

## Department expediting transition to ICD-10 coding system

By Kate Berger, Office of General Counsel

On Jan. 8, the Workers' Compensation Advisory Council recommended amendments to the workers' compensation law to allow the Department of Labor and Industry to update references in workers' compensation rules and forms from ICD-9 codes to ICD-10 codes. Because the ICD-10 coding system becomes effective Oct. 1, the department anticipates the rule updates will be accomplished under Minnesota Statutes § 13.386 by that date.

ICD – the International Classification of Diseases – consists of thousands of numerical codes developed by the World Health Organization to provide a uniform classification of medical diagnoses and hospital inpatient procedures. This system is used by the health care industry throughout the world. On Oct. 1, providers, payers and others in the health care system in the U.S. will be required to use the ICD-10 coding system instead of ICD-9. Minnesota workers' compensation rules and the DLI Health Care Provider Report form currently refer to ICD-9 codes. Unless they are updated to the ICD-10 system by Oct. 1, the workers' compensation Health Care Provider Report form and rules will refer to an obsolete coding system.

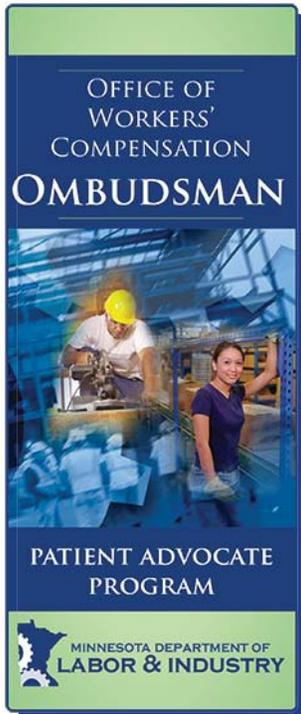


The updates can be incorporated into the rules using the General Equivalence Mappings (GEMs) between the two systems developed by Centers for Medicare and Medicaid Services.<sup>1</sup> The following are links to more information about the transition.

- Frequently asked questions – Centers for Medicare and Medicaid Services  
[www.cms.gov/Medicare/Coding/ICD10/Downloads/ICD10FAQs2013.pdf](http://www.cms.gov/Medicare/Coding/ICD10/Downloads/ICD10FAQs2013.pdf);
- Frequently asked questions – Centers for Disease Control and Prevention  
[www.cdc.gov/nchs/icd/icd10cm\\_pcs\\_faq.htm](http://www.cdc.gov/nchs/icd/icd10cm_pcs_faq.htm); and
- *Why Workers' Compensation Agencies Cannot Ignore ICD-10* – International Association of Industrial Accident Boards and Commissions (IAIABC)  
[www.iaiabc.org/i4a/headlines/headlinedetails.cfm?id=254&pageid=1&archive=0](http://www.iaiabc.org/i4a/headlines/headlinedetails.cfm?id=254&pageid=1&archive=0)

<sup>1</sup>[www.cms.gov/Medicare/Coding/ICD10/2013-ICD-10-CM-and-GEMs.html](http://www.cms.gov/Medicare/Coding/ICD10/2013-ICD-10-CM-and-GEMs.html)

## Patient Advocate Program: update, spreading news about services



In October, the Minnesota Department of Labor and Industry (DLI) rolled out its new Patient Advocate Program to help injured workers who have serious back issues – particularly those who may be considering lumbar fusion surgery – to understand their medical treatment options, as well as DLI's regulations and procedures regarding medical treatment.

As of Jan. 29, Clayton Overmire became DLI's patient advocate. He has more than 15 years of workers' compensation claims handling experience,

along with a solid appreciation of the issues faced by injured workers as they make medical treatment choices in recovering from their injuries.

DLI is reaching out to injured workers through a variety of channels, contacting insurers, qualified rehabilitation consultants and other stakeholders both individually and through speaking engagements to spread the word about this new service. The program's Web page now includes a description of the program's purpose and goals, a brochure about the program and links to other informational resources, including DLI's information sheet about low back fusion. DLI is also directly mailing information about the program to injured workers identified as potentially having sustained serious low back injuries.

DLI encourages insurance, legal and vocational rehabilitation professionals to refer injured workers with significant low back injuries who may be facing important treatment decisions to the patient advocate for information and assistance.

For further information about the program, visit [www.dli.mn.gov/WC/OmbudsmanPatientAdvocate.asp](http://www.dli.mn.gov/WC/OmbudsmanPatientAdvocate.asp) or contact Overmire by phone at (651) 284-5202 or by email at [clayton.overmire@state.mn.us](mailto:clayton.overmire@state.mn.us).

## New online process available for submissions of annual claim reimbursements

*By Karen Kask-Meinke, Director, Special Compensation Fund*

The Department of Labor and Industry (DLI) is launching a new online process that enables insurers and third-party administrators to submit annual claims for reimbursement of supplementary and second-injury fund benefits electronically to the department. DLI processes more than 3,000 paper annual claims for reimbursement each year. The reimbursement programs will sunset in 2040.

The online submission is intended to increase efficiency and improve storage and record retrieval issues associated with the receipt of paper annual claim reimbursements. However, using the online filing process is optional; insurers and third-party administrators can continue to file annual claim reimbursements in conventional paper formats. Those who choose to use the new application must use the worker identification (WID) number instead of the Social Security number to submit an annual claim reimbursement request. Information about WID numbers is online at [www.dli.mn.gov/WC/WidNumber.asp](http://www.dli.mn.gov/WC/WidNumber.asp).

The online annual claim reimbursement process is expected to be available for use in mid-February. All applicable statutes regarding annual claim reimbursements submitted in conventional paper formats apply to requests submitted electronically via DLI's website. Data submitted electronically will be accepted as received only during regular DLI business hours, 8 a.m. to 4:30 p.m. (Central Time), Monday through Friday, excluding holidays. Data received after 4:30 p.m. or on a Saturday, Sunday or state holiday will be electronically date-stamped for the next business day DLI is open.

Additional information about the process is online at [www.dli.mn.gov/WC/Wcforms.asp](http://www.dli.mn.gov/WC/Wcforms.asp). Questions may be directed to DLI's Special Compensation Fund at (651) 284-5097 or 1-800-342-5354.



# Several workers' compensation rehabilitation forms revised

By Sandra Barnes, Compliance Supervisor, Compliance, Records and Training

The Department of Labor and Industry (DLI) has revised several of its workers' compensation rehabilitation forms to provide additional information, clarify choices and reflect changes to related laws.

