ILLINOIS STATE BAR ASSOCIATION

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Workers' Compensation Law

The newsletter of the Illinois State Bar Association's Section on Workers' Compensation Law

Editor's Comments

BY RICHARD D. HANNIGAN

We've now been on lockdown for over six weeks. Certainly seems like a longer period of time. Once we are allowed back into the court room I wonder if our courtroom attire will fit. Will my dress shoes be too tight since I've only been in slippers and tennis shoes?

Hopefully, everyone is safe and secure in their place. Times like this can lead to depression, anxiety, and stress as well as alcohol and substance abuse. You should keep in mind that if you or a friend are experiencing any of these difficulties the

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Appellate Jurisdictional Issues Involving Non-Final/ Interlocutory Orders: What Are They and How Can We Avoid Them?

BY BRAD ELWARD

One of the more common realities of handling cases before the Illinois Appellate Court, Workers' Compensation Commission Division, is that we all encounter cases of questionable appellate jurisdiction. In fact, a quick review of almost any set of decisions following an appellate court oral argument calendar will find at least one, if not two, orders dismissing a case for want of jurisdiction. See, *e.g.*, *Niekamp Truck Service, Inc. v. Illinois Workers' Compensation Comm'n*, 2020 IL App (4th) 190317WC-U, and *Montgomery v. Illinois Workers' Compensation Comm'n*, 2020 IL App (3d) 190351WC-U. Typically these rulings involve an attempted appeal of an interlocutory Commission or circuit court order – one that was not final and did not

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Illinois Lawyers Assistance Program is there to help you. You have paid for this with your attorney registration dues. LAP is a nonprofit entity operating under the Illinois Supreme Court. They offer 100 percent confidential, cost-free services for judges, attorneys, and law students dealing with any issues relating to depression, anxiety, stress, alcohol and substance abuse or addiction. They are here to support the profession. They are completely separate from the ARDC. They are 100 percent confidential. You can contact them at 1-800-LAP1233 or gethelp@illinoislap.org.

The Illinois Worker's Compensation Commission is operating with bare-bones personnel. Their goal is to keep everyone safe and yet keep our system moving forward. As attorneys we are always very protective of our staff. We will not tolerate clients that are abusive and overbearing. The same holds true with the Chairman Brennan of the Illinois Worker's Compensation Commission and his employees. In the past you could file your application for adjustment of claim, appearance or other documents at the Commission in Chicago and wait for them to be processed. That is no longer the case. A select few individual (lawyer staff or and lawyers) decided that they were more important than the commission personnel. They were not getting the service they thought they deserved. The state employees are under a lot of stress just like all of us. Because they have been subject to abuse Chairman Brennan has implemented a new rule. Your forms can be left at the Commission but you will not be allowed to pick them up until the following day. When interacting with these dedicated state employees please show them the respect that they are due and the respect that you would expect others to show you.

It is extremely important for you to visit the IWCC website at least once a day. You can sign up for their emails. The web address is https://www2.illinois.gov/sites/iwcc/Pages/default.aspx

In trying to move our cases forward Chairman Brennan has opened up the daily calls. You're not allowed any 19(b) petitions on these calls and they will be limited. Any cases where the parties have agreed to try it and have selected a hearing date for the following month will have an opportunity to be heard unless the quota of cases prior to the one called have closed the dates. Cases on the May call will be heard in June. My personal recommendation would be that the attorneys for the litigants complete the request for hearing form prior to their trial date. I recommend that it be signed and sent to the arbitrator that will hear the case. I would also advise that arbitrator the approximate amount of time it will take to try your case. That will give the arbitrator more information so as to optimize the amount of time he will spend on any given day and hearing as many cases as possible. Prior to appearing before the arbitrator in June you should go over your exhibits and agree as to what will be admitted. If there is an objection to a report and a deposition has not been completed I doubt that your case will be heard. Having the opportunity to prepare a case that you know will be going to trial in June also creates a better probability that you and your opponent will work things out and the trial will not be necessary.

This newsletter was put together with the assistance of Editor Timothy O'Gorman. Tim is with Keefe, Campbell, Berry, and Associates. The first article is one that you will have to save if you ever plan on taking a case through the circuit court and up to the appellate or supreme Court. Brad Elward was gracious enough to interrupt his retirement from Heyl, Royster, Voelker & Allen and offer excellent advice and a roadmap to determine whether the circuit court, appellate court, or supreme court lacks jurisdiction because it is not a final order or the proper papers have not been filed. This article can end up saving you a great deal of time and your client's money because it shows you how to file the appropriate motion to determine jurisdiction long before your briefs are

Workers' Compensation Law

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even filed. Former Arbitrator Christine Ory provides us with "an exit" review of her experience as a practicing workers' compensation attorney turned arbitrator. Robert Finley of Hinshaw and Culberson discusses an interesting case wherein there was a final award on a 19(b) hearing that came to be heard again on a subsequent 19(b) hearing. As it turned out the petitioner was working different jobs with separate identities. Herb Franks of Franks Gerkin & McKenna discusses a Rule 23 case which determines what one must prove when arguing that it is hazardous to step from a curb onto the grass and thereby creating an increased risk. Mark Jeep of Jeep, Jeep & Hauck deals with a case involving the denial of penalties for failure to authorize treatment. The decision is basically an affirmation of *Hollywood Casino – Aurora v. IWCC* with Justice Holdridge dissenting. Former chairperson, commissioner, arbitrator, and practicing workers' compensation attorney Joanne M. Fratianni discusses a case wherein the petitioner was denied benefits for lack of credibility. The petitioner's argument was that there was sufficient proof simply because he said it happened. As an aside I think we should all be thankful to Ms. Fratianni for the time she spent as Chairperson. The governor, during her tenure, wanted to collapse the Commission, change the rules and the law. She was the glue that held everything together for four years. Jack Linn of Linn, Campe & Rizzo discusses a case involving six separate injuries from September 15, 2006 through February 11, 2010 and manifest weight of the evidence. Timothy O'Gorman of Keefe, Campbell, Biery & Associates discusses the Rule 23 case wherein the petitioner could not keep his accident date consistent when giving the history of accident to different entities. Because of the state of Illinois shut down, I thought important to include an article by Judge E. Kenneth Wright, Jr., Erin Clifford, and Justice Michael B. Hyman dealing with the 19 ways to manage stress and avoid conflict while staying indoors.

The opinions expressed in this newsletter are not necessarily those of the Illinois State Bar Association or the members of this section council.

Appellate Jurisdictional Issues Involving Non-Final/Interlocutory Orders: What Are They and How Can We Avoid Them?

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dispose of all issues – or a failure by one party to perfect jurisdiction either before the circuit court or the appellate court. In almost every such case involving an interlocutory order, the case must be remanded. And in certain cases where the ground is related to subject matter jurisdiction, the case is dismissed. *See Conway v. Illinois Workers' Compensation Comm'n*, 2019 IL App (4th) 180285WC (petitioner failed to file notice of intent required by 805 ILCS 305/19(f)).

