
 2017 Forum
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Case Law Update 2017

Inconceivable decisions from the courts and LIRC

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Flug v. Wal-Mart Associates, Inc., 2017 Wis. 72 (2017)

- Work related and non work related injury
- Lower court applied §102.42(1m)
- Supreme Court found the Statute did not apply unless the treatment was for a work injury
- Dissent wants to know what happened to the good faith belief of the employee
- Spencer and City of Wauwatosa still good

Outline Page 4

Operton v. LIRC 2017 Wis. 46 (2017)

- Termination of TTD under § 102.43(9)(e)
- Misconduct and substantial fault
- Inadvertent errors are not misconduct or substantial fault
- Intentional errors are a basis for termination for substantial fault

Outline Page 5

Amalga Composites, Inc. v. LIRC, 2016 AP 1445 (July 5, 2017)

- Post-injury job offer contingent on proper documentation of citizenship
- Termination leads to award of wrongful refusal to rehire benefits
- Amalga argued award violated the Immigration Act
- Court said LIRC must determine if employee was an undocumented worker first

Outline Page 6

Erie Barry v. Northstar Logistics, Inc.
2015 AP 1853 (Feb 14, 2017)

- Wrongful refusal to rehire
- Barry claimed no offer, Northstar claimed offer and rejection before termination
- Testimony from Northstar president but not supervisor
- Barry argued dismissal was based on uncorroborated hearsay
- Barry might have won, but for the president

Outline Page 8

Larry Wittmann v. Consolidated Lumber
2016 AP 1228 (May 13, 2017)

- How long is too long for a healing period?
- Broken ankle, but no lost time
- Full duty and healed fracture
- Terminated 8 months later
- Off and on treatment for 4 more years
- TTD claim denied because condition was "stationary" well prior to termination

Outline Page 9

Linda Burt-Redding v. LIRC
2016 AP 916 (July 18, 2017)

- Non-traumatic mental injury
- Threats to life and family are part of the job for police officers
- Police Chief and expert testified that threats aren't unusual
- Possible legislative change

Outline Page 10

DWD v. LIRC
2017 AP 29 (2017)

- Misconduct termination for UI claim
- One unexcused absence not enough
- Statutory interpretation by LIRC says must be two or more
- Supreme Court will decide

Outline Page 11

Judith A. Chovanec v. Wal-Mart
&
Linda Schue-Nilles v. Marketplace Foods

- Chovanec clocked out before she borrowed the tables
- LIRC said her actions were for her benefit, not Wal-Mart's
- Schue did not clock out before changing her shoes
- LIRC applied the "coming and going" rule before she left the building

Outline Page 14

Barry Pipkin v. Nick H. Hull
&
Michael Bukovic v. CPF, Inc.

- Road rage fight for traveling employee
- LIRC applied the "aggressor rule" for fighting even though Pipkin was a truck driver
- Bukovic was stealing while on the clock when he was injured
- LIRC said that stealing put him in a personal deviation when the tank blew up

Outline Pages 15

Mark J. Musial v. City of Green Bay

- Basketball official must be officiating and not playing to make the injury compensable
- Teams request not enough to put him within the scope of employment
- LIRC said the job did not require Musial to play, so the broken leg was not compensable
- What if the employer said he could?

Outline Page 16

Ochieno H. Amos v. Mentor Management
&
Stanley Jacquet, Jr. v. Allstar Exteriors & UEF

- Petition to reopen compromise
- LIRC said Amos failed to prove the required basis to reopen, even though he was pro se
- Jacquet settled with UEF so UEF could go after Allstar
- LIRC said Allstar could not re-open compromise without a hearing on the employment issue

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Outline Page 16

James Rogers v. Meyers Electric, Inc.

- Rogers first argued a traumatic injury and lost
- LIRC left open the right to claim an occupational disease
- Rogers used the same MD to say it was an occupational disease at the 2nd hearing
- LIRC said the MDs' reports were inconsistent and denied the claim... again

Outline Page 17

Adam P. Goodman v. Bartlein Barrels

- Goodman claimed an injury while testing barrels
- He filed records and notes but no WKC-16B or definitive causation report
- LIRC affirmed the dismissal on the lack of a definitive causation report
- Get a 16B!

Outline Page 20

Alvin A. Villareal v. SPX Corp.

- SPX paid short-term disability
- Villareal was awarded TTD
- SPX asked for full reimbursement of the short-term disability benefits under §102.30(7)(a)
- LIRC granted reimbursement, but only during the TTD period awarded

Outline Page 21

Jacob B. Wein v. AD Roofing LLC

- Wein was under 27 when injured
- Wein won his claim for PTD at hearing
- Both vocational experts discussed Wein's plans, before his injury, to go to college
- LIRC affirmed the PTD award, but found the presumption of max wage did not apply
- Wein wanted to work for the DNR after college

Outline Page 21

Randall Adamowicz v. Old Carco LLC

- Adamowicz won a knee PPD claim in 2002
- In 2016 he needed a knee replacement
- Carco argued the 2002 claim was just a temporary aggravation
- LIRC reversed the dismissal finding that issue preclusion applied to the case
- LIRC is now reconsidering the TTD award

Outline Page 22

Janet Mueller v. Ashley Furniture

- Mueller retired before her surgery
- LIRC denied TTD for the surgery
- The Circuit Court sent it back to LIRC
- LIRC said no temporary total or PPD after retirement, even though Mueller was now working part-time

Outline Page 22

Robin Eisenhauer v. Dollar Tree Stores

- End of healing while waiting for treatment
- Eisenhauer wanted a spinal cord stimulator for a conceded injury
- Dollar Tree disputed the need for the treatment
- LIRC affirmed the prospective award for treatment
- LIRC wanted to, but could not award prospective TTD

Outline Page 23

Elizabeth Vera v. Southwest

- Idiopathic defense
- Heavy work right before injury
- Knee popped just walking
- LIRC said heavy work before knee popped was enough

Outline Page 23