



News & Case Notes

<u>Subject</u>	<u>Claimant</u>	<u>38 NCN Issue</u>
<u>AGGRAVATION</u>		
Filed W/I 5 Years of First Notice of Closure (Which Awarded TTD As of Initial Injury) - Carrier's "Nondisabling" Classification Was Improper - "273(4)"	Stuart A. MacDonald	9
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"386(1)" - Carrier's Request For Review Dismissed Without Decision On Merits Of ALJ's Compensability Decision - Claimant Did Not "Finally Prevail" Over Denial; "382(3)" - Carrier's Request Did Not Raise ALJ's "Attorney Fee" Award As Separate Issue	Davynne C. Krossman	2
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Carrier's "Upper Extremity" Denial Included "Epicondylitis/Tendinitis" Condition - Carrier Subsequently Rescinded "Epicondylitis/Tendinitis" Portion of Denial at Hearing Level - "386(1)" Fee Award	Leisa K. Bulick	8
Determination of Reasonable Attorney Fee Award - ALJ's Award Increased - "Out-of-Town" Travel to Hearing, Substantial Benefit Considered - Board Encourages Submission of "Rule-Based Factor" Information to ALJ Before "Attorney Fee" Determination - "015-0010(4)"	Brian E. Nodurft	4
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<u>Subject</u>	<u>Claimant</u>	<u>38 NCN Issue</u>
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Current "CTS" Occupational Disease Claim Not Precluded by Prior Unappealed Denial of Hand/Finger Numbness - Not "Same Condition"	Laurie A. Followell	10
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Combined Condition: "Ceases" Denial - Requisite "Change" Since Acceptance Not Proven - Physicians Supported "Change" During "Acceptance" Period - "262(6)(c)"	Clara A. Zehrt-Shay, DCD	4

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Injury While Walking During "Rest Break" - Tripped on Public Sidewalk After Talking on Cell Phone Regarding "Work-Related" Matter - Not a "Social/Recreational" Activity "Primarily for Personal Pleasure" - "Arose Out Of " & Occurred "In The Course Of " Employment	Priscilla V. Lowells	11
"Mixed Risk" Doctrine - Fainting While Snow Shoveling At Work - "Personal/Work Related" Reasons For Fainting - Injury "Arose Out Of " Employment	Torrey F. Wolbert	6
"Off-Day" MVA - Delivering Cash To Employer For Office Holiday Pizza Party - "Special Errand"/Within "Reasonable Bounds" of Employment/For Employer's Benefit - Injury Occurred W/I Course & Arose Out of Employment	Cassandra Sumner	6
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"Rest Break" Fall/Parking Lot - No "Employer Control" - Area Where Claimant Performed Regular Work Duties	Justin Walker	10
"Rest Break/Walking" Injury - "Personal Comfort" Doctrine - But, Did Not "Arise Out of " Employment - No "Employment" Risk - Tripped on Public Sidewalk	Katherine Mandes	3
Slip/Fall On Employer's Premises During Paid Rest Break - Met "Course Of " Prong Via "Personal Comfort" Doctrine - Met "Arising Out Of " Prong Because Returning From "Smoke Break" On Public Street Because Employer's Premises "Tobacco Free"	Donna L. Combs	2
"Social/Recreational Activity/ Primarily for Personal Pleasure" - "Traveling Employee" Injury While Walking to Convenience Store - Statutory "Exclusion" Applied - "005(7)(b)(B)"	W. Leigh Castleton	11

<u>Subject</u>	<u>Claimant</u>	<u>38 NCN Issue</u>
"Unexplained Fall" - Claimant's Fall/ Injury at Work (Due to Syncopal Episode) - "Facially Nonspeculative Idiopathic Explanation" - Not "Unexplained," Did Not "Arise Out of" Employment	Suzanne M. Brockie	12
"Unexplained" Injury - "Loss of Consciousness" While Driving Employer's Truck - No "Facially Nonspeculative Idiopathic Explanation" - "Arose Out of" Employment; Also, "Increased Danger" Rule Applicable	Maxim Glodyanu	12
<u>DEATH BENEFITS</u>		
"Dependent" - Decedent's Mother Dependent On Worker's Income (In Whole or Part) To Maintain Mode Of Living - "204(4)(a)", "005(10)(a)(A), (C)"	Bradley D. Yonker	2
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Impairment Findings - Apportionment - Impairment Related to "Undiagnosed" Condition Not Ratable - Superimposed/Unrelated Condition - "035-0007(1)(b)(B)"	Reina Cruz-Salazar	5
Impairment Findings - Arbiter Findings (Invalid/Unrelated to Accepted Condition) Not "Ambiguous" - "AP-Ratified" Findings Not More Accurate - "Only "AP," "AP-Ratified," & "Arbiter" Findings Can Be Considered	Adam A. Arevalo, Jr.	9
Impairment Findings - "Brain Impairment" - Arbiter's "Invalid" Findings "Ambiguous" In Light of Claimant's Documented Symptoms - "AP" Opinion Constituted "More Accurate Evidence" (Addressed "035-0390" Criterion)	Brandy C. Aguirre	9
Impairment Findings - "Class 2" (Mild) Brain Impairment - "AP's" Opinion (Concerning Effects on Condition if Claimant "Returned to Work") Not Considered Speculative - "035-0400(5)"	Timothy Leak	10
Permanent Impairment - "Chronic Condition" - "Significant Limitation/Repetitive Use" - "035-0019(1)(b)"	Kristopher K. Norton	11
Permanent Impairment - No Apportionment - No "Pre-Closure" Denial of Combined Condition - Caren Applied	Alicia Bermejo-Flores	11

