



James R. Waldhauser	Whitney L. Teel	Emily L. Johnson
Thomas P. Kieselbach	Natalie K. Lund	Parker T. Olson [¶]
Mark A. Kleinschmidt	Thomas F. Coleman	Scott G. Ferriss
Richard W. Schmidt	Craig A. Larsen*	Bryan M. Wachter
Lisa F. Kinney*†	Michael R. Johnson	Megan M. Oliver
Jennifer M. Fitzgerald	Elizabeth R. Cox‡	Ronnie Santana

Attorneys at Law – Minnesota, *Wisconsin, †Michigan, ¶California
‡Certified Medicare Secondary Payer Professional

ISSUE: DIAGNOSIS AND CAUSATION OF A PSYCHOLOGICAL CONDITION

Tami L. Petrie v. Todd County, No. WC18-6176 (W.C.C.A. November 19, 2018)

The Employee in this case worked as a correctional officer and filed a claim petition listing the nature of her injury as PTSD. The employee appealed the compensation judge's decision that she had not established a compensable claim for PTSD with a diagnosis from a licensed psychiatrist or psychologist as required by Minn. Stat. § 176.011, subd. 15(d).

The employee had undergone an independent psychiatric examination with a licensed psychiatrist, who diagnosed PTSD. However, the independent psychiatrist opined that the employee's psychiatric condition was caused by pre-existing factors and past trauma and that work incidents did not cause or aggravate her pre-existing mental health condition.

On appeal, the employee argued the IME doctor's diagnosis met the statutory requirement set forth in Minn. Stat. § 176.011, subd. 15(d), and that causation must be considered as a separate element under Minn. Stat. § 176.011, subds. 15(a) and 16. She argued that the causation element could be established by other evidence presented at hearing.

The WCCA agreed that Minn. Stat. § 176.011, subd. 15(d), does not require that the diagnosis of PTSD by a licensed psychiatrist or psychologist include an opinion regarding causation for that condition. Therefore, the WCCA reversed the compensation judge's finding that there was no diagnosis established pursuant to Minn. Stat. § 176.011, subd. 15(d) and remanded for a determination on causation.

Summary by: Emily Johnson

Issue: MEDICAL TREATMENT AND EXPENSE – REASONABLE AND NECESSARY

Roux v. R.J. Reynolds Tobacco, No. WC18-6174 (November 28, 2018)

In this case, the employee was injured in a motor vehicle accident while working for the employer. The employer and its insurer admitted liability and paid medical benefits, including a right ankle surgery, vocational rehabilitation benefits, and wage loss benefits. The parties entered into a Stipulation for Settlement in June 2013 in which the employee settled his claims on a full, final and complete basis. Only medical expenses related to the injured right ankle remained open. Following the settlement, the employee's condition required ongoing treatment which was extensive and resulted in piecemeal litigation.

In January 2014, the employee sought treatment for pain management and was recommended to continue pool therapy and continue several medications. The employee filed a medical request seeking approval of the pool therapy and the prescriptions. The compensation judge awarded treatment for pain management and two of the prescriptions, concluding that these treatments were reasonable, necessary, and causally related to the employee's right ankle injury. The judge denied the pool therapy.

In 2015, the employee was diagnosed with chronic regional pain syndrome (CRPS) by several doctors. Dr. Charry and Dr. Hess both recommended similar treatment plans which included injections and acupuncture. The employer and insurer had an IME conducted which concluded that there was no evidence of CRPS and the employee's current complaints of pain were unrelated to the work injury. The issue of whether Dr. Charry's treatment and expenses were reasonable, necessary, and causally related to the employee's work injury was heard at a formal hearing. In an unappealed Findings and Order, the compensation judge awarded payment for Dr. Charry's treatment.

Between August 2016 and December 2017, the employee treated with multiple providers. He continued physical therapy, acupuncture, pool therapy, and prescription medications, as well as appointments for cognitive behavior therapy in connection with the employee's pain. The employer and insurer retained a medical expert who opined that there was no evidence of CRPS and concluded that the employee received excessive amounts of treatment and physical therapy and there was no need for the additional treatments including acupuncture and pool therapy. He also questioned the employee traveling 250 miles round trip to obtain treatment when there was adequate treatment closer to his home.

