**WCLA NEWSLETTER**
**CASE LAW UPDATE NOVEMBER 2019**

## I. ARISING OUT OF EMPLOYMENT

***Buckley v. Molly Maids*, 16 WC 32369, No 19 I.W.C.C. 0196 (April 18, 2019)**

The Petitioner worked full time for the Respondent as a maid. She worked there for nearly 20 years. Her main duties included mopping, vacuuming, sanitizing kitchens and bathrooms, dusting mini-blinds, ceiling fans, cobwebs, baseboards and doorframes and unloading and reloading the car with supplies. On the day of the incident she was dusting the levers of the mini-blinds and she was holding the bottom of the mini-blinds so she would get a good wipe on it but then it starting coming loose and she reached up too quick and that is when she felt a pop. She noticed immediate pain in her left arm. She notified her boss via text. She went to the occupational health clinic on the day of the accident, that being September 21, 2016.

The Arbitrator denied the claim finding the activity was a neutral risk.

The Arbitrator determined, based on the facts nothing in the records suggested the Petitioner's employment contributed to the risk of raising her arm so as to constitute a qualitative increase in the risk faced by the general public. There was nothing in the record to indicate the Petitioner had to raise her arms more frequently than the general public. The Arbitrator denied the claim.

On review the Commission reversed the Arbitrator's Decision and found the activity being performed by the petitioner was an employment risk. The Commission relied upon Mytnik v. Illinois Workers' Compensation Commission, 2016 Ill. App. (1st) 152116WC.

In Mytnik the claimant worked on an assembly line where he installed rear suspension on vehicles using an articulating arm to fasten bolts and brackets. At the time of his injury, the claimant was reaching down to grab a bolt that had fallen on the assembly line where he felt pain down the right side of his back and hip. The Appellate Court found the act of bending may be an act performed by the general public on a daily basis, however, the evidence established that bolts would regularly fall out of the articulating arm during the assembly process and that the claimant had to run down there and bend over and reach and pick up before the rotating platform ran over it.

The Commission determined that the Petitioner's act of raising her arm may have been an act performed by the general public on a daily basis however that was not the whole of the Petitioner's testimony. The petitioner testified that in the process of holding the bottom of the mini-blind, and then attempting to dust it the mini-blind became loose and she quickly reached upward with her left arm to prevent the mini-blind from falling. The Commission ruled it was in error that the Arbitrator determined that nothing by way of the Petitioner's employment contributed to the risk of raising her arm.

The Commission stated: "Here, the act of dusting the mini-blind, was a required part of the Petitioner's job duties. There was no testimony or evidence to the contrary. The fact the mini-blind had loosened, began to fall and Petitioner attempted to prevent the mini-blind from falling further by suddenly lifting her left arm was a risk incidental to, belonging to, and connected to Petitioner's dusting duties."

Maria E. Portela and Thomas J. Tyrrell authored the opinion and there was a dissent by Deborah Simpson.

***Sims v. State of Illinois, Jacksonville Correctional Center***, 17 WC 25254; 19 I.W.C.C. 0195 (April 18, 2019)

Arbitrator Hemenway denied the claim on the basis the Petitioner failed to prove the accident arose out of the employment. The Petitioner was a correctional officer at the Jacksonville Correctional Center. On December 18, 2016 he slipped on ice as he was returning from his "chow break" located in the gatehouse. To get to the gatehouse he had to leave the tower, walk across the parking lot, and then walk on the sidewalk. As he was returning from chow break he exited the gatehouse, walked down a long sidewalk, turned left and walked towards the parking lot. He lost his footing before he got to the parking lot. He testified everything was covered with snow and ice.

The path to the gatehouse was open to the public. The petitioner testified the pathway is in a secure area of the prison. He can eat in the break room or any other room where they are assigned to eat.

The Petitioner sought medical care. The Arbitrator had found the Petitioner was exposed to a neutral risk and that the Petitioner failed to establish that he was exposed to a risk of falling snow and ice to a greater degree than that of the general public. The Arbitrator also indicated the Petitioner failed to prove that the risk of falling on snow and ice while walking in a public lot was qualitatively or quantitatively increased due to his job duties.

