NUZZO & ROBERTS NEWSLETTER

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WORKERS' COMPENSATION UPDATE: SECOND AND THIRD QUARTERS 2021

In recent months, the Connecticut Supreme Court, Connecticut Appellate Court, and the Compensation Review Board have issued several important decisions regarding workers' compensation law. Additionally, several new statutes have been enacted by the Connecticut Legislature.

LEGISLATIVE UPDATE

Benefits for PTSD

Public Act 21-107 expands Connecticut General Statutes §31-294k eligibility for Post-Traumatic Stress Disorder (PTSD) injuries beyond police officers, parole officers, and firefighters. Effective June 30, 2021, for dates of injury after July 1, 2019, the statute includes emergency medical services personnel, Department of Correction employees, and telecommunicators. Furthermore, under certain circumstances healthcare providers are also covered for PTSD related to COVID-19 events occurring on or after March 10, 2020. Finally, the statute redefines PTSD as a post-traumatic stress injury.

Administrative Law Judges

Public Act 21-18 (effective October 1, 2021) corrected several discrepancies in the Workers' Compensation Act. Most significantly, Workers' Compensation Commissioners will become Administrative Law Judges and Connecticut General Statutes §31-349 has been amended to be more consistent with prior legislative changes.

COVID-19

The Connecticut Legislature passed the Connecticut Essential Workers COVID-19 Assistance Fund to provide benefits for lost wages, out-of-pocket medical expenses, and burial expenses to certain essential employees. If benefits are paid to the worker, the workers' compensation respondents get a set-off. This program is available until June 30, 2024, if the employee died or could not work after contracting COVID-19, or symptoms later diagnosed as COVID-19, between March 10, 2020 and July 20, 2021. The worker does not need to prove the illness arose from employment.

CGS §31-290a

Effective June 15, 2021, Connecticut General Statutes §31-290a, which addresses wrongful discharge or

discrimination for the employee's exercise of workers' compensation rights, has been expanded to include deliberately misinforming or persuading an employee to not file a workers' compensation or a claim under the Connecticut Essential Workers COVID-19 Assistance Fund.

Burial Expenses

Special Act 21-2, Section 291 amends Connecticut General Statutes §31-306(a)(1) to increase the burial expense from $4,000 to $12,000. This change applies to an employee who died as a result of the workers' compensation injury on or after June 15, 2021. Starting on January 1, 2022, the amount for burial expenses shall be adjusted annually by the Consumer Price Index for Urban Wage Earners and Clerical Workers' in the Northeast, as calculated by the Federal Bureau of Labor Statistics.

SUPREME COURT AND APPELLATE COURT DECISIONS

Compensability of Injuries Resulting From Idiopathic Falls

In ***Clements v. Aramark***, SC 20167 (June 24, 2021), the Connecticut Supreme Court addressed whether injuries are compensable when they result from an idiopathic fall from a standing position on a level floor. The Connecticut Supreme Court reversed the Connecticut Appellate Court ruling and reinstated the trial commissioner and Compensation Review Board's conclusions that the injury is not compensable when an employee is injured due to an idiopathic fall on a level floor.

In this matter, the claimant fainted, lost consciousness, fell backward and hit her head. The trial commissioner found the fall and head injury did not arise out of her employment because the fall "was brought on by a personal medical infirmity unrelated to her employment."

The Supreme Court stated an idiopathic fall is compensable if the employment places the employee in a position increasing the dangerous effects of the fall, such as height, near machinery, in sharp corners or in a moving vehicle. In other words, we distinguish "between two types of idiopathic falls, namely, those that result in injuries unrelated to workplace conditions, and those in which workplace conditions contribute to the harm by increasing the risk of resultant injuries." The hazard has to be peculiar to the employment or the injuries related to the idiopathic fall are not compensable.

The Medical Care Exception

In ***DeJesus v. R.P.M. Enterprises, Inc.***, 204 Conn. App. 665 (2021), the claimant was injured during his employment, but he failed to file a Form 30c notice of claim within one year of the date of injury. Normally, this would mean he filed an untimely claim pursuant to Connecticut General Statutes §31-294c. However, the Connecticut Appellate Court affirmed the

trial commissioner and Compensation Review Board's conclusion that Mr. DeJesus filed a timely notice claim pursuant to the medical care exception found in Connecticut General Statutes §31-294c(c).

The medical care exception stands for the proposition "that no defect in a notice of claim shall be a bar to the maintenance of proceedings 'if within the applicable period an employee has been furnished, for the injury with respect which compensation is claimed, with medical or surgical care'."

The claimant was injured when a car he was working on fell on his head and shoulders. After the incident, Mr. DeJesus could not feel his legs and he was placed on a mattress by the owner, and the owner directed another employee to drive the claimant to the hospital. Consequently, the employer was aware of the incident at work and the claimant's injury. Furthermore, within a year of the injury, the employer provided money for Mr. DeJesus to buy an electric wheelchair, built a wheelchair ramp at the claimant's home, and paid the claimant $500 a week. Therefore, by paying these benefits, the employer tolled the statute of limitations and the case could not be considered untimely based on the failure to file a Form 30c.

