

WORKERS' COMPENSATION: CASE LAW UPDATE

Lisa R. Perdue

Iowa Supreme Court and Iowa Court of Appeals Decisions

I. Arising out of and in the course of employment

A. Arndt v. City of LeClaire, 728 N.W.2d 389 (Iowa 2007).

Claimant failed to prove that he sustained an injury which arose out of and in the course of employment. Claimant alleged that he slipped on grease at work and fell backwards, twisting his knee and popping his shoulder. Medical records indicated that claimant reported that the injury fell at home and that his private health insurance would pay for treatment, not workers compensation.

B. Fleming v. Stivers Lincoln-Mercury, 2006 WL 3802908 (Iowa Ct. App. 2006).

Claimant worked as a mechanic and began having trouble breathing. As a smoker, the question was raised as to whether the condition arose out of work or as a result of smoking. The Court of Appeals found that the pre-existing condition made claimant more susceptible to irritation from the chemicals, but found there was not medical testimony that the irritation from the chemicals caused damage to the body, merely a temporary, symptomatic response that resolves without permanent change to the body. The temporary irritation reaction was not an aggravation injury.

C. Ausmus v. Waterloo Community School District, 722 N.W.2d 653 (Iowa 2006).

Claimant was a science teacher at a middle school in Waterloo, who claimed that a new administration began mistreating him causing a mental injury. The Iowa Supreme Court found that claimant established medical causation, but did not establish legal causation. The Court noted that the legal standard was originally adopted because if only medical causation was required, the workers' compensation system would be transformed into a general mental health insurance because most workers could prove that work somehow contributed to the condition. In so doing, the Court rejected claimant's position that the legal

causation standard violated Equal Protection because there was a rational basis for the requirement.

D. Ayers v. D&N Fence Company, Inc., 731 N.W.2d 11 (Iowa 2007).

Claimant initially injured his knee in 1987 as the result of a fall and ultimately underwent arthroscopic surgery. In 2002, claimant stepped in a hole, twisted his knee and felt significant pain. The claimant suffered a MCL strain, but X-rays showed degenerative arthritis. Claimant eventually underwent total knee replacement. Dr. Fabiano opined the cause of the total knee replacement was the degenerative arthritis, with whom Dr. Riggins agreed. Dr. Stenberg eventually opined that the injury aggravated the pre-existing arthritis. The Commissioner found claimant failed to prove the injury materially aggravated the condition. The Commissioner also rejected the cumulative injury argument as the exposure was incidental and did not materially change the outcome. The Iowa Supreme Court affirmed the decision.

E. Heartland Specialty Foods v. Johnson, 731 N.W.2d 397 (Iowa Ct. App. 2007).

Claimant was involved in an altercation with a co-worker. One week later, her family physician opined that she was suffering anxiety-related problems from her work. The Commissioner determined that a physical injury arose out of and in the course of her employment and that the physical injury was a substantial factor in precipitating the mental health injury and impairment.

F. Moore v. Motel Six Operations, LP, 2007 WL 2710854 (Iowa Ct. App. 2007).

Claimant worked as a desk clerk and was eventually given greater work responsibilities after two managers were terminated. Claimant had a history of depression and eventually complained of headaches, blurred vision and increased depression. After missing work for several days, claimant was terminated. Following termination, she attempted suicide. The Court found that the Commissioner's denial of benefits was inadequate because it only considered whether the stress sustained by this employee was of a greater magnitude than other Motel Six workers. However, it did not analyze workers of same or similar jobs regardless of the employer. The case was remanded to the Commissioner.

II. Scheduled Member Injuries

- A. Burnett v. Webster City Custom Meats, 2007 WL 254722 (Iowa Ct. App. 2007).

Claimant sustained a right upper extremity injury for which one physician gave a 1% impairment rating and the other physician gave a 2% impairment rating. The Deputy found that the minimal ratings under the AMA Guides were insufficient to assess the loss of use of her arm. The Deputy gave a 10% impairment rating. The Court of Appeals affirmed the decision, stating that the Guides are merely that and Deputies are free to accept other material evidence to determine the degree of impairment.

III. Medical Benefits

- A. Coop v. John Deere Des Moines Works, 2006 WL 3615011 (Iowa Ct. App. 2006).

Claimant was injured in 1990 and subsequently developed Reflex Sympathetic Dystrophy which left her confined to a wheelchair. Since 1991, claimant has purchased two different vans for which the insurer refused to pay. The insurer did pay for modifications to the vans. Claimant filed a petition seeking payment for the vans. Testimony at trial established that a Paratransit bus was available from 6 a.m. until 8 p.m. and that all of claimant's medical appointments were in the Des Moines metro. The Court of Appeals found claimant failed to provide evidence that a van was a medical necessity. The Court found that claimant did not present evidence to show the type of "extremely rare" situation where claimant must be provided with a van as a reasonable and necessary appliance. The Court of Appeals differentiated this case from the Iowa Supreme Court decision of Manpower Temporary Services v. Sioson.

IV. Penalty

- A. City of Madrid v. Blasnitz. ___ N.W.2d ___ (Iowa 2007).