## Rights and Responsibilities form

Changes have been made to the Rights and Responsibilities form. Additional information has been provided to clarify the process for selecting a qualified rehabilitation consultant (QRC). Two new bullet-points have been added to provide clarification to the injured worker that a QRC needs the employee's permission to attend, schedule or cancel medical appointments, to discuss their medical care with the health care provider or to obtain medical records. Further, the employee has the right to revoke that permission at any time. In the disclosure section of the form, the caption and an introductory paragraph were added to clarify for the injured worker that this section relates to the disclosure of information and that there is no requirement they provide the requested information or sign the form.



## R-forms

DLI has also revised the R-20 (QRC intern application), R-22 (rehabilitation vendor application), R-24 (rehabilitation firm application) and the R-25 (QRC application) forms, which are the registration forms used by rehabilitation providers. All of the forms now contain disclosure and notice language relating to the provision of information, when that information is considered private data and when it is considered public data. Under state law, DLI is required to obtain the Social Security number and Minnesota tax identification number for all license applicants. Instead of using a separate form to collect this information, the information is now requested within the registration form.

The R-22 and R-24 forms now require the legal business name of the provider. If the provider is not doing business under the provider's full legal name, the provider must identify either the assumed name (DBA) or the name of the business entity (such as a corporation or LLC) as filed with the Secretary of State.

DLI has completely revised the R-20 and R-25 forms to simplify the application process for QRCs and QRC interns. There will be one form for QRC interns – the R-20 – and one form for the QRCs – the R-25. These two forms also now contain a section for a public address. If a QRC wishes to use another address instead of their home address, they may provide that to the department.

## More information

The revised forms will be available in PDF on the DLI website at [www.dli.mn.gov/WC/Wcforms.asp](http://www.dli.mn.gov/WC/Wcforms.asp). If you have questions about the changes or how to use these forms, contact Martha Steinhart by email at [martha.steinhart@state.mn.us](mailto:martha.steinhart@state.mn.us) or by phone (651) 284-5136.

The changes to the R-2, R-3 and R-8 that were referenced in the November 2013 *COMPACT* have now been finalized and the forms are available for use on the department's website and through the online form submission Web portal.



## DLI Dashboard shows agency performance indicators

The DLI Dashboard tracks the agency's progress in key areas. Stakeholders can see where the agency is on track and where it needs to improve.

DLI is committed to accountability and continually improving its performance.

View the dashboard online at [www.dli.mn.gov/Dashboard.asp](http://www.dli.mn.gov/Dashboard.asp).

## Workers' compensation cost turns upward from recent low-point

By David Berry, Research and Statistics

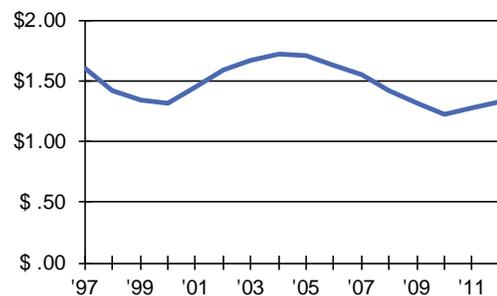
After peaking in 2004, Minnesota's workers' compensation costs declined through 2010 but turned upward in 2011 and 2012.

The overall cost of the system came to \$1.33 per \$100 of payroll in 2011, substantially down from the peak of \$1.72 reached in 2004. In keeping with a nationwide insurance pricing cycle, the 2012 figure reflects an upturn from the low-point of \$1.23 for 2010.<sup>1</sup>

These figures reflect premiums paid by insured employers plus an estimate of costs for self-insured employers.

<sup>1</sup>Regarding current pricing trends, see, for example, "Workers' Comp Pricing to Improve Throughout 2013: Fitch," in *Business Insurance*, June 25, 2013, [www.businessinsurance.com/article/20130625/NEWS08/130629915](http://www.businessinsurance.com/article/20130625/NEWS08/130629915).

Workers' compensation system cost per \$100 of payroll, 1997-2012 [1]



	Cost per \$100 of payroll
1997	\$1.61
2000	1.31
2004	1.72
2008	1.42
2009	1.31
2010 [2]	1.23
2011 [2]	1.27
2012 [2]	1.33

1. Data from the National Association of Insurance Commissioners, Minnesota Workers' Compensation Insurers Association, Inc., Minnesota Assigned Risk Plan, Minnesota Workers' Compensation Reinsurance Association, Minnesota Department of Labor and Industry and Minnesota Department of Employment and Economic Development. Includes insured and self-insured employers.
2. Subject to revision.

## Mileage rate falls a half-cent

A new, lower mileage rate became effective in Minnesota on Jan. 1. The rate changed from 56.5 cents a mile to 56 cents a mile.

# Litigating disputed medical requests with potential intervenor issues at DLI

By Mark McCrea, Supervisor, Alternative Dispute Resolution

According to the Department of Labor and Industry's (DLI's) most recent *Minnesota Workers' Compensation System Report*, from 1997 to 2011 the overall dispute rate increased 42 percent and medical disputes increased 89 percent.<sup>1</sup> A probable consequence of accelerating medical disputes is increased involvement in dispute-resolution proceedings by intervenors and potential intervenors.

An intervenor is a party with an interest in a pending workers' compensation proceeding, where the person or entity may either gain or lose by an order or decision in the case, and the person or entity *has* filed a motion or application to intervene under Minnesota Rules 1415.1250 and Minnesota Statutes § 176.361.<sup>2</sup> A *potential* intervenor is a person or entity who has an interest in a workers' compensation proceeding where the person or entity may either gain or lose by an order or decision in the case, and the person or entity *has not* filed a motion or application to intervene under Minn. Rules 1415.1250 and Minn. Stat. § 176.361.<sup>3</sup>

Potential intervenor issues sometimes create unique challenges for attorneys and parties litigating disputed medical claims at DLI. These challenges are primarily characterized by oversights and delays in notifying potential intervenors of their right to petition for intervention and reimbursement. In many instances, these oversights and delays are identified by DLI staff members as they conduct preliminary reviews prior to scheduled conferences or during deliberations occurring in conferences regarding these claims. Oversights and delays identified by DLI staff members will likely result in the cancellation or continuance of administrative conferences scheduled at DLI if:

- a potential intervenor has not been notified of their right to petition for intervention and reimbursement in accordance with Minn. Rules 1415.1100;<sup>4</sup>
- a potential intervenor has not had been afforded the requisite time to respond to a notice regarding its right to petition for intervention and reimbursement, under Minn. Stat. § 176.361;<sup>5</sup> or
- a potential intervenor has not been notified of the scheduled conference, pursuant to Minn. Rules 1415.3700.<sup>6</sup>

Avoiding continuances, cancellations and other delays due to potential intervenor issues is necessary to assure the quick and efficient delivery of medical benefits to injured workers at reasonable costs to employers, as indicated in Minn. Stat. § 176.001. Accordingly, the recommendations set forth below are intended to assist parties and attorneys in avoiding delays linked to disputed medical requests with potential intervenor issues that are litigated at DLI.

