

# DEFENSE TALK

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CLIFTON, MUELLER & BOVARNICK, P.C.

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ATTORNEYS AT LAW

2010

CURRENT EVENTS, ARTICLES, AND SUMMARIES OF RECENT CASES AND LEGISLATION IN THE AREAS OF WORKERS' COMPENSATION, LIABILITY, INSURANCE, AND EMPLOYMENT LAW

## Industrial Claim Appeals Office Update

The cases summarized here are only a selection of the cases decided by the Industrial Claim Appeals Office. In these summaries, ALJ=administrative law judge; DIME=Division-sponsored independent medical examination; ICAO=Industrial Claim Appeals Office.

### DIMES

ICAO reversed that part of ALJ Harr's order that determined respondents had overcome the DIME physician's opinion on cervical impairment by clear and convincing evidence. The ALJ had determined that the DIME physician erred in finding impairment under Table 53 II.B of the AMA Guides, because Table 53 requires 6 months of documented pain and rigidity. Claimant had reached MMI four months after the date of injury and therefore had sustained no permanent medical impairment at MMI. However, when the DIME physician examined claimant 11 months after MMI, claimant did meet the criteria for an impairment rating under Table 53. ICAO held that neither the AMA Guides nor the Act requires the 6 months of documented pain to occur before MMI. *Lopez*

*v. Cargill Meat Solutions*, W.C. No. 4-757-408 & W.C. No. 4-758-952 (ICAO Sept. 9, 2010)

ICAO affirmed ALJ Stuber's order that denied claimant's claim for permanent partial disability and additional medical benefits. In reaching his decision, the ALJ determined that claimant had not overcome the DIME report. Claimant alleged the DIME physician was biased because two years before his examination of claimant, the DIME doctor had filed a complaint with the Attorney Regulation Counsel against claimant's attorney in response to an "aggressive and confrontational" letter

from the attorney to the doctor. Claimant did not object to the doctor's inclusion in the DIME panel until after he issued his report that claimant had reached MMI and had no permanent impairment. The ALJ held that claimant failed to establish that any bias of the DIME doctor against her attorney warranted the conclusion that the DIME report had been overcome. *Leewaye v. Harrison School District #2*, W.C. No. 4-649-073 (ICAO Sept. 7, 2010)

The orders summarized here are on file with the editor. If you would like a copy of any order, contact Diane Murley at [dmurley@cmb-pc.com](mailto:dmurley@cmb-pc.com) or 970-255-8852.

### CMB Welcomes Joanne C. Crebassa

The firm is pleased to announce the addition of Joanne C. Crebassa as a senior associate in the Denver office. Joanne is an experienced civil litigation attorney who has practiced primarily in commercial liability defense, including premises, auto, medical malpractice, products liability, workers' compensation and third-party subrogation. Joanne earned her Bachelor's degree, graduating *summa cum laude*, from the University of Northern Colorado in December 1993. She attended law school at University of California-Davis and was admitted to the Colorado Bar in 1998.

Prior to joining the firm, Joanne practiced as associate counsel for a large Denver insurance defense firm. Her current litigation practice focuses on civil litigation defense in the areas of workers' compensation, first and third-party civil liability. She

is a member of the Colorado Bar Association, the CBA Workers' Compensation Section, the Denver Bar Association and the Colorado Defense Lawyers Association.

Joanne was raised in Colorado, and she enjoys hiking, mountain biking and attending concerts at Red Rocks Amphitheatre. Joanne is also a member of the Tesoro Cultural Center, a Colorado non-profit organization committed to protecting Colorado's artistic and historic treasures, and making them available to the community through educational programs, historical reenactments, and events celebrating Colorado's history, art, cuisine and music. Joanne lives in Littleton with her husband Jay, and their children Julian, Jamie and Jessica.

Please join us in welcoming Joanne!

