2002 Work Comp Seminar

Compensability Requirements

9:30-10:00 a.m.

Presentation by:
Ryan M. Clark
Patterson Lorentzen Duffield Timmons
505 Fifth Avenue, Suite 729
Des Moines, IA 50309
(515) 283-2147
Fax: (515) 283-1002

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I. BASIC ELEMENTS OF WORKERS' COMPENSATION

A. Compensability

1. General Rules: Arising Out Of and in the Course Of Employment

The first prerequisite in a workers' compensation case is establishment of the employer-employee relationship. James R. Lawyer & Judith Ann Graves Higgs, Iowa Workers' Compensation - Law and Practice (3rd ed.), §§ 5-1.

Next, Claimant must show both (1) injury arose out of the employment; and (2) injury occurred in the course of employment. Id.

Claimant must show by preponderance (more likely than not) of evidence. These components are separate and distinct, and must coexist.

a. "Arising Out of the Employment"

1) Focus is on "causation"; however, it need not be the sole cause or true "proximate cause" as used in tort law. Id.

2) Generally, involves the idea of causal relationship between the employment and the injury. Burt v. John Deere Waterloo Tractor Works, 73 N.W.2d 732, 737 (Iowa 1955) (citing 58 Am.Jur., Workmen's Compensation, § 209, p. 716). The employment must somehow increase the risk of the injury to be considered to have arisen out of the employment. Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 19996) (holding that an employee injured while standing up from a toilet in the restroom did not have an injury which arose out of the employment).

3) Ask: "Can Claimant establish, by the necessary quantum of proof, a causal

connection between the conditions under which work was performed and the resulting injury, i.e., did an injury follow as a natural incident of the work?" Musselman v. Central Telephone Co., 154 N.W.2d 128, 130 (Iowa 1967) (citing Reddick v. Grand Union Tea Co., 296 N.W. 800 (Iowa)).

4) Determination of whether an injury or disease has a direct causal connection with the employment is essentially within the domain of expert testimony, and the finder of fact (the Deputy) assesses the weight to give such opinions. Id. at 133.

5) "An injury received while the employee is not doing any act of service may nevertheless by 'arising out of the employment' if it can reasonably be said it resulted from a hazard of the employment." Burt, 73 N.W.2d at 737 (citing Griffith v. Norwood White Coal Co., 294 N.W. 741).

6) Certainty regarding causation is not required: "It is sufficient if the injured workman produces sufficient evidence to persuade the commissioner that the injury probably arose out of and in the course of the employment." Id. (citing Ford v. Goode, 38 N.W.2d 158).

The court in Burt borrowed from a Massachusetts case in holding:

> It arises "out of" the employment, when there is apparent to the rational mind *upon consideration of all the circumstances*, a causal connection between the conditions under which the work is required to be performed and the resulting

injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person *familiar with the whole situation* as a result of the exposure occasioned by the nature of the employment, then it arises "out of" the employment.

Id. (citing In re McNicol, 102 N.E. 697 (Mass.)).

7) Recent Case Law (discussion).

b. "In the Course of the Employment"

1) Refers more to time, place and circumstances of the injury.

2) Inclusion of injuries to employees "whose services are being performed on, in, or about the premises which are occupied, used, or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business." Lawyer & Higgs, §§ 6-1.

3) "An injury on the employer's premises during the employee's hours of employment almost always will be compensable." Id. at §§ 6-2 (citing Gomez v. E.C. Ernst Midwest, 34 Biennial Rep., Iowa Indus. Comm'r 118 (1979)).

If a worker leaves the usual place of employment, look for total abandonment of employment, or else there may be compensability. Id. (citing Bushing v. Iowa Ry. & Light Co., 226 N.W. 719, 722 (Iowa 1929)).

For example, if an employee is traveling from job site to job site, there will likely be compensability. Id. (citing Marley v. Orval P. Johnson & Co., 244 N.W. 833 (1932)).

Also, if the employee is, as his/her primary purpose, performing a task in furtherance of the employer's business, there will likely be compensability regardless of location. Id. at §§ 6-13.

4) Recent Case Law (discussion).

2. Special Situations

a. Going and Coming Rule

1) Rule: "Injuries sustained while traveling between home and the employee's place of work are generally not compensable." Eisnaugle v. Gundersen Clinic, File No. 1197973 (Arb. Dec. 1999) (citing Otto v. Independent School District, 23 N.W.2d 915 (Iowa 1946)).

2) Rule only applies to those workers who have fixed hours of work and a fixed place of work. Id. (citing Medical Associates Clinic P.C. v. First National Bank of Dubuque, 440 N.W.2d 374 (Iowa 1989)).

