PEORIA COUNTY BAR ASSOCIATION

2018 CASE LAW UPDATE

ILLINOIS WORKERS' COMPENSATION

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Case Law Update

A. Arising out of/Risk Analysis

In *Dukich v Ill. Workers' Compensation Comm'n*, 2017 IL App (2d) 160351WC, the appellate court conducted a risk analysis to conclude an employee's act of walking on wet pavement on the employer's premises was a neutral risk to which the claimant was at no greater risk than the general public. The employee, an attendance clerk at a high school, slipped and fell when she was walking down a wet handicap ramp from the school building to her car, which was parked in a designated parking spot in a lot controlled by the employer. The employee presented no evidence that there were any defects where she fell and testified that the cause of her fall was "the rain." There was no evidence the employee was in a hurry or carrying anything required by her employer.

In upholding the Commission's denial of benefits, the appellate court further noted that the dangers created by rainfall are dangers to which all members of the general public are exposed on a regular basis and are not risks associated with one's employment. Although the claimant did not testify to using the wet pavement more frequently as part of her job requirement, which could have created a risk associated with her employment, the appellate court denied that argument, pointing out that there was no evidence that the wet pavement the claimant slipped on was any different than wet pavement anywhere else, reiterating their previous finding that she was at no greater risk than the general public. The court further found that the condition of wet pavement alone is not a "hazardous condition" so as to create a risk associated with employment.

B. Causation/Pre-existing Condition

In *Schroeder v. Ill. Workers' Comp. Comm'n,* 2017 IL App (4th) 160192WC, the appellate court considered the chain of events surrounding an employee's medical condition to determine if her current condition of ill-being was related to the alleged work accident.

The claimant, a truck driver, alleged she sustained injuries to her back as a result of a slip and fall on ice. Prior to the slip and fall, she had actively sought treatment for low back injuries, including several surgeries. She was recommended for a third surgical procedure approximately ten months before the work accident, but declined to move forward as she wanted to return to work. Following the work accident, evidence presented indicated the employee was no longer capable of working

in her pre-injury employment. She did not respond to conservative treatment and underwent a third surgery. She also reported an increase in her pain complaints, though objective testing after the accident was substantially similar to testing prior to the accident.

In reinstating the Commission's decision finding causation and awarding benefits to the Petitioner, the court noted a claimant need not be in perfect health and free of any pre-existing conditions in order for causation for current condition of ill-being to be related to a work accident. Rather, the appellate court noted the evidence was clear that the claimant's condition had clearly deteriorated after the accident, giving rise to an inference that the work related accident caused the deterioration.

C. Interest

Dobbs Tire & Auto v. Ill. Workers' Comp. Commin. 2017 IL App (4th) 160192WC

A recent trend in workers' compensation cases has been a demand by petitioner's attorneys for nine percent judgment interest on Commission awards appealed by employers and affirmed by reviewing courts. The theory was that a circuit court's order affirming a Commission decision was a "judgment," and, pursuant to Section 2-1303 of the Code of Civil Procedure, triggered the application of a nine percent interest rate. Conversely, Section 19(n) of the Illinois Workers' Compensation Act sets the interest rate applicable to arbitration decisions unpaid paid. Section 19(n) ties the interest to the yield on indebtedness issued by the United States Government with a 26-week maturity on the auction date prior to the date on which the decision is filed. The difference in the application of the two interest rates is significant.

The appellate court found that section 2-1303's nine percent interest rate does not apply unless and until a Commission's decision, which is not a judgment, is reduced to a judgment under section 19(g) in a separate circuit court proceeding, and not just after the court affirms the Commission decision. Thus, the nine percent interest would not apply to a scenario where an employer promptly pays the award due plus applicable section 19(n) interest. The appellate court observed that where an employer pays the underlying award and pays section 19(n) interest, there are no grounds for entry of a section 19(g) judgment, and thus, section 2-1303 has nothing to which to attach.