The Commission reversed the Arbitrator and stated: "However, a risk-analysis is unnecessary if the injury occurred on the employer's premise 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 Commission*, 91 Ill.2d 210, 215, 437 N.E.2d 609, 62 Ill. Dec. 921 (1990). Further, where the injury was due to the dangerous condition of the employer's premises, courts have consistently approved an award of compensation. *Hiram Walker & Sons, Inc. v. Industrial Commission*, 41 Ill.2d 429, 244 N.E.2d 179 (1968) holding that claimant's fall in employer's ice-covered parking lot was compensable; *Mores-Harvey v. Industrial Commission*, 345 Ill. App.3d 1034, 804 N.E. 2d 1086, 281 Ill. Dec. 791 (2004) (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 Commission*, 2013 Ill. App. (4th) 130049WC; 998 N.E.2d 971, 376 Ill. Dec. 261 (where the claimant slipped on ice in a parking lot furnished by employer shortly after she arrived at work, the claimant was entitled to benefits under the Act as a matter of law).

The Commission also stated: "The fact that the walkway in the case at bar was also used by the general public is immaterial to the issue of compensability as petitioner's injury was caused by a hazardous condition on the employer's premises." The Commission goes on to state: "(t)he hazardous condition on the employer's premises renders the risk of injury incidental to employment without having to prove that she was exposed to the risk of that hazard to a greater extent than are members of the general public".

In the present case, it was undisputed that the walkway where Petitioner fell was on the employer's premises and that the walkway and parking lot were covered in snow and ice. Petitioner's testimony he slipped and fell on the ice was not rebutted by the Respondent and was bolstered by the Employer's First Report of Injury and the contemporaneous medical record.

The Commission found that the injury was caused by the snow and ice which represented a dangerous condition or defect on the employer's premises. As there was a hazardous condition on the employer's premises, a neutral risk analysis was not warranted. Petitioner's injury is a compensable claim.

The Commission then went on to state that they could have also found this case compensable under the "Personal Comfort Doctrine".

The Commission then reviewed the medical evidence and took into consideration the 5 factors under Section 8.1(b) of the Act and awarded the petitioner 1% of a man as a whole.

***Hindman v. Big Muddy*, 16 WC 37776; 19 I.W.C.C. 0275 (June 6, 2019)**

The Petitioner failed to prove she encountered a hazardous condition, i.e. an employment risk. The Petitioner testified she fell on an incline or uneven surface on the sidewalk. Petitioner clarified that uneven referred to one part of the sidewalk being higher than the other. Petitioner testified no defect was apparent in the sidewalk and no cracks were present. The sidewalk was sloped as to allow for handicap access.

The Arbitrator denied the claim and stated: "Petitioner failed to prove accident as a matter of law." The Commission struck that portion of the Arbitrator's Decision and found the Petitioner was in the course of her employment but she failed to present evidence sufficient to prove that her accident arose out of her employment. The Commission, once again, ruled Petitioner failed to prove a hazardous condition or an employment risk. The Commission then analyzed that under a neutral risk analysis and reached the same conclusion.

***Beasley v. State of Illinois, Shawnee Correctional Center*, 17 WC 04093; 19 I.W.C.C. 0224 (May 7, 2019)**

The Commission affirmed Arbitrator Hemenway's order finding the incident arose out of the Petitioner's employment.

The Petitioner testified on the date of the accident he was sitting at his computer in a rolling chair on a concrete floor checking e-mails when a co-worker came up to speak to him. He testified the computer chair had five rollers with casters made of hard plastic than soft tread casters used for concrete flooring. After the conversation took place the Petitioner pushed away from his desk to get his feet from under his desk until his chair rollers hit a wire and jammed; he then pivoted to the left, clasped his hands behind his head and leaned back. When he did this, the chair back went further than it normally did, and the chair rollers slid out from the concrete floor. The Petitioner flipped backwards over the chair. The Petitioner testified the chair went back further than it did in the past and caused the accident. He stated there was a combination of the fact that the chair was 21 years old with a broken tension mechanism, and the chair rollers were caught on a radio shop wire debris on the floor.

