

EVANS & DIXON LLC
ATTORNEYS AT LAW

ILLINOIS CASE LAW UPDATE

2015 Spring Seminar


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I. Arising Out of and in the Course of Employment


- (1) *Pryor v. The Illinois Workers' Compensation Commission (Cassen Transport)*, 2015 IL App (2d) 130874WC
- (2) *Young v. The Illinois Workers' Compensation Commission (Doncasters d/b/a MECO, Inc.)*, 2014 IL App (4th) 130392WC; 13 N.E.3d 1252 (2014)
- (3) *Butler v. South Berwyn School District #100*, 14 IWCC 542 (2014)



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Pryor v. IWCC (Cassen Transport)

- Car-hauler: travel required overnight hotel stay 2 nights/week.
- After walking from his home to his personal vehicle, Petitioner reached down to pick up suitcase and felt unbearable pain in back and down legs.
- Petitioner filed claim alleging low back injury was compensable as he was a traveling employee.



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Pryor v. IWCC (Cassen Transport)

- Arbitrator found Petitioner failed to prove a work-related injury.
 - Although Petitioner would be considered a traveling employee from when he arrives at Employer's terminal, "lifting an overnight bag is not sufficient to put [Petitioner] in the course of his employment."



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Pryor v. IWCC (Cassen Transport)

- The Commission affirmed and adopted the arbitrator's Decision.
 - Petitioner "had not left his home at the time of accident. The risk of injury in this case was a personal risk, and was not sufficiently connected with the employment in order to be a risk particular to his work."
- The Circuit Court of Winnebago County confirmed the Commission's decision.



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Pryor v. IWCC (Cassen Transport)

- Appellate Court and affirmed the Commission's decision, finding:
 - Even assuming Petitioner had left his home, he was preparing to begin his "regular commute" to the Employer's terminal.
 - Because the injury occurred during his regular commute, the traveling employee exception did not apply, and the Commission was correct to deny benefits.



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Young v. IWCC (Doncasters d/b/a MECO

- Alleged work-related left shoulder injury after reaching down into 16x16 inch box apprx. 3 feet deep to retrieve a 12 – 20 lb. spring clip for inspection.
- Arbitrator denied benefits.
- Commission affirmed the Arbitrator’s Decision.
 - “[T]he mere act of reaching down for an item did not increase [Petitioner’s] risk of injury beyond what he would experience as a normal activity of daily living.”
- Petitioner appealed to the Edgar County Circuit Court which also confirmed the Commission’s decision.



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Young v. IWCC (Doncasters d/b/a MECO

- The Appellate Court reversed the Commission’s decision and directed benefits to be awarded, finding:
 - The Commission improperly examined Petitioner’s accident as a neutral risk as opposed to a risk associated with employment.
 - Neutral risks are compensable only where the employee was exposed to the risk to a greater degree than the general public.
 - Petitioner’s reaching into the box was an employment related risk, not a neutral risk.



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Young v. IWCC (Doncasters d/b/a MECO

- Petitioner’s description of his work showed he “was performing acts that the employer might reasonably expect him to perform so that he could fulfill his assigned duties,” as “the risk to which [Petitioner] was exposed had employment related characteristics.”



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Butler v. South Berwyn School District #100

- Teacher: Walking between classrooms, missed a step, twisted her ankle resulting in a closed fracture of the lateral malleolus.
 - Testified she was “probably looking at her phone because she was texting.”
 - Text messages were “urgent business” as the school’s computers were being reimaged.
- The Arbitrator denied benefits, finding
 - Petitioner did not show she was at a greater risk of injury because of her employment, noting she placed herself at greater risk by texting while descending stairs.

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Butler v. South Berwyn School District #100

- The Commission reversed and awarded to the Petitioner, finding:
 - Contributory negligence on the part of the Petitioner is not a defense in a workers’ compensation case.
 - The accident was work-related “because she was sending a work-related text of significant importance which she thought was temporally urgent in nature.”

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II. Medical and Rehabilitation Benefits

- *Taylor v. Caterpillar, Inc.*, 14 IWCC 766 (2014)

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Taylor v. Caterpillar, Inc.

