WCLA MCLE 4-10-18

- Review of Commission Decision Summaries
- Tuesday April 10, 2018
- 12:00 noon to 1 pm
- James R. Thompson Center Auditorium, Chicago, IL
- 1 hour general MCLE credit

Hector Cobarrubias v. D&M Custom Carpentry 15WC034073; 17IWCC0304

- The Commission finds that Petitioner has proven that he was an employee ofRespondent atthe time of his alleged accident. Althouch there are credibility issues with all of the witnesses, wefmd that the most compelling testimony is that Respondent had a written independent contractor agreement with other individuals with whom he worked and required those individuals to showproofofworkers9 compensation insurance coverage. (T.102-103). Respondent testified that he Onlyhad an oral agreement with Petitioner. (T.137,147, l66). Petitioner testified that he was neverasked to carry or show proofofworkers' compensation insurance to work at a particular job. (T.20).
- The Illinois Supreme Court has identified a number of factors to assist in detenniningwhether a person is an employee. Among those factors are: (1) whether the employer may controlthe marmer in which the person performs the work; (2) whether the employer dictates the person'sschedule; (3) whether the employer comperlsates the person on an hourly basis; (4) whether theemployer withholds income and social security taxes from the person's compensation; (5) whetherthe employer may discharge the person at will; and (6) whether the employer supplies the personwith materials and equipment. (Escluinca v. Ill. Workers' Comb. Comm9n, 2016 IL App (1st)150706WC fl47 c!'fz'ng Roberson v. Industrial Common, 225 Ill.2d 159,175 (2007)).
- Nevertheless, we also find that Petitioner failed to prove that he sustained an accidental injury arising out of and in the course of his employment with Respondent on September 29, 2015

Denise DeGarmo v. SIU(Edwardsville) 16WC017193; 17IWCC0510

- IWCC affirms & adopts Arbitrator's DENIAL of 19(b)
- In the course of the employment" refers to the time, place, and circumstances under which the claimant isinjured. *Scheffler Greenhouses, Inc.* v. *Industrial Comm'n,* 66 Ill. 2d 361, 366, 362 N.E.2d 325, 5 Ill. Dec.854 (1977). Injuries sustained on an employer's premises, or at a place where the claimant mightreasonably have been while performing her duties, and while a claimant is at work, or within a reasonabletime before and after work, are generally deemed to have been received in the course of the employment.*Caterpillar Tractor Co. v. Industrial Comm 'n,* 129 Ill. 2d at 57. The evidence indicates that the Petitionerhad just exited her work building that day, Peck Hall, and fell just outside the door while she was walkingto her car, and while remaining on the Respondent's premises. Based on this evidence, the Arbitratorfinds that the Petitioner's incident occurred in the course of her employment.
- Arbitrator reasons that the issue here becomes whether the neutral risk oftraversing the walking area outside of Peck Hall involved a risk to the Petitioner which was greater thanthat encountered by the general public. The question is whether the ***paver-like gap*** created in the concretewhere she fell constitutes a "special hazard or risk." The Arbitrator does not believe that the Petitionerhas shown this through the evidence in the case.

Torrie Ashby v. Hy-Vee 16WC003652; 17IWCC0491

- IWCC affirms & adopts Arbitrator’s DENIAL of benefits
- While the evidence clearly indicates that the stairs were available for use by the public, this is not the critical issue in this case.
- For Petitioner to prove that this accident arose out of and in the course of his employment forRespondent, he must prove that his employment exposed him to a greater degree of risk than thegeneral public. Catemillar Tractor Co. v. Industrial Commission, 541 N.E.2d 665 (ill. 1989).When Petitioner was climbing the stairs, he was performing an activity of daily life alsoperformed by members of the general public. Petitioner's employment by Respondent did notexpose him to a greater degree of risk than that of the general public. The stairs were dry and hada protective rubber coating.

Stuart Sanders v. SOI (Centralia CC) 15WC012506; 17IWCC0261

- IWCC affirms & adopts Arbitrator's DENIAL of 19(b)

If Petitioner's participation in the basketball game was deemed to be involuntary he would be entitled to benefits under the Act, however, in this instance Petitioner's participation in the basketball game on January 4, 2015, was purely voluntary. Petitioner admitted that on the day of his injury that he was not assigned to be the gym officer. Petitioner admitted that there was no official mandate or memorandum asking correctional officers to work out or play basketball on their lunch periods. Petitioner testified that he did not receive any kind of monetary bonus or incentive to work out or play basketball on his lunch break. Petitioner testified that he did not have to report to anyone that he was working out on his lunch break, and agreed that the facility would not know whether he was eating lunch or working out.

