WCLA NEWSLETTER

CASE LAW SUMMARIES SEPTEMBER 2019

Status of Employment:

Oleksy v. WK Heating Inc., 27 ILWCLB 122 (Ill. W.C. Comm. 2018).

Petitioner sustained injuries while working for respondent, who installed and maintained heating and cooling systems. Respondent paid petitioner with checks made out to the business owned by petitioner. Petitioner received a Form 1099 with no taxes or Social Security deducted from his pay. Respondent instructed petitioner to take out workers' compensation insurance through his own corporation and there was no written contract between petitioner and defendant. Respondent claimed he paid petitioner per unit installed, while petitioner claimed he received payment on an hourly basis. Respondent provided blueprints, but respondent did not dictate or control the way petitioner installed the furnaces. Petitioner used job materials provided by respondent. Petitioner did not receive paid time off, vacation, or health insurance from respondent. The Arbitrator found that the claimant failed to prove an employer/employee relationship with the respondent.

Petitioner appealed to the Commission and the majority affirmed and adopted the Arbitrator's decision. Commissioner Tyrrell dissented, finding that respondent paid petitioner an hourly wage, he did not have experience in the HVAC business, and defendant exercised control over the petitioner's work. Further, Commissioner Tyrrell found respondent's testimony "patently absurd" that he had no employees, only independent contractors.

Arising Out of Employment:

Stadelbacher v. Choate Mental Health,27 ILWCLB 123 (Ill. W.C. Comm. 2018).

Petitioner worked as a public service administrator and training director at respondent's mental health facility. At the end of her workday, she left the employee lounge through an exit-only door with the most direct path to the parking lot. She climbed several steps to a concrete slab, and then walked onto a grassy area where she stepped into a hole and injured her left knee. Another exit existed from the employee lounge directly to the staff parking area, but it required a longer walk due to a retaining wall. The arbitrator found that petitioner's injury arose out of her employment and awarded benefits to petitioner, distinguishing the facts from the Illinois Appellate Court's decision in *Dodson v. Industrial Commission*. The arbitrator noted there clearly was a defective area with a deep hole that caused petitioner's knee injury, while no such defect existed in *Dodson*. Furthermore, the exit petitioner used was marked with an exit sign in the employee lounge, which indicated it was a designated exit. This exit also seemed to be the general path all employees took who left by that door.

Respondent appealed and the majority of the Commission affirmed and adopted the opinion of the arbitrator. Commissioner Coppoletti dissented, finding that petitioner's accident did not

arise out of her employment. In her dissenting opinion, Commissioner Coppoletti argued that petitioner utilized an unsafe path for her own convenience even though respondent provided a safe route.

Tindall v. Illinois, State of/Menard Correctional Center, 27 ILWCLB 124 (Ill. W.C. Comm. 2019).

Petitioner, a correctional supply supervisor at the prison, sustained injuries to his right shoulder and hand when he fell forward while traversing stairs. After he arrived for his shift, he walked up a flight of stairs on the outside of a door already open. Petitioner then turned around to walk down a flight of stairs that led to his office. He carried a cup of soda in his right hand and keys in his left hand. While trying to locate the key to his office door, petitioner caught his toe on one of the steps and fell forward. His testified his office door was locked for security reasons and he had a cup of soda in his hand as there was no water fountain near his office. The arbitrator awarded benefits to petitioner, finding he was exposed to an employment risk to which the general public is not exposed, even though a fall while traversing stairs is usually a neutral risk. Although there was no testimony about whether the general public used the stairs, the arbitrator inferred that the stairs were not open to the general public since the stairs were in a prison. Further, he did not have a water fountain near his office, so it was necessary for him to have a cup of soda in his hand. His accident arose out of his employment.

Respondent appealed to the Commission. The Commission majority affirmed and adopted the decision of the arbitrator. Commissioner Simpson dissented, stating there was no evidence the stairs were defective or dangerous and petitioner did not have to use the stairs excessively in the course of his employment. As a result, Commission Simpson found the risk of falling unrelated to petitioner's employment.

