Larry D. Nelson v. Smurfit Stone Container Corp. and Zurich Am. Ins. Co./Broadspire, No. WC17-6053 (W.C.C.A. Oct. 9, 2017)

This case involves issues of causation of a claimed *Gillette* injury, as well as two defenses to temporary total disability benefits, namely "retirement" and "withdrawal from labor market."

In this case, an employee sustained a work-related injury to his right shoulder, which required surgery. After he returned to work, he began to experience symptoms in his left shoulder as well. A few years later, the employer laid off the employee and shut down the plant. Upon separation, the employee signed a document indicating that he did not sustain any work injuries with the employer, and that he planned to work until age 66. He then searched for employment for a few months and applied for social security retirement benefits.

Three years later, the employee was diagnosed with a left rotator cuff tear and underwent surgery. He then made a claim against the employer for permanent and/or temporary total disability from the date of the plant closure. The compensation judge found that the employee did sustain a left shoulder *Gillette* injury. Even though the judge denied permanent total disability benefits based on the lack of a diligent job search, he awarded the employee temporary total disability benefits.

The matter was appealed by the employer and insurer. The WCCA concluded that the compensation judge had substantial evidence to conclude that a *Gillette* injury occurred, and that the ascertainable event for such could be the date the employee was laid off. Additionally, the WCCA found that the compensation judge properly weighed the employee's credibility in determining that the employee was not aware the document he signed indicating that he did not have any work injuries included his shoulders. Lastly, the WCCA indicated that the employee's plan to retire at age 66 did not preclude temporary total disability benefits because the statement was made with the assumption that the employee could continue working with that employee up until that age, thereby negating the retirement or withdrawal from the labor market defenses.

Summary By: Parker T. Olson

Julio Escobedo v. Archetype Signmakers and Risk Admin. Servs., No. WC17-6067 (W.C.C.A Oct. 9, 2017)

The Employee had a non-work related right knee condition as a result of an injury playing youth football. He had multiple instances of locking and pain over the years and subsequently had a partial lateral meniscectomy in 1985. He had no restrictions after recovery from surgery and did not have any right knee treatment until an admitted July 8, 2015, injury at work when the Employee twisted his knee, causing pain and swelling. He first sought medical treatment on July 27, 2015 and received a cortisone injection with a diagnosis of osteoarthritis. He did not seek treatment again until early January 2016. He received another injection and was referred to a surgeon who performed a right knee replacement in early April 2016. He was released to work without restrictions in June 2016.

The Claim Petition sought wage loss benefits and medical expenses related to the knee replacement. The Employer and Insurer denied liability for the claimed benefits based on the work injury being a temporary strain that resolved by July 27, 2015, and the work injury not being a substantial contributing factor in the need for treatment. The IME concluded the Employee's injuries prior to the 1985 surgery probably caused an unrecognized ACL tear and the 1985 surgery predisposed the Employee to degenerative arthritis of the knee.

The compensation judge found the work injury was not a substantial contributing cause of the need for a knee replacement and the alleged periods of disability. The Employee appealed the compensation judge's determination arguing that the judge should have determined the case based on the six factors of workplace aggravations suggested in *McClellan v. Up North Plastics*, (W.C.C.A. Oct. 18, 1994) and that the opinion of the IME doctor, which the compensation judge adopted, lacked detailed explanation and foundation.

Affirming the compensation judge's determination, the W.C.C.A. stated that which factors are significant and the weight to be given each are questions of fact for the compensation judge and in this case, were properly considered. The Employee's argument regarding the IME report was found to be without merit. The Court found the IME report did not lack detailed explanation, stating the IME doctor sufficiently explained the facts on which he relied, and they were not inconsistent with the compensation judge's findings and the record. The W.C.C.A. also found that there was sufficient foundation for the IME doctor's opinion as he had reviewed the Employee's pre and post work injury medical records, took a medical history from the Employee, and completed an examination.