Most recently, in a Rule 23 order entered on April 21, 2020, the Appellate Court, Workers' Compensation Commission Division, dismissed an appeal from a circuit court order based on a lack of jurisdiction. In *Montgomery v. Illinois Workers' Compensation Comm'n*, 2020 IL App (3d) 190351WC-U, the Commission entered an order citing the employer's statutory duty to pay reasonable and necessary medical and incidental expenses, without specifying which of the claimant's purported expenses that the employer had to pay under that duty. The employer did not dispute that it was obligated by statute to pay "all outstanding reasonable and related medical bills" and "[a]ll bills for necessary and related treatment, attendance care and travel." It did, however, dispute *which* of the medical bills submitted were reasonable and necessary. The court found the Commission's order was interlocutory and un-appealable because it left that dispute unresolved. *Montgomery*, 2020 IL App (3d) 190351WC-U, ¶ 11. While Rule 23 Orders are not binding, they nevertheless do reveal a growing problem in workers' compensation appellate practice over the past few years denoted by a number of cases dismissed for want of jurisdiction.

This article will discuss some of the more common jurisdictional issues that arise in workers' compensation appeals, how to bring those jurisdictional issues to the court's attention early in the appeal process, and how, when appropriate, to obtain permissive appellate review of interlocutory orders. When a case with questionable jurisdiction goes all the way to oral argument and the first question asked of counsel by the appellate court is—"Counselor, how do we have jurisdiction?" —we've waited too long to raise the issue. The court's resources are limited and their time is valuable. Moreover, your client wants a quick resolution of the claim and you have just delayed the case by as many as six-to-nine months and perhaps written a brief unnecessarily. Filing an appeal from an interlocutory order means the case must be remanded. Yes, the materials may be reused on a second appeal, but there are times when the ensuing remand resolved the issues and thus, the issues are no longer issues for appeal. Moreover, the issues may have changed. In the end, this means unnecessary costs and delays.

What Are Interlocutory Orders?

Non-final decisions of the Commission or the circuit court are considered interlocutory—not final—and are not immediately appealable. *Honda of Lisle v. Industrial Comm'n*, 269 Ill. App. 3d 412, 414 2d Dist. 1995). Stated another way, only final decisions of the Commission or circuit court are appealable. *Bechtel Group, Inc. v. Industrial Comm'n*, 305 Ill. App. 3d 769, 772 (2d Dist. 1999). "A judgment is final if it determines the litigation on the merits, and it is not final if it leaves a case pending and undecided." *Supreme*

Catering v. Illinois Workers' Compensation Comm'n, 2012 IL App (1st) 111220WC, ¶ 8. Another interlocutory concern involves an order of the circuit court which reverses a Commission's decision and remands a matter to the Commission is interlocutory and not appealable at that time. *Wood Dale Electric v. Illinois Workers' Compensation Comm'n*, 2013 IL App (1st) 113394WC, ¶ 8; *Jones-Richard v. Illinois Workers' Compensation Comm'n*, 2020 IL App (1st) 191130WC-U, ¶ 27. In this latter scenario, does the remand automatically make a circuit court order non-final? Or are there other considerations?

While these statements seem straightforward and easy to apply, in practice it can often be much more difficult to ascertain the finality of a decision. And to add to this uncertainty, case law exists stating that, if the remand is solely to conclude simple calculations or other uncontroverted matters, the remand does not impact the finality of the order. Thus, if the circuit court instructions on remand require only that the Commission "act in accordance with the directions of the court and conduct proceedings on uncontroverted incidental matters or … make a mathematical calculation," the circuit court's order is final for the purposes of appeal. *Edmonds v. Illinois Workers' Compensation Comm'n*, 2012 IL App (5th) 110118WC, ¶ 19. For example, in *Williams v. Industrial Comm'n*, 336 Ill. App. 3d 513, 516 (2d Dist. 2003), the court held, "If, however, the agency on remand has only to act in accordance with the directions of the court and conduct proceedings on uncontroverted incidental matters or merely make a mathematical calculation, then the order is final for purposes of appeal." Similarly, in *Charter Dura-Bar, Inc. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (2d) 141240WC-U, the circuit court confirmed the Commission's award of medical expenses and the employer's credit, but remanded the case back to the Commission with instructions to revise and reduce the amount the employer owed to reflect the credit. The employer appealed, which was deemed proper because the remand was simply for a mathematical computation.

Some of the more common areas of workers' compensation involving potentially interlocutory orders are vocational rehabilitation, medical expenses, and motions to dismiss. In *Supreme Catering*, 2012 IL App (1st) 111220WC, ¶18, the appellate court held that a Commission decision remanding a case to the arbitrator for further proceedings on the issue of vocational rehabilitation is not a final order. In *Dial Corp. v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 120332WC-U, ¶ 8, the appellate court held it was without jurisdiction to consider an appeal where the circuit court vacated the Commission's award of medical expenses and remanded the case to the Commission to determine if the claimant had any unpaid out-of-pocket expenses. And in *Centegra Health Systems v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 121421WC-U, ¶ 8, the appellate court held the appeal of the Commission's denial of a motion to dismiss was not a final and appealable order. More recently, the appellate court dismissed an appeal where the circuit court failed to rule on all of the issues presented to it and instead remanded issues back to the Commission. *Niekamp Truck Service, Inc.*, 2020 IL App (4th) 190317WC-U, ¶ 11.

How Do We Raise Jurisdictional Issues Before the Appellate Court?

Jurisdictional flaws can be raised at any time, even by the court *sua sponte*. *St. Elizabeth's Hosp. v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 883 (5th Dist. 2007). But out of concerns for judicial economy, it is preferable to address these issues as soon as possible. The first inquiry of every appeal assessment from a Commission decision or from a circuit court decision must ask this question – is the order final and appealable or is it interlocutory. If the order is final, we file our review/appeal.

If finality is not clear, the question becomes, "How do I protect myself in the event my assessment of finality is wrong?"

If it is clearly interlocutory, the question becomes, "How can I get this issue before the appellate court for interlocutory review?" We will discuss these latter two scenarios in turn.

Finality unclear. What if you reviewed the circuit court order and you just are not certain if it is a final or interlocutory order?

If jurisdiction is questionable or unclear, counsel should always err on the side of caution and file a notice of appeal under Supreme Court Rule 303. Once the appeal is docketed before the court, however, counsel should immediately file a motion with the appellate court asking it to clarify jurisdiction. I have used this approach on numerous occasions and it is much better than not appealing and wondering a jurisdictional error was committed. Admittedly, this approach was once used before a circuit court in reference to a questionable Commission order. At the hearing on the motion, the circuit court judge asked, "Why did you file an appeal if you don't belief that this court has jurisdiction?" My answer was simple and honest – "Because my malpractice carrier gives more clout to your robe than it does to my opinion." He laughed and ruled on the motion, finding the Commission order was not final and remanding the case for further proceedings. I slept better that night.

What should the motion look like?

