

## **MINNESOTA SUPREME COURT RULES EMPLOYER MAY ASSERT TREATMENT PARAMETERS DEFENSE IF IT IS NOT DENYING PRIMARY LIABILITY FOR THE WORK INJURY**

On April 24, 2019 the Minnesota Supreme Court issued an important decision clarifying when an employer may assert a workers' compensation medical treatment parameters defense to a claim for medical benefits. The Court concluded that once an employer admits primary liability for a work injury, it may assert the treatment parameters defense and claim the treatment is not reasonable and necessary even if it is denying some of the symptoms stemming from the original injury are causally related to that injury. Johnson v. Darchuks Fabrication, Inc., \_\_\_ N.W.2d \_\_\_ (Minn. 2019).

The employee sustained an admitted work-related right ankle injury in 2002 and subsequently developed Complex Regional Pain Syndrome (CRPS). After getting its fourth IME, the employer asserted the CRPS had resolved and the employee's CRPS treatment did not comply with the Minnesota Worker's Compensation Medical Treatment Parameters and was therefore not reasonable and necessary to cure or relieve the effects of the injury.

The employee filed a Medical Request and the parties appeared for hearing before a compensation judge. The judge found the CRPS diagnosis was correct, concluded it was related to the ankle injury and determined the CRPS had not resolved. The judge found the treatment reasonable and necessary. The judge also concluded the employer, by claiming the CRPS had resolved, effectively denied liability for the injury. Therefore, the judge concluded the treatment parameters did not apply. (MR 5221.6020, subp. 2 provides that the treatment parameters "do not apply to treatment of an injury after an employer has denied liability for the injury.") The judge ordered the employer to pay for the treatment. The employer appealed to the WCCA, arguing that because it had not denied liability for the ankle injury, the compensation judge improperly refused to apply the treatment parameters.

The WCCA affirmed, concluding the treatment parameters did not apply because the employer asserted at trial the employee's CRPS condition resolved and the treatment for that condition prescribed by the physician was not reasonable. The WCCA reasoned that by disputing the employee's CRPS condition and treatment, the employer effectively denied a causal relationship between the work related injury and the CRPS symptoms. Therefore, under its prior precedent interpreting M.R. 5221.6020, subpart 2, the WCCA concluded the employer was barred from asserting a treatment parameters defense. The employer appealed to the Minnesota Supreme Court.

The Minnesota Supreme Court reversed the WCCA. It found the bar against applying the treatment parameters is triggered only when an employer denies liability for an injury. The court stated MR 5221.6020, subpart 2 "applies only when an employer denies that it has an obligation under the act to pay compensation for an alleged work-related injury." In this case, the employer admitted and continues to admit the employee suffered a work-related ankle injury and he had not fully recovered from that injury. The employer also admitted it has continuing liability to pay

for reasonable and necessary medical treatment to cure or relieve the injury. (In a footnote, the Court noted the situation might be different if the employer had asserted the employee no longer suffered from *any* symptoms causally-related to the work-related ankle injury.) The Supreme Court found that because the employer did not contest its liability to pay for treatment that is reasonable and necessary to cure and relieve the effects of the employee's work related ankle injury, it has not "denied liability" for the injury and therefore it can use the treatment parameters as a defense.

**Comment:** This case helps clarify when an employer may assert a "treatment parameters" defense in Minnesota workers' compensation cases. The Supreme Court focused on whether the employer had "denied liability" for the injury by denying the reasonableness and necessity of treatment for symptoms allegedly related to the injury. The Supreme Court appears to have concluded that the bar against asserting a treatment parameters defense only applies when the employer disputes whether the injury is "covered" by the Workers' Compensation Act (i.e. whether the injury arose out of and in the course of employment.) The Minnesota Supreme Court concluded "the bar against applying the treatment parameters is triggered only when an employer denies liability for an injury." (Emphasis supplied). While the compensation judge concluded the employee's CRPS had not resolved, the employer did not appeal that finding and only argued on appeal the treatment for CRPS was not reasonable and necessary under the treatment parameters. Based on our reading of Johnson, the Minnesota Supreme Court has concluded once an employer admits primary liability for an injury and concedes that an employee continues to have at least some symptoms related to that injury (right ankle), it is free to assert the workers' compensation medical treatment parameters as a defense even though it is denying treatment for other symptoms and claims the disputed treatment is not reasonable and necessary to cure and relieve the effects of the injury.