1. Attorneys should ask their clients whether they are aware of any potential intervenors prior to filing Medical Request forms or Medical Response forms. Conducting this inquiry prior to filing these forms facilitates the identification of potential intervenors early in DLI's dispute-resolution process. Early identification of potential intervenors enables attorneys to notify potential intervenors of their right to petition for intervention and reimbursement when Medical Request forms or Medical Response forms

***Litigating, continues ...***

<sup>1</sup>Minnesota Department of Labor and Industry. *Minnesota Workers' Compensation System Report, 2011*, September 2013.

<sup>2</sup>Minnesota Rules 1415.0300, subp. 11a.

<sup>3</sup>Minnesota Rules 1415.0300, subp. 18.

<sup>4</sup>Minnesota Rules 1415.1100, subp. 2, in part provides: "If inquiry discloses the existence of a potential intervenor, the attorney must promptly serve the potential intervenor with written notice of its right to petition for intervention and reimbursement ..."

<sup>5</sup>Minnesota Statutes § 176.361, subd. 2(a), in part provides: "An application or motion to intervene must be served and filed within 60 days after a potential intervenor has been served with notice of a right to intervene or within 30 days of notice of an administrative conference."

<sup>6</sup>Minnesota Rules 1415.3700, subp. 2, in part provides: "... the division or office must notify the parties and intervenors or potential intervenors, under Minnesota Statutes § 176.361, of the date, time and place of the conference at least 14 days before the conference under Minnesota Statutes § 176.106 ..."

## Litigating, continued ...

are filed, as provided by Minn. Rules 1415.1100. At DLI, early notification appears to produce earlier responses from potential intervenors and fewer cancellations or continuances of scheduled administrative conferences.

2. Attorneys should file a copy of the notice of right to petition for intervention and reimbursement with DLI. Except as provided by Minn. Rules 1420.1850, parties are not required to file such copies served on potential intervenors with DLI. However, many attorneys routinely file copies of these notices with DLI. Filing copies of these notices with DLI informs the staff of the existence of all potential intervenors and enables them to properly notify these entities of scheduled administrative conferences, in accordance with the requirements of Minn. Rules 1415.3700. This filing also reduces the likelihood of continuances or cancellations caused by the failure to notify potential intervenors of scheduled administrative conferences.
3. Attorneys should document service of Medical Request forms on potential intervenors. Parties filing Medical Request forms are required to serve copies of these forms on potential intervenors.<sup>7</sup> Failure to document this service may result in continuances or cancellations of administrative conferences scheduled at DLI. Service of Medical Request forms on potential intervenors may be documented by completing item number 6 of the Medical Request form or attaching a related affidavit of service.

<sup>7</sup>Minnesota Rules 1415.3800, subp. 2.

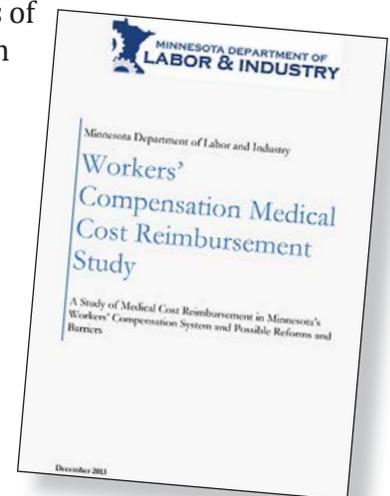
## DLI studies effectiveness, costs of potential reforms, barriers within work comp system

The Department of Labor and Industry (DLI) has published its *Workers' Compensation Medical Cost Reimbursement Study*, which is online at [www.dli.mn.gov/WC/Pdf/MedicalCostReimbursementStudy.pdf](http://www.dli.mn.gov/WC/Pdf/MedicalCostReimbursementStudy.pdf). DLI was directed by 2013 Minnesota Laws 377 to "study the effectiveness and costs of potential reforms and barriers within the workers' compensation carrier and health care provider system, including carrier administrative costs, prompt payment, uniform claim components and the effect on provider reimbursements and injured worker copayments of implementing the subjects studied."

After meeting with stakeholders, DLI narrowed the focus of the survey and sent questionnaires to 24 hospitals, 20 ambulatory surgery centers, 20 workers' compensation insurance carriers and 20 self-insured employers to gather data for the study. The study focused on medical services that are not covered by a fee schedule – specifically, hospital inpatient services and certain outpatient services provided by hospitals and ambulatory surgery centers. In addition, data was specifically requested about surgical implants, because their reimbursement has been a significant source of contention between providers and payers.

Three significant aspects of the workers' compensation carrier and health care provider system are discussed in the report: the billing and payment mechanisms used by providers and payers; the costs resulting from disputes of "friction" between providers and payers; and the statutory methodology by which reimbursements for medical care are made. The discussion includes a general analysis of the impact each area has on costs within the workers' compensation system. The report then discusses the cost containment reforms and identifies some of the barriers to implementing those reforms.

The department will be meeting with medical providers and insurers to obtain feedback about the potential reforms identified in the study. It will then consult with business and labor representatives during the next few months to develop possible reforms that could serve as a basis for 2015 legislative proposals.



# Professional conduct complaints about rehabilitation providers

By Mike Hill, Rehabilitation Policy Specialist

Rehabilitation is intended to restore an injured employee to a job related to their former employment or to a job in another work area that produces an economic status as close as possible to that which they would have enjoyed without disability. The Department of Labor and Industry (DLI) has established rules governing the delivery of services within the workers' compensation system. When all parties are working toward the same rehabilitation plan goals, injured employees move through the workers' compensation system in a quicker and more cost-effective manner.

If during the process a party believes a rehabilitation provider is not following the statutes or rules, a written complaint may be filed with the department. Upon receipt, DLI will perform an investigation to determine if a violation has occurred and if disciplinary action is warranted. Table 1, below, details closed complaint files and where the complaints originated.