For motions requesting appellate court clarification of jurisdiction, all motions should be brought pursuant to Supreme Court Rule 361, the general appellate motion provision. The motion can be entitled, "Motion to Clarify Jurisdiction," and should include the following: (1) a statement of the relief sought; (2) a statement of the potential jurisdictional issue; and (3) appropriate authority and citations to the Record as needed. The grounds can be simple – "the circuit court's order, while remanding the matter back to the Commission, did so only for the purposes of re-calculating the petitioner's benefits and not for the resolution of a substantive issue." Or, it could state, "The circuit court's order, while confirming the Commission's award of temporary benefits, remanded the case for further proceedings on the reasonableness of medical expenses submitted by the petitioner."

As with all appellate court motions, you should include as an appendix to the motion all supporting documents necessary for the court to makes its decision and you must include a proposed order, stated in the

alternative, as required by Rule 361(b)(2). The supporting documents should include the order being appealed from as well as all other pertinent documents, pleadings, and orders from the file that affect the potential jurisdictional issue. These documents must be in the official court Record, however, and Record-stamped documents should be used. Rule 328. If the Record on Appeal has not yet been filed in the appellate court, include an authenticating affidavit pursuant to Rule 328 and make sure the copies attached have the circuit court record ("C. – XX") stamp clearly visible.

Filing a motion to clarify early in the appeal can save time and money on an otherwise interlocutory appeal and avoid the awkward conversation with a client explaining why the appeal was dismissed. Using this motion will also save the court from preparing for and holding oral arguments on a case that is not yet ripe for appeal.

What if our opponent's appeal is from a potentially non-final order?

The above discussions consider the jurisdictional issue from an appellant's perspective. But what if you determine that your opponent has filed an appeal from a non-final order? In that event, you should immediately move to dismiss the appeal for want of jurisdiction using the same overall format set forth above, but from the perspective of a motion to dismiss. The appellate court welcomes early disposition of jurisdictional issues relating to non-final orders as a means to protect its hectic docket. Although the same type of motion should be filed where the want of jurisdiction stems from a non-compliance with section 19(f), many of these issues are nonetheless taken with the case and heard at oral argument. In *Conway*, for example, the appellate court considered the jurisdictional issue involving the failure of counsel to file a section 19(f) notice of intent and issued a full written decision on the non-compliance. *Conway*, 2019 IL App (4th) 180285WC, ¶¶ 21, 22. This issue, which called for legal interpretation of a statutory requirement, necessitated the court's consideration of a substantive issue – whether the failure to file the notice of intent or an affidavit of filing the notice of intent – constituted strict compliance with section 19(f).

How Can We Get Interlocutory Orders Before the Appellate Court?

If we are evaluating a circuit court order that appeals non-final and interlocutory, are we left with a long remand and an appeal down the road? How can we get a non-final/interlocutory circuit court order before the appellate court? Fortunately, there are limited options available to counsel. Unfortunately, those options are discretionary with the courts. So what are these interlocutory options?

Rule 306 Permissive Interlocutory Appeal

Supreme Court Rule 306(a)(6) provides a means to seek interlocutory review for certain circuit court orders remanding a proceeding for a hearing *de novo* before an administrative agency. Since the Commission is an administrative agency, Rule 306(a)(6) can be used in limited circumstances to obtain an immediate interlocutory appeal or a circuit court order remanding a matter to the Commission for further factual findings. See, e.g., *Trunek v. Industrial Comm'n*, 345 Ill. App. 3d 126, 128 (1st Dist. 2003). When Rule 306(a)(6) applies, party seeking interlocutory appeal has 30 days from the order of remand within which to file a petition for leave to appeal pursuant to Rule 306(a)(6) with the appellate court. See Rule 306(a) for details, as well as IICLE *Civil Appeals*, Ch. 11, "Interlocutory Appeals of Certain Orders" (2018). Rule 306 can be used to resolve questions of law and of fact.

Rule 308 Permissive Appeal from a Certified Question of Law

A second potential means to obtain interlocutory appeal is found in Supreme Court Rule 308(a), which governs appeals from certified questions of law. Rule 308(a). While this method is much more limited than the review available under Rule 306(a), it is nonetheless an option in workers' compensation cases involving a legal question. See *Hydraulic, Inc. v. Industrial Comm'n*, 329 Ill. App. 3d 166, 172-173 (2d Dist. 2002) (using Rule 308(a) to certify legal questions concerning the application of the *Petrillo* doctrine). *See also PPG Industries v. Illinois Workers' Compensation Comm'n*, 2104 IL App (4th) 130698WC). If a Rule 308(a) petition is sought, the initial filing (a motion asking for certification) must be filed with the circuit court asking for certification of the legal question, followed by a Rule 308(a) petition for leave to appeal filed in the appellate court.

Final Thoughts

In closing, potential jurisdictional issues should be brought to the appellate court's attention as soon as practicable. It is in everyone's interest, including that of the appellate court, to have jurisdictional issues clarified early so as to save money and time on an appeal from an otherwise non-final order. Moreover, it is important that counsel always err on the side of caution when jurisdictional seems questionable, and when this arises, file the notice of appeal and ask the appellate court for guidance. *Sua sponte* dismissals for want of jurisdiction should rarely occur.■

***Brad Elward** is a retired attorney who spent 30 years handling workers' compensation appeals. He now works as an adjunct professor at Bradley University and the University of Illinois, College of Law. He is past president of the Illinois Appellate Lawyers Association, the co-general editor of the IICLE Civil Appeals volume (2018), and the author of Chapter 15, "Workers' Compensation Appeals." He handled over 350 appeals with over 240 oral arguments before the Illinois appellate court, Illinois Supreme Court, seventh circuit court of appeals, and the Missouri appellate court, and has authored over 50 articles on appellate-related topics.*

Lessons Learned

BY CHRISTINE M. ORY

My experience in the Illinois Workers' Compensation arena began a few months after the 1975 Amendment to the Illinois Workers' Compensation Act, when I was hired by Hartford Insurance as a claims adjuster. It was at this time I had the good fortune to come to know attorneys Frank Wiedner, Jay Shapiro, Roy Peregrine, and Dale Bruckner, who provided defense of Hartford's workers' compensation claims. These gentlemen's expertise and knowledge of workers' compensation law were invaluable to me. All of them where great mentors to me even before I became an attorney.

Frank Wiedner was a gentleman's gentlemen; an elder statesman of the profession. He was editor of the ISBA WC Section newsletter for over 25 years. His work on the newsletter, as described by the present newsletter editor, Rich Hannigan, was that of a law school exam wherein he used fictitious names to provide a case law update. I was saddened to learn Frank passed on the day I retired.

Jay Shapiro brought laughter to the practice. Always the jokester. He may be disarming with his humor, but he knew the law and how to try the case. I also have Jay to thank, for reintroducing me to a childhood friend at a WCLA Christmas party, Joann Fratianni, whom I had not seen in almost 15 years.

As a new attorney, I had the good fortune of being hired by the firm of Peregrine, Stime, Newman, Ritzman and Bruckner. I could not have asked for better mentors. Dale Bruckner was the best legal writing instructor and Roy Peregrine taught me all aspects of the law and a lot about human nature. Of course, having been a claims adjuster for eleven years, my view of petitioners, and their attorneys, was rather jaded. Therefore, when I became an attorney in 1986, and made my foray into the petitioner's practice, it was Roy and Dale who taught me that representing petitioners was not so bad.

