

Caselaw Update

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Caselaw Update

1. Arising out of and in the course and scope of

i. [Lein v. Eventide](#), #WC16-5961 (WCCA 12/07/16)

On January 19, 2015, the employee, while working as an activities coordinator for Eventide, went down a flight of stairs to use the vending machines on the first floor. As she was descending the stairs, her right foot slipped out from underneath her causing, her to fall backwards and strike her head on the back of several steps as she fell down the stairs. The employer and insurer denied primary liability for the injury based on a Dykhoff defense. At hearing, photographs were introduced into evidence. It revealed that the stair treads of the stairwell were unpainted and had no anti-slip surface of any kind. To defend the claim, the employer and insurer hired an expert to do a stair investigation. The expert concluded that the stairs were not a special hazard or an increased risk to users. The employee's expert attorney concluded that the employer failed to supply a stair system that was free from defect. Specifically he referenced the absence of an anti-skid condition. The compensation judge found that the employee was not exposed to an increased risk, as required by Dykhoff, and denied the claim. The WCCA reversed. It concluded that in this case, the burden was somehow placed on the employee to establish a defect in the stairs or a failure by the employer to comply with the building code or OSHA rules. They determined that the case was tried as a negligence action or a failure to comply with codes or safety standards, which is a legal standard that is prohibited by the Workers' Compensation Act. The WCCA, in analyzing the case, noted that it was uncontroverted that the stairs did not have anti-slip treads and the employee testified her foot slipped, causing her to fall. They differentiated Dykhoff in the sense that the employee in Dykhoff was unable to provide any connection between her injury and her employment other than her presence on the employer's premises. In this case, however, the WCCA determined that the employee had provided the requisite causal connection to conclude that the injury rose out of the employment. Therefore, the WCCA reversed the compensation judge's decision.

ii. [Hohlt v. University of Minnesota](#), #A16-0349 (Minn. June 28, 2017)

The employer and insurer appealed the WCCA's reversal of the compensation judge's Findings and Order to the Minnesota Supreme Court. The employee slipped and fell on an icy sidewalk when walking from her workplace to a public parking ramp owned and operated by her employer, the University of Minnesota. The sidewalk was owned by the City of Minneapolis, but the University, as an adjacent property owner, had the responsibility to maintain it. The Minnesota Supreme Court agreed with the WCCA in applying the increased risk test that there was a causal connection between the injury and her employment. The causal connection existed because her employment exposed her to a hazard that originated on the premises as part of the working environment; the hazard was the University's maintained sidewalk, as she was moving from one part of her employer's premises to another. The Minnesota Supreme

Court also distinguished between other cases on similar issues, noting that the employee in this case was walking between two parts of the employer's premises. The Minnesota Supreme Court determined that the injury did arise out of the employment. With respect to the "in the course of" requirement, the Minnesota Supreme Court agreed with the WCCA and the trial court that there was a reasonable period between actual working hours and that for her to walk to her car, only four blocks away, was reasonably incidental to employment.

iii. [Kubis v. Community Memorial Hospital, #A16-0361 \(Minn. June 28, 2017\)](#)

The employee in this case took the stairs to go upstairs when she tripped and fell. There were handrails on each side of the stairway, and the stairwell itself was not defective. There was nothing on the stairs that could have caused the fall. The employee asserted, instead, that she was in a rush to log out to avoid overtime. At trial, the compensation judge found the statement not credible. Therefore, the compensation judge denied the claim. The WCCA reversed. The Minnesota Supreme Court determined that the WCCA was not correct in substituting its own view of the evidence in place of the compensation judge's findings. The Minnesota Supreme Court noted that there was no credible evidence in the record to support the notion that the employee was pressured to rush to report to the next shift. The Court determined there was ample evidence in the record consistent with the judge's findings - the decision was overturned.

2. Attorney Fees

a. Subd. 7 Fees: Penalties

i. [Barrick v. Custom Products of Litchfield, Inc., WCCA 09/23/16](#)

The trial court in this case awarded penalties for the late payment of attorney fees. It also awarded the payment of Subd. 7 fees. However, because the penalties were less than \$250, Subd. 7 fees were not ordered to be paid under Minn. Stat. § 176.081, Subd. 7. The employee appealed, citing [Lann v. Dan Koch & Sons Trucking, Inc., 73 WCD 179, 183 \(WCCA 2013\)](#), which held that the \$250 deduction was to only be applied once per injury. The WCCA agreed. However, they also noted that the compensation judge misapplied the deduction language, noting that Subd. 7 fee deductions apply to reimbursement of attorney fees, not to penalties under Minn. Stat. § 176.225. The penalty amount is up to 30% of the total amount delayed, without any statutory deduction.

b. Roraff/Heaton

i. [Weatherly v. Hormel Foods Corp., #WC17-6038 \(WCCA June 13, 2017\)](#)

The attorney filed a Claim Petition seeking various benefits, including wage loss, medical bills of an unknown nature, and a reserved claim for permanent partial disability. The employer and insurer responded with an Answer admitting the wage loss claims, stating that the permanent

partial disability was premature, and indicating that it was unknown whether any medical bills were outstanding. The Claim Petition was later dismissed.

The attorney file a Statement of Attorney Fees seeking Roraff/Heaton fees. The compensation judge found that no genuine dispute occurred between the parties. The WCCA agreed. They reiterated that an attorney must establish that through the efforts of the attorney, the employee obtained disputed benefits. The attorney failed to satisfy this burden of proof. Therefore, the WCCA denied the appeal.

