MINNESOTA SUPREME COURT DECISION
August 2012

Anderson v. Frontier Communications, et al, A11-0834 (August 10, 2012)
Compensation Judge: Jane Gordon Ertl
WCCA Panel: Stofferahn, Wilson, Pederson
Dissenting: J.J. Anderson, Paul H., Meyer, and Page

Justice G. Barry Anderson, writing for the majority, reversed the WCCA and reinstated the compensation judge's ruling. The Supreme Court of Minnesota found there was **substantial evidentiary support** in the record for the compensation judge's findings the injured employee **failed to give** the employer **timely notice** of his work-related injury and the **employer lacked actual knowledge** of the work-related nature of employee's injury.

In May 2009, *nearly two years after employee's last day of work*, employee's attorney gave employer notice that employee claimed his back injury was work-related. Under Minn. Stat. §176.141 (2010), employee was required to give written notice of his injury to the employer, or the employer needed to have actual knowledge of the injury, within 180 days of the occurrence of the injury.

Timely Written Notice

The compensation judge found employee sustained a ***Gillette***-type injury arising out of and in the course of his employment, culminating on employee's last day of work, July 4, 2007. The judge also found **employee knew** in April 2007 "that his **work aggravated** his low back." The judge found employee did not give his employer timely notice of the claimed injury and denied employee's claim for benefits.

In the case of a ***Gillette*** injury, the **notice period** begins to run "from the time it becomes **reasonably apparent** to the employee that the injury has resulted in, or is likely to cause, a **compensable disability**." *Isaacson v. Minnetonka, Inc.*, 411 N.W.2d 865 (Minn. 1987). The WCCA noted the most significant factor in cases related to giving timely notice of a potential *Gillette* injury is the **employee's knowledge of a compensable injury**. The WCCA found while a medical report is not required before notice must be given, *this employee* was not required to give notice to his employer that his problems are the result of his work history when there was no medical evidence making that connection and where the existing medical evidence provides a different reason for his problems. The Supreme Court disagreed.

The Court reversed the WCCA and reinstated the compensation judge's finding employee should have realized the seriousness of his condition and the work he did caused or aggravated his back problems. Employee's **notice of injury** in May 2009 was **not timely**. In examining the notice issue, the Supreme Court noted the following:

> "But Anderson's medical records reflect that the nature of Anderson's job was discussed at the initial surgical consultation: The patient works for a telecommunications company and does a lot of physical labor including working up and down the telephone poles installing equipment. He sometimes lifts 50-60 pounds of weight. He is presently still working full time. And Anderson himself testified that before the surgery his doctors 'explained that everytime [he] bent over that there was two and a half centimeters of travel in . . . [his] back, and that it was pinching [his] spinal cord.' Anderson further testified that seeing the x-rays and

> MRI's before the surgery, he 'realized from all the stooping and bending that [he had] been doing all these years that [his] discs were wore out and they had to be replaced.' ***Under our standard from Isaacson, 'the information available to Anderson— whether or not documented in Anderson's medical records—was that the wear and tear on his discs was the result of his work activities."*** (Emphasis added.)

Actual Knowledge

The Supreme Court addressed this issue out of judicial economy, as this issue was not address by the WCCA. It cited its definition of "actual knowledge" from *Pojanowski v. Hart*:

> "**Actual knowledge**" is knowledge of such information as would put a **reasonable man on inquiry**. Mere knowledge of a disability following a traumatic injury is not sufficient, for the facts and circumstances of either the disability of the injury must be such as would put a reasonable man on inquiry that the **disability is work-related**."

Under ***Isaacson***, an employer must have some **information connecting work activity** with an **injury**. The compensation judge found employee **did not tell anyone at work** that his back condition related to the demands of his job. Employee argued to the WCCA that because employer knew the demands of employee's job, employer had sufficient information in May 2007, when employee told his supervisor he needed time off for back surgery. The compensation judge found employee's injury culminated on July 4, 2007 and under *Dickson v. Minn. Vikings Football Club*, WC08-132 (WCCA September 9, 2008), an employer cannot be deemed to have actual knowledge of an injury before the injury occurs. The Supreme Court found the **record sufficient to support** the compensation judge's finding related to the **employer's lack of actual knowledge**.

Justice Paul H. Anderson dissented in two parts. First, with Justice Meyer and stating the Supreme Court should have **summarily affirmed the WCCA**. Second, he wrote at length to explain the need for the Supreme Court to apply a **balancing test** that specifically includes the **lack of medical evidence** as an important, if not critical, **factor** to consider when determining **whether notice of a *Gillette*-type injury is timely**. Justice Anderson also expressed concern over the **significant weight placed on employee's answers to a series of questions**, which were often **phrased** by the employer **using a disjunctive clause**. He concluded his dissent with a few **observations and comments on** the employee's "stoic attitude with respect to work and his back injury" and noting **Minnesotans' stoic attitude toward "life's travail**." To reinforce this point, he made mention of writings by Sinclair Lewis, "A Prairie Home Companion" and books on Lake Wobegon by Garrison Keillor, and writings by Howard Mohr, the late Bill Holm, and Joe Paddock depicting the same.

Justice Meyer dissented stating she would have **affirmed the WCCA**. Testimony from **employee** showed he **did not have sufficient knowledge** in April or July 2007 **to know** he had a **compensable work injury**. She found **substantial evidence did not support the compensation judge's conclusion** a reasonable person would have known employee had a compensable injury, which needed to be reported to his employer, until his doctors provided reports establishing a work relationship. Justices Page and Paul H. Anderson joined her dissent.