

# Tennessee Workers' Compensation Update

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## Discretionary Costs, Attorney Fees, Oh My!

### ***GARASSINO V. WESTERN EXPRESS, INC.***

(Filed on November 7, 2016)

In ***Garassino***, the issue before the Workers' Compensation Appeals Board ("Appeals Board") was whether the employee was entitled to discretionary costs, including costs related to the physical examination by his medical expert and costs related to obtaining the testimony of the medical expert. Although the trial court found employee to be the prevailing party at trial and awarded those costs, upon review, the Appeals Board stated neither section 50-6-239(c)(8) of the Tennessee Code Annotated nor Rule 54.04 allow for the recovery as discretionary costs of the fees of a non-treating physician for reviewing medical records or examination of an employee for the purpose of offering expert opinion testimony. Therefore, the Appeals Board found that the trial court erred in awarding discretionary costs and fees of the employee's medical expert for reviewing medical records and conducting a physical examination of the employee. Please note, however, section 50-6-239(c)(8) of the Tennessee Code Annotated does allow for discretionary costs for "reasonable fees for depositions of medical experts against the employer upon adjudication of the employee's claim as compensable."

## MAXIMUM & MINIMUM BENEFIT CHANGES

***Temporary Benefits*** – The maximum weekly benefit rate for injuries occurring July 1, 2016 through June 30, 2017 is \$976.80, or 110% of the state's average weekly wage.

***Permanent Benefits*** – The maximum weekly benefit rate for injuries occurring July 1, 2016 through June 30, 2017 is \$888.00, or 100% of the state's average weekly wage.

***Minimum Weekly Benefit*** – The minimum weekly benefit rate for injuries occurring July 1, 2016 through June 30, 2017 for both temporary and permanent benefits is \$133.20.

## ATTORNEY FEES

**Effective July 1, 2016, Public Chapter 1056** (SB2582/HB2416) provides for reasonable attorney fees and costs to be awarded by the court of workers' compensation claims (subject to a two-year sunset provision) when the employer:

- Fails to furnish appropriate medical, surgical, and dental treatment or care, medicine, medical and surgical supplies, crutches, artificial members and other apparatus to an employee provided for in a settlement, expedited hearing order, compensation hearing order or

- Wrongfully denies a claim by failure to timely initiate any of the benefits to which the employee is entitled, including medical benefits under § 50-6-204 or temporary or permanent disability benefits under § 50-6-207, if the workers' compensation judge makes a finding that such benefits were owed at an expedited hearing or compensation hearing.

If you have questions regarding these updates, please contact one of MGC's workers' compensation [attorneys](#).

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