

**WCLA NEWSLETTER**  
**CASE LAW SUMMARIES SEPTEMBER 2020**

**Status of Employment/ Right to Control:** *Garrett v. Chad-Nic Management Services Inc. d/b/a Shiloh Commons, 28 ILWCLB 111 (Ill. W.C. Comm. 2020).*

The Petitioner was working in an apartment complex in a maintenance capacity when injured. Respondent argued that the Petitioner was an independent contractor and an employment relationship did not exist. Petitioner argued he was an employee of Respondent, the apartment management company.

The Petitioner was paid a base hourly rate for hours worked and submitted time sheets. He was paid twice a month, the same as the other employees of the company. He was not paid per job or project completed. Respondent furnished tools, provided to the Petitioner with shirts to wear at work and provided daily tasks to be completed.

The Arbitrator took into account Respondent's right to control the Petitioner in determining if an employment relationship existed. The Arbitrator found that the Respondent, through the property manager, controlled the manner in which the Petitioner performed his work and found the Petitioner was an employee of Respondent. The Commission affirmed and adopted the decision of the Arbitrator.

**Arising Out of Employment/ Mental Disabilities:** *Carpenter v. Chicago Transit Authority, 28 ILWCLB 112 (Ill. W.C. Comm. 2020).*

The Petitioner was employed as a bus driver for the City of Chicago. On the date of the alleged accident she was driving a CTA bus when she witnessed two men shooting at each other. The bus was in the crossfire and was not far from the location of the shooting. Neither of the men were injured, nor was the Petitioner or anyone on the bus. The Petitioner alleged severe emotional shock and claimed a "mental-mental" injury.

The case discussed the Illinois Supreme Court case *Pathfinder Co. v. Industrial Commission*. In *Pathfinder*, the court reasoned when there is a direct observation of a shocking physical situation, that causes a Petitioner's mental stress, that mental stress could be compensable. Additionally, where there is a sudden, severe emotional shock traceable to a definite time, place, and cause, which leads to psychological injury or harm, that Petitioner has suffered an accident within the meaning of the Workers Compensation Act.

The Arbitrator reviewed the video footage of the incident and determined that it was reasonable that the Petitioner would have felt her life was in danger which caused mental stress. This was supported by her testimony and the mental health medical records. The Commission affirmed and adopted the decision of the Arbitrator.

**Arising Out of Employment/ Employment Risks:** *Cook v. Illinois, State of/Dept. of Human Services, 28 ILWCLB 113 (Ill. W.C. Comm. 2020).*

The Petitioner was employed as a mental health technician, which required her to work with mentally challenged patients in their homes. On the date of accident, she was walking into the kitchen to clean dishes after lunch. She had nothing in her hands at the time. She rolled up her sleeves in preparation to wash the dishes. In rolling up her sleeves, she struck her left hand on the wall. She sustained a contusion of her left hand and underwent surgery. The Respondent denied the case, stating there was no increased risk associated with mechanism of injury, of her hand hitting the wall.

The Arbitrator reasoned that the Petitioner's work in cleaning up after patients and rolling up her sleeves to clean dishes put her at an increased risk of injury. The Arbitrator also reasoned that the injury was compensable under personal comfort doctrine because rolling up her sleeves to avoid getting water on her clothing was a reasonable act of personal comfort. The Arbitrator indicated the injury was compensable under both of these theories.

The Respondent appealed the Arbitrator's decision. The Commission determined that the Petitioner was injured due to employment related risk. Commissioner Coppoletti dissented stating the majority opinion focused its risk analysis on the act of rolling up her sleeves and not the injury of hitting her hand on the wall. Hitting her hand on the wall was a neutral risk and nothing about her employment increased the risk of hitting her hand on the wall.

**Course of Employment/ Scope of Duties:** *Maddy v. Purdy Brothers Trucking, 28 ILWCLB 114 (Ill. W.C. Comm. 2020).*

The Petitioner's job title was spotter for a trucking company. His job required him to move tractor-trailers to different docks for a customer's processing plant. His employer offered the processing plant the option, at an additional cost, to remove loads from trailers. On the date of the accident the Petitioner unloaded a trailer, at the request of a plant employee, and injured his knee and wrist. The unloading service was not paid for by the plant for this load.

