ILLINOIS WORKERS' COMPENSATION

I. Jurisdiction - Illinois jurisdiction is appropriate when:

A. If the petitioner is injured in Illinois, even if the contract for hire is made outside of Illinois.

B. The petitioner's employment is principally localized within Illinois, regardless of the place of accident or the place where the contract for hire was made.

C. If the last act necessary to complete the contract for hire was made in Illinois.

II. Compensability Standard

A. Accident or accidental injury must arise out of and in the course of employment.
   1. Accident arises out of the employment when there is a causal connection between the employment and the injury.
   2. Injury must be traceable to a definite time, place, and cause.

B. *Medical Causation*: The petitioner must show that the condition or injury might or could have been caused, aggravated, or accelerated by the employment.

III. Employee must provide notice of the accident.

A. The petitioner must give notice to the employer as soon as practicable, but not later than 45 days after the accident.

B. Defects/Inaccuracy in the notice is no defense unless the employer can show it was unduly prejudiced.
   - This is difficult to show in Illinois because the petitioner directs his/her own medical treatment.

IV. Accident Reports

A. Employer must file a report in writing of injuries which arise out of and in the course of employment resulting in the loss of more than three scheduled workdays.
   - This report must be filed between the 15th and 25th of each month.

B. For death cases, the employer shall notify the Commission within 2 days following the death.

C. These reports must be submitted on forms provided by the Commission.

V. Application Filing Periods - Statute of Limitations

A. Petitioner must file within three years after the date of accident, or two years after the last compensation payment, whichever is later.

B. In cases where injury is caused by exposure to radiological materials or asbestos, the application must be filed within 25 years after the last day that the petitioner was exposed to the condition.

VI. Average Weekly Wage (AWW)

A. General Rule: Divide the year's earnings (52 weeks) of the petitioner by the number of weeks worked during the year.
   1. *e.g.*, Sum of wages for 52 weeks prior to the accident = $40,000.
      - $40,000/52 = $769.23.

B. If petitioner lost five or more calendar days during a 52-week period prior to the accident, then divide the annual earnings by the number of weeks and portions of weeks the petitioner actually worked.
   1. e.g., Sum of wages for 52 weeks prior to the accident = $30,000 but petitioner missed 10 days = $30,000/50 = $600.00.

C. If petitioner worked less than 52 weeks with the employer prior to the injury, divide amount earned during employment by number of weeks worked.
   1. e.g., Petitioner worked 30 weeks and earned $20,000 during this time $20,000/30 = $666.66.

D. If due to shortness of the employment, or for any other reason it is impractical to compute the average weekly wage using the general rule, average weekly wage will be computed by taking the average weekly wage of a similar employee doing the same job.

E. Overtime—Overtime is excluded from AWW computation unless it is regular or mandatory.
   1. If overtime is regularly worked, it is factored into AWW but at straight time rate.
   2. Overtime is considered regularly worked on a case by case basis, but it has been determined that it is regular when:
      a. Claimant worked overtime in 40 out of 52 weeks
      b. Working more than 40 hours 60% of time
      c. Working overtime in 7 out of 11 weeks prior to an injury
   3. If overtime is infrequently worked but it is mandatory it must be considered in AWW computation.

F. When calculating a truck driver's AWW, the only funds to be considered are those that represent a "real economic gain" for the driver. *Swearingen v. Industrial Commission*, 699 N.E.2d 237, 240 (Ill. App. 5th Dist. 1998).

1. Petitioner's gross earnings for the 52 weeks prior to the date of loss including all earnings made per mile are divided by 52 to determine the AWW. However, any monies that the driver uses to pay for taxes, fees, etc., are not included in the gross earnings, as they do not represent real economic gain.

VII. Benefits and Calculations

A. **Medical Treatment**—Pre-2011 Amendments: Petitioner chooses the health care provider, and the employer/insurer is liable for payment of:
   1. First Aid and emergency treatment.
   2. Medical and surgical services provided by a physician initially chosen by the petitioner or any subsequent provider of medical services on the chain of referrals from the initial service provider.
   3. Medical and surgical services provided by a second physician selected by the petitioner (2nd Chain of Referral).
   4. If employee still feels as if he needs to be treated by a different doctor other than the first two doctors selected by the petitioner (and referrals by these doctors), the employer selects the doctor.
   5. When injury results in amputation of an arm, hand, leg or foot, or loss of an eye or any natural teeth, employer must furnish a prosthetic and maintain it during life of the petitioner.
   6. If injury results in damage to denture, glasses or contact lenses, the employer shall replace or repair the damaged item.
   7. Furnishing of a prosthetic or repairing damage to dentures, glasses or contacts is not an admission of liability and is not deemed the payment of compensation.

B. **2011 Amendments** (In effect for injuries on or after September 1, 2011)
   1. Section 8(4) of the Act now allows employers to establish Preferred Provider Programs (PPP) consisting of medical providers approved by the Department of Insurance.
      - The PPP only applies in cases where the PPP was already approved and in place at the time of the injury. Petitioners must be notified of the program on a form promulgated by the Illinois Workers' Compensation Commission (IWCC).
   2. Under the PPP, petitioners have 2 choices of treatment providers from within the employer's network. If the Commission finds that the second choice of physician within the network has not provided adequate treatment, then the petitioner may choose a physician from outside the network.
   3. Petitioners may opt out of the PPP in writing, at any time, but this choice counts as one of the employee's two choices of physicians.
   4. If a petitioner chooses non-emergency treatment prior to the report of an injury, that also constitutes one of the petitioner's two choices of physicians.

C. **Medical Fee Schedule**—Illinois Legislature created a Medical Fee Schedule that enumerates the maximum allowable payment for medical treatment and procedures.
   1. Maximum fee is the lesser of the health care provider's actual charges or the fee set for the schedule.
   2. The fee schedule sets fees at 90% of the 80th percentile of the actual charges within a geographic area based on zip code.
   3. The 2011 Amendments to Section 8.2(a) of the Act reduces all current fee schedules by 30% for all treatment performed after September 1, 2011.
   4. Out-of-state treatment shall be paid at the lesser rate of that state's medical fee schedule, or the fee schedule in effect for the Petitioner's residence.
   5. In the event that a bill does not contain sufficient information, the employer must inform the provider, in writing, the basis for the denial and describe the additional information needed within 30 days of receipt of the bill. Payment made more than 30 days after the required information is received is subject to a 1% monthly interest fee. (Prior to the Amendments, this fee accrued after 60 days, now it accrues after 30 days.)

D. **Temporary Total Disability (TTD)**
   1. 2/3 of AWW
   2. If temporary total disability lasts more than three (3) working days, weekly compensation shall be paid beginning on the 4th day of such temporary total incapacity. If the temporary total incapacity lasts for 14 days or more, compensation shall begin on the day after the accident.
   3. Minimum TTD rate is 2/3 (subject to 10% increase for each dependent) of Illinois minimum wage or Federal minimum wage, whichever is higher.
      - For the minimum and maximum rates for various dates, see this link.

E. **Temporary Partial Disability (TPD)**
   1. 2/3 of the difference between the average amount the petitioner is earning at the time of the accident and the average gross amount the employee is earning on the modified job.
   2. Normally applicable in light duty situations.