Miceli v. Bernard Zell Anshe Emet Day School, 27 ILWCLB 125 (Ill. W.C. Comm. 2018).

Petitioner worked for respondent as a senior accountant in a two-story building. At the end of her workday, she exited the building and walked down the stairs. She testified that she stepped on something on the sidewalk at the bottom of the stairs, causing her left foot to turn inward while her ankle turned outward. Petitioner stated she saw rock salt on the ground in that area. She waited for the pain to subside and walked to the school parking lot. Six days later, she sought treatment with her podiatrist who treated her the year before for a right foot injury. Petitioner underwent surgery and the arbitrator found that her injury arose out of her employment.

Respondent appealed to the Commission. The Commission reversed the decision of the arbitrator, finding the history of a mechanism of injury in the most contemporaneous medical records contradicted the independent medical examination history and petitioner's testimony. Initially, petitioner reported she stepped off the curb, which is a normal activity of daily living and no greater risk than the general public. Petitioner then stated the surface was covered with salt when she stepped and twisted her ankle, but this testimony was rebutted and not supported by the record. The Commission found petitioner failed to prove she sustained an accident that arose out of her employment and she also failed to prove a causal connection between the accident and her condition of ill-being.

Brown v. Whelan Security, 27 ILWCLB 133 (Ill. W.C. Comm. 2019).

Petitioner sustained injuries while working for respondent as a security officer. He worked a second shift from 3:30 to 11:30 p.m. and his duties included watching monitors and doing rounds once an hour at two buildings. Petitioner also had "roving duty" from 7:30 to 9:30 p.m. each day which involved patrolling six buildings, checking padlocks and doors, and walking around the campus. He used a flashlight while walking and stepped up and down stairs and curbs. While patrolling on "roving duty" he stepped off a curb in an awkward position with his right foot partially on the curb. Petitioner felt pain in his right ankle and knee. He underwent a total knee replacement following a diagnosis of a medial meniscal tear and moderate osteoarthritis. The arbitrator awarded benefits to petitioner, emphasizing his unrebutted testimony regarding his work duties and finding that petitioner was not simply walking along the sidewalk and stepping off the curb awkwardly. The arbitrator explained that petitioner was exposed to a qualitative risk of injury to a greater degree than the general public.

Upon review, the Commission affirmed and adopted the decision of the arbitrator.

Dunham v. Illinois, State of/Vienna Correctional Center, 27 ILWCLB 134 (Ill. W.C. Comm. 2019).

Petitioner, a correctional officer at Vienna Correctional Center facility, smashed her right hand between the doorframe and a door while walking out of the control room. She testified that she walks in and out of the control room multiple times during her shift and it is a regular part of her job. The arbitrator awarded benefits for her soft tissue crush injury to the right middle finger along with a laceration. The arbitrator emphasized petitioner's testimony that the doors of the correctional facility were extremely heavy steel doors, which were not present outside the prison system. The door closed rapidly on petitioner and she was subjected to an increased risk of injury that was both qualitative and quantitative.

Upon review, the Commission modified the permanent partial disability award to reflect the correct injured finger and otherwise affirmed and adopted the arbitrator's decision.

Dabek v. Cardinal Building Maintenance, Inc., 27 ILWCLB 135 (Ill. W.C. Comm. 2019)

On November 11, 2015, petitioner, a janitor, sustained multiple injuries after she fell while cleaning a toilet. She testified that she did not know what caused her to faint and no one witnessed the incident. She woke up on the floor. Petitioner previously felt dizzy while cleaning the toilet in this particular ladies' room because of the smell of cleaning chemicals and the sewer. She worked 80 hours in the week before the accident. Upon examination at the hospital, petitioner was diagnosed with a syncope episode. The arbitrator denied benefits, relying upon the hospital and treatment records which did not mention suspected chemical exposure, sewage smell, dizziness, poor ventilation, exertion, or dehydration as a cause of her syncope. Although she felt dizzy before the fall, there was no testimony that the smell of chemicals and sewage, or an increased workload, caused her dizziness and there was nothing new about this particular ladies' room on that day that distinguished it from all the previous times she cleaned the

bathroom. All diagnostic tests were negative for serious problems and she had experienced no similar episodes of syncope. The examining doctor opined that the most likely explanation may be a vasovagal or a neurocardiogenic syncope. The arbitrator explained that the petitioner's fall was idiopathic and attributable to a risk personal to petitioner.