Claimant was a police officer with the City of Madrid who alleged that when responding to a domestic call, she slipped as she entered the home and hit her shoulder and elbow on the doorjamb. Claimant reported that she was fine and proceeded to address the call. She testified that she

reported the injury to her supervisor the next day. Claimant did not seek medical treatment until one month after the injury. Surveillance video was obtained showing claimant grooming horses with both arms. Claimant eventually had surgery to repair a rotator cuff. The Commissioner awarded penalty benefits of 50%, finding that “substantial evidence that has a reasonable chance of prevailing is required. . .” The Commissioner also gave greater weight to the testimony of claimant because she was a police officer. The Court of Appeals rejected the greater weight given to claimant’s testimony and concluded that the Commissioner reformulated the legal standard for penalty by requiring substantial evidence which has a reasonable chance of prevailing. The Court of Appeals remanded the decision.

The Iowa Supreme Court granted further review. In the decision, the Court detailed 12 different facts and circumstances which supported the insurer’s denial of the claim. The Court 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 Supreme Court ruled that as a matter of law, the claim was fairly debatable and the claimant was not entitled to penalty benefits.

V. Judicial Estoppel

A. Winnebago Industries, Inc. v. Haverly, 727 N.W.2d 567 (Iowa 2006).

When surgery was not authorized by the insurer, the claimant filed a petition for alternate medical care. In the answer, the insurer did not dispute liability and the alternate medical care was ordered. At the arbitration hearing, the defendants were precluded from denying causation as the issue of liability had previously been litigated at the alternate medical care hearing. On appeal, the Iowa Supreme Court found that defendants were precluded from contesting liability due to judicial estoppel. The Court ruled it would be improper to allow defendants to admit liability to maintain control over the medical care, but later challenge liability for indemnity payments. The Court added the following language in a slip opinion:

There might, in some cases, be a significant change in the facts after the admission of liability that could justify a change of position by the

employer, but those facts are not present here.

B. Tyson Foods v. Hedlund, 2007 WL 108343 (Iowa Ct. App. 2007).

Further review was granted by the Iowa Supreme Court after the Iowa Court of Appeals affirmed the decision that employer was judicially estopped from denying liability at a subsequent alternate medical care hearing because employer admitted liability at the first alternate medical care hearing. Employer asserts that based upon the receipt of new medical information, they should be allowed to contest liability.

VI. Weight of Medical Providers Opinions

A. Myers v. Danka Holdings, 2006 WL 1409128 (Iowa Ct. App. 2006).

In awarding permanent total disability, the Deputy stated:

Over my many years with this agency, I have tended to give more weight to the views of health care providers who became involved in the case for the purpose of treatment rather than those who were involved, in whole or in part, for litigation purposes. I believe this approach is correct, but not necessarily determinative. This means that the views of the treating physicians, Drs. Krain and Hines, should be given more weight than the others.

The Court of Appeals found that this statement indicated that the Deputy gave greater weight to the opinions of treating physicians as a matter of law, which violates previous decisions by the Iowa courts, committing legal error. The Court of Appeals remanded to the Agency.

VII. Economic Change in Conditions in Review-Reopening Proceedings.

A. Bright v. Supervalu, Inc., 2007 WL 1062928 (Iowa Ct. App. 2007).

After losing his employment, Claimant sought additional indemnity benefits on review-reopening. The Court of Appeals rejected the argument because losing employment was fully considered in the arbitration decision. Furthermore, claimant did not prove that the loss of employment was due to the injury as opposed to other non-injury related circumstances.

Iowa Workers Compensation Commissioner Decisions

I. **Medical Care.** Iowa Code §85.27 allows employers and insurers to direct the medical care for compensable injuries. Medical treatment must be reasonably suited to treat the injury.

A. Van Dyke v. Vermeer, File No. 5012087

Employers cannot revoke authorization for medical care and refuse to pay for these expenses after they were provided by an authorized treating physician. Employers must pay for all treatment they authorize and direct.

II. **Arising Out of and In the Course of Employment.** Two essential elements for establishing a workers compensation injury.

A. Durkop v. Tyson Foods, Inc., File 5009097

Purchasing of a uniform arose out of and in the course of employment because it is incidental to employment and is done for the employer's benefit.

B. Fortune v. USA Healthcare, File No. 5005972

Unexplained falls should be placed into the neutral risk category and absent a showing that the fall was due to a personal condition, injuries arising from such falls are compensable.

C. Ernst v. Lennox Manufacturing, Inc., File No. 5014455

Injuries sustained in an employer sponsored fitness program are compensable.

III. **Penalty Claims.** Iowa Code §86.13 provides penalty benefits for the unreasonable denial of indemnity benefits. The burden is on defendants to provide a reasonable basis for failure to pay benefits.

A. Rucker v. West Side Transport, File No. 5002619

Commissioner denied penalty benefits stating that Defendants acted

reasonably in relying on Dr. Durand's restrictions and denying jurisdiction in this matter. However, the Commissioner stated that defendants' actions in adjusting this case were troubling. Specifically, the Commissioner believed that defendants took advantage of the aspects of Iowa law that were of benefit to them (controlling medical care) and waiting to deny jurisdiction until it was time to determine whether claimant was entitled to indemnity benefits. The Commissioner found such actions to be a "flagrant misuse of Iowa's law" and that the actions were "disturbing and should not be common practice."