F. **Permanent Partial Disability (PPD)**
   1. 60% of AWW
   2. See rate card for value of body parts
   3. Minimum PPD rate is 2/3 (subject to 10% increase for each dependent) of Illinois minimum wage or Federal minimum wage, whichever is higher—as of 02/01/06 the Illinois minimum wage is higher ($6.50/hour).

G. **Person as a whole—Maximum of 500 weeks**
   1. General rule if injury is not listed on rate card, it is a person as a whole injury.
   2. Common for back injuries.

H. **Level of the hand for carpal tunnel claims = 190 weeks**

1. For claims arising after September 1, 2011, the 2011 Amendments return the maximum award for the loss of the use of a hand for carpal tunnel cases to the pre-2006 level of 190 weeks. The maximum award for the loss of the use of a hand in carpal tunnel cases was previously 205 weeks. For all hand injuries not involving carpal tunnel syndrome, the maximum award for the loss of the use of a hand remains at 205 weeks.

I. **Carpal Tunnel Syndrome**
   1. The 2011 Amendments to Section 8(e)9 cap repetitive Carpal Tunnel Syndrome awards at 15% permanent partial disability of the hand, unless the Petitioner is able to prove greater disability by clear and convincing evidence.
   2. If the petitioner is able to prove by clear and convincing evidence greater disability than 15% of the hand, then the award is capped at 30% loss of use of the hand.
   3. The 2011 Amendments apply to injuries arising after September 1, 2011, and only apply to cases involving *repetitive* Carpal Tunnel Syndrome. The cap of 15% or 30% does not apply to cases involving Carpal Tunnel Syndrome brought on by an acute trauma.

J. **Disfigurement**
   1. Usually scarring.
   2. Must be to hand, head, face, neck, arm, leg (only below knee), or chest above the armpit line.
   3. Maximum amount is 150 weeks if the accident occurred before 07/20/05 or between 11/16/05 and 01/31/06.
   4. Maximum amount is 162 weeks if accident occurred between 07/20/05 and 11/15/05 or on or after 02/01/06.
   5. Disfigurement rate is calculated at 60% of AWW.
   6. A petitioner is entitled to *either* disfigurement or permanent partial disability for a specific body part, not both.

K. **Death**
   1. Maximum that can be received can't exceed the greater of $500,000 or 25 years of benefits.

L. **Permanent Total Disability**
   1. Only arises when the petitioner is completely disabled which means the petitioner is permanently incapable of work.
   2. Statutory PTD
      a. Statutory PTD arises when: loss of both hands, arms, feet, legs, or eyes.
      b. Employee receives weekly compensation rate for life, or a lump sum (based on life expectancy)
      c. PTD payments are adjustable annually at the same percentage increase as that which the state's average weekly wage increased, but this is capped at the maximum rate.
   3. Odd-Lot PTD

a. A petitioner who has disability that is limited in nature such that he or she is not obviously unemployable, or if there is no medical evidence to support a claim of total disability, the petitioner may fall into the odd-lot category of permanent total disability.
b. The petitioner must establish the unavailability of employment to a person in his or her circumstances.
c. The petitioner must show diligent but unsuccessful attempts to find work, or that by virtue of the petitioner's medical condition, age, training, education, and experience the petitioner is unfit to perform any but the most menial task for which no stable labor market exists.
d. Once the petitioner establishes that he or she falls into this odd-lot category, then the burden of proof shifts to the respondent to show the availability of suitable work.

M. **Vocational Rehabilitation**

1. Employer must prepare a vocational rehabilitation plan when both parties determine the injured worker will, as a result of the injury, be unable to resume the regular duties in which he was engaged at the time of the injury, or when the period of total incapacity for work exceeds 120 continuous days.
2. If employer and petitioner do not agree on a course of rehabilitation, the Commission uses the following factors to determine if rehabilitation is appropriate:
   a. Proof that the injury has caused a reduction in earning power.
   b. Evidence that rehabilitation would increase the earning capacity, to restore the petitioner to his previous earning level.
   c. Likelihood that the petitioner would be able to obtain employment upon completion of his training.
   d. Petitioner’s work-life expectancy.
   e. Evidence that the petitioner has received training under a prior rehabilitation program that would enable the petitioner to resume employment.
   f. Whether the petitioner has sufficient skills to obtain employment without further training or education.
3. Employer is responsible for payment of vocational rehabilitation services.

N. **Maintenance**

1. Not technically TTD.
2. A component of vocational rehabilitation.
3. Maintenance is paid once claimant at MMI, and undergoing vocational rehabilitation.
4. Two common situations:
   a. When petitioner is undergoing vocational rehabilitation and has been placed at MMI, maintenance picks up where TTD ceases (at the TTD rate) –similar to a continuation of TTD.
   b. When employee has completed a vocational rehabilitation program and has yet to be placed in the labor market.

O. **Wage Differential**
   1. Compensates for future wage loss
   2. To qualify for wage differential, claimant must show:
      a. A partial incapacity that prevents him from pursuing his or her "usual and customary line of employment."
      b. Earnings are impaired.
   3. Employee receives 2/3 of the difference between the average amount he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident.
   4. The 2011 Amendment to Section 8(d)(1) now provides that for accidents on or after September 1, 2011, wage differential awards shall be effective only until the Petitioner reaches age 67, or five years from the date that the award becomes final, whichever occurs later.

P. **Ratings**
   1. The 2011 Amendments to Section 8.1b of the Act provide that physicians may now submit an impairment report using the most recent American Medical Association (AMA) guidelines.
   2. In determining the level of permanent partial disability, the Act states that the Commission shall base its determination on the reported level of impairment, along with other factors such as the age of the Petitioner, the occupation of the Petitioner, and evidence of disability corroborated by the treating medical records.
   3. The relevance and weight of any factor used in addition to the level of impairment as reported by the physician must be explained in a written order by the Commission.

VIII. Preferred Provider Program

A. The 2011 Amendments to the Workers' Compensation Act amended Section 8(4) of the Act to allow employers to establish preferred provider programs (PPP) consisting of medical providers approved by the Department of Insurance.
   - The PPP only applies in cases where the PPP was already approved and in place at the time of the injury.
   - Petitioners must be notified of the program on a form promulgated by the Illinois Workers' Compensation Commission.

B. Under the Act, petitioners have 2 choices of treating providers from within the employer's network.
   - If the Commission finds that the second choice of physician within the network has not provided adequate treatment, the employee may choose a physician from outside of the network.

C. A petitioner may opt out of the PPP in writing at any time, but the decision to opt out of the PPP counts as one of the petitioner's two choices of physicians.

D. Under the Section 8(4), if the petitioner chooses non-emergency treatment prior to the report of an injury, that constitutes one of the petitioner's two choices of physicians.

IX. Illinois Workers' Compensation Procedure

A. **Steps of a Workers' Compensation Claim and Appellate Procedure**:
   1. Petitioner files an Application of Adjustment of Claim with the Illinois Workers' Compensation Commission. The Application for Benefits must contain:
      a. Description of how the accident occurred
      b. Part of body injured
      c. Geographical location of the accident
      d. How notice of the accident was given to or acquired by the employer
   2. After Application is filed, the claim is assigned to an Arbitrator. The claim will appear on the Arbitrator's status call docket every three months unless it is motioned up for trial pursuant to 19(b) or 19(b-1).
      a. Three arbitrators are assigned to each docket location. These three arbitrators rotate to three different docket locations on a monthly basis.
      b. One of the three arbitrators assigned to a particular docket location will be assigned the case. If a party requests a 19(b) hearing, the hearing will be held before the assigned arbitrator, even if that arbitrator is not at the docket where the case is located.
   3. If no settlement is reached, the case can be tried before the Arbitrator for a final hearing.
      a. Arbitrator is the finder of fact and law, and issues a decision.