3. Causation

a. Gillette Injury

- i. Peterson v. Midwest Machine Tool Supply, Inc., #WC16-6004 (WCCA 03/07/17)

The employee in this case alleged that she sustained an injury to her low back as a consequence of her poor ergonomic set up, including the chairs she used at work. Her treating doctor opined in his records that “[t]he rationale behind this being work-related is very reasonable,” and that prolonged sitting was a “risk factor for development of disc disease, disc bulging, etc.” However, the employee did not have a narrative report that addressed causation and that supported the assertion that the work activities were a substantially contributing cause to the employee’s disability. The employer and insurer had an independent medical evaluation that supported their denial of causation. The compensation judge found the employee was not credible and concluded, further, that the opinion of the IME were more persuasive than those of the treating doctor. The employee appealed on the grounds that the IME did not have foundation for his opinions because he did not review an MRI that showed bulges in the lumbar spine. The employee alleged, further, that the IME was mistaken with regards to the employee’s diagnosis. The Worker’s Compensation Court of Appeals disagreed. First, they indicated that there was no medical opinion offered by the employee that the findings on the MRI had anything to do with the employee’s symptoms or condition. The WCCA also stated that even if the MRI had diagnostic significance, it did not address the primary issue in the case: whether the employee had sustained a Gillette injury. The Court reiterated that in order to prevail on her claim, the employee needed to present a medical opinion that established a causal connection between the work activity and the low back complaints. In this case, the employee failed to offer any doctor opinions stating that the work activities were a substantial contributing cause to her disability.

- ii. Noga v. Minnesota Vikings Football Club, #WC16-5989 (WCCA April 20, 2017)

The employer and insurer appealed the compensation judge’s findings that the employee had sustained a Gillette injury on December 1, 1992, and that employee’s claims were not barred by the statute of limitations. The employee was drafted by the Vikings and played defensive lineman from 1988-1992. He went on to play for several other teams before eventually retiring

in 1999. In 2001, he filed a claim for workers' compensation benefits, which were settled with an Award on Stipulation served and filed on March 23, 2004. The employee went on to develop cognitive issues. In January of 2015, the employee filed a claim for workers' compensation benefits due to the effects of head injuries and for a Gillette-type injury to his head. The compensation judge found that the employee had sustained a Gillette-type injury culminating on or about December 1, 1992, which was his last day of employment with the Vikings. The judge found, further, that that statute of limitations had been tolled. He also found that the employee's claims were not closed out in the prior Stipulation for Settlement. The WCCA remanded the matter back to the compensation judge relative to whether the employee sustained a Gillette injury. The judge relied on the expert medical opinion of a treating physician. However, the physician failed to offer any rationale or evidence that the work activities during the employee's years with the Vikings from 1988-1992 were a substantial contributing cause to the employee's condition and claim. The WCCA also analyzed the judge's decision that the prior Stipulation for Settlement did not close out the employee's claims for a head injury, brain injury, and dementia, as they were not specifically mentioned in the Stipulation. Finally, the WCCA analyzed how a new claim of permanent total disability benefits could be made considering there was a close out of those benefits in the past. The court reviewed the compensation judge's decision, which analyzed the Sweep v. Hanson Silo Co. and the Ryan v. Potlatch Corp. cases. Because the judge had properly analyzed those cases, the WCCA was not willing to reverse on those grounds.

b. Temporary Injury

i. Torgusson v. Lutheran Social Services, #WC16-6014 (WCCA 02/27/17)

The employee claimed she sustained an injury to her low back after assisting a patient who was paralyzed. She sought medical care and treatment and eventually underwent an MRI that showed changes at the L4-5 level. The employee had a significant history of low back complaints, including an MRI that was done in 2008 and showed bulging at the L5-S1 level. The employer and insurer had an independent medical evaluation done by Dr. David Carlson who opined that the employee had sustained a strain that resolved no later than eight weeks after the injury. Therefore, the employer and insurer filed a Petition to Discontinue Benefits, which was granted by the compensation judge. The judge referred to the employee's seven year history of chronic back pain and the lack of any persuasive opinions from the employee's doctors that the employee continued to suffer from the effects of the work injury; no medical opinions were offered by the employee or her attorney to support the assertion that the employee's work injury had anything to do with the employee's ongoing symptoms. Since Dr. Carlson was the only expert providing an opinion, the compensation judge accepted those opinions. The WCCA affirmed the judge's decision.

4. Evidence

a. Expert Medical Opinion

i. Gianotti v. Independent School District #152, #A16-629 (Minn. 02/08/17)

The WCCA reversed a compensation judge's finding that the employee did not sustain a concussion as a result of a work injury. The compensation judge in the case relied upon the employer and insurer's independent psychiatric examination of Dr. Arbisi, who had determined that the employee did not sustain a concussion, in denying the employee's claims. On appeal, the WCCA overturned the decision. It determined that Dr. Arbisi lacked adequate foundation to offer this opinion based on his area of expertise. On appeal, the Minnesota Supreme Court who reversed the WCCA's opinion. First, they indicated that the original appeal did not raise the issue of Dr. Arbisi's competence. Instead, it was an issue that was brought up by the WCCA. Because the Notice of Appeal and briefs to the WCCA failed to raise this issue, it was forfeited. With respect to foundation, the Supreme Court overturned the WCCA and determined that Dr. Arbisi did have solid foundation for his opinions. Therefore, the compensation judge's Findings and Order were reinstated.