The petitioner had signed an incident report the same day indicating that: "The chair kicked out on me sending me backwards onto the floor." The Supervisor's Report Section asks about unsafe acts or conditions which contributed to the accident stated: "chair allowed him to lean back beyond tip threshold."

The Arbitrator ruled, based on the evidence presented that the chair was defective.

The Arbitrator went on to state: "Arguendo, and irrespective of any disrepair or defect in the chair, while the Commission has on some occasions found that injuries caused by rolling chairs constitutes a work-related risk in some instances. *(See Calloway v. Cook County Dept. of Corrections* 131 I.W.C.C. 0159; *Bacheldor v. Wal-Mart* 141 I.W.C.C. 0176; *Burcham v. Governor's State University*, 141 I.W.C.C. 0795; *Muriel Minter-Mell v. Verizon Wireless*, 07 I.W.C.C. 1632, and non-compensable neutral risks in others (*See Elliot Daymon v. Vienna Corr. Ctr.*, 15 I.W.C.C. 0369), in the majority of cases, the Commission has found the injuries compensable either as a work-related risk or a neutral risk to which the claimant was exposed to a greater degree than the general public, particularly in cases that involved rolling chairs on slick surfaces. The Arbitrator ruled, based on the evidence Petitioner need not establish that the chair was defective, there was sufficient evidence in the record for a reasonable person to conclude that the chair was indeed defective or at least petitioner was subjected to a heightened risk of injury by virtue of debris left on the floor.

## II. COURSE OF EMPLOYMENT

***Washington v. Northeastern Illinois University*, 17 WC 18052, 19 I.W.C.C. 0184 (April 8, 2019)**

Death case. The Arbitrator denied the claim. The Commission reversed. The employee, Mayfield (decedent) sustained what proved to be a fatal injury on June 19, 2015 while performing her work duties. She sustained a right tibial plateau fracture while playing in a student/faculty basketball at one of her assigned schools. She died of a pulmonary embolism a few days after undergoing surgery to repair the fracture. There was no dispute that the pulmonary embolism resulted from the work injury.

Ms. Colette Thelemaque-Collier testified the decedent's job included conducting workshops in the classroom that explored a connection between college and careers and engaged students in college visits, career days, career exploration, team building activities, family financial aid workshops. Team building exercises include experiential education such as activities where students can think about collaboration and overcoming obstacles through physical activities or cooperative games. She testified this could include playing in a sporting event together. The decedent's job duties included managing a high school site team, providing the scope of work covered by the grant, assisting in workshops for parents and students, professional development training, and coordinating events.

Wendy Stack testified on Respondent's behalf. Her title was Associate Vice President, Access, Innovation, and Research and Executive Director, Center for College Access and Success. She testified the decedent worked with the CPS college and career coach as her assigned school and her responsibilities included working with the post-secondary team at the high schools which may include counselors, other coaches besides the GEAR UP coach, and assistant principals. She testified that participating in athletic activities is not mandatory.

The Commission agreed that the Arbitrator correctly determined the decedent was a traveling employee when the accident occurred. The Commission cited: *Venture-Newberg-Perini v. Ill. Workers Comp. Comm'n*, 2013 IL 115728. 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.

The Commission ruled the decedent's injuries appeared while she participated in an event at one of her assigned schools. Thus, the decedent was clearly a traveling employee at the time of the accident. The Commission further found that injury occurred while she performed an act her employer might reasonably expect her to perform incident to her assigned duties as College Access Coordinator. Two witnesses testified that it was not mandatory for decedent to participate in a faculty/student basketball at her assigned school but her participation was reasonable and foreseeable. The Arbitrator, in denying the claim, relied exclusively on the voluntary recreational activity exclusion pursuant to Section 11 of the Act. Section 11 states as follows:

> "Accidental injuries incurred while participating in voluntary recreational programs including but not limited to athletic events, parties and picnics do not arise out of and in the course of the employment even though the employer pays some or all of the costs thereof. This exclusion shall not apply in the event that the injured employee was ordered or assigned by his employer to participate in the program." 820 ILCS 305/11.