Summary By: Scott G. Ferriss

Joshua Samuda v. Minn. Vikings Football Club and Great Divide Ins. Co., No. WC17-6068 (W.C.C.A. Oct. 16, 2017)

The Employee had a one-year contract from March 2014 through February 2015 that was to be paid over 17 weeks during the 2014 regular season, even if the Employee was injured and could not perform due to the injury.

The Employee sustained an admitted injury in April 2014 during preseason training camp. Benefits were paid to the Employee including 77 weeks of temporary total disability benefits based on a weekly wage of $700.00, the amount received weekly during training camp. The Employee claimed an underpayment of benefits based on his one-year contracted salary of $318,000.00. The compensation judge found the average weekly wage to be just over $6,000.00 based on the contract over 52 weeks.

The Employer and Insurer appealed, arguing the actual earnings of the Employee must be used to determine weekly wage and that the wage found by the compensation judge was speculative. The

W.C.C.A. found the Employee's contract was substantial evidence to support the conclusion of the compensation judge that $700.00 per week was not a fair approximation of the earning capacity of a NFL player and the finding of the weekly wage being slightly more than $6,000.00.

The Concurring Opinion came to the same conclusion but noted that the plain language of the contract was all that was needed to resolve the issue.

Summary By: Scott G. Ferriss

Michael W. Burkett v. Randstad North America and ACE USA/ESIS, Inc., Keystone Auto Parts and Sedgwick Claims Mgmt. Servs., Inc., No. WC17-6061 (W.C.C.A. Oct. 16, 2017)

The Employee was diagnosed with diabetes in 2007. In June 2014 he complained of numbness and tingling in both hands and fingers. He began working for Randstad, a temporary employment agency, in October 2014, and was assigned to a warehouse position at Keystone Auto Parts. If the temporary placement worked out, Keystone would hire the employee permanently.

The Employee went to the ER on January 18, 2015 for swelling, pain, tingling, and numbness in his bilateral hands. He could not work the next day. On January 20, he was hired as a full-time employee doing the same work as when he was a temporary employee. The pain and swelling worsened over the next couple of months and he stopped working by March 19, 2015. He had no restrictions from a doctor but did not look for work.

He was subsequently diagnosed with bilateral carpal tunnel and bilateral cubital tunnel syndrome with no evidence of diabetic neuropathy. Surgery was recommended but the Employee chose not to pursue surgery or look for work from May 2015 to May 2016. Both Employers obtained medical opinions relating the carpal tunnel to the Employee's diabetes.

The compensation judge found the Employee suffered a *Gillette*-type injury on March 19, 2015, awarding TTD benefits from March 19 through May 4, 2015. Further TTD was not awarded as the compensation judge found the Employee removed himself from the labor market and did not seek treatment for over a year.

Employer Keystone appealed the finding of a work injury and the Employee cross-appealed the decision to deny ongoing TTD benefits.

The W.C.C.A. found that the records and testimony substantially supported the judge's finding of a *Gillette* injury, noting that whether the diabetes caused the injury was largely irrelevant because the usual work of an employee that substantially aggravates, accelerates, or combines with a pre-existing condition to produce a disability, will cause the entire disability to be compensable.

Keystone also appealed the March 19, 2015, date of culmination of the *Gillette* injury arguing that the Employee had already lost time before this date. The Court stated that despite not having restrictions from a doctor, the Employee's own self-imposed restriction was sufficient.

The W.C.C.A. affirmed the denial of TTD benefits based on the Employee's lack of job search and the fact that he sought no treatment during the time claimed for benefits.

Summary By: Scott G. Ferriss

Ronald G. Rossbach v. Rossbach Construction and SFM Mutual Insurance, No. WC17-6070 (W.C.C.A. Nov. 2, 2017)

The pro se Employee entered into a Stipulation for Settlement with the Employer and Insurer which was served and filed on December 31, 2014, with the Award on Stipulation being signed on January 2, 2015. The Award incorrectly stated that both parties were represented by counsel. The Employee filed a petition to vacate the Stipulation and Award on Stipulation on the grounds of fraud or mutual mistake of fact under Minn. Stat. § 176.461 and § 176.521, subd. 3.

