

WORKERS COMPENSATION CASE LAW UPDATE

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I. Causation

A. Lakeside Casino v. Blue

Claimant was a cocktail server at the Casino. On 12/31/2000, she became light-headed and nauseated while working. She was instructed by her supervisor to go to the employee lounge until she felt better. After 45 minutes, the symptoms disappeared and she felt well enough to return to work. She left the lounge and walked approximately 40 feet to a set of stairs. She descended the first flight with no problem. On the second flight of stairs, she stumbled and felt pain in her ankle. Claimant denied being light headed or nauseated at the time of the fall. Claimant was diagnosed with possible early complex regional pain syndrome.

Claimant sought workers compensation benefits. Defendants admitted the fall occurred in the course of her employment, but denied that it arose out of her employment. The Supreme Court noted that Iowa adopts the “actual risk” doctrine. Thus, “if the nature of the employment exposes the employee to the risk of such an injury, the employee suffers an accidental injury arising out of and during the course of employment. And it makes no difference that the risk was common to the general public on the day of the injury.”

Although claimant did not fall due a defect in the stairs, Iowa law does not require that the stairs be more dangerous than any other set of stairs. Furthermore, it does not matter that claimant’s fall was due to her own inattention. The Supreme Court declined to adopt the positional risk doctrine which would have allowed claimant to recover for an unexplained fall. The Iowa Supreme Court found that claimant’s fall was explained in that claimant did not properly lift her foot to clear the proper step, carefully positioning her foot on the next step, while maintaining her balance. As noted by the Deputy, “Stairs are inherently more dangerous than a flat, smooth, unobstructed walking surface.”

B. Ottumwa Regional Medical Center v. Mitchell

Claimant worked as a housekeeping aide. While cleaning a room, she received a page to change the linen and mattress in a patient’s room. As claimant walked in to the room, her right foot went out from underneath her. After the fall, she looked on the floor, but did not notice “any water or anything . . . other than looking slick, there was nothing on it.” The Iowa Workers Compensation Commissioner found the claim compensable.

The Court of Appeals utilized the Blue decision in determining the claim did not arise out of her employment. The Court of Appeals found that the claimant's injuries arose out of an unexplained fall, which is not compensable since Iowa has not adopted the positional risk doctrine.

C. Curries Company v. McCurdy

Claimant began working for employer in 1988. His various jobs required that he stand on concrete all day. In 2000, he had a job change which led to decreased movement in the work area, but also a rubber mat to stand on. On 2001, he developed foot pain. Dr. Groen's revised medical opinion found that the position change was likely a contributing factor to his condition. The Commissioner found the injury was cumulative in nature and worsened with the 2000 job change.

II. Penalty

A. City of Madrid v. Blasnitz

The sole issue on appeal to the Supreme Court was whether substantial evidence existed to support the Commissioner's award of penalty benefits. The Commissioner determined:

Claimant was employed as a peace officer, a position that judges and juries typically consider to be one that brings credibility. . . . When the totality of the facts in this case are considered and weighed, I find that it was not reasonable to consider the untimely evidence from Mrs. Palmer to of sufficient import and reliability to have a reasonable chance of outweighing all the contrary evidence that supported the compensability of claimant's claim.

The Iowa Supreme Court noted that the Commissioner focused on only one piece of evidence in evaluating the reasonableness of the denial. However, the Iowa Supreme Court detailed 12 different facts and circumstances which supported the insurer's denial of the claim and stated that "the fact that the commissioner was not convinced by the evidence supporting the insurer's denial does not negate the existence of a genuine dispute with respect to whether the claimant's January 2003 fall was the cause of her injury." The Court also found that the Commissioner improperly suggested that claimant's position as a police officer meant claimant was credible. The Supreme Court ruled that as a matter of law, the claim was fairly debatable and the claimant was not entitled to penalty benefits. As a result, the decision did not need to be remanded to the Commissioner.

B. Curries Co. v. McCurdy

The Commissioner awarded benefits when the insurer failed to pay benefits after both physicians provided opinions that claimant's cumulative injury was work related. The Court of Appeals affirmed the decision on the basis that defendants failed to re-investigate the claim when the additional medical records were received. Defendants had initially denied the claim on the basis that it had not received all of the medical records. Upon receipt of the records, there was no indication that defendants conducted any further review or investigation.