The employee filed a medical request seeking payment of various medical and related expenses. The judge ordered treatment as prescribed for acupuncture and physical therapy and found the employer's request that the future treatment be undertaken closer to the employee's home was reasonable. The judge denied claimed medical benefits and medical mileage for pool therapy, acupuncture treatment, and occupational therapy on the basis that it was not reasonable, necessary, or causally related to the work injury. He also denied the prescription medications for the treatment of headaches and/or depression which was closed out pursuant to the 2013 Stipulation for Settlement.

The employee appeals the judge's findings denying treatment and medical mileage for pool therapy and for the prescription medications, and the denial of the employee's choice of provider. The employer and insurer cross-appeal the judge's finding awarding the psychological treatment, acupuncture, and physical therapy.

The employee bears the burden of proving that the claimed medical treatment was reasonable and necessary to cure or relieve the effects of the injury. *Leuthard v. Craig's Tree Serv.*, 76 W.C.D. 735 (W.C.C.A. 2016). Whether the medical treatment is reasonable and necessary is a fact question to be decided by the compensation judge. *Hopp v. Grist Mill*, 499 N.W.2d 812, 48 W.C.D. 450 (Minn. 1993). Here, the compensation judge found some medical treatment to be reasonable and necessary and causally related to the employee's right ankle injury. He found other medical treatment was not reasonable or necessary or was foreclosed by the 2013 Stipulation for Settlement. Substantial evidence supports the judge's findings. Because substantial evidence supports the judge's findings, it is affirmed.

Summary by: Michelle I. Kelly

ISSUE: EXPERT MEDICAL OPINION

Crosby v. TAK Commc'ns, Inc., No. WC18-6190 (W.C.C.A. December 14, 2018)

The employee sustained a concussion and spine injury at work in February 2012. Employer and insurer admitted primary liability and wage loss and medical benefits were paid. However, the employee continued to complain of low back pain following his return to work. Based upon medical reports of Dr. Exconde, the employee alleged permanent partial disability benefits were owed for his back injury. Employer and insurer denied this claim, and the matter went before a compensation judge. The judge found for the employee and his award included permanent partial disability benefits for a combined rating of 15.6723, adopting Dr. Exconde's ratings.

The employee's employment with TAK ended in November of 2013 worked various other jobs. He did not receive treatment from 2013 until 2015, but began treating again for back pain in 2015. The employee sought payment for a number of medical bills going back to that time, and the employer and insurer denied liability.

Dr. Exconde opined that the 2012 injury was a substantial contributing factor to the employee's neck and pack treatment, but an IME report of Dr. Cederberg opined that the 2012 injury had resolved when he was placed at MMI in November 2012. The compensation judge found for the employee, based upon the medical records, the employee's testimony, and the opinion of Dr. Exconde. Employer and insurer appealed.

On appeal, the employer and insurer argued that the opinions of Dr. Exconde lacked foundation, that they should not be accepted since they were not a narrative, that one of his reports failed to address recent treatment, that he had no basis to opine on a neuropsychological referral, and that he was not aware of details of the employee's work. The W.C.C.A. noted that Dr. Exconde had treated the employee since 2012, was familiar with his history and injury, and had reviewed some of his treatment records from other providers. As such, it concluded that Dr. Exconde had adequate foundation.

The employer and insurer also argued that the substantial evidence did not support the compensation judge's opinion, as the employee had returned to work full time to a physically demanding and time-extensive job and was placed at MMI in 2012, the medical treatment sought in 2015 was not related to the work-injury. They alleged that the compensation judge failed to address these facts. The W.C.C.A. was not convinced, and noted that compensation judges do not need to address every fact in their opinions. It noted parts of the opinion that did, in fact, refer to some of these facts, and concluded that the judge's findings were reasonably supported by the evidence.

