WCLE MCLE 5-6-15

- Recent Commission Decisions & Legislative Update
- Wednesday May 6, 2015
- 12:00 pm to 1:00 pm
- James R. Thompson Center , Chicago, IL
- 1 Hour General MCLE Credit

Jillian Bianchi v. Children's Memorial 09WC043037; 14IWCC0878

- IWCC affirms & adopts Decision of Arbitrator denying benefits in repetitive trauma case
- Dr. Fernandez admitted that he did not know how long it took the Petitioner to tap the earpiece, what pressure she used in tapping it, or if the headset was on one side or both sides. Dr. Fernandez admitted that he never reviewed a job description or a video of the job performed by the Petitioner. The Commission is not required to accept a causal connection opinion when it is based on flawed, inaccurate or incomplete histories. *Sorenson, 281 Ill. App.3d 373* (1996).Dr. Michael Vender provided a contrary opinion, which the Arbitrator finds to be more persuasive and credible. Dr. Vender testified that the Petitioner described her job activities to him.
- The Arbitrator finds the Petitioner failed to prove that she sustained an accidental injuries arising out of and in the course of her employment. In so finding, the Arbitrator relied on the testimony of the petitioner and her supervisor as to the amount of telephone calls that she would make and take and the time it took to initiate the earpiece and the length of leach call. The Arbitrator also relied on the testimony regarding the keying activities finding that the Petitioner, in using the computer, would activate same by limited keying of the patient's name or medical record number and then obtaining said information from same. The Arbitrator would note that this process is unlike that of a transcriptionist or secretary who is constantly typing, but consists of limited keying with thought process. The Arbitrator, like Dr. Michael Vender, finds that reaching up with one's arm extended to tap an earpiece one to two seconds at a time, would not be considered to be repetitive and clearly nothing which is forceful.

Jennifer Jurcak v. City of Chicago 10WC043618; 14IWCC0883

- IWCC reverses Decision of Arbitrator & finds that Petitioner sustained a work-related accident resulting in injury to her right knee
- P did not receive any right knee treatment between April 2007 and September 21, 2010 (DA)
- Traffic Control Aid: “Backing up kind of swiftly guiding traffic, her right leg totally went straight and jolted…trying so quickly to move back to turn the cars as it was rush hour when her leg went straight and she jolted”
- The Commission notes that Ms. Jurcak had a pre-existing right knee condition…prior work-related accident in 2002 that resulted in three surgeries to her right knee. As a result of the accident and subsequent surgeries unable to fully straighten her leg… She subsequently returned to work with permanent restrictions…The Commission further notes that the record is void of any mention of Jurcak receiving medical treatment to her right knee between April 2007 and September 21, 2010. There is no indication that Petitioners pre-existing right knee condition impeded ability to perform job duties as a traffic control aid
- On the day of the incident, Petitioner was in the middle of the street directing rush hour traffic in downtown Chicago. Despite the Petitioner's testimony that she did not see anything that caused her to feel the jolt in her right knee, the unrebutted evidence establishes that Ms. Jurcak was walking backwards quickly while directing oncoming traffic when the incident occurred. The evidence demonstrates that Jurcak's job required her to direct rush hour traffic. The Commission finds that the Petitioner was exposed to a risk of injury greater than that which is faced by the general public.

Carl Crittenden v. City of Chicago 08WC019505; 14IWCC0884

- IWCC affirms Decision of Arbitrator awarding wage-differential, but modifies amount downward
- In this case, the Arbitrator calculated the weekly wage differential to be $581.06 per week…no real dispute that the Petitioner, but for being injured, would have been earning $ 32.79 per hour in his pre-injury job with Respondent…the two vocational experts who evaluated Petitioner and opined on his earning potential, Julie Bose and Steve Blumenthal, essentially determined Petitioner was capable of earning $ 8.25 to $13.78 per hour in suitable employment…found that $ 11.00 per hour would be reasonable, and then determined the weekly wage differential by multiplying each weekly wage by 40 hours ($ 51,311.60 for the former, $ 440.00 for the latter), subtracted the weekly wage Petitioner was capable of earning from what he would have been earning but for the injury, and took 66-2/3% of that figure, as required by § 8(d)(1).
- When a claimant is receiving weekly benefits while performing a search for alternative employment, the search is his "job" during this time. Taking the evidence as a whole, the Commission agrees that the Petitioner has clearly shown entitlement to a wage differential, however his lack of effort in obtaining alternative suitable employment leads us to determine that he is capable of earning the highest amount that Mr. Blumenthal opined he was capable of earning, $ 13.78 per hour. We note that while the Respondent could have initially provided more assistance to the Petitioner in his job search than it did, but this does not absolve the Petitioner's responsibility to do his best and give his best effort in finding alternative employment. In this case, we do not believe he provided such effort, and as a result have determined the proper weekly wage differential should be $ 506.93 per week.

Richard Drobac v. Harrah's Casino 07WC029247(cons.);14IWCC0943

- IWCC modifies Decision of Arbitrator; takes away PTD and awards 65% loss of whole person
- The Commission, however, reverses the Arbitrator's ruling on odd-tot permanent and total disablement. The Commission views the evidence slightly differently than the Arbitrator, noting Petitioner's previous work experience working in hospital maintenance, construction, painting and investing in the stock market The Commission also notes that Petitioner has not looked for work since being terminated by Respondent. Based on this evidence, the Commission vacates the Arbitrator's odd-lot permanent and total disablement award, instead granting Petitioner a permanent partial disability (PPD) award based on his current hand complaints. The Commission awards Petitioner PPD benefits for a 65% loss of use of his person as a whole under § 8(d)(2) of the Act.