This fact became clearer to me in 1992 when I became full-fledge petitioner's attorney having joined Ralph Gabric's firm. Ralph taught me that being a petitioner's attorney was actually a good thing. Once again, I was fortunate to have had the opportunity to work with one of the greatest guys in the practice.

Along the way, not only did I gain knowledge of the law, but I learned there were two sides to every case. I also learned the true meaning of the adage; "you have to go along to get along." I learned that I did not have to sacrifice my principles, or surrender my client's position, in order to resolve the case. I learned you could still be an advocate for your client without being unreasonable.

It was these lessons, thanks to these great mentors, that I carried with me when I was appointed arbitrator in 2015. As a result, the first thing I learned as an arbitrator was that I was extremely lucky to have been mentored by some of the best in the profession, and that others were not as fortunate as I was.

One thing I never learned as an arbitrator, was why respondents filed so many motions to dismiss. Despite a diligent search, I never found where the WC Act or the Rules provided for a motions to dismiss. I also did not understand why respondents filed so many motions for hearings on newly-filed cases; and then were resentful when I would not dismiss the case when the petitioner's attorney failed to appear on the date respondent had selected for trial.

On the other side, I never understood why certain petitioner firms filed 19bs on every case. Furthermore, I never understood why they did not show up on the date the 19b was set. As a former petitioner's attorney, I did not find it beneficial to aggravate the party who holds the purse strings. Therefore, I never understood why petitioner's attorneys would fail to show up when any case was set, thereby wasting respondents' attorneys time.

And those depositions! I think I speak for all arbitrators when I say there are way too many depositions. I found very few depositions that were actually necessary. The reports usually said it all and depositions rarely changed the outcome in favor of the party taking the deposition. In fact, in one case, the respondent's doctor actually made petitioner's case when petitioner's own doctor had failed to do so. A pet peeve of this retired arbitrator, and many other arbitrators, is receiving a deposition that has four pages of the deposition on one page.

As an arbitrator, I found it insulting to receive bankers' boxes of exhibits that were duplicates, irrelevant, unrelated, disorganized and not numbered. I also do not understand why thousands of pages of medical records were submitted when only a handful of pages were relevant. I saw no reason why the parties could not agree on submission of only the relevant pages; or, at a minimum, at least separate the relevant pages and place them on the top of the exhibit. I also found it insulting to have to view hours of unpersuasive video surveillance.

I never understood the audacity of some petitioner's attorneys who sent an email request for a continuance on the afternoon before, or even the morning of, the call. Nor did I understand why so many contracts had to be returned for the simplest things; mainly due to inappropriate rates or missing information regarding dependents or marital status. I also did not understand how some attorneys believe they can charge their clients for everything from clerking service, in-house photo copying, car rentals or associate's time for depositions; or, the best, an $18 parking fee to attend a hearing in Wheaton where the parking is free.

One thing that personally offended me was petitioner's attorneys ignoring fee petitions of previous attorneys and executing settlement contracts, attesting they had resolved fees, when they had not.

The main lesson I learned as an arbitrator, and also as an attorney who practiced at the Commission, was that I was extremely fortunate to have had an opportunity to practice in the area of workers' compensation law with all of you.■

Seeing Double: The Inextricably Intertwined Case(s) of Mr. Centeno a/k/a Mr. Morales

BY ROBERT J. FINLEY

The most interesting and paramount fact in the court's 34-page opinion (2020 ILApp (2d) 180815WC) is a Petitioner with an alleged double identity. The employer discovered this information after a 19b decision awarding benefits. With that decision pending appellate review, the employer presented evidence regarding the double identity subject during a subsequent 19b hearing. This twisted puzzle tests multiple issues including the scope of Commission powers, award enforcement procedures, and additional compensation for penalties and attorney fees. The court's ironically uncomplicated analysis is vital study for all practitioners before the Commission.

Procedurally, Petitioner Mr. Centeno filed an application for accidental injuries occurring October 7, 2010. After a 19(b) hearing in 2013, the arbitrator found the accident compensable and awarded TTD, medical bills, and prospective medical care. The decision was reviewed (*Centeno I*).

In 2013, Centeno evidently became employed elsewhere, and, in 2014, he notified the new employer about his new name—Mr. Morales. Morales, thereafter, claimed a new work-related accident with his new employer. Morales filed a new application in 2014 with a new attorney. Early in 2015, Morales proceeded against his new employer before another arbitrator with another hearing under Section 19(b).

Meanwhile, *Centeno I* eventually made its way to the second district appellate court. With *Centeno I* pending review, in 2015, Centeno (a/k/a Morales) initiated another 19(b) hearing (*Centeno II*) claiming additional benefits since *Centeno I*. During *Centeno II* hearing, his former employer presented evidence suggesting Centeno had two different identities. Centeno disputed and denied these allegations; however, before close of proofs, his attorney moved to bifurcate the hearing citing ethical issues. Thereafter, the attorney moved to withdraw the 19(b) hearing request. The arbitrator denied the motion, and the employer continued presenting evidence on the issue including witness testimony from a police detective and Morales' office manager. After proofs closed on *Centeno II* hearing, the arbitrator denied all claims because Centeno did not prove his current condition of ill-being was related to the 2010 accident. Afterwards, in 2016, the Morales decision and *Centeno I* were also both decided.

Centeno II was reviewed and the Commission affirmed the arbitrator's decision denying all claims. Under its own power, the Commission amended the Centeno Application to reflect both names-Centeno a/k/a Morales-because the two cases were so "inextricably intertwined that both transcripts should be considered together so a reviewing court has a full understanding of the dishonest nature of the Petitioner."■

A Fall Is a Fall, But Is It Compensable?

BY HERB FRANKS

In a recent Supreme Court Rule 23 opinion, the second district appellate court denied a worker's claim for benefits because she failed to prove that there was a defective condition on the employer's premises which caused her injury. In the case of *Deborah Souvenir v. IWCC*, 2020 IL App (2d) 190759WC-U, Claimant injured her right foot and ankle when she fell in the parking lot on her way into the Dovenmuehle call center for her first day of work. At arbitration, the Claimant testified that she tripped and fell while walking over a median because the grassy area inside of the median was approximately an inch and a half lower than the median curb. Claimant stated that she never measured the height difference, nor was the defect visible because the height of the grass made the floor of the median appear to be level with the curb. Claimant further alleged that she informed the employer about the defective curb and median immediately after her fall.

The employer testified that the Claimant did not mention an uneven curb or median when she reported the injury. The premises were inspected shortly after the accident, and the employer did not discover any defects. The employer's testimony was supported by an email from Claimant's supervisor to human resources advising that the Claimant had fallen, but that the Claimant didn't know what caused the fall. In addition, the

employer's insurance agent testified that Claimant did not report any defects to him and described the curb as "normal." Photographs of the premises did not show any abnormalities or defects.

The arbitrator denied the claim, finding that the Claimant had not met her burden of proof in showing that the accident arose out of her employment. The witness testimony and photographic evidence did not disclose any defects in the curb. Without an objective, discernable defect, the arbitrator could not find the premises defective. Thus, Claimant failed to show that her injury arose out of her employment.

