October Case Law Summaries- Part I

I. Arising Out of Employment

Butler v. Illinois, State of/Veterans Home of Anna, 20 IWCC 0348

Petitioner worked as a secretary for a residential facility. She alleged multiple injuries from a fall due to a broken chair. Petitioner testified she returned to her workstation when the floor mat slid and she grabbed her chair. When she grabbed her chair, two bolts in the chair broke and Petitioner fell. Petitioner testified the floor was slippery and the floor mats did not have slip resistant backing. Petitioner provided her own desk and chair due to the condition of the employer's equipment and the employer did not object. Witness testimony and injury reports reflect Petitioner's chair broke as she attempted to sit down. There was a dispute as to whether Petitioner was merely sitting down when the chair broke or if the incident occurred due to the floor mat.

The Arbitrator found Petitioner sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator reasoned that it was irrelevant whether the injury occurred due to the floor mat or while Petitioner was merely sitting down in the chair as the accident occurred due to an unsafe or hazardous condition on the employer's premises. The Arbitrator was not persuaded by Respondent's argument that the incident constituted a personal risk as Petitioner used her own chair and reasoned she used personal equipment for the benefit of the employer to which the employer acquiesced. The Commission affirmed the Decision.

Giglio v. Illinois, State of/Police, 20 IWCC 0334

Petitioner alleged an injury to his neck and upper back on February 14, 2018 while performing a burpee exercise during a six month cadet training program. His training supervisor noticed the claimant stopped the exercise and brought him in front the class to finish the work out to "make an example of him." Petitioner did not immediately report the incident as he desired to complete the academy. Although Petitioner testified to ongoing pain, he completed the remainder of the session that week. Thereafter he sought treatment on February 17, 2018 and reported increasing pain during training at the police academy, although he did not report the specific incident. He was diagnosed with cervical radiculopathy. After this evaluation, Petitioner reported the incident to his supervisor via text message and they discharged him from the academy to return in the next class. Petitioner did not return to the academy until the following session in June 2018.

The Arbitrator found Petitioner sustained an accidental injury that arose out of and in the course of his employment. Although Petitioner did not immediately report the incident when it occurred, the Arbitrator reasoned Petitioner did not want to jeopardize completing the academy. While Petitioner did not report the specific incident during his initial evaluation on February 17, 2018, the Arbitrator noted Petitioner reported pain that originated during training at the police academy. The Commission affirmed the Arbitrator's Decision.

II. Course of Employment

Suits v. Marquette Group, 2020 IL App (3d) 190491 WC-U

Petitioner worked for a marketing company on the seventh floor of a building. Her employer permitted a 30 minute lunch break and two 15 minute breaks. Petitioner and other colleagues often

walked during the breaks. The employer encouraged the practice, implemented a wellness program and provided pedometers. Petitioner alleged two separate injuries that occurred while walking. She first alleged an injury on June 6, 2012 when she tripped on a raised piece of concrete three blocks from the employer's premises and a second accident on November 14, 2012 when she twisted her ankle and fell one half block from the employer's premises.

The Arbitrator found the accidents did not arise out of or in the course of Petitioner's employment. The Commission affirmed the Decision, which was then affirmed by the Circuit Court. Petitioner appealed to the Appellate Court. The Court found the Decision was not against the manifest weight of the evidence. In denying accident, the Court noted that while Petitioner was engaged in an act of personal comfort, she did so off the employer's premises and cited *Eagle Discount Supermarket v. Indus. Comm'n*, 82 Ill. 2d 331 (1980), in finding the most important factor to consider was the location of the accident. Petitioner sustained injuries off the employer's premises and she was exposed to risks outside the employer's control.

Lonergan v. Sanctuary Hospice, 20 IWCC 0344

Petitioner worked as a nurse liaison and her job duties included traveling to doctors' offices and hospitals. She testified 90% of her job duties required travel to various facilities. On January 17, 2014, Petitioner left a meeting at an assisted-living facility when she slipped and twisted her knee. Petitioner did not testify to the cause of her fall and the medical records indicated her knee gave out. She subsequently theorized she could have slipped on ice or tripped on uneven asphalt.

The Arbitrator found Petitioner was a traveling employee and her accident arose out of and in the course of her employment. The Commission reversed the Arbitrator's Decision and found that while Petitioner was a traveling employee, she still had the burden to prove compensability and Petitioner failed to prove the cause of her fall. The evidence suggested Petitioner did not know the cause of her injury and her indication it could have occurred due to ice or uneven asphalt was mere speculation.