<u>Subject</u>	<u>Claimant</u>	<u>38 NCN Issue</u>
<u>HEARING REQUEST</u>		
"Good Cause" For Untimely Filed Request Not Established - Denial Not Confusing About "60-Day Period" to Timely File Request, No Evidence That Claimant Misled by Carrier - "319(1)(b)"	Daron J. Havlik	4
Untimely Filed From Carrier's Claim Denial - Filed More Than 60 Days After Claimant's Receipt of Denial - Specific Mailing Date of Denial Not Established, But Record Established Denial Had Been Mailed to Correct Address (And Received by Claimant) - "319(1)"	Christy L. Bolta	12
<u>INTERIM COMPENSATION</u>		
No "AP-Authorized" TTD Benefits Established - "262(4)(a)," "005(12)(b)"	Ted B. Minton	4
Impairment Findings - Apportionment - Impairment Related to "Undiagnosed" Condition Not Ratable - Superimposed/Unrelated Condition - "035-0007(1)(b)(B)"	Donald J. Dugas II	5
<u>ISSUE PRECLUSION</u>		
"Alternative" Findings in Prior Litigation Order Not "Preclusive" on Current Litigation - Two Proceedings (Concerning Separate Claim Closures for Different Conditions) Did Not Involve Same "Operative Facts"	Johanna L. Southard	9
<u>JURISDICTION</u>		
"Aggravation" Claim Not Filed W/I Five Years of First Claim Closure - Hearings Division Lacked Authority to Consider - "273(4)(a)" - "Claim" Must Be Processed as "Own Motion" Claim (Assuming No "Compensability/Responsibility" Dispute) - "267(3)"/"278"/"012-0030(1)"	Leisa K. Bulick	8
Hearings Division Authorized To Consider Decedent's Mother's Hearing Request Regarding "De Facto" Denial Of "Dependent" Claim - Filed W/I Two Years Of Claim - ARU's Order On Reconsideration (Concerning Decedent's "Fatality" Claim) Not Preclusive On "Beneficiary" Claim - "319(6)", "030-0015(1)(c)(B)"	Bradley D. Yonker	2

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MEDICAL SERVICES

Gastric Bypass Surgery - Directed Solely to Unrelated Obesity, Not Accepted Low Back Condition - Not Compensable - "245(1)(a)"	Richard Verkist	3
"Hardware Removal" Surgery - Directed to "Combined Condition" - "Effective Date" of "Ceases" Denial Was After Surgery Requested - "245(1)(a)"	Fred D. Harris	1
MRI Directed "In Material Part" to Accepted Knee Condition - Carrier Responsible for Medical Service Even if Partially Due to Noncompensable Degenerative Condition - "245(1)(a)"	Daniel B. Slater	8
"Prosthetic-Related" Dispute (Monitor, Replace, Repair) - Jurisdiction Rests With WCD - "704(3)(b)(B)", "245(1)(c)(E)"	Jack L. Edwards	5
Surgery "Due in Material Part" to "Work Accident" - Partial Relationship to "Off Work" Incident Not Determinative - WCB Retains "Causal Relationship" Jurisdiction Irrespective of "AP" Change of "Causation" Theory	Jose L. Cardona-Ornelas	7

MEDICAL OPINION

"Changed" Opinion Not Discounted - "Change" Explained, Physician Maintained Opinion That Initial Treatment Related to Work Incident	Angie M. Soto	10
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MEDICALLY STATIONARY

"030-0035(4)" Did Not Apply - No "Conflict" In "Med Stat" Date; Even If "Conflict," Conditions "Med Stat" On Earlier Exam Date	Johanna L. Southard	6
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MENTAL DISORDER

