

Minnesota Vikings Score a Win on Player's Dementia-Related Workers' Comp Claim

by Brad R. Kolling - Tuesday, August 06, 2019



The Minnesota Supreme Court just **ruled** that former Minnesota Vikings Defensive End Al Noga could not proceed with a Workers' Compensation claim against the team because he failed to provide timely notice of his claim.

Alapati (Al) Noga played seven seasons in the National Football League (NFL), five of them (1988 through 1992) with the Minnesota Vikings. When his NFL career was over, he played in the new Arena Football League until 1999.

Orthopedic Claims are Just a Warm-Up

As a Viking, Noga sustained a number of orthopedic injuries as well as head injuries and periodic headaches. Noga testified that team trainers and doctors treated his symptom by dispensing Advil and Tylenol, and that he tried to play through the headaches and wooziness

because he felt he needed to do this to remain in the league.

The Vikings' training records did not contain entries of any treatment for headaches, nor did they reflect that the Vikings' staff provided Advil or Tylenol to Noga. Instead, they referenced only his orthopedic injuries and one occasion when he did not report for conditioning because he had a headache.

Noga filed a claim in 2001 for workers' compensation benefits for his various orthopedic injuries while playing for the Vikings. A medical examination report from February, 2004, stated that Noga sustained ten separate orthopedic issues and two neurological issues which included blackout episodes from concussions and headache episodes. Noga and the Vikings settled this claim a month later and included the medical report in the settlement documents.

Dementia Claim Kicks Off

In 2011, after a neuropsychological evaluation, Noga was diagnosed with dementia due to general intellectual functioning which showed a general decline with extremely low verbal memory and problem solving/organization. The evaluation report did not identify the specific cause, although multiple head trauma was indicated as an important factor. Other factors included under-reported substance abuse, untreated sleep apnea, and psychiatric/personality factors.

In 2014, another neuropsychologist examined Noga and reported that his cognitive deficits represented moderate brain impairment resulting from an assortment of factors including ADHD, having English as a second language, untreated sleep apnea, chronic physical pain, cannabis use, previous methamphetamine and alcohol abuse, psychological disturbance, and a multitude of concussions/mild brain injuries which occurred while playing football. The report noted that Noga's history of concussions was not the sole cause of his brain impairment but they were significant contributing factors.

Noga filed a workers' compensation claim in January 2015 claiming a Gillette injury (an injury not attributable to one specific event but rather to repetitive movements over time) in the form of head trauma, brain injury and/or dementia that culminated on his final day playing for the Minnesota Vikings in 1992. The Vikings denied that Noga sustained a Gillette injury and also contended that the claims were barred by two provisions of the Minnesota Workers' Compensation Act: (1) the requirement under [Minn. Stat. § 176.141](#) to provide the employer with notice of the injury within 180 days; and (2) the obligation under [Minn. Stat. § 176.151](#) to file a claim for compensation within 3 years after the employer has made written report of the injury to the commissioner, but not to exceed six years from the date of the accident.

Player's Claims March Downfield

A workers' compensation judge initially found that Noga had sustained a Gillette injury in the

form of head trauma resulting in dementia and that his claims were not barred by failure to provide notice or the statute of limitations. The Vikings appealed to the Workers' Compensation Court of Appeals affirmed that Noga had sustained a Gillette injury but vacated the decision relating to the notice and statute of limitations issues. The case was remanded back to the workers compensation judge.

Following the remand, the workers' compensation judge found that the Vikings received proper notice of the Gillette injury in 2004 when the neuropsychological report on Noga was received (and was later attached to the settlement documents for the claim). In addition, the judge noted a line of court decisions determining that an employer's act in assuming responsibility for providing medical care to the employee will toll (suspend) the running of the statute of limitations. The judge concluded that dispensing Advil or Tylenol to Noga constituted sufficient medical care in this instance to suspend the statute of limitations.

The Vikings appealed again to the Workers' Compensation Court of Appeals which affirmed the compensation judge's decision, prompting the team to take the case to the Minnesota Supreme Court.

The Minnesota Supreme Court explained that there were three issues to resolve:

1. Did Noga suffer a compensable Gillette injury?
2. Did Noga provide the team with sufficient notice of the injury as required under the statute?
3. Did Noga file his legal claim within the law's statute of limitations?

Vikings Prevail on a Goal Line Stand

The Supreme Court addressed the statute of limitations issue first and sided with the Vikings in ruling that Noga had not filed his claim in a timely manner. This ruling rendered the other two issues moot and the Court therefore deemed it unnecessary to resolve them.

In deciding that Noga missed the statute of limitations, the Court explained that the claim arose in February, 2004, when he received the medical examination report that led to the settlement. At that point, Noga had sufficient information of the nature of his injury/disease, its seriousness and probable compensability. Therefore, unless there was a basis for suspending the statute of limitations, Noga had six years thereafter (until February 2010) to file his claim and his failure to do so required that the claim be dismissed.

In dismissing the case, the Supreme Court rejected the contention that the act of providing Advil or Tylenol to Noga meant that the Vikings were assuming responsibility for his care. To make such a finding, the Court would have to be convinced that the employer demonstrated a conscious sense of obligation to accept responsibility for a work-related injury that was compensable under the workers compensation statute. Merely giving out some over-the-counter medication did not rise to that level of intent

Additionally, the Court found that the Vikings actually could not have assumed liability for

Noga's eventual Gillette injury because there was nothing to show that the Vikings knew or should have known that Noga was at an increased risk of developing a compensable Gillette injury in the form of dementia when they provided Tylenol and Advil for headaches and wooziness. The Court noted that during the period in which Noga played for the Vikings, medical awareness of the connection between head injuries sustained while playing football and the potential long-term neurological effects of those events had not yet developed. Therefore, the Court noted that it could not attribute to the Vikings an acceptance of responsibility for a later-diagnosed dementia which would toll the statute of limitations.

Bottom Line

An employee must show that the employer took some action that reveals an intent to accept responsibility for a work-related injury such as paying for and providing workers' compensation benefits initially to an employee.

Also, for future workers' compensation cases involving brain conditions alleged to have resulted from trauma while working, the duty of the employee to pursue a claim begins to run when the individual knew or should have known the condition was caused, aggravated or accelerated by work activities.