The Court of Appeals ('COA' for short) didn't have much to say on workers' compensation issues last month. All of its workers' compensation opinions were 'unpublished,' which means that they are not controlling legal authority. Here's a brief round-up of the COA's July opinions:

*Spears v. Tyson Foods, Inc. – In *Spears*, the Commission denied the plaintiff's claim, in part because it found his testimony about an alleged back injury inconsistent and unsupported by his medical records. The plaintiff appealed to the COA arguing that the Commission failed to give his testimony enough weight.

I am constantly amazed at how much time and money are wasted appealing factual determinations of the Industrial Commission. Defendants often do this, I think, to compel plaintiffs to settle cases. Justice delayed is justice denied. I have no earthly idea why a plaintiff would make such an appeal. If there is *any* evidence to support a finding of fact made by the Commission, the COA *must* let the finding stand.

*Denning v. Interstate Brands Corp. – In *Denning*, the Commission concluded that the plaintiff's preexisting back injury was not aggravated by his fall into a manhole. Two doctors hired by the employer testified that the fall did not aggravate plaintiff's back. Based on the COA's opinion, it looks like even the plaintiff's own surgeon could not say that there was an aggravation.

The plaintiff appealed arguing that, because his employer had admitted the injury, he was entitled to a presumption that his back problems were related to his workplace accident. This is often called the *Parson* presumption. Typically, an injured employee must prove that his injuries were caused by the workplace accident. When the *Parsons* presumption applies, however, the employer must prove that the employee's injuries *were not* caused by the accident.

The COA held that the presumption did not apply because, even though the employer admitted the accident, it did not file a Form 60. (This is the form an employer must file with the Commission to admit an injured employee's right to compensation.) This was a terrible decision by the COA. It essentially allows employers to benefit from *failing* to file the forms they are obligated to file. The decision provides incentive to employers to delay or avoid filing the necessary forms.

It's noteworthy that even *with* the presumption, the plaintiff probably would have lost anyway. Two doctors testified that the accident did not aggravate the plaintiff's back injury. Such testimony is more than enough to overcome the presumption. In other words, right result, wrong reasoning

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