Stress From "Emergency Dispatcher" Duties, Major Cause (By "Clear & Convincing Evidence") of "PTSD" Claim - "Non-Excluded" "Work-Related" Stressors Must Be Weighed Against Statutorily Excluded "Work-Related" Stressors & "Nonwork-Related" Factors - "802(3)"	Sheila Minor	4
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NEW/OMITTED MEDICAL CONDITION

Claimed Traumatic Brain Injury (TBI) Encompassed In Previously Accepted Concussion Condition - Carrier's "Compensability" Denial Set Aside	Kelli Phillips	3
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<u>“NON-COOPERATION” DENIAL</u>		
Carrier’s Denial & “Suspension” Request Invalid - Based On Claimant’s Failure To Arrange Interview - Carrier’s Notice Did Not Include “Date, Time, Place” Of Interview Under “0060- 0135(2)(a)” - Did Not “Strictly Comply” With Rule	Gustav A. Schenk	2
“262(15)” - Claimant “Reasonably Cooperated” with Carrier W/I 30 Days of WCD’s “Suspension” Order - Denial Procedurally Invalid	Basil D. Yauger	8
“Reasonable Cooperation”W/I 30 Days of WCD “Suspension” Order - Carrier’s Denial Procedurally Invalid - “262(15)”	Basil D. Yauger	11
<u>OWN MOTION</u>		
“278(1)(a)” - Worsening - “Disability Date” - Surgery Recommendation/Inability to Work Due to “Current Worsening”; “Work Force” - Established by “Work Search” Affidavits/Applications	Collin D. Stringer	8
Attorney Fee - Must Be “Instrumental” in Obtaining Voluntary Reopening/Resulting in TTD - “015-0080(2)”	Rafael Corona-Gambino	10
Attorney Fee - Voluntary Claim Reopening - Attorney’s Services Did Not “Result In Increased TTD” - “015-0080(2)”; Penalties/ Attorney Fees - Untimely Voluntary Reopening, Unreasonable Refusal To Close Claim, Untimely First Installment of PPD Award - “262(11)(a),” “012-0110(1),” “012-0036(3)(a),” “015-0110”	Rigoberto Gonzalez-Hernandez	6
Deferral of Review of “NOC” - Carrier Must First Close Previous “Vocational Assistance” Claim Following “ATP” - “268(10)”	Adele H. Tom	1
“Post-Arbitrator Report” Raising of “Premature Closure” Argument/Untimely Raised - Carrier’s TTD Argument Reviewable Based on Claimant’s “NOC” Appeal - “Hearing Referral” on TTD Issue Unnecessary (Record Sufficiently Developed) - Unreasonable Failure to Pay TTD Award from NOC	Larry D. Higgins	7
PPD - No Prior Award - No “Redetermination” - “278(2)(d)” N/A - Impairment Finding Related to Prior Accepted Condition Not Ratable For New/Omitted Medical Condition	Eddie M. Querner	1

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OWN MOTION (CONT.)

“PTD” - “Work Force/Futility” Requirements Must Be Established As of “NOC”; “Work Disability” - “Education” Value - Claimant’s Affidavit (Stating No “High School Diploma/No GED”) Outweighed Form Indicating “College Courses”; Penalty - Discovery Violation - “012-0110(1)”	Sandra L. Sanders	10
“Redetermination” - Evaluation of “Current” Permanent Impairment of Body Part - Impairment Values for Distal Body Parts (Thumb, Finger) Converted to Proximal Body Part (Hand)	Richard L. Zach	2
“Worsened Condition” Claim - Reopening Denied - Claimant Not In “Work Force” On “Disability Date” (When Surgery Recommended)	Collin D. Stringer	3

PENALTIES

Continuation of Denial After “Legitimate Doubt” Destroyed - Denial Unreasonable	Devynne C. Krossman	2
Record Lacked “Amounts Then Due” - Penalty Not Assessable - “262(11)(a)”	Devynne C. Krossman	7
Refusal to Close Claim Not Unreasonable - Carrier Scheduled “WCE” W/I a Week of Receiving “AP” Closing Exam Report (Which Had Not Specified “RFC”) - “268(5)(f)”	David W. Kerrigan	12
Unreasonable Claim Closure - “268(5)(f)”	Juan M. Orta-Carrizales	7
Unreasonable Denial - Employer’s Investigative Report/Physician’s “Causal Relationship” Opinion - Eliminated “Legitimate Doubt” for Carrier’s Liability for Injury Claim	Nayef Salem	5
Unreasonable Failure to Timely Accept/Deny “New Occupational Disease” Claim Unreasonable - Prior “Injury” Denial Did Not Encompass Later “New O.D.” Claim - No “Amounts Then” to Base Penalty, But “Attorney Fee” Awarded - “262(11)(a)”	Ted B. Minton	4
Unreasonable “NOC” - “Insufficient Information” to Close Claim - Carrier Did Not Seek Clarification of “AP” Inconsistent “Work Release” Statements - “268(5)(f)”	Marshall E. Shaw	11