The Commission affirmed the Arbitrator's decision, and the Circuit Court of Kane County also confirmed. On appeal, the second district applied a *de novo* standard of review in affirming the circuit court's decision. The court acknowledged that a "hazardous condition" on the employer's premises creates a risk incidental to employment. However, it rejected the Claimant's argument that the height difference between the curb and the median constituted a defective or hazardous condition because she did not present evidence or legal authority proving that a curb must be level with adjoining surfaces. It was the Claimant's burden to prove all elements of her claim, and she had not presented evidence sufficient to satisfy this burden.

The court also likened the case to the supreme court's decision in *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill.2d 52 (1989). In that case, an employee was injured when he stepped off of a curb, twisting his ankle. The court found that the Claimant's injury was not the result of a hazardous or defective condition because the Claimant presented no evidence that the curb was hazardous or defective. Here, as in Caterpillar, "surfaces were dry and there were no holes, obstructions or rocks." Thus, the Claimant's injury did not arise out his employment.

While the appellate court's decision does not hold precedential value and may not be cited except in the limited circumstances identified in Illinois Supreme Court Rule 23, the Court's decision provides an important reminder that not all falls are created equal. A Claimant bears the burden of presenting concrete evidence to show a causal defective condition connection between her employment and the injury.■

Justin O'Neil v. IWCC, or *Hollywood Casino* Redux

BY MARKHAM M. JEEP

(Disclosure: the author's firm represented Mr. O'Neil before the Commission and the appellate court.)

In *Justin O'Neil v. IWCC*, 2020 IL App(2d) 190427WC, ---N.E.3d---(2020) the appellate court re-examined the applicability of penalties and fees which might be ascribed to unfounded, unsubstantiated, and vexatious refusals of a Respondent to authorize medical treatment for an injured worker. Applying the reasoning of *Hollywood Casino-Aurora, Inc. v. IWCC*, 2012 IL App (2d) 110426WC, 967 N.E.2d 848 (2nd Dis. WC Division, 2012), the Court with one dissent (J. Holdridge) confirmed and extended its earlier decision that penalties and fees for the failure to prospectively authorize medical care could not be sustained because the Act does not have the precise language needed to punish a wayward Respondent.

And make no mistake, the acts of Respondent were wayward indeed. (The opening line of Dicken's *Christmas Carol* comes to mind. "Marley was dead: to begin with. There is no doubt whatever about that.")

The facts are simple. O'Neil is a boat technician. In February 2016 he knelt on a concrete floor putting pressure on his right knee to perform a work-related task. He felt and later reported a "pop and then a sharp pain" and twisted his knee in response.

Mr. O'Neil, a Navy veteran, sought medical care two days later (on a Saturday) at the local VA facility. The diagnosis was prepatellar bursitis. Mr. O'Neil was told to rest, elevate his leg, use ice, a pull-on elastic sleeve and pain medication. He followed that advice for two days but went to work Monday to "tough it out," fearing that he might lose his job if he didn't. He continued to treat periodically at the VA. Surgery was not recommended. Symptoms did not abate over the ensuing months and the swelling in his knee continued, sometimes accumulating fluid at the kneecap approximating the size of a racquetball.

Finally, on referral from Respondent's occupational health clinic, Mr. O'Neil came under the care of a private orthopedic surgeon, Dr. Roger Chams, in June 2016. At the first visit with Dr. Chams, fluid was aspirated from the affected joint and a cortisone injection was administered. The diagnosis of prepatellar bursitis was confirmed. An MRI was ordered, and Mr. O'Neil was allowed to return to work without formal restrictions. Claimant was provided with a note instructing him to use caution for his knee and that he be allowed to rest or be excused from work as needed due to knee pain. The aspiration and cortisone injection only provided temporary relief. Mr.

O'Neil was given a doctor's note for "light duty and light kneeling." Dr. Chams' chart notes clearly indicate that the condition of the right knee was a result of the workplace accident which occurred in February 2016.

Over the next several months Mr. O'Neil underwent more aspirations of the knee and received another cortisone injection. An MRI revealed significant inflammation in the knee and bursa and a tilted knee cap. Dr. Chams recommended right knee arthroscopy and open removal of the prepatellar bursa.

To this point, all treatment was paid by Respondent. On October 10, 2016, the surgery recommended by Dr. Chams was approved by Respondent's insurance carrier. Mr. O'Neil postponed surgery until the end of the boating season due to the hectic workload of his employer's business. Surgery was scheduled for December 17, 2016. On December 8, 2016, Dr. Chams was notified by Respondent's carrier that authorization was revoked, citing the need for "additional investigation."

Subsequently, it became evident that Respondent was relying on an old note from the VA dating from January 2002 (fourteen years earlier) that Mr. O'Neil had undergone surgical removal of two lipomas (fatty tumors) from his right shin.

Respondent did not order a record review. Respondent did not order a Section 12 examination. Respondent did not seek Utilization Review. In short, Respondent did not avail itself of any of the numerous arrows of denial available in the defense quiver. It simply revoked the prior authorization.

At trial on claimant's Petition for Emergency Hearing accident was agreed, but causal connection was denied. The arbitrator heard the testimony of Mr. O'Neil and observed his right leg, noting that he has a scar 2 to 3 inches below the joint line. Mr. O'Neil denied prior injury or treatment to his right knee joint. The arbitrator noted that that the knee "was free from any visible scarring and his medical records indicate that no prior procedures were ever performed on his right knee." *O'Neil v. JGS Marine, LLC*, 16 WC 31519 (Ill.Ind.Com'n.), 18 I.W.C.C 0295, 2018 WL 3013042. He ordered Respondent to authorize the proposed surgery.

In addressing the claim for penalties under Sections 19(l) (negligent and unreasonable delay--$30 per day, with a $10,000 maximum), 19(k) (vexatious delay or frivolous defenses—50% of the amount payable at the time of award) and 16 (vexatious delay and frivolous defenses--attorney's fees and costs) the arbitrator found that Respondent "offered no good-faith arguments at trial indicating there was a genuine controversy pertaining to the payment of benefits under the Act…" *O'Neil*, 2020 IL App (2d)190427WC, at paragraph 12, quoting the arbitrator's award. He also noted the failure to perform an independent medical examination or a Section 8.7 Utilization Review. There being no contrary opinion, Respondent's revocation of a previously granted authorization was based on "speculation and ambiguity and [was done] in an unreasonable and vexatious manner." *Ibid*, at paragraph 13. In addition to ordering the surgery, the arbitrator awarded 19(l) penalties of $6,900 and fees of $1,380. However, based on the precedent established in *Hollywood Casino*, he declined to award penalties under Section 19(k).

On review, the Commission confirmed the award ordering that Respondent pay for the surgery, but based on *Hollywood Casino*, concluded that it "lacked statutory authority to award penalties based on Respondent's decision to revoke authorization for claimant's knee surgery." *O'Neil*, 2020 IL App (2d) 190427WC, at paragraph 14. The Commission acknowledged that the Court's decision in *Hollywood Casino* is limited to the issue of Section 19(k) penalties but extended the reasoning of that holding to penalties arising under Section 19(l) and Section 16 violations. *Ibid*, at paragraph 14.