3) Situations/Exceptions to the Rule:

- employer provides the transportation or pays the cost of travel;

- dual purpose, where the employment purpose predominates when the commuting is, by itself, a part of the service provided by the employee for the

employer;

- if employee is required to have a vehicle at the employer's place of business, then the commute is within the course of employment; and

4) "Zone of Danger" (2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995)).

b. Lunchtime and Breaks

1) "The employer's premises play an important role in injuries occurring over lunch hours and on coffee breaks. . . . Injuries on the employer's premises are likely to be compensable. . . . The opposite is true for those off the premises. . . . However a number of factors may come into play. . . . Who prepares the food? Who pays for the food? Is the lunchtime paid or unpaid? Does the employer benefit from the employee's presence? Was horseplay involved?" Lawyer & Higgs, §§ 6-4.

2) Principles from the "Going and Coming Rule" still apply; for compensability, an injured worker will need to look to those exceptions to the Rule.

3) Remember, a claimant still must meet the "arising out of" test.

c. Personal Comfort

1) Refers to such things as smoking, going to the bathroom and eating.

2) No hard and fast rules; must consider facts on a case-by-case basis; three categories: risks distinctly associated with employment which are universally held compensable; personal risks not associated with employment which are

universally non-compensable; and risks that are neutral which generate the most controversy. Farrell v. Eagle Country Market, File No. 1191552 (Arb. Dec. Dec. 1999) (citing 1 Larson Workers' Compensation Law, §§ 7-10)).

3) Some Case Law:

Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996): an injury from turning to flush a toilet while on break at work falls within those personal risks not associated with employment; absent showing that the injury was the result of any restroom design or condition that did not exist outside the workplace, the injury is NOT compensable.

McCool v. Dowd Drug, File No. 1155192 (App. Dec. Oct. 1998): an ankle fracture from stepping off a curb on a public street while running an errand for employer held compensable because the hazardous condition, a "fairly high curb," was a risk the claimant would not have been exposed to but for claimant's employment.

Rish v. Iowa Portland Cement Co., 170 N.W. 532 (Iowa 1919): claimant injured when he started smoking while wearing a pair of overalls with dynamite caps in the pockets; held compensable even though smoking was not a necessity, because it is a typical habit and/or indulgence that could be anticipated by employers.

d. Recreation/Social Activities

1) Very interesting "In the course of" cases, generally:

2) Ask: Was the activity on the employer's

premises? Was it during the regular workday? To what degree did the employer sponsor the activity? What control did the employer exercise over the activity? Was attendance required or expected? Was the employee compensated for attendance? Was there a substantial direct benefit to the employer? Lawyer & Higgs, §§ 6-7.

3) Example: The company softball game where an employee sprains an ankle (Based on Cooper v. Rockwell-Goss, II Iowa Indus. Comm'r 91 (Arb. Dec. 1982).

Facts:

Claimant employed by defendant as a machinist and voluntarily signed up for the company softball team on a bulletin board at work. The team was part of an industrial league and league standings and team scores were published by the Cedar Rapids paper.

The name of the company appeared on the uniforms. The company provided the uniforms, bats and balls while individual members supplied their own gloves, shoes and transportation.

The team did not practice or play on company property and no time off was given to play in the games. No benefits accrued to team members and no supervisor suggested or demanded signing up to play.

Claimant did not claim the team benefitted the company by selling its product, but did suggest that the team builds morale.

The company's personnel manager communicated that the company

relationship with the team was in the form of financial contribution and that uniform advertising had "minuscule" benefit because the company manufactured highly specialized and very expensive equipment and purchasers were highly unlikely to be present to see the uniforms. Also, the personnel manager asserted there was no control over the team, with very little in the way of encouraging participation or spectators.

Issue: Whether or not the employer derived a "substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life" and from advertising.

Rule: If the employer's real purpose in sponsoring and promoting the team is advertising, that alone is adequate to mark it as work connected. But, if the advertising value is incidental, flowing, for example, from the mere presence of the company name on the players' jerseys, this may not be enough, even when combined with evidence of some employer subsidy.

The Commissioner thus adopted the majority view that "morale and efficiency benefits are not alone enough to bring recreation within the course of employment." The court held that there was not enough to bring the team's existence as one having a "substantial, direct benefit" on the employer and, consequently, Claimant's injury did not occur in the course of his employment.

e. Home Office

1) Implicates those issues discussed

regarding "Going and Coming Rule" depending on where you are going, an employee is more likely to be in the course of his/her employment when leaving and returning home; less likely to have fixed hours of employment, which removes the Rule in the first place;

2) Implicates those issues discussed regarding "increased risk" and "Arising Out Of."

REMEMBER MIEDEMA!

ALWAYS KEEP IN MIND THE PARAMOUNT RULE OF CONSTRUCTION: WORKERS' COMPENSATION LAW IS "FOR THE BENEFIT OF THE WORKING MAN AND SHOULD BE, WITHIN REASON, LIBERALLY CONSTRUED."*

*Barton v. Nevada Poultry Co., 110 N.W.2d 660, 662 (Iowa 1961).