III. Accidental Injuries

Boston v. River Birch Senior Living LLC, 20 IWCC 0365

Petitioner worked as a CNA supervisor and her job duties required that she be on call for one to two weeks per month. While completing her shift, Petitioner discovered another caregiver left her assignment without finishing her tasks and used her on call phone to report this to her manager. While driving home after her shift, Petitioner received threatening text messages on her personal phone from the co-worker she reported. Petitioner reported this to her manager. She then received a call from the co-worker that she was at the Petitioner's home. Petitioner returned home where the co-worker confronted her and Petitioner testified she pushed the co-worker as she felt threatened and a physical altercation ensued. Petitioner left and returned a few hours later when they engaged in another physical altercation. Although the incident occurred off the employer's premises, Petitioner maintained her injuries arose out of and in the course of her employment as she was on call when the incident occurred.

The Arbitrator found Petitioner failed to prove her accident arose out of and in the course of her employment and reasoned all communication with the co-worker occurred via Petitioner's personal cell phone. Further, Petitioner did not attempt to prevent the altercation by calling the

police or contacting her employer after she knew the co-worker was waiting for her at home or after the first physical altercation. The Arbitrator also found it significant that Petitioner pushed the co-worker and the fight ensued, although Petitioner testified this was due to a perceived threat. Nevertheless, the Arbitrator found it significant that Petitioner was the first to make personal contact. The Arbitrator reasoned any actions Petitioner took after she was aware the co-worker was waiting for her in the parking lot became personal actions. The Commission affirmed.

Eaton v. Morris Hospital, 20 IWCC 0330

Petitioner alleged bilateral carpal tunnel syndrome due to her repetitive job duties as a nurse. Petitioner's treating physician reviewed a job description, which indicated Petitioner's job required her to use her hands and fingers for pushing, pulling and repetitive grasping for seven or more hours per day. However, at trial Petitioner did not testify that her job duties required repetitive grasping and pulling or that she experienced symptoms while performing her job duties. Petitioner testified at trial that her job did not require fine manipulation. Respondent obtained a Section 12 examination and the doctor opined Petitioner's carpal tunnel syndrome was idiopathic in nature and not related to her job duties as there was no evidence of highly repetitive flexion and wrist extension coupled with forceful grasping.

The Arbitrator found Petitioner proved she sustained an accidental injury that arose out of and in the course of her employment after finding the treating doctor's opinion persuasive. The Arbitrator reasoned the treating doctor reviewed the job description in formulating his opinions.

The Commission reversed the Arbitrator's Decision and found Petitioner failed to prove her condition of ill-being was causally related to her job duties. The Commission reasoned the treating doctor based his opinion on assumptions made after reviewing the job description, which Petitioner did not corroborate through her trial testimony. She also did not testify that she experienced carpal tunnel symptoms while performing her job duties at work and only testified that she experienced pain while sleeping. The Commission further reasoned the medical records did not document carpal tunnel symptoms until one year after she last worked for Respondent. The Commission further found Respondent's Section 12 examiner's opinion persuasive as the doctor had a more accurate and complete understanding of Petitioner's condition and job duties.

IV. Permanent Disability Benefits

Sanders v. Chicago, City of/Dept. of Water Management, 20 IWCC 0343

Petitioner worked as a construction laborer and sustained injuries to his right knee, right elbow, left finger and right foot resulting from a motorcycle accident that occurred while en route to a restaurant to use the restroom.

The Arbitrator awarded a wage differential pursuant to Section 8(d)1 for the right knee injury and 5% loss of use of the right arm and 15% loss of use of the left little finger pursuant to Section 8(e). The Commission affirmed the Arbitrator's wage differential award under Section 8(d)1 but vacated the award under Section 8(e). The Commission reasoned that pursuant to the holding in *General Electric Co. v. Indust. Comm'n*, 89 Ill. 2d 432 (1982), compensation is proper under either Section 8(d)1 or 8(e), although compensation cannot be awarded under both sections for injuries resulting from the same accident.

Bush v. Illinois, State of/Dept. of Transportation, 20 IWCC 0358

Petitioner worked as a highway maintainer and testified his job required forceful gripping and pulling of pipes with large pipe wrenches. He was diagnosed with bilateral ulnar and median neuropathies and left epicondylitis and underwent bilateral carpal tunnel releases and ulnar nerve transpositions. He also received an injection for his left elbow epicondylitis/interstitial partial tear. Petitioner attributed his upper extremity conditions to his repetitive job duties. The medical records reflect Petitioner had a prior radius fracture and underwent open reduction internal fixation and a carpal tunnel release. At trial, Petitioner testified he still experienced reduced strength and grip strength in both arms and hands. He also reported pain in his right elbow. Petitioner further testified that while he returned to his full duty job, he could no longer engage in extra work as a tree trimmer, although he presented no evidence as to income loss. The parties proceeded to hearing regarding the nature and extent of the injuries.