The Arbitrator did not address whether Section 11 exclusion applied to an accident suffered by a traveling employee. Pursuant to *Bagcraft v. Indus. Comm'n*, 302 Ill. App. 3d 334 (1998) the Commission concluded that Section 11 exclusion of voluntary recreational activity is inapplicable when the injured employee is a traveling employee.

***Nance v. Grasser's Plumbing & Heating*, 17 WC 9002; 19 I.W.C.C. 0181 (April 4, 2019)**

The Petitioner completed installing a furnace at a customer's home early. He was returning to the employer's place of business, in a company truck on a route that would take him back to the business. Petitioner was carrying a check from the customer to the employer for the work. It was the only job the Petitioner had been given for that day.

The Petitioner stopped by his father's house before returning to the business. This required him to make a left turn off of the route back to the business. While stopped in the left lane to make a turn, petitioner was struck by another vehicle, causing Petitioner to injure his neck. Petitioner would not have been stopped on the road but for the need to make the left turn to go to his father's home. Petitioner told the adjuster he was going to his dad's house at the time of the accident but did not tell the adjuster the reason he was going to his dad's home. Petitioner had no work-related reason to go to his dad's house at that time, or at least that was known at the time of the denial of benefits made by the employer. At the hearing the Petitioner testified he was going to his dad's house to use the bathroom. He indicated there was no policy in place regarding where employees could/should take bathroom breaks. Based on the personal comfort doctrine the injury is compensable.

The Arbitrator had awarded penalties and attorneys' fees under Section 19(l), 19(k) and Section 16 of the Act. Those penalties were reversed by the Commission. The Commission ruled that Respondent's denial of benefits based on the initial investigation was not unreasonable nor vexatious.

***Brustin v. Brustin & Lundblad, Ltd.*, 14 WC 23938; 19 I.W.C.C. 0220 (May 1, 2019)**

The Petitioner is an attorney and president of his firm with emphasis in handling common-law actions as well as some workers' compensation claims. He is the firm's senior attorney and he supervises the office. His office had called him at his residence indicating that a client the Petitioner had known for years was in his office early for a meeting. The Petitioner then, after receiving the call finished getting dressed, shaved and washed and preparing himself to go to the office. The Petitioner lives in a high rise building at the corner of Bellevue and inner Lakeshore Drive in the City of Chicago. He went out the front door of his building. He turned to his right, going from north to south, walking on the public sidewalk to the bus stop which was at the corner of Oak Street and the inner Lakeshore Drive. He chose to take a public bus to the office because it is direct and efficient. The weather was nice and dry. There was no moisture on the sidewalk, there were no objects on the sidewalk and the path on the sidewalk was not blocked. As he was walking at his normal pace on the public sidewalk, he tripped and fell forward onto the sidewalk. He attributed the fall to an elevation issue with the sidewalk. He had filed a civil suit against the City of Chicago and the case was dismissed on the City's motion for summary judgement. Affidavits supporting the motion for summary judgement indicated the sidewalk discrepancy in elevation was 1 1/8 inch to 1 7/8 inch. The Petitioner received medical care.

The claim was denied by the Arbitrator and affirmed by the Commission. The testimony of Mr. Brustin does not support a conclusion at the time of the October 27, 2011 incident he was a traveling employee. He was traveling to his office, his fixed place of employment. He was traveling using his ordinary means of travel, the public bus, transportation which he considers to be the most efficient of traveling to the office.

The coming and going rule means an employee cannot generally collect workers' compensation benefits while commuting to and from work. (*Hundle v. Sjostrom & Sproulc* (1965), 33 Ill.2d 40.) An exception to this rule occurs when the employer agrees to compensate the employee for the time spent traveling to and from work. *Commonwealth Edison v. Industrial Commission*, 328 NE2d. 165 (1981)

The Petitioner testified his law firm provides a CTA bus card to its employees.