Upon review, the Commission majority affirmed and adopted the decision of the arbitrator. Commissioner DeVriendt filed a dissenting opinion, stating there was no neurological or cardiac etiology found as the cause of her syncope. He considered the excessive hours worked by petitioner and the fact that her body was bent over at the waist for an extended period while cleaning the toilet. Commissioner DeVriendt stated that the hours worked and her position while cleaning the toilet were contributing factors to her syncope and fall at work. He explained that the number of times and duration of time performing this activity required by her job turned this into a distinctly work-related risk, or at the very least, a neutral risk to which she was exposed to a greater degree than the general public quantitively and qualitatively.

Course of Employment:

McCoy v. Paragon Systems Inc., 27 ILWCLB 126 (Ill. W.C. Comm. 2018).

Petitioner worked as a protective services office for respondent, a security company. On the date of accident, petitioner was assigned to "Delta 400," a mobile patrol. He physically inspected several properties while driving the respondent's pickup truck. Around 10:45 a.m., radio dispatch instructed petitioner to help an employee stuck in a parking garage. As he rushed to exit the truck, his right foot slipped inside the truck and he twisted his knee. It was raining and the inside of the truck was wet and slippery with no resistant mats. Petitioner testified he has to make sure federal employees and the general public is secure as part of his job duties. The arbitrator denied benefits.

Petitioner appealed to the Commission. The Commission reversed the arbitrator, finding that petitioner was a traveling employee and his actions were reasonable and foreseeable. His job required him to drive a work vehicle from one location to another to inspect multiple properties and he had to exit the vehicle to assist a stranded worker. Petitioner also established causal connection through a chain of events as well as through the opinion of his doctor. The Commission awarded 20 weeks of TTD benefits and prospective medical care in the form of a right knee arthroscopic surgery to repair a torn lateral meniscus.

Abrusci v. University of Illinois, 27 ILWCLB 136 (Ill. W.C. Comm. 2019).

Petitioner worked as a clinical nurse consultant at the University of Illinois. Her office was located in a separate building from the University Hospital. Once or twice a day, petitioner made rounds to units at the hospital to meet with doctors and nurses. On February 23, 2012, she took her lunch break. Petitioner stopped to check on her son before her lunch break, who was a patient on the seventh floor of the hospital. Her son was sleeping. Petitioner then took paperwork to a nurse on the fifth floor and returned to her son's room. She arranged to get him something for lunch and left the hospital to get food at a local restaurant. Petitioner used the staff elevator to

return to her son's room and eat lunch with him. While walking down a hallway to her son's room, she slipped and fell on water, sustaining a complete avulsion of her left hamstring. While the personal comfort doctrine establishes that injuries that occur while an employee is engaged in a lunch break, use of the washroom, or other break may, under certain circumstances, be deemed to occur in the course of the employment. The arbitrator found the facts did not fall within this doctrine and denied compensability. The location of her fall was not the result of her simply opting to take her lunch break. She testified she typically ate lunch off the University campus, in her office, or in the cafeteria. The only reason she brought her lunch to the seventh floor of the hospital was to visit her son as a patient in the hospital. Since her purpose on the seventh floor was as a visitor and not as an employee, her activities could not be described as an act of personal comfort during the course of her employment. She was not performing any employment activities at the time she fell.

Upon review, the Commission affirmed and adopted the decision of the arbitrator.

Accidental Injuries:

Smith v. Caterpillar, Inc., 27 ILWCLB 137 (Ill. W.C. Comm. 2019).

