WCLA MCLE 9-26-19

- Review of Recent Commission Decisions: August Summaries
- September 26, 2019
- 12:00 noon to 1 pm
- James R. Thompson Center Auditorium, Chicago, IL
- 1 hour general MCLE credit

Marla Hawkins v. Georgetown-Ridge Farms CUSD #4 12WC035797; 18IWCC0742

- IWCC affirms & adopts Arbitrator's denial of benefits for fall down stairs
- Caught sandal, did stairs twice per day, no foreign substance, nice weather, carrying bag(?)
- Not employment related risk: "did not present any evidence explaining the cause of her fall. She testified that she does not know why she fell." (Direct v. Circumstantial)
- Not compensable under neutral risk qualitative/quantitative analysis
- "Petitioner did not show that ***qualitatively*** she was performing an employment related task when she was injured. She was not performing any task for her employer. She was walking like any member of the general public."
- "Likewise, ***qualitatively (sic; quantitatively?)***, she presented no evidence she used the stairs in question more than a member of the general public. The entrance she used was open to the general public. The door she entered through was the only door at the school that was unlocked all day."

Lois Vaughan v. Memorial Medical Center 16WC017341; 18IWCC0690

- IWCC reverses Arbitrator's award of benefits for fall in parking lot
- Arbitrator: "tripped while walking on her normal, accepted route between the door she exited at work and her parking lot. Not only was the spot where she tripped on uneven ground, but it was also encountered in darkness when she left her work shift at 7:00A.M. Those facts together exposed the Petitioner to a risk of tripping greater than that encountered by the general public. Respondent argues that the Petitioner's accident did not arise out of her employment because she route that she took to her parking lot was of her own choice. It argues that she could have gone around her building using a sidewalk on the other side and presumably avoided encountering any defects. The Arbitrator is not persuaded by this argument Ms. Moore, the Respondent's Workers Compensation Coordinator, testified that the route the Petitioner took, while not the quickest route was an accepted route. At least one other employee, Tracy Gomez, apparently felt the same way. This was clearly not a situation where the Petitioner was unnecessarily exposing herself to danger in taking the route that she took to her car.
- IWCC: The Arbitrator's finding of a hazard or defect is erroneous. The Arbitrator's decision is based on finding of a hazard or defect. He wrote : "It is clear from the evidence that the uneven surface between the sidewalk and the asphalt parking lot where the Petitioner fell was a hazard or defect. This is especially true when you add in the fact that the asphalt lot was not flat and instead sloped away from where Petitioner placed her left foot." Here, the height differential (diminishing towards the access ramp at the end of the sidewalk) between the curb and the blacktop was by design and not a defect. As Respondent points out, "common sense dictates that sidewalk slabs should be even or the same height; whereas curbs are, by nature, raised boundaries…IWCC: Petitioner's injury did not "arise out of employment. As there was no defect, special hazard or risk on Respondent's premises, the Commission finds that Petitioner has failed to prove that her injury "arose out of her employment."

Travis Ruffino v. SOI(Liquor Control Comm’n) 17Wc022376; 19IWCC0051

- IWCC affirms and adopts Arbitrator award to “travelling employee” inspector who falls down stairs at in-the-field inspection
- Arbitrator: Based upon the noted findings, the Arbitrator concludes that Petitioner, as a traveling employee, was engaged in a reasonable and foreseeable activity at the time of his injury, and was exposed to a greater risk of injury as a result of his employment and employment duties. He therefore has met his burden in establishing that he sustained accidental injuries that arose out of and in the course of his employment with Respondent.
- IWCC Special Concurring Opinion: As Petitioner was neither traveling nor on the street when his injury occurred, I find such analysis inapplicable…Petitioner was exposed to a neutral risk when walking on the stairs, but he was exposed to such risk more frequently than the general public. Petitioner's job duties required him to enter unfamiliar buildings and perform inspections which required him to traverse stairs on a more frequent basis than the general public. As, such Petitioner's injury arose out of his employment. For the reasons set for above, I concur with the decision reached by the majority.

