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Issue: MEDICAL TREATMENT & EXPENSE – TREATMENT PARAMETERS; RULES CONSTRUED

Loupe v. McNeilus Steel, Inc., No. WC18-6175 (September 11, 2018)

In this case, the employee injured his right knee, and liability was admitted. Following the injury, employee moved to Louisiana where he began treating with Dr. Millet, an orthopedic surgeon. Upon his recommendation, Dr. Millet performed a replacement of the right knee in 2013. The surgery was successful, and the employee continued follow-up visits to Dr. Millet. All subsequent examinations were normal. In 2014, 2015, and 2016, Dr. Millet ordered x-rays of the right knee and the employer and insurer paid for them. The parties entered into a Stipulation for Settlement in 2016, and medical expenses were left open subject to defenses.

In 2017, after several years of normal findings, the employer and insurer declined to approve another x-ray recommended by Dr. Millet. The employer and insurer argued that the x-ray was "routine" and therefore not indicated under the treatment parameters for radiographic studies. Dr. Millet opined that after a total joint replacement, x-rays are necessary at each follow-up visit to ensure that the components are in the correct position, that there is no abnormal wear, and to check for signs of arthritis. The employee filed a medical request in July 2017 seeking payment for the 2017 x-ray. The matter was heard on April 12, 2018. The compensation judge found the treatment parameters precluded payment for routine x-rays and denied the employee's claim. The employee appealed.

The WCCA affirmed the compensation judge's decision. The Court found the compensation judge did not err in applying treatment parameters and case law principles to analyze the disputed treatment. The court finds nothing in the rules governing medical imaging that require the employer to pay for post-surgical x-rays to be repeated every year in perpetuity, when the employee's examinations are unremarkable.

Summary by: Michelle I. Kelly

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Issue: PERMANENT TOTAL DISABILITY – SUBSTANTIAL EVIDENCE, INSUBSTANTIAL INCOME; JOB SEARCH – SUBSTANTIAL EVIDENCE

Blomme v. Ind. Sch. Dist. No. 413., No. WC18-6169 (September 14, 2018)

The employee suffered an injury to his low back. After initially pursuing conservative treatment, employee underwent his first fusion surgery on June 6, 2005. In March 2006, the employee entered Stipulation for Settlement with the self-insured employer, settling all benefits on a full, final, and complete basis except for future non-chiropractic medical care.

Since the settlement, the employee underwent multiple lumbar surgeries and additional treatments which affected his ability to work. Since December 2006, the employee's work status has varied. On February 23, 2016, the court granted the employee's petition to vacate the April 5, 2006, Award on Stipulation. He underwent a follow up IME on behalf of the self-insured employer and the doctor stated her opinion that the employee was capable of light-duty employment.

On January 3, 2017, the employee filed a Claim Petition. The issue at hearing was whether the employee was permanently and totally disabled from January 1, 2007 to the present. The compensation judge found that the employee was entitled to permanent total disability benefits from January 1, 2007, and awarded permanent total disability benefits as well as permanent partial disability benefits.

The self-insured employer appealed the finding and contended that the compensation judge erred in finding that the employee was not physically capable of work and failed to perform a reasonably diligent job search. The WCCA affirmed the decision of the compensation judge because the decision was supported by substantial evidence in the record. Overall, the case came down to the compensation judge's decision to go against the opinions of the IME completed after the vacation of the prior Award.

Summary by: Michelle I. Kelly

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Issue: CAUSATION – GILLETTE INJURY; GILLET INJURY – DATE OF INJURY; NOTICE OF INJURY – SUBSTANTIAL EVIDENCE; PRACTICE & PROCEDURE – STATUTE OF LIMITATIONS

Noga v. Minn. Vikings Football Club, No. WC18-6133 (September 19, 2018)

The employee played for the Vikings from 1988 through the 1992 season. He then played two additional seasons in the NFL in addition to the Arena Football League until 1999.

While playing for the Vikings, the employee experienced headaches and dizziness after tackling during games and practice. He reported symptoms to the team doctor or the trainer. He was typically given an Advil or Tylenol and sometimes told to go rest in the training room. In 2001, the employee filed a Claim Petition for workers' compensation benefits associated with several specific orthopedic injuries. An Award on Stipulation was served in February 2004. Attached to the Stipulation was a report by his doctor stating that he recommended that the employee be evaluated by a neurologist for his blackout and headache problems.