- ii. [Younghans v. Johnson Brothers Liquor, #WC16-6017 \(WCCA May 12, 2017\)](#)

The WCCA affirmed the compensation judge's denial of workers' compensation benefits. The employee in this case sustained a work-related injury to his cervical spine in 1988, resulting in the need for a cervical fusion and discectomy at C5-6. In 1993, he was involved in a non-work-related motor vehicle accident. Prior to the motor vehicle accident, degenerative changes were noted at the levels adjacent to the cervical fusion. However, following his motor vehicle accident in 1993, he developed worsening neck pain. In 1999, the employee asserted a claim for medical bills related to the 1988 injury. The compensation judge denied the claim and determined the employee's condition was personal in nature and that the 1988 injury was not a substantial contributing case. The employee began working for a new employer in 2001. He sustained another work-related injury to his neck on April 30, 2014. At the request of the employer and insurer on risk in 2014, the employee underwent an independent medical examination with Dr. Mark Friedland. An independent medical examination was again later done by Dr. Kristen Zeller performed an IME for the employer and insurer on risk at the time of the 1988 date of injury. Dr. Zeller opined that the employee's condition was degenerative in nature and unrelated to a work injury. Instead, his current symptoms were related to an Arnold Chiari Type I malformation. She indicated in her report that she was not an expert and could not comment on Chiari type malformations.

A Claim Petition was later filed seeking payment of medical benefits for the 1988 and 2014 injury. As part of the litigation, Dr. Friedland's deposition was taken. Dr. Friedland, in his report as well in his deposition, found that the 1988 injury was a substantial contributing cause to the employee's disability. He also provided testimony relative to the prior degenerative changes found on the cervical spine as it relates to the fusion, but before the non-work-related motor vehicle accident in 1993. The compensation judge found that the work injuries were not a substantial contributing cause to the employee's need for treatment. The judge determined that the preponderance of the evidence failed to show that the 1988 was responsible for the employee's ongoing symptoms.

An appeal was filed against the 1988 date of injury only. The appeal was made on two grounds. First, the compensation judge's decision was not supported by the evidence and, second, that Dr. Zeller's opinion lacked foundation because she had admitted that she was not an expert despite her claim that the employee's symptoms were related to a Chiari malformation. The WCCA upheld the compensation judge's findings on the assumption that the judge relied on Dr. Zeller's report. There was no mention or analysis as to why Dr. Friedland's opinions were rejected.

b. Unopposed Medical Opinion

i. [Thao v. Synovis Life Techs, Inc.](#), #WC16-5928 (WCCA 09/02/16)

The employee appealed the compensation judges finding that the medical treatment for tendonitis and carpal tunnel were not related to the employee's admitted carpal tunnel work injury of January 1, 2008. The WCCA found that the compensation judge's determination was unsupported by substantial evidence. In this case, the employee sustained an admitted work-related injury in the form of carpal tunnel as a repetitive trauma Gillette-type injury with a date of January 1, 2008. The parties resolved this claim on a full, final, and complete basis, with the sole exception of medical expenses. The employee received additional medical care and treatment and was diagnosed with deQuervain's Tenosynovitis and trigger finger. The employee's physician, Dr. Cook, prepared a narrative report opining that the tendonitis and carpal tunnel were attributable to the employee's work activities and that the treatment was reasonable, necessary and cause related to the employee's work activities. The employee filed a Medical Request seeking payment of medical care and treatment, which later was heard before a compensation judge who denied the claims. The issue before the WCCA was whether or not the compensation judge's finding of no causal relationship was supported by substantial evidence. The WCCA found that Dr. Cook's opinion did have appropriate foundation and that, in fact, the compensation judge made no finding that Dr. Cook's opinion lacked appropriate foundation. The WCCA noted, further, that the employer and insurer did not submit any medical evidence relevant to the dispute. It went on to state that the compensation judge may not ignore or disregard uncontroverted medical opinions, and that there was nothing within the medical records to indicate that the employee's condition was not work-related. The WCCA went even a step further to indicate that while the defense counsel may offer a description of the medical condition as argument, the argument does not constitute evidence in the record. Similarly, references of an argument to the opinion of the claims adjustor that were not put into evidence lack any evidentiary weight.

5. Dependency Benefits

a. Burial expenses; rehabilitation benefits

i. [Grage v. ACME Electric Motor, Inc.](#), #WC15-5898 (WCCA 09/02/16)

The WCCA affirmed the compensation judge's decision for burial expenses, but reversed the compensation judge's denial of vocational rehabilitation services for a dependent surviving spouse. The employee died. His surviving spouse opted for cremation and a funeral. She

obtained a bench-style monument to be placed at her husband's grave. The bench, with tax and cemetery lot, totaled \$10,946.28. The employer and insurer denied payment, asserting that the expense was unreasonable. The court interpreted the statute under 176.111, Subd. 18, and looked at its plain meaning. They stated that there was no requirement that the expense be "reasonable," but only that it not exceed \$15,000. The authority of determining reasonable value of services is left up to the compensation judge. The compensation judge concluded that burial expenses include the expense of a bench-style headstone. The court affirmed the compensation judge's decision that it was compensable burial.

Additionally, the surviving spouse had very limited work experience; she worked as a custodian in the Bemidji schools. She had previously obtained an undergraduate degree and a license to teach K-12. To support herself following the death of her husband, she accepted a job at a residential treatment facility for high school students with addictions. She later found full-time employment at Red Lake Elementary School. The position was limited to a three-year contract and was dependent upon her obtaining a special licensure to teach autistic children. Because she was in need of further licensure, she requested a vocational rehabilitation consultation. The compensation judge denied this claim. The WCCA reversed, indicating that the purpose of the Workers' Compensation Act is to compensate surviving dependents for loss suffered when an employee is accidentally killed or dies from compensable injuries. They determined that a 54-year old woman with dependency benefits running out in 6 years and who was struggling with licensing requirements to secure and maintain employment had demonstrated the need for rehabilitation assistance to become self-supporting. Therefore, she was entitled to a rehabilitation consultation.