- 33 year old factory worker developed extruded herniated disc after straightening up while working in a bent-back position.
 - No improvement following extensive treatment including multiple surgeries.
 - Dr. Rahman recommended a sleep numbed bed.



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Taylor v. Caterpillar, Inc.

- Dr. Rahman testified:
 - The prescription was made at Petitioner’s request and “he does not typically prescribe these [beds] for patients” and “to his knowledge there is no literature supporting the medical necessity for this sort of home apparatus.”
- Respondent disputed the need for the sleep number bed based on opinions of Dr. Skaredoff, a pain management specialist.
 - Dr. Skaredoff indicated the Official Disability Guidelines (ODG) indicate there is no studies supporting the purchase of specializes mattresses for low back pain.



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Taylor v. Caterpillar, Inc.

- Arbitrator Lindsay denied benefits concluding the sleep number bed was neither medically necessary nor reasonable, finding:
 - Dr. Rahmam, a surgeon, did not typically prescribe sleep number beds and Dr. Skaredoff is a pain management specialist whose opinions were supported by the ODG.
 - There was no proof the sleep number bed which she picked out rather than her physician, would provide any medical benefit.
 - The sleep number bed Petitioner choose was “top of the line” and “no evidence was presented showing that other less expensive types of adjustable mattresses” might achieve the same result.



The Commission affirmed and adopted Arbitrator Lindsay’s Decision on appeal.

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III. Temporary Disability Benefits

- (1) *Matuszczak v. The Illinois Workers' Compensation Commission (Wal-Mart)*, 2014 IL App (2d) 120532WC, 22 N.E.3d 341 (2014).
- (2) *Sunny Hill Nursing Home v. The Illinois Workers' Compensation Commission (Dalia Mahoney-Tapella)*, 2014 IL App (3d) 130028WC; 14 N.E.3d 16 (2014)
- (3) *Rosales v. Affinia Group/Brake Parts, Inc.*, 14 IWCC 513 (2014).
- (4) *McAdon v. Millennium Knickerbocker Hotel*, 14 IWCC 366 (2014).



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Matuszczak v. IWCC (Wal-Mart)

- Night stocker – Cervical Spine Injury - released to return to work under light duty restrictions which were being accommodated.
 - While working light duty, Petitioner repeatedly caught stealing cigarettes and terminated.



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Matuszczak v. IWCC (Wal-Mart)

- Arbitrator O'Malley awarded TTD benefits from the date of Petitioner's termination as he had not yet reached MMI, pursuant to *Interstate Scaffolding*.
- The Commission vacated the TTD award on appeal.
 - Since Petitioner continued to steal from Respondent despite his knowledge of termination if discovered, the Commission felt his theft of cigarettes was equal to a refusal to work.



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Matuszczak v. IWCC (Wal-Mart)

- The DuPage County Circuit Court reversed the Commission's decision and reinstated Arbitrator O'Malley's award of TTD benefits.
- The Appellate Court reviewed the Supreme Court's decision in *Interstate Scaffolding*, and reinstated the original TTD award, finding:
 - *Interstate Scaffolding* both prohibited automatic denial of TTD benefits to an employee discharged from work for by the employer and established "the employer's TTD obligation continues until the employee's medical condition has stabilized."
 - Thus, even though "[Petitioner's] knowledge that his voluntary conduct ...conduct inarguably unrelated to his injury, was a crime and could properly result in his termination" it "was not sufficient to support the Commission's denial of benefits."



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Sunny Hill Nursing Home v. IWCC

- Petitioner co-owner of a flower shop which he daughters operated. Petitioner spent time at the shop while off of work and receiving TTD payments.
- Arbitrator found Petitioner established causation and that he presence at a flower shop she co-owned did not constitute a return to work.
- The Commission affirmed the Arbitrator's decision. Circuit Court of Will County confirmed the Commission's affirmation.