C. Orris v. Kinze Manufacturing, Inc.

Claimant asserted penalty benefits on the basis of (1) failing to provide proper notice; (2) untimely weekly checks; and (3) failure to voluntarily pay an amount which properly reflects his industrial disability. The Court of Appeals found that notices from the employer regarding additional benefits to be paid were sufficient to allow termination of benefits because they provided claimant with knowledge his benefits would terminate with greater than 30 days advance notice. Thus, despite the fact the notices were not termed Auxier notices, they sufficiently advised claimant of his right.

Claimant also sought penalty benefits because defendants only voluntarily paid 15% industrial disability. At hearing, the Deputy awarded 25% industrial disability and claimant alleged he was entitled to penalty on the 10% not voluntarily paid. The Court of Appeals rejected this argument finding that 15% was reasonable given the 12% impairment rating of Dr. Buck.

However, the Court of Appeals determined the Commissioner failed to consider whether penalty benefits should have been awarded for the late payment of several weeks. Thus, the Court of Appeals remanded the decision back to the Commissioner for determination.

D. Weitz v. Johnson

The Agency awarded penalty benefits on the basis that the insurer inexplicably waited 4 months to obtain an impairment rating from a physician of its choice. The Court of Appeals reversed the decision finding that Weitz had a reasonable basis to believe claimant did not suffer industrial disability. The Court noted that three physicians believed claimant had a 0% impairment and claimant returned to work with another employer, without restrictions. The Court noted that in

analyzing penalty benefits they do not weigh the competing evidence, but decide whether evidence existed to justify denial of the claim.

III. Admission of Evidence

A. Shebetka v. Worley Warehousing, Inc.

At trial, defendants offered to videotapes of surveillance evidence as exhibits. Claimant objected on the grounds of insufficient foundation for the evidence. The Deputy overruled the objection. The Court of Appeals affirmed the decision on the basis of Iowa Code §17A.14(1), which states that administrative agencies are not bound by the technical rules of evidence.

IV. Alternate Medical Care

A. Tyson Foods, Inc. v. Hedlund

Claimant was diagnosed with “underlying inflammatory problems, possibly rheumatoid arthritis.” On January 4, 2005, Claimant’s physician responded to a questionnaire by the employer stating that the rheumatoid arthritis was not work related. On February 11, 2005, the physician opined that the arthritis was “materially aggravated by the workplace.” Employer scheduled an IME for a second opinion due to what they believed to be conflicting evidence. Claimant deemed the IME to be a change in her treating physician and filed a petition for alternate medical care. At the hearing, Tyson clarified that the IME was for a second opinion and the petition was dismissed by the Deputy. The Deputy indicated that as the basis for the alternate medical care petition no longer exists, there is no issue to be resolved. In addition, the Deputy stated that Tyson was specifically asked if liability was accepted on this claim and Tyson admitted that it was.

However, Tyson was not able to re-schedule the IME and unable to find a rheumatologist to treat claimant. As a result, they scheduled an IME with Dr. Bahls. Claimant filed a second petition for alternate medical care and defendants answered, but did not indicate they were disputing liability. After the IME with Dr. Bahls, defendants filed an amended answer to the petition for alternate medical care indicating that it was disputing liability. The Deputy determined that defendants were precluded under the doctrine of re judicata from contesting liability.

The Iowa Supreme Court found that the doctrine of issue preclusion did not apply because since liability was admitted, the issue was not actually raised and

litigated, as required by the doctrine. The Court next considered whether the doctrine of judicial estoppel applied. The Court found that a “fundamental feature of the doctrine is the successful assertion of the inconsistent position in a prior action. Absent judicial acceptance of the inconsistent position, application of the rule is unwarranted because no risk of inconsistent misleading results exists.” Although the Court had not previously defined what “judicial acceptance” was, the Court noted that the previous, inconsistent assertion must be material to the holding in the first proceeding. While Tyson clearly asserted an inconsistent position in the first alternate care hearing, the Commissioner did not act in any way to dispose of the application upon that position. Judicial Estoppel did not apply because the admission of liability played no role in the dismissal of the petition.