Petitioner's job with Caterpillar required him to perform final testing on tractors before the tractors were cleared for delivery. He would climb five stairs to a work platform at the side of the tractors and at the front. Petitioner testified he would do this by stepping onto a five-step staircase that was movable and positioned at the back half of the tractor. This would enable him to reach a work platform that gave him access to the driver's seat to perform his tests. Petitioner testified he would go up five steps in the front of the tractor to perform work. He testified that he would work on eight to ten tractors per day, and he would go up and down each tractor a minimum of four times at the driver's station and two times regarding the front of the tractor. Petitioner testified that he was going up steps to hook up a tractor and he felt sharp pain and a pop in the back of his left knee as he lifted his left leg off the floor. His doctor diagnosed him with medial and lateral meniscal tears and an ACL tear. The Arbitrator denied benefits, noting that petitioner simply raised his left leg to reach a normal stair step and there was no evidence that repetitive use of the steps caused or contributed to the injury to his knee. The arbitrator also found no evidence that the stairs were defective or hazardous, petitioner was not holding any work-related tools, and the stairs had handrails on both sides. Petitioner failed to prove that his injury occurred due to a risk connected to his employment.

Upon review, the Commission affirmed and adopted the decision of the arbitrator.

Hughes v. Proviso Township District 209, 27 ILWCLB 138 (Ill. W.C. Comm. 2019).

Petitioner worked a night custodian for respondent at a high school. His duties included cleaning the commons area, cafeteria, art wing, band rooms, and ROTC wing. Petitioner wet mopped the school's kitchen, which required use of considerable force and frequent use of scrub pads

because the floor had a lot of grease and spills on it. The floor in the school's clay room was also difficult to clean. Petitioner testified that he used a large mop that weighed 20 pounds when wet. He spent 75% of his time mopping floors. Between March 2011 and July 2012, petitioner noticed his pain in his wrists while performing his work duties. Before July 2012, he saw a hand surgeon who diagnosed him with bilateral carpal tunnel syndrome. Petitioner then provided his surgeon with a written job description and the surgeon provided a letter on July 26, 2012, concluding that his condition was causally related to his work duties. Petitioner underwent bilateral carpal tunnel release surgeries. His surgeon testified that the work activities contributed to his condition, specifically grabbing or repetitively grasping the mop and moving his hands back and forth. The respondent's examining doctor agreed that the petitioner had carpal tunnel syndrome, but respondent's examiner did not believe his condition was casually related to his work activities because his work activities were not forceful or repetitive enough.

The Commission awarded benefits, finding the treating surgeon's opinions regarding causation more persuasive than those of the examining doctor. The Commission emphasized the petitioner's testimony that considerable force was required to mop the school's kitchen and clay rooms and he spent 75% of his shift wet mopping.

Causal Relationship:

Fletcher v. Nexus Staffing, 27 ILWCLB 127 (Ill. W.C. Comm. 2019).

Petitioner worked for respondent, a staffing agency. On the date of accident, he was assigned to work for a company as a forklift operator. His duties included replenishing products and putting away products delivered on the trucks. The products included ladders, step stools, and scaffolding weighing between 5 and 150 pounds. While lifting a case, petitioner felt pain in his back as well as a pop below his neck between his shoulder blades. He went to the emergency room and was diagnosed with a shoulder strain. He began physical therapy and chiropractic treatment and was also diagnosed with neck and low back pain. The arbitrator found petitioner failed to provide his sustained an accident that arose out of and in the course of his employment.

The Commission reversed the arbitrator, finding that petitioner's testimony was supported by the record. Even though his accident was unwitnessed, this did not bar recovery. The emergency room records on the date of accident and his written statement the next day sufficiently followed his testimony. The Commission also found he established causal connection through a chain of events analysis as he had no complaints, injury, or treatment to his left shoulder, neck, or back before the date of accident. Petitioner received an award for reasonable and necessary medical expenses, temporary total disability benefits, and permanent disability for 5 percent loss of the person under Section 8(d)2 of the WCA.

Permanent Disability Benefits:

Gray v. Chicago, City of, 27 ILWCLB 128 (Ill. W.C. Comm. 2019).

