# WCLA 11-7-18

- Intervening Injury & Breaking the Chain of Causation: PAR v. IWCC
- November 7, 2018
- 12:00 noon to 1 pm
- James R. Thompson Center Auditorium, Chicago, IL
- 1 hour general MCLE credit

# Vogel v. IWCC
# 354 Ill.App.3d 780 (2005)

- DA: 7-10-98
- Fusion 3-12-99
- MVA 6-9-99 (while on the way to 1st PT)
- “Failed fusion” 11-5-99
- RTW 3-13-00 (for a different employer)
- MVA 4-17-00
- MVA 6-18-00

# Vogel v. IWCC
# 354 Ill.App.3d 780 (2005)

- Dr. Boury (treater): “MVA’s aggravated condition.”
- Dr. Skaletsky (IME): “Failed to fuse for inherent biological reasons.”
- Arb.: TTD to 1st MVA ; IWCC affirms.
- Cir. Court: Reverses; MVA’s do not break causal chain (law & fact); remands.
- IWCC: TTD to RTW & surgery; CC confirms.
- Appellate Court: IWCC initial decision was against the manifest weight of the evidence and remanded the cause so that the Commission could enter an award consistent with the court's ruling.
- “When a claimant’s condition is weakened by a work-related accident, a subsequent accident that aggravates the condition does not break the causal chain”…but for the surgery…evidence (of intervening cause) is illusory…testified he was doing fine…(MVA) was a concurrent cause,” not intervening.

# Vogel v. IWCC
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- Every natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury.
- That other incidents, whether work-related or not, aggravated Petitoner's condition is irrelevant
- Whether a causal connection exists is a question of fact for the Commission, and a reviewing court will overturn the Commission's decision only if it is against the manifest weight of the evidence.
- When the claimant's condition is weakened by a work-related accident, a subsequent accident that aggravates the condition does not break the causal chain.
- "Only contributing, not intervening, causes" do not break the chain
- Although the pseudoarthrosis would not have occurred but for the auto accident, it is equally true that the pseudoarthrosis would not have occurred but for claimant's work injury. Therefore, evidence established that the auto accident was merely a concurrent cause, along with the work injury.
- Arbitrator and IWCC never expressly found that the auto accidents broke the causal chain, but instead found merely that they "further aggravated medical condition."

# National Freight industries v. IWCC 2013 IL App (5th) 120043WC

- Petitioner filed an application for adjustment of claim (08 WC 56873) seeking benefits for injuries sustained in a motor-vehicle accident on December 4, 2008, while in the employ of National Freight Industries.
- At same time, Petitioner filed a second application for adjustment of claim (08 WC 56874) alleging the occurrence of a work-related accident on November 6, 2006 (prior to the accident alleged in the first application), while in the employ of Fischer Lumber.
- Following a consolidated 19(b) hearing, Arbitrator determined that Petitioner's current condition of ill-being was not a natural consequence of the November 6, 2006, injury and that the accident of December 4, 2008, constituted an independent, intervening accident that broke the chain of causation.
- Arbitrator found that Fischer Lumber's liability for temporary total disability (TTD) benefits and medical expenses ceased on December 4, 2008, and that National Freight was liable for TTD benefits and medical expenses for the period from December 5, 2008, through the date of the arbitration hearing.
- In addition, the Arbitrator determined that claimant was not entitled to a permanency award against Fischer Lumber because the injury had not reached maximum medical improvement prior to the date of the second accident.
- IWCC affirmed and adopted the decision of the arbitrator. The circuit court of Madison County confirmed the decision of the Commission.
- Thereafter, Petitioner and National Freight filed separate appeals, which we consolidated on our own motion. In appeal No. 5-12-0043WC, National Freight argues that the Commission's finding that the December 4, 2008, accident broke the chain of causation from claimant's prior work accident is both contrary to law and against the manifest weight of the evidence. In appeal No. 5-12-0047WC, Petitioner argues that IWCC finding that he was not entitled to a permanency award from Fischer Lumber is against the manifest weight of the evidence. For the reasons set forth below, we affirm in part, vacate in part, and remand the cause for further proceedings. We affirm the decision of the Commission finding National Freight liable. We vacate the Commission's finding that Petitoner is not entitled to a permanency award from Fischer Lumber and remand the matter to the Commission with instructions that it determine the permanency attributable to each separate injury.