In assessing permanency, the Arbitrator considered the five factors of Section 8.1(b). The Arbitrator assigned no weight to the first factor as neither party presented an impairment rating. In considering the second factor, the Arbitrator assigned significant weight due to Petitioner's job as a highway maintainer, which required significant repetitive use of his upper extremities and he continued to experience symptoms. The Arbitrator assigned minimal weight to the third factor as Petitioner failed to present any evidence of lost income due to his inability to perform extra work as a tree trimmer. Given Petitioner's age of 50, the Arbitrator assigned moderate weight to the fourth factor as Petitioner would live with the effects of the injury for the remainder of his work and natural life. Finally, the Arbitrator assigned significant weight to the fifth factor, but primarily focused on the nature of the treatment and Petitioner's residual symptoms. The Arbitrator awarded 12.5% loss of use of the right hand, 15% loss of use the left hand, 12.5% loss of use of the right arm and 20% loss of use of the left arm.

The Commission majority affirmed the Arbitrator's Decision. However, a dissenting Commissioner found that since Petitioner actually returned to his full duty work, the second factor weighed in favor of decreased permanent disability. Additionally, in considering the fifth factor, the Commissioner found the Arbitrator failed to actually compare Petitioner's subjective complaints to the medical records. When doing so, the Commissioner found the records did not wholly support Petitioner's subjective complaints and weighed in favor of decreased permanent disability. As such, the Commissioner would have awarded 7.5% loss of use of the right hand, 10% loss of use of the left hand, 10% loss of use of the right arm and 15% loss of use of the left arm.

V. Death Benefits & Beneficiaries

Holley v. American Coal Co., 20 IWCC 0345

Decedent filed an Application for Adjustment of Claim on July 31, 2015 alleging injuries due to workers' pneumoconiosis. He died on April 28, 2016 after refusing treatment for stomach cancer. The Application was amended to list the Estate of decedent as the Petitioner. Thereafter, the parties proceeded to hearing on May 15, 2019 and decedent's daughter testified at hearing among other witnesses. The Arbitrator found decedent's condition causally related to his job duties as a coal miner and awarded permanency benefits. After the hearing, Petitioner's counsel filed a "Petition to Amend Application for Substitution of Party" to substitute decedent's daughter as Petitioner

before the Commissioner without objection by Respondent's counsel. The Commissioner granted the Petition as decedent's daughter was an eligible beneficiary under the Act. The majority affirmed the Decision as decedent's daughter was an eligible dependent under the Act and distinguished this case from *Ill. State Treasurer v. Estate of Kormany*, 140 N.E.3d 821 (2019), which held that the Commission's jurisdiction was suspended until a representative of the Estate was properly appointed, as there was no finding in *Kormany* that the deceased claimant died with a spouse or dependent.

A dissenting Commissioner disagreed and found *Kormany* controlled and compelled the Commission to vacate the Decision of the Arbitrator until a representative of the Estate was properly appointed. The Commissioner maintained that if a claimant dies of unrelated causes then there must be a legal representative appointed to prosecute the claim and the Commission did not possess authority to appoint a representative.

VI. Claim Filing Procedure

Ramsey v. Illinois Emergency Management Agency, 20 IWCC 0350

Petitioner worked as an office coordinator and alleged repetitive trauma injuries to her thumbs and elbows. Petitioner suffered from symptoms since 2011 and on December 1, 2016, she told her doctor that her symptoms were attributable to her job duties over 20 years. She filed an Application for Adjustment of Claim on January 8, 2018. Petitioner testified she wore hand braces every day while at work. Respondent's witness testified that while he saw Petitioner wearing braces in the office, he was unaware the underlying condition was related to her job duties until he received a letter from her attorney in January 2018.

The Arbitrator found December 1, 2016, the date of her evaluation during which Petitioner attributed her symptoms to her job duties, was the appropriate accident date. As a result, the Arbitrator further found Petitioner failed to provide proper notice within the requirements of the Illinois Workers' Compensation Act. The Commission affirmed the Arbitrator's Decision and reasoned that while her supervisor saw her wearing braces at work, it did not constitute actual, defective or inaccurate notice of an alleged injury and Respondent did not need to prove undue prejudice.

