

ILLEGAL ALIENS AND WAGE LOSS BENEFITS

- I. In general, an alien is considered an “employee” [Minn. Stat. §176.011, subd. 9(1)]
- II. Is an undocumented (illegal) alien/employee entitled to collect wage loss benefits?
 - A. Other jurisdictions have ordered some form of benefits to illegal aliens. In Candelo v. District Court of Florida, 478 So.2d 1168 (Dist. Ct. Fla., 1985), the court determined the employer was estopped from asserting an illegal alien defense where the employer knew or should have known of the employee’s illegal status. The court noted this protects an illegal alien from suffering at the hands of an employer willing to hire him and then use his illegal status to avoid liability for benefits.
 - B. In Minnesota: Gonzalez v. Midwest Staffing Group, 59 W.C.D. 207 (W.C.C.A. 1999); the court held that an “undocumented alien” was not expressly excluded from entitlement to benefits under the Minnesota Workers’ Compensation Act. This has been a long standing holding by this court and others.
 1. In this case, the court held the employee was not excluded from entitlement to benefits even where Gonzalez had procured the job by presenting false resident alien paperwork to the employer.
 2. The W.C.C.A. did address the possible defense to a wage loss benefit claim based upon the employee’s legal ineligibility to seek re-employment in this country (In Gonzalez, the ER and IR only argued that the employee was excluded as an “employee” by the statutory language defining an employee). Can an undocumented alien complete an adequate job search when released to return to work, or does his/her illegal status preclude him/her from properly satisfying the requirements imposed by statute for a good faith job search?
- III. Job search requirement and undocumented aliens
 - A. In situations where wage loss benefits can be impacted by a diligent job search, courts in other states in the early 1990's held that undocumented aliens were not excluded from receiving benefits by the Workers’ Compensation Acts, rather from the “resulting inability to properly satisfy requirements imposed on every employee/claimant under [state] law.” (Manis Construction Company v. Arellano, 411 S.E. 2d 233 at 235 (Va. App. 1991)).
 - B. THE BIG ONE IN MINNESOTA: Correa v. Waymouth Farms, Inc., (W.C.C.A. 2002)
 1. The employee was born in Mexico, immigrated to the U.S. in 1987 with a visa and passport. He was not a U.S. citizen and did not have a work

permit. He commenced employment with the employer in 1999.

2. Employee sustained an admitted low back injury. At the time of his injury, he also worked part-time with another employer. He eventually underwent an L4-5 microdiscectomy, and the employer paid both TTD and TPD benefits.
3. INS informed the employer that the employee's social security number did not match his birth date and the alien registration number he provided to the employer was not valid. Employer refused to allow him to return to work until he could provide proper documentation. The 2nd employer would not let him return to work until he had no restrictions.
4. The employee was offered employment by a previous employer, but the employer could not meet his restrictions.
5. QRC report indicated the employee continued to look for work and the QRC provided medical management.
6. The employee's had residual back pain and radiating leg pain, his treating physician recommended additional surgery and restricted him from any work until the surgery. The ER and IR filed an NOID, claiming the employee was not capable of legally working.

ISSUE APPEALED BY ER AND IR: The employer and insurer did not dispute the employee's entitlement to TTD benefits when medically unable to work, only that he was not entitled to TTD benefits when he was medically able to work but not able to legally obtain employment as a matter of law. The compensation judge had concluded that "[g]iven the employee's significant physical restrictions, limited language skills and lack of professional rehabilitation assistance, his personal job search efforts meet the 'reasonable and diligent' requirement of the law."

HOLDING: The W.C.C.A. agreed that since the employee had worked in the U.S. since 1987 without the proper papers and the lack of documentation had not prevented the employer from hiring the employee. The Court held that substantial evidence, including the employee's testimony concerning his work history, supported the conclusion that the employee's undocumented alien status did not preclude him from conducting a reasonable and diligent job search and affirmed the compensation judge's denial of discontinuance of TTD benefits.