#### INSIDE THIS ISSUE:

Practice Pointer—Deadlines to Watch Out For to Avoid Penalty Claims	2
Victories in the Trenches	3
Ipsi Dixit	3

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## Deadlines to Watch Out For to Avoid Penalty Claims

*By Holly M. Barrett*

With the increase in penalties, effective August 11, 2010, from up to \$500 per day to up to \$1,000 per day, here are some of the new deadlines to watch out for as well as some old, but commonly missed, deadlines:

Report Injury:	8-43-101(1), C.R.S. provides that within TEN DAYS after notice or knowledge that an employee has contracted an occupational disease, has sustained a permanently physically impairing injury, or has sustained a lost-time injury, the employer shall file a report with the Division. Employer shall IMMEDIATELY file a report with the Division in the case of a fatality. 8-43-103(1), C.R.S. provides that notice of any injury for which compensation and benefits are payable shall be given by the employer to the Division and insurer within TEN DAYS after the injury.
Liability Notice:	8-43-203(1)(a), C.R.S. provides that the employer or insurer shall notify in writing the Division and the injured worker within TWENTY DAYS after a report is, or should have been, filed with the Division whether liability is admitted or contested.
Brochure:	8-43-203(3), C.R.S. provides that AT THE TIME that the employer or insurer provides its liability notice, the employer or insurer shall provide to the claimant a brochure describing the claims process and informing the claimant of his/her rights.
Wage Records:	Rule 5-4(D), W.C.R.P provides that a party shall have FIFTEEN DAYS from the date of mailing to respond to a reasonable request for wage information.
Medical Records:	Rule 5-4(A)(5), W.C.R.P. provides that a copy of EVERY medical report shall be exchanged with all parties within FIFTEEN WORKING DAYS of receipt.
TTD Benefits:	Rule 5-6(B), W.C.R.P provides that temporary disability benefits awarded by admission are due on the date of the admission and the initial payment shall be made so that the claimant receives the benefits not later than FIVE CALENDAR DAYS after the date of the admission. 8-42-105(2)(a), C.R.S. provides that TTD benefits shall be paid at least once every two weeks.
Termination of TTD:	Rule 6-1(A)(4), W.C.R.P. provides that an insurer may terminate temporary disability benefits without a hearing by filing an admission of liability with a written offer of modified employment. A claimant is allowed a period of THREE BUSINESS DAYS to return to work from the date of receipt of the job offer. Benefits may not be terminated until three business days after claimant received the offer.
PPD Benefits:	Rule 5-6(C), W.C.R.P. provides that permanent disability benefits awarded by admission shall be paid so that the claimant receives the benefits not later than FIVE CALENDAR DAYS after the date of the admission.
Lump Sum Payments:	8-43-406(1), C.R.S. provides that the insurer shall file the calculation of the lump sum due and notice that the lump sum has been paid to the claimant within TEN DAYS after claimant's request.
Benefits Ordered:	Rule 5-6(A), W.C.R.P. provides that benefits awarded by order are due on the date of the order and shall be paid within THIRTY DAYS of when the benefits are due.
Settlement:	8-43-204(7), C.R.S. provides that any lump sum payable as full or partial settlement shall be paid to the claimant or the claimant's attorney within FIFTEEN DAYS after the date the executed settlement order is received by the employer or insurer.
Survey:	8-43-220, C.R.S. provides that UPON CLOSURE of a claim, each insurer shall survey the claimant regarding the claimant's satisfaction with the insurer. Rule 5-14(A), W.C.R.P. provides that within THIRTY DAYS following closure of each claim that was reported to the Division, the insurer shall survey the claimant.
Final Payment Notice:	Rule 5-11(B), W.C.R.P. provides that a final payment notice shall be filed within SIXTY DAYS after a claim is closed.

If you have any questions about how to avoid penalty situations, please contact any of the attorneys at Clifton, Mueller & Bovarnick, P.C.

# IPSI DIXIT



The following clever sayings were submitted by Tommy Domingue.

- A bicycle can't stand alone; it is two tired.
- A will is a dead giveaway.
- A chicken crossing the road: poultry in

motion.