B. **Pretrial Procedure**
   1. Depositions - cannot take the petitioner's deposition.
   2. Subpoenas - easy to get, normally Arbitrator has signed in advance
   3. Records of Prior Claims - determine if a credit allowed
      - No credits for person as a whole injuries (including shoulders, which are now treated as person as a whole injuries)
   4. Section 12 Medical Examination - petitioner must comply
      a. Used to avoid penalties
      b. Used to investigate petitioner's prior treatment and diagnoses
      c. Can be scheduled at reasonable intervals
      d. Must pay mileage
   5. Settlement

C. **Arbitration Procedure**
   1. When the Application for Adjustment of Claim is filed, the Commission assigns the docket location (normally within the vicinity of where the injury occurred).
   2. Cases appear on the call docket on three-month intervals until the case has been on file for three years, at which point it is set for trial unless a written

request has been made to continue the case for good cause. (This request must be received within 15 days of the status call date).
   a. Cases that are more than three years old are referred to as "above the red line," and red line cases are available on the call sheet at the Illinois Workers' Compensation Commission website.
   b. If no one for the petitioner appears on a red line case at the status conference, the case can be dismissed by the arbitrator for failure to prosecute.
3. If a case is coming up on the call docket, a party can request a trial.
   - This request must be served on opposing counsel 15 days before the status call.
   - At the status call, the attorneys will select a time to try the case.
4. If both parties are in agreement, they may request a trial at the monthly call docket.
5. If a case is not coming up on the call docket, and a party has a need for an immediate hearing, the party can file a motion to schedule the case for a 19(b) hearing.
   a. The party requesting the 19(b) hearing must only give the other party 15-days notice.
   b. A 19(b) hearing is not proper where the employee has returned to work and the only benefit in dispute amounts to less than 12 weeks of temporary total disability.
6. A pretrial conference can be requested by either party prior to the start of a trial.
   - The benefit of a pretrial conference is that the same arbitrator over a pretrial conference will hear the actual trial, so the parties will have a good idea how the arbitrator feels about the case or a particular issue.
   - Both parties must consent to a pretrial conference.
7. Emergency Hearings under Section 19(b-1)
   a. Petitioner not receiving medical services or other compensation.
   b. Petitioner can file a petition for an emergency hearing to determine if he is entitled to receive payment or medical services.
   c. Similar to hardship hearings in Missouri
   d. Effectively serves the same purposes as a 19(b) hearing but affixes deadlines.
8. If a case is tried by an arbitrator and the arbitrator's award resolves the case (*i.e.*, the parties do not reach a settlement) medical benefits will remain open.
   - Future medical benefits can only be closed through a settlement agreement.

D. **Appellate Procedure**
1. Arbitrator’s decision can be appealed to a panel of three Commissioners of the Illinois Workers’ Compensation Commission (ten members appointed by Governor—no more than six members of the same political party).
   a. Must file a petition for review within 30 days of receipt of Arbitrator’s award.

2. Decision of the Commissioners can be appealed to the Circuit Court.
3. Circuit Court Decision can be appealed to the Illinois Appellate Court's Industrial Commission Panel.
4. If Appellate Panel finds case significant enough, it will submit it to the Illinois Supreme Court.

X. Penalties Relating to Actions of Employer/Insurer

A. 19(k) Penalty for Delay—PPD, TTD and/or Medical

1. When there has been unreasonably delayed payment or intentionally underpaid compensation.
2. Penalty is 50% of compensation additional to that otherwise payable under the Act.
3. This section is invoked when the delay is a result of bad faith.
4. Amount of penalty is based on amount of benefits which have accrued.
5. Commission will use Utilization Review as a factor in determining the reasonableness and necessity of medical bills or treatment.
    - Utilization review can also be utilized to avoid penalties.

B. 19(l) Penalty for Delay—TTD

1. If employer or insurance carrier fails to make payment "without good and just cause"
2. The arbitrator can add compensation in the amount of $30/day not to exceed $10,000.
3. This section invoked even if the payment is not a result of bad faith
4. Generally penalties are not awarded if the employer has relied on a qualified medical opinion to deny payment of benefits.

C. Employer's Violation of a Health and Safety Act

1. If it is found that an employer willfully violated a health/safety standard, the arbitrator can allow additional compensation in the amount of 25% of the award.

XI. Penalties Relating to Actions of the Petitioner

A. Intoxication

- For accidents <u>before</u> September 1, 2011, if the court finds that accident occurred because of intoxication then injury is not compensable.

1. Intoxication not per se bar to workers' compensation benefits.
2. Intoxication will preclude recovery if it is the sole cause of the accident, or is so excessive that it constitutes a departure from employment.
    - For accidents <u>on or after</u> September 1, 2011, the Amended Section 11 of the Act provides that no compensation shall be payable if:

1. The petitioner's intoxication is the proximate cause of the petitioner's accidental injury.
2. At the time of the accident, the petitioner was so intoxicated that the intoxication constituted a departure from the employment.

- The 2011 Amendment provides that if at the time of the accidental injuries, there was a 0.08% or more by weight of alcohol in the petitioner's blood, breath, or urine, or if there is any evidence of impairment due to the unlawful or unauthorized use of cannabis or a controlled substance listed in the Illinois Controlled Substances Act, or if the petitioner refuses to submit to testing of blood, breath, or urine, there shall be a *rebuttable presumption* that the petitioner was intoxicated and that the intoxication was the proximate cause of the petitioner's injury.
- The petitioner can rebut the presumption by proving by a preponderance of the evidence that the intoxication was not the proximate cause of the accidental injuries.

B. **Unreasonable/Unnecessary Risk**
1. If the petitioner voluntarily engages in an unreasonable risk (which increases risk of injury), then any injuries suffered do not arise out of the employment.

C. **Fraud**
1. The 2011 Amendments provide the Department of Insurance with authority to subpoena medical records pursuant to an investigation of fraud.
2. The 2011 Amendments eliminate the requirement that a report of fraud be forwarded to the alleged wrongdoer with the verified name and address of the complainant.
3. The 2011 Amendments provide for penalties for fraud, based on the amount of money involved. These penalties begin at a Class A misdemeanor (less than $300) to a Class I felony (more than $100,000). The Amendments also require restitution be ordered in cases of fraud.

XII. Workers' Occupational Diseases Act - Covers slowly developing diseases that do not arise out of an identifiable accident or occurrence but not repetitive trauma.

A. **Occupational Disease** – "A disease arising out of and in the course of the employment or which has become aggravated and rendered disabling as a result of the exposure of the employment."

B. Exposure can be for any length of time (even if very brief).

C. The employer that provided the last exposure is liable for compensation no matter the length of the last exposure (unless claim is based on asbestosis or silicosis - must be exposed for at least 60 days by an employer for it to be liable).

D. Petitioner must prove he was exposed to a risk beyond that which the general public experiences.

E. Applies only to diseases that are “slow and insidious”
   1. e.g., kidney ailment cause from repetitive exposure to liquid coolant.
   2. e.g., asthma aggravated by white oxide dust.

