



Workers' Compensation Legal Update

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Agenda

INTRODUCTION/THE
BASICS

ILLINOIS CASE LAW
UPDATE

IOWA CASE LAW UPDATE

PRACTICAL POINTERS

QUESTIONS

Introduction

A little bit about me...

- Practicing Iowa Workers' Compensation since 1989
- Practicing Illinois Workers' Compensation since 1998
- Born and raised in the Quad Cities
- Married for 35 years
- 3 adult children ages 29, 26 and 23
- 2 poodles 😊



HOPKINS
& HUEBNER, P.C.
ATTORNEYS AT LAW

The Basics of Work Comp

Elements of a Workers' Compensation Claim:

1. Employee/Employer Relationship:

- the injured person must be an employee of the employer.

2. Arising out of:

- causal nexus between the work and the injury

3. In the course of employment:

- the injury must take place within the period of employment at a place where the employee reasonably may be, and while the employee is fulfilling work duties.



Illinois Workers'
Compensation
Commission

Illinois Case Law Update

Unpublished Opinions – Check Court Rules before
Citing



ISSUE

**EMPLOYEE/EMPLOYER
RELATIONSHIP**

Routine Maintenance v. IWCC (2022)

Issue: whether Petitioner was an employee or an independent contractor when Petitioner sustained serious injuries from falling off a ladder while cleaning gutters.



FACTS:

- **Petitioner:**

- union bricklayer who had never cleaned gutters
- answered an advertisement for a gutter cleaner
- received one paycheck from Respondent
- signed an agreement that he was an independent contractor,
 - but claims he did not read the paperwork.
- Was not on Respondent's payroll and did not wear a uniform.

Respondent:

- Respondent provided the ladder and transportation to the site
- Respondent testified he did not recall
 - hiring Petitioner,
 - what job petitioner was hired for,
 - the manner of the job,
 - how long Petitioner was hired for,
 - or how Petitioner got the job.

Ruling: employee/employer relationship ***DID*** exist

- facts supported both sides of the case,
- office manager directed the job and was the one in charge.
- Respondent
 - ***controlled*** the manner of the work,
 - dictated the schedule,
 - supervised petitioner
 - provided transportation to the work site,
 - and hired him to perform maintenance duties.



ISSUE

**ACCIDENT ARISING
OUT OF
EMPLOYMENT**

Western Springs Police Department v. IWCC (2023)

- Petitioner injured when she parked in a public parking spot
- injury caused by slipping on ice in parking lot
- question was whether the injury arose out of
- and in the course of her employment.

Facts:

- **Petitioner**: was employed by the village as a crossing guard and receptionist.
- Not specifically told where she should park.
- Generally parked across from the village hall in the 4-hour limit parking spots because she was granted permission to park for longer than 4 hours
- She had provided her license plate number to the police so they would not issue her a parking citation.

Respondent:

- there were 2 employee-designated parking spots behind the village hall that were not for use by the general public
- Petitioner could have parked in one of these two spots
- Claimant could park wherever she wanted
- No one from the village told her where she had to park
- Petitioner chose to park in an angled spot b/c it was more convenient for her
 - Angled spots were not reserved for village employees
 - Angled spots were limited to 4 hours for general public

General Premises Rule

- Employee slips and falls while walking to work off the employer's premises
- Resulting injuries **do not** ARISE OUT OF OR IN THE COURSE OF EMPLOYMENT

2 Exceptions to General Premises Rule

- 1. Parking Lot Exception
 - Employee is injured in a parking lot provided by and under the control of the employer
 - Employee's injury is caused by a hazardous condition in the parking lot
- 2. Employee injured at a place she was required to be in the performance of her duties and
 - Employee is exposed to a risk common to the general public to a greater degree than other persons

Western Springs Police - Ruling:

- Injury DID arise out of and in the course of employment
- The injured worker was in a place where she was reasonably expected to perform job duties
- The injured worker was granted the privilege of parking in excess of the 4 hour limit for the general public
- Respondent owned and maintained the lot

Hoots v. IWCC (2022)

Issue: whether
Petitioner's injury
caused by slipping
on ice in parking lot
arose out of the
course of her
employment when
she parked in a
public parking lot.



FACTS:

- **Petitioner:**

- worked as a sales associate for Respondent.
- Due to construction at her store, she attended mandatory training at another store.

- **Respondent:**

- did not own the parking lot at which Petitioner was injured.

Traveling Employee?