The guy who fell onto an upholstery machine was fully recovered.

He broke into song because he couldn't find the key.

He had a photographic memory which was never developed.

The short fortune teller who escaped from prison: a small medium at large.

Those who get too big for their britches will be exposed in the end.

When you've seen one shopping center you've seen a mall.

Santa's helpers are subordinate clauses.

Marathon runners with bad shoes suffer the agony of de feet.

The roundest knight at King Arthur's round table was Sir Cumference. He ac-

quired his size from too much pi.

A rubber band pistol was confiscated from algebra class because it was a weapon of math disruption.

No matter how much you push the envelope, it'll still be stationary.

A dog gave birth to puppies near the road and was cited for littering.

Two silk worms had a race. They ended up in a tie.

I wondered why the baseball kept getting bigger. Then it hit me.

A small boy swallowed some coins and was taken to a hospital. When his grandmother telephoned to ask how he was, a nurse said, "No change yet."

Send your suggestions for "Ipsi Dixit" to the editor at [dmurley@cmb-pc.com](mailto:dmurley@cmb-pc.com).

## VICTORIES IN THE TRENCHES

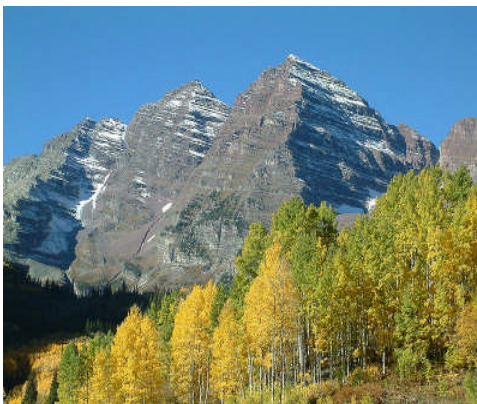
**Richard A. Bovarnick  
and  
Erica A. Weber**

In *Gatewood vs. United Natural Foods, Inc.*, ALJ Cain denied and dismissed the claim for workers' compensation benefits. Erica presented the testimony of employer witnesses to persuade the ALJ that claimant's testimony was not credible, because it was the product of bias and improper motivation stemming from claimant's anger over his termination from employment. The ALJ also found claimant's expert's testimony unpersuasive because it relied upon the history given by claimant, which was inconsistent with his conduct and statements to other healthcare providers. The ALJ concluded that claimant failed to prove a work-related injury. Erica tried the case and Erica and Rich wrote the position statement following the hearing.

**M. Fran McCracken**

In *Hoffman v. Wal-Mart Stores, Inc.*, PALJ McBride denied and dismissed with prejudice claimant's claim for additional benefits. Fran argued successfully that claimant had demonstrated a flagrant disre-

gard for previous prehearing orders entered in her claim and that her failure to comply with discovery obligations constituted a substantial deviation from reasonable care and a willful disregard of her discovery obligations. Therefore, the PALJ determined that claimant's conduct justified the litigation-ending sanction of dismissal.



*Note: Summaries and articles should not be relied upon as authority for a particular case. Consult any of the attorneys at Clifton, Mueller & Bovarnick, P.C. for advice on the application of all the law to the specific facts of your case or legal problem.*

## DEFENSE TALK <sup>SM</sup>

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is published monthly by the law firm of

Clifton, Mueller & Bovarnick, P.C.  
Attorneys at Law  
Suite 500  
789 Sherman Street  
Denver, CO 80203  
Telephone (303) 988-7692  
Facsimile (303) 988-7724

Grand Junction Office  
Suite 200  
2454 Patterson Road  
Grand Junction, CO 81505  
Telephone (970) 255-8852  
Facsimile (970) 255-8905

John M. Abraham  
Holly M. Barrett  
Richard A. Bovarnick  
James R. Clifton

Joanne C. Crebassa  
M. Frances McCracken  
Royce W. Mueller  
Diane K. Murley

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789 SHERMAN STREET  
SUITE 500  
DENVER, COLORADO 80203