VII. Petitions to Review

Sloniker v. Aspen Construction Systems, 20 IWCC 0337

Petitioner previously received a wage differential award pursuant to Section 8(d)1, which was based in part on Petitioner's low back pain due to an annular tear at L4-5. Respondent filed a Petition under Section 19(h) a few years later alleging Petitioner's disability diminished and the wage differential benefits should be terminated and the award converted to an award under Section 8(d)2. Respondent argued the medical records after hearing suggested that Petitioner's annual tear resolved and as such, Petitioner's disability diminished or ended. Respondent relied in part on an office note composed by the treating doctor's nurse practitioner that indicated Petitioner's annular tear resolved following an updated MRI. The medical records and imaging also suggested new findings at L5-S1.

The parties presented conflicting opinions regarding Petitioner's condition. Petitioner's treating doctor testified that while his nurse practitioner indicated otherwise in the office note, the presence or absence of an annual tear needs to be confirmed through discography. Nevertheless, the MRI demonstrated other findings of disc degeneration consistent with his clinical presentation and some signal from the area near the prior annular tear. The treating doctor found there was not a material anatomic change in Petitioner's condition. Respondent's expert testified that the treating doctor believed the annual tear resolved per the medical records. The expert reviewed the MRI and noted there was no annular tear to "any significant degree" and they always leave some remnant left on imaging but nothing significant. Respondent's expert also believed Petitioner only experienced a lumbar strain and attributed his degenerative disease to Petitioner's age.

The Commission denied Respondent's Petition and found the opinions of the treating doctor most persuasive. The Commission reasoned Respondent's expert did not refute the treating doctor's testimony that the MRI demonstrated an ongoing signal that could suggest a persistent annular tear. Further, the fact Respondent's expert noted annular tears leave remnants behind on MRI suggested there was still something present on the MRI, although the expert did not find it significant. The Commission also considered whether the annular tear diminished and if that diminished Petitioner's disability and was persuaded by the treating doctor's testimony that the presence of an annular tear needs to be confirmed by discography. Nevertheless, even if the annular tear diminished, that did not necessarily support a finding that Petitioner's disability itself diminished to the point where his pain decreased and he could return to his prior job. The Commission further reasoned the Respondent's expert did not review the prior MRIs which would make it difficult to determine if the pathology changed. The Commission also noted the expert's diagnosis of a lumbar strain and age related degenerative disease was not persuasive as the diagnosis and causation had been adjudicated by the Arbitrator at hearing.

October Case Law Summaries- Part II

I. Status of Employment

Skolimowski v. Bekin Van Lines Operations, 20 IWCC 0296

Petitioner and her husband responded to an advertisement for an over the road truck driver position. On the application, Petitioner's husband characterized his position as an owner-operator and they both signed the application. Petitioner's husband and Respondent entered into an independent contractor agreement that listed the husband as the "contractor". The agreement indicated the contractor would direct the operation and performance of all services and was responsible for determining the method and manner of travel, servicing of equipment, labor, income tax, business taxes, employer and employee taxes and fuel taxes. Both Petitioner and her husband had commercial driver licenses and traveled together across the country moving commercial business, although Petitioner's husband owned the cab. Defendant supplied the uniforms bearing the company's name and a logbook. Petitioner's husband was paid by the mile and received a 1099. He would then issue a separate 1099 to Petitioner. Petitioner alleged an injury to her lower back on October 9, 2005 while pushing a heavy pallet jack. Respondent denied liability for the injury and maintained she was not an employee.

The Arbitrator found Petitioner was not an employee of Respondent and denied all benefits. The Commission affirmed the Decision and reasoned Petitioner and her husband did not work assigned

shifts and were not provided assigned loads. Rather, they would solicit loads by contacting the dispatcher and the loads were not guaranteed. The Commission further reasoned that although Respondent provided the delivery date, it had no control over the manner of delivery or performance of work and Petitioner could choose her own routes and schedule breaks and meals. Petitioner's husband could also hire his own employees and he was permitted to drive for other companies if he removed Respondent's signage. The Commission further found the manner of payment significant and that Petitioner and her husband were responsible for taxes. Although Respondent provided uniforms and equipment and Petitioner worked as a driver, which fell under the Respondent's general business of moving product, the Commission did not believe these facts negated the other evidence presented at trial.