Clinton Taylor v. Mt. Vernon Police Dept. 12WC043325; 14IWCC0946

- The Commission, upon reviewing the entire record, reverses the Arbitrator's decision and finds while Petitioner proved he sustained an accidental injury on October 16, 2012, he failed to prove a causal connection exists between the alleged October 16, 2012 work accident and Petitioner's present condition of ill-being
- The Commission finds that Petitioner's contemporaneous records are not consistent with one another and they do not support Petitioner's claim that he injured his right knee in the October 16, 2012 altercation. The most contemporaneous report is the October 16, 2012 incident report which is made on the day of the event…contains an extreme amount of detail regarding the altercation. Among other things, it addressed the physical condition of the Petitioner post altercation with references/photos taken of Petitioner's injured arm/hand and scratches, but it makes absolutely no reference to and had no photos whatsoever of Petitioner's right knee. One whole month elapses before a second report is made. The second report is the Form 45, which is dated approximately one month later and which again addresses the altercation, but oddly enough it contains a diagnosis of a torn patellar tendon in Petitioner's right knee prior to Petitioner seeking any medical care. Petitioner does speak about being familiar with Nurse McKee, who is the wife of fellow Officer Ryan McKee. He says she came by the house a few times during which he complained of his right knee. Interestingly enough, when he sees Nurse McKee in a formal medical setting three days after he completes the Form 45 report he does not mention the altercation but instead talks about wrestling with a co-worker and being on his knees while fixing a toilet. He dates the onset of the knee pain only two weeks before and he indicates that it is without injury or trauma. All of the medical records subsequent to right knee MRI correspond to the altercation. Petitioner claims that he did not know his right knee was that bad. He thought it was going to get better. Otherwise, he would have mentioned it earlier.
- While it is true that Dr. Mall provides a positive causation opinion regarding Petitioner's right knee and the altercation, his opinion is only as good as the foundation upon which it based upon. Dr. Mall relied on Petitioner's history that he developed right knee pain following the altercation.

Douglas Kozel v. Owens & Minor 12WC016190; 14IWCC1050

- IWCC modifies Decision of Arbitrator to include additional TTD
- The Commission finds that Petitioner is entitled to additional TTD benefits for the period from April 27, 2010 through August 26, 2010. Even though he was returned to full duty on January 26, 2010, Petitioner was never released by Dr. Cummins at MMI. On that date, Dr. Cummins noted that Petitioner still had stiffness in his shoulder and he wanted to follow Petitioner for the next three to six months to see how things progressed with a home exercise program. Dr. Cummins specifically heId off declaring Petitioner at MMI because of the possibility he would require a revision shoulder arthroscopy. On April 27, 2010, Dr. Cummins noted that Petitioner continued to have limited motion due to stiffness and that Petitioner complained of an inability to perform his activities of daily living with his right arm. Based on Petitioner's failure to improve nine months following his surgery, Dr. Cummins recommended an MRI and revision arthroscopy.
- The evidence shows that the insurance company was aware of Dr. Cummins' request for authorization for surgery shortly after this visit. It was not approved right away and, instead, Respondent sent Petitioner for a Section 12 examination with Dr. Breslow in August before ultimately approving the surgery that was done in October 2010. Although Dr. Cummins did not explicitly change Petitioner's work restrictions on April 27th, we find that this is most likely due to the fact that Petitioner was not working at the time. Petitioner was also not represented by an attorney at that time. Based on the above, we find that the evidence clearly shows that Petitioner was not at MMI and needed additional treatment Therefore, he is entitled to TTD from April through August 26, 2010, the date of his examination with Dr. Breslow.
- Penalties!

Susan Routt v. Wal-Mart Stores 11WC027410; 14IWCC1052

- IWCC reverses the Arbitrator's grant of Respondent's Motion to Dismiss and reinstates the Application for Adjustment of Claim
- The issue in this case is whether a dismissal for want of prosecution (DWP) precludes the filing of a new Application for Adjustment of Claim within the statute of limitations
- Regarding Petitioner's second Application, we find that it is not barred by the dismissal of the first Application. The second Application was filed timely within the statute of limitations and we follow the Commission decision of *Johnson v. IDOT. 6 IWCC 991* (11/14/06) and the Supreme Court case of Chicago Rawhide Mfg. Co. v. IC. 35 III. 2d 595 (1966).

Manuel Mendoza v. Heatmaster 11WC027410; 14IWCC1052

- With regard to the issues of Section 19(k) penalties and Section 16 attorney fees, the Commission modifies the Arbitrator's decision and finds Petitioner is entitled to penalties and fees pursuant to these sections of the Act, for the reasons noted below.
- As the records in evidence prior to October 18, 2011 do not make clear that there was loss of bone due to Petitioner's accident, the Commission finds there was no unreasonable or vexatious delay in payment of the statutory amputation benefit.
- The delay in payment of various medical expenses related to this case is another matter.
- Petitioner's Exhibit 2 indicates Petitioner emailed Respondent's claim handler on April 8, 2011 inquiring about the payment of a bill from Resurrection Hospital, noting the provider had contacted him indicating it was awaiting Mr. Cohn's response regarding payment. In his April 14, 2011 email response, claims handler responds: “I just got off the phone with Debra at Resurrection and we are in the process of settling this bill.”
- One of the arguments Respondent appears to be making is that, based on its ongoing negotiations with medical providers, it should not be required to make payments on behalf of Petitioner in an undisputed case. We strongly disagree. In the case at bar, the claimant was receiving collection notices and phone calls from the provider seeking payment.
- While a Respondent has every right to seek a better bargain versus the fee schedule allowance with the providers in paying such benefits, doing so while such providers are actively seeking collection against the Petitioner in an undisputed case is unreasonable. In our view, in an undisputed accident and causation case, a claimant should not be required to field collection calls from a provider due to the employer "working on" or being "in the process of settling" bills with providers.