Where both parties are represented by counsel, stipulations are presumed to be fair, reasonable, and in conformity with the Workers' Compensation Act. In cases where one or both of the parties are not represented by counsel, § 176.521 requires the compensation judge to review the stipulation and approve it only if the parties have shown the settlement to be fair, reasonable, and in conformity with the Workers' Compensation Act. Here, the Award stated that both parties were represented, when in fact, they were not. The W.C.C.A. found that the evidence and facts agreed to by the parties established that the stipulation was not issued in compliance with the Act.

The W.C.C.A. referred the matter to the chief administrative law judge to determine the fairness, reasonableness, and conformity with the Act. The Court declined to address the petition to vacate until the stipulation was reviewed by the chief administrative law judge.

Summary By: Scott G. Ferriss

Loretta R. (Schneider) Didrikson v. Jay Litman Construction and Minn. Assigned Risk Plan administered by RTW, Inc., No. WC16-5981 (W.C.C.A. Nov. 2, 2017)

The Employee sustained a low back injury in July 1988 lifting a heavy box while working for the Employer. She received chiropractic treatment, physical therapy, a laminectomy, and a disc removal. A full settlement with medical expenses open was reached and approved in February 1992.

The Employee resumed treatment for her back and leg pain in 1994. She was able to perform some part-time work after the settlement but had not worked since July 1995. In 1996, she was diagnosed with cardiomyopathy. In June 1997, the Employee was deemed disabled and eligible for Social Security disability benefits dating back to March 1995 due to her cardiac impairment. The back injury was found not to meet the disability requirements.

She received extensive additional treatment from 2001-2012 and continued to avoid surgical intervention due to her cardiac issue. In August 2016, the Employee filed a petition to vacate the 1992 Award on Stipulation stating that her pain had spread and dramatically worsened, and she could not have surgery due to her heart condition.

The Employee obtained a report from her treating doctor indicating she had degenerative disc disease, disc protrusions, and probably failed back syndrome related to the 1988 injury. Additionally, the doctor diagnosed the Employee with arachnoiditis based on an April 2017 MRI. The Employer and Insurer's IME report that opined the Employee had not shown a substantial change in medical condition since 1992 and the Employee's symptoms were not typical with findings of arachnoiditis.

The W.C.C.A. can vacate an award under Minn. Stat. § 176.461 and § 176.521, subd. 3. The petitioning party must show "good cause" to vacate an award. The court noted that four instances can show "good cause" to vacate an award on stipulation filed prior to July 1, 1992: 1) mistake; 2) newly discovered evidence; 3) fraud; or 4) substantial change in condition.

The W.C.C.A. concluded that the Employee's diagnosis of arachnoiditis constituted a showing of a change in diagnosis, the Employee had been unable to work, and needed more costly and extensive medical care related to her work injury. The Court indicated this was enough to show good cause to vacate the Award on Stipulation.

Summary By: Scott G. Ferriss

Lachlan P. Folstrom v. Northgate Liquors and Amtrust Group, No. WC17-6066 (W.C.C.A. Nov. 9, 2017)

The Employee sustained an admitted injury to his low back while lifting beer kegs. Two weeks after the injury, he reported pain into his right hip and groin. The Employer and Insurer obtained an IME report indicating the Employee had a temporary sprain and he reached maximum medical improvement the day he reported the hip pain. The Employer and Insurer filed a Notice of Intention to Discontinue Benefits and a Rehabilitation Request seeking to terminate vocational rehabilitation benefits.

At the hearing, the Employer and Insurer sought to admit evidence of the Employee's prior misdemeanor criminal conviction which they argued was related to the Employee's credibility. The evidence was not admitted, and the compensation judge found that the Employee had a work-

related injury to the low back and hip, he had not reached MMI, and vocational rehabilitation should not be terminated.