XIII. Repetitive Trauma - Covered Under the Workers' Compensation Act

A. Date of Injury for Repetitive Trauma
   1. Date of injury is the date on which the injury “manifests itself.”
   2. “Manifests itself” - General Standard - the date on which both the fact of the injury and the causal relationship of the injury to the claimant’s employment would have become plainly apparent to a reasonable person—Landmark case: *Peoria County Belwood Nursing Home v. Indus. Commn.,* 505 N.E.2d 1026 (Ill. App. 1987).
   3. The *Belwood* Standard has been expanded slightly over the years.
   4. Courts have found date of injury to be:
      a. Date injury became apparent to a reasonable person.
      b. Last date of work at the employer prior to the disablement (time at which employee can no longer perform his job).

XIV. Third-Party Recovery

A. Workers’ Compensation Act prohibits petitioners from bringing tort actions against their employers

B. An injured petitioner may pursue tort action against a third party.

C. The third party has a right to contribution from the employer which is limited to its liability under the Workers’ Compensation Acts.

D. Typically respondents can recovery around 70 to 75% of what was paid out in benefits.

XV. Assaults

A. If subject matter causing altercation is related to work then injuries from an assault are compensable.

B. Exception: If the aggressor is injured = no compensation.
   - e.g., Waitresses arguing over tables and the argument turns physical when one waitress strikes the other—this is compensable.

XVI. Minors (under 16 years of age)

A. Receive a 50% increase in benefits even if they fraudulently misrepresent their age.

B. Minors may elect within six months after accident to reject the Workers' Compensation Remedies and sue in civil court (potentially high payout).

XVII. Voluntary Recreational Programs

A. Injuries incurred while participating in voluntary recreational programs do not arise out of and in the course of the employment even though the employer pays some or all of the cost.

B. If the employer orders the employee to participate then the recreational injury is compensable.

XVIII. Second Injury Fund

A. Only pays when employee has previously lost an arm, leg, etc. and subsequently loses another arm, leg, etc. in an independent work accident that results in the employee being totally disabled.

B. Present employer liable only for amount payable for the loss in the second accident.

RECENTLY ASKED QUESTIONS IN ILLINOIS
FROM ISSUES ADDRESSED IN RECENT ILLINOIS CASES

Q: When an employee slips and falls in the employer's parking lot in pursuit of money that fell out of his pocket, is this a compensable injury?

A: No. In *Fuentes*, the Arbitrator decided, and the Commission confirmed, that the employee failed to demonstrate his injuries arose out of his employment after falling onto his back in the employer's parking lot. Employee was walking to his car after his work shift. If he did not park in this location, he would be disciplined. On the way to the car, a couple dollars flew out of his pocket. Employee walked to get the money, bent down, and slipped and fell onto his back.

In reaching its decision, the Arbitrator pointed out that it was the employee's choice to pursue the money after it blew out of his pocket. Further, it was noted that Illinois courts have consistently held that injuries that arise from personal risk, rather than an employment related risk, are not compensable. The arbitrator compared this fact scenario to *Dodson v. Industrial Commission,* which held that an injury does not arise out of employment when an employee voluntarily exposes himself to an unnecessary personal risk solely for his own convenience. Here, the employee voluntarily exposed himself to an unnecessary personal risk for his own benefit. His actions did not benefit the employer. Therefore, the injury was not compensable.

Angel Fuentes v. Marriott International, 15 IL. W.C. 4527 (Ill. Indus. Comm'n June 26, 2017)

Q: Is failing to offer a reasonable accommodation to an employee considered a compensable psychological injury?

A: Probably not. In *Bumphus,* Claimant alleged that he sustained an injury to his psyche due to being denied a reasonable accommodation. Claimant had just began a new job when he told his supervisor that if he was going slow, it was because of a rod and two pins in his back that were causing pain when he was lifting. He continued to work and later came to understand that there was mandatory overtime. Claimant was working a normal shift when he started experiencing back pain again and indicated that he could not go any further and was going to leave. He notified the employer about his back pain again, the mandatory overtime, and the situation about his leaving. After speaking to the employer, he thought the issue was resolved and he was pleased.

Claimant returned to work and was still required to work overtime. He went to the employer's office to find out about his reasonable accommodation he thought he had received. He believed there was doubt about his rod and two pins so he obtained medical documentation from his primary care physician to show the employer. The employer informed claimant that this documentation was not accepted as establishing his reasonable accommodation, so he became "flustered." He told the employer that he had

post-traumatic stress disorder" and had written a book about it, and offered the book to the employer as evidence. The employer told claimant that he was to get different medical documentation, and unless he came up with the documentation, his employment would no longer be considered. A few days later, he brought the requested documentation to the employer but still was not offered a reasonable accommodation. He then filed a charge of discrimination with the EEOC.

Claimant also filed an Application for Adjustment of Claim alleging an accident occurred related to being denied a reasonable accommodation for spinal fusion surgery, that he sustained stress and anxiety due to "bullying and duplicity," and that the nature of the injury was "mental-mental."

In finding that the claimant failed to prove he sustained an injury that arose out of and in the course of his employment, the Arbitrator stated that psychological injuries are compensable under "mental-mental" only when the claimant suffers a "sudden, severe emotional shock traceable to a definite time, place and cause which causes psychological injury or harm. . . though no physical trauma was sustained." Here, claimant testified that he became "flustered," but there was no evidence of a definite, sudden emotional event. Further, claimant's alleged interactions with his co-workers did not rise to a level greater than day-to-day emotional strain and tension which all employees must experience.

John Bumphus v. Unique Personal Consultants, 15 IL. W.C. 27577 (Ill. Indus. Comm'n Apr. 19, 2017)

Q: Is locking and unlocking doors throughout the day enough to be considered repetitive under the Act?

A: Not necessarily. In *Cascio*, the Commission adopted the decision of the Arbitrator, who found that a claimant failed to prove she sustained an injury to her bilateral wrists and hands which arose out of and in the course of her job duties, which included unlocking doors.

Claimant worked at a mental health facility as security therapy aide for approximately 21 years from 1990 to 2011. Her job duties included unlocking the doors of individuals, opening cabinets, and restraining combative patients. Starting in 2005, the resident's doors were opened electronically via a computer touch screen. In 2011, claimant noticed numbness, and tingling in her hands, along with reduced grip strength, making it hard to perform her job duties. She was diagnosed with carpal tunnel syndrome (CTS). Two months later, claimant completed an Employee's Notice of Injury indicating she injured her arms and hands by "turning of keys." The Supervisor's Report of Injury stated that "worker has been diagnosed with CTS in both wrists, from repetitively turning keys unlocking doors and closets."

At the request of the employer, claimant was examined by Dr. Stewart. He agreed with the CTS diagnosis and recommended surgery. Dr. Stewart had a specific discussion with

claimant regarding her wok activities. He noted that the opening and closing of a door takes less than two seconds. Even taking a high number of 150 doors per day at approximately two seconds per door is only five minutes of time per work day. Dr. Stewart further indicated that activities that involve an increased risk of carpal tunnel involve forceful repetitive activities. Simple repetitive activities do not increase the risk. It was Dr. Stewart's opinion that claimant's job duties did not cause or contribute to the development of her CTS.

To the contrary, Dr. Jones testified that a person who turns keys, cuffs mental patients, locks and unlocks doors as well as gross hand manipulation for six to eight hours per day could have an effect on the development of carpal tunnel.

