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Minnesota Supreme Court affirms an employer is not required to pay attorney fees incurred in connection with an employer's petition of the date of onset of PTD.

In Nguyen v. Audio Communication, ___N.W.2d ___ (Minn. 2012) the employee sought and was awarded permanent total disability (PTD) benefits from and after March 4, 2008. The employer petitioned the compensation judge for determination of the date of onset of PTD, claiming the employee became PTD as of October 9, 2006, (the date the employee became eligible for SSDI benefits) or January 23, 2007, (the date the employee's physician recommended he stopped looking for work). The compensation judge subsequently deemed the employee PTD as of March 1, 2007. The employer obtained a credit for $19,000 in workers' compensation benefits paid to the employee because of the offset for SSDI benefits. However, the employee was still partially successful in opposing the petition by preventing an even greater recovery if the judge selected one of the employer's suggested dates.

The employee petitioned to require the employer to pay attorney fees incurred by partially succeeding in opposing the petition. The attorney sought a Gruber-type fee, an hourly fee paid by the employer and insurer where the contingency fees are insufficient to reasonably compensate the attorney for his time defending the issue. The court held that Gruber-type fees were "plainly inapplicable to this case." Attorneys are entitled to Gruber-type fees where the fees were incurred in successful defense of an allegation of bad faith receipt of benefits and contingency fees do not reasonably compensate the attorney because there is no stream of benefits from which a contingent fee can be paid. Neither element was present in this case.

With this decision the Workers' Compensation Court of Appeals and Minnesota Supreme Court signaled they are resistant to expanding the scope of Gruber-type fees.

The Minnesota Supreme Court issued its decision in Nguyen on May 9, 2012. You can find the full text of the decision here http://www.lawlibrary.state.mn.us/archive/supct/1205/OPA111784-0509.pdf

Please contact any of the attorneys in our firm's Workers' Compensation Practice Group if you have any questions about the Nguyen case or other workers' compensation matters.

Nguyen.doc