WCLA 1-31-19

- Year's First Case Law Update & Commission Decision Review
- January 31, 2019
- 12:00 noon to 1 pm
- James R. Thompson Center Auditorium, Chicago, IL
- 1 hour general MCLE credit

Cher Smith v. Manhattan Park District 11WC019917; 17IWCC0462

- Arbitrator awards benefits for slip & fall on snow in employer’s parking lot
- The parking lot was owned and maintained by Respondent. Although it was used by the public occasionally it was mainly used by employees as it was adjacent to Respondent's administrative office where Petitioner and the other employees worked. For this reason, the Arbitrator finds Petitioner was in the course of her employment when she slipped and fell on Decanter 13, 2010.
- The other issue considered by the Arbitrator was whether the accident arose out of Petitioner's employment with Respondent. The Arbitrator notes the parking lot was maintained by Respondent. It was not a natural accumulation of ice and snow as the Respondent had plowed and salted the parking lot. The Arbitrator also notes Petitioner’s testimony that the firefighters, who came to Petitioner’s rescue were also slipping. The facts as presented indicate Petitioner was exposed to a risk greater than that of the general public and her injuries arose out of her employment with Respondent.

Cher Smith v. Manhattan Park District 11WC019917; 17IWCC0462

- IWCC REVERSES (3-0) Arbitrator's award of benefits for slip & fall on snow in parking lot
- The mere fact that duties take the employee to the place of injury and that, but for the employment, the employee would not have been there is not sufficient to give rise to the right to compensation.
- The evidence establishes that the parking lot was open to and used by members of the general public. While the parking lot was also used by employees of the Park District, there is no evidence establishing that the Park District instructed their employees to park in that lot. Rather, employees were free to park anywhere in the lot, park in the street, or park in the Park District's other parking lot. Thus, the employees and members of the general public were exposed to the same risk. ***(Not in the course of?)***
- IWCC finds that the ***accumulation of snow in the parking lot represented a natural accumulation*** as there was no evidence that Respondent created or contributed to a hazard. As the lot was open to the general public, Smith's fall resulted from a hazard to which she and the general public were equally exposed. Thus, IWCC finds that Smith's injury ***did not arise out of her employment***.
- Circuit Court Confirmed 4-8-18
- Argued in Appellate Court 12-12-18

Cher Smith v. IWCC
2019 IL App(3d) 180251WC-U

- IWCC REVERSED; ARBITRATOR'S DECISION REINSTATED (in part)
- However, a risk-analysis is unnecessary if the injury occurred on premises due to an unsafe or hazardous condition. Our supreme court has held that accidental injuries sustained on the employer's premises within a reasonable time before or after work arise " 'in the course of' " employment. *Archer Daniels Midland Co. v. Industrial Comm'n*, 91 Ill. 2d 210, 215 (1990).
- The presence of a hazardous condition on the employer's premises that causes a claimant's injury supports the finding of a compensable claim. *Suter v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 130049WC,
- In other words, the fact that this parking lot was also used by the general public is immaterial to the issue of compensability because claimant's injury was caused by a hazardous condition on the employer's premises.
- The key factors that guide our decision in this case are as follows: (1) claimant's injury occurred on the employer's premises, and (2) the injury was due to or caused by a dangerous condition or defect on the employer's premises, namely ice and snow. No consideration is given as to whether claimant's risk was any greater than that of the general public.
- We decline to follow *Wal-Mart Stores* here, finding it distinguishable. In that case, the claimant was not walking to or from her parked car, but was being picked up by a friend. There was no evidence that anyone had asked the claimant's friend to park where she did.

Jeremy Reynolds v. MultiBand 13WC040126; 18IWCC0197

- Arbitrator denies benefits due to marijuana
- The Arbitrator finds that Petitioner's claim is barred by Section l l of the Act. Shortly after the accident a urine test was performed which was positive for marijuana. Petitioner denied having used marijuana prior to the accident and stated that he had been exposed to "second-hand smoke" from individuals who were customers of Respondent. Petitioner did not provide any specifics at all as to when or where he was purportedly exposed to this "second-hand smoke." The Arbitrator finds that this testimony is not credible.
- Petitioner's testimony that the accident was caused by a failure of the vehicle's brake system is also questionable. Respondent tendered service records of the vehicle which contained no reference to any brake work as having been performed on the vehicle. Further, Clifford Bigelow, an engineer, inspected the vehicle and concluded that there was no evidence of brake failure.