Stacy Kundinger v. Village of Northbrook 14WC039038; 18IWCC0767

- IWCC affirms Arbitrator award to firefighter who injured her right foot stepping off fire engine on to uneven pavement (different reasoning)
- Arbitrator: Petitioner testified she was stepping down from the fire engine stairs and did so onto uneven ground, causing her to twist her foot. The risk of such an event is not distinctly associated with her employment, nor is it personal to her. ***The risk of stepping on uneven ground is a neutral one***… considers whether the risk of stepping down onto uneven ground is one to which Petitioner was exposed to a greater extent than that to which the general public was exposed…While the act of stepping onto the ground is an everyday activity …notes Petitioner described a ***higher than normal distance*** between the fire engine's last step and ground level, described an uneven surface between the curb and the highway, stated her job duties required her to respond to emergencies away from her normal fire station or location, to carry her gear and to step off fire engines with that gear. Petitioner's activity of stepping off the abnormal height of the stair and onto the uneven ground exposed her to a risk greater than that to which the general public is exposed. Blackburn, 11 IWCC 1123 (claimant was exposed to the defective street and the risk of stepping thereon more frequently than the general public). The evidence also supports a conclusion ***that stepping down a ladder and onto uneven ground were acts she might reasonably be expected to perform incident to her assigned duties as a firefighter responding to an emergency call***. Here, the evidence showed that Petitioner would have been reasonably be expected to disembark the fire engine down the stairs and onto the uneven pavement in order to carry out her duties of attending to the emergency described. Such actions would thus be incidental to those duties.

Stacy Kundinger v. Village of Northbrook 14WC039038; 18IWCC0767

- IWCC affirms Arbitrator award to firefighter who injured her right foot stepping off fire engine on to uneven pavement (different reasoning)
- IWCC: The ***Arbitrator used neutral risk analysis***. Although the Arbitrator arrived at the correct conclusion that Petitioner's injury is the result of an accident arising out of and in the course of her employment, ***the Commission notes that Petitioner is a traveling employee and a neutral risk analysis is inappropriate.*** A ***traveling employee is an employee whose duties require them to travel away from their employer's premises.*** Venture-Newberg-Perini. Illinois courts have found that injuries sustained by a traveling employee arising from the following three categories of acts are compensable: 1) acts the employer instructs the employee to perform; 2) acts which the employee has a common law or statutory duty to perform while performing duties for the employer; and 3) acts which the employee might ***be reasonably expected*** to perform incident to his assigned duties. Generally, if the employee is engaged in conduct that is ***reasonable and foreseeable***, any resulting injury arises out of and occurs in the course of the employment. Petitioner's position as a firefighter and EMT requires her to leave her assigned station and respond to emergencies. Petitioner injured her foot during one such call. The injury occurred while she was wearing her full firefighting uniform, carrying the necessary equipment including her helmet and air pack, stepping down from the higher than average rung on the engine ladder, and rushing to contain an active car fire. After analyzing the pertinent facts, it is unquestionable that Petitioner's injury occurred while she performed acts that she would reasonably be expected to perform as part of her job duties as a firefighter. Thus, Petitioner sustained a compensable injury to her right foot on the date of accident.

Edelina Islas v. Mid-American Growers 12WC020669; 18IWCC0752

- Although the Commission affirms the finding of causal connection, it also views the evidence slightly different than the Arbitrator and terminates causal connection on September 18, 2015.
- A review of the facts indicates that the Law of the Case doctrine does not apply in this case, as the ruling in the initial 19(b) hearing has been satisfied. Petitioner was able to undergo both facet joint blocks, but neither provided the necessary results with which to continue treatment.
- Based on the testimony of her own treating physician, Petitioner is not entitled to undergo the denervation procedure, and has reached MMI as of September 18, 2015, which is the date she followed up with Dr. Orteza and discussed her amount of relief. Although the longevity of the relief is not noted in that day's medical record, it can be presumed that Dr. Orteza was made aware, or should have been aware, of the 30-minute time frame of relief. At that time Dr. Orteza would have known that the denervation procedure was not necessary. Accordingly, the Commission finds that causal connection should be terminated as of September 18,2015.
- In keeping with the causal connection ruling, the Commission modifies the TTD award and terminates benefits as of the MMI date of September 18, 2015. Moreover, although TTD is terminated on September 18, 2015, and Petitioner was still off work at the time, she is still not entitled to Maintenance benefits subsequent to the MMI date. Petitioner did not return to work, but also did not engage in a vocational rehabilitation program, nor did she perform a job search. Thus, there is no basis to award maintenance.

