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A View from Above:
2009-2010 Workers' Compensation
Year in Review

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Recent Legislative Developments



1. Confidentiality of Medical Records

- Known as the “Overstreet Bill.” Any waiver or release must have specific language in it. Applies to all workers’ compensation claims regardless of the date of injury.



2. Maximum and Minimum Benefit Changes

For injuries occurring July 1, 2010 through June 30, 2011:

Temporary Benefits: \$841.50 or 110% of the state’s average weekly wage

Permanent Benefits: \$765.00 or 100% of the state’s average weekly wage

Minimum Weekly Benefit:
\$114.75 for both temporary and permanent benefits



3. Construction Industry Changes

- Clarifies that unless you are a **sole proprietor** or **partner** (with no employees) getting paid **directly** by the property owner, an employer in the contracting group **must** have workers' compensation insurance on all of their workers and themselves
 - Was in effect from December 31, 2009-January 22, 2010
 - New effective date is March 28, 2011



4. Permanent Partial Disability Benefits

- A response to the Fusner v. Coop Construction Company case (Deceased worker was a Mexican national employed at a Nashville construction site and the Court determined that the Mexican parents were dependents)
- For injuries occurring on or after July 1, 2009: Places a 1.5 times cap on permanent partial settlements to the body as a whole or scheduled member injuries worth 200 or more weeks if the employee is not eligible or authorized to work in the U.S.



5. Recreational Activities

- New legislation in response to **Gooden v. Coors Technical Ceramic Co.** (Employee died of heart attack during a pick-up basketball game on break and wife received death benefits)
- This law specifically **excludes** those injuries that occur during recreational activities that are not required by the employer and do not directly benefit the employer. Effective June 11, 2009.

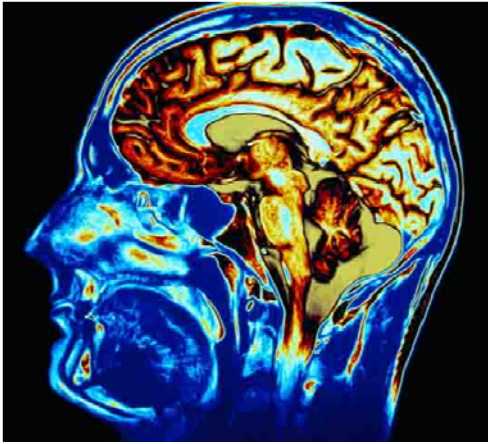


Exceptions to Recreational Activities Law

- Injuries **are** covered under workers' compensation where participation:
 - 1) Was expressly or impliedly **required** by the employer; or
 - 2) Produced a **direct benefit** to the employer beyond improvement in employee health or morale; or
 - 3) Was **during work hours** and was part of the employee's work duties; or
 - 4) Occurred due to **unsafe conditions** the employer had knowledge of and failed to curtail the unsafe condition.



6. Mental Injuries



- Response to mental injury claims where the employee continues treatment and is never placed at maximum medical improvement
- Caps the maximum length of time an injured employee can receive temporary disability for a mental injury occurring on or after July 1, 2009

Mental Injuries Cont'd...

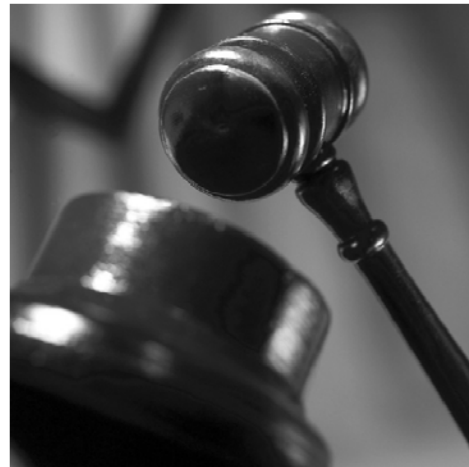
A claimant is presumed to be at **maximum medical improvement (MMI)** upon the earliest of one of the following:

- 1) At the time the treating psychiatrist concludes the employee has reached MMI;
- 2) 104 weeks after the employee has reached MMI as a result of the physical injury that is the cause of the mental injury; or
- 3) 104 weeks after the date of injury in the case of mental injuries where there is no underlying physical injury.



7. Reconsideration of Awards

- Response to the case of Perrin v. Gaylord Entertainment Co.
- Company purchases, restructuring, what next?



Reconsideration Cont'd

For injuries **on or after July 1, 2009**, an injured worker is capped at **1.5 times** the impairment rating if:



- 1) The injured worker continues to be employed by the successor employer at the same or greater rate of pay; or
- 2) If the employee declines an offer of employment with the successor employer at the same or greater rate of pay.