Respondent argued that the employee was not in the scope of his employment because he was not permitted to help unload trailers unless that service was paid for.

The Arbitrator reasoned that at the time of the accident, the Petitioner unloading a trailer, would not be deemed unreasonable or unusual. The Arbitrator concluded that the employer acquiesced to the Petitioner removing the loads from the trailer without charging the customer. The Respondent appealed the decision and the Commission affirmed and adopted the decision.

**Causal Relationship/ Skeletal Conditions:** *Fornear v. Illinois, State of/Dept. of Corrections*, 28 ILWCLB 115 (Ill. W.C. Comm. 2020).

The Petitioner alleged a repetitive trauma to his bilateral hips due to his work as a correctional officer. He alleged that he repeatedly traversed multiple flights of stairs throughout his shift and did so while wearing a 12-pound duty belt.

The Respondent secured the opinion of a Section 12 examiner who opined that the Petitioner's greater trochanteric bursitis was related to his tight iliotibial bands, and not related to his work duties. The Section 12 doctor noted that the Petitioner's hips had deteriorated so much that any normal daily activity would be an overexertion.

The Arbitrator found the Petitioner failed to prove bilateral hip injury was causally related to a repetitive trauma due to his work duties. The Commission affirmed the decision noting the Section 12 examiner was credible as the Petitioner still had pain despite being off work for 7 years. Commissioner McCarthy dissented to the majority opinion noting that the Petitioner's job duties could have aggravated the tight iliotibial bands on both hips.

**TPD – Petitioner wins award despite not requesting such benefits – *Robinson v. Walmart***, 28 ILWCLB 116 (Ill. W.C. Comm. 2020).

Petitioner was involved in a work accident at her retail job. Following her accident, Petitioner was placed off work but she continued to be compensated for serving as a caretaker for her mother. The Arbitrator acknowledged that normally a petitioner is entitled to TTD benefits while they are off work. Here, because Petitioner testified that she was compensated for her role as a caretaker, she was not entitled to TTD benefits. The Commission modified the Arbitrator's decision by awarding TPD benefits for the period while Petitioner was off work from her retail job but earned some income even though she did not formally request the benefits.

In this case, the Commission reasoned that while Petitioner did receive some income for her work as a caretaker, her condition did not stabilize enough for her to return to her retail job. Therefore, Petitioner was entitled to TPD benefits for the period she was off work from her retail job. As such, the Commission can award warranted benefits even if a petitioner does not formally request them.

**Permanency Value / PPD Benefits – *Gabriel v. Menards***, 28 ILWCLB 117 (Ill. W.C. Comm. 2020).

Petitioner was employed as millwright whose job required a heavy demand level. Petitioner injured his back in a lifting accident and was diagnosed with degenerative lumbar spine disease and a disk herniation. Petitioner pursued conservative treatment, and ultimately a functional capacity evaluation was obtained which found Petitioner could work at a medium demand level. Petitioner was placed at maximum medical improvement

with lifting restrictions that were less than what his job required but Petitioner's employer was able to accommodate his restrictions.

After conducting a permanency analysis, the Arbitrator found Petitioner's injury carried exposure of 25% LOU of the person as a whole. The Commission reduced the permanent disability award to 15% LOU of the person as a whole. The Commission reasoned that Petitioner returned to work full duty, continued with his normal position and received assistance when lifting heavy items when necessary. Although Petitioner testified that he changed careers to find something less physically demanding, there was no evidence that any doctor ever recommended a change in careers. Further, Petitioner never sought additional medical treatment nor did he complain of any ongoing low back symptoms while he continued to work for his employer. The Commission found there was no evidence that Petitioner was unable to find another job in his original profession within his permanent lifting restrictions, instead he independently decided he wanted to pursue a more sedentary job.

**Permanency Value / PPD Benefits** – *Parr v. University of Illinois*, 28 ILWCLB 118 (Ill. W.C. Comm. 2020).

Petitioner injured his right ankle when he fell off a ladder while working as a building mechanic. Petitioner underwent surgery and his postoperative diagnosis was an acute traumatic displaced bimalleolar fracture of the right lower leg.

