fire department, he had any cardiovascular conditions. In addition, during his career as a firefighter he also obtained a CDL and had a physical exam. The doctor performing the CDL exam noted he had normal cardiovascular results.

The evening before he died, the decedent was on-call and received a page to respond to an emergency. He and other fighters responded and learned they were not required. He returned home and complained to his wife of discomfort and indigestion. She found him early the next morning on the couch, unresponsive and not breathing. Attempts to resuscitate him in the hospital were unsuccessful. A subsequent autopsy found the cause of death to be atherosclerotic cardiovascular disease and acute myocardial infarction.

His wife filed a petition for dependency benefits. The self-insured employer denied the claim, asserting the presumption did not apply and that his death was not the result of a work-related condition. The employer obtained an IME, who concluded his work activities as a fire fighter did not contribute to the development of coronary artery disease. The claimant obtained an expert, who concluded the decedent's coronary artery disease resulted from his employment as a firefighter and was caused by exposure to sleep disruption, inhaled smoke, and psychosocial stress.

After hearing the evidence, the compensation judge concluded that the petitioner failed to prove that the statutory presumption applied, and that the decedent did not sustain an occupational disease of coronary sclerosis arising out of and in the course of employment.
The WCCA reversed, concluding that the compensation judge made an error of law in denying the application of the presumption. WCCA agreed with the petitioner that even though there was no preemployment physical, the employee's normal cardiac findings on multiple physical examinations for more than 25 years after his date of hire "clearly required an inference that he did not have coronary sclerosis at the time he was hired." Consequently, the WCCA remanded the case back to the compensation judge for a determination whether the self-insured employer had rebutted the statutory presumption by a preponderance of the evidence.

Judge Carlson, joined by Judge Sundquist, dissented. She concluded that not only was the claimant to the statutory presumption, based on the "undisputed facts of this case," the self-insured employer had not rebutted the statutory presumption. She felt the WCCA should have reversed the entire decision of the compensation judge and awarded dependency benefits.

Lehet v. Roofers Advantage Program. WCCA, 10/29/2024

The Workers' Compensation Court of Appeals addressed Lehet's petition to vacate a 2003 award on stipulation related to a work injury he sustained in 2001. Lehet, a carpenter, suffered a significant low back injury when struck by an aerial lift, leading to a diagnosis of an L5-S1 annular tear and subsequent surgeries. After settling his workers' compensation claim, he experienced ongoing pain and underwent additional surgeries, including a new injury in 2019 while working for a different employer.

The WCCA found conflicting medical opinions regarding the causation of Lehet's worsened condition, particularly whether it was due to the original 2001 injury or the subsequent 2019 injury. Given these disputes and the need for further factual findings, they referred the case to the Office of Administrative Hearings for an evidentiary hearing to determine the relationship between the injuries and the employee's current condition.

Camarena v. PIAT, Inc.. WCCA, 11/3/2024

Camarena sustained an eye injury while working as a restoration technician while removing drywall. Debris entered his left eye, leading to a corneal ulcer and subsequent medical treatment, including a corneal transplant. The compensation judge found that Camarena's

injury arose out of his employment. She also found, after applying the Hassan factors, that the claim was not barred by the prohibited act doctrine, as the employer failed to demonstrate a clear violation of safety policies regarding eye protection. The judge found that the employer and insurer did not show that the employer prohibited employees from performing all work on jobsites without goggles, that they customarily observed a prohibition against working without goggles, or that the employer took reasonable steps to enforce the prohibition. The judge also concluded that the "irregular wage" formula should apply to calculate the employee's weekly wage.

The WCCA affirmed lower court on all counts, In concluding that the employer and insurer had not met their burden of establishing the prohibited act defense and that the compensation properly applied the Hassan factors, the WCCA remarked that "the employee's act of performing his job duty, specifically taking down drywall, was not a prohibited act. Taking down drywall was a permissible task; in fact, it was a required task on his date of injury. Even if taking down drywall without protective eye gear was a violation of the employer's policy, performing a permissible act in an impermissible manner does not bar an employee from receiving benefits."