- Required to travel away from her employer's premises to perform her job
- Travel is an essential element of her employment
- Traveling employee is in the course of employment from the time she leaves home until she returns
- Injury is compensable if occurs while employee is traveling for work away from employer's premises

Was she a Traveling Employee?

- No evidence she embarked on a work-related trip
- Claimant commuting to work at employer's premises
- Although attending training at a different site, all employees hired for the Woodson store also commuted to Jacksonville for training
- No evidence that employer reimbursed travel expenses or that employer assisted in making traveling arrangements

General Premises Rule

- When an employee slips and falls at a point off the employer's premises while traveling to or from work, the injuries do not arise out of and in the course of employment and are not compensable under the Act

Ruling: Injury did NOT arise out of and in the course of employment

Although Petitioner had to work at another store due to the construction, **traveling was not an essential element of her job**. Petitioner made her regular commute to another store. She was not reimbursed for travel expenses. Respondent did not own the parking lot, did not control the parking lot, and did not maintain the parking lot. Further, she was not instructed to park in the parking lot.

Buckley v. Illinois Workers' Compensation Commission (2022)

- Buckley was a firefighter
- Claimant was directing traffic at the site of an incident
- Went back to the fire station, jumped off engine but did not hear any pop or feel pain
- Right knee was uncomfortable back at the station, but call did not involve crawling, lifting or climbing
- Attended a meeting, unable to straighten right knee all the way
- As he walked across carpeted floor, he tried to extend his knee and it buckled
- Heard a popping sound and knee gave way
- Buckley fell to the ground sustaining injuries

Injury Arising out of Employment

- Origin is in some risk connected with or incidental to the employment so that there is a causal connection between the employment and the accidental injury
- Risk is “incidental to employment” when it belongs to or is connected with what the employee has to do in fulfilling job duties

Three Risk Categories:

- Risks directly associated with the employment
 - Obvious kinds of industrial injuries – compensable
 - Ie. Tripping on a defect on the premises
- Risks personal to the employee
 - Nonoccupational diseases and injuries caused by personal infirmities such as a trick knee
 - Generally do not arise out of employment (unless workplace conditions expose employee to added or increased risk of injury)
- Neutral risks – no particular employment or personal characteristics
 - Generally do not arise out of the employment and are compensable only if the employee was exposed to a risk to a greater degree than the general public

Ruling: not compensable – neutral risk

- Injury had no particular employment characteristics
- No specific accident or injury while responding to the call or while returning to the firehouse
- Therefore, consider the incident while walking at work
- Walking across the floor at work does not establish a risk greater than to the general public, and is therefore a neutral risk
- Employment did not increase the risk of falling on the carpet



ISSUE: COVID 19

Illinois Occupational Disease Act

Lucero v Focal Point LLC

- Case decided in injured worker's favor under the Occupational Disease Act
- March 21, 2020 Gov. Pritzger issued a Stay-at-Home order
- Injured worker was a CNC Operator, at an essential business- rebuttable presumption
- 4/13/2020 developed Covid 19 symptoms
- 3/10/21 released to RTW w/o restrictions

WAYS THE EMPLOYER CAN REBUT THE PRESUMPTION:

- 1. Demonstrating that it complied with recommended CDC or Illinois Public Health guidelines in the 14 days prior to the diagnosis (including sanitation, masks, other protective gear, barriers, social distancing, etc.);
- 2. Presenting some evidence that the claimant contracted somewhere else or
- 3. Showing that the claimant worked from home or was off work in the 14 days prior to diagnosis



TRIAL BEFORE ARBITRATOR

- Employer Offered Evidence at trial to rebut #1.
 - Covid Safety Committee
 - Social Distancing
 - Masking encouraged



EMPLOYER ATTEMPTED TO OFFER EVIDENCE TO REBUT #2 BY SHOWING EMPLOYEE CONTRACTED COVID 19 OUTSIDE THE WORKPLACE

- But employee lived 2.7 miles from work with his wife
- Employee drove self to work and did not go anywhere else
- “There was really nowhere else to go” due to Stay-at-Home order
- There was no evidence that his family or friends had Covid prior to him

ARBITRATION DECISION

- Employee's exposure to the Covid 19 virus arose out of and in the course of his employment
- The injured worker's condition was causally connected to the Covid 19 disease
- Claim was compensable
- Affirmed by the Commission



Iowa Case Law Updates

May 5,
2023

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ISSUE

SHOULDER INJURIES

Iowa's Second Injury Fund

Iowa Code sections 85.63 through 85.69 are known as the Second Injury Compensation Act. This Act states that when a worker with a prior scheduled injury suffers a work-related second scheduled injury, the injured worker is to be compensated by the employer for the second injury as if there were no prior injury.

