WCLA MCLE 5-2-18

- Review of Commission Decision Summaries
- May 2, 2018
- 12:00 noon to 1 pm
- James R. Thompson Center Auditorium, Chicago, IL
- 1 hour general MCLE credit

Dedra Koehler v. SOI Murray Center 14WC016584; 17IWCC0471

- Petitioner went to throw a paper towel away after washing her hands, turning to her left toward the trash can, when she heard her right knee pop and felt a very sharp pain in the knee
- Arbitrator denies benefits: “The risk associated with tuning to throw paper towels away is clearly not a risk distinctly associated with employment as a cook…Turning to discard paper towels after washing ores hands is a risk to which the general public is exposed daily.”
- IWCC affirms and offers “supplemental analysis” on AOO
- Based on this precedent, the risk that led to Petitioner9s injury in this case-her turning to discard a paper towel-was an everyday occurrence that cannot be considered distinct to her employment even if it was undertaken in furtherance of her employment duties. Thus, the Commission must reject Petitioner's argument that her injury be considered the result of an employment-related risk.
- In this case, Petitioner offered no evidence that her job exposed her to any quantitatively or qualitatively unusual risk of injury due to tuning to discard apaper towel. Although she points out in her brief that she was required to wash her hands

Cher Smith v. Manhattan Park District 11WC019917; 17IWCC0462

- IWCC REVERSES (3-0) Arbitrator's award of benefits for slip & fall on snow in parking lot
- The mere fact that duties take the employee to the place of injury and that, but for the employment, the employee would not have been there is not sufficient to give rise to the right to compensation.
- The evidence establishes that the parking lot was open to and used by members of the general public. While the parking lot was also used by employees of the Park District, there is no evidence establishing that the Park District instructed their employees to park in that lot. Rather, employees were free to park anywhere in the lot, park in the street, or park in the Park District's other parking lot. Thus, the employees and members of the general public were exposed to the same risk. ***(Not in the course of?)***
- IWCC finds that the ***accumulation of snow in the parking lot represented a natural accumulation*** as there was no evidence that Respondent created or contributed to a hazard. As the lot was open to the general public, Smith's fall resulted from a hazard to which she and the general public were equally exposed. Thus, the Commission finds that Smith's injury ***did not arise out of her employment***.
- Circuit Court Confirmed 4-8-18(?)

David Clarke v. City of Peoria 08WC012057; 17IWCC0475

- Firefighter has heart attack on 12/29/2007
- Arbitrator awards benefits based on ODA Section 1(d) presumption: “general opinions are insufficient to overcome the presumption.”
- A presumption, such as the one in §1(d) is a procedural rule that dictates the effect of the absence of evidence. A presumption does not shift the burden of proof but rather shifts only the burden of production. Thus, a statutory presumption is a rule of evidence. No one has a right in any particular procedure. Therefore, the Arbitrator finds that the statutory amendment contained in § 1(d) applies to Petitioner's claim because it constituted a change in a procedural rule.
- IWCC modifies down from 25% MAW to 20% MAW: “having weighed the evidence”
- Since the statutory changes to the Acts simply create a rebuttable presumption, and not a conclusive rule of law, the change is only procedural and therefore can be retroactively applied.
- Citing Simpson, Petitioner met his burden of proof regarding whether his heart condition was work related. Respondent introduced evidence to rebut the presumption created by the statute, but Petitioner was able to prove by a preponderance of the evidence that his condition was work related.

Roy Sims v. Aramark
15WC026947; 17IWCC0429
Application of 8.1b to Ankle FX ORIF

Arbitrator	IWCC
• AMA: 12% LE; some	• Affirmed
• School custodian; greater	• Affirmed
• 69; limited work life; greater	• Affirmed
• Future earnings; none	• Affirmative evidence RTW; some
• Disability; ime's too; significant	• Affirmed
• 42.5% foot	• 35% foot