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<u>PREMATURE CLOSURE</u>		
"Insufficient Information" to Close Claim - Carrier Did Not Seek Clarification of "AP's" Inconsistent Opinions - Closure Unreasonable - "268(5)(f)" Penalty Awarded	Humzah Al-Rawas	10
<u>PREEXISTING CONDITION</u>		
Prior "Arm/Shoulder Blade" Treatment - Not For Currently Claimed Rotator Cuff Tear/Biceps Tendinitis - Not "Arthritic Conditions" - "005(24)"	Roger A. Miller	3
<u>REMANDING</u>		
"Post-Hearing" CT Scan/Physician's Chart Notes - Unobtainable at Hearing Level/ Reasonably Likely to Affect Outcome - "Compelling Reason" to Remand - "295(5)"	Marcos E. Miralrio-Guevara	10
<u>RESPONSIBILITY</u>		
"308(1)" - Applied to Dispute Regarding "Same Condition" Between Multiple Employers/Insurers - "Pilgrim" Rationale Applicable to O.D. Claims with Same Employer/Insurer	Leisa K. Bulick	8
"LIER" - "Impossibility/Sole Cause" Defense Not Established by Last Carrier - "Actual Causation" Not Applicable Because Compensability Conceded/Claimant Did Not Assert "Actual Causation" Against Any Employer	John M. Burlington	4
<u>SANCTIONS</u>		
"390" - Record Did Not Establish That "Withdrawn" Request For Review Was Frivolous, Without Reasonable Prospect of Prevailing	Devynne, C. Krossman	2
<u>SCOPE OF ISSUES</u>		
"O.D." Claim Not Raised At Hearing (Which Concerned "New/Omitted Medical Condition" As Related To Accepted "Injury") - "O.D." Raised During Closing Arguments - Untimely	Socorro Martinez-Munoz	6

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STANDARDS

Work Disability Award Not Warranted - "AP" Released Claimant to "At-Injury" Job - "AP" Restrictions Affected Manner of Performing "At-Injury" Job Duties, But Did Not Affect Ability to Perform Customary/Recurring Duties - "214(2)"/"726(4)(f)(E)"	Pamela K. Ruis	12
Work Disability - Release to "Modified" Job Claimant Was Performing at Time of Injury - Not Release to "Regular Work" (Recurring, Customary Job) - "214(1)," "035-0005(15)"	Pedro Perez-Hernandez	11
Work Disability - "AP" Release to "Regular Work" ("At-Injury" Job) - No Entitlement to "Work Disability" - "214(2)," "726(4)(f)(E)"	Marshall E. Shaw	11

SUBJECT WORKER

"Nonsubject Worker" Exception ("027(15)(c)") - Claimant Did Not "Furnish" Truck to Motor Carrier - Had No "Transferable Interest" in Truck Leased to Carrier	Carl S. Ward	4
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THIRD PARTY DISPUTE

No Portion Pertained To "Loss of Consortium" Claim - All Settlement Proceeds Subject To Carrier's "Third Party" Lien - Claimant's Litigation Costs Recoverable To Extent Reasonably/Necessarily Incurred In Third Party Action	Terry S. Powers	2
Projected Future Expenses/Present Value - "Reasonably Certain" to Be Incurred - "593(1)(c)"	Zeferino Vasquez-Sanchez	11
Reimbursement for Litigation Expenses - Must be "Reasonably/Necessarily" Incurred in Third Party Litigation - "Filing Fees" in "Wrong" Jurisdiction Not Reimbursable - "Extraordinary" Attorney Fee Not Warranted - "593(1)(a)"	Robert Mackie	7

TTD

Termination of Employment ("325(5)(b)") - "Work Rule" Violation/"Disciplinary Reason" Not Established	Hipolito Coria	7
"Termination" of Employment - "325(5)(b)" - Record Did Not Support Termination For "Work Rule" Violation - Claimant Provided Written Notification of Work Release	Ronald D. McAllister	6

Subject Claimant 38 NCN Issue

WORKER REQUESTED MEDICAL EXAMINATION

WCD Authorized to Rescind/Reconsider Initial
“Approval” Order W/I 60-Day “Appeal Period” - “AP”
Concurrence With IME Report - No Entitlement to
“WRME” - “325(1)(e)"/“060-0147”

Michael R. Greco Sr.

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