The Employer and Insurer appealed, arguing the Employee's lack of credibility warranted a reversal. They further argued that the IME report obtained by the Employee lacked foundation due to the untruthful statements by the Employee to the doctor and that the compensation judge erred in disallowing the admission of the Employee's criminal conviction.

The W.C.C.A. affirmed the findings and order of the compensation judge, finding that there was substantial evidence to support the findings of the compensation judge and the compensation judge did not abused its discretion when it refused to admit the prior criminal conviction.

Summary By: Scott G. Ferriss

Lynn Trujillo v. Pride Construction and Meadowbrook Claims Services, No. WC17-6081 (W.C.C.A. Dec. 4, 2017)

The Employer and Insurer sought to discontinue temporary partial disability benefits on the basis that the Employee's earnings were sporadic, insubstantial, and did not amount to substantial gainful employment. The discontinuance was denied, and the Employer and Insurer appealed.

The W.C.C.A. found the Employee and his QRC credible in their testimony that the Employee had cooperated with vocational rehabilitation and his earnings at a subsequent employer were substantial enough to amount to gainful employment, thus entitling him to temporary partial disability benefits.

Summary By: Scott G. Ferriss

Janet Hufnagel v. Deer River Health Care Ctr. and MHA Ins. Co. and Essentia Health – Deer River and Berkley Risk Administrators Co., No. WC17-6057 (W.C.C.A. Dec. 5, 2017)

This matter involved a dispute regarding attorney fees under *Roraff/Irwin* and Minn. Stat. § 176.191. The Employee's Attorney filed a claim seeking $31,773.84 in said fees. The Employee's attorney claimed that this matter involved complex issues based on the fact that two insurers were involved along with three dates of injury. He then also claimed that the primary dispute was between the two insurers, even though both insurers denied primary liability in this matter. At the hearing for attorney fees before the compensation judge, it was found that the Employee's attorney was entitled to $8,000.00 in excess *Roraff/Irwin* fees. The compensation judge denied any additional fees under Minn. Stat. § 176.191.

The matter was appealed to the Workers' Compensation Court of Appeals. The WCCA reversed the compensation judge's decision and remanded the matter back to him with instructions. The WCCA found that the attorney fee award of $8,000 was insufficient to adequately compensate the Employee's attorney for time spent. While although the WCCA found that the compensation judge applied all of the *Irwin* factors and provided an extensive discussion of said factors, the WCCA still found that the award was insufficient. Based on the standard of review, the WCCA inherently determined that the compensation judge's findings were clearly erroneous and were manifestly contrary to the weight of the evidence. As for fees under Minn. Stat. § 176.191, the WCCA similarly reversed the compensation judge's decision and determined that the primary dispute in this matter was between the insurers. However, in its decision, the WCCA listed the dispute between the insurers as a "significant issue."

The Employer and Insurer have appealed to the Minnesota Supreme Court and a Writ of Certiorari was issued on December 27, 2017. The case number is A17-2064.

Summary By: Parker T. Olson

Einar J. Otterness v. Andersen Windows and Old Republic Ins. Co./Helmsman Management Services, LLC, No. WC17-6063 (W.C.C.A Dec. 12, 2017)

The pro se Employee appealed the compensation judge's findings that the Employee failed to present substantial evidence that he sustained a *Gillette* injury to his lumbar spine. The W.C.C.A. affirmed the compensation judge's findings and orders in their entirety due to the Employee's failure to offer clear medical evidence to support his claims of a *Gillette* injury or lasting effects of two claimed work injuries in 2012.

Summary By: Scott G. Ferriss

Kayla Lein v. Eventide and Meadowbrook Claims Services, No. WC17-6101 (W.C.C.A. Dec. 29, 2017)

The Employee was injured while descending a flight of stairs on the Employer's premises. The Employer and Insurer denied liability, asserting the injury did not arise out of her employment. The Employee presented evidence that the stairs she fell on did not have anti-slip treads. The compensation judge denied the Employee's claim, concluding that the Employee failed to establish that she had been exposed to an increased risk.