Commissioner Tyrrell filed a powerful dissent. The *O'Neil* court quotes him as noting that the denial of medical treatment for an injured worker without "any countervailing medical opinion or evidence other than a single, unsubstantiated reference to a prior knee surgery [which never happened] was 'the epitome of "frivolous defenses which do not present a real controversy."' *O'Neil*, at paragraph 15. Therefore, Commissioner Tyrell would have affirmed the award of attorney's fees and penalties and noted that *Hollywood Casino* is directed only to the imposition of Section 19(k) penalties.

Commissioner Tyrrell noted that the arbitrator "got it right," and asked that the legislature address the issue if the decision of the Commission is sustained and stated:

I would submit that refusing to authorize essential and oftentimes critical treatment, without adequate justification, is just as harmful if not more so that the failure to pay a bill after the fact. More to the point, the human toll, and the deleterious effect on the health and well-being of injured workers in legitimate need of medical care, in my humble opinion, far outweighs the monetary need to pay for same, and should be protected just as vigilantly. *O'Neil v. JGS Marine, LLC*, 18 I.W.C.C 295, 2018 WL 3013042.

The appellate court's analysis hinges on the strict (or as Justice Holdridge characterized it, "overly narrow," see *O'Neil*, paragraph 31) reading of the penalties provisions of the Act. [Sections 16, 19(k), and 19(l)]. Specifically, the court reads delay of *payment* and *underpayment* of compensation as acts which occur only after the presentation of a medical bill, i.e., after medical services have been rendered. The majority finds that the act of denying treatment, that is to say, *refusing to authorize* the delivery of medical services to be delivered at a date in the future, cannot by definition fit the grammar of the penalties provisions. *Hollywood Casino* confined Section 19(k) penalties for Respondent misconduct to *post hoc* malfeasance. *O'Neal* extends the malfeasance impunity to Sections 16 and 19(l).

Ironically (in the author's opinion), the majority recognizes the forward-looking duty set forth in Section 8(a) which specifically requires employers of injured workers to "*provide and pay*…for all… necessary [and reasonable] first aid, medical and surgical services…." But the Court hastens to also point out that Section 8(a) has no penalty provision within the four corners of its language. And the O'Neil Court also notes that "…while this result may seem harsh to claimant, it the function

of the legislature, not the judiciary, to provide a penalty for those employers that unreasonably or vexatiously refuse or delay authorization for reasonable and necessary medical services…." *O'Neil*, at paragraph 22.

The author closes with the observation that, grammatical niceties notwithstanding, the reality of the practice (and I cannot speak to the statewide implementation of the Act since our firm represents injured workers largely in Zone 5) is that the denial of the duty to pay for medical services in advance of delivery, i.e., authorization, is in fact, the denial of treatment and therefore the *de facto* non-payment of a bill. And with *Hollywood Casino* and *O'Neil* in place, employers and their carriers can now deny medical services to injured workers without reason, cause or justification--but with impunity. This result should "seem harsh" to every person of good faith in the Workers' Compensation community. We all know and daily see the potential for mischief and the hardship visited on injured workers and their families when necessary and reasonable medical care is denied.

It is past time for legislative action.■

The Mere Word of Petitioner Is Not Always Sufficient Proof of an Accident

BY JOANN M. FRATIANNI

In *Jaysen Hamann v. Illinois Workers' Compensation Commission et. al.*, (Keystone & Wire) 2020 Ill.App.3d 190486 WC-U (unpublished order under Supreme Court Rule 23), Petitioner claimed he suffered a work-related injury on March 2, 2015 when he slipped and twisted his back. Petitioner was employed at Respondent since April 15, 2013 as a mechanical technician. His job duties included servicing machinery and performing maintenance throughout the steel mill side of the facility. This required him to go in and out of various buildings on Respondent's jobsite.

On March 2, 2015, Petitioner was working a 16 hour shift, which he was required to work two to four times weekly. Petitioner testified he was walking outside with Mike Pagan, a coworker, who was in front of him as they both walked in a tractor's frozen tire tracks. Petitioner testified he slipped on ice that had melted while wearing his mandatory leather steel toed boots, causing him to injure his back.

Petitioner testified he told Mr. Pagan and Derek Klinedinst, his immediate supervisor, about the injury, and was directed to the in-plant medical department. Petitioner saw Dr. Homer Pena at that time. The on-duty nurse completed a questionnaire that indicated he slipped on ice while walking and injured his back. Petitioner reported Mr. Pagan witnessed the accident.

Petitioner received follow up treatment with Dr. Pena and was also seen in the emergency room. Neither Dr. Pena nor the emergency room physician found any objective evidence of injury to his back. Petitioner completed a hand-written statement on March 4, 2015 that indicated he severely twisted and injured his back when he slipped on ice while walking. The statement further indicated that Pagan was with him and offered a hand to regain his balance.

Petitioner then sought treatment with Prairie Spine and Pain Institute. He initially came under the care of Derek Morrow, a physician's assistant, who prescribed physical therapy and an MRI. Petitioner reported he had a laminectomy performed at L5-S1 in 2001 and had been released back to work. The MRI revealed advanced degenerative changes with no evidence of new herniation. Petitioner also came under the care of Dr. Richard Kube who prescribed and performed surgery on July 28, 2015 in the form of a decompression and lumbar fusion. Dr. Kube testified by evidence deposition that he performed surgery based on complaints of symptomology.

Petitioner underwent two Section 12 examinations at the request of Respondent with Dr. Julie Wehner. Petitioner related complaints of pain radiating down his left leg with numbness and tingling in his toes. He gave a history to Dr. Wehner of not having any further MRI's to his back following his 2001 surgery. Dr. Wehner, however reviewed five MRI scans of Petitioner's lumbar spine that occurred between 2002 and 2015. Dr. Wehner found evidence of the prior laminectomy and felt the MRI scans revealed degenerative changes with no recurrent disc herniation. Dr. Wehner found no acute trauma-related recurrent disc herniation and believed that Petitioner could return to work.

Petitioner admitted on cross-examination that he filed several workers' compensation claims including several back injuries for which he received settlements. Petitioner further admitted that at the time of the incident, Pagan was walking in front of him and could not have witnessed the fall.

Robert Barker, the senior safety and health specialist, testified on behalf of Respondent. Mr. Barker testified he met with Petitioner the morning of the incident and noted Petitioner denied tripping over anything but suggested hydraulic fluid may have been on the bottom of his shoes. Mr. Barker testified Petitioner did not appear to be in any pain until the company nurse approached him and asked about his pain level. Mr. Barker testified that he then noticed a "dramatic change" in Petitioner's

pain level in the presence of the nurse. Mr. Barker further testified he examined the accident site and found no evidence of ice in the area. He also spoke with Mr. Pagan who did not witness the accident.

On October 14, 2016, the arbitrator heard this matter and rendered a decision dated November 15, 2016. The decision denied an accident occurred and the arbitrator felt Petitioner's "credibility to be suspect" based on numerous inconsistencies in his version of the events, the lack of objective medical evidence and Petitioner's history of several prior workers' compensation injuries and settlements.

