

Departing from Typical Decision Affirming Trial Judge, Appellate Court Vacates Judicial Decision and Remands for Reconsideration

In the matter of *Van Artsdalen v. Fred M. Schiavone Construction*, the Appellate Court vacated the Workers' Compensation Judge's (WCJ) decision based on the standard review criteria as set forth in case law.

In this matter, the employee, Thomas Van Artsdalen, was injured at Schiavone Construction in 2012. Conservative authorized treatment was provided for Van Artsdalen from January 2012 through May 2012, when he was authorized to return to work. Due to lack of work for him, he didn't return until July 2012, and then he retired in September 2013. Van Artsdalen received additional authorized treatment in 2013, and treatment ended in September 2014. At the conclusion of treatment, both sides obtained permanency evaluations.

The parties were unable to reach a settlement and the matter was tried on March 10, 2016, with only the employee being called to testify. The parties agreed to a trial on reports, whereby the expert reports were submitted for the Court's consideration without testimony. The WCJ found that the employee suffered a permanent disability of 47.5 percent of partial total disability to his lower back. The Court found the employee's expert to be more credible than the employer's expert. The WCJ, while noting that the employee did not have surgery, concluded that the injuries were "inoperable as no surgical intervention was available to relieve (employee's) pain due to the multiple levels and types of disc pathology." Using the criteria, as well as other alleged facts, the Court found the employee's "disability rating worse than one who could obtain relief from a procedure or operation." The estimate of disability was appealed on the theory that the Court's determination was not based on "substantial evidence in the record."

The Appellate Court noted that its review of decisions in workers' compensation cases is "limited" to whether the findings made could have been reached on sufficient credible evidence present in the record. Deference must be accorded "unless manifestly unsupported by or inconsistent with competent relevant and reasonably credible evidence as to offend the interests of justice."

Despite these stringent standards on appeal, the Appellate Court determined that the Judge's reliance on the alleged facts that the employee's injury was inoperable, and that the employee took days off during the years of employment, were facts which were not found in the evidence. These "facts" were central to the Judge's determination that the employee's disability rating was worse. None of the above was supported by testimony of either the employee, nor was it noted in any expert report. Therefore, the decision was vacated and the matter was remanded back to the Court for further consideration.

Comment: Where the lower Court relies upon reasonable credible evidence contained in the record created at trial, the Appellate Court will not impose its own opinion as to the resolution of a case. Where the Court relies upon information not contained in the record or supported by any credible evidence, the Appellate Court has the duty to vacate a decision. Close review of the initial judicial decision must be done after trial to make sure the opinion being expressed by the Court is based on reasonable credible evidence found in the record.

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