# National Freight industries v. IWCC 2013 IL App (5th) 120043WC

- Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury.
- Manifest weight of the evidence

# PAR Electric v. IWCC
# 2018 IL App (3d) 170656WC

- 6-16-14 DA, Hamm v. PAR Electric, 14WC037190, R shoulder
- 9-26-14 SX right shoulder
- 1-5-15 FCE medium only; no full duty release
- 3-11-15 Release to RTW full duty by Dr. Li
- 3-23-15 RTW for H&M
- 4-1-5 DA,  Hamm v. Henkels & McCoy (H&M), 15WC019322, R shoulder
- 4-3-15 DA,  Hamm v. H&M, 15WC019323, R shoulder
- 7-8-15 SX right shoulder
- 12-22-15 19(b) consolidated hearing
- Arbitrator's Awards: found Petitioner sustained three accidents and that his condition of ill-being was causally related to all three accidents.
- 14 WC 37190 vs. PAR, Arbitrator awarded Petitioner TTD benefits, from September 26, 2014, through March 11, 2015 and medical expenses, but only those incurred prior to March 11, 2015.
- 15 WC 19322 and 15 WC 19323 vs. H&M, the Arbitrator awarded Petitioner TTD benefits, from April 6, 2015, through the date of the arbitration hearing, and ordered  H&M to pay medical expenses incurred after April 1, 2015, as well as prospective medical treatment

# PAR Electric v. IWCC
# 2018 IL App (3d) 170656WC

- IWCC Decisions
- 16IWCC0686/7 v. H&M: the Decision of the Arbitrator is reversed; Petitioner had failed to sustain his burden of proving his accidents on 4-1-15 & 4-3-15 caused the current condition of ill-being of his right shoulder, and compensation is denied
- 16IWCC0690 v. PAR: Respondent Par Electric is responsible for all medical expenses and benefits arising out of Petitioner's right shoulder condition. By separate Decisions, IWCC reverses the Decisions of the Arbitrator in 15WC19322 and 15WC 9323, finding therein that Petitioner did not prove the respective accidents on 4-1-15 & 4-3-15 were intervening accidents causing his current condition of ill-being and denying compensation in those claims

# PAR Electric v. IWCC
# 2018 IL App (3d) 170656WC

- IWCC Decisions
- Dr. Li may have released Petitioner to RTW prematurely: “IWCC notes that at times the practice of medicine is more of an art than a science. Sometimes, doctors‘ educated conclusions regarding a patient's current condition can be later found to be inaccurate or incomplete.”
- No follow up FCE
- Never symptom free after initial injury
- This case is similar to that of Vogel
- Therefore, even if the Commission accepts the Arbitrator's conclusion that all the accidents are concurrent causes of Petitioner's condition of ill-being, that finding in itself would not be sufficient for the subsequent accidents to become intervening accidents thereby breaking the chain of causation from the initial accident on June 16, 2014

# PAR Electric v. IWCC
# 2018 IL App (3d) 170656WC

- Respondent argues that IWCC decision was contrary to the analysis outlined in National Freight Industries…argues that IWCC decision was contrary to law
- Respondent asserts there is a conflict between "the line of cases that hold employers take an employees as they find them and intervening accident cases where the subsequent work-related accidents occur."
- Respondent requests that we resolve this alleged conflict "with an interpretation that distinguishes between subsequent work-related and non-work-related accidents."
- According to Respondent, we outlined such an approach in National Freight Industries

# PAR Electric v. IWCC
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- Respondent suggests that a conflict exists between these lines of cases because recovery is permitted under a preexisting-condition analysis if the employee establishes that his or her employment was a causative factor in the resulting condition of ill-being, but under an independent intervening cause analysis, an employer is relieved of liability only if the intervening event completely breaks the causal chain between the original work-related injury and the ensuing condition of ill-being.
- Respondent would have us limit an employer's liability in intervening cause cases if a subsequent event was a causative factor in the employee's resulting condition of ill-being.
- Respondent cites no authority for such a position. Indeed, this is clearly not the law in Illinois.
- Contrary to Respondent's claim, we did not set forth a test in National Freight Industries for determining whether a subsequent work-related event constitutes an independent intervening cause that severs the chain of causation from an earlier work injury.
- We merely recounted the evidence in the record that supported the Commission's resolution of the issue.
- IWCC determined that Petitoner's condition of ill-being after April 2015 would not have resulted "but for" his original work injury. After reviewing the record, we cannot say that a conclusion opposite that of the Commission is clearly apparent.