

WCLA MCLE 1-26-16

- Case Law Update
- Tuesday January 26, 2016
- 12:00 pm to 1:00 pm
- James R. Thompson Center , Chicago, IL
- 1 Hour General MCLE Credit

Michael Toles v. Bolingbrook Police Dept.

09WC011199, 12IWCC1429

- On February 17, 2009, Toles was preparing to report to work. Part of this preparation involved placing his duty bag in the trunk of his car.
- The duty bag weighs 40 pounds and contains the officer's helmet, reports, gas masks, legal codes, ammunition, handcuffs and a flashlight.
- Petitioner testified that officers keep the duty bags with them for safekeeping.
- Once he would arrive at the police station, he would transfer the duty bag from the trunk of his personal car to the trunk of his patrol car.
- Based upon the above, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of his employment by respondent on February 17, 2009. The fact that Petitioner was home at the time does not change this finding as he was specifically engaged in an activity performed for the benefit of Respondent, an activity the Respondent could reasonably expect him to perform. Petitioner's testimony that the duty bags were to be kept with officers for safekeeping even while off duty was not contradicted. The Arbitrator is also aware that Petitioner would be considered to be on-call 24 hours a day as a police officer.
- IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 10, 2011, is hereby affirmed and adopted.

Bolingbrook Police Dept. v. IWCC

2015II App (3d) 130869WC

- On appeal, the employer challenges the Commission's award...the employer contends that the Commission's finding that the claimant sustained an accidental injury arising out of and in the course of his employment on February 17, 2009, is contrary to law and against the manifest weight of the evidence.
- In the present case, the Commission's finding that the claimant's injury arose out of and in the course of his employment is not against the manifest weight of the evidence.
- The evidence in the record supports a finding that, at the end of his shift, the employer allowed him at least two options with respect to the job-related task of safekeeping the duty bag: securing the bag in lockers at the police station or securing the bag at his personal residence. Both options were apparently acceptable to the employer.
- Regardless of which of the two options the claimant chose at the end of any given shift, the Commission could find that the responsibility for the safekeeping of the duty bag remained a job-related undertaking.
- Evidence in the record supports a finding that the employer's interests are furthered when its officers perform tasks before and after their shifts that are directly related to the safekeeping of their duty bags.

Bolingbrook Police Dept. v. IWCC

2015II App (3d) 130869WC

- Dissent: Not in the course of
- At the time of the alleged injury in the present case, claimant was employed as a police officer. He alleged that he injured his back as he was placing his duty bag in the trunk of his personal vehicle prior to leaving his home for work. Thus, the alleged injury did not occur on respondent's premises or at a place where claimant was reasonably expected to be in the performance of his duties.
- The Commission acknowledged that the accident occurred while claimant was at home, but reasoned that claimant was "specifically engaged in an activity performed for the benefit of Respondent, an activity the Respondent could reasonably expect [claimant] to perform." The Commission further explained that "[claimant's] testimony that the duty bags were to be kept with officers for safekeeping even while off duty was not contradicted." I disagree with these findings by the Commission.

Tommy Oliver v. Rausch Construction

11WC028718, 12IWCC1290, 14IWCC0192

- This matter comes before the Commission pursuant to an order of remand from the Circuit Court of Cook County. In accordance with the order of the circuit court entered on June 27, 2013, the Commission considers the issues of penalties pursuant to sections 19(k) and 19(1), and attorney fees pursuant to section 16 of the Illinois Workers' Compensation Act, and being advised of the facts and law, finds that Petitioner is not entitled to penalties or attorney fees as stated below.
- Petitioner contended that Respondent's failure to pay temporary total disability benefits and medical bills was unreasonable, vexatious and solely for the purpose of delay as the medical records fully supported Petitioner's claim. The fact that Petitioner reported the accident six days after it occurred does not create a reasonable basis for Respondent's failure to pay benefits as Petitioner credibly testified that his right elbow condition worsened after he went home on July 19, 2011.