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Sunny Hill Nursing Home v. IWCC

- Respondent subsequently appealed to the Appellate Court, arguing the Commission erred in finding causation and awarding TTD benefits.
- The Appellate Court indicated Petitioner's activities "could arguably be characterized as 'work,'" and the Court felt this language "should not be interpreted to mean a return to any work will result in the denial of TTD benefits."
- Citing *Interstate Scaffolding*, the Court indicated the proper inquiry was whether Petitioner's work was evidence of whether her condition had stabilized.



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Rosales v. Affinia Group/Brake Parts, Inc.

- Petitioner’s green card expired and she was eventually terminated.
- Quoting the language of the Illinois Supreme Court in *Interstate Scaffolding*, Arbitrator Lee noted “the only issue when determining if TTD benefits are due to a claimant is whether the employee remains temporarily totally disabled due to a work injury and whether the employee is capable of returning to the workforce.”
- Thus, even if the reason for Petitioner’s termination was for cause, TTD benefits are due is she still is temporarily totally disabled as determined by medical professionals. Neither Petitioner’s immigration status nor termination had any affect on the analysis of whether TTD was owed.
- Arbitrator Lee’s decision was affirmed on appeal.



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McAdon v. Millennium Knickerbocker Hotel

- Petitioner injured and placed under restrictions which were accommodated until his employment contract ended.
- Arbitrator Black further awarded Petitioner TTD benefits.
- The Commission found although Petitioner had restrictions, he was working the full measure of his employment until he was discharged, a discharge he was aware of prior to his accident.
- Petitioner argued, based on *Interstate Scaffolding*, “he is entitled to either employment or continuing temporary total disability benefits after he sustains an injury, so long as his condition has not reached a state of maximum medical improvement.”
- The Commission disagreed, distinguishing from *Interstate Scaffolding*. In this case, the Commission found, Petitioner was capable of performing his full duty work, and admitted he was capable of full duty work without restrictions.
- The Commission modified the Arbitrator’s award of TTD benefits.



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IV. Permanent Partial Disability Benefits Analysis under 5 Factors – 8.1b

- (1) *Booten v. Illinois Department of Transportation*, 14 IWCC 832 (2014).
- (2) *Fiene v. City of Zion Police Department*, 14 IWCC 445 (2014).
- (3) *Bandy v. Continental Tire of the Americas, Inc.*, 14 IWCC 359 (2014).
- (4) *McFall v. The Sygma Network Inc.*, 14 IWCC (2014).
- (5) *Bone v. Aramark Management Services*, 14 IWCC 134 (2014)



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Booten v. Illinois Department of Trans.

- Petitioner – medial meniscus tear – partial/lateral meniscectomy.
- Arbitrator Granada – 5 factors of Section 8.1b(b):
 - 20% PPD of the right leg.
- Commission – 5 factors of Section 8.1b(b)
 - Reduced award to 12.5% of right leg.
 - The Commission noted following surgery, “Petitioner failed to report any major issues,” and “did not testify he continuously struggles with his job duties or is otherwise limited.”



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Fiene v. City of Zion Police Department

- Petitioner/Cop– right superior labral tear–surgery.
- Arbitrator Holland – 5 factors of Section 8.1b(b):
 - 10% PPD of the body as a whole.
- Commission – 5 factors of Section 8.1b(b)
 - Increased award to 15% of the body as a whole.
 - The Commission found highly relevant Petitioner’s testimony his shoulder “has not inhibited his ability to perform his job but knows it’s a weak point and keeps his shoulder issues in mind when he enters an altercation.”



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Bandy v. Continental Tire of the Americas

- Petitioner – TFCC tear?–surgery.
- Dr. Williams: Probe of wrist confirmed no TFCC tear, and issued two ratings:
 - 2% of the left upper extremity without a TFCC tear
 - 9% of the left upper extremity with a TFCC tear.
- Arbitrator Granada – 5 factors of Section 8.1b(b):
 - 20% PPD of the left hand.