Table 1. Source of complaints

Year	ER/IR	Attorney	EE	Rehab	DLI/internal	Other	Total
2008	14	8	3	4	30	1	60
2009	7	4	5	1	16	0	36
2010	8	0	4	2	2	0	16
2011	0	2	1	79	3	0	85
2012	5	3	3	18	27	0	56
2013	2	0	5	6	1	0	14

## Complaint outcomes

A single complaint may allege violations of several workers' compensation statutes or rules. During the course of an investigation, additional issues may be identified.

Outcomes are determined by the findings of the investigation. Possible outcomes include the following.

- **Unsubstantiated** – If the department lacks jurisdiction, the complainant fails to provide necessary information or the allegations are not supported by the information obtained, the complaint may be dismissed.
- **Letter of instruction** – If the investigation reveals the subject did not act optimally, the alleged conduct is identified. A letter of instruction is sent to the provider. While the letter is not considered to be formal discipline, the information is retained by the department in case subsequent inquiries into a provider's conduct are undertaken.
- **Discipline/stipulation** – If the result of an investigation supports the allegation, then formal disciplinary action may be warranted. Discipline, in the form of a stipulated agreement, involves corrective action and a fine. The severity of the disciplinary action may be increased if the subject has

a history of similar violations, if the violation(s) has caused harm or if the subject has demonstrated a pattern of noncompliance with workers' compensation statutes and rules.

- **No appeal** – This happens when a contested court hearing decision is not appealed.
- **Inactive rehabilitation provider** – If the rehabilitation provider made their registration inactive during the investigation, the rehabilitation provider complaint must be dealt with prior to re-registration with DLI.

**Table 2. Professional conduct and accountability outcomes**

Year	No juris.	Unsub.	Ltr. of inst.	Stip./fine	No appeal	Inactive	Total files
2008	0	24	16	21	0	0	61
2009	3	11	15*	8*	0	0	36
2010	1	4	5	6	0	0	16
2011	0	6	3*	2*	0	0	10
2012	0	13	23*	4*	3	6	47
2013	0	5	19	3	0	1	28

\*Complaint (or complaints) resulted in a letter of instruction and a stipulation being issued.

**Some 2013 rehabilitation rule violations**

- Contacting physician without prior written medical release..... 5220.1802, subp. 5
- Performing claims adjusting activity by reporting ODG/MDA information in reports ..... 5220.1801, subp. 8 B
- Lack of knowledge about workers' compensation laws and rules..... 5220.1803, subp. 2
- Inadequate written disclosure by QRC/QRC firms ..... 5220.1803, subp. 1a  
.....Minnesota Statutes 176.102, subd. 4
- Failure of QRC intern supervisor to sign off on all written documentation .....5220.1400, subp. 3a
- Failure of QRC supervisor to monitor the QRC intern..... 5220.1801, subp. 9 E
- Failure to represent self as a QRC intern on all documents..... 5220.1805 B
- Failure to provide copies of all required reports and progress records, including email messages, to all parties..... 5220.1802, subp. 3  
..... 5220.0100, subp. 30  
..... 5220.0100, subp. 31
- Failure to list employee's name, worker identification (WID) number or Social Security number, and date of injury on all required reports and required progress records ..... 5220.1802, subp. 1
- Failure to file narrative report with the Rehabilitation Consultation Report form ..... 5220.0130, subp. 3C(4)

- Performing an independent vocational evaluation before a formal retraining plan was submitted or litigation was pending..... 5220.1801, subp. 5
- Failure to keep all required reports and progress records, including handwritten notes, case notes and email messages, for at least five years after the rehabilitation file is closed..... 5220.1803, subp. 5
- QRC firm website offers claims-related services in conjunction with Minnesota workers' compensation files ..... 5220.1805 B  
..... 5220.1801, subp. 8 A
- Failure to include the eight information points on the R-2 Rehabilitation Plan form initial evaluation report ..... 5220.1803, subp. 5

Statutes and rules are available on the Office of the Revisor of Statutes website at [www.revisor.mn.gov](http://www.revisor.mn.gov).

### Conclusion

The purpose of a professional conduct investigation is to determine if a violation of the rules and statutes has occurred, so the behavior can be corrected, preventing future problems. Through outreach, education and compliance efforts the department strives to work with rehabilitation providers to improve the quality of services provided to the stakeholders in Minnesota.

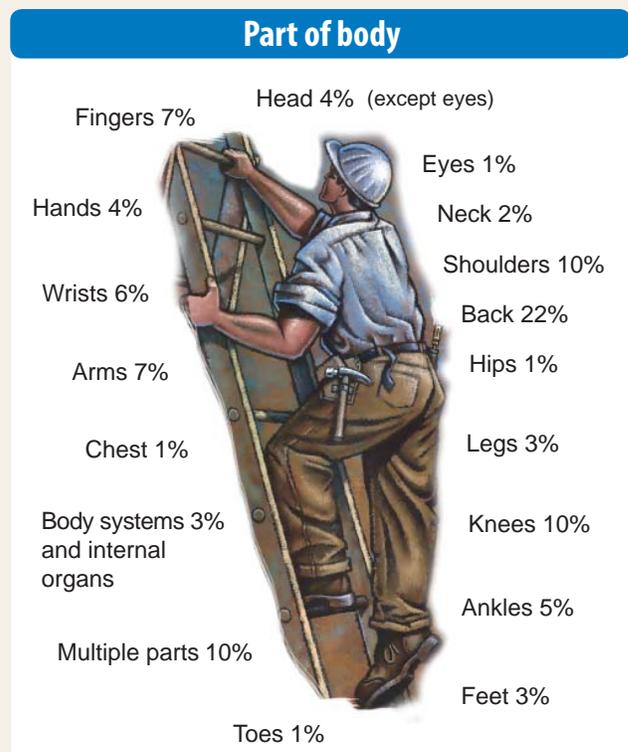
"Information for a rehabilitation provider," on the DLI website at [www.dli.mn.gov/WC/RehabProv.asp](http://www.dli.mn.gov/WC/RehabProv.asp), was developed so rehabilitation providers could enhance their work product. Additionally, stakeholders may call the DLI staff at 1-800-342-5354 with any questions or concerns.

## Workers' compensation claim characteristics brochure updated

The Department of Labor and Industry's Research and Statistics unit has updated its annual Minnesota workers' compensation claim characteristics brochure for general industry.

The brochure provides statistics at a glance about injury, illness and fatality claims for 2012, such as the number of claims, nature of injury or disease, occupation of injured workers and other injured workers characteristics. The brochure also provides resources for further workers' compensation statistical information.