D. Case Loans

Prospect Funding Holdings, L.L.C. v. Saulter 2018 IL App (1st) 171277

In a non-work comp case Decision, the 1st District Appellate Court issued an opinion addressing case loans.

Plaintiff in a wrongful death case borrowed $25,000 from Prospect Funding Holds. 4% compounded monthly, with an irrevocable letter of direction from client to attorney to pay Prospect, and a purchase agreement.

- Agreed to Minnesota Law governing agreement
- Agreed to hold settlement money in trust account and to pay Prospect first
- Loan repayment contingent upon obtaining a judgment or settlement

Attorney Saulter settled the claim. Didn't pay Prospect, paid Plaintiff.

Prospect sued client and attorney in Minnesota. Attorney Saulter was dismissed on jurisdictional grounds, not a party to the contract so choice of Minnesota Law didn't apply to him. Prospect took a default judgment against the client. Couldn't collect. Prospect sued Saulter in Illinois for breach of contract and professional negligence. Illinois court granted Saulter's Motion to Dismiss, finding that the contract was champertous and illegal under Minnesota Law.

*Champerty is defined by Black's Law as "an agreement between a stranger to a lawsuit and a litigant by which the stranger pursues the litigant's claims as consideration for receiving part of any judgment proceeds."

Prospect appealed alleging that Illinois courts need to give full faith and credit to the Default Judgment, ii) that the choice of law clause doesn't apply to the letter of direction and even if it does, Saulter can't raise champerty as a defense, iii) Illinois Rules of Professional Conduct obligated Saulter to hold the money. Appellate Court affirmed the

dismissal. Minnesota Default Judgment was not on the merits and not directed against Attorney Saulter. Purchase agreement unenforceable under Minnesota law, so letter of direction is also unenforceable. Finally, an alleged violation of Rules of Professional Conduct doesn't give rise to a private cause of action. ARDC has exclusive power.

Clerk of Appellate Court directed to send a copy of opinion to the ARDC for investigation.

E. Appeals

Eddards v. Commission 2017 IL App (3d) 150757WC

The Illinois 3rd District Appellate Court found that Respondent did not properly perfect its appeal of a corrected Arbitration Award. Therefore, the Commission's and Circuit Court's decisions on the appeal were vacated, and the corrected Arbitration Award was upheld, as it had not been properly appealed. The Respondent's appeal to the Commission incorrectly referenced the original Award rather than the corrected Award.

The Commission reversed the Arbitrator and found the original award non-compensable. The Circuit Court affirmed the Commission. The Appellate Court reversed the Commission, agreeing with Petitioner that Respondent appealed the wrong Decision, and failed to timely appeal the corrected Decision.

The original Arbitration Award was never a final and appealable Order since it was timely recalled and corrected. Respondent tried to characterize its mistake as a "typographical error" but the Appellate Court found that argument non-persuasive since Respondent specifically referenced the non-final Award and date it was entered.

F. Medical Fee Schedule/Negotiated Rate

Perez v. Ill. Worker's Comp. Comm'n, 2018 IL App (2d) 170086WC

In *Perez*, the appellate court was asked to consider whether the employer was responsible for payment of medical bills in a lower amount negotiated and paid by a third party insurance carrier from claimant's husband or the stipulated fee schedule amounts.

Employer submitted an exhibit listing medical payments by the third party carrier in the amount of $17,597.96 and copayments of $260.00. The parties stipulated the fee schedule amount on the medical services totaled $37,767.32 with a caveat that responsibility of payments per fee schedule were disputed.

The appellate court, in applying statutory construction, agreed with the employer's argument that it was only liable for the amount of medical expenses actually paid pursuant to the negotiated rate, regardless of whether the employer or its insurer negotiated rate.

The court looked at the plain language of Section 8(a) of the Act, which states the employer is required to pay (1) the negotiated rate, if applicable, or (2) the lesser of the health care provider's actual charges, or (3) according to fee schedule. The court noted no limiting language and noted that had the legislature intended to limit negotiated rates and agreements to those between the employer or its own insurance carrier, it could have included this restriction but declined to do so.