The Commission found the record is devoid of any evidence to conclude Petitioner was paid for his travel time to the office. If the law firm provided to its employees a CTA pass to cover the cost of transportation, it merely demonstrates reimbursement for the expense of travel and is a form of additional compensation. It does bring the travel itself within the course of employment.

The Petitioner proposed to the Commission he was on a special mission for the benefit of his law firm. The Arbitrator found there was no evidence of any special mission giving rise to any compensable accident. The Commission affirmed.

## III. ACCIDENTAL INJURIES

***Sprenger v. Peoria County Sheriff's Department*, 15 WC 21038; 19 I.W.C.C. 0189 (April 16, 2019)**

The Commission awarded benefits to the claimant for a left knee meniscus tear sustained at work when she twisted her leg. The Petitioner was responding to an emergency call involving an

inmate who required medical care for a seizure. The Petitioner had been in the restroom and she ran out the door, turned to grab her five-pound duty belt, then pivoted to the left to run out the door. She twisted her knee when she pivoted. The incident took place on April 8, 2015. The Petitioner experienced left knee pain the following day and it increased over the next several days. The Arbitrator rejected the employer's argument that the claimant lacked credibility based on her failure to report the accident to her employer or seek medical attention for 11 days.

At the time of the accident the claimant was relatively young and was a competitive distance runner who ran 20 to 30 miles a week. The Arbitrator concluded that it would be reasonable for the claimant to believe the problems might go away.

***Williams v. Phillips 66*, 14 WC 3224; 19 I.W.C.C. 0254 (May 22, 2019)**

Commission reversed the Arbitrator and found the Petitioner met his burden he sustained a work-related injury to his right knee due to a work accident that took place on April 23, 2013).

According to the Petitioner's job description, he had to spend a significant portion of his time walking, climbing ladders or stairs up to 100 feet or higher, bending, standing on his knees, reaching, assuming awkward postures, maneuvering through tight spaces, grasping and carrying small tools or equipment, pushing and pulling, squatting and kneeling.

On April 29, 2013 he was descending one tank through a step/pivot motion. The Petitioner felt weakness in his knee causing him to descend the remaining stairs sideways. The Commission determined Petitioner sustained an accident while coming down the spiral staircase of the spherical tanks while stepping down and pivoting on the angled steps. The Petitioner sustained a torn meniscus and the evidence presented at the time of the hearing reveal it was related to work. There was extensive testimony about the Petitioner's activities and his involvement in climbing spiral steps. A job description was also introduced into evidence.

The Arbitrator had denied the claim on the basis the Petitioner himself could not pinpoint any moment or event when he felt something occur or change in his knee.

The Commission reversed the Arbitrator's Decision and went into great detail about the activities of the Petitioner and the medical evidence connecting the condition to the work activities.

## IV. CAUSAL RELATIONSHIP

***Rivera v. Shree Dutt, Inc., d/b/a Dunkin Donuts*, 15 WC 18868, 19 I.W.C.C. 0180 (April 3, 2019)**

On June 1, 2015 the Petitioner injured her right knee while walking on a floor sticky with caramel flavoring that continuously leaked out of its dispenser throughout the day. She went to the ER the next day and the doctor diagnosed effusion of the right knee joint and a sprain/strain of the knee. Eventually the Petitioner came under the care of Dr. Poepping, an orthopedic surgeon, on June 12, 2015 the Petitioner had complaints of severe right knee pain. The doctor diagnosed an ACL rupture, medial meniscus tear and a posterolateral comer injury. When the Petitioner came in to see Dr. Poepping the Commission noted none of the medical providers in the various ERs had properly diagnosed the reason for the Petitioner's worsening condition.