The employee applied for SSD benefits in the fall of 2007. In an appeal from an initial denial in 2008, he reported that his condition had worsened since December 1, 2007. In 2009, the employee was awarded SSD based on findings that the employee had sustained numerous concussions and musculoskeletal injuries while playing football and had been left legally blind and unable to drive. A claim was filed in January 2015 seeking workers compensation benefits against the Vikings for the effects of several specific alleged head injuries and for a Gillette injury to the head. Ultimately, the compensation judge found that the employee had not proven that he sustained an injury on any of the specific dates alleged because he had not played on any of those dates. The judge instead found that the employee had sustained a *Gillette* injury resulting in his dementia condition, culminating on December 1, 1992. The Vikings appealed.

The Vikings argued that the compensation judge erred in setting the date of culmination noting that as of that date, there was no evidence of any restrictions or lost time from work. They also contend that the finding of primary liability against the Vikings is inappropriate based on the date of culmination. The WCCA affirmed and found that the substantial evidence supported the compensation judge's finding that the employee's work activities while playing for the Vikings were a substantial contributing factor to the claimed Gillette injury. The WCCA also affirmed the compensation judge's finding that the employer had adequate notice of the employee's Gillette injury and that the employee's claim for benefits was not barred by the statute of limitations.

Summary by: Michelle I. Kelly

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Issue: ARISING OUT OF & IN THE COURSE OF – SUBSTANTIAL EVIDENCE

Rosar v. Southview Acres Health Care Ctr., No. WC18-6143 (September 21, 2018)

The employee suffered an injury after walking down the hall while working as a nursing assistant. Employee claimed to be walking faster while working than she does when not at work. She did not offer any other explanation for how the fall itself occurred. The employer and insurer denied primary liability and the issue of whether the employee's injury arose out of employment was presented to the compensation judge.

The compensation judge concluded that the injury did not arise out of employment pursuant to Dykhoff. For an injury to be compensable, it must arise out of and in the course of employment. There is no dispute that the employee's injury occurred in the course of her employment. The only relevant issue for the compensation judge was whether the employee's injury arose out of her employment. The compensation judge concluded there was insufficient evidence to prove a causal connection between hurrying and the fall, thus making the fall unexplained. Under Dykhoff, injuries resulting from unexplained falls are not compensable. The compensation judge denied the employee's claim and the employee appealed.

The issue before the WCCA is whether the findings of fact and order are clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted. Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. The findings of fact should not be disturbed, unless they are clearly erroneous in the sense that they are contrary to the weight of evidence or not supported by the evidence as a whole. Because the compensation judge's finding that the employee's fall was unexplained is supported by the evidence, the WCCA affirmed the compensation judge's denial of her claim.

Summary by: Michelle I. Kelly

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Issue: ARISING OUT OF & IN THE COURSE OF

Krull v. Divine House, Inc., No. WC18-6166 (September 27, 2018)

While working as a program coordinator for a group home, the employee sustained a knee injury while walking into a building carrying milk for a client. The employee experienced a loud popping noise in her left knee along with severe pain. Before the injury, the employee suffered from left knee osteoarthritis on an ongoing basis. The employee underwent an IME in January 2018 and the doctor opined that the employee's knee surgery resulted from a pre-existing condition unrelated to any specific work activity.

For an injury to be compensable, it must arise out of and in the course of employment. The compensation judge concluded that the employee did not suffer a compensable work injury to her knee as the employee was not exposed to a condition that put her at an increased risk of injury. The judge did not find that carrying the milk caused any injury in this case. The employee appealed.

The issue before the WCCA is whether the findings of fact and order are clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted. Because the employee did not meet her burden of proof to establish that her knee injury arose out of employment, the WCCA affirmed the compensation judge's denial of her claim. They ultimately found that there was no increased risk in this case, and that the compensation judge did not err in that determination.

Summary by: Michelle I. Kelly

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Issue: TEMPORARY TOTAL DISABILITY; CAUSATION – SUBSTANTIAL EVIDENCE.

