

NUZZO & ROBERTS

NEWSLETTER

July 2016

WORKERS' COMPENSATION UPDATE SECOND QUARTER 2016

In recent months the Connecticut Legislature has enacted new statutes, and the Connecticut courts and the Compensation Review Board have issued several important decisions regarding workers' compensation law.

LEGISLATIVE UPDATE

Where to Send a Notice of Claim for a Municipal Employee

In Public Act No. 16-112 the legislature amended Connecticut General Statutes §31-294C to require a municipal employee to send a copy of a notice of claim or Form 30C to the town clerk for the municipality. This Public Act went into effect on July 1, 2016.

Sole Proprietor and the Need for a Workers' Compensation Policy

Public Act No. 16-73 amends Connecticut General Statutes §31-286A, which controls contractors for public work projects. The amendment states that a sole proprietor does not need workers' compensation insurance as long as the sole proprietor is not contracting with subcontractors and is not a principal

employer. However, the sole proprietor must have liability insurance in lieu of workers' compensation insurance.

SUPREME AND APPELLATE COURT DECISIONS

Compensability of a Heart and Psychiatric Claim

In *Hart v. Federal Express Corp.*, 321 Conn 1 (2016), the Connecticut Supreme Court affirmed the finding of the trial commissioner and Compensation Review Board, which concluded that the claimant sustained heart and psychological injuries arising out of and in the course of his employment.

The trial commissioner found that prior to the date of injury, the claimant had a subclinical heart condition that did not require treatment or interfere with his ability to engage in heavy physical labor. However, the work events on the date of injury subjected the claimant to "unmanageable workload demands and forced him to work at an unreasonably rapid pace, without allowing time to take breaks for food, hydration, or even personal comfort." As a result, the claimant was dehydrated and more susceptible to cardiac arrhythmia. Furthermore, the unreasonable demands of the claimant's employment resulted in psychological stress, which with the

physical exertion elevated the claimant's heart rate and caused a cardiac event.

Therefore, "as a result of the day's events, the claimant's heart condition was aggravated significantly and worsened to the point of requiring long-term, post-hospital treatment, medication, and monitoring. The commissioner also concluded that the physical trauma that the claimant experienced on September 15, 2009 and the ensuing emergency treatment were substantial factors causing him to develop PTSD and related psychological symptoms."

The Compensation Review Board and Supreme Court ruled that the medical evidence reasonably supported the trial commissioner's conclusions.

COMPENSATION REVIEW BOARD DECISIONS

Mutual Benefit Rule

In *Deoliveira v. Florenee Cleaning, LLC*, 6024 CRB-4-15-8 (June 6, 2016), the Compensation Review Board addressed whether an injury that occurs before the employee is on the clock, but in a vehicle being provided by the employer to travel to a work location, is compensable. The vehicle in which the claimant was injured was owned and operated by the employer.

In overturning the trial commissioner's conclusion, the Compensation Review

Board stated furnishing transportation was for the "mutual benefit" of the claimant and the employer, and the injury that occurred while the employee was being driven was compensable. In reaching its conclusion the Compensation Review Board cites to a Connecticut Supreme Court decision with a very similar fact pattern, *Sala v. American Sumatra Tobacco Co.*, 93 Conn. 82 (1918).

Motion to Preclude not Applicable

In *Woodbury-Correa v. Reflexite Corporation*, 6032 CRB-6-15-9 (June 22, 2016), the Compensation Review Board affirmed the trial commissioner's denial of the claimant's Motion to Preclude. Although the claimant filed a timely Form 30C and the respondents file an untimely Form 43, no indemnity benefits or medical bills were submitted for payment until the date the Motion to Preclude was filed. Therefore, it "was impossible for the respondents to comply with the statutory requirements to issue any benefits payments during the 28 day period following the filing of the claimant's Form 30C as no benefits were claimed."

Medical Marijuana

In *Petrini v. Marcus Dairy, Inc.*, 6021 CRB-7-15-7 (May 12, 2016), the Compensation Review Board affirmed the trial commissioner's finding and determined the claimant's use of medical marijuana for pain management

constitutes reasonable and necessary medical treatment and mental health therapy to assist the claimant with pain management is reasonable and necessary medical treatment.

In this matter the claimant suffered a lower back injury that required surgery and resulted in the claimant taking numerous pain medications for six years. The claimant began taking medical marijuana through a licensed physician because the previously prescribed medications were not allowing him to manage his pain. The use of the medical marijuana allowed him to eliminate the use of six prescription medications and a spinal cord stimulator that was no longer functioning.

In reaching the conclusion that the medical marijuana should be authorized for use in this matter, the trial commissioner and Compensation Review Board stated it is not necessary that medication allow the claimant to return to work. The Compensation Review Board quoted *Bowen v. Stanadyne*, 2 Conn. Workers' Comp. Rev. Op. 60, 232 CRD-1-83 (June 19, 1984):

Reasonable or necessary medical care is that which is curative or remedial. Curative or remedial care is that which seeks to repair the damage to health caused by the job even if not enough health is restored to enable the employee to return to work. Any therapy designed to keep the employee at

work or return him to work is curative. Similarly, any therapy designed to eliminate pain so that the employee can work is curative. Finally, any therapy which is life prolonging is curative.

WHEN IN DOUBT, CALL US

We are only a phone call away. If you have any questions, call us!!

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