The Arbitrator, however, decided that claimant failed to prove she sustained an injury which arose out of and in the course of her employment. The claimant's testimony indicated that any use of her hands to open locked doors was not significantly repetitive. Further, the facility changed to an electronic lock system in 2005. The arbitrator did not believe that claimant's work duties in unlocking doors and cabinets were repetitive within the meaning of the Act.

Crystal Rose Cascio v. Chester Mental Health Center, 12 IL. W.C. 07617 (Ill. Indus. Comm'n Apr. 13, 2017)

Q: Is the Injured Workers Benefits Fund liable when an employer declares bankruptcy?

A: Yes. In a matter of first impression, the Commission affirmed the decision of the Arbitrator's finding that the Injured Workers Benefit Fund ("IWBF") would be liable for claimant's award when his employer had declared bankruptcy. Claimant worked for employer, A-Tech Stucco Eifs Company ("A-Tech") who had a workers' compensation policy with West Bend Mutual Insurance Company ("West Bend") on the date of injury, March 19, 2007. Claimant notified A-Tech of his injury and the owner of A-Tech presented to the emergency room during claimant's visit. Claimant filed an Application for Adjustment of Claim on April 9, 2008. Thereafter, West Bend filed a Complaint of Declaratory Judgment against A-Tech alleging that A-Tech violated the terms of its workers compensation policy because it did not report claimant's accident to West Bend for over twelve months. In October 2008, A-Tech filed for bankruptcy. West Bend's Motion was granted on June 9, 2009 and it was found that West Bend had no duty to defend or indemnify A-Tech in this workers compensation claim.

Claimant amended his Application to include the Illinois State Treasurer as ex-officio custodian of the IWBF as a party to the case. The IWBF submitted a Motion to Dismiss, which was ultimately denied, finding IWBF liable for payment of the award. IWBF argued that because A-Tech had an insurance policy at the time of the accident, IWBF was not liable to make payment. The arbitrator disagreed, looking to the legislative intent of the IWBF, stating that the IWBF's intent is to protect injured workers that find themselves in

situations similar to this. Due to West Bend's granted order in 2009, A-Tech's insurance policy was essentially null and void and West bend had no duty to indemnify A-Tech in this case. Therefore, Claimant's only recourse to secure any type of benefits whatsoever would be through the IWBF.

The arbitrator further relied on the plain language of Section 4(d) of the Act which clearly states:

Moneys in the Injured Workers' Benefit Fund shall be used only for payment of workers' compensation benefits for injured employees when the employer has failed to provide coverage as determined under this paragraph (d) and has failed to pay the benefits due to the injured employee." 820 Ill. Comp. Stat. Arm. 305/4(d).

In this case, A-Tech failed to provide coverage to claimant as well as failed to pay him benefits that were due. There is no Illinois case law that distinguishes the different ways an employer can "fail to provide coverage" however the arbitrator believed that certainly breaching its agreement with is carrier in a way that the carrier was able to secure a judgment that it does not need to defend its insured, falls within the meaning of "failing to provide coverage."

Further, the IWBF clearly states that it is funded by the penalties and fines collected from employers that "negligently" fail to provide coverage. The arbitrator believed A-Tech was certainly "negligent" in not following the terms and conditions of the policy and notifying the carrier within the time frame determined by the policy.

Therefore, because A-Tech failed to provide adequate coverage pursuant to 4(d) of the Act and failed to pay benefits to claimant, the IWBF was an appropriate party in this case, and IWBF's motion to dismiss itself from the case was denied.

Estate of Gyula Kormany v. A-Tech Stucco Eifs Co., 08 IL. W.C. 15587 (Ill. Indus. Comm'n June 1, 2017)

Q: Is a claimant's job search log, consisting of 1200 logged searches, which stemmed from cold calls, a diligent job search to support an odd-lot theory for permanent total disability benefits?

A: Potentially no. In *Knezevich,* the claimant sustained a left thumb injury on June 14, 2006, and injured his back on August 4, 2006, as an ironworker. A 2009 functional capacity examination (FCE) revealed claimant's job does not provide for light duty, and the claimant was restricted to 50 pound lifting capacity and no latter climbing. The FCE concluded claimant should seek medium demand work. The claimant met with a vocational rehabilitation counselor, Ms. Entenberg, on March 20, 2010. Ms. Entenberg noted the claimant graduated high school, accumulated 50 credit hours at a junior college, and has been an ironworker since 1968. Based on claimant's 2009 FCE, Ms. Entenberg state claimant could not return to ironwork but would be able to do other jobs.

Claimant's job search was self-directed. In 2009, he found no jobs within his restrictions, and between June 21, 2010, and October 5, 2011, he contacted 1181 employers. Claimant testified that 110 employers were not hiring at that time, but no job denied him a position based on his physical restrictions. Later, claimant retracted his prior statement and clarified 280 employers were hiring during his search. On October 30, 2010, Ms. Entenberg generated a follow-up report which stated claimant completed a diligent search and no stable job-market was available. Ms. Entenberg did not have information regarding claimant's prior injuries, prior FCEs, or prior restrictions pre-dating this accident. The arbitrator awarded permanent total disability (PTD). The Commission reversed and the circuit court confirmed the Commission's decision.

On appeal, the Appellate Court stated an employee is not entitled to a PTD award if he is qualified for and capable of obtaining gainful employment without seriously endangering his health or life. It explained an odd-lot theory exception, where a PTD award is proper if a claimant's disability is limited in nature so that he is obviously unemployable, or if there is no medical evidence to support a claim of disability. To prove the odd-lot theory, the claimant must prove: (1) diligent but unsuccessful attempts to find work; or (2) that because of his age, skills, training, and work history, he will not be regularly employed in a well-known branch of the labor market.

The Appellate Court agreed with the Commission's characterization of claimant's job search logs. The Commission stated the search "was nothing more than farcical." The Commission noted the logs revealed repeated attempts to contact the same employers. The court added many of the logs are from "cold" calls copied from the Yellow Pages or White Pages. The court explained, even if it believed claimant made these calls, it was not a reasonably calculated search to lead to available employment. The court also indicated claimant never attempted to locate an employer who solicited applications and admitted none of the employers were hiring. It was suspect of claimant's retracted testimony, a year later, regarding whether the employers were hiring. The court noted claimant's log where he claimed to have filled out 12 in-person applications and made 21 calls in one day was unbelievable for a serious job search. Also no weight was given to Ms. Entenberg's report as it was based on claimant's job search logs. The Appellate Court confirmed.

Knezevich v. Ill. Workers' Comp. Comm'n, 2017 IL App (3d) 160208WC

Q: Is an employer's evidence of a doctor's opinion that the claimant's work was not connected to the injury and presentation of other risk factors sufficient to rebut the presumption under 820 ILCS 305/6(f)?

A: Yes. The Court of Appeals explained § 820 ILCS 305/6(f) does not provide a strong presumption, but presents an ordinary rebuttable presumption, which requires the employer to offer some evidence sufficient to support a finding that something other than a claimant's occupation caused his/her condition. The 42-year-old claimant was a firefighter for 15 years who was 265 pounds, stood 6'1' tall, and recently switched to an

e-cigarette from smoking one to one and a half packs day since the 1990s. He suffered from cardia arrest, due to an underlying coronary artery disease, on February 5, 2014. Claimant claimed a rebuttable presumption, under § 820 ILCS 305/6(f), which provides

> "any condition or impairment of health of an employee employed as a firefighter, emergency medical technician, or paramedic which results directly or indirectly from … heart or vascular disease or condition … resulting in any disability … to the employee shall be rebuttably presumed to arise out of and in the course of the employee's [employment]."