A dissenting opinion disagreed with the majority and found Petitioner was an employee of Respondent. The Commissioner did not find the independent contractor agreement persuasive. Rather, the Commission noted the proper analysis as outlined in *Roberson v. Indus. Comm'n*, 225 Ill. 2d 159 (2007) was whether the employer controlled the manner in which the person performs the work, dictated the schedule, paid the worker hourly, withheld income and social security taxes, whether the employer could discharge the employee and whether the employer supplied materials and equipment. The Commissioner found Respondent exercised substantial control over the activities, required Petitioner to complete a job application and undergo a physical examination, required Petitioner to wear a uniform and provided training on driving and log books. Further, although Respondent did not mandate the routes driven, it provided a mileage limit. The Commissioner further found it significant that the truck owned by Petitioner's husband and leased to the Respondent bore Respondent's name, as did the trailers attached to the truck.

II. Course of Employment

MacDonnell-Dayhoff v. Village of Western Springs Police Department, 20 IWCC 0441

Petitioner worked as a school crossing guard for the Village in the mornings and as a receptionist for the Village in the afternoon. On February 6, 2014, Petitioner parked her vehicle in angled parking on the street in front of the Village Hall and slipped on snow and ice while exiting her vehicle. Petitioner testified she parked in this location due to its proximity to the corner where she worked as a crossing guard and as a receptionist. The Village owned and maintained the parking area and also had two other parking lots. Petitioner was not instructed by the Respondent or the Village where to park and the Village permitted parking in the angled spots in front of the building. At trial, Petitioner maintained she was a traveling employee.

The Arbitrator denied benefits and found Petitioner was exposed to a neutral risk as she chose to park on a public street in a space open to the general public. Petitioner had the opportunity to park in the Village lots, which were well maintained with frequent snow and ice removal, although Petitioner chose not to park in the lots. The Arbitrator reasoned Petitioner was exposed to the same dangers due to snow and ice as members of the general public while parked in a public parking area.

On appeal, the Commission majority found Petitioner was not a travelling employee as her job did not require travel between job sites or travel away from her employer's premises. However, the majority reversed the Arbitrator's Decision and found Petitioner's accident arose out of and in the course of her employment. The Commission first found Petitioner fell in a parking space provided

by the employer. It reasoned the Village owned and maintained the lot where Petitioner parked, permitted her to park in this area and waived the four hour parking limit. Further, while the parking lot was also open to the general public, Petitioner was exposed to a hazardous condition on the employer's premises and Petitioner did not need to prove she was exposed to the risk of hazard to a greater extent than the general public.

III. Accidental Injury

Laidlaw v. Illinois, State of/Dept. of Corrections, 20 IWCC 419

Petitioner alleged repetitive trauma injuries to her hands that resulted in carpal tunnel syndrome and lateral epicondylitis. She worked as a supervisor in the Bureau of Identification department of the Illinois Department of Corrections. Her office included a chest high counter approximately four and a half feet high where she fingerprinted inmates. Petitioner testified there are 14 motions in the process of fingerprinting that is completed by rolling the fingers in ink and then on the fingerprint card. She fingerprinted approximately 40 people per day. She further testified her job duties included using a paper cutter to cut down the fingerprint cards and cut up old ID cards, used a hole puncher for mug shots, created ID cards, assembled files and took DNA samples. However, for at least a few years Petitioner also worked for the union and her job duties also consisted of union duties. Petitioner's treating physician opined her condition was related to her job duties that required repetitive fingerprinting.

Respondent secured a Section 12 examination. Based on the examination and Petitioner's description of her job duties, the expert found Petitioner's job duties were a likely contributor to her condition, although he did not have a job description. The Section 12 examiner subsequently reviewed a job description, besides other evidence, including her union duties. He noted the job duties varied more than he initially believed and she performed duties beyond fingerprinting. The expert further noted it was significant that Petitioner's symptoms did not improve one and a half years after her retirement. As such, the expert found Petitioner's condition was unrelated to her job duties.

The Arbitrator found Petitioner failed to prove she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator reasoned Petitioner testified to a variety of job duties. The Commission reversed and found Petitioner proved her job duties performed over 30 years were repetitive and required force and flexion and Petitioner's statements were consistent that she attributed her symptoms to her employment. Further, Petitioner's treating doctor opined her condition was causally related to her job duties that required repetitive fingerprinting and found the Respondent's experts explanation for why he changed his opinion unpersuasive.

