

PPD Must Affect a Petitioner's Ability to Work in Order to Apply to the PPD Threshold for Claiming PTD

By Nick M. Matchen

The Minnesota Supreme Court recently held that for the purposes of determining whether an employee has met the Permanent Partial Disability (PPD) threshold for claiming Permanent Total Disability (PTD) benefits, the PPD must impact the employee's ability to secure something more than sporadic employment resulting in an insubstantial income. The case, *Allan v. R.D. Offutt Co.*, 869 N.W.2d 31 (2015), was handled by JLO Partner George W. Kuehner on behalf of the employer and insurer.

The employee, Todd Allan, suffered a low back injury arising out of his employment for R.D. Offutt Co. The employee had to establish a 17% PPD rating in order to claim PTD benefits. The back injury entitled the employee to a 10% rating. To reach the threshold the employee also claimed a 10% rating for the non-work related complete loss of his teeth, which were replaced by dentures.

The compensation judge agreed with the employer and insurer that the loss of teeth should not apply to the PPD threshold. The Workers' Compensation Court of Appeals (WCCA) reversed and remanded, relying on *Metzger v. Turck, Inc.*, 59 W.C.D. 229 (WCCA 1999), where it held that a hysterectomy that did not affect the employee's vocational capacity could nevertheless contribute to the PPD threshold.

The Supreme Court reversed the WCCA and remanded the case after analyzing the statutory framework for PTD benefits. The court found that the language of *Minn. Stat. § 176.101(5)* provides that PTD "means that the employee's physical disability in combination with (the threshold PPD rating) causes the employee

to be unable to secure anything more than sporadic employment resulting in an insubstantial income." *Allan*, 869 N.W.2d at 34. The terms "in combination with" and "causes" require that the disability used to meet the threshold must have a causal effect on the inability to procure employment.

Allan argued that because PPD benefits are payable for functional loss rather than wage loss, a disability that contributes to the PPD threshold does not need to separately contribute to the wage loss caused by the work-related injury. The Supreme Court found this argument unpersuasive.

The court reasoned that *Minn. Stat. § 176.021, subd. 3*, only allows PPD benefits to be awarded for functional loss. PTD benefits, however, require wage loss. The court distinguished between PPD benefits and the use of PPD ratings to establish the PTD threshold. The Court stated that just because PPD "benefits are unconnected to an employee's earning capacity does not mean that an employee's [PPD] rating is similarly untethered to an ability to earn an income, when that rating is used to determine eligibility for [PTD] benefits." *Allan*, 869 N.W.2d at 37.

The court emphasized that the threshold applies to permanent partial disability ratings and is not based on permanent partial disability benefits. The ratings established under *Minn. Stat. § 176.105* is a unit of measure used to determine the extent to which an injured employee is entitled to permanent partial disability benefits. With the adoption of a permanent partial disability rating threshold for PTD benefits that unit of measure must be used in a manner consistent with the PTD benefits (wage loss benefits) to be paid. ●

Firm News

The Firm welcomes Jason M. Hill as a Senior Associate.



Jason has successfully represented, counseled and obtained favorable results for numerous

individuals, businesses and insurers in Minnesota for more than 15 years. Jason's representation and counseling has included everything from pre-suit evaluation and investigation through jury trial and appeal. His practice has included claims and disputes arising out of civil rights and governmental liability, motor vehicle accidents, personal injury, sports and entertainment facility liability, and construction defect liability. Prior to joining the firm, Jason worked for three years with a solo practitioner on Minnesota's Iron Range and for twelve years with a small insurance defense firm in the Twin Cities.

Congratulations!

Congratulations to [George W. Kuehner](#) who prevailed at the Supreme Court in *Allan v. R.D. Offutt Co.*, (A14-1555, Aug 31, 2015). The decision substantially changes the nature of the permanent partial disability threshold requirement an employee must reach before being permitted to assert a workers' compensation claim for permanent total disability.

2015 Legislative Update

By Tessa M. McEllistrem

The 2015 session of the Minnesota legislature provided many alterations and additions to state statutes. Below are a myriad of amendments and legislative changes that will affect health, construction, general insurance defense, and government entities.