The brochure is available on the department's website at [www.dli.mn.gov/RS/ClaimCharac.asp](http://www.dli.mn.gov/RS/ClaimCharac.asp). For more information, contact the Research and Statistics unit at [dli.research@state.mn.us](mailto:dli.research@state.mn.us) or (651) 284-5025.



## Two annual reports updated, available online

### *Collection and Assessment of Fines and Penalties report*

Minnesota Statutes § 176.222 directs the commissioner of the Department of Labor and Industry (DLI) to submit an annual report regarding the assessment and collection of fines and penalties under the workers' compensation law. Some of the results of the current report include the following findings.



DLI has continued to improve its efforts to find employers that have never obtained or fail to maintain workers' compensation coverage. During the past year, DLI has made efforts to contact new employers to

provide them with information regarding their potential obligation to carry workers' compensation insurance, assist them with a better understanding of their obligation and to promote compliance with workers' compensation laws. In response to employers' requests, DLI is also updating its communications to make them more understandable to employers.



### *Prompt First Action Report on Workers' Compensation Claims*

Minnesota Statutes § 176.223 directs the DLI commissioner to publish an annual report providing data about the promptness of all insurers and self-insurers in making first payments or denials on a claim for injury.

The department evaluates data submitted on the First Report of Injury form and Notice of Insurer's Primary Liability Determination form to determine whether the first payment of denial of benefits is timely. In fiscal-year 2013, 89.6 percent of the 23,093 lost-time claims had a timely first action. This percentage increased slightly from fiscal-year 2012, where 89.4 percent of the 22,777 lost-time claims had a timely first action.

The department's Workers' Compensation Division anticipates increased use of technology, electronic data exchange and early intervention will maintain or improve the overall first action timeliness percentage.

### **Access the reports**

Both reports are available on the DLI website at [www.dli.mn.gov/WC/ReportsPubs.asp](http://www.dli.mn.gov/WC/ReportsPubs.asp).

### ***Department of Labor and Industry experts available for speaking engagements***

Department of Labor and Industry (DLI) staff members regularly speak to community, industry and school groups about issues that affect employees, employers and other DLI stakeholders.

As part of its outreach efforts to stakeholders, DLI's speakers bureau can provide interested parties with a knowledgeable speaker in an array of topics. Visit [www.dli.mn.gov/Speakers.asp](http://www.dli.mn.gov/Speakers.asp) for more details.



## EDI, eFROI news and updates

### Business process changes following Jan. 1 mandate of electronic filing of first report of injury

By Jessica Stimac, Director, Compliance, Records and Training

The Department of Labor and Industry (DLI) has transitioned to mandatory electronic filing of the First Report of Injury (FROI) form as of Jan. 1, 2014. As part of the initiative to mandate, DLI amended Minnesota Rules 5220.2520, 5220.2820 and 5220.2830, requiring reporting entities under Minnesota Statutes § 176.231 to submit FROI forms electronically, and subjecting filers to penalties if a timely electronic FROI form is not received or if errors are not corrected within 60 days of receipt of an acknowledgement report from the department. These provisions are effective for all first reports of injury filed on or after Jan. 1, 2014.

The department has discretion to issue penalties under Minn. Rules 5220.2820 or 5220.2830. As a courtesy to reporting entities new to electronic data interchange (EDI) or the new eFROI Web portal, the department is allowing a 60-day grace period post-implementation before penalties will be issued for failing to file electronically or failing to correct errors. Note that this grace period does not apply to late filings of the FROI form or any other penalties issued by the department.

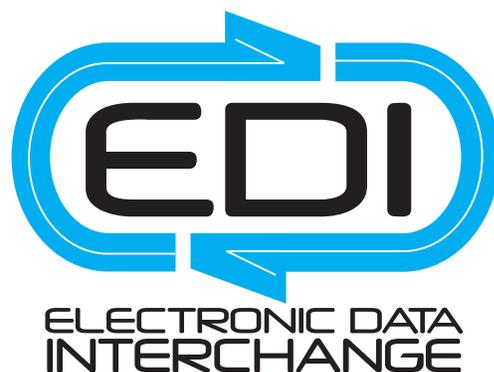
Paper FROI forms will be accepted and processed through Feb. 28, but as of March 1, 2014, paper FROI forms submitted by reporting entities will be returned to the submitter and not considered filed with the department. Reporting entities submitting paper FROI forms through Feb. 28, will be sent a letter to this effect. Reporting entities that submit paper FROI forms on or after March 1 will be subject to late filing penalties if the FROI form is not received electronically within existing reporting timelines, even if a timely paper FROI form was submitted.

On or after March 1, the only paper FROI forms that will be processed by the department are those filed by the employer, pursuant to the provisions of Minn. Stat. § 176.231, subs. 1 and 2, relating to serious or fatal injuries; those filed by the employee; or those requested by the department for another business purpose.

Paper FROI forms should not be filed with the department in addition to an electronically filed FROI form. Paper FROI forms should not be attached to other required filings with the department (for example a Notice of Insurer's Primary Liability Determination form).

Additional information about the mandate can be accessed on the department's EDI Web page at [www.dli.mn.gov/WC/Edi.asp](http://www.dli.mn.gov/WC/Edi.asp). To receive the most recent news and updates pertinent to trading partners, subscribe to DLI's specialty email list "Workers' compensation - trading partners" at [www.dli.mn.gov/EmailLists.asp](http://www.dli.mn.gov/EmailLists.asp).

Any questions, comments or concerns regarding implementation can be directed to the EDI/eFROI Implementation Team at [dli.edi@state.mn.us](mailto:dli.edi@state.mn.us).



# CompFact

## Northeastern Minnesota is home to large percentage of supplementary benefits recipients

By Brian Zaidman, Research and Statistics

Have you ever wondered how the workers receiving indemnity benefit payments are distributed throughout Minnesota? Are most of the injured workers in the Twin Cities area? The geographic distribution of employees receiving indemnity benefits is affected by the distribution of industries and the movement of workers after their injuries.

For supplementary benefit recipients, their injuries must have occurred before Oct. 1, 1995, to be eligible for this benefit. There were more than 1,900 workers receiving supplementary benefits in 2012. The workers who were receiving supplementary benefits in 2012 had at least 17 years after their injuries in which they may have moved their residences to a different part of the state or out of the state.

At the other extreme, most of the workers receiving temporary total disability (TTD) benefits in 2012 were injured since 2009 and had much less time in which they may have changed their place of residence. The temporary benefit category used in this analysis also includes workers receiving permanent total disability (PTD), but these workers account for less than 5 percent of the total. The combined TTD and PTD claims are identified as total disability claims. There were 23,630 workers receiving total disability benefits in 2012.

