

CONNECTICUT WORKERS' COMP UPDATE

The law firm of Strunk Dodge Aiken Zovas wishes you a happy and healthy holiday season. Below is our final workers' compensation update for 2016.

STRUNK DODGE AIKEN ZOVAS NEWS

Strunk Dodge Aiken Zovas is pleased to announce that Attorney Philip Markuszka has joined our firm as an associate attorney to assist us in defense of workers' compensation claims. He graduated from Bryant University in 2006 where he received his Bachelor of Science degrees in Finance and Management, with minors in English and Legal Studies. He attended the University of Connecticut School of Law and served as Executive Editor of the Connecticut Journal of International Law. Attorney Markuszka obtained his Juris Doctor Degree in May, 2011, and his L.L.M. in Insurance from the University of Connecticut School Of Law in 2013, earning the CALI in the Law of Marine Insurance and the L.L.M. program's Insurance Award. He was admitted to the Connecticut and Massachusetts Bars in 2011 and the United States District Court of Connecticut in 2014. Prior to becoming an attorney Phil worked at The Hartford Insurance Company in the Complex Claims Group. He managed claims and accounts involving asbestos, welding rod, lead paint, workers' compensation, multiple chemicals, diacetyl, cell phones, construction defect, environmental and surplus lines. Attorney Markuszka was born in Poland and is fluent in Polish.

CASE LAW

In the recent case of *Holston v. New Haven Police Department*, SC 19631 (November 22, 2016), the Connecticut Supreme Court determined that a myocardial infarction claim brought by a police officer pursuant to General Statutes Section 7-433c was timely filed notwithstanding that an earlier hypertension claim was substantially related to the heart attack and had been dismissed because it was untimely filed. General Statutes Section 7-433c awards benefits for heart and hypertension conditions to police officers and firemen who were hired before July 1, 1996 and passed a pre-employment physical examination. Since causation is not an issue in 7-433c claims the Supreme Court determined that the heart attack claim could be pursued despite a causal link to the untimely filed hypertension claim. The Court agreed with the commissioner and Compensation Review Board that the heart attack was a new injury and could be pursued. This case was defended by Attorney Jason Dodge of Strunk Dodge Aiken Zovas.

In *Gould v. City of Stamford*, 6063 CRB-7-15-12 (November 14, 2016), the Compensation Review Board held that concurrent benefits were not due to an injured worker who in addition to his main job with the City of Stamford owned a business that he operated as a single-member LLC. The CRB affirmed the commissioner's ruling that the claimant did not qualify as an "employee" for purposes of the workers' compensation

statutes pertaining to the company that he owned and that the concurrent income provisions of General Statutes Section 31-310 did not apply to him. The Board based their decision largely on the fact that the claimant was treated as the owner and not an employee for tax purposes and did not take a regular salary. The CRB also noted that while the claimant had obtained workers' compensation coverage for purposes of his own company he had not filed a Form 75 seeking to accept coverage under the Act for the concurrent job as required pursuant to the Chairman's Memorandum 2003-02. Based on this case, employers and carriers should not accept concurrent income claims until the Second Injury Fund reviews the claim for concurrent benefits and confirms that Section 31-310 applies.

COMMISSION NEWS

Governor Malloy as of this date has not appointed a new commissioner to replace retired Commissioner Delaney; Commissioner Delaney continues to periodically perform per diem work for the commission.

A review of the statistics from the Chairman's office of the Connecticut Workers' Compensation Commission reveals that since 2011 there has been a significant reduction in the number of informal hearings that have taken place on a yearly basis. In 2011-2012 there were 53,874 informal hearings held. For the most recent period of June 2015 to June 2016 there were 41,084 informal hearings held, a reduction of 12,790 hearings or 24%! Formal hearings have been reduced as well; in 2009-2010 there were 1,203 formal hearings but this past year there were 661, a 45% reduction. This may be due to the commission's efforts to reduce needless hearings but also perhaps a decrease in active, litigated claims. Given the decline in hearings it remains to be seen if the Governor will add another full time commissioner.

As of January 1, 2017 the commissioners will be reassigned to new districts. If they have been presiding over a formal hearing that has not been completed it is likely that the file will transfer with the commissioners to their new district. The commissioner assignments are as follows: First District Commissioners Walker and Dilzer, Second District Commissioners Mullins and Mlynarczyk, Third District Commissioners Senich and Barton, Fourth District Commissioners Cohen and Gregg, Fifth District Commissioners Goldberg and Morelli, Sixth District Commissioners Salerno and Engel, Seventh District Commissioner Truglia and Engel, Eighth District Commissioners Schoolcraft and Mlynarczyk.

As of October 1, 2016 and for injuries after that date the new total disability maximum rate is \$1,292; the new maximum rate for temporary partial and permanent partial disability is \$1,063.