The Arbitrator found that Petitioner sustained a 40% loss of use of the right leg under Section 8(e) of the Act. The Commission modified the award by applying Petitioner's permanent disability to the right foot instead of the leg. The Commission reasoned that Petitioner's fractures were located at the ankle joint, and the implanted hardware did not extend far past that joint. Additionally, the medical records, which included imaging and operative reports, office notes, and physical therapy records only supported an injury to Petitioner's right ankle.

**Medical / Rehabilitation Benefits – Vocational Rehabilitation** – *Bucaro v. Illinois Guaranty Fund*, 28 ILWCLB 119 (Ill. W.C. Comm. 2020).

Petitioner injured his left shoulder while working as an elevator mechanic. Petitioner's treatment included four injections, two surgeries, and he was eventually released with permanent restrictions. Petitioner was given permanent restrictions pursuant to a functional capacity test when he was finally released at maximum medical improvement. Petitioner requested in writing that his employer either accommodate his permanent restrictions or commence a vocational rehabilitation service. Petitioner's employer did not respond to Petitioner's written request, and he hired a vocational rehabilitation service on his own. The rehabilitation provider's services did not lead to any employment, and as such Petitioner ultimately found work on his own with another elevator company. Petitioner's new job accommodated his permanent restrictions and gave him a pay raise although his job title remained the same as his prior job.

At trial, the Arbitrator found Petitioner was not entitled to vocational rehabilitation services based on his return to an identical job with higher earnings. The Commission reversed the Arbitrator's findings regarding the vocational rehabilitation and ordered the employer to pay for the services. The Commission reasoned that Petitioner's entitlement to vocational rehabilitation services should not be determined by the end result achieved by Petitioner's efforts to look for work. Therefore, the purpose of vocational rehabilitation is to find suitable employment for a petitioner. In awarding, vocational rehabilitation, the Commission noted that the evidence demonstrated that Petitioner's potential loss of job security was due to a compensable injury, and there was a likelihood he could obtain employment upon completion of his training.

**Medical / Rehabilitation Benefits – Pain Treatments – *Vasquez v. Walmart*, 28 ILWCLB 120 (Ill. W.C. Comm. 2020).**

Petitioner worked as a forklift driver who injured her left wrist in a work accident when she pulled a rope to open an overhead dock door. Petitioner was diagnosed with a TFCC tear and CRPS of her left arm. One of Petitioner's doctors recommended a dorsal column stimulator, but her orthopedic specialist did not believe she met the criteria of CRPS and recommended she be evaluated by a pain management specialist instead to confirm her diagnosis.

The Arbitrator found causation satisfied but questioned the severity of her condition based on surveillance footage. The Arbitrator denied recommendations for the stimulator reasoning it was not reasonable or necessary. On appeal, the Commission agreed there was insufficient evidence to justify the need for the stimulator given the unreliability of Petitioner's reported symptoms based on video surveillance. However, the Commission found that a treating doctor's uncontroverted recommendation for further evaluation was appropriate to confirm Petitioner's diagnosis and then determine the best treatment plan.

**Authority of Commission – Review of Settlement Agreements – *Cowger v. CPC Logistics Inc.*, 28 ILWCLB 121 (Ill. W.C. Comm. 2020).**

The parties entered into a settlement contract, to resolve this matter for \$100.00 on a disputed basis. The contract was approved by the Arbitrator, and then three weeks later, an attorney filed a petition for review on Petitioner's behalf seeking rescission of the Arbitrator's approval of the contract and review of all issues related to the claim.

The Commission reviewed this case to determine if the settlement contract was properly executed in order to determine if its approval should be upheld. The Commission found the settlement contract was not properly executed and therefore vacated the Arbitrator's approval. The Commission reasoned that Section 9070.10(b) of the Illinois Administrative Code states that settlement contract forms must be completed in full and accompanied by an appropriate signed physician's report concerning the nature, extent, and probable duration of the disability resulting from the alleged accident. Here, the Commission found that the settlement contract at issue was not completed in full because there were multiple

inconsistencies with the settlement contract and accompanying documents, including whether disputed medical bills have been paid by the employer.