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Medical Cannabis-The Haze Clears

By Chris Yoshimura-Rank

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The W.C.C.A. issued two opinions on medical cannabis and its role in the Minnesota workers' compensation system on November 10, 2020.

In *Susan K. Musta v. Mendota Heights Dental Ctr., et. al.* No. WC19-6330 (W.C.C.A. November 10, 2020), an employer and insurer appealed a compensation judge's award of out-of-pocket expenses related to the purchase of medical cannabis. The employee sustained a work-related injury to her neck in 2003. She was subsequently certified as having intractable pain, allowing her to obtain medical cannabis. The parties stipulated at hearing that the employee's use of medical cannabis was reasonable, necessary, and causally related to the work injury. However, the employer and insurer declined to reimburse the employee for the out-of-pockets related to obtaining medical cannabis, citing that federal law pre-empted the Minnesota Medical Cannabis Therapeutic Research Act and precluded them from reimbursing the employee. The W.C.C.A. held that since there was no dispute that the employee's use of medical cannabis was reasonable, necessary and causally related treatment for the work injury, the W.C.C.A. awarded reimbursement under Minn. Stat. 176.135. The W.C.C.A. specifically declined to address whether federal law pre-empted the Minnesota Medical Cannabis Therapeutic Research Act because, to do so, would require the W.C.C.A. to interpret and apply laws beyond the limited jurisdiction of the Court.

In *Bierbach v. Digger's Polaris, et. al.* No. WC19-6314 (W.C.C.A. November 10, 2020), an employer and insurer appealed a compensation judge's award of out-of-pocket expenses for medical cannabis on the basis that the employee's use of medical cannabis was reasonable and necessary medical treatment that was causally related to the work injury. The employee sustained an admitted, work-related injury to his ankle in 2004. Given his significant ongoing symptoms related to the injury, the employee was admitted to the Minnesota medical cannabis registry following an intractable pain diagnosis. At the time of the hearing, the employee's monthly cost for medical cannabis had doubled to \$1,863.71, and the employee sought reimbursement for out-of-pockets related to the cost. On appeal, the employer and insurer argued, in part, that the compensation judge lacked jurisdiction to order the employer and insurer to finance the employee's medical cannabis use and that federal law that made it illegal to possess, distribute or manufacture cannabis pre-empted state law and, therefore, it was a crime for the employer and insurer to reimburse out-of-pockets related to state-authorized medical cannabis. In affirming the lower court's decision, the W.C.C.A. concluded, in part, that a compensation judge has jurisdiction to adjudicate all issues that fall under the workers' compensation act, specifically including the compensability of medical cannabis treatment for a work-related injury under Minn. Stat. 176.135. The W.C.C.A. further declined to address whether federal law pre-empted the Minnesota Medical Cannabis Therapeutic Research Act due to lack of jurisdiction to decide such issue.

Major Takeaways:

- Compensation judges and the W.C.C.A. have jurisdiction to adjudicate whether the use of medical cannabis is reasonable and necessary care and treatment as the result of a work-related injury and award reimbursement of costs associated with the use of medical cannabis, if deemed appropriate.
- Neither the W.C.C.A. nor compensation judges will adjudicate whether the federal Controlled Substances Act pre-empts the Minnesota Medical Cannabis Therapeutic Research Act, as the issue is beyond their jurisdiction.

If you have any questions regarding the above, or any other workers' compensation matter, please feel free to call Chris at (763) 252-6371.

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