The Second Injury Fund compensates the worker for the additional disability of the combined effect of the two scheduled injuries. The benefits are limited to the value of that permanent disability that exceeds the value of the two affected members separately. The benefits are not payable until after the employer, or insurance carrier, has completed payment of benefits for the second permanent partial disability. The original injury does not have to be work-related to qualify for these benefits.

Martinez-Rivera v. Signet Builders, Inc. ***(2021)***

- **Ruling:** Claimant did **NOT** qualify for Second Injury Fund Benefits.
 - **§85.64(1)** does not list the shoulder as an enumerated body part which may trigger Fund liability.

Industrial Disability

Partial or total impairment of earning capacity or ability to perform work.

The goal of an industrial disability is to provide some measure of a worker's functional impairment and consequent loss in earning capacity.

This degree of disability is calculated by looking at how much the person's earning capacity has been reduced. Iowa's workers' compensation system requires employers to compensate laborers

for total and permanent disabilities

Carmer v. Nordstrom, Inc. (2021)

- **Issue**: whether two **shoulder** injuries could be compensated as industrial disability
- **Facts**:
 - **Claimant**: sustained a right shoulder injury and then developed a left shoulder sequela injury due to overuse.
 - **Defendant**: argued (a) two shoulder injuries cannot be compensated under 85.34(2)(n) as that section only refers to a singular shoulder and (b) shoulder is not on the scheduled member list, two shoulder injuries cannot be compensated under 85.34(2)(t).
- **Ruling**: two **shoulder** injuries could be compensated industrially under the “catch all” provision of 85.34(2)(v).

Bridgestone Americas, Inc. V. Charles Anderson (2022)

- **Ruling**: where an employee sustains injuries to the shoulder and any other scheduled member, the injuries will be compensated industrially under 85.34(2)(v).

****Both decisions are being appealed, but at this time are guidance**

Kish v. University of Dubuque (2021)

- **Issue**: whether a claimant is entitled to **industrial disability** due to her **voluntary choice to transfer to a lower-paying position** with Defendant/Employer.
- **Facts**:
 - **Claimant**: worked as lead custodian at time of injury, after reaching MMI returned to work without restrictions. She did not feel she could handle lead custodian and took position as regular custodian, making \$1.00/hour less.
 - **Defendant**: offered Claimant ongoing work in position that paid same or more than she earned on DOI.
- **Ruling**: Claimant's recovery was limited to the functional impairment.
- The court noted that Claimant made a voluntary choice to transfer, that the University did not request/require, and no physician had imposed permanent restrictions that would prevent her from continuing to work as lead custodian.



ISSUE CAUSATION

May 5,
2023

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Medical Causation

To establish a compensable injury in Iowa, an employee must establish that the injury has a causal connection to the employment.

According to Iowa law, the question of medical causation is “essentially within the domain of expert testimony.”

Bolton v. Marcus Lumber (2022)

- **Issue**: employer responsibility for alleged work related COVID-19 death.
- **Facts**:
 - Claimant worked at a hardware store with power tools, driving a truck, deliveries to customers, maintenance and purchasing
 - Off work, volunteer firefighter- did not wear a mask during meetings
 - Regularly stopped for coffee and breakfast on the way to work; lunch at work with a co-worker
 - Spouse worked as a paraprofessional at the school district
 - Attended a wedding at the courthouse with others

Evidence at trial:

- **Claimant** provided evidence that multiple employees had tested positive for Covid-19 in the weeks before his death
- **Defendant**: provided evidence that they followed all CDC guidelines and precautions for their employees, including requiring masks, social distancing, temperature checks, and negative COVID tests for employees before returning to work after exhibiting symptoms. Further, provided evidence that Claimant was not following CDC guidelines in his personal life where he was gathering with family outside of his household, going out to lunch, and working for the fire department all while not wearing a mask.

RULING:

- Claimant did not meet the burden of proof to show casual connection to employment and thus, employer is **NOT** liable.
- Medical Causation: essentially within the domain of expert testimony
- Claimant (surviving spouse) failed to show by a preponderance of the evidence that decedent's work was a substantial factor in causing him to contract Covid 19, which led to his death
- Employer followed CDC Guidelines at work
- Claimant did not follow CDC Guidelines off work

Mental Injury Causation

To find that a purely mental injury is compensable the Claimant must present evidence that work was both the **factual and legal cause** of the injury.

Factual cause: the mental injury was causally connected to their employment.