Dr. Sompalli performed surgery on July 30, 2015 including an incision and drainage of the right thigh and leg abscess which was around 300-400 milliliters, excisional debridement of the posterior thigh fascia and posterior leg fascia, and a fasciotomy of the right superficial and deep compartments of the right leg and medial thigh. Post-op diagnosis was necrotizing fasciitis with abscesses of the right leg and thigh. Further surgery was performed.

There was some conflicting evidence regarding causation.

The Commission concluded that the Arbitrator's denial of the causal relationship of petitioner's current condition of ill-being and prospective medical benefits should be reversed. The Commission concluded that the Petitioner did meet her burden of proof. The most credible evidence from the treating physicians indicated the Petitioner suffered a twisting injury to her right knee that aggravated her pre-existing degenerative knee condition. The Commission also found the mechanism of injury supports the finding the Petitioner sustained a medial meniscus tear and a minimal aggravation of a possible pre-existing ACL tear.

By the time the Petitioner received proper treatment she was septic. The infection and subsequent procedures to remove the necrotic tissue in the right leg significant worsened her condition.

The Commission found the Petitioner is entitled to the requested total knee replacement and Respondent was to pay for the associated medical expenses. The Commission also awarded TTD benefits.

***Horner v. Capital Healthcare Rehab Centre*, 14 WC 11452, 19 I.W.C.C. 0182 (April 8, 2019)**

The Petitioner developed a carpal tunnel syndrome and right hand condition. The Petitioner sustained an injury to her right hand after a slip and fall on a wet floor. The Petitioner had had a prior injury to her right hand in 2010. The diagnosis was a right thumb sprain. No significant pathology noted on an MRI. The Petitioner underwent conservative care for that injury. The Petitioner was not a surgical candidate.

Following the work injury the Petitioner had significant complaints of pain in the right hand along with the right thumb. EMG nerve conduction study performed on May 2, 2014 revealed mild right carpal tunnel syndrome with no evidence of ulnar or radial neuropathy or peripheral neuropathy.

The Arbitrator concluded the Petitioner did not meet her burden of proof meaning her current condition of ill-being is causally related to the work accident. The Commission modified the Arbitrator's decision regarding causal connection, medical bills and nature and extent.

The Commission interpreted the medical evidence differently than the Arbitrator and stated so in their decision. They ordered the Respondent to pay for the medical bills and awarded 7% loss of use of the right hand.

## V. CALCULATION OF PRE-INJURY WAGES

***Alvarado v. Menards, 12 WC 27144, 19 I.W.C.C. 0187 (April 11, 2019)***

The case involves the death of an employee of Menards Store. There is no dispute over the compensability of the case. The only issue is whether or not a "Instant Profit Sharing" payment of $7,717.76 should be included in the petitioner's average weekly wage. The Commission ruled that the instant profit sharing payment of $7,717.76 was a "bonus" and not included in the average weekly wage. The Commission noted that the IPS program clearly showed that it was discretionary and that Menards reserved the right to amend or even cancel the program in whole or in part without notice and in its sole discretion. The documents introduced into evidence show that Menards intention to pay these benefits was not a guarantee and that no contractually enforceable rights between Menards and its employees were created in the process. More importantly, the evidence shows that the IPS payments were not tied to individual performance, but were instead dependent upon the profitability of the unit in which a team member worked, assuming an employee met the required numbers of hours worked. These payments were included in the employee's yearly W-2 wage statements however, that did not alter the Commission's Decision that the money was a bonus and excluded in the average weekly wage.

***Claypool v. Medstar Ambulance*, 17 WC 00211, 17 WC 00212, 19 I.W.C.C. 0258 (May 22, 2019)**

Issue was concurrent employment.

The Commission found the Petitioner was not concurrently employed at the time of the accident. The Petitioner had been employed by Medstar Ambulance since 2011. In June of 2015 she worked full time for Belleville Memorial Hospital. She continued working for the Respondent on a part-time basis. On October 15, 2016 the Petitioner left her job at Belleville Memorial Hospital and increased her hours with Respondent to full time. She cashed out all of her paid time off and terminated her relationship with Belleville Memorial. The Petitioner did not testify she had any intention of returning to Belleville Memorial.

