

## ***MINNESOTA SUPREME COURT REAFFIRMS WCCA'S LIMITED ROLE ON APPEAL***

### **RECAP**

On February 8 the Minnesota Supreme reversed the Minnesota Workers' Compensation Court of Appeals decision to award benefits in a head injury claim and held the WCCA (1) erred when it ruled on an issue not raised on appeal; (2) erred when it reversed the compensation's judge's determination that there was adequate foundation for a psychologist's opinion; and (3) erred when it substituted its view of the evidence for that adopted by the compensation judge. *Gianotti vs. vs. Independent School District 152 and RAM Mutual Insurance Co.*

### **IMPACT**

*Gianotti* breaks no new legal ground. It represents the Minnesota Supreme Court's latest reminder to the WCCA of its limited scope of review. Compensation judges are granted wide discretion in weighing the evidence, making factual determinations, determining witness credibility and choosing between expert opinions. On appeal, the WCCA's job is to determine whether the compensation judge's decisions on these matters have substantial evidentiary support. If they do, the WCCA, even if it may have weighed the evidence differently and come to different conclusions, must affirm.

### **SUMMARY**

Bus monitor Ellen Gianotti claimed she sustained a significant head injury, resulting in severe emotional distress, in the course and scope of her employment. As she rode a bus on October 7, 2014, the bus driver unexpectedly braked, causing her to fall and strike her head on the interior of the bus and injure her arm. She went to the hospital that day. Her CT scan and X-rays did not demonstrate a brain injury. The insurer admitted primary liability and initiated payment of temporary total disability.

Within two days of the accident, the employee complained of headaches, confusion and trouble finding words. On October 23, 2014, she underwent a neuropsychological assessment with Dr. Hauge, a licensed psychologist. He concluded based on a battery of tests, she "had an apparent concussive injury" and was experiencing "multiple symptoms of somatic, cognitive, and emotional-related change" since the injury. Dr. Hauge referred her for "psychological intervention because of significant emotional distress" since the injury. She began treatment with a therapist for anxiety, depression and panic attacks allegedly related to her head injury. Her treating doctors submitted a report to Gianotti's attorney supporting the consistency of her concussion symptoms and diagnosing post-concussive syndrome.

Gianotti saw Dr. Paul Arbisi, a licensed psychologist, for an independent psychological examination at the insurer's request. His review of the medical records revealed the employee had taken anti-depressant and anti-anxiety medication for at least 7 years before her injury, a fact she never fully disclosed to the doctors treating her for her bus injuries. Dr. Arbisi administered a MMPI-2, from which he concluded the employee's self-reported psychiatric symptoms, including extreme suffering and memory and cognitive problems were not credible. He also concluded she had not suffered a concussion and post-concussive syndrome. Dr. Arbisi submitted a supplemental report based on post-injury psychiatric records he did not originally review; he stated the new information did not change his opinions from his initial report.

Gianotti filed a medical request with the Workers' Compensation Division seeking coverage for treatment for her emotional and psychological conditions allegedly related to her head injury. The insurer filed a Petition to Discontinue Benefits. These issues were consolidated and heard before workers' compensation judge John Baumgarth. The compensation judge relied heavily on the opinion of Dr. Arbisi, and found Gianotti had not suffered a concussion and post-concussive syndrome. He denied her claims for treatment for emotional and/or psychological conditions and found the insurer could discontinue wage loss benefits.

Gianotti appealed to the WCCA. The appeal raised the issue of whether the compensation judge erred in holding the admitted injury did not result in a brain injury. In Gianotti's brief, she argued the opinions of her treating doctors outweighed Dr. Arbisi's opinion. She also asserted Dr. Arbisi's opinion lacked factual foundation, as he had not reviewed the video of the accident and some of Gianotti's post-injury psychiatric records.

The WCCA reversed the compensation judge's findings that Gianotti did not suffer a concussion and post-concussive syndrome and vacated the denial of coverage for the emotional and psychological conditions. The WCCA reasoned: (1) Dr. Arbisi was not competent as an expert; (2) he lacked factual foundation for his opinion because he did not review the video; and (3) all other evidence indicated that Gianotti suffered from a post-concussive syndrome.

The Minnesota Supreme Court reversed the WCCA. First, it held that the WCCA should not have ruled on Dr. Arbisi's competence to render an opinion regarding the employee's injuries because the employee never raised that issue on appeal. Neither her notice of appeal nor her brief to the WCCA raised the issue of Dr. Arbisi's competence to provide an expert opinion.

Next, the court found the WCCA improperly reversed the compensation judge's determination there was adequate foundation for the psychologist's opinion. The court stated that the law on whether an expert's opinion has the proper foundation is well settled: the fact on which an expert relies for an opinion must be supported by evidence and the adequacy of foundation for an expert is a decision within the discretion of the trial judge, subject to review for abuse of discretion. The court quickly dispensed with the notion the video was determinative of an adequate foundation for a medical opinion. The court noted the WCCA did not explain why it credited the opinion of treating doctors who also did not view the video. The court found Judge Baumgarth had not abused his discretion in finding Dr. Arbisi's opinion had adequate factual foundation as Dr. Arbisi (1) reviewed Gianotti's pre-injury medical history including records reviewed by no other doctor; (2) reviewed the majority of her post-injury medical records; (3) conducted a significant battery of tests; and (4) interviewed Gianotti.

Finally, the court found the WCCA erred when it reversed the compensation judge's findings that Gianotti did not suffer a concussion and post-concussive syndrome. The court relied on precedent to explain "the compensation judge was free to choose among conflicting medical experts' opinions" on whether a brain injury occurred. In weighing the medical evidence, the compensation judge has the discretion as the trier of fact to choose between the competing and conflicting medical experts' reports and opinions. The court repeated its admonition that the WCCA cannot "substitute its view of the evidence for that adopted by the compensation judge if the compensation judge's findings are supported by evidence that a reasonable mind might accept as adequate."

If you have questions regarding this Supreme Court decision or its effect on your circumstances, or any other Workers' Compensation related issues, please contact a member of our Workers' Compensation

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