Tommy Oliver v. Rausch Construction

11WC028718, 12IWCC1290, 14IWCC0192

- On November 26, 2012, the Commission issued a Decision and Opinion on Review and found that: "penalties pursuant to sections 19(k) and 19(1), and attorney fees pursuant to section 16 should not be imposed against Respondent in the present case. Respondent's conduct in the defense of this claim was neither unreasonable nor vexatious as there were legitimate issues in dispute with respect to accident and causal connection, such as Petitioner's failure to report a work accident on his last day of work, Petitioner's request to fill out an accident report six days after the reported work injury and Mr. Kutzer's testimony."
- On June 27, 2013, the circuit court issued an order on appeal, stating: "This matter is remanded to the Illinois Workers' Compensation Commission for further findings of fact regarding the Commission's decision regarding penalties and attorneys fees. If testimony has not been taken on this issue, then such testimony should be heard. If facts have already been presented on this then the Commission needs to reduce its inferences to findings of fact."

Tommy Oliver v. Rausch Construction

11WC028718, 12IWCC1290, 14IWCC0192

- In compliance with the circuit court's order, the Commission expands on the reasons why it found Petitioner ineligible for penalties and attorney fees as stated in its November 26, 2012, Decision and Opinion on Review. The Commission denies Petitioner's request for penalties pursuant to sections 19(k) and 19(1) and attorney fees pursuant to section 16 based on the following: (1) although Petitioner alleged he injured his right elbow on his last day of work, he failed to report he had sustained a work accident that day; (2) Petitioner sought medical treatment and requested to complete an accident report six days after the reported work injury; and (3) Mr. Kutzer, Petitioner's supervisor on the day of the accident, testified that Petitioner did not appear to be in pain and did not report an accident on the day he claimed it occurred. These facts provide reasonable explanations for Respondent's denial of Petitioner's claim and show that Respondent's refusal to pay benefits was not frivolous, vexatious or solely for the purpose of delay.

Oliver v. IWCC & Rausch

2014 L 050328

- All three (3) of the Commission's purported reasons to support its decision are, in reality, the same reason. That [the claimant] did not report his accident on the day it happened and waited six (6) days to file an accident report with the[e]mployer. The Commission attempts to set a precedent that cannot be allowed; that an employee must report an accident on the day it occurs in order to be eligible for benefits. Such an idea is specifically prohibited by the Act, which provides that an accident must be reported within 45 days of its occurrence.
- The [employer] never allowed [the claimant] to file a report and therefore never conducted an investigation into the accident. An employer cannot be allowed to willfully decide not to investigate a matter and then argue that, even though [it] did not look into it, [it] reasonably believed [it] did not have to pay benefits.
- The [employer] stuck its head in the sand and then argued that it could not see or hear anything so it was reasonable for [it] to think nothing was there. That is a dangerous precedent that cannot be allowed.
- IWCC reversed and Arbitrator's award of penalties reinstated

Oliver v. IWCC

2015 Il App (1st) 143836WC

- On appeal, the employer argues that the Commission's decision as to penalties and attorney fees was not against the manifest weight of the evidence. For the reasons that follow, we affirm the judgment of the circuit court, which reversed the Commission's decision and reinstated the arbitrator's decision with respect to penalties and attorney fees.
- Penalties imposed under section 19(1) are "in the nature of a late fee."
- The burden of providing a reasonable basis for denial of benefits falls solely on the employer. The record is clear that the employer denied this claim, without any investigation, solely because the claimant did not report the accident on the day it occurred. As the employer has provided no authority for such a denial, it has failed to provide a reasonable basis for that denial. Therefore, we find that the Commission's determination that the employer's refusal to pay benefits was reasonable is against the manifest weight of the evidence.