Beshears v. KLN Enterprises, 20 IWCC 0436

Petitioner worked as a regional sales manager, which often required travel to various states for food shows, meetings and sales calls. Petitioner testified her job duties required her to be on her feet for extended periods of time on hard surfaces. Petitioner noted increasing pain in September 2013 and while attending a food show in Texas her symptoms significantly worsened and she had difficulty ambulating. She testified that she notified her supervisor of the injury the following day. Petitioner further testified she cancelled a food show the following week due to the injury and notified her supervisor. The medical records note a chronic history of left hip and foot pain and

there was no reference to an acute onset of foot pain in the records from September 2013. After Petitioner described her job duties at length to her doctor, which included a statement she was on her feet for 12 to 18 hours per day, the treating physician opined Petitioner sustained a stress fracture due to her job duties. Petitioner did not testify at trial that her job duties required her to be on her feet for 12 to 18 hours per day.

At trial, Respondent presented witness testimony that Petitioner did not report the condition as work related until March 2014. Respondent also obtained a Section 12 examination. The expert opined there was no evidence to support a specific accident to the foot as Petitioner described a gradual onset of symptoms in September 2013. However, the doctor noted stress fractures are consistent with repetitive trauma and walking upright at work would cause stress to the second metatarsal and lead to a stress fracture.

The Arbitrator found Petitioner met her burden of proof that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator relied on the opinions of Petitioner's treating doctor and Respondent's Section 12 examiner and noted Petitioner's job required her to stand or walk extensively in the performance of her job duties. The Commission reversed the Arbitrator's Decision and found Petitioner failed to meet her burden of proof. It reasoned Petitioner did not testify at trial that her job required her to be on her feet for 12 to 18 hours per day, as she reported to the treating doctor. As such, she failed to present the necessary evidence to support the treating doctor's causation opinion. The Commission also noted that Respondent's Section 12 examiner opined the stress fracture was not due to a work injury and testified stress fractures are typically due to activities of daily living and caused by upright ambulation on a repetitive basis.

IV. Causal Relationship

Rominski v. Service Drywall & Decorating, 20 IWCC 0089

Petitioner worked as a journeyman carpenter and alleged an injury to his lower back on February 9, 2016 after he slipped and fell down eight to nine stairs at work. After pursuing conservative treatment, Petitioner was diagnosed with a herniated disc and underwent injections and a lumbar fusion. Respondent obtained a Section 12 examination and the doctor opined Petitioner's examination was normal and there was nothing on the MRI to support his subjective symptoms. The doctor opined Petitioner sustained a soft tissue injury and the subjective complaints were inconsistent with the objective findings.

The Arbitrator found Petitioner failed to prove his back condition was causally related to the work injury. On appeal, the Commission reversed the Arbitrator's Decision and found the lower back condition related to the work incident. While Petitioner had a slight fender bender in 2011, the condition resolved with physical therapy and Petitioner received no treatment for his lower back from 2012 through the February 2016 work injury. The Commission also found it significant that Petitioner was capable of working full duty as a journeyman carpenter until the work accident. Petitioner also sought immediate treatment and continued to complain of back pain throughout his care. The Commission reasoned Petitioner proved causation based on the chain of events with no evidence of symptoms in the years prior to the accident and the development of a debilitating condition immediately thereafter, which was supported by the medical records.

Meyer v. Aramark, 20 IWCC 0439

Petitioner worked as a bulk fold and belt operator beginning in June 2018. Her job duties included carrying large bags of linen and sorting and folding soiled and clean items onto conveyor belts and industrial hampers. She alleged a left hand and wrist injury on August 21, 2018, addressed in a separate decision, and a right hand and wrist injury on September 5, 2018. Petitioner argued a chain of events analysis as her hands and wrists were fine before the alleged accidents. Petitioner also presented the opinion of her treating physician that found causation between the condition of ill-being and her job duties.

The Arbitrator found Petitioner's right hand and wrist conditions were causally related to the September 5, 2018 work injury. The Commission reversed the Arbitrator's Decision and found the right hand and wrist complaints were not related to her job duties and rejected the chain of events theory as the evidence demonstrated Petitioner had prior right hand deficits due to a preexisting brachial plexus injury that contradicted her testimony. The Commission reasoned it was more likely than not that Petitioner's right hand and wrist complaints were residual symptoms from her preexisting brachial plexus injury and due to deconditioning after a long absence from the work force.

V. Permanent Disability Benefits

Sexton v. Illinois, State of/Secretary of State, 20 IWCC 0435

Petitioner worked as a chief engineer and his job duties included operation and maintenance of buildings, including the refrigeration systems, heating units and water pumps. Approximately 85% of his day involved supervisory duties and 15% involved engineering labor that required use of vibratory tools, pipe wrenches and hammer drills. Petitioner alleged bilateral carpal and cubital tunnel injuries due to his repetitive job duties. After undergoing carpal and cubital tunnel releases, Petitioner underwent a Section 12 examination that demonstrated he had ongoing pain to palpation over the bilateral medial elbow scars, positive bilateral elbow Tinel's with tapping over the cubital tunnel and reduced grip and pinch strength. Petitioner testified to weakness in his hands with gripping and pushing and pain when using a wrench.

