

Another beautiful job by a majority of the Wyoming Supreme Court

To appeal a decision concerning worker's compensation benefits is like prosecuting a claim of medical malpractice. The injured seldom wins. The medical community is not judged as mortals but as infallible. They're not, of course, but that is how courts and determining bodies almost always rule.

But, not always.

Occasionally, a worker injured on the job does prevail. Seldom, but sometimes.

In the recent Wyoming Supreme Court opinion (*Straube v. State of Wyoming*, 2009 WY 66, S-08-0106), almost everybody along the line had ruled against the injured worker. For the employer.

The incestuous relationship between doctors hired to render medical opinions for the State Workers' Comp Division and the Division creates an uneven playing field.

When your check comes from one place and another wants you to render an opinion that might end that gravy train, you will tend to favor the one signing the check. Nothing different about that - just a fact of life.

In this case, a worker injured his knee only three days after going to work for a company. He was a "pipeline helper."

His treating physician in Gillette was given approval to perform a surgery as a worker's compensation claim.

The worker's knee did not fully recover. Over time, he was examined by other doctors and a subsequent surgery was recommended. He had a pre-existing condition in his knee at the time of his at-work injury.

That's where the rubber met the road.

Doctors favorable to the Medical Commission wrote that the pre-existing condition disqualified him from having the later surgery as a Workers' Comp benefit. An out-of-state physician and the Gillette physician said the pre-existing condition by itself would not have caused the problems the guy was experiencing.

Two Cheyenne orthopaedic surgeons

provided the Medical Commission the defense they needed to deny the claim. Neither doctor examined the claimant, they only reviewed the record. It must be so much more convenient to read about something instead of actually examining a real live human being. Quicker. More profitable. As Justice Golden wrote in the majority opinion, the two doctors did not even identify the medical records they reviewed.

There's a story on page 8 about another guy who was treated like chattel. Property. A disposable employee.

Occasionally, someone with authority has to do what the Supreme Court did here. A majority said: "Look, this is human being. He deserves to be treated like one. Employers may not have a conscience. We do." Sometimes, err on the side of compassion. Of decency. Of morality.

Justice Golden's words in the ruling

¶16 With these principles in mind, we now turn to Straube's complaints. We find it expedient to identify the focus of our analysis. It is undisputed that Straube suffers from a preexisting condition. It is also undisputed that Straube suffered a compensable material aggravation of this preexisting condition. Straube's first surgery on August 26, 2005, was covered as being directly necessitated by the work injury. The question before us is therefore whether the need for the proposed second surgery is also causally related to Straube's work injury.

¶17 In support of its decision to deny benefits, the Medical Commission relied on the reports from Dr. Davis and Dr. Whipp. The opinions of these doctors are not based so much on medical information as their individual thoughts on the state of the law. (See Note A) Dr. Davis stated that he thought about the situation and, since the initial injury could have occurred at anytime, the consequences of the surgery should not be the responsibility of the Division. The injury did not, of course, happen at just anytime, it happened while Straube was on the job. As already noted, an employer takes an employee as he finds him. *Lindbloom*, 684 P.2d at 1389. The Division recognized this rule when it initially granted benefits for a material aggravation. Because benefits were granted for the consequences of the injury, anything that is a direct continuing consequence is also covered. Dr. Whipp discussed apportionment. So did the Medical Commission. The Medical Commission's ultimate conclusion was, since apportionment under these circumstances is not legally allowed, then no benefits should be granted.

¶18 Needless to say, it is not for doctors or the Medical Commission to question public policy, let alone thwart it. The inability to apportion the medical consequences of a work injury between the immediate injury and a preexisting condition is not a reason to deny benefits. Benefits are awarded if the medical consequences are causally related to the work injury. The evidence in this case supports such causal connection. Straube's knee never fully recovered after the work injury, as evidenced by the continued weakness in the knee and Straube's continued pain. More importantly, the only medical evidence directly on point comes from Dr. Dunn, who unequivocally stated the currently recommended surgery would not be necessary had it not been for the work injury. We must, therefore, conclude that the decision of the Medical Commission is against the overwhelming weight of the evidence.

¶19 The decision of the Medical Commission is reversed. This case is remanded to the district court to reverse the order denying benefits and for entry of an order granting benefits.

(A) We note that the doctors responsive reports fail to identify the medical records they reviewed.

Justice Burke dissented, Chief Justice Voigt joined dissent

Next Issue - June 16th

Channel 5 back on Bresnan

Ho hum.

Except for a concern that some decent people would lose their jobs if Channel 5 and Bresnan hadn't reached a settlement, their impasse didn't make much difference to most Cheyenne residents.

It was maybe ten days but it seemed like just overnight. Hardly time to miss 'em. Channel 5 didn't go dark on the cable system - it was used to simulcast the Weather Channel. So the one thing viewers feared they would miss was covered more than ever on that channel - weather.

CBS programming also comes from Denver so popular shows weren't lost. The syndicated shows on Channel 5 might be better missed anyway. Bresnan put the Denver CBS station on HD so that improved the picture quality on those sets. Channel 5 on HD has a tendency to "freeze" for seconds at a time.

So, everything considered, losing KGWN for a few days was hardly noticeable.

What was noticeable were the efforts by Channel 5 to direct viewers to DISH, a satellite provider. Perhaps Bresnan was asleep and didn't notice how Channel 5 shilled for a Bresnan competitor during their brief split.

Channel 5 went a bit overboard in trying to damage Bresnan's business while in negotiations to get back on the air to cable customers. People who made the quick switch to DISH may be surprised to learn what they *won't* get to see when UW football season comes. DISH doesn't offer *the mtn*. And switching just to pick up Channel 5 when viewers should have known KGWN would have to cave in before advertisers started to desert them ended up being premature. Impetuous.

The long and short of it is that Channel 5 wasn't much missed. But it's good that the dispute was quickly resolved before some of the KGWN employees were terminated. They're some good people.

It ended well. And DISH probably picked up a few new customers. Now, wait until October. No MWC football games.



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