Wright v. Viking Coca Cola Bottling Co., WC18-6168 (WCCA October 1, 2018)

The employee sustained an injury when he slipped and fell on an icy sidewalk in February 2015. He landed on his left side with his arm extended overhead and felt immediate pain in his left shoulder and arm. At the initial treatment, the employee complained of left upper arm and shoulder pain, but denied headaches and lightheadedness. The employee resumed work with some accommodations and no lost time. In June 2016, the employee sought care for severe headaches. His doctor took him off work at this time. The self-insured employer obtained medical experts who found no basis to relate any of the employee's neurological complaints to the incident of February 2015. The employee filed a claim petition and it went to a Hearing.

In a Findings and Order issued in February 2018, the compensation judge denied the employee's claim that he suffered a spine, head, and/or concussive injury as a result of the February 2015 work injury and denied payment of medical treatment for those conditions. The judge awarded TTD benefits from July 1, 2016 to February 19, 2017, 90 days post-MMI. The employee appealed the denial of the spine, head, and concussive injuries and associated medical treatment.

The WCCA ultimately found that substantial evidence supported the compensation judge's determination that the employee was taken of work by his doctor because of ongoing symptoms due, in part, to the work-related injury. Consequently, the compensation judge's award of TTD benefits is affirmed. Additionally, when there is a choice of expert opinion, the compensation judge's choice must be upheld unless the opinion lacked adequate factual foundation. Here, the record supports the factual foundation upon which the medical expert relied. Because the substantial evidence supported the judge's findings, the WCCA affirmed.

Summary by: Michelle I. Kelly

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Issue: GILLETTE INJURY - SUBSTANTIAL EVIDENCE; NOTICE OF INJURY – SUBSTANTIAL EVIDENCE

Kronberger v. 3M Cos./Capital Safety, No WC18-6165 (WCCA October 11, 2018)

After work on the employer's assembly lines, the employee began noticing symptoms in her right shoulder. The employee went to her family doctor and reported the symptoms, noting that they had worsened, though she could not recall a specific injury. The doctor issued light duty restrictions. After one week of light duty work, the employer was no longer able to accommodate her restrictions. The employee was referred to an orthopedic surgeon and underwent surgery in August 2016. The surgeon opined that based upon the surgery and his review of the information, it did appear to be a repetitive trauma injury and was work related. The employee was examined by another doctor at the request of the employer and insurer. The doctor opined the employee's condition was caused by a specific episode when she felt the shoulder snapped out of place and rejected any claimed repetitive use work-related injury.

The judge adopted the opinions of the surgeon and the credible testimony of the employee over the doctor in making their decision and found that the employee did sustain a work-related Gillette injury. The judge awarded wage loss benefits and found the employee's notice to the employer was sufficient. The employer and insurer appealed. The WCCA found that substantial evidence supports the compensation judge's conclusion that the employee sustained a Gillette injury as a result of her work activities.

Notably, Minn. Stat. § 176.141 provides that if notice of an injury is given after 30 days from an injury but within 180 days of the occurrence of the injury, compensation will be allowed only if the employee can show the failure to give earlier notice was due to mistake, inadvertence, ignorance of fact or law, inability, or fraud, misrepresentation, or deceit, and so long as the employer is not prejudiced. The compensation judge found the employee's delay was excusable for ignorance of fact based upon her credible testimony that she was not sure what caused her shoulder pain.

Summary by: Michelle I. Kelly

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Issue: EVIDENCE – RES JUDICATA; PRACTICE & PROCEDURE - DISMISSAL

Zabel v. Gustavus Adolphus College, No. WC18-6185 (WCCA October 12, 2018)

The employee was injured when she slipped and fell on ice while employed as a post office clerk. The injury was admitted, and benefits were paid. The employer and insurer ceased paying wage loss benefits, arguing the employee's injury was temporary and had resolved. By Findings and Order dated April 25, 2017, the judge found "the employee's symptoms relative to her brain/concussion injury of April 18, 2013 were temporary in nature and fully resolved as of May 19, 2014." In the Findings and Order the compensation judge described medical treatment the employee received on July 13, 2015. The employee presented at Mayo Clinic ER reporting symptoms of nausea and vertigo. She also complained of a headache when she "got sick, lost her balance and ran into a wall." The Findings and Order was not appealed.

Then in February 2018, the employee filed a Claim Petition seeking benefits related to a traumatic brain injury sustained at work on July 13, 2015. The compensation judge granted a Motion to Dismiss and an Order Dismissing Claim Petition with Prejudice. The compensation judge found that employee could have and should have claimed the July 13, 2015, date of injury at the time of the 2017 hearing, and because she failed to do so, the unappealed findings that resulted from that hearing bar her current claims under the doctrine of res judicata.