The Employee appealed and the W.C.C.A. reversed, stating the compensation judge improperly used doctrine from general tort liability, which is specifically prohibited in the Workers' Compensation Act. The Employer and Insurer appealed to the Minnesota Supreme Court.

Following a stay, an Order was issued vacating the decision of the W.C.C.A. and remanding the matter for reconsideration in light of the Supreme Court's decision regarding the "increased-risk" test in *Hohlt* (whether the employee was exposed to the risk because of employment) and the standard of review issue in *Kubis* (findings of fact are for determination of compensation judge).

The W.C.C.A. held in *Roller-Dick v. CentraCare Health Sys.*, No. WC17-6051 (W.C.C.A. Oct. 19, 2017), that stairs located on an employer's premises constitute an increased risk and an injury on the stairs is sufficient to show causal connection to conclude the injury arose out of the employment. In light of the *Kubis*, *Hohlt*, and *Roller-Dick* decisions, the W.C.C.A. reversed and remanded, finding that the stairs themselves, regardless of the lack of anti-slip tread, were adequate to show the increased risk, thus the Employee's injury arose out of her employment and her claim was compensable.

The Employer and Insurer have appealed to the Minnesota Supreme Court and a Writ of Certiorari was issued on January 25, 2018. The case number is A18-0138.

Summary By: Scott G. Ferriss

Kenneth Hinkle v. Ruan Transp. Inc., and Ace Ins Co., No. WC17-6083 (WCCA Jan. 5, 2018).

This case involves an Employee who was hired as an over-the-road truck driver by Ruan Transportation after responding to an ad in a Georgia newspaper. He lived in Decauter, Georgia, had a commercial driver's license from Georgia, and was assigned to an account with a home terminal in Georgia upon his hiring in 2008. In 2014 he was assigned to an account with a home terminal in Brooklyn Park, Minnesota, which later moved to Otsego, Minnesota. There was another terminal for this account in Lake City, Georgia. He received route assignments from dispatcher in Otsego and attended mandatory safety and training meetings there. He rented trucks for his assignments from a facility near his home in Georgia.

On October 28, 2014, the employee voluntarily resigned and was rehired about 45 days later when he was flown by the employer to Otsego to complete paperwork to be rehired. He attended a safety meeting there and picked up a load of products. From December 2014 through October 2015, he picked up or delivered products in 20 states, picking up and delivering in Minnesota locations more than any other state. He traveled through Minnesota about eight times per month and would pick up paperwork and attend classes in Minnesota.

On October 27, 2015, the employee was injured in Georgia. The employer filed a first report of injury in Georgia, which listed the employer's address in Elk River, Minnesota. Employer and Insurer accepted primary liability by filing a notice of insurer's primary liability determination in Minnesota and initially paid temporary total disability pursuant to Minnesota's workers' compensation law. In July 2016, the employer and insurer began paying benefits under Georgia's workers' compensation law.

The employee filed a claim petition in Minnesota requesting benefits under Minnesota's workers' compensation law. The compensation judge found that the work injury was compensable under Minnesota workers' compensation law. The employer and insurer appealed.

The employer and insurer argued that the amount of time the employee spent and amount of work performed in Minnesota are negligible compared to his overall employment activity. The WCCA disagreed because the statute does not require that more of the employee's time be spent in Minnesota than elsewhere, only that the employee regularly perform 'primary' job duties in this state.

The employer and insurer also argued that the employer was an Iowa employer because its home office is in Iowa. The WCCA disagreed because the employer had terminals in Otsego and Elk River, Minnesota and its employees perform services for hire in Minnesota.

The employer and insurer claimed that the employee was not hired in Minnesota because he was originally hired in Georgia, and his voluntary termination was not intended to be permanent. The WCCA determined that the compensation judge could reasonably conclude that the employee had been hired in Minnesota in 2014.