The distribution of the injured workers by type of benefit received and economic development region (multi-county areas used by the state for economic planning) is shown below. Nearly half of the injured workers reside in the Twin Cities region; however, this is a smaller percentage than the percentage of workers with jobs in the Twin Cities region. That is most likely due to the distribution of industries, with many of Minnesota's office work jobs, which have a relatively low injury rate, concentrated in the Twin Cities region.

The table also shows that northeastern Minnesota, which includes Duluth and the Iron Range, has a much larger percentage of the workers receiving supplementary benefits in 2012 than its percentage of workers receiving total disability benefits in 2012. Two other Minnesota regions, along the North Dakota border, and workers who are not Minnesota residents also showed higher percentages of workers receiving supplementary benefits compared to total disability benefits, although these differences were less than one percentage point.

Percentage distribution of workers receiving supplementary benefits and total disability benefits during 2012 by economic development region			
Employee residence	Temporary total or permanent total benefits	Supplementary benefits	Minnesota employment [1] 2012
Duluth and northeastern Minnesota (7 counties)	6.9%	17.0%	5.2%
St. Cloud area (4 counties)	7.9%	4.7%	5.9%
Rochester and southeastern Minnesota (11 counties)	10.4%	8.9%	8.8%
Twin Cities metropolitan area (7 counties)	47.0%	42.7%	60.1%
Remainder of Minnesota (9 regions with 58 counties)	23.5%	21.5%	19.9%
Non-Minnesota	4.3%	5.1%	--

1. Excludes federal government employees.

One factor influencing the higher than expected percentage of supplementary benefits claims in northeastern Minnesota is injured workers in the mining industry. Among claims occurring between 1984 and 1995, workers in the mining industry accounted for 2.3 percent of the supplementary benefits claims and for only 0.7 percent of the total disability benefits claims.

Public administration is another industry with a higher percentage of the supplementary benefit claims (5.6 percent) than its percentage of the total disability claims (3.1 percent) among claims occurring from 1984 through 1995. The northeastern Minnesota development region accounted for 26 percent of the public administration workers receiving supplementary benefits in 2012, behind only the Twin Cities region, with 41 percent of the claims.

## More resources from DLI: newsletters, specialty email lists, rulemaking lists

**Newsletters** – The Minnesota Department of Labor and Industry (DLI) offers three quarterly publications in addition to *COMPACT: Apprenticeship Works, CCLD Review* and *Safety Lines*.

- ***Apprenticeship Works*** is the newsletter from DLI's Apprenticeship unit. Its purpose is to inform the public of the goals, plans and progress of the Apprenticeship unit. Learn more or subscribe online at [www.dli.mn.gov/Appr/Works.asp](http://www.dli.mn.gov/Appr/Works.asp).
- ***CCLD Review*** is the newsletter from DLI's Construction Codes and Licensing Division. Its purpose is to promote safe, healthy work and living environments in Minnesota and to inform construction and code professionals about the purpose, plans and progress of the division. Learn more or subscribe online at [www.dli.mn.gov/CCLDReview.asp](http://www.dli.mn.gov/CCLDReview.asp).
- ***Safety Lines***, from Minnesota OSHA, promotes occupational safety and health, and informs readers of the purpose, plans and progress of Minnesota OSHA. Learn more or subscribe online at [www.dli.mn.gov/OSHA/SafetyLines.asp](http://www.dli.mn.gov/OSHA/SafetyLines.asp).



**Agency news** – Stay up-to-date with the Department of Labor and Industry by signing up for its email newsletter at [www.dli.mn.gov/Email.asp](http://www.dli.mn.gov/Email.asp). The agency sends occasional messages to subscribers to share news about DLI activities.

**Specialty and rulemaking news** – DLI also maintains five specialty email lists and 11 rulemaking lists to which interested parties may subscribe. The specialty email lists are: prevailing-wage information; workers' compensation adjuster information; workers' compensation EDI trading partners; workers' compensation medical providers information; and workers' compensation rehabilitation information. Learn more about DLI's specialty email lists, subscribe or review previously sent messages online at [www.dli.mn.gov/EmailLists.asp](http://www.dli.mn.gov/EmailLists.asp).

The rulemaking lists are required to be maintained for people who have registered with the agency to receive notices of agency rule proceedings via email or U.S. mail. The rulemaking lists topic areas are: apprenticeship; boats/boats-for-hire; electrical; fire code; high-pressure piping; independent contractor; labor standards/prevaling wage; Minnesota OSHA; plumbing; state building code; and workers' compensation. Learn more or subscribe at [www.dli.mn.gov/Rulemaking.asp](http://www.dli.mn.gov/Rulemaking.asp).

**Subscribing to *COMPACT*** – Interested parties may subscribe or unsubscribe from the *COMPACT* email list at <https://webmail.mnet.state.mn.us/mailman/listinfo/wc-compact>. Subscribers receive emailed notices about editions of the quarterly workers' compensation newsletter and other periodic updates from DLI.

# Basic Adjuster Training 2014

**March 26 and 27 • May 14 and 15 • Oct. 6 and 7**  
**8:30 a.m. to 4 p.m.**

**Recommended for claim adjusters who have less than one  
year of experience in Minnesota workers' compensation**

## Session topics

- Overview of Minnesota workers' compensation
- Rehabilitation benefits and issues
- Medical benefits and issues
- Waiting period
- Liability determination
- Indemnity benefits
- Penalties
- Dispute resolution
- How to file forms

## CEU credits

This educational offering is recognized by the Minnesota commissioner of commerce as satisfying 10.5 hours of credit toward continuing insurance education requirements.

## Location

Minnesota Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN 55155

## Cost

\$150 for the two-day session (includes lunch)

Early registration is encouraged. The session is limited to 30 people. Classes will be filled on a first-come, first-served basis. The Department of Labor and Industry reserves the right to cancel a session if there are not enough participants registered.

## Take the pre-test

Do you administer Minnesota workers' compensation claims? Not sure if you need training? Take the pre-test at [www.dli.mn.gov/WC/PDF/quiz.pdf](http://www.dli.mn.gov/WC/PDF/quiz.pdf) and see how you do.