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McFall v. The Sygma Network

- Petitioner – Herniated disc C7-T1 & Central Protrusion C5-6, C6-7 – cervical micro-discectomy and fusion C7-T1.
- Dr. Stephanian – 10% BAW based on standard AMA guidelines.
- Arbitrator Lindsay – 5 factors of Section 8.1b(b):
 - 17.5% PPD of the body as whole.
- Commission - 5 factors of Section 8.1b(b)
- Increased award to 22.5% of the body as a whole.



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Bone v. Aramark Management Services

- Petitioner – Achilles tendon laceration– surgical repair
- Dr. Krause– 6% PPD of the lower extremity.
- Arbitrator Gallagher – 5 factors of Section 8.1b(b):
 - 30% PPD of the right foot.
- Commission - 5 factors of Section 8.1b(b)
- Decreased award to 15% of the right foot.
- Petitioner was performing the same duties as he did prior to the accident and was earning \$.50 cents more per hour than prior to the accident.



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IV. Permanent Partial Disability Benefits Wage Differential Awards

- (1) *Lenhart v. IWCC (USF Holland)*, 2015 IL App (3d) 130743WC
- (2) *Village of Deerfield v. IWCC (Hugh Garrity)* 2014 IL App (2d) 131202WC; 24 N.E.3d 290 (2014)



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Lenhart v. IWCC

- Petitioner sustained compensable back injury, underwent "significant" amount of medical treatments.
- The matter was tried on the sole issue of nature and extent of PPD, with Petitioner alleging he was permanently and totally disabled as a result of the accident.
- Respondent produced surveillance showing Petitioner engaged in various physical activities.



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Lenhart v. IWCC

- The Arbitrator found Petitioner proved he was permanently and totally disabled as a result of the accident under the odd-lot theory.
- The Commission reversed the award of PTD benefits, finding medical opinions stating that Petitioner was unable to work were directly contradicted by the surveillance video and Petitioner had exaggerated his functional incapacity to his treating physicians.
- The Appellate Court affirmed the Commission's reversal of the PTD award, but found the Commission erred in failing to decide whether Petitioner was entitled to a wage differential. The Court remanded the case to the Commission for a determination of whether Petitioner was entitled to a wage differential.



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Village of Deerfield v. IWCC

- Petitioner filed 3 applications for adjustment of claim alleging injuries to his left shoulder on 02/28/05, cervical & lumbar spine on 08/09/05, and aggravating injury to his left shoulder on 01/12/06.
- At trial Petitioner requested consolidation of cases.
- Arbitrator: 02/28/05 accident resulted in 25% disability of left arm and 15% disability to the right arm and 08/09/05 accident rendered Petitioner incapable of pursuing usual and customary line of employment and thus entitled to wage differential benefits.



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Village of Deerfield v. IWCC

- Commission: Affirmed wage differential for 08/09/05 case, but modified the PPD award for the shoulders in the 02/28/05 case – converted both into single award to 18.8% PPD of the body as a whole.
- Lake County Circuit Court confirmed Commission.
- The Appellate Court affirmed the Commission’s award. The Court rejected respondent’s argument that because the shoulder and the spine are compensated under the body as a whole they are injuries to the same body part based on 8(d)(2). The Court found Petitioner did not sustain injuries to the same body part, but separate body parts.



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V. Employee Improper Conduct

- *Geyer v. Aardvark Builders*, 14 IWCC 901 (2014)



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Geyer v. Aardvark Builders

- Petitioner, Respondent’s Comptroller, went outside of office, and realized he had locked himself out. Petitioner also left his phone inside the office.
- Petitioner could not access the office, he was able to enter an indoor stairwell/hallway area of the building. Petitioner climbed up and over the wall partition, eventually requiring him to drop down 8 to 10 feet to the floor.
- Petitioner injured his left foot upon landing, suffering a calcaneal fracture.



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Geyer v. Aardvark Builders

- Respondent provided testimony from an investigator including photographs to show the accident could not have physically occurred in the way Petitioner described.
- Arbitrator found those actions “were for the benefit of the Respondent” awarded benefits.
- The Commission overturned the Arbitrator’s award and denied benefits, finding:
 - Petitioner chose “a very dangerous activity” to get back into the office, a choice which “exposed Petitioner to a danger which did not arise out of his employment.”



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