



# Iowa General Assembly

## 2012 Legal Updates

Legislative Services Agency – Legal Services Division

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**Purpose.** Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.

### **WORKERS' COMPENSATION - "SUITABLE WORK" AND INDUSTRIAL DISABILITY**

Filed by the Iowa Supreme Court

March 2, 2012

*Neal v. Annett Holdings, Inc.*

No. 10-2117, 814 N.W.2d 512 (Iowa 2012)

[http://www.iowacourts.gov/Supreme\\_Court/Recent\\_Opinions/20120302/10-2117.pdf](http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20120302/10-2117.pdf)

Rehearing denied May 2, 2012

**Facts.** In September 2007, Tim Neal (Neal) injured his shoulder while employed as an over-the-road truck driver by TMC Transportation, a division of Annett Holdings (Annett). At this time Neal resided with his wife and three children in Grayville, Illinois. Due to the injury, Neal's doctor imposed work restrictions. Annett offered Neal light-duty work in Des Moines, which is 387 miles from Grayville, and a motel room and transportation expenses to return to his home every other weekend.

Neal testified that before his injury, he returned home every weekend and sometimes during the week, but if he worked in Des Moines, he would only be able to return home every other weekend. Neal declined Annett's offer of light-duty work in Des Moines. In response Annett suspended Neal's workers' compensation benefits.

#### **Procedural Background**

**Workers' Compensation Commission.** In February 2009, an arbitration hearing was held on Neal's workers' compensation claim. In the arbitration decision, the deputy workers' compensation commissioner concluded that Annett properly suspended Neal's temporary disability benefits because he refused to accept "suitable work" offered, as required in Iowa Code section 85.33(3). The deputy commissioner also concluded that Neal had sustained a 15 percent permanent partial disability as a result of the injury.

Neal appealed the arbitration decision. On appeal, the commissioner reversed, finding that Annett had failed to offer "suitable work" because the light-duty job was located a great distance from Neal's home and Neal could not return home every weekend as he did before he was injured. The commissioner also found that Neal suffered a 60 percent partial disability. Annett petitioned for judicial review.

#### **District Court**

The district court affirmed the commissioner's finding that Neal suffered a 60 percent permanent partial disability but reversed on the issue of whether Annett offered Neal suitable work. The district court stated that Iowa Code section 85.33(3) does not define "suitable work" in terms of its location but instead whether the work offered is "consistent with the employee's disability." The district court found that the light-duty work offered to Neal was consistent with his disability and by refusing to accept the offer, he forfeited his right to temporary disability benefits during his period of refusal. Both Neal and Annett appealed the district court decision.

#### **Iowa Supreme Court—Issues on Appeal**

1. Whether the commissioner erred in concluding that Annett failed to offer suitable work to Neal for purposes of Iowa Code section 85.33(3).
2. Whether the commissioner erred in considering an improper factor (location) in reaching its factual determination regarding the suitability of the work offered to Neal.
3. Whether the commissioner erred in finding that Neal suffered a 60 percent permanent partial disability.

#### **Analysis and Holding**

**Suitable Work.** The Iowa Supreme Court (Court) concluded that the Legislature did not vest the authority to interpret the phrase “suitable work” for purposes of Iowa Code section 85.33(3) in the workers’ compensation commissioner. The Court reached this conclusion for three reasons. First, the Legislature has made no explicit grant of interpretative authority to the commissioner. Second, while the commissioner has the authority to adopt and enforce rules, the mere grant of rulemaking does not give an agency authority to interpret all statutory language. Third, since the concept of “suitable work” is found in similar contexts, including employment discrimination, wrongful termination, unemployment compensation, and the odd-lot doctrine, “suitable work” is not a specialized phrase within the expertise of the commissioner but instead has a specialized legal meaning that extends beyond the context presented in this case. Thus, the Court did not accord deference to the commissioner’s interpretation of what constitutes “suitable work” for purposes of that statute. The Court proceeded with its own analysis, and was free to substitute its own judgment of the phrase’s meaning upon a finding that the commissioner made an error of law.

The Court stated that Iowa Code section 85.33(3) disqualifies an employee from receiving temporary partial, temporary total, and healing period benefits if the employer offers “suitable work” that the employee refuses. The Court found that the language of the statute does not define “suitable work” but does require that the work offered must be both “suitable” and “consistent with the employee’s disability” before the employee’s refusal of the work triggers disqualification from benefits.

The Court looked at workers’ compensation statutes in other states and the holdings of courts in other contexts and in other jurisdictions. The Court observed that in the absence of legislative direction, other courts have held that the location of available work may be considered in determining an employee’s eligibility for workers’ compensation benefits and that geographic proximity of the work to the employee’s residence is commonly considered as a relevant factor in determining what constitutes an offer of “suitable work” under workers’ compensation statutes. The Court also found authority for the broader proposition that geographic location may be considered in determining whether the availability of employment cuts off statutory workers’ compensation benefits.

The Court held that the commissioner did not commit an error of law by considering the distance of available work from Neal’s home in determining whether Annett offered “suitable work” for purposes of Iowa Code section 85.33(3) and that substantial evidence supports the commissioner’s conclusion that the light-duty work offered by Annett was not “suitable work” under the circumstances of this case. The Court noted the commissioner’s observation that “being away from the support of your wife and family, especially while recovering from a serious work injury, is not an insignificant matter.” The Court further noted that there was no evidence in the record establishing that Neal agreed as a condition of employment to any relocation that Annett might require.

**Permanent Partial Disability.** The Court found that determining the amount of Neal’s permanent partial disability is a mixed question of law and fact. In this situation, the Court will not overturn or modify the agency’s decision unless it is irrational, illogical, or wholly unjustifiable. The Court upheld the commissioner’s disability determination, finding that the evidence in this case supports the commissioner’s findings and the commissioner’s application of these facts to the law is not irrational, illogical, or wholly unjustifiable.

#### **Dissent**

**Suitable Work.** The dissent would reverse and remand on this issue by applying a standard that “suitable work” for purposes of Iowa Code section 85.33(3) may require an employee to travel temporarily so long as the work is offered in good faith to meet the needs of the company and the travel is at the employer’s expense. Using this standard, geography is a relevant consideration but the fact that a temporary light-duty job may require some travel at the employer’s expense is not sufficient grounds alone to make the job “unsuitable” for purposes of this statute.

**Permanent Partial Disability.** The dissent would reverse and remand on this issue on the basis that Neal’s capabilities are essentially undisputed by the parties and there is no substantial evidence in the record to support the conclusion that Neal suffered a 60 percent loss in earning capacity as a result of his shoulder injury.

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