Richard Zaleski v. D&M Architectural 15WC009992; 19IWCC0070

- IWCC reverses Arbitrator wage-differential and awards 30% whole person
- Arbitrator: Jackson Park Hospital noted that once the claimant proves that he has sustained a disability the question of compensation under Section 8(d) arises. Jackson Park Hospital 2016 IL App (1st) 142431WC. The Supreme Court has expressed a preference for wage-differential awards…Under Section 8(d)(1), Arbitrator concludes that Petitioner's post-injury earnings fail to reflect his true earning capacity. Respondent asserts that Petitioner should not be entitled to a wage differential award because he has returned to his same position and at the same rate. ***However, income and earning capacity are not synonomous***…. In awarding 8(d)(1) benefits, the Arbitrator elects to adopt the analysis conducted by Boyd and the analysis conducted by Babat in her first report. $820.00 per week wage differential.
- IWCC: Commission is compelled to examine all the evidence relevant to the subject Petitioner's earning capacity in a competitive job market to determine whether he is entitled to a wage-differential award. Initially, the Commission notes that the subject Petitioner is working for Respondent doing essentially the same work he was doing before the injury and earning the same wages. Conversely, the Commission cannot base an award for loss of earnings on speculation that a claimant might not maintain a position that he has proven he can do for two years between the date of his medical release and the arbitration hearing when there is no indication that he is employed for the purpose of avoiding liability under the Act. The Commission finds therefore, that the Petitioner is entitled to an award based on loss of use of person as a whole under section 8(d)2, thus an analysis under Section 8.1b(b) is warranted.

Kristen Roeing v. Mannheim School Dist. #83 13WC002673; 18IWCC0762

- IWCC affirms PPD award 4% MAW, but uses different 8.1b analysis
- One time, bilateral facet joint injections, L3-S1, by Dr. Jain
- IME Dr. Klaud Miller, MD; AMA Dr. Lami
- AMA: Dr. Lami provided a 0% impairment rating based upon the 6th Edition AMA Guidelines. The level of impairment is not solely determinative of an award of permanent partial disability and must be weighed with the other four factors. Such factor is relevant in assessing Petitioner's ongoing disability. The Commission finds this weighs in favor of a decreased permanence.
- Occupation: Performing her duties as an early childhood autism Petitioner sustained injury while performing her duties as an early childhood autism teacher. Petitioner returned to work in her full capacity as an early childhood autism teacher…require her to physically interact with students who may become combative at times. The Commission finds this weighs in favor of an increased permanence.
- Age: Petitioner was 28 years old on the date of accident. The Commission observes Petitioner is still relatively young, has many work-years ahead of her, and will therefore have to deal with the effects of her injury for a longer period of time. The Commission finds this weighs in favor of an increased permanence.
- Future Earning: Petitioner returned to work in her pre-injury occupation. No evidence was presented that Petitioner's wages or her earning capacity was affected by the injury she sustained. The Commission finds this weighs in favor of a decreased permanence.
- Evidence of Disability (Treating Records): Petitioner underwent a course of physical therapy and chiropractic treatments. Petitioner continued to experience pain requiring her to undergo facet joint injections. Petitioner's pain decreased significantly and was manageable. Petitioner testified she continues to experience periodic flare-ups of pain. The Commission finds this weighs in favor of an increased permanence.

Heriberto Mares v. The Salvation Army 12WC004403; 19IWCC0053

- IWCC reverses Arbitrator’s award of penalties
- Arbitrator: Respondent did not pay TTD until more than a year after the accident. As of that date, Respondent had not obtained any Section 12 examination. At the hearing, Respondent placed accident and notice in dispute but did not offer any evidence to support these defenses. The records from Concentra, a provider of Respondent's selection significantly undermine the validity of the defenses. When Respondent eventually obtained a Section 12 examination following the two-level fusion, its examiner. Dr. Hsu, reviewed records and characterized the treatment to date as reasonable and necessary. He did not attribute Petitioner's ongoing pain to the non-union but he did not question the need for the fusion. Nor did he find Petitioner capable of working in any capacity. Instead, he recommended a functional capacity evaluation. However, the Arbitrator is unable to calculate 19(k) penalties and Section 16 attorney fees on the awarded expenses since they are not reduced per the fee schedule. As noted previously, neither party offered a fee schedule into evidence.
- IWCC: The Commission does not believe an award of penalties and attorney fees is appropriate. Respondent has disputed this claim and questioned Petitioner's credibility from the outset. On review, Respondent explains: “There were reasons to dispute the accident from the beginning. No witnesses confirmed the accident and, in fact, the Petitioner did not call any co-worker to testify. No written accident report was described. The Petitioner was unable to even identify the date of injury weeks afterward. He hired two different attorneys and related two separate dates of accident. It also must be noted that it was discovered while investigating the claim that the Respondent learned that the Petitioner had been using another person's Social Security Number and had none of his own. The Respondent also discovered an Accident Report suggesting a person of the same name, address and Social Security identification injured his back with another employer in 2006." IWCC finds that Respondent had valid reasons to dispute accident and question Petitioner's credibility.