Engineering Licensing Standards

As of August 1, 2015, changes were made to *Minn. Stat. § 326.02, subd. 3*, which governs licensure requirements for engineers. The law allows for an easing of certification requirements. Now, a professional engineering license is sufficient to meet state and local requirements to perform any actions authorized under that license. Notably, it does not prevent governmental entities from attaching additional certification requirements when soliciting public contracts for engineering services.

State Hospitals

As of August 1, 2015, *Minn. Stat. § 609.2231, subd. 3(a)* was amended to add extra assault protection at the state security hospital in St. Peter for employees who supervise and work directly with the mentally ill and dangerous patients. As part of this change, patients who assault a direct care worker at a facility can be charged with a felony, rather than a low-level crime. Additionally, the law amended the definition of “secure treatment facility” to include the entire state security hospital, rather than just the sex offender program.

Workers’ Compensation Cases

A new law took effect on August 1, 2015, which allows retired workers’ compensation judges to hear cases at the office of administrative hearings when regularly appointed workers’ compensation judges are not available. Prior to this, workers’ compensation judges had to be state employees unless all other judges were disqualified under the Code of Judicial Conduct. This new change will help speed workers’ comp cases along by allowing more judges to be available to hear cases.

Effective August 1, 2015, *Minn. Stat. § 176.135* was amended in an effort to make workers’ compensation payments to hospitals more in line with Medicare amounts. The maximum payment is set at 200% of the amount paid by Medicare with two exceptions. First, if the charge is over \$175,000, the payment is to be no more than 75% of the hospital’s usual and customary charge. Second, for Critical Access Hospitals, which are in rural areas and 35 miles or more away from another hospital, payment is set at 100% of the hospital’s usual and customary charge.

Minnesota’s Responsible Contractor Law

Changes have been made to Minnesota’s Responsible Contractor Law, *Minn. Stat. § 16C.285*, which governs public construction contracts. The law has been amended to allow for contractors to verify that their subcontractors meet the state’s responsible contractor standards after they have been deemed the successful bidder rather than during the solicitation process. The purpose of this is to streamline the admin-

istrative burdens that are placed on contractors during the bidding process. Additionally, all contractors bidding on public projects that are expected to exceed \$50,000 must comply with workplace laws and regulations, workers’ compensation and wage and overtime pay standards. Furthermore, the definition of “contractor” now explicitly excludes design professionals or material suppliers.

Uber and Lyft

A new law has been issued as a result of Uber and Lyft becoming more popular. *Minn. Stat. § 65.472* defines transportation vehicles, such as Uber and Lyft, as “transportation network company” drivers because they have a special phone app, called a digital network, which allows registered riders to connect through a smart phone to registered drivers when they need a ride. Now, different levels of liability insurance are required depending on whether the driver is just logged into the app, or whether the driver is providing a passenger with a ride. At all times, the driver has to have basic economic loss benefits under the no-fault law as well as uninsured and underinsured motorist coverage to ensure all passengers are protected.

Insurance

As of May 20, 2015, *Minn. Stat. § 169.791, subd. 1* was amended to allow drivers to be able to show electronic proof of insurance through their smartphone application. Additionally, the law provides for default consent to the search of the electronic device when it is provided to an officer to show proof of insurance. ●

JLO Launches New Mobile Friendly Website

On October 19, 2015, Jardine, Logan & O’Brien, P.L.L.P. launched its new website. Designed with mobile users in mind the website features a completely new responsive layout. The same great content is still there, just easier and nicer to look at. This and all past newsletters are available for viewing and download on the Resources Page under Newsletters.

Visit our site on your phone, tablet, laptop or desktop by pointing your favorite browser to www.jlolaw.com

You can also stay connected with us at Twitter and LinkedIn



About the Firm

Jardine, Logan & O'Brien, P.L.L.P., is a mid-sized civil litigation law firm that has handled some of the region's largest and most difficult disputes with outstanding results for clients. Litigation has always been our primary focus. With trial attorneys admitted in Minnesota, Wisconsin, North Dakota, South Dakota, and Iowa, our firm has the ability and expertise to manage cases of any size or complexity. We are trial lawyers dedicated to finding litigation solutions for our clients. View our website at www.jlolaw.com to obtain additional information. Please call us to discuss a specific topic.



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