Petitioner injured his low back while carrying a 50-pound box. He was diagnosed with a lumbar strain and underwent physical therapy for a few months. The arbitrator awarded permanent

disability benefits for 12.5 percent loss of the person under Section 8(d)2. In conducting a permanency analysis, the arbitrator gave greater weight to petitioner's testimony he had discomfort performing his work duties after the accident. The arbitrator gave some weight to his age of 57, which made it more difficult to recover following the injury and thus decreased the disability award. Even though petitioner resumed his prior job duties, the arbitrator gave moderate weight to his future earning capacity, noting he was more cautious performing his duties. The arbitrator also noted pathology documented in MRI studies and his testimony of ongoing impairment.

Respondent filed an appeal and the Commission found the permanency award excessive. The Commission stated petitioner returned to work in a physically demanded job in less than two months after the accident and he declined work hardening in lieu of resuming his full duties. The Commission assigned less weight to his age since his future working life was limited as evidenced by his retirement 18 months after the accident. The Commission noted the treating doctor's assessment of the MRI findings as age appropriate and stated petitioner had only limited therapy for his back strain. Based on the statutory factors, the Commission found a PPD award for 5 percent loss of use of the person more appropriate.

Wilsdorf v. Illinois, State of/Police, 27 ILWCLB 129 (Ill. W.C. Comm. 2018).

Petitioner, a police officer who performed motorcycle traffic enforcement, sustained injuries in a work-related motor vehicle accident. She was diagnosed with a suspected rib fracture, chest wall strain, left knee strain, and low back strain. Petitioner resumed her full duties after she underwent physical therapy. Upon returning to work, petitioner complained of numbness and tingling in her left foot and lower left leg. She was diagnosed with neuropathy of the left superficial peroneal nerve. After conducting an analysis under Section 8.1b, the arbitrator awarded permanency of 10 percent loss of use of the person as a whole under Section 8(d)2 and 15 percent loss of use of the left leg under Section 8(e) of the Act.

Respondent appealed and the Commission conducted its own Section 8.1b analysis. The Commission provided less weight to the second factor, petitioner's occupation, as she resumed her full duties in her preinjury occupation. Further, evidence showed petitioner was promoted to sergeant and continued to work in that capacity with less weight assigned to her future earning capacity. The Commission assigned greater weight to age at the time of her accident, 35, since she would have to work for a longer period and deal with the permanent nature of her disability. Regarding the last factor, evidence of disability corroborated by the treating records, the Commission noted she sustained a "pretty severe spinal strain," along with lumbosacral and left knee strains and possible rib fractures. Petitioner testified to constant numbness of the left side of her foot halfway up her leg and stated she takes over the counter pain medication. The Commission lowered the permanency award for her left leg to 10 percent under Section 8(e) and affirmed the arbitrator's award of 10 percent person as a whole under Section 8(d)2.

Lohman v. Dynergy Midwest Generation, 27 ILWCLB 130 (Ill. W.C. Comm. 2019).

Petitioner worked as a heavy equipment operator in respondent's coal-fueled power plant. He alleged repetitive trauma to his bilateral hands and arms as a result of his job duties. Petitioner

underwent bilateral thumb joint fusions with limited range of motion of his thumbs and difficulty picking up smaller objects. The arbitrator awarded 7.5 percent loss of use of both arms, 10 percent loss of use of both hands, and 25 percent loss of use of both thumbs.

On review, the Commission agreed with the arbitrator's analysis under Section 8.1b and the weight assigned to each subsection. However, the Commission disagreed with the permanency award for the thumbs and increased the permanency award to 45 percent loss of use of both thumbs.

Ortiz v. Illinois, State of/Dept. of Human Services, 27 ILWCLB 139 (Ill. W.C. Comm. 2019).