The Commission found *Flynn v. Industrial Comm'n, 211 Ill. 2d 546 (2004) and Jacobs v. Industrial Comm'n, 269 Ill. App.3rd 444 (1995)* finding concurrent employment where an employee was temporarily laid off from his primary job due to seasonal nature of the work, are distinguishable. The employment relationships in *Flynn* and *Jacobs* had not been "wholly severed" as in the case before us. The Commission then took the 6 weeks of full time work that the Petitioner had worked for Medstar Ambulance and used that to calculate the average weekly wage. Her total earnings and mandated overtime computed at a straight time rate total $4,366.01. That was divided by the six week and gave the Petitioner an average weekly wage of $727.66 per week.

## VI. PERMANENT DISABILITY BENEFITS

***White v. State of Illinois, Chester Mental Health Center*, 16 WC 5247, 19 I.W.C.C. 0231 (May 13, 2019)**

Arbitrator awarded 20% loss of use of a person as a whole pursuant to Section 8(d)(2). The Petitioner had surgery consisting of a laminectomy and a fusion at L5/S1 with both metal hardware and bone grafting. The petitioner was 29 years of age at the time of the occurrence. Commission increased the award to 22.5% of a person as a whole. The Petitioner relied upon the occupation of the injured employee which required her to bend to interact with patients and be on her feet 90% of the time as a factor to increase the permanency. The Commission, however, found the possibility of future surgery is not germane to the factor pertained to the age of the

employee at the time of the incident. The fact that at a young age means she will continue to endure pain and physical deficits resulting from the injury does weigh heavily in increasing the disability however.

## VII. RECISION OF SETTLEMENT CONTRACTS

***Pearl v. Chicago Chesed Fund, Inc.*, 16 WC 34526, 19 I.W.C.C. 0183 (April 8, 2019)**

The parties entered into a settlement agreement. It was approved on March 28, 2018 for $29,500.00. Settlement was for as follows:

1. $18,848.54 for 27 1/2% of the left foot

2. Blue Cross Blue Shield lien of $164.96

3. An unpaid medical bills bill or lien from Physicians Immediate Care of $271.50

4. Disputed TTD benefits of $912.04

5. Disputed future medical bills and expenses of $5,000.00.

On April 19, 2018 Petitioner received a notice from the group insurance carrier, Blue Cross Blue Shield claiming a lien for $13,790.00 instead of $164.96. The Petitioner filed a Petition for Review on April 24, 2018. On June 26, 2018 Petitioner filed a Motion on Settlement Contract on Review and set the motion on Commissioner Tyrrell's July 18, 2018 Chicago Review Docket. The Petitioner asked the Commission to reject the settlement contracts as "the approval of the contract based upon the mutual mistake of fact is not in the best interest of the parties."

The parties were asked to brief the matter before Commissioner Tyrrell.

There were 2 issues the Commission had to consider. Commission must determine whether it maintains the jurisdiction to review a settlement contract when a Petitioner files for review 29 days after the Arbitrator approved the settlement contract. Next, the Commission must determine whether the facts warrant a rescission of the contract.

The Commission found it possesses jurisdiction to review the settlement contract. The Commission noted no Illinois Court has directly addressed the question whether a settlement contract approved by an Arbitrator is considered a decision of the Arbitrator or a decision of the Commission. The Commission noted this is a crucial issue in this matter. Section 19(b) provides that a decision of the Arbitrator shall become a decision of the Commission unless the Petition for Review is filed within 30 days after receipt of the decision.

Contrarily a decision of the Commission becomes final if a proceeding for review is not filed within 20 days of the receipt of notice of a decision pursuant to Section 19(f)(1) of the Act. Here the Commission only has jurisdiction to review the settlement contracts if the contract is effectively a decision of the Arbitrator and thus a 30 day review period. The parties do not dispute that the Petition for Review was filed 29 days after the contract was approved.

