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The Brown & Carlson Insight

Allan v. R.D. Offutt Co.

(Changing the future of PPD Thresholds for PTD cases)

[Minnesota Supreme Court
8/31/15 Allan Decision](#)

On August 31, 2015, the Minnesota Supreme Court released the much anticipated opinion of *Allan v. R.D. Offutt Co.* This was a hotly contested case that included amicus briefs from both the Minnesota Defense Lawyers Association and Minnesota Association for Justice. It was a very close 4-3 decision in favor of . . . the defense!

In *Allan*, the employee was making a claim for permanent total disability benefits. Before getting to *Allan*, let us first discuss the history of permanent partial disability thresholds as it relates to permanent total disability claims. As you know, in order to qualify for permanent total disability benefits, one must first meet certain permanent partial disability thresholds. This rating is either 13, 15 or 17 percent depending on an employee's age and education at the time of injury. After meeting this threshold, an employee can then make the argument that they are permanently and totally disabled based on their injuries, restrictions, age, education and inability to secure anything more than sporadic employment resulting in an insubstantial income. There is a string of Minnesota Workers' Compensation Court of Appeals decisions that are often cited by petitioner attorneys that hold that non-work related PPD ratings can be rated under the PPD schedule and used to meet the PPD threshold. In addition, the prior cases hold that the non-work related PPD does not have to restrict the employee's work activities. For example, in *Metzger v. Turck, Inc.*, 59 W.C.D. 229 (1999) the employee's non-work-related hysterectomy surgery, together with a work related spinal disability could be combined to meet the PPD threshold. This has been the law of the land . . . until now!

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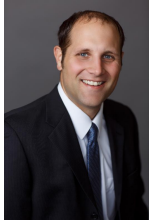
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In *Allan*, the employee needed to satisfy the 17% PPD threshold to qualify for PTD benefits. He had a 10% PPD rating



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for his back that was related to the work injury. He then used non work-related PPD ratings from his complete loss of teeth to qualify for an additional 10% in order to meet the threshold. At the Hearing level, the Compensation Judge found he did not meet the 17% threshold because the loss of teeth was fully corrected with dentures. On appeal, the WCCA reversed and remanded the Compensation Judge's decision. The WCCA concluded that the correctable nature of his teeth loss was irrelevant to whether it could contribute to his overall PPD ratings. The WCCA also relied on its prior holding in *Metzger* by stating that the loss of teeth need not affect his employability in order to contribute to his PPD ratings.

In the recent Supreme Court opinion, the WCCA decision was reversed. The opinion did an excellent job analyzing the definition of permanent total disability benefits in Minn. Stat. § 176.101, Subd. 5(2). In doing so, the Court held that the Statute "unambiguously requires that disabilities that contribute to an employee's permanent-partial-disability must affect employability." Thus, the Supreme Court finally adopted the standard that we as defense attorneys, employers, and insurers have been arguing for years. The Supreme Court opinion overturns the prior WCCA decisions on this issue. It should be noted that the Supreme Court also remanded the case back to the WCCA because they did not address whether the loss of teeth affected his employability. I suspect that it does not and the employee will not be able to overcome the PPD threshold and his claim for permanent total disability benefits will be denied.

What does this mean for future permanent total disability cases? Employees must now prove that their non-work related PPD ratings actually affect their employability, such as providing them with ongoing work restrictions. The days of simply stating that the female employee had a hysterectomy so she overcomes the PPD threshold are over. The days of the employee stating that he or she had their teeth pulled so they overcome the threshold are over. While this will create another issue that must be addressed at Hearings (does the employee's non-work related PPD rating affect his/her employability), it certainly will make it more difficult for employees to prove entitlement to permanent total disability benefits. This is a trade-off I think we are all willing to accept!

Click on the link if you would like to see a copy of the decision.

If you have any questions regarding your permanent partial or permanent total disability claims, please contact us at Brown & Carlson.

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