In assessing permanency, the Arbitrator considered the five factors of Section 8.1(b) of the Illinois Workers' Compensation Act. The Arbitrator assigned no weight to the first factor as neither party offered an impairment rating and no weight to the fourth factor as Petitioner's earning capacity was not permanently impacted by the injury. For the second factor that considered Petitioner's occupation, the Arbitrator assigned some weight and noted Petitioner performed supervisory duties for 85% of his shift and labor for the remaining 15%. The Arbitrator assigned some weight to the third factor as Petitioner was 57 years old and had remaining work life and experienced ongoing symptoms with certain work tasks. Considering the fifth factor, the Arbitrator noted inconsistencies between Petitioner's subjective complaints at trial and the medical records. The treating physician's records reflect Petitioner reported 95% improvement of the symptoms on his left side and 99% improvement on the right. However, the last physician to examine Petitioner was Respondent's Section 12 examiner and the report confirmed Petitioner's subjective complaints of loss of strength. In considering the five factors, the Arbitrator awarded 7.5% loss of use of each hand and arm.

On appeal, the Commission modified the Arbitrator's Decision finding that while it agreed with the weight the Arbitrator assigned to each factor, an award of 12.5% loss of use of the right dominant hand and arm and 7.5% loss of use of the left hand and arm was more appropriate.

Harness v. City of Springfield, 20 IWCC 0182

Petitioner worked as an auto body technician and sustained an injury to his left shoulder. He underwent a left shoulder arthroscopy with arthroscopic subacromial decompression, open distal clavicle excision, and open biceps tenodesis in the subpectoral region. The post-operative diagnoses were left shoulder pain with severe AC joint arthritis and bicipital tendinosis. The medical records noted objective improvement following surgery with excellent range of motion and strength, although Petitioner reported ongoing subjective pain complaints. Following a valid FCE, the treating doctor found Petitioner capable of lifting 21-50 pounds, 40 pounds floor to waist, front carry lift of 40 pounds and overhead lifting of 11-20 pounds. Respondent accommodated the permanent restrictions until the shop closed and Petitioner retired. At trial, Petitioner testified he had since reopened his own body shop a week before the hearing and intended to do flat rate insurance work. After completing his first job, he took longer to do the work than the time allotted by the insurance company. Petitioner testified to ongoing pain and cramping if he exceeded his restrictions.

The Arbitrator considered the five factors of Section 8.1(b) of the Illinois Workers' Compensation Act to assess permanency. The Arbitrator assigned no weight to the first factor as neither party offered an AMA impairment rating into evidence. The Arbitrator assigned great weight to the second factor in considering the occupation of the employee as Petitioner could no longer perform his job duties as a body technician and retired. While Petitioner recently reopened his own body shop, he took longer to perform the work. In addressing the third factor, although the Arbitrator acknowledged Petitioner's work life expectancy was shorter than a younger worker, he will experience ongoing issues for the rest of his life and assigned greater weight to this factor. The Arbitrator assigned little weight to the fourth factor addressing Petitioner's future earnings capacity as the parties offered no credible evidence on this issue and the anticipated future earnings from his new business were unknown. The Arbitrator assigned great weight to the fifth factor as the records demonstrated Petitioner received permanent restrictions that precluded him from working his regular job and testified to ongoing pain. After considering all five factors, the Arbitrator awarded 35% loss of use of the person as a whole.

On appeal, the Commission modified the award and reduced it to 27.5% loss of use of the person as a whole. In modifying the award, the Commission addressed the second and third factors and reasoned Petitioner was a retired worker with a part time business and as such, he should not be compensated for a loss of occupation. Rather, the Commission found Petitioner's permanency should be focused on the fifth factor and agreed with the Arbitrator's analysis of said factor.

VI. Medical & Rehabilitation Benefits

Salas v. City of Chicago/Dept. of Transportation, 20 IWCC 0292

Petitioner sustained an injury to his left knee on December 7, 2005 while working as a cement finisher. He reached maximum medical improvement on January 3, 2008 and received permanent restrictions that precluded him from returning to work. Petitioner underwent a vocational

rehabilitation assessment on February 11, 2009 that found Petitioner could perform some jobs if the city accommodated his restrictions or he would require vocational rehabilitation. Vocational rehabilitation training commenced by Petitioner on a periodic basis and then Respondent provided vocational rehabilitation services as of May 18, 2012. Petitioner participated fully in vocational services between 2012 and 2017. Petitioner then engaged his own vocational rehabilitation counselor and his counselor issued a report on December 5, 2017 that found Petitioner was no longer a viable vocational candidate as he was not employable in a stable labor market.

