

Workers' Compensation Newsletter

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Medical Fee Schedule Online

The new medical fee schedule is currently available on the Illinois Workers' Compensation Commission Website: www.iwcc.il.gov.

Arbitrator Peiler resigns

Arbitrator Valerie Peiler has resigned from her position with the Commission, effective February 22, 2006. Arbitrator Gomora handled Arbitrator Peiler's February trial cycle. The Commission has not yet announced who will permanently handle Arbitrator Peiler's trial cycle.

Illinois Supreme Court Holds That Act Applies to Worker Hired in Illinois and Transferred to Florida Where Injury Occurred

A January 20, 2006, decision from the Illinois Supreme Court in the case of *Robert C. Mahoney v. The Industrial Commission*, No. 100239, affirmed the First District's decision that the site of the contract for hire is the exclusive test for determining the applicability of the Illinois Workers' Compensation Act to an employment injury sustained by a worker outside of Illinois. The Supreme Court's decision in *Mahoney*, however, has not yet been released for publication in the permanent law reports and consequently is still subject to revision or withdrawal.

In *Mahoney*, Petitioner was hired in Illinois in 1969 by United Airlines to work as a ramp serviceman in Chicago, Illinois. In 1993 Petitioner requested and received a transfer to Orlando, Florida. In May of 1999 and in January of 2001 Petitioner was injured on the job and received compensation under Florida law. Petitioner later filed an application for adjustment of claim with the Commission in Illinois.

The arbitrator, the Commission, and the Cook County judge who heard the case all found that Illinois lacked jurisdiction over the case. The First District Appellate Court reversed, holding that *United Airlines (Walker) v Industrial Comm'n*, 96 Ill.2d 126 (1983) conferred jurisdiction over all employees hired in Illinois. In *Walker*, the Illinois Supreme Court interpreted the Act to provide jurisdiction when the contract of hire was made in Illinois, even where an employee is permanently transferred to another state and the injury occurs several years after the transfer.

In practice, when an Illinois employee is transferring within the company to another state, the employer should whenever possible have the employee enter into a new contract for hire in the state where the employee has just transferred to which specifically abrogates the old contract for hire. Such a contract of hire should deny Illinois jurisdiction for such a transferred employee.

Commission Holds That Evidence of Petitioner's Convictions For Burglary and Theft Are Admissible (Cont'd)

A September 30, 2005, decision from the Illinois Worker's Compensation Commission in the case of *Dean Bachi v. W.E. O'Neil Construction Co.*, No. 05 I.W.C.C 0768, held that the arbitrator erred by failed to admit into evidence a certified copy of Petitioner's 13 year-old burglary conviction and a certified copy of Petitioner's 9 year-old misdemeanor theft conviction, offered for the purpose of attacking Petitioner's credibility.

The Commission also vacated penalties awarded under Section 19(k) and attorney's fees awarded under Section 16, citing the issues surrounding Petitioner's credibility as one of the grounds.

Commission Holds That Evidence of Petitioner's Convictions For Burglary and Theft Are Admissible (Cont'd)

The Commission cited in support Rule 609(a) of the Federal Rules of Evidence, which provided in pertinent part that "evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment." F.R.E. 609(a).

It is respectfully submitted that the Commission should have admitted the theft conviction but excluded the burglary conviction because it occurred more than 10 years prior to the June 21, 2004, arbitration hearing. Illinois law provides that evidence of criminal conviction of any witness is admissible only where: (1) there is competent evidence that the crime was a felony or involved dishonesty or false statement; (2) the conviction occurred not more than ten years prior to trial, and (3) the probative value of said conviction is not substantially outweighed by the danger of undue prejudice to said witness. People v. Montgomery, 47 Ill.2d 510, 268 N.E.2d 695 (1971); Knowles v. Panopoulos, 66 Ill.2d 585, 363 N.E.2d 805 (1977) (Montgomery rule applies in civil cases).

In practice, criminal background searches of Petitioners, and their trial witnesses, should be considered in contested cases. A certified copy of the conviction of a Petitioner, or his or her trial witnesses, for a felony or a crime involving dishonesty or false statement should be obtained if it is likely that the arbitration hearing will occur within ten years of the date of said conviction.

Commission Holds That Reports of Respondent's Section 12 Examiners Must Demonstrate An Understanding Of Petitioner's Entire Clinical Course of Treatment And State With Specificity The Bases For Each Opinion In Order to Contest Causation

A September 15, 2005, decision from the Illinois Worker's Compensation Commission in the case of *Joseph Raymond Hodder, Jr. v. Northern Illinois University*, No. 05 I.W.C.C 0700, held that the reports of Respondent's Section 12 Examiners were deficient on their face to contest causation.

In *Hodder*, Respondent offered the reports of its Section 12 examiners, Dr. Charles Wright and Dr. Alexander Ghanayem, to contest Petitioner's causal connection claim. The Commission noted that Dr. Wright admitted in his report that he "has not had time to digest the entire volume of records" and consequently found that his opinions lacked credibility based upon his "admitted deficient understanding of Petitioner's entire clinical course of treatment."

The Commission commented that Dr. Ghanayem's report lacked "specificity regarding the basis of his opinions, in the face of other qualified treating physicians who concur with the diagnosis."

The Commission found that Dr. Ghanayem's opinions and conclusions, standing alone, were less persuasive than the causal connection evidence offered by Petitioner.