8. The New Impairment Rating Rule

- Officially a Rule of the TDOL
- Treating physician is required and responsible for determining the employee's IR for the injury the physician is treating



The New Impairment Rating Rule



Defines who is the treating physician

1. Chosen from panel
2. Physician referred from panel physician
3. Physician recognized by ER
4. Physician designated by TDOL

The New Impairment Rating Rule

- The fees a treating physician can charge for the rating are now set
 - No more than \$250
 - Cannot charge a fee if no permanent impairment
- Time is money: A treating physician must provide the impairment rating within 21 calendar days of the date of maximum medical improvement (MMI)
- Practical Consequences



Case Law Update

1. Early Retirement

- Appeal Panel held that an employee's award was capped at 1.5 times his medical impairment rating when he took early retirement following a work injury
- Considered the fact that the employee committed to taking early retirement one month after his surgery and before he knew what permanent restrictions, if any, would be assigned



2. Reconsideration and Production Quotas

- Pigg v. Liberty Mutual
 - An employer's enforcement of production quotas does not subject the employer to additional liability
 - Ms. Pigg worked at Dell Computers and sustained a shoulder injury.
 - Claim settled
 - Returned to work and failed to meet production
 - Terminated and court said capped at 1.5 times the impairment rating



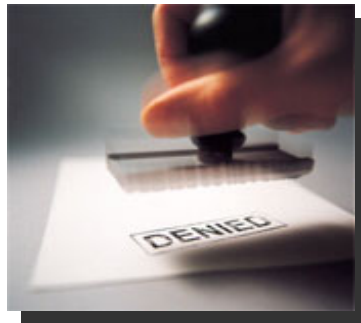
3. Parking Lot Injuries

- Employee was at work for the City of Manchester when she received a message that her sister had fallen and sustained an injury
 - As the employee was leaving work to rush to her sister's aid, she tripped and fell in the parking lot on the employer's premises
- Bright line rule: An injury is in the course of employment when an employee is injured en route to or from work or on the necessary route between the work facility and designated parking area



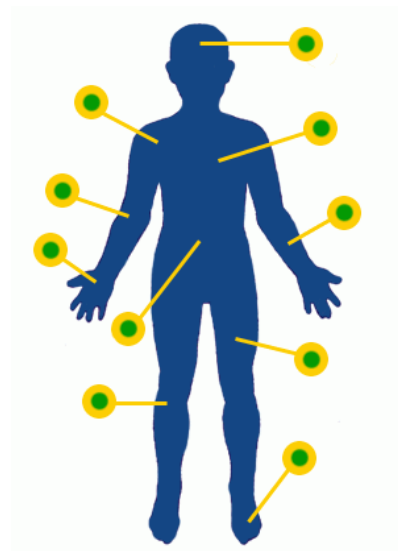
4. Seizures

- Employee suffers a seizure while waiting in a truck for coworkers to return from breakfast
 - Employee had a seizure and suffered a shoulder injury
- Appeal panel analogized to “idiopathic fall” reasoning
 - No evidence the employee’s injury was enhanced or made worse by any hazard attributable to the employee’s job



5. **Body As A Whole v. Scheduled Member**

- Case of Crowell v. TRW
 - Employee developed *tinnitus* (ringing in the ear) and developed insomnia and loss of concentration as a result
 - Appeals panel ruled that because the employee’s tinnitus went beyond simple hearing loss, it had an impact on the employee’s entire body
 - Proper to award benefits to body as a whole rather than scheduled member for hearing loss only



6. Occupational Disease

- Employee has pre-existing COPD
- Exposed to workplace irritants (dust and dirt at hazardous waste storage facility)
- Employee develops pulmonary inflammation and pneumonia/pleural fibrosis
- Held an occupational disease



7. Willful Misconduct

- The “Dump Truck” case
 - George Haynes sustained injuries when the dump truck he was driving overturned on June 16, 2006
 - June 5, 2006: Verbal Reprimand
 - Minutes before incident: Coworker warned Mr. Haynes
- Appeals panel held that the driver’s injuries were a direct result of his own willful misconduct and his claim was denied



8. Mental Injuries

- Case of Bressler v. H & H Specialty Coating
 - Employee hurts right arm and was placed on restricted duty and given medications.
 - Employer offered light-duty position, employee works 2 days and quits
 - Employee later hospitalized for depression (lack of income, pain)
- Appeals panel held compensable



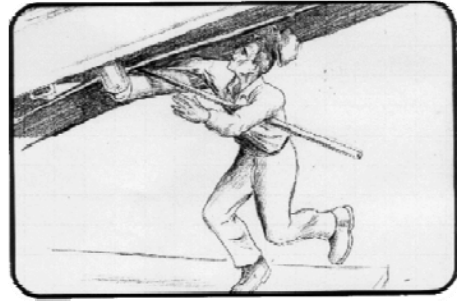
Mental Injury Statute

- **Tenn. Code Ann. § 50-6-102** plainly provides that a "mental injury should not include a psychological or psychiatric response due to loss of employment or employment opportunities."
- Appeals panel ruled that this provision only applies when the loss of employment or employment opportunities is the sole basis for the mental injury



9. Drug-Free Workplace Program

- Case of Campbell v. PML
- Kevin Campbell injured himself when he placed his hand in machinery to adjust a moving conveyor belt
- Employer was a certified Drug-Free Workplace
- Campbell sent for a drug screen: positive for THC
- Triggered statutory presumption that Campbell's drug use was the proximate cause of his injury



What does IQ have to do with it?



- Trial court found Campbell's credibility to be "imperfect"
- Excusable because "intellectually challenged" and he was therefore more likely to act unwisely around dangerous machinery
- Campbell received benefits and his award was upheld on appeal

Practical Advice



QUESTIONS?