6. Intervenor

i. [Fischer v. ISD #625, #WC16-5955 \(WCCA 11/16/16\)](#)

The employee's workers' compensation matter proceeded to hearing. Several intervenors had filed the appropriate motions to intervene, but failed to appear at the hearing either in-person or by telephone. The employee's counsel at hearing indicated that he was making a direct claim for payment of the intervention interests. The compensation judge allowed the employee to assert those claims and awarded the payment of these interests. The WCCA disagreed and reversed the decision. The WCCA stated that although an intervenor's claims may be inextricably connected with those of the employee, those claims belong to the intervenor, not the employee. If the employee's attorney represented the intervenor, the attorney would have had to establish this representation at hearing. The attorney did not do so in this case.

ii. [Sumner v. Jim Lupient Infinitj, #WC16-5968 \(WCCA 11/30/16\)](#)

This case has been the subject of previous decisions by the Workers' Compensation Court of Appeals and the Supreme Court. This particular appeal referred to the remanded claims after a hearing held on April 16, 2016. In the compensation judge's findings, the judge denied the

intervention claims of Rehab Results and Karen Lake Chiropractic for failure to appear at the April 19, 2016, hearing. The judge did so based on the compensation judge's interpretation of Sumner. The WCCA reversed, indicating that when they previously heard the matter on the first appeal, the two intervenors were not required to appear at the previous hearing since no objections were filed on their motions to intervene. The Supreme Court, in its decision, noted in its affirmance that one of the exceptions to the appearance requirement for an intervenor arises when an employer does not object to an intervenor's motion to intervene. As such, the WCCA had determined that the judge had erred and reversed the judge's determination.

iii. [Basting v. Metz Framing, Inc., #WC16-5971 \(WCCA 01/05/17\)](#)

The employee in this case sustained a work-related injury and later filed a claim seeking payment of medical bills, including those of an intervenor, Neurological Associates, who had failed to appear by telephone at the hearing. For that reason, the judge denied the claims of the intervenor. The WCCA had previously heard a similar dispute in Fischer v. ISD #625, #WC16-5955 (WCCA 11/16/16) in which it determined that once a provider or other entity intervenes in a workers' compensation case, it becomes a party and the employee's attorney may then only present the claims of the intervenor if it is unequivocally established at the hearing that the attorney represents not only the employee, but also represents the intervenor. In this particular case, no claim had been made by the employee's attorney that he represented the attorney and the denial of the intervention interest was affirmed.

7. Jurisdictions

a. Concurrent

i. [Anello v. Wisconsin Central Ltd., #WC16-5949 \(WCCA 02/10/17\)](#)

The employee in this case sustained an admitted work-related injury to his low back while performing longshoreman work. Benefits were initially paid under the Longshore and Harbor Workers' Compensation Act (LHWCA). The employee then filed a Medical Request under the Minnesota Workers' Compensation Act seeking payment of medical expenses. Following a hearing, the compensation judge denied benefits, indicating that the employee's claim for Minnesota Workers' Compensation Benefits would supplant, rather than supplement, the benefits under the LHWCA. Therefore, the judge denied the employee's claim for lack of jurisdiction. The WCCA provided an analysis of the LHWCA and the various cases that have interpreted the Act. The WCCA determined that the courts have allowed successive State Awards in situations in which Minnesota and another state pay for benefits for the same injury. The primary requirement is that the second Award is reduced by the amount of duplicate benefits paid under the other states' Act. Therefore, the WCCA determined that the compensation judge's dismissal of the employee's claims for lack of jurisdiction was clearly erroneous and reversed and remanded the case to the Office of Administrative Hearings for a hearing on the merits.

b. Subject Matter

- i. [Gist v. Atlas Staffing, Inc., #WC16-6019 \(WCCA June 21, 2017\)](#)

The employee sustained a kidney injury as a result of exposure silica sand. The employee went on to develop end-stage renal disease. As a result of the injury and consequential kidney disease, the employee received treatment in two different states. The out-of-state provider received Medicaid payments and Medicare payments. The employer and insurer argued that because the medical provider accepted payment from Medicaid and Medicare, they were paid in full and, therefore, could not claim a Spaeth balance. The compensation judge and the WCCA held that the jurisdiction of workers' compensation courts is limited to questions of law and fact arising under the Minnesota Workers' Compensation Law. Jurisdiction of a workers' compensation court does not extend to interpreting or applying laws outside the workers' compensation system. The WCCA concluded that the compensation judge properly determined that she lacked jurisdiction to interpret and apply Medicaid and Medicare statutes and rules in determining liability for workers' compensation benefits. The courts also determined that Medicaid and Medicare law do not conflict with Minnesota Workers' Compensation Law requiring an employer and insurer to pay reasonable and necessary medical costs for an injured employee. Ultimately, the court concluded that the compensation judge properly rejected the employer and insurer's argument that the medical provider would be barred from receiving workers' compensation payment.