The Proper Cancellation of a Workers' Compensation Policy

In ***Bellerive v. Grotto, Inc.***, 206 Conn. App. 700 (2021), the Connecticut Appellate Court affirmed the Compensation Review Board's reversal of the trial commissioner's conclusion. Specifically, the trial commissioner concluded the insurer did not properly cancel a workers' compensation policy and the policy was in effect on the date of the claimant's injury (March 1, 2016). The Compensation Review and Appellate Court concluded the policy was properly cancelled and not valid on the date of the claimant's injury.

In this matter, on October 13, 2015, the insurer (Liberty Mutual) issued a notice of cancellation effective on November 3, 2015, which in compliance with Connecticut General Statutes §31-348, provided a 15-day waiting period following the cancellation. The notice was filed electronically with the National Council of Compensation Insurance (NCCI). The basis of the cancellation was the employer's failure to provide self-audit materials.

After November 3, 2015, Liberty Mutual continued to send the employer letters requesting the audit materials that were the basis of the cancellation. Some of those letters indicated the policy may be cancelled if the audit materials were not properly received. However, other letters indicated the policy had been cancelled. Liberty also sent a February 18, 2016 letter referencing a change in an endorsement, but stating the other endorsements remained in place.

After the date of injury, the employer sent Liberty incomplete audit information and on April 5, 2016, Liberty sent the employer a prorated reimbursement of the previously paid premium.

In upholding the Compensation Review Board's conclusion that the policy was properly cancelled, the Appellate Court stated, "because Liberty was not required to notify Grotto before cancelling its workers' compensation policy, the only pertinent issue with respect to the effectiveness of Liberty's cancellation is whether Liberty's electronic notice to the NCCI pursuant to §31-348 was sufficient in light of the requirements of §31-321. We conclude that Liberty's electronic notice to the NCCI was sufficient." Furthermore, in citing to ***Yelunin v. Royal Ride Transportation***, 121 Conn. App. 144, 149 (2010), the Court stated, "an employer's understanding as to when coverage terminated is largely irrelevant," if the insurer is in compliance with §31-348.

Finally, the Appellate Court stated, "Yelunin is clear that the employer's subjective belief is immaterial, and the record lacks sufficient evidence that Liberty intended to continue or reinstate coverage after November 3, 2015."

Compensability When the Claimant Suffered a Prior Injury to the Same Body Part

In ***Malinowski v. Sikorsky Aircraft Corp.***, 207 Conn. App. 206 (2021), the Connecticut Appellate Court affirmed the trial commissioner and Compensation Review Board's conclusion the claimant's repetitive activities at work substantially and permanently contributed to the need for a left total knee replacement. Although the claimant suffered a 1972 left knee injury that resulted in degenerative arthritis and required surgery in 1973, the subsequent repetitive work activities of pulling and pushing pallets of parts weighing 800 to 1,400 pound and walking up and down staircase as often as 8 times an hour, in 12 hour shifts for 28 years were also substantial factors in requiring left knee replacement surgery.

Additionally, the treating orthopedic physician concluded the work for the respondent employer substantially contributed to the need for the knee replacement surgery. The Respondent's Examiner concluded the 1972 injury was a substantial contributing factor to the claimant's left knee condition and need for total knee replacement surgery and although the work for the respondent-employer was a contributing factor, it was not a substantial contributing factor causing the need for the new surgery. Despite the Respondent's Examiner conclusion, the Appellate Court concluded the trial commissioner's original conclusion regarding causation was reasonably supported by the facts and the medical conclusions.

COMPENSATION REVIEW BOARD DECISION

Compensability of Injuries at Company Events

In ***Ahern v. ADP Totalsource/Z-Medica, L.L.C.*** 6390 CRB-8-20-5 (April 28, 2021), the claimant suffered a knee injury while participating at a company field day. The Compensation Review Board affirmed

the trial commissioner's finding the injury was compensable and not excluded pursuant to Connecticut General Statutes §31-275(16)(B)(i). The statute states a personal injury does not include:

> "An injury to an employee that results from the employee's voluntary participation in any activity the major purpose of which is social or recreational, including, but not limited to, athletic events, parties and picnics, whether or not the employer pays some or all of the cost of such activity."

However, in this matter, the trial commissioner and the Board found "the company field day was held during the claimant's working hours; the event was promoted in-house by means of email messages, flyers and posters; and the claimant testified, and two coworkers acknowledged, that the event was intended to encourage 'camaraderie' among the company employees." Furthermore, had the claimant decided to not attend the event, she would have been required to use personal or vacation/leave time. Thus, the trial commissioner was correct to conclude the injury arose out of and in the course of employment.

WHEN IN DOUBT, CALL US

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

Contact David J. Weil at dweil@nuzzo-roberts.com, Jason K. Matthews at jmatthews@nuzzo-roberts.com, James P. Henke at jhenke@nuzzo-roberts.com, Michael D. Randall at mrandall@nuzzo-roberts.com, Kim R. Small at ksmall@nuzzo-roberts.com or Brandy M. Parry at bparry@nuzzo-roberts.com.

NUZZO & ROBERTS, L.L.C.
P.O. Box 747
One Town Center
Cheshire, CT 06410
Phone: (203) 250-2000
Fax: (203) 250-3131