On September 28, 2018, the Commission affirmed and adopted the decision of the arbitrator with one Commissioner filing a special concurring opinion to further expand on the lack of credibility of Petitioner as well as the lack of credible evidence that his slip was the cause of an employment risk.

On August 8, 2019, the Circuit Court of Peoria County confirmed the Commission's decision.

Petitioner appealed to the Illinois appellate court. In his argument, Petitioner sought a finding of accident even though he was uncertain of the fall but claimed that he met his burden of proof as the incident occurred in an area of Respondent's premises that was not accessible to the public.

The appellate court applied the manifest weight standard in affirming the circuit court and the Commission. The court reiterated the long-standing proposition that it is within the exclusive purview of the Commission to assess the credibility of witnesses. They relied on the fact that the Commission found that no treating medical provider rendered an opinion that there existed any objective findings to support Petitioner's complaints of pain or accidental injury. They agreed with the Commission's finding that Petitioner had a "significant history" of sustaining prior work related injuries.

The appellate court further found that the conflicting evidence in the record came from Petitioner's self-serving statements and rejected his claim he sustained a work-related accident and resulting injury strictly because "he said so."

While this case was published as a Rule 23 Order, it would seem to indicate that Petitioner's version of events alone when there is conflicting evidence to the contrary, is not enough to sustain his burden of proof to render a finding of an accident in a workers' compensation matter.■

Examining the Manifest Weight Standard on Appeal: *Air Wisconsin v. IWCC* – 2018 L 50342

BY JACK LINN

The key principle addressed in this case is one that is quite familiar to Illinois workers' compensation attorneys: The resolution of a fact issue by the Commission will not be disturbed on review unless it is against the manifest weight of the evidence, meaning an opposite conclusion must be clearly apparent.

The Petitioner in *Air Wisconsin* was employed by the Respondent as a mechanic. He sustained six separate work-related injuries, two of which were head injuries sustained in 2006 that are not relevant to the appeal. The other four injuries gave rise to the appeal. On March 10, 2007, he fell 8 feet from a ladder while inspecting a plane engine and injured his left leg. On May 13, 2007 he slipped on fluid while working, again injuring his left leg.

As a result of the Petitioner's left leg injuries, he underwent surgery on October 16, 2007. He was off work for the left leg injury from September 10, 2017 through November 28, 2007. The Petitioner again injured his left leg in a work accident on July 9, 2009, and was prescribed a course of pain medication for that injury.

On February 11, 2010, the Petitioner slipped on ice while working and injured his right leg. He came under the care of the same doctor he had previously treated with for the left leg injuries, and was restricted from working as of February 12, 2010. Following a course of conservative care, he underwent surgery on his right knee on September 16, 2010. The Petitioner remained fully restricted from working by his treating physician.

The Petitioner was seen for a Section 12 examination on December 20, 2010. The IME doctor felt that the original left knee injury was caused by a degenerative process and was not work related, but that the right knee injury (and need for surgery) was work related. The IME doctor opined that that the Petitioner was capable of sedentary work.

Air Wisconsin offered the Petitioner a sedentary position on February 2, 2011. The Petitioner did not accept the position, as he remained fully restricted from working by his treating physician. On March 10, 2011, Air Wisconsin terminated the Petitioner for failure to report to work. He continued to treat with his orthopedic doctor on a monthly basis throughout 2011 and 2012. He underwent conservative care due to pitting edema and ongoing lymphedema.

The Petitioner was examined by a

different IME doctor at the request of Air Wisconsin on June 14, 2012. That doctor felt that the Petitioner would have been able to return to full duty work following his right knee injury, but was precluded from doing so by his mental state, obesity, and lymphedema. He further opined that the Petitioner's lymphedema did not arise solely from his work injury. However, the doctor stated that based on the totality of the Petitioner's symptoms he should not return to work as an aircraft mechanic, and did not release him to return to work.

The petitioner continued to treat with his orthopedic doctor over the next five years, and his condition continued to deteriorate. By 2015 he was wheelchair-bound. On September 26, 2016, the treating physician found that the Petitioner was incapable of returning to work and that his work-related condition was permanent.

At arbitration, the Petitioner testified that he had never received treatment on either leg prior to his work injuries. He testified that he experienced extreme swelling and fluid build-up in his extremities. At the time of arbitration his left foot had ballooned to a size 21; his right foot was a size 14. His weight had increased at that point from 270 pounds to 422 pounds, 150 pounds of which was fluid.

The arbitrator found the Petitioner's treating physician more credible than the IME examiner. For the left leg injuries, the arbitrator awarded the Petitioner 11 2/7 weeks of TTD benefits (9/10/07 – 11/28/07), all claimed medical expenses, and 35 percent loss of the left leg. For the right leg injury, the Arbitrator awarded 343 weeks of TTD benefits (2/12/10 – 9/16/16), all claimed medical expenses, and 35 percent loss of the man as a whole.

The commission affirmed and adopted the findings of the arbitrator with regards to medical expenses and PPD benefits. The commission modified the award with respect to TTD benefits, awarding the petitioner 6 2/7 weeks of TTD for the first injury and 343 1/7 weeks of TTD for the second injury. The circuit court affirmed the award of the commission; Air Wisconsin appealed to the appellate court.

Air Wisconsin argued that the Commission's finding of a causal connection between the claimants current condition of ill-being with regards to both legs was against the manifest weight of the evidence. The appellate court stated that it was the function of the Commission to resolve conflicts in the medical opinions of the treating physicians and the Section 12 examiners, and the commission had specifically adopted the treating physician's causation opinions. The appellate court found that there was nothing in the record that would make the opposite conclusion readily apparent, and as a result rejected Air Wisconsin's argument that the finding of causal connection was against the manifest weight of the evidence. The appellate court affirmed the judgment of the circuit court and upheld the decision of the Commission.■

Bad Dates: Inconsistent Date of Injury Reporting Leads to Denial of Benefits

BY TIMOTHY J. O'GORMAN

In a Rule 23 decision, the First District appellate court Workers' Compensation Division affirmed the decision of the Commission to deny benefits to a claimant on the basis of a lack of accident when that claimant's credibility is questioned by his inconsistent reports of a date of accident. Claimant in *Gonzalez v. Illinois Workers' Compensation Commission,* 2020 IL App (1st) 191650WC-U, alleges injuries to his left and right knees after an alleged fall while making a delivery of Chinese food supplies. Claimant was a delivery driver servicing various locations in Illinois and its adjacent states when he testified a dolly he had been using during deliveries required a repair to its wheel. Claimant testified he advised his employer the wheel needed repair and was reassured his equipment would be worked on.

Claimant alleges on March 17, 2016, while making a delivery in Lansing, Michigan, the dolly he had complained about lost a wheel while Claimant was pushing it, resulting in an alleged fall onto his left knee. Claimant testified he suffered 9-10 out of 10 pain after the fall however continued to perform the rest of his deliveries for the day. Claimant testified he notified his employer (who denied having any conversation with Claimant) and showed him his knee. Claimant stated he then went home to his live-in girlfriend and described the situation whereupon she applied icy hot to his left knee and gave him Tylenol.