8. Medical Treatment and Expense

a. General

- i. [Forrestal v. Miller Dwan Medical Center/Essentia Health, #WC15-5897 \(WCCA 09/30/16\)](#)

The compensation judge in this case awarded payment of medical bills for visits to the hospital and doctor's office to obtain narcotic medication. The WCCA reversed on the basis that the employee had violated her narcotics contract, supporting a determination that the treatment was not reasonable and necessary. The WCCA noted that the compensation judge indicated that the treatment "represented a reasonable effort by the employee to obtain medical treatment for her work injury residuals." The WCCA went on to state that this standard was not the standard under the statute. The employer must pay for an employee's medical treatment that is reasonable and necessary to cure and relieve the effects of a work-related injury. It is not enough to make a reasonable effort to obtain treatment. The treatment must be reasonable and necessary to be compensable. The WCCA stated, further, that if it affirmed the compensation judge's decision, it would be essentially nullifying the intent of the opiate agreement. Moreover, if the WCCA agreed that the employee's breach of the narcotic contract was a minor breach, they would usurp the opinions of the 11 medical professionals who consistently agreed that the employee's use of narcotics is not be appropriate in this case. They stated that the court was not in a position to substitute its opinion for that of the medical care providers.

b. Rule out conditions

i. [Dittel v NW Airlines, # WC15-5892 \(WCCA 11/15/16\)](#)

The employee sustained several work-related injuries and ultimately underwent a cervical hemilaminectomy and discectomy at C6-7 in 1996. Post-surgery, he continued to receive medical treatment. He also continued to report neck and upper extremity numbness. As a result of these symptoms, in 2011 he was referred to a neurologist. The neurologist opined that the employee likely suffered from bilateral carpal tunnel syndrome and ordered a nerve conduction and EMG study, as well as an MRI of the cervical spine. The trial court found that the bilateral carpal tunnel syndrome was not work-related and, as a result, denied the treatment with the neurologist. The WCCA reversed the decision, determining that a referral to a medical specialist for diagnostic testing to evaluate or rule out an alternative explanation or treatment for her work injury may be compensable even when the condition or diagnosis evaluated is determined not to be causally related to the work injury.

c. Treatment Parameters

i. [Morgan v. Care Force Homes, Inc., #WC16-5957 \(WCCA 11/14/16\)](#)

The employee sustained an admitted work-related injury to her low back on January 6, 2013, and ultimately claimed that she developed CRPS in the left leg. She underwent various conservative treatment options and, by 2016, was treating with Dr. Arora. Dr. Arora recommended medial branch blocks to determine whether the employee's facet joints were a pain source. Dr. Arora also recommended that the employee undergo Botox injections in the piriformis muscle. Finally, Dr. Arora recommended that the employee undergo platelet-rich plasma injections to the SI joint. Following the hearing, the compensation judge determined that the employee had not established complex regional pain syndrome, but did find the requested medical treatment to be reasonable and necessary. The judge found that Botox treatment and PRP injections were precluded by the treatment parameters. However, he found there was a medical complication, which justified a departure from the parameters. The employer and insurer appealed. The WCCA affirmed the compensation judge's opinions. The Court of Appeals held that there was a "medical complication" permitting departure from durational treatment limits under Minn. Rule 5221.6050, Subd. 8A, which is not limited to situations in which the work injury has brought about a wholly new secondary medical condition. The WCCA held, further, that a departure may be granted from the parameters that limit the type of treatment, as well as from those that limit the duration of treatment.

9. Penalties; Temporary Benefits, Fully Recovered

i. [Marcial v. Atlas Staffing, Inc., #WC16-5914 \(WCCA 09/07/16\)](#)

The employee sustained a work-related injury to his low back on June 11, 2014. He sought medical care and treatment, which was later denied by the employer and insurer despite their IME who concluded that the employee had sustained an injury; the IME opined that the injury resolved six to eight weeks after it occurred. Notwithstanding this opinion, the employer and

insurer maintained their denial of primary liability. The employee ultimately filed a claim for penalties under Minn. Stat. § 176.225. The employee contended that the employer and insurer had frivolously denied payment and benefits. The compensation judge found that the employee had sustained a work-related injury to his low back, but denied the claim the claim for penalties, concluding that the employer and insurer had arguments and defenses to the employee's claims in view of the varying information and histories received from the employee and employer regarding whether the employee was injured at work. The WCCA upheld the decision and determined that the employer and insurer had a good faith basis for denying primary liability for the employee's alleged injury.

The compensation judge also made the factual finding that the employee's injury had resolved, but stated in a finding that the issue of permanent partial disability benefits was reserved for a later claim. The employee appealed the finding that the injury had resolved. The WCCA elaborated on the word "resolved". They stated that "to say that a work injury resolved has a very specific meaning in the Workers' Compensation system. If an injury has resolved, the employee is back to whatever baseline existed before the injury and medical care, wage loss and other potential benefits are not attributable to the work injury". Because permanent partial disability was an issue to be addressed, the court remanded the matter back to the compensation judge for further findings.

10. Permanent Partial Disability

a. Rules Construed — Minn. R. 5223.0390, Subpart 4

i. [Parker v. Foley Locker, Inc., #WC16-6018 \(WCCA 05/11/17\)](#)

The employee sustained an admitted low back injury and, eventually, filed a claim for PPD benefits to the extent of a 13% whole body permanency under Minn. R. 5223.0390, Subpart 4E and 4E(1). The employee relied on the opinions of Dr. Wengler, who documented absent ankle reflex on examination which was considered an objective finding for nerve root entrapment. He also noted positive straight leg raising, limited range of motion, and instability with percussion. He also felt that the L4-5 level was destabilized and exhibited transitional instability. The employer and insurer disagreed, arguing that the medical experts disputed whether radicular findings were present. The compensation judge in this case accepted the opinions of Dr. Wengler. The WCCA agreed with the compensation judge and rejected the employer and insurer's argument that there must be persistent objective findings to qualify for PPD benefits under this rule. The court determined that the rating does not require the absent ankle reflex be found repeatedly on examination.