B. Stroud v. Square D, File No. 5013498

The legal requirement to reasonably investigate every claim demands that for every injury that requires medical treatment, the defendants must inquire as to whether there is permanent functional impairment following completion of healing or treatment. This is required even if the workers is released to return to work without restrictions.

C. Gunther v. Iowa State Penitentiary, File No. 5013883

In a hearing loss claim, defendants argued that other non-work related activities could have caused or contributed to the hearing loss as claimant was engaged in activities such as personal firearm training, personal target shooting, and training others in the use of firearms. Defendants did not seek a medical opinion that such activities could contribute to the hearing loss. The Commissioner found that without such medical opinion, the defendants' argument was "mere speculation" and benefits could not be denied on this basis. A 50% penalty was awarded after considering previous cases where penalties were awarded against the insurer.

D. Flanagan v. Jim Giese Comm. Roofing, Inc., File No. 5009134

In all but the rarest industrial disability cases, the impairment rating is the minimum level of compensation owed to a claimant by virtue that the impairment rating signifies the extent of the claimant's loss of use of the whole body.

E. Groeneweg v. Total Component Solutions Corp., File 5009377

A dispute between employers and insurers with respect to which defendant was liable will not guard against a penalty when only one job was performed and the medical evidence ties the injury to that job. Defendants must utilize Section 85.21 to protect themselves. Penalty award was \$31,000.00.

F. Cynthia Martin v. General Mills, File No. 5015640

Claimant sustained an injury to her left arm and alleged that she suffered depression as a result of that compensable injury. She further alleged the depression left her permanently and totally disabled. The depression claim was denied, in part, because she suffered from and sought treatment for depression previous to the injury. The Deputy awarded permanent total disability benefits, but denied her claim for penalty benefits. On appeal to the Commissioner, claimant was awarded a 50% penalty. In so doing, the Commissioner wrote:

Indeed, they can only continue to properly defend against the claim so long as a duly diligent investigation continues to show a reasonable basis for denying the claim. In this case, contrary to that principle, defendants immediately took an adversarial stance as regards claimant's claim that her physical injury to her hand has substantially aggravated her depression. Defendants invested all their resources into defending and maintaining that stance. Defendants never attempted to inquire as to its correctness and they never altered from it.

Indeed, defendants disingenuously attempted to reframe the issue as whether claimant's depression was causally related to her employment. Such reframing was clearly done in an attempt to create a logical fallacy by raising the inference that claimant's claim was to be judged by the standards of a mental/mental injury. Both a reasonably competent claims adjuster adjusting in the state of Iowa or a workers' compensation attorney practicing in the state of Iowa clearly would have had notice from claimant's petition that she was claiming that her disabling depression was a non-scheduled member sequela of her left-hand injury. In other words, that she was claiming a physical/mental injury, which is not subject to the same legal causation standard of a mental/mental injury. Since a reasonably competent claims adjuster would be expected to have notice of this from the claimant's petition, the claims adjuster would have a duty to inquire further as to whether claimant's left hand

injury could have brought about her claimed disabling depression.

Furthermore, defendants could not cast off their duty to investigate claimant's claim that her left arm injury was a substantial factor in bringing about her current level of disabling depression simply by stating that they were aware that claimant had had at least one previous episode of [major depressive disorder](#). Reasonably competent claims adjusters that handle claims in the state of Iowa know that pre-existing conditions become compensable work injuries when the work injury or its sequela substantially aggravates the condition. In the original notice and petition, claimant alleged industrial disability, permanent total [disability] and odd lot as disputed issues. Each of these allegations raises an inference that the depression, on which claimant bases her claim for benefits differs substantially from the depressive symptoms she experienced during her work years at General Mills. A reasonable claims adjuster would have investigated further in this regard. Herein, defendants did not do so.

In summary, defendants had a duty to investigate the question of whether the hand injury and its after-effects had materially and substantially aggravated claimant's earlier depression such that it was as debilitating as she claimed in her original notice and petition. Defendants wholly disregarded that duty. Instead, they utilized their resources stonewalling claimant's claim for benefits.

Penalty award was \$50,000.00. This decision is currently pending on judicial review.

G. Muhamedagic v. IBP, File No. 5011839

Defendants relied upon the medical opinions of Dr. Kinkle in denying the claim, but the Deputy determined that the care provided by said physician was not reasonable and his opinions incorrect. The Deputy determined that defendants' reliance on said opinions was not reasonable and assessed a \$20,000 penalty. The Commissioner affirmed the penalty award on appeal. In doing so, the Commissioner found:

“Defendant makes the legitimate argument that in a penalty case it should

be able to accept at face value a medical opinion from a treating physician. However, defendant's argument is undercut by its own failure to provide to the treating physician a job video which demonstrates the actual employment duties and stressors for the period immediately prior to the alleged date of injury.”