

## **Stipulations Regarding Time Loss Compensation May Tie Employers' Hands**

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Pursuant to state's worker compensation statutes, injured workers can receive paid medical treatment and compensation for lost earnings, which is known as "time loss." Employers often stipulate that a worker has suffered an injury on the job in order to streamline the process and ensure that the worker receives compensation as soon as possible. That stipulation may have a significant impact later if the worker and/or the employer decide to appeal the resulting time loss award. In *Chunyk & Conley/Quad-C v. Braw*, 156 Wn. App. 246 (2010), such an employer stipulation resulted in the Court's setting aside a jury verdict that a worker was not injured.

In *Chunyk*, the worker had fractured her right wrist while playing softball resulting in an arm cast, and while at work, she slipped carrying patient binders because of the pain in her wrist. Her right arm contracted at the elbow, her hand contracted into a claw, and her whole arm became sensitive. She was one armed, slow and awkward, in pain, mentally distracted and suffered memory loss. Washington Labor & Industries ("L&I") determined that she had sustained an industrial injury when the patient binder struck her cast and the injury aggravated her pre-existing non-work related wrist fracture (i.e., the softball game injury). The employer, for whatever reason, stipulated that such on-the-job incident had caused the worker's injuries. The worker then began working off the clock, sleeping at the job, and/or taking work home. Her supervisor reprimanded her for taking patient files to her house. Believing that the employer would eventually fire her, the worker quit. She took a new administrative nursing job and experienced the same limitations. She was then fired. She then worked as a home companion for an elderly woman, providing home care services. Again, she was fired. At this point, she stopped working.

L&I determined that her industrial injury caused a "temporary total disability" so that she was entitled to time loss compensation for approximately four years. This time loss award included money for chronic pain and depression. Her initial employer challenged L&I's earning capacity determination, asserting that the worker could in fact find a job (as she had done on two separate occasions after leaving the employer). At trial, several physicians testified that the worker's chronic pain syndrome and depression were unrelated to the industrial injury and challenged L&I's diagnosis of the extent of her claimed injuries. The worker had extensive family history problems, which were alternate explanations for her claimed depression. The jury agreed, overturned L&I's determination, and found that the worker was not entitled to four years of time loss compensation.

The worker appealed and argued that, because the employer had previously stipulated her work injury caused these conditions, the employer should not have been allowed to contest the "time loss" award. The reviewing Court agreed and held that the judge engaged in reversible error by allowing the jury an opportunity to evaluate whether the workplace injury, in fact, caused her chronic pain and depression.

The takeaways from *Chunyk* are that employers should participate and contest any claim for workers' compensation, and also not stipulate to causation. Delaying or failing to participate in

the claim process and/or administrative review can lead to an accepted condition that will entitle the worker to time loss payments. Thus, a prudent employer will be on top of workers' compensation claims and participate in the process to ensure fair and adequate handling of claims and to limit time loss payments. Another takeaway from Chunya is that softball can be dangerous - both for the worker and the employer.