11. Permanent Total Disability – Retraining

i. [Dekeyrel v. Metro Mech. Contractors, #WC 16-5930 \(WCCA 11/16/16\)](#)

The employee sustained an admitted work-related injury to his low back in 2011. He received various treatment and eventually came under the care of Dr. Hanson in June of 2012. He

underwent placement of an artificial disc and fusion in January of 2013. Despite the surgery, he continued to have ongoing problems. On December 15, 2013, he stopped working completely. In February of 2014, the employee sought a second opinion with Dr. Schwender. Dr. Schwender discussed removal of the disc and referred the employee to Dr. Paul Huddleston who, as of February 2015, recommended removal of the disc and extending the fusion through the SI. The employee was concerned about the high risk associated with the surgery and elected to hold off on the procedure. Eventually, the employee underwent this surgery on September 23, 2015. The employee then filed a claim for PTD benefits.

At the time of the hearing, the employee had yet to be released to return to work. At hearing, the employee's QRC opined that the employee was "currently" permanently and totally disabled and was likely to be totally disabled for an indefinite period of time. Despite this opinion, the compensation judge denied the claim for PTD benefits. On appeal, the WCCA reiterated that permanent total disability benefits primarily rely on the employee's ability to find and hold a job, rather than on his physical condition. The reality of the job market, and not the medical testimony, is the most significant factor in determining whether an employee is permanently and totally disabled. The purpose of vocational testimony is not to establish the nature of the disability or its duration, but to determine whether employment is viable for the injured worker while such disability continues. The court noted that while possible future training might aid the employee in returning to work with the employer, mere speculation that an employee might find employment if he receives some unspecified training is an inadequate basis for a compensation judge to conclude that the employee is not currently permanently and totally disabled. The WCCA reversed the compensation judge's denial of benefits noting that given the employee's ongoing disability, the extended period of time for which the employee has been unable to work, and the record as whole did not support the finding that the employee is not currently permanently and totally disabled.

12. Rehabilitation

a. Change of QRC

i. Bode v. 3M, Co, #WC16-5910 (WCCA 12/9/16)

The employee in this case sustained an admitted work-related injury. She obtained a QRC and a rehabilitation plan was developed, which included coordination of the employee's medical treatment with a goal of returning the employee to her pre-injury status with the employee in the same or similar work. She returned to work with the employer, but had difficulty doing her work. She claimed, further, that her supervisors were not complying with her restrictions and limitations. Over the next nine months, the employee repeatedly reported to the QRC, her medical providers, and her work supervisors that her restrictions were not being followed. The employee also reported that she felt pressured at work. The employee continued to run into difficulties with the QRC and eventually filed a Rehabilitation Request seeking a change in QRCs. The matter went to trial and the compensation judge concluded that there was nothing in the records to justify the employee's lack of trust in the QRC. The employee appealed. The WCCA reversed the decision.

The WCCA decided that a compensation judge may grant or deny a requested change of QRCs based on the “best interest of the parties,” considering the goals of rehabilitation as set forth in Minn. Stat. § 176.102, Subd. 1 (b) and Minn. R. 5220.0710, Subpart 3. The employee alleged in her appeal that the QRC was merely attending doctor’s appointments and communicating with the employee and the employer and insurer by report. Essentially, the QRC was the “go between”. The QRC failed to monitor and facilitate a return to work within the employee’s restrictions. The QRC instead supported the insurer’s request, pressing the employee’s doctors to reduce and remove restrictions and to increase her work hours. The WCCA noted that the QRC could have requested a Rehabilitation Conference to discuss which duties on which machines were causing the employee’s physical problems or suggested the employee be taken off of work for a period of time to allow recovery. The QRC also could have conducted an onsite analysis of the assignments and shared the information with the employer to effectively have accommodations for the employee’s restrictions. The WCCA noted it is the responsibility of the QRC to provide essential service needed to ensure an injured employee is returned to suitable work. The employee has a self-interest in not exacerbating her injuries and in reporting tasks and duties that do so. The employee satisfied this requirement. It was then the QRC’s responsibility to be certain that the employee is provided suitable work within her restrictions. Because the employee failed to do so, a change of QRCs is appropriate in this case.

13. Temporary Partial Disability Benefits

- i. [Petzel v. DS Agri Construction, #WC16-6020 \(WCCA 05/16/17\)](#)

Following a work-related injury, the employee obtained employment working for his father’s farm as a “gofer.” The employee was paid \$10.00 per hour, but earned less than \$80.00 per month in this “job.” The employee claimed entitlement to TPD benefits based upon this employment. The compensation judge denied this claim, finding that the employee’s earnings were sporadic and insubstantial income. The WCCA affirmed that \$80 a month or 8 hours of work at \$10 an hour was insubstantial.