Summary By: Bryan M. Wachter

John Devos v. Rhino Contracting Inc., No. WC17-6075 (WCCA Jan. 8, 2018)

This case involves an employee who was working for Rhino Contracting, which was based in Grand Forks, North Dakota. A dispute exists regarding whether the employee was recalled or rehired in 2012, and whether that occurred in North Dakota where the employer is based, or in Minnesota where the employee lived.

The employee filed an amended claim petition naming the Special Compensation Fund as the insurer. The Special Compensation Fund filed a motion to dismiss, asserting that the employee's claim was barred by Minn. Stat. §176.041, subd. 5b, because he was an employee hired in North Dakota by a North Dakota employer and his alleged injury arose out of temporary work in Minnesota.

A special term conference was held by the Compensation Judge. No witness testimony was received, but exhibits were submitted and appearances were noted. Employee's attorney noted that he misunderstood the nature of the proceeding. The record was kept open, on employee's counsel's request, for submission of additional evidence on the issue of whether the employee was hired in Minnesota or in North Dakota in 2012. The employee did not submit additional testimony or evidence, but rather submitted a formal objection to the motion to dismiss due to factual disputes. The Employee argued that the Special Compensation Fund failed to prove that the employee was recalled in 2012, that he was hired in North Dakota, and that he employer was a North Dakota employer.

The Compensation Judge issued a Findings and Order granting the Special Compensation Fund's Motion to Dismiss. The Judge found that the employee had been recalled in 2012, that he had been hired in North Dakota by a North Dakota employer, and because the work performed in Minnesota was temporary, the employee's claim is barred under Minn. Stat. §176.041, subd. 5b. The employee appealed, citing as error the Judge's factual determinations and dismissal without an evidentiary hearing in absence of a set of stipulated facts.

The Employee argued on appeal that because factual disputes exist as to the circumstances of his hiring and where it occurred, as well as to whether the employer is a North Dakota employer, the compensation judge's dismissal without an evidentiary hearing was inappropriate.

The WCCA held that the Compensation Judge made factual determinations for which there is either no evidence or it is unclear what evidence he had considered. The dismissal was vacated and remanded for fact finding on the issues of when and where the employee was hired in 2012, and whether the employer is a North Dakota employer.

Judge Milun dissented, reasoning that based on the exhibits in the record, the employee completed an application in Grand Forks, North Dakota and was hired the same day, that the employer is a North Dakota corporation, and that the employee worked 44.5 hours in Minnesota in the calendar year 212 and those did not fall over fifteen consecutive days. Therefore, the employee does not qualify for benefits under the Minnesota Workers' Compensation Act per Minn. Stat. §176.041, subd. 5b.

Summary By: Bryan M. Wachter

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*Pamela J. Beguhl v. Supportive Living Solutions/Whittier PL., and Meadowbrook Claims Servs.***,** No. WC17-6078 (W.C.C.A. Jan. 11, 2018)

The Worker's Compensation Court of Appeals affirmed a modified decision of the compensation judge in which she found that the Employee's work-related injuries were substantial contributing factor to her left foot/ankle and right shoulder conditions, but that any work-injury that affected her neck condition caused only a temporary sprain/strain and resolved within 12 weeks.

Pamela Beguhl ("Employee") suffered from two separate work-related injuries to her left foot/ankle and right shoulder, neck, low back, and hips. These body parts had sustained prior work and non-work related injuries which had led to a variety of medical treatment. Following the work injuries, the Employee treated with and received medical opinions from multiple providers, including: Dr. Troy Vargas, a doctor or podiatric medicine; Dr. Anthony Ferrara, the Employee's family physician; Dr. Fernando Pena, an orthopedic surgeon, Dr. Timothy Felton, who conducted an independent medical examination; Dr. Jonathan Biebl, who treated her for her right shoulder; and Dr. Rick Davis, who performed a second independent medical examination.