The Commission discusses *Yocum v. Industrial Commission*, 297 Ill. App.3d 813 (1998). In *Yocum* the Arbitrator approved a settlement contract without resolving the pending fee petition

still pending. The former attorney filed a motion before a Commissioner seeking an allocation of attorneys' fees and the Commission issued an award allocating the fees between both attorneys. The second attorney argued the Commission lacked subject matter jurisdiction to consider the fee dispute because his opponent failed to file a Petition for Review within 30 days of the Arbitrator's approval of the contract. The Court determined the former attorney's motion was sufficient to preserve the Commission's jurisdiction over the fee dispute. As the record was unclear as to whether both the Arbitrator and the Commission approved the settlement contract, the Court commented on the filing deadlines for both scenarios.

The *Yocum* Court indicated that a settlement contract approved by an Arbitrator is the same as an arbitration decision and has a 30-days period for review pursuant to Section 19(b). The Commission determined the 30 day time factor is appropriate. The Commission also ruled the executed contract was based upon a mutual mistake and the prior approved settlement contract was rejected based on that factor.

## VIII. JURISDICTION

***Wemheuer v. Advanced Technology Services*, 17 WC 13999, 19 I.W.C.C. 0239 (May 17, 2019)**

The Arbitrator concluded contract for hire was made in Illinois and therefore Illinois Workers Compensation Act had jurisdiction when he sustained injuries in Indiana on October 31, 2016. The Petitioner lived in Nevada, came to Illinois and signed a Non-Disclosure Restrictive Covenant Agreement in Peoria on September 21, 2015. He also completed the "New Employee Webinar Course" during his onboarding activities in Peoria during the week of September 21, 2015. These acts constituted the final satisfaction of conditions promulgated by the Respondent in its offer of employment. The signing of these documents in Peoria, Illinois was a final act to complete the employer/employee relationship between the Petitioner and the Respondent.

## IX. EVIDENCE

***Dugan v. Trillium Environmental*, 15 WC 11529, 19 I.W.C.C. 2073 (June 5, 2019)**

A good decision regarding laying foundation for the admissibility of video surveillance evidence. Commission Decision states as follows:

The Commission addresses the admissibility of video surveillance evidence submitted at trial by Respondent. Petitioner objected to the admission of this evidence on grounds including lack of foundation and improper authentication. A video recording may be admitted in evidence if it is properly authenticated and relevant to the issues in controversy. *People ex rel. Sherman r. Cryns*, 203 Ill. 2d 264, 283 (2003). First, a foundation for a video recording must be laid by someone having personal knowledge of the filmed object and is capable of testifying that the video is an accurate portrayal of what it purports to show. *Cisarik v. Palos Community Hospital*, 144 Ill.2d 339, 342 579 N.E.2d 873 (1991).

In the case at bar, Respondent presented the testimony of Zarko Gligoravic, a supervisor at PhotoFax, Inc., the surveillance company retained by Respondent. Mr. Gligoravic testified that he oversaw the investigators who performed the surveillance and recorded the video, collected on several days between April 2015 and March 2017, the video footage was selected, compiled and submitted at hearing on DVD, along with corresponding surveillance reports, as

Respondent's Exhibit 8. Mr. Gligoravic testified regarding the way his company identifies the subjects to be surveilled, assigns tasks to investigators, and finally provides finished work product (including video discs and written reports) to the company's clients. Mr. Gligoravic did not do any of the actual surveillance himself and had no prior familiarity with Petitioner. Mr. Gligoravic testified that, in his observation, the subject of surveillance as captured on video looked to be the same individual as Petitioner, who was sitting in the courtroom. However, Petitioner contended that the individual purported to be him in the video was actually his look-alike younger brother.

Inasmuch as Mr. Gligoravic did not have "personal knowledge of the filmed object," having done none of the surveillance himself, the Commission sustains Petitioner's objection and thus strikes those findings of the Arbitrator based upon the video recording. Even so, the Commission finds that, considering the totality of the admissible evidence, Petitioner has failed to prove entitlement to any benefits save for those described in this instant Decision and Opinion on Review.