Petitioner, a business manager, sustained a work-related accident on January 14, 2014 after she slipped on a wet tile floor and landed on her left knee. After she resumed her full duties, she sought treatment for ongoing pain, especially when she attempted to jog. An orthopedic physician diagnosed patellofemoral pain secondary to contusion, possible chondromalacia, and lateral tracking patella. After undergoing a diagnostic arthroscopy, petitioner was released from treatment to a home exercise program. The arbitrator performed a permanent disability analysis under Section 8.1(b) and found the Petitioner sustained a loss of use of 15% of the left leg under WCA Section 8(e). The arbitrator assigned lesser weight to Petitioner's occupation, noting that she returned to her pre-injury job as a business manager. The arbitrator assigned some weight to the Petitioner's age of 50, reasoning she had a relatively shorter work life expectancy to live with the impairment. The arbitrator gave no weight to the possible loss of earning potential as she returned to the same job. The arbitrator gave the greatest weight to the evidence of disability, including the Petitioner's testimony about continued complaints as well as the treating doctor's records.

Upon review, the Commission disagreed with the permanent disability award, finding that the arbitrator should have given greater weight to the fact Petitioner had a sedentary job and she was able to return to work in the same job after the accident. The lack of any potential loss of future earning potential should be used as a factor to reduce a permanency award. Further, the treating doctor noted that surgery revealed no significant pathology and the respondent's examining doctor found no evidence of symptom magnification. The Commission reduced the permanency award to 12.5% loss of use of the left leg.

Medical and Rehabilitation Benefits:

Mojica v. Labor Network, 27 ILWCLB 140 (Ill. W.C. Comm. 2019).

Petitioner sustained an injury to her lumbar spine on July 29, 2015 while pushing a heavy cart with malfunctioning wheels. After conservative treatment failed to resolve her pain, her treating doctor recommended a two-level discectomy. Another orthopedic surgeon recommended a three-level fusion. Petitioner testified she understood surgery was recommended, but she was unclear what was recommended. The arbitrator found the petitioner established a compensable

injury and awarded temporary total disability and reimbursement of medical bills. The arbitrator denied prospective medical treatment, noting equivocal medical opinions on what procedures should be performed. The arbitrator considered the conflicting medical opinions as well as the second treating doctor's failure to sufficiently explain why additional levels may be indicated for surgical intervention and indicated that petitioner was not entitled to any form of prospective medical care.

Upon review, the Commission stated that it "faces a conundrum." The Commission concluded that petitioner should not be denied prospective treatment if such treatment actually is necessary to resolve her condition of ill-being. However, the Commission did not want to authorize a three-level fusion surgery if, either no surgery is indicated, or a much less invasive procedure would suffice. The Commission remanded the case to the arbitrator with instructions to encourage the parties to agree to an independent orthopedic doctor or a neurosurgeon to examine the petitioner, review her medical records, and make a recommendation about what prospective treatment is indicated and prescribed. At that point, the arbitrator must reconsider the issue of prospective treatment and either deny it or determine what prospective treatment would be appropriate.

Zumba v. Labor Network, 27 ILWCLB 141 (Ill. W.C. Comm 2019).

Petitioner worked as a cleaner at a bakery. She sustained two accidents on March 11, 2017 and April 15, 2017 involving her right knee. Her treating orthopedic surgeon diagnosed a meniscal tear and recommended surgery. The respondent's examining doctor disagreed with the diagnosis and opined petitioner had an iliotibial band disorder, requiring therapy and injections with no need for surgery. The arbitrator recommended that the parties select a "tie-breaker" orthopedic surgeon specializing in knee and lower extremity conditions. If this recommendation was not accepted, the arbitrator awarded the specialized therapy and injections recommended by the employer's examining doctor, noting that he was not excluding a subsequent recommendation or award of right knee surgery as recommended by the treating surgeon.

Upon review, the Commission modified the arbitrator's decision, finding petitioner entitled to prospective medical treatment as recommended by the treating orthopedic surgeon. The Commission was not persuaded by respondent's examining doctor's opinion that petitioner suffered from posterolateral hamstring pain and IT band syndrome. Specially, the Commission stated that the examining doctor's opinion was directly contradicted by the MRI, which was positive for a right medial meniscal tear, as well as the exam findings as petitioner had swelling of the knee with medial joint line tenderness, as well as a positive McMurray's test with limited range of motion.