The Supreme Court has held that the doctrine of res judicata may apply in workers' compensation cases *only with respect to issues litigated and decided*. This doctrine brings finality to legal proceedings in which "a final judgement on the merits bars a second suit for the same claim" by the same parties. The WCCA finds that the employee's current claims were not actually litigated or decided, regardless of whether they could have been. The 2017 Findings and Order does not bar the employee's claims. Because the compensation judge erred in dismissing the claim petition, the WCCA reversed and remanded the matter to the Office of Administrative Hearings.

Summary by: Michelle I. Kelly

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Issue: TEMPORARY TOTAL DISABILITY; JOB OFFER - REFUSAL

Dodgson v. City of Minneapolis Public Works, No. WC18-6186 (W.C.C.A. October 31, 2018)

The employee suffered an injury to his left index finger, resulting in the amputation of the finger while working for employer and causing excruciating pain and sensitivity. The employee's doctors restricted the use of the left hand and disallowed driving or operating heavy machinery. The employee was also instructed to avoid working in temperatures below 65 degrees Fahrenheit and was prescribed charcoal-lined gloves to wear in colder temperatures. Near the end of October 2017, the employer offered the employee a temporary light-duty job. The employee rejected this job offer on the basis that he had no transportation as he was precluded from driving. When suggested he take public transportation, the employee refused, citing the cost. The employer discontinued benefits.

The issue in this case is whether the employee unreasonably refused an offer of gainful employment that was consistent with the rehabilitation plan. The compensation judge determined that the employee was offered a job consistent with the rehabilitation plan and that his refusal to accept the offered job was not reasonable. All wage loss benefits were discontinued.

Under Minn. Stat. § 176.101, subd. 1(i), temporary total disability benefits "shall cease if the employee refuses an offer of work that is consistent with a plan of rehabilitation filed with a commissioner which meets the requirements of section 176.102, subd. 4. The QRC testified that the job offer was consistent with the employee's work restrictions "except for transportation issues," however, there is nothing in the filed rehabilitation plan consistent with that statement. The WCCA affirmed the compensation judge's conclusion that the job offer was consistent with the rehabilitation plan.

The takeaway from this case is if a job offer would dramatically alter a reasonable and responsible pattern of living, the employee's refusal may be considered reasonable. The WCCA affirmed the compensation judge's finding that the employee unreasonably refused to make other arrangements to get to work whether that was by public transportation or occasional reliance on others.

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Issue: CAUSATION – SUBSTANTIAL EVIDENCE

Sanchez-Rivera v. Swift Pork Co., No. WC18-6182 (W.C.C.A. October 31, 2018)

The employee worked primarily boxing meat for the employer. His job required him to assemble boxes on a roller table which was waist high, fill the boxes to 63 pounds, and stack the boxes to a lift height of 48 inches. In July 2016, the employee claimed a cumulative trauma injury to his bilateral forearms, heels, and right shoulder while doing his regular job. The employee sought treatment and his doctor opined that the employee's bilateral shoulder and elbow pain was due to repetitive use as a part of his job. The employer retained an orthopedic surgeon for an IME. The surgeon opined that the employee experienced only muscle fatigue due to work which did not imply injury.

A Claim Petition was filed, and the matter came on for hearing. The issues included whether the employee sustained Gillette injuries, and the employee's claims for medical, vocational rehabilitation, and wage loss benefits. The compensation judge denied the employee's claim, finding that the employee did not sustain his burden of proof considering the mechanics of the job tasks and of the alleged injuries. The compensation judge relied on the IME and found that the employee's claimed Gillette injuries were unrelated to his work. The employee appealed.

It is a long-established principle that the choice of the compensation judge among conflicting expert opinions is to be upheld, unless that opinion lacked adequate foundation. The record is consistent with the factual basis assumed by the surgeon. The employee argued that the judge should have given greater weight to the repetitive nature of the employee's job. The WCCA found that the compensation judge gave significant weight to the fact that the employee's work was well within the restrictions outlined by the employee's doctor. The WCCA affirmed the compensation judge's findings.

Summary by: Michelle I. Kelly