In January of 2017, Employee's claim petition, self-insured Employer's Request for Formal Hearing, and Employee's Objection to discontinuance were filed. The matters were consolidated and came before Compensation Judge Kirsten Tate on March 28 and 30, 2017. Judge Tate found that the November 5, 2015 work injury was a substantial contributing factor to the Employee's left foot/ankle condition; that the April 5, 2016 work injury was a substantial contributing factor to the Employee's right shoulder condition; and that the any low back/neck condition sustained as a result of the April 5, 2016 work injury had resolved within 12 weeks after the injury. She awarded temporary disability benefits, payment of outstanding and ongoing rehabilitation bills, and payment of intervenors' claims as they related to the left foot/ankle and right shoulder treatment.

On appeal, the self-insured employer argued that Dr. Pena's opinion, which the compensation judge had relied upon in her ruling on the left foot/ankle, lacked foundation and that Dr. Felton's opinion, which supported the employer, was more complete. The WCCA noted that "[a] compensation judge's choice between expert opinions is generally upheld unless the facts assumed by the expert are not supported by the record." *Nord v. City of Cooks*, 360 N.W. 2d 337, 37 W.C.D. 364 (Minn. 1985). As such, the decision was upheld.

The compensation judge had adopted the decision of Dr. Biebl, Employee's treating physician, over the opinion of Dr. Davis, the IME physician, regarding the right shoulder condition. Self-insured Employer argued against Employee's credibility and asked the WCCA to take "judicial notice" of the surrounding facts of the work injury and the likely outcome. The WCCA pointed out that its "authority is limited to reviewing the records submitted to the compensation judge." *Sharp v. Grant Northern Oil Co.*, slip op. (W.C.C.A. Dec. 13, 1990). As this was the WCCA's position, they lacked a basis for reevaluation credibility and probability value of the Employee's testimony. As the compensation judge's inference was reasonable, the WCCA lacked the power to choose a different inference and affirmed.

The Employee argued that the compensation judge relied upon preexisting neck problems which were unsupported by the record. However, the WCCA found that the decision was in fact supported by "substantial evidence" and affirmed the decision.

The self-insured Employer disputed multiple points regarding the QRC's billing, including: use of a standard billing amount that did not reflect reasonable time spent; inadequate descriptions; unreasonable billed time; billing for administrative tasks that did not further rehabilitation; and failure of the WRC to reduce the charged fee per Minn. R. 5220.1900, subp. 1f. The court upheld the objected time as adoption of a minimum standard is almost always reasonable. The descriptions were found adequate. The administrative tasks, totaling .8 hr., were found to be not payable and the award modified to exclude this amount. Finally, the court found that substantial evidence supported the full award of the claimed QRC costs.

The entire decision, less the aforementioned .8 hr. billed time to QRC, was therefore upheld by the WCCA.

Summary By: Megan M. Oliver

Teresa C. Santelli v. Wal-Mart and Claims Management, No. WC17-6085 (WCCA Jan. 24, 2018)

The employee sustained an injury to her left shoulder on October 11, 2012 when lifting a box of frozen bread in the bakery department. She treated for a shoulder injury of calcific rotator tendinitis and was found to be at maximum medical improvement and released with no restrictions and 0% permanent partial disability on July 9, 2013.

A few months before an October 12, 2014 injury, she was transferred to the pets department, which involved heavy lifting of bags of pet food, and noticed pain in her left shoulder. On October 12, 2014, she was throwing cardboard into a baler and noticed increased left shoulder symptoms. The symptoms were in the same location as those in 2012. She returned to her doctor who concluded she had exacerbated her earlier injury. She treated for the injury including physical therapy and was given a QRC. Dr. Freehill opined that she would be a candidate of left shoulder replacement surgery.

On May 29, 2015, she fell on her left shoulder in a non-work-related incident and sustained a left shoulder displaced surgical neck fracture. She was off work for five months and eventually returned to work with restrictions and continued with her QRC.