Death Benefits and Beneficiaries:

Ravenswood Disposal Services v. (Lagunas), IWCC, 27 ILWCLB 131 (Ill. App. Ct., 1st 2019).

At the time of his death from a work accident in 2013, decedent was divorced with one child born in 2001. Petitioner, decedent's minor son, was born to decedent and his ex-wife, Ms. Lagunas. The couple divorced in 2010, before decedent's death. The divorce decree named petitioner as a dependent with decedent responsible to pay child support for petitioner. Ms. Lagunas later married Isidro Delgado in 2010, with Isidro adopting petitioner in 2014. Petitioner changed his surname to Delgado.

At trial, there was an issue as to whether decedent was an employee of respondent. Respondent paid decedent with cash and by check through a staffing company. Decedent did not work exclusively for respondent and respondent did not issue W2s or 1099s to decedent. Respondent admitted to controlling decedent's work but claimed to not have any control once decedent showed up for work. Respondent's President testified he considered decedent an employee and respondent paid funeral and burial expenses, plus a few weeks of death benefits, then denied liability. The arbitrator found decedent was an employee of respondent at the time of his death and petitioner was entitled to benefits under Section 7(a). The Commission affirmed the decision of the arbitrator and the Circuit Court confirmed the Commission's decision.

Respondent appealed to the Appellate Court. The Appellate Court rejected respondent's argument that decedent was an independent contractor. The court cited the supervisor's admission he considered the decedent an employee and he received cash payments, which supported the Commission's finding of an employment relationship. Next, the court found no error in the Commission's finding that petitioner was decedent's dependent under Section 7(a). Although petitioner's adoption after decedent's death may have precluded petitioner from claiming ongoing benefits on the basis that petitioner's adoptive father was obligated to support him, it did not restrict him from claiming benefits on different grounds, namely that he was under age 18 when his father died. The court pointed out that the WCA does not contain express language terminating petitioner's right to benefits by reason of his adoption where he otherwise qualified for benefits based on his age when the accident occurred. The court noted there is language addressing what occurs when a surviving spouse remarries. Even though petitioner may have depended on his adoptive father before and after his adoption, this does not defeat his right to benefits when petitioner also depended on the decedent when the accident occurred.

The court also determined the Commission's award of penalties under Sections 19(k) and (l) and attorneys' fees under Section 16a of the WCA was not against the manifest weight of the evidence or an abuse of discretion. Not only did respondent fail to pay petitioner death benefits, but respondent also failed to pay some of decedent's medical expenses. The Commission determined respondent lacked a reasonable basis for challenging the employer-employee relationship.

Retaliatory Discharge:

Matros v. Commonwealth Edison Co., 27 ILWCLB 132 (Ill. App. Ct. 1st 2019).

Plaintiff worked as an overhead electrician for defendant. He filed two workers' compensation claims, one for his right shoulder in 2002 and another for his left shoulder and psyche in 2003. In September 2004, defendant terminated plaintiff for misrepresenting his condition during

medical leave along with poor work performance. The trial court ruled in favor of defendant, finding plaintiff did not meet his burden in establishing his discharge was causally related to the exercise of any right under the WCA. The court further held defendant had a valid, non-pretextual basis for terminating plaintiff.

In affirming, the Illinois Appellate Court stated that the Illinois Supreme Court has expressly rejected the position that a plaintiff can successfully establish causation by showing that retaliation was one of several motives leading to the employee's discharge and therefore a proximate cause of the discharge. In reviewing the trial court's analysis, the Appellate Court noted that the trial court properly considered the precise standard for causation and found that defendant offered two non-pretextual reasons, which were credible and supported by the evidence. Therefore, the plaintiff failed to establish the requisite element of causation in his retaliatory discharge claim.

