# WCLA MCLE 4-25-19

- Case Law Update: Euclid Beverage & McAllister
- April 25, 2019
- 12:00 noon to 1 pm
- James R. Thompson Center Auditorium, Chicago, IL
- 1 hour general MCLE credit

# Euclid Beverage v. IWCC 2019 IL App (2d) 180090WC

- The arbitrator's decision, issued on April 6, 2016, determined that (1) there was a causal connection between the May 24, 2011, work accident and the claimant's current condition of ill being; (2) the claimant was entitled to TTD benefits of $713.91 per week for 22 weeks from November 23, 2011, through April 24, 2012, with Euclid receiving a credit of $13,360.71 for previously paid TTD benefits; (3) the claimant was entitled to maintenance benefits of $713.91 per week for 1626 /7 weeks from April 25, 2012, through June 8, 2015; and (4) the claimant was entitled to permanent partial disability (PPD) benefits, specifically wage differential benefits, for $433.91 per week from June 9, 2015, through the duration of his disability, pursuant to section 8(d)(1) of the Act (820 ILCS 305/8(d)(1) (West 2010)), because his injuries caused an impairment of earnings.
- The Commission affirmed the arbitrators' award of maintenance and TTD benefits, however, it modified the PPD award from wage differential to a percentage of the person as a whole award, pursuant to section 8(d)(2) of the Act, for $642.52 per week for a period of 200 weeks for 40% loss of man as a whole. The Commission determined that the claimant's "election not to work after being medically cleared to work again prevented him from establishing what he is capable of earning."
- Circuit court, without hearing, confirmed in part and set aside in part the Commission's decision. The court confirmed the Commission's decision to award PPD benefits based on a percentage of the person as a whole under section 8(d)(2) of the Act but set aside the Commission's decision to award maintenance benefits, finding that the record did not demonstrate that the claimant participated in a vocational rehabilitation program or self-directed job search between April 25, 2012, and June 8, 2015. On January 31, 2018, the claimant filed a timely notice of appeal.

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- the claimant contends that the Commission's decision to award maintenance benefits was not against the manifest weight of the evidence because Euclid denied the claimant's request for vocational rehabilitation services in violation of section 8(a) of the Act and Illinois Commission Rule 7110.10(a) (50 Ill. Adm. Code 7110.10(a), amended at 30 Ill. Reg. 11743 (eff. June 22, 2006))1 and he experienced a reduction in earning capacity after Euclid terminated his employment. The claimant also argues that the Commission's percentage of the person as a whole PPD award was against the manifest weight of the evidence.
- We are unpersuaded by the claimant's arguments. First, the claimant never sought or gained employment following termination from Euclid on November 22, 2011. As such, rehabilitation would be neither mandatory nor appropriate because the claimant did not show an intention to return to work, although he was capable, as evidenced by Dr. Ross's notes
- Furthermore, we cannot find that the claimant proved a reduction in his earning capacity after he was terminated from Euclid. First, the Commission found that he had failed to prove his earning capacity because his reliance on Helma's labor survey was "unacceptable speculation."

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- The Commission found that the claimant had abandoned the job market on April 24, 2012, and failed to prove his earnings capability. Specifically, the Commission stated that the claimant's reliance on Helma's labor survey to establish his earnings potential was "unacceptable speculation." In particular, the Commission noted that Helma's reports were completed in anticipation of litigation, just four months prior the arbitration hearing, and she lacked an understanding regarding the claimant's previous work managing multiple employees, which could have broadened the scope of possible employment opportunities. Thus, the Commission concluded that the claimant was prevented from establishing "what he is capable of earning."
- Based on the foregoing, we cannot say that the opposite conclusion is clearly apparent regarding the Commission's determination to award a percentage of the person as a whole benefits rather than wage differential benefits. Accordingly, the decision of the circuit court, confirming the Commission's decision to award PPD benefits based on a percentage of the person as a whole, is affirmed.

# McAllister v. IWCC 2019 IL App (1st) 162747WC

- IWCC reverses Arbitrator’s Decision awarding benefits & penalties
- 16IWCC0029, 1-8-16
- Voluminous case law establishes that the act of standing and walking does not constitute a risk greater than that to which the general public is exposed. Citations.
- In the case at bar, there is no indication that Petitioner was exposed to risk that was greater than that to which the general public is exposed when be reported a one-time instance of standing up from a kneeling position while in the course of his employment. As such the issue before the Commission is not whether the risk is a risk to which the general public is generally exposed but is a risk that is peculiar to the employee's work.
- IWCC finds that the act of standing up after having kneeled on one occasion was not particular to Petitioner's employment and it just have easily could have occurred while Petitioner, similar to a member of the general public, was performing this task in any other area of his life whether it be looking under his car in the driveway or picking up an item that dropped underneath his bed. As such the Commission finds that Petitioner was subjected to a neutral risk which had no particular employment or personal characteristics.

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- Appellate Court confirms denial of benefits
- Manifest weight (MWOE) even though facts “undisputed” because “subject to more than a single inference”
- “Arising out of” issue”
- First task in determining whether the injury arose out of the claimant’s employment is to categorize the risk
  - Employment
  - Personal
  - Neutral
- IWCC determined NOT employment-related and NOT neutral-compensable; not contrary to MWOE

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¶ 30 Here, the Commission determined claimant was not injured as the result of an employment-related risk. That finding is supported by the record and an opposite conclusion from that reached by the Commission is not clearly apparent.

¶ 32 Next, the Commission did characterize the risk to which claimant was exposed as a neutral risk; however, it also found that claimant failed to establish that he was exposed to that neutral risk to a greater degree than the general public and, therefore, his injury was non-compensable. Again, the record contains support for that decision, and an opposite conclusion is not clearly apparent.

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¶ 73 Here, we simply hold that an "arising out of" determination requires an analysis of the claimant's employment and the work duties he or she was required or expected to perform. Only after it is determined that a risk is not employment-related should the Commission consider and apply a neutral-risk analysis. As stated, the evidence in this case was such that the Commission could properly find that claimant's injury did not stem from an employment-related risk. The risk posed to claimant from the act of standing from a kneeling position while looking for something that had been misplaced by a coworker was arguably not distinctly related to his employment. Claimant's work for the employer did not require him to perform that specific activity. Further, it was the Commission's prerogative to find claimant's act of searching for the misplaced pan of food was too remote from the specific requirements of his employment to be considered incidental to his assigned duties. As a result, the Commission's determination that claimant was not injured due to an employment risk was supported by the record and not against the manifest weight of the evidence.

# McAllister v. IWCC
# 2019 IL App (1st) 162747WC

- Special Concurrence (3-2): Applies Neutral Risk Analysis and gets same result
- What is an “employment related risk”?
- “Distinctly associated with the employment”
  - “Acts instructed to perform by his employer” OR
  - “Common law/statutory duty to perform” OR
  - “Reasonably expected to perform incident to assigned duties”
- “A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling his duties”
- Is “everyday activity” or “common bodily movement” ever be “employment-related” risk? See definition above.
- Is “everyday activity” or “common bodily movement” always a “neutral risk” governed by neutral risk analysis (qualitative/quantitative)?