*If you need special accommodations to enable you to participate or have questions about this training, call Lisa Smith at (651) 284-5273 or toll-free at 1-800-342-5354.*



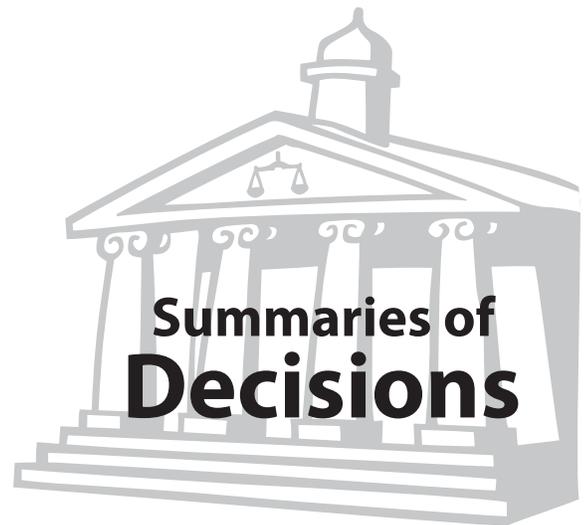
**Participants must register and pay online**

<https://secure.doli.state.mn.us/events/events.aspx?eid=15>

# Workers' Compensation Court of Appeals

October through December 2013

Case summaries published are  
those prepared by the WCCA



## ***Colindres vs. ABM Janitorial Services, Oct. 1, 2013***

Medical Treatment and Expense – Reasonable and Necessary  
Medical Treatment and Expense – Treatment Parameters

Substantial evidence supported the compensation judge's conclusion that the employee had incapacitating low back pain as contemplated by the applicable treatment parameters and that the proposed fusion surgery was consistent with other applicable rules. The rules do not require that all conservative treatment modalities be exhausted prior to surgery.

Affirmed.

## ***Dahl vs. Rice County, Oct. 2, 2013***

Medical Treatment and Expense – Diagnostic Testing

Where the purpose of the requested diagnostic testing was to explore possible causes of the employee's alleged cognitive dysfunction, substantial evidence supports the compensation judge's denial of the request where the cognitive dysfunction was not shown to be a symptom of his work injuries.

Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence, including medical records, lay testimony and expert medical opinion, supports the compensation judge's denial of further psychotherapy sessions.

Affirmed.

## ***Gabrielson vs. McIntosh Embossing, Oct. 2, 2013***

Vacation of Award – Substantial Change in Condition

The employee has established an unanticipated and substantial change in medical condition sufficient to constitute cause to vacate Awards on Stipulation issued in 1990, 1992 and 1996.

Petition to vacate awards on stipulation granted.

***Villarreal vs. AAA Galvanizing a/l/a AZZ, Oct. 4, 2013***

Arising Out Of and In The Course Of – Substantial Evidence

Where the employee injured his left knee when he twisted his leg while exiting his vehicle in the employer's parking lot 10 to 20 minutes before his work shift, substantial evidence supports the compensation judge's finding that the injury arose out of and in the course of his employment.

Temporary Total Disability – Substantial Evidence

Where the employee's medical records indicated he had left knee pain as well as low back pain during a claimed period of temporary total disability, substantial evidence supports the compensation judge's award of temporary total disability benefits related to the employee's work injury to his left knee.

Affirmed.

***Serrano vs. ABM Janitorial Services, Oct. 9, 2013***

Causation – Substantial Evidence

Substantial evidence, including the adequately founded opinion of the independent medical examiner, supports the compensation judge's finding that the employee's injury was temporary in nature.

Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence, including the adequately founded opinion of the independent medical examiner, supports the compensation judge's finding that a proposed fusion surgery is not reasonable, necessary and causally related to the employee's injury, which was temporary in nature.

Affirmed.

***Ahmed vs. Loop Parking Company, Oct. 15, 2013***

Job Offer – Refusal

Substantial evidence supports the compensation judge's determination that the employee had refused a job offer within the meaning of Minnesota Statutes § 176.101, subd. 1(i), warranting a discontinuance of temporary total disability compensation.

Affirmed.

***Weismann vs. Tierney Brothers Construction, Oct. 18, 2013***

Arising Out Of and In The Course Of – Traveling Employee  
Arising Out Of and In The Course Of – Deviation From Employment

The compensation judge did not err in concluding that injuries sustained by the employee as a result of rescuing an injured motorist arose out of and in the course of the employee's employment as a storm damage estimator, where the employee was a traveling employee, the accident scene was on the route from where the employee had worked that day to the motel in which he was staying and it was not

unreasonable for the compensation judge to infer from the circumstances that the employer implicitly directed the employee to participate in the rescue.

Affirmed.

***David vs. Bartel Enterprises (Nitro Green), Oct. 23, 2013***

Attorney Fees – Roraff Fees

The compensation judge did not err in calculating the \$13,000 attorney fee awarded for recovery of disputed medical benefits without regard to the Irwin factors, pursuant to Cahow v. Brookdale Motors, 61 W.C.D. 427 (W.C.C.A. 2001).

Affirmed.

***Thomley vs. RYT Way Industries, LLC, Oct. 28, 2013***

Causation – Gillette Injury

Substantial evidence in the form of well-founded medical opinion supports the compensation judge's determination that the employee did not sustain a work-related Gillette injury to his low back.

Affirmed.

***Bell vs. State Department of Transportation, Oct. 30, 2013***

Penalties – Substantial Evidence

Substantial evidence supports the compensation judge's findings regarding the delay in permanent partial disability payments. The compensation judge did not abuse his discretion by denying additional penalties where the employer had good faith defenses to parts of the employee's permanent partial disability claim.

Affirmed.

***Bitterman vs. Safe Way Bus Company, Inc., Oct. 31, 2013***

Causation – Substantial Evidence  
Evidence – Credibility

Considering the record as a whole, the evidence supports the compensation judge's acceptance of the employee's testimony and his determination that the employee sustained an injury as the result of a fall at work.

Causation – Substantial Evidence  
Exclusions From Coverage – Intoxication

Substantial evidence supports the compensation judge's finding that although the employee was intoxicated at the time of his fall, to some extent the employer and insurer failed to meet their burden of proving the employee's intoxication was a proximate cause of the injury, given the other evidence

presented in the case, including the employee's testimony regarding his tolerance for alcohol and testimony from representatives from the employer showing there was no indication of impairment on the date of injury.

#### Medical Treatment and Expense

A remand is appropriate where there was a question raised at hearing regarding which treatments, if any, were not reasonable, necessary or causally related to the employee's injury, and the compensation judge did not indicate whether he considered each treatment individually.

Affirmed, in part, and remanded, in part.