Summary by: Megan Oliver

**ISSUE: MEDICAL TREATMENT & EXPENSE – REASONABLE AND NECESSARY;
EVIDENCE – EXPERT MEDICAL OPINION**

Thaemert v. Honeywell International, Inc. No. WC18-6164 (WCCA Dec. 20, 2018)

The Employee sustained an admitted work injury on January 29, 1993, which caused ongoing chronic pain. She began to be prescribed opioid pain medications in 1995. A second injury was alleged to have occurred on June 17, 1998, for which primary liability was denied. She continued to take opioid pain medications. The claim was settled in 2001 with the 1993 injury closed and 1998 injury left open subject to defenses. All benefits left open were attributable to the 1993 injury. Of note, formal chronic pain clinic programs were closed out.

Following the settlement, narcotic dosages were increased. Starting in 2014, her dosing was decreased which resulted in an increase in pain symptoms and difficulties with activities of daily living. A new IME was obtained and found the narcotic medication to be excessive. Payment was denied for ongoing narcotic medication.

The compensation judge found the Employee had work injuries in 1993 and 1998, found the Employee's complaints of pain credible, and that the pain was related to the work injuries. Despite this, the treatment was denied as unreasonable. Employee appealed, and the WCCA vacated in part and remanded after finding the compensation judge relied on an expert opinion that was based on material facts contrary to those found by the compensation judge as well as using factors that were unsupported by the evidence in the record.

By Scott G. Ferriss

ISSUE: CAUSATION – SUBSTANTIAL EVIDENCE; TEMPORARY AGGRAVATION

Cole v. Lametti & Sons, Inc., No. WC18-6195 (W.C.C.A. Dec. 20, 2018):

In this case, the Employee had a lengthy history of prior work injuries with multiple employers and had undergone extensive treatment. He had prior injuries to his neck, back and left arm in 1997, neck, upper back, and left shoulder in 1999, neck and shoulders in 2005, left shoulder in 2012, and right shoulder in 2013. All of these injuries were with prior employers.

On October 23, 2014, he was injured as he was helping lift a 350 pound pipe while working for Lametti & Sons. He sought treatment for right shoulder and neck pain and was diagnosed with cervical strain and right shoulder AC ligament strain. The Employer and Insurer admitted liability for the right shoulder and paid various workers' compensation benefits but disputed the nature and extent of the injury.

The Employer and Insurer obtained an IME report that found the Employee sustained a temporary aggravation of his pre-existing cervical spine condition and prior injuries, and had returned to baseline within six weeks.

In June 2016, he underwent right shoulder surgery and physical therapy in July 2016, where he reported ongoing and increased pain in his left shoulder. He reported that he recalled his left shoulder being painful after the 2014 injury. In November 2016 he was recommended left shoulder surgery.

An independent medical examination found that the left shoulder condition was not caused by the 2014 work injury but involved *Gillette* injuries culminating in 2005 and 2012.

The Employee filed a Claim Petition alleging bilateral shoulder and cervical spine injuries on July 5, 2005 and October 23, 2014 and sought approval of medical treatment and surgery of the left shoulder.

After a hearing, the compensation judge found that the employee's 2005 work injury was a substantial contributing cause of the need for left shoulder surgery, and that the employee had not sustained a left shoulder injury in 2014 and that the 2014 injury was not a substantial contributing cause of the need for left shoulder surgery. The judge also found that the employee's right shoulder injury in 2014 had resolved.

The Employee appealed the compensation judge's findings that the Employee had not sustained a left shoulder injury in 2014, that the 2014 injury was not a substantial contributing cause of the Employee's need for left shoulder surgery, and that the 2014 right shoulder injury had resolved.

Substantial evidence supports the compensation judge's finding as it relates to the causation of the left shoulder injury. The Employee's testimony at hearing was found inconsistent with the medical records. Further, the employee had extensive medical treatment for the right shoulder after the 2014 injury but did not seek treatment for the left shoulder until July 2016. Dr. D'Amato's opinion also supports the compensation judge's findings.

Substantial evidence supports the judge's findings that the right shoulder injury in 2014 resolved. The compensation judge relied upon the opinion of Dr. D'Amato. The Employee was also able to return to work and continued to do heavy equipment work.

While there is evidence that the 2014 injury was a factor in the employee's shoulder conditions, there is substantial evidence in the record that supports the judge's findings that the employee's 2014 work injury did not cause the left shoulder condition and caused only a temporary aggravation of the right shoulder condition.

Summary by: Bryan Wachter