WCLA MCLE 7-10-18

- Review of Commission Decision Summaries
- July 10, 2018
- 12:00 noon to 1 pm
- James R. Thompson Center Auditorium, Chicago, IL
- 1 hour general MCLE credit

Cody Harris v. United Parcel Service 15WC033018; 17IWCC0550

- IWCC affirms & adopts (2-1) Arbitrator's 19(b) award of benefits to bulk line collection roller, injured in one-vehicle collision before actual work hours after getting fries from cafeteria
- Thus, at the time of the accident, Petitioner was performing work for the employer as a random early starter to prep the bulk line: specifically looking for tubs to attach to the PITO unit to take to the bulk line
- Even ifPetitioner was, as Respondentsuggests, scheduled only as a couection roller that day, Respondent knew ofand allowed Petitioner to performwork for which it has previously admitted it does not pay its employees to do despite the benefit derived.
- Finally, Respondent also asserts that Petitioner was in violation ofa safetyrule such that her actionsconstituted a personal risk fior which her injuries cannot be said to have arisen out ofher employment:is notcredible that it was actuany enforced and evidence suggest Respondent allowed individuals to operate these unitswithout current certification to its benefit.
- The Arbitratrtaor Finds that the Petitoner purchasjng an order of French fries at Respondent's cafeteriaconstituted an act ofpersonal comfort as contemplated under the rule. However, Respondent is correct thatPetitioner was not engaged in any act ofpersonal comfort, as the act ended and was otherwise completed whenby the tine ofher accident.

Christina Herron v. Kindred Hospital 15WC020754; 17IWCC0579

- IWCC affirms & adopts (2-1) Arbitrator’s 19(b) award of benefits to nurse who injures back when arising from “squatting” position to drain catheter
- It is clear that the incident in this case arose during the course of Petitioner`s employment. The onlylegitimate issue for analysis is whether the claimant's injuries arose out ofher employment.
- Nothing in the record suggests that Petitioner's injury was the result of a risk personal to the employee.
- The act of squatting down to empty a catheter bag while holdirlg onto a graduated Cylinder and then arising,being careful not to spill the contents of the cylinder, are risks associated with Petitioner's employment.
- While the risk of squatting and arising from a squatted position may be argued to be a risk to which the general publicis exposed, the Arditrator finds Petitioner'sjob duties exposed Petitioner to this risk to a greater degree than thegeneral public both qualitatively and quantitatively.

Gertrude Birkhead v. Northrup Grumman 15WC021233; 17IWCC0596

- IWCC affirms & adopts Arbitrator’s denial of benefits
- Arbitrator's Credibility Assessment: Petitioner’s very lengthy tenure with Respondent weighs in her favor, credibility-wise,but her testimony concerning the cause of her fall is at odds with the recorded statement she provided to an adjuster. Petitioner testified there is ''no question" in her mind she slipped on some kind of liquid but, when she talked with the adjuster, only six days after the accident, she admitted she did not know what caused her to slip. The adjuster specifically asked her whether there was water or some other liquid on the bathroom floor. She said she did not know.
- The Arbitrator clarifies that the accident/incident reports offered by Respondent (RX 5) played no role in her assessment of Petitioner's credibility and denial of benefits.
- The Arbitrator declines to award Respondent credit for this fee. Section 12 of the Act does notcontain any provision requiring a claimant who fails an examination to pay such a fee. The onlysanction afforded by Section 12 is temporary suspension of compensation benefits until theexamination occurs. No other section ofthe Act contemplates the kind of credit Respondentseeks.

Jose Avalos v. Caldwell Letter 12WC021007; 17IWCC0658

- IWCC affirms & adopts Arbitrator’s award of benefits in altercation case
- Certainly, cases exist which indicate wholly unexplained attacks by co-workers are not compensable. (1946 & 1971)
- It is questionable whether such cases are still controlling given the Supreme Court's ultimate ruling in Rodriguez, as well as its explanation of that holding in Health & Hospitals Governing 62 Ill.2d 28(1975):“this court indicated that a 'neutral' assault of the general type is compensable without any further showing of a specific causal link between the employment and the assault." 95 Ill.2d 166,174 (1983).
- The facts in the instant case show that the accident did not result from a personal dispute.

Steve Goodson v. Carlisle Syntec 12WC028983; 17IWCC0640

- IWCC modifies date of manifestation of repetitive trauma carpal tunnel from 2-27-12 (Arbitrator) to 4-16-12
- Accident report dated 4-23-12 says accident was reported on 4-7-12
- The Commission modifies the decision of the Arbitrator to find that the appropriate date of manifestation for Petitioner's repetitive trauma injuries was April 16, 2012, or the date Dr. Sola noted that the recent NCV had confirmed the carpal tunnel syndrome diagnosis that both he and Dr. Goggin had previously suspected…while Dr. Sola's assessment on February 27, 2012 was carpal tunnel syndrome, he expressed no opinion as to its possible relationship to Petitioner's employment
- Furthermore, IWCC finds Petitioner provided proper and adequate notice to Respondent on April 23, 2012, or the date of the accident report. The Commission notes that while this report indicates that Petitioner claimed to have reported the injury to Ms. Woker on April 7, 2012, Ms. Woken herself was unable to confirm the date on which this conversation took place. In any event, this conversation would have clearly preceded the definitive diagnosis made by Dr. Sola on April 16, 2012. More importantly, even if there was a defect in said notice, Respondent provided absolutely no evidence that it was somehow prejudiced by same.

Joseph DiLeonardi v. City of Chicago 14WC041387; 17IWCC0570

- IWCC reverses Arbitrator's denial of benefits on traveling employee theory
- Arbitrator's rationale for denial: "Neither the Accident Report nor the petitioner's testimony indicates that there was any risk or hazard associated with the curb (for example that it might have been chipped or damaged). The petitioner testified that he stepped and missed the curb. This action has nothing to do with an increased risk or his employment. It was on a street open to the general public. The petitioner testified that he drove his own vehicle. It follows that he parked it and therefore decided how close to park to the curb. There is no increased risk in any of his actions up to and including the moment that he stepped to get out of his Vehicle. This is an unexplained incident."
- IWCC rationale for reversal: "Nee 2015 IL App (1st) 132609WC, is directly on point and dispositive. Traveling employee…However, when a traveling employee, such as the claimant in this case, is exposed to the risk while working, he is presumed to have been exposed to a greater degree than the general public. As such, the Commission finds Petitioner's accident also arose out of his employment

Juan Mota v. Greco
13WC011310; 17IWC0627

- IWCC affirms & adopts Arbitrator's award of 45% loss of leg
- Displaced tibial fracture requiring rodding
- 0% AMA impairment rating
- (i) Impairment. Respondent offered the AMA rating by Dr. Palacci who gave Petitioner a zero percent PPI rating. Dr. Palacci classified Petitioner with a proximal tibia shaft fracture, nondisplaced, with no sufficient objective abnormal findings at MMI. However, Dr. Palacci's diagnosis of nondisplaced fracture is not accurate and inconsistent with Dr. Goldberg's diagnosis of a displaced tibia fracture hence requiring the rodding. The PPI range for a displaced tibial shaft fracture is from 14% to 100% impairment of the lower extremity per the AMA Guides. Accordingly, the Arbitrator gives little weight to the impairment rating.