Legal causation mental injury must be caused by workplace stress of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs, regardless of their employer.

Tripp v. Scott County Emergency Communication Center (2022)

- **Issue**: whether Iowa law holds **emergency workers** to a separate, higher standard to be eligible to receive worker's compensation benefits for **trauma-induced mental injuries** than workers with identical injuries in other roles.

FACTS:

- **Claimant:**

- worked in dispatch for 16 years and was diagnosed with PTSD after a call from a mother who was screaming about the death of an infant.
- Testified the screams in the call were “beyond normal sounds.”
- Treating psychologist testified her PTSD constituted a chronic episodic condition that resulted in a permanent disability.

RULING:

The Iowa Supreme Court held that legal causation requirement could be satisfied where an **“unusual strain”** led to the mental injury.

- Both lower courts denied benefits because 911 dispatchers “routinely take calls involving death and traumatic injuries” and Claimant did not establish the call was **“unusual”** or **“unexpected”** in this line of work as required by Iowa law at the time.

Jackson v. Bridgestone Americas Tire Operations LLC (2021)

- **Issue**: whether a work incident was casually connected to the injury.
- **Facts**:
 - Claimant: worked for the Defendant nearly 30 years, missing only 3 days of work
 - 2016, he committed an act of insubordination by refusing to follow a supervisor's safety and quality directives and lied about these acts of insubordination
 - Claimant was placed on suspension for a short time, then was called into the office and terminated.
 - Claimant committed suicide by hanging
 - Claimant had recently been diagnosed with major depressive disorder and other mental conditions.
 - **Defendant**: had a policy and practice of terminating employees for insubordination.

RULING:

Claimant did ***NOT*** prove legal causation.

- The court found that Claimant's alleged mental injury was not caused by workplace stressors, but by his love for his job. Therefore, there also was no legal causation.

NOTICE OF INJURY

Section 85.23 Iowa Code

- Unless the employer has actual knowledge of the injury
- Claimant has 90 days from the date of the occurrence –
- Date of occurrence is date employee knew or should have known that the injury was work related

John Deere Davenport Works v. James Dickerson (2021)

- **Facts**: employee was injured in the scope of his employment. On the date of the accident, the employee filled out a so-called “Near Miss Report.” The report did not indicate that he was “hurt or damaged.”
- **Ruling**: The fact that a written report had been submitted, regardless of its title was enough to **put employer on notice.**



ISSUE

**ALTERNATE MEDICAL
CARE**

May 5,
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Denemark v. Archer Daniels Midland Company (2022)

- **Issue**: whether care provided by the employer was unreasonable and claimant therefore was entitled to alternate medical care.
- **Facts**: Claimant injured his arm while working. The surgery required to fix his arm was delayed until the employer could investigate the claim. Further delays caused by transportation and scheduling issues caused the surgery to occur over 2 months after originally scheduled.
- **Ruling**: the delay was ***NOT*** unreasonable.
- To win on a claim for alternate care the Claimant needed to demonstrate that the care that was authorized by the employer was ineffective, inferior, or less extensive than needed. Because the Claimant still received the surgery and it was adequate care the Commissioner determined that he was not entitled to alternate care.



ISSUE

**CAUSAL CONNECTION
BETWEEN WORK AND
INJURY**

Smith v. TPI Iowa, LLC (2021)

- **Issue**: whether the shoulder injury was compensable.
- **Facts**:
 - Two separate doctors failed to connect the shoulder injury to claimant's employment
 - After surgery the Claimant went to a third doctor for an IME
 - The IME noted that the Claimant had impairment related to the "subject injury" but did not state whether the subject injury was related to work.
- **Ruling**: the injury was ***NOT*** compensable.
- The court noted that Claimant failed to provide expert testimony that would causally connect her injury to her work. Even if the IME had connected the injury to the Claimant's work, there was substantial evidence, provided by the other two doctors, that there was no causal connection between the injury and the work.

PRACTICAL POINTERS

INVESTIGATION

- Reasonable basis to deny
- Contemporaneous to injury
- Identify witnesses
- Photographs
- Any video of scene
- Any items causing injury such as water on floor, raised sidewalk, etc.

THIRD PARTY LIABILITY

- Did a third party cause the injury or accident
- Motor vehicle accident
- Dog bite at home health worker's client
- Failed machinery or appliance

BE RESPONSIVE

- Reach out to the injured workers
- Be sure the employee can get the medical care needed
- Check in with the employee who is off work
- Let the employee know you care about their progress



Questions?

Thank you!

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