



Iowa General Assembly

2015 Legal Updates

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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—CONCURRENT INJURIES—DIFFERENT EMPLOYERS— APPORTIONMENT ALLOWED

Filed by the Iowa Supreme Court
May 29, 2015

Warren Properties v. Stewart

No. 13-0474, 864 N.W.2d 307 (2015)

http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20150529/13-0474.pdf

Facts and Procedural Background. An employee, Janice Stewart, was working two jobs in 2006. She had begun working for Warren Properties in 2005 and in June 2006 began a second full-time job with Wal-Mart.

In November 2006, Stewart injured her lower back at Wal-Mart. She quit that job a week later, but continued working for Warren Properties. Stewart continued her employment with Warren Properties throughout her medical treatment for her back injury at Wal-Mart. In May 2009, Stewart and Wal-Mart settled her claim for workers' compensation benefits based on 40 percent industrial disability.

Meanwhile, in February 2009, Stewart fell as she left work at Warren Properties and suffered pain in her shoulders and neck. In November 2009, Stewart filed a claim for workers' compensation benefits against Warren Properties for a shoulder and back injury.

At a workers' compensation commission hearing in October 2010, Stewart presented medical testimony opining that her fall at Warren Properties had exacerbated her preexisting back condition and caused a right shoulder impairment. A Deputy Workers' Compensation Commissioner found that Stewart sustained a permanent partial whole-body disability from the injury. The Deputy Commissioner found no specific percentage of permanent physical impairment to Stewart's shoulder as a result of the injury at Warren Properties but concluded that Stewart's disability to her back and shoulder resulted in 50 percent industrial disability. Stewart was awarded benefits from Warren Properties without apportionment for any preexisting disability that resulted from the 2006 Wal-Mart injury. On appeal the Iowa Workers' Compensation Commissioner (Commissioner) affirmed the Deputy Commissioner's decision.

Warren Properties filed a petition for judicial review with the district court. The district court held that the Commissioner erred in failing to apportion Stewart's preexisting disability that arose from the 2006 Wal-Mart injury when calculating the benefits owed by Warren Properties for the 2009 injury. The district court stated that Stewart's compensation for the 2009 Warren Properties injury is limited to the amount of industrial disability caused by that injury but rejected Warren Properties' contention that apportionment should be effected by crediting the amount previously paid by Wal-Mart to Stewart. The district court noted that the Commissioner was required to award compensation based on the percentage of Stewart's disability attributable to the 2009 Warren Properties injury without considering prior disabilities Stewart possessed for which Warren Properties was not responsible. The district court further concluded that the Commissioner's impairment finding could not be sustained without an additional finding that the prior impairment to Stewart's back had healed before the 2009 Warren Properties injury. The case was remanded to the Commissioner specifically to determine if the 2009 Warren Properties injury resulted in any new back disability.

Stewart and Warren Properties both appealed the district court's decision.

Issues.

1. Whether the district court erred in concluding that Stewart's disability arising from the 2006 Wal-Mart and 2009 Warren Properties injuries should be apportioned.
2. Whether the district court erred by remanding the case to the Commissioner for a new impairment finding.
3. Whether, if a new impairment finding is warranted, the district court erred by not apportioning the preexisting disability arising from the 2006 Wal-Mart injury through a credit to Warren Properties equal to the 40 percent industrial disability already paid by Wal-Mart to Stewart.

Holding. The Iowa Supreme Court (Court) held that the 2004 amendments to the workers' compensation disabilities statute require an evaluation by the Commissioner of Stewart's earning capacity both before and after a successive injury sustained in the course and scope of employment with a concurrent employer and thus Warren Properties is liable to compensate Stewart only for the reduction in earning capacity caused by the 2009 Warren Properties injury.

Analysis. The Court noted that in the over 100 years since establishment of the state's workers' compensation system, the statute governing compensation for successive injuries remained virtually unchanged from 1924 to 2004. During that period, a fertile area of judicial review by courts involved apportionment of compensation for successive injuries. In response, the Court developed a comprehensive body of law to apply the statutory principle of apportionment to a variety of different circumstances, specifically application of the fresh-start and the full-responsibility rules. These rules impacted the statute by substantially limiting apportionment in determining compensation for successive injuries. In 2004, the General Assembly amended the 1924 statutory apportionment rule by repealing the old successive disabilities statute and replacing it with a new statute.

In the *Roberts Dairy* case, decided by the Court less than two months previous to this decision, the Court examined the scope and meaning of the 2004 statutory approach to apportionment for successive injuries. *Roberts Dairy* held that the statutory principle described in Iowa Code section 85.34(7)(a), that an employer is not liable for compensating the preexisting disability of an employee from employment with a different employer, did not apply when the earning capacity of the employee has been reevaluated by the competitive labor market.

While the issues presented in this case are similar to those considered in *Roberts Dairy*, the important distinguishing fact in this case is that the preexisting disability occurred with a concurrent employer, not a previous employer. The Court stated that while the statute does not specifically mention concurrent employers, concurrent employers are also different employers and the text of the statute clearly captures those employers also.

In the 2004 amendments, the General Assembly expressed concern that there not be double recoveries or double reductions for successive permanent partial disabilities. The holding in *Roberts Dairy* recognized that an injured employee's earning capacity is effectively reset by the competitive labor market in the reevaluation of the employee that accompanies each change of employment, thus apportionment is not appropriate under these circumstances.

The Court opined that the General Assembly did not establish a specific method of apportionment for successive disabilities with different employers when no market reevaluation has taken place, as it did for successive disabilities with the same employer. But considering the General Assembly's intent to avoid double recoveries and double reductions, the Court concluded that the General Assembly did not intend to exclude from apportionment successive disabilities with different employers when no market reevaluation has occurred.

In this case, Stewart did not compete in the labor market again after the 2006 Wal-Mart injury because she continued to be employed full-time with Warren Properties. The absence of this market readjustment means that Stewart should not receive the benefit of an automatically refreshed earning capacity in computing benefits for any successive disability. Rather, she must present evidence to show that the reduced earning capacity which resulted from her 2006 Wal-Mart injury had been restored in whole or in part as a consequence of unexpected healing, a change in her qualifications, training, education, or other factors that existed prior to the 2009 Warren Properties injury. The apportionment rule set forth in the 2004 amendments to the statute must be applied to assure that any compensation paid by Warren Properties is based on the loss of earning capacity resulting from that injury and not the 40 percent loss of earning capacity sustained by Stewart as a consequence of the earlier 2006 Wal-Mart injury.

The Court held that without a market readjustment through a change in employment, any preexisting disability must be apportioned so that only the new disability resulting from a successive injury is determined, based on the two factors considered in the statutory formula: the earning capacity possessed when the successive injury occurred, and the reduction in earning capacity, or disability, caused by the successive injury. The Court found that while the record contained substantial evidence to support the Commissioner's determination that the 2009 Warren Properties injury caused some increase in Stewart's industrial disability, the Commissioner's decision lacked detailed findings based on the requirements of the statutory formula to support that conclusion.

The case was remanded to the district court for remand to the Commissioner for further proceedings consistent with this opinion.

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