Edward Scanlon v. Rivera & IWBF 12WC020817; 17IWCC0430

- IWCC affirms finding of NO EMPLOYER EMPLOYEE RELATIONSHIP
- The totality the evidence indicates that Petitioner was an independent contractor, not an employee. Therefore, the Arbitrator finds that Petitioner failed to meet his burden of proving an employer-employee relationship
- The evidence presented clearly suggests that the claimant was neither hired by the respondent as an employee, nor retained or commissioned by respondent as an independent agent. Rather, the claimant assisted the respondent as a co-flounder of the venture. The claimant's lack of W-2 forms, securing his benefits in cash, and flexibility regarding his schedule were entirely consistent with this partnership arrangement.
- The Commission notes the holding in Metro Construction, 39 Ill. 2d 424 (1968), where the Illinois Supreme Court observed in workers comp, it appears that with the exception of one jurisdiction (Oklahoma)every court where this issue has arisen has held that working partners are not employees within the meaning of the statutes. We think the majority view to be sound and it is adopted."
- Furthermore, pursuant to Section 1(b)3 of the Act, partners of a business may elect to be covered by the Act, but must declare themselves to be so covered. There was no such showing, especially given the lack of insurance coverage heretofore demonstrated.
- CIRCUIT COURT REVERSED & REMANDED 4-19-18

David Paul Lemin v. Al-Amin Bros. Transp. 13WC005725; 17IWCC0435

- IWCC reverses Decision of Arbitrator; Arbitrator found NO ER/EE relationship
- Sup. Ct. has identified factors to assist in determining whether a person is an employee: (1) whether employer may control the manner in which the person performs the work; (2) whether employer dictates the schedule; (3) whether the employer compensates person on an hourly basis; (4) whether employer withholds income and social security taxes from person's compensation; (5) whether the employer may discharge person at will; and (6) whether the employer supplies the person with materials and equipment. ROBERSON.
- Another relevant factor is nature of the work performed in relation to the general business of the employer.
- Label placed on the relationship is also a consideration, although it has lesser weight.
- The significance of these factors rests on the totality of the circumstances, and no single factor is determinative. Nevertheless, whether the purported employer has a right to control the actions of the employee is the single most important factor."
- Nature of the claimant's work in relation to the employer's business is important consideration.

Catherine Berger v. SOI (DCEO) 12WC001388; 17IWCC0463

- IWCC affirms Arbitrator’s denial of benefits: No AOO
- JRTC Building: fall in atrium
- Petitioner was on break and in Respondent’s building where she worked (albeit in an area regularly traversed by members of the public who are not employees of Respondent) when she slipped and fell...The injury occurred in the course of her employment.
- If the fall occurred on Respondent's premises and it was due to a hazardous condition of the premises, the injury would arise out of Petitioner's emptoyment.
- In this case, Petitioner's testimony, the Notice of Injury, and the medical records do not establish that there was a hazardous condition of Respondent’s premises that caused the fall
- There is a lack of evidence regarding what Petitioner slipped on. Therefore, it cannot be said that Respondent's premises was defective and contributed to the fall.

Elaine Theobold v. Rockford Mass Transit 12WC044320; 17IWCC0448

- IWCC affirms & adopts Arbitrator’s award of benefits
- Petitioner testified that in order to reach the head sign she needed to lift herself out of the seat and reach with her right arm to push the button to change the sign. She would change the sign every hour, 8 times a day…Petitioner testified that she felt a pop in her shoulder
- The Arbitrator finds that the act of reaching upward from the driver's seat of a bus to change the head sign is a risk associated with the employment. Young
- The record shows claimant was injured while performing her job duties, namely reaching up to change the head sign, a required part of her assignment. This task and the mechanism of injury described are distinct to her job duties aa a bus driver and connected with her assigned duties.

Kim Hartnell v. JC Penney 09WC024716; 17IWCC0482

- Previous 19(b) tried and won by Petitioner; now back for permanency
- Arbitrator awards additional TTD 250 weeks & 30% whole person
- IWCC modifies down: TTD 35 weeks & 15% whole person
- Arbitrator erred insofar as she decided that the law of the case doctrine relieved Petitioner of her burden to prove, at the permanency hearing, that any purported ill-being as may be extant after the date of the earlier § 19(b) hearing is causally related to her accident.
- IWCC is allowed in a subsequent hearing to find that a previously causally connected condition has resolved and to deny a current causal connection without reversing the prior § 19(b) decision. *See* *Weyer*
- Petitioner still had the burden of proving that her current ill-being, i.e., the ill-being as it was alleged to exist post-§19(b) and up to the time of the permanency hearing, was causally connected to her accident. The evidence shows that Petitioner has failed to carry her burden. evidence presented at hearing showed that Petitioner is malingering and exaggerating her symptoms, in particular her cognitive problems.