V. Rate

A. Schutjer v. Algona Manor Care Center

Claimant was injured less than 1 month after starting employment. As a result, there were not 13 weeks to calculate her rate. Defendants contended her rate should be based upon 32 hours a week, claimant alleged 40. The Court of Appeals found no substantial evidence to support the 32 hour claim and utilized 40 based upon the accident report stating employee’s normal weekly hours 40.

B. Villela v. Lund Foods

Claimant asserted the Commissioner erred in utilizing the hours she customarily worked and that her rate should be calculated on the bases if “what hours she could have worked because she was entitled to them.” Court of Appeals determined that if 40 hours a week was customary, 40 should be used. However, as claimant only worked 40 hours in 13 of the 37 weeks in the time period from January to September, 40 was not customary.

VI. Stay of Award of Benefits

A. Wilson v. Isle of Capri

Claimant was awarded workers compensation benefits. The defendants filed a petition for judicial review on the basis that subject matter jurisdiction was lacking. However, the filing of a petition does not automatically stay the enforcement of the workers compensation award. Defendants must file a motion for stay. The Court then considers the following factors (1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter. (2) The extent to which the applicant will suffer irreparable injury if relief is not granted. (3) The extent to which the grant of relief to the applicant will

substantially harm other parties to the proceedings. (4) The extent to which the public interest relied on by the agency is sufficient to justify the agency's action in the circumstances. The Court of Appeals reversed the district court's ruling and granted the stay finding that the defendants had a strong likelihood of success on appeal pursuant to the Jones Act.

B. Larson Manufacturing v. Thorson

On its third trip to the Iowa Supreme Court, the issue was raised as to whether a stay should have been granted against the enforcement of the workers compensation award. The Iowa Supreme Court affirmed the denial of the stay.

VII. Notice of Injury

A. Bridge v. Karr Tuckpointing

The Deputy denied benefits on the basis that claimant failed to give notice of his injury within 90 days, as required by Iowa Code §85.23. The Deputy found that Bridge sought treatment for his left knee on July 18, 2002, which marked the date from which notice began to run. The commissioner affirmed this decision as did the district court on judicial review. Claimant appealed claiming the affirmative defense was not supported by substantial evidence, as it was not until Dr. Coates evaluated him on March 25, 2004, that Bridge knew his condition would have a permanent adverse impact on his employment. The Court of Appeals reversed finding that by virtue of the discovery rule, the statute of limitations will not begin to run until the employee also knows that the physical condition is serious enough to have a permanent adverse impact on the claimant's employment or employability, i.e., the claimant knows or should know the "nature, seriousness and probable compensable character of his injury" or condition.

VIII. Proposed Legislative Changes

A. Iowa Code §86.13

This bill amends Code section 86.13 to provide that all employers, their workers' compensation carriers, or both, have an affirmative duty to pay employees all workers' compensation benefits and interest due on those benefits to which the employee is entitled under Code chapters 85, 85A, 85B, and 86, by the date the benefits or interest are due. If an employee proves that such benefits

and interest have not been paid when due, the worker's compensation commissioner is required to order the employer, its carrier, or both, to pay a penalty to the employee of up to 50 percent of the amount due. The penalty ordered also constitutes a workers' compensation benefit and is due within 10 days after the order is filed. The bill also provides that the commissioner shall not order payment of such a penalty if after weighing all the evidence received and determining its credibility, the commissioner finds that the employer, its carrier, or both, has proven that the failure to perform the affirmative duty to pay the benefits and interest when purportedly due, occurred after conducting a reasonable investigation and reasonable evaluation of the employee's entitlement to such benefits and interest and with a basis that was both reasonable and was the actual reason for the failure to pay, and was provided in writing to the employee on or before the purported due date for the payments. The bill also provides that a defense that the basis of the failure to pay is that the employee's entitlement to such benefits or interest is fairly debatable as that defense is recognized in the common law as a reasonable basis for a failure to pay with respect to a bad-faith tort, does not constitute a reasonable basis for the failure to perform the affirmative duty to pay benefits and interest when due pursuant to this subsection.

B. Iowa Code §85.27

The proposed legislation seeks to eliminate the employer's right to control the medical care. Under the legislation, the employee would have the right to select his own care.

C. Iowa Code §85.34

The proposed legislation seeks to change the compensation of scheduled member injuries. Scheduled member injuries would be compensated on the basis of 500 weeks and determined by the loss of earning capacity.