Claimant testified the following day he was incapable of bending his knee however continued to work on March 18 and 19. Claimant testified his pain in his left knee increased and did not work on March 20, 21 or 22 pursuant to his normal schedule. Claimant then worked on March 23 through March 26 and eventually sought treatment for the first time on March 29, 2016. Claimant presented to the ER at Good Samaritan Hospital with a history of injury "3 weeks ago." Claimant then returned to work on March 30. Claimant's supervisor denied ever having a conversation or text exchange regarding the injury however the record demonstrates a text was sent by Claimant's supervisor asking if Claimant's leg was feeling better and if he was capable of working on April 2.

Claimant continued to work his normal schedule until June 14, 2016 where a visit with Dr. Neema Bayran (a visit for cervical pain from an unrelated motor vehicle accident) described a work related injury occurring in February 2016. Claimant was prescribed off work and recommended he attend physical therapy.

Claimant presented for his initial physical therapy evaluation on June 27 whereupon an injury date of February 1, 2016 is documented. Claimant testified he did not tell his therapist his accident happened on that date. Claimant was referred to Dr. George Markarian who diagnosed Petitioner with osteochondral defect and a medial meniscus tear and opined his condition was causally related to his alleged injury on March 17, 2016. Claimant was examined by Dr. Lawrence Lieber who opined his condition was not a result of anything occurring at work on March 17, 2016.

A decision was authored by the arbitrator who found Claimant failed to prove he sustained injuries on March 17, 2016 that arose out of his employment or that he provided Respondent with timely notice of an accident on March 17, 2016. All benefits were denied on the basis Claimant's multitude of accident dates contained in Claimant's medical records called Claimant's credibility into question. Additionally, the arbitrator stated Claimant's girlfriend was not credible either. Subsequently, the Commission and circuit court affirmed the findings and conclusions of the arbitrator.

On appellate review, the appellate court reversed the findings of the Commission on the issue of notice, relying on Claimant's supervisor's text messages and eventual admission that Claimant suffered an alleged injury roughly 2 weeks after Claimant alleged his injury occurred. As notice occurred within the 45 day period required by statute, the appellate court reversed the Commission's finding of notice.

On the issue of whether Claimant's injuries arose out of or in the course of Claimant's employment, the appellate court affirmed the findings of the Commission and denied all benefits sought. The appellate court referenced the same inconsistencies in Claimant's accident date reporting along with contradictory statements made to Claimant's doctors as compared to his ability to function. The appellate court specifically mentioned Claimant's ability to continue to perform his job duties at full capacity while at the same time complaining of debilitating pain. The appellate court's opinion relies on the manifest weight of the evidence standard, noting the Commission is the sole determining body on issues of credibility and seeing as the Claimant's credibility is so damaged by a number of factors, the appellate court affirmed the findings of the Commission.■

19 Ways to Manage Stress and Avoid Conflict While Staying Indoors

BY E. KENNETH WRIGHT, JR., ERIN CLIFFORD, & MICHAEL B. HYMAN

Despite strict measures, with each passing day, confirmed cases and death from COVID-19 increase at a rapid pace locally, statewide, and nationally. We know to remain vigilant and do whatever we can to prevent the disease's spread. By necessity, each of us knows the symptoms of COVID-19 infection, including coughing, fever, chills, sore throat, and shortness of breath. And we know that this virus transmits so easily and quickly that carelessness and thoughtlessness can place at risk our own life and the life of everyone with whom we come into contact.

Business establishments, restaurants, and other places people congregate have closed; only essential service providers such as hospitals, pharmacies, and grocery stores continue operating. Most people work from home if they still have a job.

Even infected persons, if able to avoid hospitalization, self-isolate at home in a "sick room." All of this has made life more difficult, more precarious, more complex, and, poignantly, more precious.

The authors offer 19 ways to help you manage the stress and potential interpersonal conflicts posed by COVID-19 confinement.

1. Stick to a schedule to ensure productivity and avoid thoughts of worry for what life has in store for you.

2. Keep the same morning routine you followed at home before the restrictions. Shower and dress at the appropriate time. Doing so can give you a sense of purpose and direction.

3. Adhere to the Centers for Disease Control and Prevention's (CDC) recommendations on washing hands after coming in contact with common surfaces, putting away groceries, food packaging, etc.

4. Minimize infection by observing all CDC guidelines, including

- social distancing (maintaining a distance of at least six feet) from others,
- regularly washing and sanitizing hands,
- avoiding public transportation, ride-sharing, and taxis,
- wearing a face mask while outdoors,
- cleaning high touch surface areas with disinfectants, including

phones, remote controls, counters, tabletops, etc.,
- using a separate bathroom, if possible, and
- avoiding sharing dishes, utensils, towels, and other personal items with housemates,
- apply a hand sanitizer to disinfect hands when soap and water is unavailable,
- avoid touching face and nose.
- also, wear gloves when outside the home.

5. Always cover a cough or sneeze with an elbow or tissue and dispose used tissues in a lined trash can,

6. Daily spend time with your family, friends, and colleagues through phone calls, video conferences, or virtual hang out sessions,

7. Reduce cabin fever (being "stuck" indoors with the same people for a prolonged time) by focusing on individual activities part of the day such as watching a movie by yourself, going for a walk or running alone, or volunteering to go to the grocery store or pharmacy,

8. Write letters or use social media platforms such as Zoom and TikTok to connect with friends and family not in your home and, thus, enjoy a change in company.

9. Overcome monotony by moving around the house and finding an "isolated space," like the patio or a balcony to get some sun. Or, work on your kitchen table and enjoy a snack at the same time.

10. Set up a study or a corner where you have a desk, computer, and other essentials.

11. Integrate an exercise routine in your schedule, alone or with a friend, but keep your distance.

12. Meditate daily to reduce stress. It can bring about a sense of calm and restfulness.

13. Play board, card, or video games with housemates or virtually.

14. Limit how much time you spend on social media or watching COVID-19 news. Too much exposure can contribute to anxiety and interfere with sleep habits.

15. Cook meals alone or with others in person or virtually (remember the CDC guidelines with regard to hand washing).

16. Drive around your neighborhood to get out of the house, even though public places are closed. It is recommended to do it alone because of the social distancing guidelines and having more than one person in a closed space like a car raises the risk of infection.

17. Take advantage of less traffic by riding a bike. Of course, follow the guidelines regarding wearing a face mask, hand washing, social distancing, and avoiding contact with your face.

18. Resist drinking alcohol. Experts say too much of it can weaken your immune system, and it won't reduce anxiety.

19. Read or learn something new. Reading and learning can boost brain power and help you relax.

Adopting some of these strategies while quarantined may improve your productivity, lessen stress and interpersonal conflicts, and keep you safe, healthy, and, hopefully, protected.■

Judge E. Kenneth Wright, Jr. is the presiding judge of Cook County's First Municipal District; Erin Clifford is the Director a/Marketing and Business Development at Clifford Law Offices; and Justice Michael B. Hyman sits on the First District Appellate Court.