Helen Brooks v. Kankakee School Dist. 111 14WC004973; 17IWCC0518

- IWCC reverses Arbitrator’s award of benefits in parking lot case
- The Commission finds Petitioner failed to prove Respondent provided or controlled the lot where she fell, both of which were required in order for the parking lot exception to apply.
- No documentary evidenceor testimony established that Respondent *provided* the subject parking lot to its employees. To thecontrary, both Petitioner and witness Breeck testified the lot was provided by the Co-Op for useby employees of multiple employers in addition to Respondent.
- The Commission finds nothing in the record which proved that Respondent *controlled* theparking lot. Petitioner's testimony that she never saw the general public park in the lot is similarlyinsufficient to establish control of the lot by Respondent. The only evidence tending to show whocontrolled the lot was the testimony of Ms. Breeck - and she testified that the lot was maintainedby the Co-Op, not by Respondent.

Robert Watson v. Wal-Mart 14WC028608; 17IWCC0519

- IWCC REVERSES Arbitrator’s finding of causal connection (aggravation of pre-existing osteo-arthritis
- There is no question that Petitioner's arthritis in both knees preexisted the workplace incidentthat is asserted to be the accident. The degree of degeneration was advanced by that time. Both Dr.Garelick and Dr. Sclamberg agree on this point. However, the two doctors disagreed as to whether thecurrent condition of Petitioner's knees -insofar as that condition may warrant restriction from workingand total knee replacement - arose from that workplace incident.
- Arbitrator cited the opinion of Dr. Sclamberg in his decision in favor of Petitioner.However, Dr. Sclamberg based his opinion solely on the history related to him by Petitioner, who toldDr. Sclamberg that he had no pain in his knees pre-dating the accident. As noted above, the evidenceshows that this history is inaccurate. As noted above, a few days after the accident, Petitionercomplained to his primary care physician of knee pain that had been ongoing for four months. Dr.Sclamberg testified that his opinion would change if medical records indicated that Petitioner had kneepain before the accident.
- The Commission finds that Dr. Sclamberg's opinion is flawed and that Dr. Garelick's opinion ismore persuasive. The Commission concludes that Petitioner's preexisting arthritis was symptomaticbefore the asserted date of accident, and that the asserted accident is not causally related to the currentcondition of ill-being in his knees. The evidence shows that the current condition of his knees reflectsthe natural progression of his already-advanced arthritis, and is not due to any compensable"aggravation."

James Griffeth v. R.W. Dunteman 15WC012818; 17IWCC0485

- IWCC MODIFIES Arbitrator’s causation finding relating to some teeth
- The Commission affirms the Arbitrator's causal connection opinion in relation to tooth#9 on Petitioner's upper row. However, the Commission reverses the Arbitrator's findingof causal connection in relation to teeth #'s 7, 8 and 10. Petitioner had pre-existing toothdecay on the top row of teeth which accounted for the majority ofhis disfigurement. Asnoted by Dr. Bargamian, if Petitioner's current upper teeth conditions were the result ofthe accident related trauma, there would be injury to the adjacent soft tissue, of whichthere is little to none present in the photos. Forperspective, photos show that Petitioner'slower lip is clearly damaged, which is consistent with the (stipulated) trauma-inducedstructural damage to teeth #22-27 on the bottom row.

Mark Schmidt v. CTA 14WC003252; 17IWCC0521

- IWCC MODIFIES DOWN (20% leg) Arbitrator’s PPD award (25.5%)
- Dr. Shah wrote, "At this pointhe can return to work full duty. He is at maximum medical improvement..Impairment rating is zero." The Commission finds that this statement by Dr. Shah is not a"report" as contemplated under §8.1 b(a) nor is there any indication that this impairment rating"opinion" was determined based upon "[t]he most current edition of the American MedicalAssociation's 'Guides to the Evaluation of Permanent Impairment"‘
- We find Petitioner credible that, although hewas returned to work full duty in his previous position, he did so with some difficulty and selfimposedwork modifications due to his continued symptoms. We agree with the Arbitrator'sfinding that this factor deserves greater weight.
- We hereby correct this omission by finding that Petitioner was 60 years old at the timeofthe injury. We affirm the remainder of the analysis of this factor.
- The Commission affirms the Arbitrator's analysis of the fourth factor ("future earningcapacity").we find that the Arbitrator gave too much weight to this factor. Petitioner's testimonyregarding complaints of popping, grinding, and pain with certain activities is corroborated by Dr.Shah's records. We find that many of the considerations discussed by the Arbitratorunder this factor are also elements of the second factor relating to his occupation. We find thatPetitioner has some evidence of disability corroborated by the medical records but not to thedegree that the Arbitrator found. Accordingly, we give this factor some weight.