Oliver v. IWCC

2015 Il App (1st) 143836WC

- The standard for awarding penalties and attorney fees under sections 19(k) and 16 is higher than the standard for awarding penalties under section 19(l) because sections 19(k) and (16) require more than an "unreasonable delay" in payment of benefits.
- We agree with the circuit court's conclusion that section 19(k) penalties and section 16 attorney fees should have been awarded in this case. The employer's conduct was not the result of simple inadvertence or neglect. More was involved than just a lack of good and just cause. The employer made a deliberate decision not to honor its statutory obligations to the claimant, and it did so simply because the claimant did not report the accident on the day it occurred.
- Policy that if an accident is not reported on the day it occurs, it cannot be reported at all, and no benefits will be paid
- For the foregoing reasons, we affirm the judgment of the circuit court of Cook County, which reversed the Commission's decision and reinstated the arbitrator's decision with respect to penalties and attorney fees.

Kathy Jenkins v. Jackson Park Hospital

05WC048729; 12IWCC1225; 13IWCC0891

- Arbitrator awards 40% loss of use of whole person to former stationary engineer, evidence that the Respondent continued to pay previous wage rate while employing in a light-duty, security officer position
- Prior to the oral arguments, the Respondent terminated the claimant's employment as a public safety officer and no longer earned the wage on which the arbitrator relied in denying her request for a wage differential award.
- Petitioner filed an emergency motion to remand the case to the arbitrator in order to reopen proofs to allow additional evidence of her termination
- IWCC denied her request to reopen the proofs & affirmed and adopted
- Circuit Court reversed & remanded with directions for IWCC to enter wage-differential award
- IWCC enters wage differential award
- Circuit Court confirms

Jackson Park Hospital v. IWCC

2016 IL App (1st) 142431WC

- Respondent asks App. Ct. to reinstate IWCC's original PPD award under section 8(d)(2), arguing that it was not against the manifest weight of the evidence
- Petitioner asks App. Ct. to affirm IWCC's wage differential award entered on remand...Alternatively, Petitioner asks to vacate both PPD awards, remand to IWCC because: (1) IWCC abused its discretion in not reopening proofs after employment termination and (2) IWCC abused its discretion in original MAW award by limiting admission of evidence that was relevant to request for wage-differential.
- App. Ct. vacates IWCC's wage-differential award on remand under section 8(d)(1), vacates Cir. Ct. order remanding the case to IWCC with directions to enter a wage differential award, vacates IWCC's MAW award, and remands to IWCC for further proceedings consistent with opinion, during which IWCC shall admit and consider all evidence relevant actual earning capacity in the competitive job market

Jackson Park Hospital v. IWCC

2016 IL App (1st) 142431WC

- Petitioner has not waived her right to wage-differential award...linchpin factual issue is a determination of whether the work-related injuries have resulted in an "impairment of earning capacity."
- IWCC did not evaluate "earning capacity." Instead, IWCC simply looked at post-injury wages and denied wage differential award because Petitioner "does not have any wage loss, at this time." This analysis is flawed.
- At arbitration hearing, Petitioner attempted to present evidence that income as a public safety officer was not a true representation of earning capacity, but IWCC refused to consider (stipulation that other public safety officers made only \$10 per hour)
- IWCC abused its discretion in limiting the admission of the stipulation
- Because IWCC failed to consider and analyze all of the evidence that is relevant to true earning capacity in the competitive job market, App. Ct. "must" vacate IWCC awards and remand for a proper hearing on Petitioner's request for a wage differential award

Jackson Park Hospital v. IWCC

2016 IL App (1st) 142431WC

- Respondent's argument on appeal raises a competing concern, *i.e.*, that IWCC's focus solely on post-injury income is proper because, otherwise, there is a danger that Petitioner could be awarded a wage differential award while still earning the same wages
- Impairment of earning capacity...Sup. Ct. has held that income and capacity are not synonymous. Cassens Transport Co.
- Respondent argues that Smith is distinguishable because, there was evidence that the employer artificially raised wage in an attempt to defeat the wage differential claim. We agree that, in contrast, in the present case, there is no evidence in the record to support a finding that Respondent artificially inflated the wages for the specific purpose of defeating the wage differential award. Nonetheless, this fact does not make Smith irrelevant to our analysis.
- Duty of IWCC to admit and factor all of the evidence concerning the nature of the post-injury employment with the Respondent, not simply compare her pre- and post-injury wages.