An IME doctor opined that the shoulder problems were a result of a pre-existing degenerative process, that the October 2012 injury had resolved by July 2013, and that the October 2014 injury was a temporary aggravation and resolved as of March 2015. The employee was terminated for excessive absences and tardiness.

The employee filed a medical request for approval of left shoulder replacement surgery recommended by Dr. Freehill. Employer and insurer also filed a request to terminate vocational rehabilitation services, which was granted. The employee filed a claim petition temporary total disability benefits, vocational rehabilitation benefits, and attorneys fees.

A hearing was held and the compensation judge found that the surgery was reasonable, necessary, and causally related to the work injuries, awarded temporary total disability benefits, awarded vocational rehabilitation services, and intervention claims. The employer and insurer appealed.

The WCCA affirmed the compensation judge's determination on causation because substantial evidence in the form of Dr. Freehill's opinion supports the finding on the issue.

The WCCA also rejected an argument by employer and insurer that the surgery is not allowed under the treatment parameters because treatment parameters do not apply after an insurer has denied liability for the injury.

The WCCA affirmed the award of temporary total disability because the employee testified as to her ongoing limitations to find appropriate employment and the QRC testified that a job search before shoulder replacement was not practical.

The WCCA also affirmed the award of medical expenses based upon the opinion of Dr. Freehill regarding causation and vocational rehabilitation services based upon the employee's condition and need for surgery related to her work injuries.

Summary By: Bryan M. Wachter

Wayne A. Armstrong v. Clyde Machines, Inc., and RTW Group, No. WC17-6044 (W.C.C.A. Jan. 30, 2018)

The Worker's Compensation Court of Appeals affirmed the decision of compensation judge in which he approved treatment at the Center for Pain Management, despite medical treatment being closed out in the prior stipulation for settlement.

In this case, Wayne Armstrong ("Employee") suffered a work-related injury on September 19, 2007 in the form of a sharp pain between his shoulder blades that shot into his neck, right arm, and left leg. He sought medical attention and was given physical restrictions, narcotic and non-narcotic medications, and participated in physical therapy. He continued to work in a light-duty capacity until his symptoms forced his employment with Clyde Machine to terminate. He did not work from then until the hearing and received Social Security disability benefits. The parties entered into a stipulation for settlement in the summer of 2009, in which the Employee's claims were closed out on full, final, and complete basis, with claims for future medical "…limited by foreclosure of claims for … formal in or out patient pain programs, as defined by the treatment parameters, including MAPS…" (*Exhibit F*).

The Employee continued to receive treatment for primarily chronic right shoulder and neck pain through 2016. Over this time period, treating physician Dr. Ryder tried to lower the Employee's use of narcotic pain medication and encouraged him to seek alternative treatment, including physical therapy. After the Employee filed a medical request seeking approval for physical therapy, it was denied at an administrative conference. The matter then went to hearing, along with a new request for approval of a recommended right shoulder MRI and pain clinic consultation.

At hearing, Compensation Judge William J. Marshall denied the claims for physical therapy and the MRI, but approved the referral for the Center for Pain Management ("Center"). In his supporting memorandum, he noted that since the referral in question did not say exactly what type of treatment was sought, the consultation would fail to meet the requirements of a pain program under the treatment parameters and had not been closed out in the stipulation. The WCCA found that this interpretation was reasonable based on the record, as the stipulation did not close out referrals to pain centers for all potential services. In fact, the Employee had already treated at the

Center, including receiving steroid injections. Further, the Employer and Insurer agreed that the Center offered other services in addition to the ones specifically foreclosed by the agreement. While the treatment currently sought by the Employee was not known to be further steroid injections, neither was it known to be the sort of treatment that had been foreclosed. As such, the compensation judge found and WCCA affirmed that the referral to the Center was not closed out by the settlement language.

Summary By: Megan M. Oliver

4815-4525-4749, v. 1