The Appellate Court also rejected plaintiff's argument that *Clark v. Owens-Brockway Glass Container, Inc., Hollowell v. Wilder Corp. of Delaware, and Grabs v. Safeway Inc.* bar a trial court from considering an employee's disputed medical condition as evidence of a valid nonretaliatory reason for discharge. The court stated those decisions distinguish between outright lies made by an employee relating to a workers' compensation claim and a simple dispute about the nature and extent of the injury. In this case, plaintiff made outright lies about his medical condition and prior misrepresentations about his physical infirmness to his employer, so his discharge was not premised on any dispute about the nature and extent of his compensable injury, but rather on his lack of integrity. The Appellate Court deferred to the trial court's reasonable credibility determinations against the plaintiff and found that the plaintiff failed in his burden to establish that he was discharged in retaliation for exercising his rights under the WCA.

Hearing Level Procedures:

Mercil v. Batavia, City of, 27 ILWCLB 142 (Ill. W.C. Comm. 2019).

Petitioner worked for respondent as a police officer when he was bitten on the left wrist by a dog. Petitioner subsequently filed a third-party cause of action against the owner of the dog pursuant to WCA Section 5(b), with the respondent filing a petition to intervene. In the petition, respondent alleged payment of certain benefits made pursuant to the WCA and further alleged that the final amount of the workers' compensation lien or subrogation interest "has yet to be determined" as the petitioner continues receiving medical treatment to cure or relieve him of the injuries inflicted by the dog. Further, the respondent argued that final and permanent extent of the petitioner's injury "is not yet determined." A settlement was reached in the third-party suit and an agreed order was entered memorializing the payment of the settlement proceeds as well as the reimbursement to the employer pursuant to WCA Section 5(b). The agreed order stated the respondent may or may not pay additional monies to the petitioner because of his undisputed accident. During a subsequent workers' compensation hearing, one of the disputed issues was causation. Respondent argued petitioner's current condition of ill-being and need for permanent restrictions was due to his underlying degenerative condition not caused or aggravated by the work accident. The arbitrator denied respondent's ability to contest the issue

of causal relationship based on the doctrines of collateral estoppel and judicial estoppel.

Upon review, the Commission disagreed with the arbitrator's application of the doctrines on the employer's ability to contest the issue of causal relationship. The Commission otherwise affirmed and adopted the arbitrator's decision, awarding 45% loss of use of a person under Section 8(d)(2). In applying the doctrine of collateral estoppel to block a party from contesting the issue of causal relationship based on the judgment regarding a disability pension for the same accident, the fact finder must have the final judgment of the disability pension claim in the record. Otherwise, the fact finder is forced to engage in speculation.

Representation:

Lindroth v. Coastal International, 27 ILWCLB 143 (Ill. W.C. Comm. 2019).

On July 10, 2007, petitioner sustained serious injuries in a work-related accident rendering him permanently and totally disabled. Respondent paid permanent and total disability benefits and medical expenses. In 2016, an Indiana court awarded petitioner $22,197,500.00 in a civil action regarding the accident. Petitioner offered a ruling on the payment of attorney's fees and adjudication of the respondent's lien entered in an Indiana probate court. The arbitrator found, first, that the probate court in Indiana had no jurisdiction over the issue of adjudicating the Illinois workers' compensation lien and the order entered by the probate court did not control the arbitrator's decision. The arbitrator found the respondent's gross lien paid was $5,801,101.00 less 25% for attorney's fees, resulting in money owed to the respondent in the amount of $4,350,825.00. The arbitrator also found respondent entitled to a credit for future benefits owed for ongoing permanent and total disability and medical benefits. Even though respondent had the right to suspend payment of benefits and take a credit up to the amount of the third-party award, respondent was still required to pay 25% of any future PTD or medical benefits claim as attorney's fees, which should be issued as a credit on a weekly basis. In other words, when a respondent receives a credit for future permanent total disability and medical benefits owed in satisfaction of a workers' compensation lien, respondent's payment of the 25% attorney's fees on future benefits should be issued as the credit is accrued. If the respondent was required to pay the 25 percent attorney's fees in a lump sum for future benefits, this would require the respondent to pay a fee on a benefit it may never realize.

Upon review, the Commission affirmed and adopted the decision of the Arbitrator.