James Zielinski v. Cerami Construction 07WC029995; 17IWCC0594

- IWCC DENIES Respondent’s 19(h) Petition to modify 8(d)1 to 8(d)2
- The Commission finds that there is no objective evidence supporting Respondent's§19(h)/8(a) claim. Petitioner has not worked as a Cement Finisher subsequent to the September4, 2012 arbitration Decision. He did not work at all in 2013 and 2014. He worked a total offiourand-a-halfdays in 2015, but did not perfom any duties that required him to lift over fifty poundsor use his right shoulder. Petitioner's treating physician clarifled his medical records, Stating thathe was not qualified to render an opinion on Petitioner9s ability to retum to work with regards tohis richt shoulder, and only opined about Petitioner's ability to work with respect to his diabeticcondition.
- Petitioner “retum" to the workfiorce had nothing to do with any improvement in his condition,and everything to do with his need fior funds to keep up with his health reSmen. Four and-a-halfdays of work between 2013 and 2017 cannot realistically be categorized as a retum to theworkfiorce, and Petitioner's testimonymakes it understandable whysuch a "retum" was necessary.

Gilmartin v. Kipin Industries (& IWBF) 09WC016579; 17IWCC0660

- Arbitrator found Decedentdid not sustain an accidental injury arising out of and in the course ofhis employment and deniedall benefits. On review, Petitioner requests the Commission flnd Decedent sustained acompensable accident and award benefits accordingly. However, as the alleged injury occurred inWest Virginia, a jurisdictional determination is necessary befiore the merits of Petitioner7s claimcan be reached.
- KipinIndustries, Inc. is a Pennsylvania corporation, and Decedent, who was assigned to job sites invarious states over his tenure with Kipin, alleges an accidental injury while working in WestVirginia. As such, for the Commission to possess jurisdiction over this claim, the contract ofhiremust have been made in Illinois.
- Certainly, a subsequent transfer to an out-of-state job site does not defieat jurisdiction solong as the original contract of hire remains in force (A4czfeo77eJ,); here though, there iS nothing inthe record to establish the situs of the original contract of hire. The Commission notes Decedelltwas deposed on two occasions. Despite the need to establish Illinois jurisdiction over an injuryoccurring in West Virginia, there was absolutely no testimony elicited, by either party, as to thehiring process
- The Commission must flnd its jurisdiction over this claim within the provisions ofIllinoisWorkers7 Compensation Act, and it cannot be found in this record without resorting to speculationor conjecture. The Commission finds the Claim Should be dismissed for lack ofjurisdiction.

Juan Espino v. MLV Construction & IWBF 09WC048261; 17IWCC0662

- IWCC affirms and adopts Arbitrator’s award
- I respectfully dissent from the opinion ofthe majority. I would vacate the Arbitrator's awardagainst the Injured Workers9 Benefit Fund. I am not persuaded that Respondent MLV Construction wasnot covered by workers9 compensation insurance at the time ofthe alleged accident. Petitioner failed tosubmit certification from the National Council on Compensation Insurance (cNCCI''). Instead,Petitioner submitted exhibit #24 as evidence ofMLV9s lack ofinsurance. However, this document ishearsay and ofno probative value, and it reflects an incorrect date ofaccident. Furthermore, themedical records ofseveral providers reference Liberty Mutual as the insurance carrier and include aworkers' compensation claim number. There are also Liberty Mutual documents in the medical recordsindicating that charges are pending further investigation ofthe claim; these fiorms include a workers9compensation claim number and the date ofaccident. There is no credible evidence proving that aLiberty Mutual policy, or any other carrier's policy, was not in effect at the time ofthe alleged accident.I do not believe that sufficient evidence has been presented to hold the Injured Workers' Benefit Fundresponsible fior any monetary award in this case and therefiore I dissent from the majority opinionaffiming and adopting the Decision ofthe AI'bitratOr.