Jeremy Reynolds v. MultiBand 13WC040126; 18IWCC0197

- IWCC AFFIRMS & ADOPTS (2-1)
- Dissent
- As Petitioner was never questioned regarding the specifics of the exposure, finding that his failure to provide answers renders him not credible would appear arbitrary. I do not find there is evidence of unlawful or unauthorized use.
- Further, for the rebuttable presumption to apply, evidence of impairment must be presented. The only evidence in the record regarding Petitioner's marijuana use is RXl evidencing positive marijuana metabolites at an initial test level of 50 ng/ml., There is simply no evidence prior to Petitioner's accident that he was impaired.
- Therefore, a positive test result does not presuppose impairment.
- The records evidence Petitioner "is alert and oriented to person, place, and time. No cranial nerve deficit. He exhibits normal muscle tone. Coordination normal. .. He has a normal mood and affect."

Stephen Harris v. Northwestern University 16WC005763; 18IWCC0206

- The parties did not introduce an impairment rating consistent with the AMA Guides to the Evaluation of Permanent Impairment. As such, the Arbitrator gives this factor no weight in determining permanent partial disability.
- Occupation of the injured employee: the Arbitrator notes that the petitioner is an animal care technician and is currently working full duty in that position. Based on the petitioner's testimony, the Arbitrator notes that this is a repetitive job and appears to involve intensive use of hands in the course of performing the job duties. As such, the Arbitrator gives this factor greater weight.
- Age of the employee at the time of the injury: the petitioner was forty-six years old at the time of his accidental injury. This means that the petitioner is now over half way through his expected work-life expectancy and has less years of work ahead of him as compared to other individuals n the labor market. *As* such, the Arbitrator gives this factor the appropriate weight.
- Employee's future earning capacity: At trial the petitioner testified that he has suffered no loss of earning capacity as a result of his work related injury. The petitioner has testified that he continued to work full duty in the same position for the respondent following both of his surgeries. As such, the Arbitrator gives this factor lesser weight.
- Evidence of disability corroborated by the treating medical records: The medical records establish that the petitioner did not have a good result from his two carpal tunnel release surgeries. He has subjective complaints of pain, numbness and tingling in both of his hands and all of his fingers. EMG studies showed the petitioner did have bilateral carpal tunnel syndrome, but both Dr. Vender and Dr. Fernandez stated that a positive EMG is not necessarily indicative of an active disease process. Moreover, Dr. Fernandez stated that the petitioner's subjective complaints were not consistent with active and ongoing carpal tunnel syndrome. Therefore, the Arbitrator gives this factor greater weight.
- No single enumerated factor is the sole determiner of disability when determining permanent partial disability.
- Based on all of the above evidence and weighing the factors described above, the Arbitrator awards 15% loss of use of the right hand and 15% loss of use of the left hand under Section 8(e)of the Act.

Stephen Harris v. Northwestern University 16WC005763; 18IWCC0206

- In considering permanent partial disability, the Arbitrator weighed the Sec. 8 .1(b) factors: 1) There is no impairment rating in evidence; 2) Petitioner is currently working full duty in his pre-injury job and based on Petitioner's testimony the job duties are repetitive and hand-intensive; 3) Petitioner was 46-years-old at the time of the injury and the Arbitrator noted he has relatively fewer years of work-life expectancy than a younger individual; 4) Petitioner's earning capacity has not been affected; and 5) The evidence of disability corroborated by the treatment records shows that two rounds of surgeries failed to improve Petitioner's work-related condition.
- Pursuant to the 2011 amendments to the Act, a claimant must present clear and convincing evidence to support any award above 15% of a hand for carpal tunnel syndrome due to repetitive trauma: We find that despite two rounds of bilateral surgeries to address his carpal tunnel syndrome, Petitioner consistently reports high pain levels. He underwent additional treatment in the form of a right wrist injection by Dr. Vender and a left wrist injection by Dr. Xia: but reportedly received no benefit. Petitioner's scars are noted to be "thick and prominent“ and Petitioner consistently reports that they interfere with his day-to-day functions, although he is working full duty.
- After considering all the evidence of permanent partial disability, we modify the Arbitrator's award and find that Petitioner is entitled to 20% loss of use of his dominant right hand and 15% loss of use of his left hand.