One doctor opined the occupational exposure could have played a role in this case, but stated claimant had additional risk factors including obesity, family history of coronary artery disease, and a history of smoking. He further explained the cardiac event did not have to be provoked by activity for it to occur, but could have happened at rest. Another doctor stated working as a fireman could be a risk factor, but was dependent on occupational exposure. The claimant did not provide any evidence of his exposure. Thus, he opined the 20-year smoking history was probably the major cause of the atherosclerosis. He further stated the cold air could have triggered the cardiac event. The arbitrator decided the employer successfully rebutted the presumption. The arbitrator also discounted the opinion that an occupational exposure could be a factor due to the lack of evidence of claimant's actual exposure. The Commission and circuit court confirmed.

On appeal, the claimant argued the employer must show more than other potential causes, without first excluding occupational exposure, to rebut the § 820 ILCS 305/6(f) presumption. After reviewing the statute and legislative history, the Appellate Court determined § 820 ILCS 305/6(f) involves an ordinary rebuttable presumption only requiring some evidence sufficient to support a finding that something other than claimant's occupation caused the condition.

The Appellate Court confirmed the Commission's decision. It reasoned one doctor's testimony was in opposition to the presumption that claimant's condition arose out of his employment and claimant had multiple risk factors for developing coronary artery disease, including a 20-year history of smoking one to one and a half packs a day, family history of heart disease, possible diabetes, and obesity. The court rejected the argument that an employer must eliminate any occupational exposure as a possible contribution to claimant's condition, because nothing in the statute or legislative debated indicates as such.

Johnston v. Ill. Workers' Comp. Comm'n, 2017 IL App (2d) 160010WC

Q: Will a good faith settlement be upheld when the settlement allowed an employer to pay less than his expected chare of liability to dismiss a contribution claim and have a possibility to get paid more through its section 5(b) lien, than the employer paid to dismiss the workers' compensation claim?

A: Potentially, yes. A claimant was injured in a work-related accident while working for his employer Huen, an electrical subcontractor. Jade, a carpentry subcontractor, was at fault for claimant's injury. The claimant filed a workers' compensation claimant against Huen and personal injury lawsuit against Walsh and Jade. Jade filed a contribution claim against Walsh, and both Jade and Walsh filed contribution actions against Huen.

Walsh and Huen reached a settlement with claimant, where all claims, including the contribution claims, would be dismisse din exchange for Walsh paying claimant $278,334, and Huen paying claimant $200,000 regarding the workers' compensation claim and $21,666 for all other claims in this matter. Claimant also was to receive a Medicare Set-Aside Account and temporary total disability benefits, funded by Huen, until the settlement was approved. Huen also waived its lien rights if the amount collected by the claimant, via settlement with Jade, was less than $4 million. The claimant offered Jade a settlement under the same terms offered to Walsh, but Jade denied. The circuit court approved the settlement and dismissed with prejudice all claims against Walsh and Huen.

On appeal, Jade argued the settlement was not made in good faith because it allowed Huen to limit Jade's set-off to $21,666 while increasing its potential workers' compensation lien to over $56,000 such that Jade could be forced to pay more than its pro rata share of liability in the event of a large verdict. The court first stated The Contribution Act provides a tortfeasor who settles in good faith with the injured party is discharged from contribution liability. The only limitation on the settlement is that it be in good faith, which is determined by balancing the policies of promoting the encouragement of settlements and the equitable apportionment of damages among tortfeasors. The court indicated the settlement encouraged the balance between the two policies because the lien provision encouraged both the claimant and Jade to settle for less than $4 million by allowing the plaintiff to keep all of the settlement and Jade to pay a more equitable apportion of the damages. Thus, The Appellate Court upheld the settlement.

It further stated manipulation of an allocation can be evidence of bad faith in a settlement negotiation, but is not per se bad faith. The Court noted Huen provided consideration for the dismissals, and Jade presented no evidence or argument that the apportionment of Huen's payments did not actually reflect the realities of Huen's respective and potential liability. It reasoned an employer is not required to waive its section 5(b) lien with respect to non-settling defendants nor does the failure of an employer to waive its lien render a settlement invalid. The court explained if the position of a non-settling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle.

Roberts v. Walsh Contr. Co., 2017 IL App (1st) 161871U

Q: Can an employer stop temporary total disability (TTD) payments when a claimant is on light-duty and not at maximum medical improvement (MMI), and their restrictions do not hinder the claimant from reentering the workforce or employment?

A: Yes. A claimant was injured while working as a transportation operator when the crane's chainmail strap snapped loose and hit him in the face and chest on September 11, 2012. The claimant returned to work on October 16, 2012, where he requested to not be assigned to any crane duties and the employer complied. He returned to full duty on December 14, 2012, but still treated for his face and mouth. Due to claimant's anxiety towards cranes, a doctor recommended a restriction of no crane operation for six to eight weeks in July 2013, and another doctor recommended the claimant avoid operating a crane for at least one year in August 2013. Claimant was fired on October 13, 2013, due to a violation of his collective bargaining agreement.

Since the time claimant returned to work in October 2012, he remained in his transportation operator position and only incurred a few encounters of operating a crane, and none of which occurred after July 23, 2013. The employer also offered a janitorial position and claimant declined. In January 2014, claimant's doctor released him to full duty with the restriction that he not be required to operate a crane for six months. Claimant's vocational rehabilitation counselor testified based on the claimant's job description, experience, and medical evaluations, the crane restriction and continuing dental treatment did not preclude him from reentering the work force. The specialist also stated there were various employers in the area who were hiring for positions that matched the claimant's qualifications, salary, and no crane operation restriction. The arbitrator found the claimant was entitled to receive temporary total disability (TTD) benefits because claimant was not found to be at maximum medical improvement (MMI) nor had been released to unrestricted full duty work. The Arbitrator also noted claimant continued to treat for his injuries and continued to experience symptoms connected with his related injury.

The Commission reversed the arbitrator's decision and stated the proper inquiry is to determine whether the claimant's condition had stabilized and explained MMI is not dispositive on this issue. The Commission reasoned the claimant was working full duty within his job classification until he was terminated, it was not necessary for the employer to either modify an existing job or create an accommodating job on account of the claimant's work restrictions, and the employer would have allowed claimant to continue work indefinitely without any mandatory crane exposure. The Commission also noted the rehabilitation specialist found several employers who offered jobs which conformed to claimant's restrictions, claimant admitted to having prospective job opportunities, and claimant offered no evidence that his crane operation restriction or continuing dental treatment significantly limited or precluded him from reentering the workforce. The circuit court reversed.

On appeal, the Appellate Court explained a TTD award is proper when the claimant cannot perform any services except those for which no reasonably stable labor market exists The appellate Court also clarified *Interstate Scaffolding* does not state an employee is entitled to TTD benefits unless he has reached MMI, but states TTD benefits rely on whether the claimant's conditions had stabilized to the extent that they were able to reenter the workforce. The court confirmed the Commission's decision and stated there

was ample evidence to support the claimant's work-related injuries had stabilized to the extent that he was able to reenter the workforce.

