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Issue: VACATION OF AWARD – SUBSTANTIAL CHANGE IN CONDITION

Wolters v. Curry Sanitation, Inc., No. WC18-6207 (April 2, 2019)

In this case, the employee sustained a low back injury in July 1987. The employee was seen by two orthopedic surgeons with different medical opinions. Dr. Reese was reluctant to perform a lumbar fusion and the other, Dr. Wengler, eventually performed the surgery in 1988. Within a year of the surgery the employee experienced a recurrence of back pain and left leg pain. In 1990, the employee entered into a settlement that was a full, final, and complete close-out of the employee's claims except for future reasonable and necessary medical expenses. In 1997, the employee entered into a second settlement in which he agreed to close out pool therapy, hydrotherapy, health club memberships, exercise equipment, chiropractic treatment, and associated mileage for a lump sum. The employer and insurer remained liable for reasonable and necessary medical treatment.

In 2010, the employee was diagnosed the employee with degenerative disc disease at L4-5 and L5-S1. A decompression and fusion were recommended. In November 2010, the employee filed a Medical Request seeking authorization for the surgery. The compensation judge found that the proposed surgery was reasonable and necessary and authorized the surgery. Surgery was performed by Dr. Sinicropi in September 2011. The fusion failed and resulted in no appreciable relief, and the employee then sought the insurer's approval for a revision of the fusion. The proposed surgery was denied by the insurer.

In September 2018, the employee filed a petition to vacate the 1990 and 1997 Awards alleging a substantial change in his medical condition. In determining whether a substantial change has occurred, various factors are considered including: (1) a change in diagnosis; (2) a change in the employee's ability to work; (3) additional permanent partial disability; (4) the necessity of more costly and extensive medical care than anticipated; and (5) a causal relationship between the injury covered by the settlement and the employee's current condition. Fodness v. Standard Café, 41 W.C.D. 1054, 1060-61 (W.C.C.A. 1989).

The WCCA found that overall, it was unclear from the evidence submitted by the employee whether the additional surgery represented a different approach to treatment of the same underlying problems rather than treatment for a substantial change in condition. It was also unclear that the employee's ability to function had substantially changed. **The Court denied the Petition to Vacate and held that the employee had failed to clearly demonstrate a substantial change in the medical condition sufficient to warrant vacation of the awards on stipulation.**

Summary by: Michelle I. Kelly

Issue: CAUSATION – SUBSTANTIAL EVIDENCE

Klein v. Minn. Ass'n of Townships, No. WC19-6243 (April 15, 2019)

In this case, the employee sustained an injury in December 2016 while in the course of her employment. She was walking from her house to the mailbox to mail something for work and she slipped on the icy ground and fell. She had right shoulder, back, and right hip pain. Her right shoulder was diagnosed as a rotator cuff tear and it was surgically repaired in February 2017. The employer and insurer admitted liability for the employee's right shoulder injury and paid for the surgery. The employer and insurer denied that the employee's low back and right hip complaints were related to the work injury and refused to pay for such treatment.

The employee filed a Claim Petition in which she claimed entitlement to wage loss benefits, permanent partial disability, and medical expenses resulting from injuries to her back and right hip that she alleged from the fall in December 2016. The compensation judge denied the employee's claim, determining the employee had failed to establish by a preponderance of the evidence that she had sustained injuries to her back and right hip. The employee appealed.

The WCCA limited their review to the issue of whether there was substantial evidence to support the compensation judge's determination that the employee did not sustain an injury to her right hip. Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 60, 37 W.C.D. 235, 240 (Minn. 1984). The decision of the compensation judge was supported by substantial evidence and was therefore affirmed by the WCCA.

Summary by: Michelle I. Kelly