14. Settlements

- a. Approval and Disapproval

- i. [Perez-Rivera v MPSP Hotel Corp, # WC 16-5918 \(WCCA 9/20/16\)](#)

The employee and the employee’s attorney attempted to submit a Stipulation for Settlement, closing out future medical treatment for an admitted work-related injury to employee’s left knee. The compensation judge issued an Order disapproving the Stipulation for Settlement. The parties attempted to resubmit the Stipulation for Settlement at a later date, but the compensation judge again disapproved the Stipulation. The compensation judge found that the physicians in the case, including the employer and insurer’s doctor, agreed that the employee had sustained a work-related meniscal injury, which was permanent in nature. They agreed, further, that the employee might need treatment in the future. The court concluded that

because the Stipulation closed out future medical treatment, it could not be conclusively presumed to be reasonable, fair, and in conformity with the Act. Therefore, the compensation judge needed to exercise his discretion in approving or disapproving the stipulated agreement. The burden of proving the settlement meets the appropriate standards rests on the parties. The court acknowledged that while settlements on disputed claims are favored, a compensation judge may disapprove a settlement if the judge reasonably concludes that the proposed settlement might not be in the best interest of the employee. The WCCA determined that the compensation judge did not abuse his discretion and could reasonably conclude that in light of the nature of the employee's injury and the medical opinions submitted, closing out future medical benefits was not in the best interest of the employee.

b. Interpretation

i. [Allan v. Kolar Buick GMC, #WC17-6028 \(WCCA 06/22/17\)](#)

The employee filed a claim alleging two work-related injuries at the employer: a left knee of July 5, 2013, and Gillette-type injury to the low back occurring on February 14, 2014. The parties ultimately settled out all claims for those dates of injury, including any and all known consequential injuries. They closed out all treatment for the low back as part of the settlement. Several years later, several medical providers, including independent medical examiners, concluded that the employee sustained Gillette-type injuries to the low back on other dates during the employee's employment. The employee's attorney filed a claim alleging benefits. The compensation judge dismissed claims relative to the 2014 low back injury. The WCCA upheld the compensation judge's findings. It noted that the judge correctly interpreted the Stipulation for Settlement in concluding that the claim against the employer was closed out because the condition at issue was known to the parties at the time of the settlement. The fact that the employee did not identify a separate date of injury until after the settlement does not alter the analysis as determined under Ryan v. Potlatch Corp.

ii. [Robertson v. Manpower Temp. Services, #WC16-6021 \(WCCA 05/16/17\)](#)

The employee sustained a work-related injury to her right arm. The employee ultimately resolved her claims, with the exception of medical benefits, through a Stipulation for Settlement. After resolving this matter, the employee filed a Claim Petition, claiming entitlement to benefits as a result of an alleged consequential condition in the nature of RSD. The compensation judge analyzed the facts under Sweep v. Hanson Silo Co. and the Ryan v. Potlatch Corp. cases and dismissed the Claim Petition. The WCCA also analyzed these cases and agreed in part, but also vacated and remanded. Most significantly, the WCCA agreed with the compensation judge that at the time of the settlement, the employee's RSD condition had been contemplated even though it was not referenced or discussed in the Stipulation for Settlement. However, the WCCA vacated and remanded the finding in which the compensation judge dismissed the entirety of the employee's Claim Petition. Medical benefits were left open in the Stipulation for Settlement. Therefore, the compensation judge should not have dismissed the Claim Petition in its entirety.

iii. [Dahl v. AG Processing, Inc., #WC-17-6032, \(WCCA 06/21/17\)](#)

In 2004, the employee sustained an admitted work-related injury to his right shoulder. He received conservative treatment following this incident, and continued to experience right shoulder pain with occasional neck tightness. In January 2005, the employer underwent right shoulder surgery. He attended physical therapy, where he continued to complain of neck and right shoulder pain. In August 2005, the employee was released to return to full activity relative to his shoulder. However, the employee continued to complain of neck pain. An MRI of the neck, completed in September 2005, was read as negative. Nerve conduction studies performed at approximately the same time were also normal. The employee underwent a revision shoulder surgery in February 2006. In August 2006 he again sought treatment due to right shoulder pain and pain radiating into the neck and shoulder blade. He underwent a third shoulder surgery on November 2, 2006. In March 2007, he was evaluated for right shoulder and neck pain. Ultimately, in September 2008, the parties resolved the employee's claims on a full, final, complete basis, "except for certain future medical expenses which will remain open to the right shoulder, subject to the defense of the Employer and Insurer." After resolving his claims, the employee continued to treat for his shoulder. He also experienced intermittent neck pain. By 2013, the employee's neck complaints increased. He underwent an additional MRI of the cervical spine in 2013. Depending on which doctor was reading the MRI, it showed either mild asymmetric osteophytosis at C4-C5 without significant narrowing of the canal and minimal foramen narrowing on the right or multilevel cervical degenerative disc disease in the facet joints. He continued to complain of the shoulder and neck pain into 2016. The employee filed a claim for payment of the medical treatment he received. The employer and insurer denied liability for the treatment, in part, because some of the treatment related to the employee's cervical spine, and all treatment except for treatment relative to the employee's shoulder was closed out by the terms of the 2008 Stipulation for Settlement. The compensation judge determined that the treatments in question were provided for the cervical spine and were closed out pursuant to the earlier Stipulation for Settlement. Because the cervical spine condition was contemplated at the time of the settlement, the WCCA agreed that treatment for the cervical spine was closed. Further, under [Ryan v. Potlatch Corp.](#), the parties could close out consequential conditions if they were within the reasonable contemplation of the parties at the time of the settlement agreement, even when those conditions or complications were not fully realized at the time of the settlement. Therefore, treatment to the cervical spine was closed pursuant to the Stipulation for Settlement.