Holocker v. Ill. Workers' Comp. Comm'n, 2017 IL App (3d) 160363WC

Q: Is it a compensable injury if an employee gets an infection causing an amputation, after allegedly getting a blister at work and popping it at home using a needle?

A: Yes. In *Dunteman v. The Illinois Workers' Compensation Commission, 52 N.E.3d 718 (IL App. 4th 2016),* the Illinois Appellate Court held that but for the work activity causing the blister, the infection would not have occurred. In Dunteman, the claimant was initially diagnosed with diabetes in 2009. On June 25, 2011, he noticed a water blister under the callus on the bottom of his left foot between his third and fourth toes. At that time, he was working as a truck driver for the Employer, driving a 10-speed truck, which required him to strike a manual clutch with his left foot about 200 times per shift. He stated he struck the clutch forcefully with the bottom of his left foot because the clutch did not engage properly. He testified that he spent 70% of the workday driving the truck and 30% exiting the vehicle to perform tasks. When exiting the truck, he stepped onto a steel, ridged step and spun on the left upper portion of his foot, in the same area his foot struck the clutch. Once the claimant noticed the blister, he boiled a needle and used it to pop it. He testified that pure 'water" drained from it. Shortly after that, he presented to his doctor worried about the area getting infected. A week later, he presented to St. Mary's Hospital where he was diagnosed with severe cellulitis of the left extremity. At that time, he underwent an incision and drainage of the deep abscess of the left foot. He was discharged from the hospital but the following month presented again complaining of continued pain. It was noted that the distal aspect of his third toe was complete "gangrenous." The claimant then underwent a left third toe amputation. The treating physician opined that the claimant's job put him at rick for ulcerations because had to use his left foot to clutch and get in and out of the truck. The claimant's IME physician, Dr. Coe, stated that there was a causal relationship between the claimant's work and the infection in his foot but admitted that "the infection arose from the penetration of the blister in his left food with a needle." The claimant underwent and IME at the Employer's request whit Dr. Chiodo who concluded that there were no causal relationships between the need for the surgeries and the claimant's work activities.

At the initial hearing, the Arbitrator found the claimant's injuries arose out of and in the course of employment and that the current condition of ill-being was casually related to the accident. The Employer appealed and the Commission overturned the Arbitrators finding. The Claimant appealed. On appeal, the Employer argued that the claimant's popping of the blister was an independent intervening cause. However, the Appellate Court was not persuaded. They held that a review of the record demonstrated that there was a but-for relationship between the claimant's blister and subsequent infection. They went on to explain that even though the claimant popped the blister thereby causing the infection, he would not have had the opportunity to do so, if the work activities hadn't

caused the blister. They stated that the claimant's employer was a cause of the current condition, and thus, the condition and injury was compensable.

Dunteman v. The Illinois Workers' Compensation Commission, 52 N.E.3d 718 (IL App. 4th 2016).

Q: If an employer requires its employees to wear protective shoes, but does not mandate what kind or brand, and an employee falls due to the lacing on her shoes, can the employee successfully argue that the injury was due to an increased risk related to her employment?

A: Probably not. In *KVF Quad Corporation v. The Illinois Workers' Compensation Commission*, 2016 IL App. 3d 150139WC-U, the Court of Appeals held that the claimant failed to prove she was exposed to an increased risk of falling by virtue of her employment. In KVF, the claimant testified that she felt dehydrated and weak so she walked into her work office to get a drink of water. She testified that when she turned to get a bottle of water out of the refrigerator, the lace on her left boot hooked on the hook on her right boot and her "legs just went down." At the time she fell her arm was extended out. The claimant also testified that the Employer required its employees to wear footwear with a steel toe and metatarsal guard. The Employer would reimburse employees up to $100 per year for footwear that met its steel toe and metatarsal guard requirement. The employer provided a list of three stores known to carry quality footwear, It did not require employees to purchase their footwear from these stores and did not require them to buy a particular type of footwear. The claimant testified that she chose her specific boots because they offered more protection and were more comfortable. She stated she did not wear them outside of the workplace.

At hearing, the Arbitrator held that he claimant failed to prove she had sustained an accident out of and in the course of employment. The Commission reversed the decision and specifically held that "even though [claimant] chose the type of work boot she was wearing on the date of injury, she was nevertheless required to wear steal toed boots with metatarsal supports and would not have been wearing them 'but-for' her employment." The Circuit Court confirmed the Commission's decision. The Appellate Court held that the claimant fell as a result of her left boot lace catching on the hook of her right boot and that such a risk was not one inherent in her job duties in the shipping and receiving problem. They explained that the risk of tripping as the result of shoelaces catching on a hook on the opposite shoe was a neutral risk. They further explained that although the Employer required its employees to wear footwear with a steal toe and metatarsal guard, they did not mandate a specific type of shoe. Depending on that, the stated that neither the workplace conditions nor the employer's steel toe policy contributed to the risk of the claimant falling as a result of her left boot lace catching on a hook located on her right boot. They concluded that "[t]his could have happened anytime or anywhere."

KVF Quad Corporation v. The Illinois Workers' Compensation Commission, 2016 IL App. 3d 150139WC-U

Q: If an employee is driving to work for a required training, and is injured in a motor vehicle accident, are the injuries compensable?

A: No. In *Allenbaugh v. The Illinois Workers' Compensation Commission and the City of Peoria Police Department*, 2016 IL App. (3d) 150284WC, the Appellate Court held that the claimant was not within the scope of employment when he was injured while driving to a mandatory police training event outside of his normal work hours. In Allebaugh, the claimant was a patrol officer who typically worked second shift and would drive between 65% and 75% of his shift. On march 5, 2013 he was ordered to report at 8:00am for mandatory training. While enroute to the police station, an oncoming vehicle crossed the center line and struck the claimant's vehicle on the left side. Due to the fact it was snowing, his vehicle was forced into a ditch and struck several trees. He sustained injuries to his back and neck.

The Arbitrator found the claimant had sustained a work related injury because he was ordered to perform mandatory training outside of his usual duty hours and was directed to bring various police items to the training sessions. The Commission reversed explaining that the fact the training claimant was required to attend occurred outside of his usual duty hours was not sufficient to avoid the rule that generally, injuries sustained to and from work were not compensable. It noted that the claimant was not required to drive any particular route and that he was not performing any activities of employment at the time of the accident. The claimant appealed and argued that the employer remained in control of him by requiring him to bring police gear to training and report to the police station in a winter storm. However, the Appellate Court pointed out that all employees were required to go to work and thus, the claimant was engaged in a normal commute. Furthermore, they held that the claimant could not be classified as a traveling employee because he was not driving as part of his shift at the time of the accident. They explained that there was not authority to support the proposition that "where an employee regularly drives as part of his duties, his or her commute is brought within the scope of employment."

Allenbaugh v. The Illinois Workers' Compensation Commission and the City of Peoria Police Department, 2016 IL App. (3d) 150284WC

Q: If an employee is injured, released and sent back to work, but then suffers an unrelated car accident prior to her IME, is the employer still on the hook for the treatment after the car accident?