#### ***McCarney vs. Malt-O-Meal Company, Nov. 5, 2013***

#### Causation – Substantial Evidence Evidence – Credibility

Substantial evidence supported the compensation judge's denial of the employee's claim that he injured his low back at work where the employee submitted no narrative causation report, his treating physician never explained the basis for his causation opinion and the compensation judge found the employee to lack credibility.

Affirmed.

#### ***Braatz vs. Parsons Electric Company, Nov. 18, 2013***

#### Attorney Fees – Roraff Fees

Minnesota Statutes § 176.081, subd. 1(a)(3), is prospective in effect and does not preclude an award of attorney fees on medical expenses where there are potential, but as yet not determined or awarded, indemnity benefit claims. The employee's attorney is not precluded from making a claim for Roraff fees pursuant to Dorr v. National Bone Marrow Program, No. WC11-5278 (W.C.C.A. Jan. 5, 2012), where the only disputed benefit was unpaid medical expenses and there was no ongoing stream of indemnity benefits from which contingent fees could be paid. The factors applied in determining attorney fees pursuant to Irwin v. Surdyk's Liquor, 599 N.W.2d at 142, 59 W.C.D. at 336, are essentially the same as those outlined by the supreme court in Green v. BMW, 826 N.W.2d 530 (Minn. 2013) and we see no reason to reach beyond workers' compensation law in analyzing the reasonableness of the attorney fees in this case. The compensation judge reviewed the Irwin factors as they applied to the unique facts of this case, balancing the scope of the benefits awarded versus benefits claimed, along with the amount involved and results obtained, the difficulty of the issues and the responsibility assumed by counsel, and the hours expended on the case. The compensation judge's award of \$10,000 in Roraff fees was not so clearly erroneous as to be an abuse of discretion.

Affirmed.

***Wigant vs. Wallboard, Inc., Nov. 20, 2013***

Maximum Medical Improvement – Substantial Evidence

Substantial evidence supports the compensation judge's findings that the employee had ongoing restrictions and had not reached maximum medical improvement.

Affirmed.

***Ahern vs. United Parcel Services, Nov. 27, 2013***

Temporary Total Disability – Work Restrictions

Where the employee's treating doctors and the independent medical examination released the employee to return to work without restrictions, substantial evidence supports the compensation judge's decision allowing the discontinuance of temporary total disability benefits.

Affirmed.

***Lee vs. 3M Company, Dec. 2, 2013***

Causation – Temporary Injury

Despite testimony from the employee indicating he had ongoing symptoms, the medical evidence cited by the compensation judge, including the well-founded causation opinions of the independent medical examiner, provided substantial evidentiary support for the compensation judge's determination that the employee's work injuries were temporary in nature and were not substantial contributing causes of a fusion surgery and subsequent disability.

Affirmed.

***Moreira vs. Four Crown, Inc./Wendy's, Dec. 13, 2013***

Vacation Of Award – Substantial Change In Condition

The employee did not establish good cause to vacate an award on stipulation where there was no medical evidence as to a change in diagnoses, ability to work or permanent partial disability, and the employee also failed to submit medical evidence that her condition is work-related.

Petition to vacate award on stipulation denied.

***Jurva vs. M.A. Mortenson COS., Inc., Dec. 13, 2013***

Practice and Procedure – Dismissal

The recorded telephone conference with a transcript and exhibits provided a sufficient record in this case for this court to review the compensation judge's decision granting dismissal of a party from the matter below. Given the evidence submitted, the compensation judge did not err by granting the motion to dismiss.

Affirmed.

***Kuhnau vs. Manpower, Inc., Dec. 16, 2013***

Medical Treatment and Expense – Examinations  
Medical Treatment and Expense – Medical Mileage

Where the employee was not capable of driving himself to necessary medical appointments due to the effects of his work injury, and the employee's wife drove him to appointments for that reason, the employee's wife was entitled to reasonable compensation for her assistance.

Evidence – Res Judicata

The compensation judge did not err in concluding that the employee's current claim for compensation for his wife's time to drive him to medical appointments was not barred, on grounds of collateral estoppel, by a 1995 decision denying "double mileage" for travel in which the employee's spouse drove the employee to medical appointments to treat his work injury.

Reversed and remanded.

***Hartwig vs. Traverse Care Center, Dec. 23, 2013***

Credits and Offsets – Public Employee Retirement Benefits

Pursuant to Minnesota Statutes § 176.101, subd. 4, an employer and insurer is entitled to reduce the employee's permanent total disability benefits by the amount of retirement benefits being paid to the employee through PERA.

Affirmed.

***Ekdahl vs. Independent School Dist. #213, Dec. 24, 2013***

Credits and Offsets – Public Employee Retirement Benefits

The employee, a retired public school teacher, was found to be permanently and totally disabled effective Nov. 15, 2011. He began receiving a Teachers' Retirement Association service-based retirement annuity in June 2006. Pursuant to Minnesota Statutes § 176.101, subd. 4, after a total of \$25,000 in weekly compensation has been paid, the self-insured employer is entitled to reduce the employee's permanent total disability benefits by the amount of retirement benefits then being paid to the employee through the Teachers' Retirement Association.

Reversed.

***Taylor vs. City of Fridley, Dec. 26, 2013***

Permanent Partial Disability – Asthma

Substantial evidence when considering the record as a whole supports the compensation judge's award of benefits for a 78 percent whole body impairment for asthma and the compensation judge's application of Minnesota Rules 5223.0560.

Affirmed.

## Minnesota Supreme Court

*October through December 2013*

Case summaries published are  
those prepared by the WCCA



***Dykhoff vs. Excel Energy, A12-2324, Dec. 26, 2013***

Decision of the Workers' Compensation Court of Appeals filed Dec. 26, 2013, and reversed the decision of the compensation judge, reinstated.

***Klennert vs. SNG Construction, A13-1155, Dec. 26, 2013***

Decision of the Workers' Compensation Court of Appeals filed and served on May 29, 2013, be, and the same is, affirmed without opinion.

***Huebbe vs. Dairy Farmers of America, A13-810, Dec. 11, 2013***

Decision of the Workers' Compensation Court of Appeals filed and served on April 16, 2013, be, and the same is, affirmed without opinion.

***Drier vs. Grounded Air, Inc., A12-2350, Oct. 9, 2013***

Decision of the Workers' Compensation Court of Appeals filed and served on Dec. 3, 2012, be, and the same is, affirmed without opinion.

***Mironenko vs. Grounded Air, Inc., A12-2351, Oct. 9, 2013***

Decision of the Workers' Compensation Court of Appeals filed and served on Dec. 3, 2012, be, and the same is, affirmed without opinion.