At trial, the Arbitrator awarded maintenance benefits from January 4, 2008 through the date of hearing on August 15, 2018 and thereafter awarded permanent total disability benefits to commence on August 16, 2018.

The Commission affirmed the Arbitrator's Decision but modified the date of termination for maintenance benefits. The Commission found that despite having a very large workforce, the Respondent failed to accommodate the restrictions and although the case met the requirements, the Respondent never secured a vocational assessment pursuant to Commission Rule 9110.10. Rather, the Respondent did not timely initiate the vocational process. Based on the December 5, 2017 vocational rehabilitation report, the Commission found Petitioner permanently totally disabled as of December 5, 2017 and modified the Arbitrator's decision and awarded maintenance benefits from January 4, 2008 through December 5, 2017 and permanent total disability benefits commencing December 6, 2017.

VII. Benefit Payment Procedures

Brewster v. City of Chicago, 20 IWCC 0369

Petitioner worked as a truck driver. On June 25, 2015, Petitioner sustained an injury to his lower back. He underwent an L5-S1 laminectomy on January 24, 2018 and was released to full duty work on June 19, 2018. Petitioner did not attempt to return to work as he continued to take narcotic medication for the injury. Petitioner returned to the doctor on June 27, 2018 and received a light duty note. The treating doctor subsequently recommended an FCE on July 10, 2018 due to Petitioner's "inability to work full duties safely." An FCE determined Petitioner could not perform the full demands of his job as a truck driver and on August 7, 2018 the doctor provided permanent restrictions of no lifting greater than 20 pounds, limited bending and walking and no driving. Petitioner testified he provided the work status note to Respondent's nurse and the adjuster and spoke to his general foreman. Respondent did not accommodate Petitioner's restrictions since June 27, 2018. Respondent did not present medical evidence of Petitioner's condition from June 27, 2018 through August 7, 2018 and argued it was not liable for TTD benefits based on the prior June 19, 2018 full duty release.

The Arbitrator awarded TTD benefits between June 27, 2018 and August 7, 2018. The Arbitrator found the Respondent failed to present any basis for non-payment of benefits during this period and concluded Respondent's delay in payment was unreasonable within the meaning of Section 19(l) and its behavior was vexatious within the meaning of Section 19(k). The Arbitrator awarded penalties under Sections 19(l) and 19(k) and attorney's fees pursuant to Section 16. The Commission affirmed the Arbitrator's award of penalties pursuant to Section 19(l) but reversed the award of penalties and attorney's fees under Sections 19(k) and 16. It reasoned that penalties under Section 19(k) are reserved for situations where there is a delay and the delay is deliberate or

the result of bad faith or improper purpose. The Commission found Respondent's skepticism of the restrictions after the initial full duty release reasonable and its behavior did not meet the standard for an award of penalties under Section 19(k). The Commission also vacated the award for attorney fees as Section 16 provides for an award of fees only when awarded penalties under Section 19(k).

VIII. Hearing Level Procedures

Benge v. Knapheide Manufacturing Co., 20 IWCC 0366

Petitioner filed three Applications for Adjustment of Claim alleging three separate accidents against the same employer. Two of the Applications alleged injuries in 2014 to the back and were consolidated in 2016 and a third Application alleged an injury to the left hand in 2002. Petitioner filed a Motion for Reassignment to consolidate all three claims. Respondent opposed the motion arguing Petitioner continued treatment for the 2002 claim for the left hand injury, while the 2014 claims alleging injuries to the lower back were postured for hearing.

The Commission denied Petitioner's Motion for Reassignment and found Respondent showed good cause for objecting to the consolidation. The Commission reasoned that while Rule 9030.10(d) indicates cases shall be reassigned if either the claimant files multiple Applications against the same employer or the claimant files multiple Applications against different employers but arising out of injury to the same body part, there is an exception. While the language of the rule indicates the cases *shall* be consolidated upon motion of any party, modification of Rule 9030.10(d) in November 2016 added language that the Commission can make an exception based on a showing of good cause by the objecting party. The Commission further reasoned that requiring the parties to conduct two separate hearings based on the specific circumstances of this case was consistent with Section 16 of the Act that requires the process and procedures before the Commission be as simple and summary as reasonably possible.