A: It depends. In *Latasha Steele, v. The Illinois Workers' Compensation Commission* 2016 IL App. (1st) 143665WC-U the claimant worked as a cashier and stocked shelves. On June 29, 2010, while on the job, she slipped and fell on a wet floor injuring her low back, left leg, left knee, neck and face. She underwent an MRI of the lumbar and cervical spine a week later which showed a herniated disk at L5-S1. She received some injections and physical therapy and was released at MMI. She returned to work on August 23, 2010. Following her return to work, she followed up with one of her treating doctors, complaining

of an aggravation of her low back pack as well as bilateral buttock pain radiating down her leg. She received another ESI at L5-S1 on December 22, 2010. On January 6, 2011, she returned to the doctor who noted that she was doing better and would be able to return to normal work in two weeks. On January 18, 2011, she was involved in a non-work-related car accident where her car was rear-ended by another vehicle. On April 29, 2011, the Employer/ Insurer sent her out for an IME. The IME physician testified that the work accident was not a cause or contributing factor to treatment needs after the car accident and that her condition changed significantly after the car accident as she had been "functionally back in the workplace" before the car accident. The treating doctor stated that an MRI taken after the car accident demonstrated her condition had not changed and testified that his records showed the claimant had not been "functionally back in the work place" because at the time of the accident, she was not working.

At hearing, the Arbitrator found the claimants low back condition was related to her original work accident. On appeal, the Commission modified the decision of the Arbitrator based on the fact that the car accident broke the chain of causation. They explained that the car accident severed the connection between the claimant's condition and her original work injury, such that the car accident may have been to blame for the medical problems. Therefore, the Commission cut off TTD and medical on the date of the accident. The Circuit Court upheld the decision of the Commission. Subsequently, the claimant appealed and the Appellate Court held in favor of the Claimant. They concluded that the car accident did not break the chain of causation and depended on the treating physicians conclusions.

Latasha Steele, v. The Illinois Workers' Compensation Commission 2016 IL App. (1st) 143665WC-U

Q: Is an Employer/Insurer entitled to a credit for a previous out-of-state workers' compensation settlement to the same body part in an Illinois workers' compensation case?

A: Not necessarily. In *David Foy, Petitioner*, 14 IL. W.C. 42464 (Ill. Indus. Com'n June 10, 2016), the claimant injured his knee while working for the Employer, resulting in a medial meniscus tear, which required surgical repair. Prior to the accident, the claimant testified that he injured that same knee in Florida and that he had surgery, consisting of a medial meniscus repair. However, following the surgery, the claimant testified his symptoms had resolved. Medical records indicated that the treating surgeon provided him with a 3% impairment rating of the leg. The claimant furthered testified that he received a settlement from the Florida workers' compensation matter, but could not recall what it was for, but did concede that it was for approximately $30,000.00.

The Commission affirmed the Arbitrator's ruling that Employer/Insurer were not entitled to a credit for the previous knee settlement because Employer/Insurer did not submit evidence of the prior settlement making a reference to a specific work-related injury. Instead, Employer/Insurer entered into evidence a motion for attorney's fees setting forth the settlement amount. However, the documents entered into evidence did not contain

any information about any injured body part or the extent thereto; did not indicate how the settlement amount provided compensation for any loss experienced by the claimant; and, in short, contained none of the type of information a settlement contract or decision from Illinois for a workers' compensation claim would contain.

As such, the Commission noted that the party claiming the credit has the burden of proving entitlement to said credit. And, in the instant matter, there was no evidence presented that indicates the nature and extent of any alleged prior permanent partial loss to a member of the claimant, nor was there any evidence as to how this alleged loss may have been compensated. The Commission noted that there was no way to know, based on the evidence, whether the claimant suffered a prior permanent partial loss in Florida for which he was compensated, and, if so, what the extent of that loss or compensation for that loss was. Therefore, the Commission affirmed the Arbitrator's finding that, after appropriate consideration, no credit will be awarded to Employer/Insurer.

David Foy, Petitioner, 14 IL. W.C. 42464 (Ill. Indus. Com'n June 10, 2016)

Q: Is an injury compensable when an Employee is walking into work and attacked by geese in her work parking lot?

A: Probably not. In *Nora Crandall, Petitioner*, 12 IL. W.C. 39433 (Ill. Indus. Com'n Apr. 4, 2016), the claimant was arriving at work at 6:15am and parked her vehicle in the parking lot of the building. She was carrying her purse, a briefcase that contained files, and her keys, when she exited the vehicle and a gaggle of geese attacked and attempted to bite her while she was attempting to enter the building. The claimant attempted to scare them away by swinging her purse, but a goose struck her, which caused her to fall to the pavement, causing compression fractures in her lumbar spine and left knee pain.

The Commission affirmed the Arbitrator's decision not to award benefits to the claimant because the claimant failed to prove that her accident arose out of and in the course of employment with Employer. The Commission determined that the claimant's encounter with the geese was not a risk distinctly associated with her employment or a risk to which she was exposed to a greater degree than the general public. Although the claimant arrived earlier than most, there was no evidence suggesting that exposed her to a greater risk than the general public, as geese are not more likely to attack her at that time than any other. The Commission also found persuasive that other members of the general public arrived at the building, on the date of injury, at approximately the same time as the claimant and they were not injured. Therefore, the claimant was not exposed to a greater risk of being confronted by the geese at this time. Finally, Employer did not direct the claimant where to park and did not designate a parking space for the claimant, which was used by the general public. Therefore, the Commission affirmed the Arbitrator's finding that the claimant was exposed to the same degree of risk as the general public and denied compensation.

Nora Crandall, Petitioner, 12 IL. W.C. 39433 (Ill. Indus. Com'n Apr. 4, 2016)

Q: Is a repetitive trauma injury compensable when an Employee working as a switchboard operator, primarily separating documents and answering phones?

A: Possibly no. In *Robin Manning, Petitioner*, 13 IL. W.C. 39955 (Ill. Indus. Com'n May 23, 2016), the claimant was working as a switchboard operator at the County Circuit Clerk's office and had previously worked for the Employer performing various functions, such as working the counter, computer work, organization and filing materials, and answering telephones, for a total of 14 years. The claimant testified that her recent job duties included answering phones and separating documents. She testified that her job did not include a lot of typing. She began developing pain in January 2012 and nerve conduction studies revealed bilateral carpal tunnel syndrome in February 2013, which required surgical intervention. Employer/Insurer's IME expert opined that her carpal tunnel syndrome was not related to work because of the co-morbidities present, including her weight, age, gender, high blood pressure, high cholesterol, hypothyroidism, and smoking history.

The Commission affirmed the Arbitrator's ruling that the claimant as not entitled to compensation under the workers' compensation law because the claimant failed to prove that her job duties caused or contributed to her carpal tunnel syndrome diagnosis. Although the claimant testified that she would answer phones for approximately 50 minutes per day, the Arbitrator noted that she failed to testify as to how often she would sort papers and, instead, seemed to imply to the physicians that she believed it was the sorting and correlating of papers that contributed to her carpal tunnel syndrome. However, the Arbitrator determined that the performance of that duty that was not a risk of injury to which the claimant was exposed at a greater degree than a member of the general public. The Arbitrator noted that members of the general public make the same kind of hand motion on a daily basis and the rapidity of her performance of that activity was not made clear. Moreover, the amount of weight or the actual motion of the hands in performing this activity was certainly nothing greater than that to which a member of the general public would be exposed on a daily basis. As such, compensation was denied.

Robin Manning, Petitioner, 13 IL. W.C. 39955 (Ill. Indus. Com'n May 23, 2016)

