

December 22, 2004

In an effort to continue providing services you have come to expect from our firm, we wanted to advise you of a recent decision from the Workers' Compensation Court of Appeals (WCCA) where the Court's interpretation of the permanent partial disability schedules may have significant long-term ramifications. That case, Stone v. Harold Chevrolet, was decided by the WCCA on November 3, 2004. The decision was not provided to our office until December 8, 2004, as part of our request to be provided with unpublished decisions from the WCCA.

We expect considerable discussion of the <u>Stone</u> decision in the upcoming weeks and months, and we will track its procedural progress to determine if it is appealed to the Minnesota Supreme Court.

In short, Stone addressed the permanent partial disability guideline regarding reflex sympathetic dystrophy (a/k/a "RSD" or Complex Regional Pain Syndrome). The Court affirmed the Compensation Judge's award of 25 percent permanent partial disability rating under Minnesota Rule 5223.0430, subp. 6, even though the employee did <u>not</u> meet five of the eight conditions necessary for a diagnosis of reflex sympathetic dystrophy to qualify for that permanent partial disability rating.

Essentially, the compensation judge applied Minnesota Statute § 176.105, subd. 1(c) and the Weber decision in awarding the 25% PPD. Since all doctors indicated the employee did, in fact, have a diagnosis of RSD, the compensation judge concluded he should be rated under the schedule despite the failure to meet the necessary five requirements specifically required by the rule.

In affirming the compensation judge's decision, the WCCA acknowledged the uniqueness of the permanent partial disability guideline for RSD, noting no other provision connecting permanent partial disability to a specific diagnosis. Rather, the other permanent partial disability guidelines uniformly

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establish entitlement to permanency by identifying the affected body part and reviewing diagnostic tests to determine the specific rating for that condition. In this case, since the parties (and the medical experts for both sides) agreed the employee actually had RSD, to require the employee to meet the five factors under the language of the rule would be contrary to the general provisions governing entitlement to permanent partial disability.

While obviously this was a unique situation, we expect attorneys for employees to argue the same reasoning not only in cases involving RSD, but also in other cases, asserting it is not necessary to meet the requirements of the permanency schedule in order to qualify for permanent partial disability under a particular rating. We expect a lot of argument of this issue in both RSD cases as well as in other permanent partial disability claims.

Overall, we feel the <u>Stone</u> decision is unique and does not provide precedent for allowing departures from the specific permanent partial disability guidelines, whether under RSD or any other condition. We feel this case was fact specific and should be treated as such.

Sincerely,

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