15. Standard of Review

i. [Mattick v. Hy-Vee Food Stores, #A16-1802 \(Minnesota Supreme Court 07/12/17\)](#)

The employee in this case had pre-existing ankle arthritis. On January 18, 2014, she suffered a work injury to the ankle. Approximately 20 months after this injury, the employee underwent an ankle fusion. Based upon the opinions of their independent medical examiner, David Fey,

MD, the employer argued that ankle fusion was not related to the employee's work injury. The employee's treating doctors did not provide a definitive statement regarding causation. Therefore, the employee obtained an opinion from Dr. Bert. Dr. Bert found a causal relationship between the employee's work-related injury and her need for the ankle fusion. After reviewing the evidence, the compensation judge accepted Dr. Fey's opinions and found no causation existed between the employee's injury and her need for the ankle fusion. On appeal, the WCCA reversed, finding that Dr. Fey's opinion lacked foundation because he relied on an expected natural history of an arthritis condition. He also failed to note a 10 year gap in the employee's symptoms after the original arthritis diagnosis and the work injury. The WCCA also said that there was not substantial evidence to support the decision judge's findings that the work injury was not a substantial contributing cause of the employee's need for surgery. The Supreme Court reversed the WCCA and reinstated the compensation judge's Findings and Order. According to the Supreme Court, Dr. Fey had foundation and, like in Giannotti v. ISD #152, #A16-269 (Minn. 02/08/17), the WCCA was taking statements out of context. While Dr. Fey did talk about the expected natural history, he also clearly recounted and analyzed the specifics of the employee's injury. Also, Dr. Fey's opinion relied on an accurate portrayal of the employee's condition between the work injury and the surgery. Finally the judge's decision that the work injury was not a substantial contributing factor to surgery was supported by substantial evidence. Dr. Fey's opinion supports it, as does the employee's testimony that she had ongoing symptoms for 10 years before her work injury, X-rays showed degenerative changes, and the employee's ultimate diagnosis was degenerative arthritis, which indicated that her ankle had deteriorated over time. Additionally, the employee did not have work restrictions after her work injury and had gradual improvement in her condition. It was not until a few months before her surgery--a year and a half later--that her symptoms became excruciating.

16. Statute 176

a. Minn. Stat. § 176.82

i. Sanchez v. Dahlke Trailer Sales, Inc., #A15-1183 (Minnesota Supreme Court 06/28/2017)

In this case, the employee, who had worked for the employer for over 8 years prior to a work-related injury, filed a complaint for retaliatory discharge in violation of Minn. Stat. §176.82. He did so after he was placed on indefinite, unpaid leave following a deposition in the workers' compensation proceeding. At deposition, he acknowledged that he was not eligible to work in the United States. This case might sound like a valid offer of employment pursuant to Rivas v. Car Wash Partners, a case in which the Workers' Compensation Court of Appeals concluded that it was reasonable for the employer to condition a job offer on proof of eligibility to work in the United States. However, the facts in Sanchez were different. Unlike in Rivas, the Sanchez employee presented evidence that the employer was aware of his undocumented status two years prior to the work injury. Initially, the Anoka County District Court granted summary judgment and dismissed the employee's claim for retaliatory discharge in violation of the Minnesota Workers' Compensation Act. The Court of Appeals reversed and remanded, noting that the Immigration Reform and Control Act of 1986 does not preclude an undocumented

worker from maintaining a retaliatory discharge cause of action against his or her employer under Minn. Stat. §176.82. The Court concluded, further, that the district court erred in finding that, as a matter of law, the employee did not suffer adverse employment when he lost his salary and benefits. Because there were genuine disputes regarding material facts of the employer's knowledge of the employee's undocumented status prior to the work injury, the Court of Appeals reversed the decision of the district court and remanded it for further proceedings. Upon appeal to the Minnesota Supreme Court, the Minnesota Supreme Court affirmed the decision of the Court of Appeals and also remanded this matter to the District Court for further proceedings to determine whether the employer violated the terms of Minn. Stat. § 176.82.

17. Vacating a Stipulation

i. [Logan v. New Horizon Academy, #WC17-6031 \(WCCA 06/30/17\)](#)

In this case, the employee sustained an admitted work-related injury to her left upper extremity on November 11, 2015. Through an exchange of emails from August 30, 2016, through November 3, 2016, the attorneys for the employee and the employer and insurer discussed the resolution of this case. The parties were able to reach an agreement concerning the issues in dispute. They could not, however, come to an agreement regarding the Roraff/Irwin fees to be paid to counsel for the employee. Due to this impasse on the fee issue, the attorneys agreed to submit a Stipulation for Settlement for approval without an agreement regarding the Roraff/Irwin fees. This matter became complicated, as several drafts of the Stipulation for Settlement were circulated. The version of the Stipulation for Settlement that was submitted to the Office of Administrative Hearings for approval and approved through Award on Stipulation included a provision for the payment of \$11,220.00 in Roraff/Irwin fees. The Award on Stipulation was issued on November 22, 2016. After discussions between the attorneys, on December 7, 2016, counsel for the employer and insurer advised the compensation judge that the Stipulation inadvertently called for the payment of attorney's fees, which was contrary to the agreement of the parties, and requested a settlement conference. On December 19, 2016, the compensation judge held a Hearing relative to the terms of the settlement. On December 22, 2016, the compensation judge vacated the award of fees. The employee appealed. She argued that the compensation judge had no authority issue an order vacating a portion of a Stipulation when an Award on Stipulation had been issued. The WCCA agreed and held that the compensation judge was not authorized to vacate part of a Stipulation for Settlement upon which a valid Award had been issued. The WCCA found that the inclusion of the attorney fee paragraph did not result from mathematical or clerical errors, that as no Hearing occurred in this case, the compensation judge did not retain jurisdiction of the case for 30 days after issuing an Award on Stipulation, and that the terms of the Stipulation for Settlement are not unclear or ambiguous. Instead, the WCCA determined that Stipulation is a valid agreement. Therefore, the original Award on Stipulation remains in effect.