In practice, all of the Petitioner's treatment records must be sent to the Section 12 Examiner in order for their report to be credible. Furthermore, a report from the Section 12 Examiner should not be accepted unless it states all of the medical records and other materials that were reviewed, and it clearly states the bases for each opinion and conclusion expressed in the report.

Commission Imposes Penalties For Payment of A Settlement Contract Received 64 Days After Its Approval By The Arbitrator (Cont'd)

An August 17, 2005, decision from the Illinois Worker's Compensation Commission in the case of *Leslie Dennis v. Celotex*, No. 05 I.W.C.C 0630, imposed a \$16,414.87 penalty (representing 50% of the settlement amount) pursuant to Section 19(k), and ordered \$3,328.97 to be paid in attorneys' fees under Section 16 where Petitioner received the settlement draft 64 days after the date that the settlement contract was approved by the arbitrator.

A settlement contract for \$32,829.73 was approved by the arbitrator on February 4, 2004, and a copy of same and a request for payment was sent to Respondent's attorney on February 10, 2004. Respondent's attorney forwarded the contract to Respondent on March 9, 2004. On April 1, 2004, Respondent's service agent sent the check to Respondent for signature. On April 13, 2004, Respondent sent the check to Petitioner's attorney, who received it on April 16, 2004.

Commission Imposes Penalties For Payment of A Settlement Contract Received 64 Days After Its Approval By The Arbitrator (Cont'd)

The Commission held that the totality of circumstances, and specifically: (1) the 26-day delay between the time Respondent's attorney received the approved settlement contract and when same was forwarded to Respondent; and (2) the 35-day delay between the time Respondent's attorney sent the check to Respondent and the time Respondent mailed the check to Petitioner's attorney, constituted an unreasonable delay in payment of the settlement.

In practice, the approved settlement contract should be date-stamped when received, with the envelope in came in retained. The claims representative should begin processing the check request upon receipt of the approved settlement contract, ensure that the check has been mailed out no more than 21 days after receipt of the contract, and then follow up with Petitioner's attorney to confirm receipt of the settlement draft.

Commission Holds That Petitioner Must Present Evidence Supporting a Reasonable Inference That An Unexplained Fall Stemmed From An Employment-Related Risk

An August 15, 2005, decision from the Illinois Worker's Compensation Commission in the case of *Anna Marie Holtz v.J.C. Penny Co.*, No. 05 I.W.C.C 0625, held that a sales clerk who fell while walking across the store floor presented insufficient evidence that her fall was due to some condition of her employment.

The Petitioner testified that while working as a sales clerk in the store she walked from the carpeted area to the main aisle and was walking on the parquet flooring of the main aisle, when the next thing she knew, she just "went down." She testified that she did not notice anything unusual in the area where she fell and saw no water, no debris, or anything defective about the carpet or the flooring. She offered no testimony that the junction between the carpet and the flooring was uneven, or that it contributed in any manner to her fall. She testified that she was not carrying anything for work at the time of her fall. She did not give an possible explanations as to why she fell and could not explain why she fell. She testified that she had undergone prior surgery on her leg and had missed six months of work due to that surgery and condition.

The store manager testified that he came immediately upon the scene of the accident and spoke directly to the Petitioner, who was still laying down on the floor. He testified that she advised him that she just fell down and did not know why she fell down. He testified that he conducted a thorough investigation of the entire area where she fell. He did not observe any water, any other slippery substance, any torn carpeting, or any defect in any of the flooring or carpeting. He described the area where the carpeting meets the flooring as completely level from one surface to the next. He testified that the parquet flooring surface was not slippery, was not waxed, and was 18 years old. He testified that the area where Petitioner fell was completely open to the public, that customers traversed the same area constantly on a daily basis, and that he is unaware that anyone else, either customer or employee, had ever fallen in that area before or since the accident in the seven years he had been the store's manager. He also provided pictures of the area where Petitioner fell which were taken the day of the accident.

While the initial emergency room records contained a history that Petitioner tripped on some carpet and fell on her face, the arbitrator noted that Petitioner's testimony, as well as other evidence and testimony, squarely contradicted this history. The arbitrator held that this medical records was insufficient for the arbitrator to make a reasonable inference that she fell due to a condition of her employment.

In practice, in cases where an employee is injured in a fall, especially when the fall occurs in a place accessible to the public, Respondent's managers should immediately interview the injured employee in the presence of witnesses, inspect the injured employee's clothing and shoes for possible causes for the fall, take photographs of the scene and of the injured employee, conduct an inspection of the scene to investigate (and if possible rule out) all possible work-related causes of the fall, and prepare a written report regarding the findings of the investigation. The manager or the claims represent should attempt to obtain a written statement describing the accident signed by the injured employee as soon as possible after her initial accident day treatment.

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The attorneys at BryceDowney constantly strive to keep you updated regarding the latest developments in Illinois and Indiana workers' compensation law. If you would like more information on any of the topics discussed above, or have any questions regarding these issues or any aspect of Illinois and Indiana Workers' Compensation Law, please contact Richard Lenkov at (312)327-0032 or rlenkov@brycedowney.com, or any member of our workers' compensation team. © Copyright 2005 by BryceDowney, LLC, all rights reserved. Reproduction in any other publication or quotation is forbidden without express written permission of copyright owner.