

## 2019 MO DWC Seminar Mock Trial Fact Patterns

By: Chris Archer and Mike Korte

### **Fact Pattern #1**

Claimant lives close to her Employer and is provided a non-paid morning break. She walked next door to Quick Trip before walking back onto parking lot where she slipped and fell on some loose gravel. Claimant was going to her car on the parking lot as she was going home to let her dog out. The parking lot is not owned by her Employer but the lease reserves several spots for her Employer although the Claimant does not have one of those spots.

Claimant sustains bilateral distal radius fractures.

#### **Mike:**

Approach to the file:

#### **Chris:**

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#### **Mike:**

Closing Argument to the Judge:

#### **Chris:**

Closing Argument to the Judge:

#### **Judge:**

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### **Fact Pattern #2**

Claimant is 67-year-old female reported to her supervisor having her thumb bent backwards while taking a blood draw by a patient in her job as a medical technician. X-ray of right thumb

shows severe joint arthritis. Dr No says she has thumb strain. Dr Exaggeration says she is need of more treatment to her thumb including injections if not a fusion. Claimant denies prior symptoms to her thumb and retires. She testifies she retired because of her symptoms with her thumb.

Claimant is a severe diabetic with peripheral neuropathy. She had a 2-level back fusion in 2015 and one knee replacement surgery in 2013 which still affects her ability to stand for long periods of time and has a history of anxiety and depression as well.

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### **Fact Pattern #3**

Claimant is a concrete laborer who has worked for Acme for 5 months. He developed severe bilateral elbow symptoms of pain with numbness into his hands- right elbow started 3 months ago and his left sided symptoms more recently.

He worked in his trade for BSI for a year prior to take this job for Alberici. He states he had some occasional symptoms with both elbows while at BSI and admits the work was identical.

Claimant is diagnosed with bilateral medical epicondylitis and placed on restrictions of no lifting above 25 pounds. He is part of a lay-off for Acme and is claiming TTD.

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## **Fact Pattern #4**

Claimant is released to return to work full duty but his Employer does not put him on the schedule for an additional week. Claimant is paid hourly. Is TTD owed for this additional week?

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## **Fact Pattern #5**

Claimant has a compensable knee injury that resulted in medial meniscectomy being performed. He had prior opposite leg amputation but is able to RTW full duty. Dr No provides PPD opinion of 7% PPD to the knee. Dr Exaggeration opines that he has 35% PPD for his operated knee and obviously 100% of opposite knee stating the Claimant has overall greater disability due to combination of both legs being involved.

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## **Fact Pattern #6**

Claimant testifies she was working at home on her work computer on work budgets when her chair collapses and she sustains an injury to her low back. She files a claim for compensation. A review of computer confirms she was on the company website doing work when she says she was on it when her chair broke.

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## **Fact Pattern #7**

Claimant is the Employer who works doing construction. He works for general contractor and is paid on a 1099 and sustains injury while on a job site. His work comp policy was canceled a few months ago for failing to pay premium. Claim is pursued against the general contractor for benefits.

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## **Fact Pattern #8**

Claimant slips and falls from a 5-foot height on a job site. Co-worker testifies that the Claimant was smoking pot on the job site before work that morning. Same day drug test confirms marijuana. Mass spectrometry is used and a secondary confirmatory test is performed. Employer has a zero-tolerance policy. Claimant is fired for the drug test result. He testifies he was vaping that morning but admits to recently having traveled to Denver for marijuana treatment for his plantar fasciitis. He sustains a back injury requiring surgery.

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## **Fact Pattern # 9**

Claimant sustains a recurrent hernia while lifting at work. He had hernia repair the prior year which he did not turn into work. He does heavy lifting and has worked for this Employer for 10 years as a Laborer. Employer does not turn case into their comp carrier and Claimant proceeds with surgery paid thru group. It goes badly and the Claimant has numbness and pain in groin as well as pain now down his leg. He requires home health nursing services for period of time due to staph infection.

One-year post op, he is placed at MMI with permanent restrictions of no lifting over 10 pounds, limited standing or sitting. Treating MD calls for ongoing pain management. Claimant's wife provides some assistance to her husband, including more time to deal with depression and anxiety for which he is medicated.

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## **Fact Pattern #10**

Claimant and co-workers love to play pranks on April Fools' Day every year. Employer likes the comradery and goes along with it and participates. This year, a "Men of the Division of Worker's Compensation" calendar is hung up next to a co-worker's locker as a joke. She becomes upset and embarrassed as Mr. October is her old boyfriend who left her to date her Mom.

She stops coming into work, starts getting counseling and is now claiming to be totally disabled. She files civil suit as well for "hostile work environment" after getting her "right to sue" letter from the Missouri Human Rights Commission.

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