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**WORKERS' COMPENSATION
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Keeping You Updated on Significant Developments

15 ILWCLB 291 to 302

Noteworthy...

WCA covers city worker's stumble on uneven street surface

When a worker's employment requires that he use the street, his injuries attributable to risks of the street, such as tripping on an uneven surface, are compensable under the WCA 2

Wal-Mart employee proves lung problems attributable to workplace chemical exposure

Medical testimony indicating that a claimant's reactive airway disease and other breathing problems were likely related to her exposure to a chemical substance she inhaled at work is sufficient to support a benefit award under the WCA 2

Examining doctor provides convincing diagnosis of CWP

The fact that a doctor is not a B-reader will not necessarily discredit his interpretation of x-ray film as showing coal workers' pneumoconiosis, especially when, as here, the doctor is a pulmonary expert and has extensive experience reading x-rays 3

Assembly worker secures overtime in AWW calculation

In determining whether overtime wages should be included in a claimant's average weekly wage, the Commission has interpreted case law as requiring that only one of the bases set forth in *Freesen* must be proven 3

Employee fails to meet requirements to include overtime in AWW

When a claimant works varying amounts of overtime during 24 of the 52 weeks preceding her accident and fails to provide testimony or other evidence that she was required to work such overtime, the fact finder must exclude the claimant's overtime earnings from the average weekly wage calculation 4

Laborer's TTD award not limited by seasonal work

The seasonal nature of a worker's employment does not relieve the employer of responsibility for paying tempo-

rary total disability during the claimant's off-season period 4

Truck driver's successful surgery, limited restrictions warrant lowering PPD award

In awarding permanent partial disability under Section 8(d)2, the fact finder should consider whether the claimant underwent successful surgery, the exertion level he can perform at work, and whether he requires pain medication throughout the workday 5

Physical instructor for city suffers permanent damage from chemical burn

A claimant's chemical burn to her right foot, which results in permanent nerve damage, numbness and pain, merits a permanent disability award for 22.5 percent loss of use pursuant to Section 8(e) 5

Employee's foot fracture warrants 30% PPD award

In determining the nature and extent of injury, the fact finder will likely find significant that the claimant required a substantial amount of time in her healing process, even if a preexisting multiple sclerosis condition may have impeded such process 5

Auto mechanic proves PTD under odd-lot category

A claimant's significant, bilateral upper extremity disability, along with multiple surgeries, untreated depression, limited education, and very limited work history is sufficient to fall within the odd-lot category of permanent total disability 6

Summary: The claimant was working in the basement of the defendant when her shoelace caught on a nail on a skid and she lunged forward. She suffered a nondisplaced fracture of the fifth metatarsal of her left foot. At the time of the accident, the claimant was under active care for multiple sclerosis. She denied ever falling because of her MS. She stated that her left foot hurts all the time and she still does not walk correctly. She wore a walking cast for three years. Six months before the hearing, she began wearing a brace to treat neuropathy in the left leg. The arbitrator found that the claimant sustained a 20 percent loss of use of the left foot under Section 8(e). The Commission modified the arbitrator's decision to increase the permanency award to 30 percent loss of use. In so holding, the Commission noted that the claimant was casted for two years and was then prescribed a brace to aid her in walking. It is not clear if the claimant's healing process was hampered by her preexisting MS condition, but regardless, the claimant required a substantial amount of time in her healing process. Also, the treating doctor had suggested surgery to correct the fracture, but the claimant declined. ■

claimant's test scores. Testing demonstrated that the claimant's dexterity was limited and that he was in the lowest 10 percent of the population for eye-hand coordination. It was reasonable to infer from these results that the claimant would have difficulty performing some of the routine duties of a security guard. Furthermore, even if the claimant secured a position as an unarmed guard, he would presumably have to interact with the public in stressful situations. However, the claimant's vocational expert warned against even conventional interaction in a customer service setting. The Commission also pointed to the claimant's age (50), multiple upper extremity surgeries, untreated depression, failure to progress beyond ninth grade, very limited work history, and relatively limited IQ as support for the odd-lot PTD award.

In a separate opinion, the dissenting commissioner noted that both vocational experts clearly testified that the claimant could work as an entry level security guard, despite any dexterity issues or coordination problems. Based on the vocational expert's testimony, the arbitrator's wage differential award should have been affirmed, the dissent argued. ■

Authority of Arbitrator

Permanent Total Disability

Auto mechanic proves PTD under odd-lot category

Case name: *Hollingsworth v. River Oaks Chrysler Plymouth*, 15 ILWCLB 300 (Ill. W.C. Comm. 2007).

Ruling: The Commission vacated the arbitrator's wage differential and instead found that the claimant fell within the odd-lot category of permanent total disability benefits pursuant to Section 8(f) of the WCA.

What it means: A claimant's significant, bilateral upper extremity disability, along with multiple surgeries, untreated depression, limited education, and very limited work history is sufficient evidence to find that a claimant falls within the odd-lot category of permanent total disability.

Summary: The claimant sustained bilateral carpal tunnel syndrome and left lateral epicondylitis as a result of his work as an auto mechanic. He underwent multiple surgeries on his hands and arms and was unable to return to his former work. He was subsequently diagnosed with nonwork-related cancer in his right leg. Based on evidence that the claimant could obtain work as an entry level security guard, the arbitrator awarded a wage differential award under Section 8(d)1. Upon review, the Commission modified the permanent disability award, finding the claimant entitled to permanent total disability benefits under the odd-lot category rather than a wage loss award. The Commission found the opinion of the defendant's vocational expert — that the claimant could work as a security guard — to be unrealistic in light of the

Jurisdiction

Legal secretary's mistake doesn't excuse late filing

Case name: *Arocho v. Life Source Blood Services*, 15 ILWCLB 301 (Ill. W.C. Comm. 2007).

Ruling: Because the claimant's motion for reinstatement was filed more than 60 days after receipt of the notice of dismissal, the arbitrator lacked jurisdiction to reinstate the matter.

What it means: A claimant's excuse that a secretary at his attorney's office misfiled or discarded the notice of dismissal is insufficient grounds to grant jurisdiction to an arbitrator to consider a claimant's untimely motion for reinstatement, especially when the claimant's attorney failed to diligently pursue and monitor the matter.

Summary: This matter was dismissed for want of prosecution when the claimant's attorney failed to appear at the scheduled hearing. On June 7, 2005, the Commission issued a notice of dismissal. The claimant's attorney filed a motion to reinstate the matter Sept. 27, 2006. The arbitrator granted a reinstatement of the matter and denied the employer's motion to vacate the reinstatement. However, the Commission reversed, noting that Section 7020.90(a) of the Illinois Administrative Code provides the parties with 60 days from receipt of a dismissal order for want of prosecution to file a petition for reinstatement. In this case, the claimant filed for reinstatement more than 15 months after the date the Commission issued the dismissal