



ILLINOIS STATE BAR ASSOCIATION

# WORKERS' COMPENSATION LAW

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

## Carpenter bypasses employer's attempts to detour benefits

By Arnold G. Rubin

In order to recover for benefits under the Illinois Workers' Compensation Act, it is well accepted that a claimant's work-related injury must "arise out of and in the course of the employment." The "arising out of" requirement requires the employee to prove that the origin of the injury must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury.

In *McKernin Exhibits, Inc. v. Industrial Commission*, 838 N.E.2d 47, 297 Ill.Dec. 560 (1st Dist., I.C. Div., 2005), the employer argued that claimant's work-related injuries did not arise out of the employment because of his negligence and intoxication. Claimant, a carpenter, had sustained injuries when his vehicle rear-ended an 18-wheel semi-truck on I-57. After rear-ending the semi-truck, claimant's vehicle was dragged at least 100 feet.

Claimant was employed in the job capacity as a carpenter for Respondent. His job duties as a carpenter also included making deliveries for Respondent. On the date of accident, Petitioner was making a delivery to another company, at the request of his employer. Claimant was either driving the company pick-up truck or his personal pick-up truck at the time of accident. Petitioner's testimony regarding the facts of the accident was found to be inconsistent and was given little weight by the arbitrator. The facts apparently adopted by the arbitrator did include claimant driving a pick-up truck and rear-ending an 18-wheel semi-truck and being dragged for at least 100 feet. An accident reconstruction expert testified on behalf of the employer and opined that the vehicle driven by claimant was traveling between

70-80 miles per hour at the time of impact.

In addition to its assertion that claimant was speeding at the time of the accident, the employer also contended that the claimant was intoxicated. During claimant's hospitalization for the injuries resulting from the accident, he underwent a urinalysis test, which established that there was cocaine in his system. Claimant admitted that he had used cocaine one to two weeks prior to the accident. He also admitted that he had been found guilty of three felony counts for the delivery of cannabis and was on three-years felony probation at the time of the arbitration hearing. A pathologist testified on behalf of claimant and opined that, at the time of the accident, there was no evidence that claimant was impaired or intoxicated.

In addition, Daniel McKernin, claimant's supervisor, testified that he had no evidence that claimant was using cocaine on the date of accident. He also testified that if the claimant had appeared to be intoxicated or impaired, he would not have permitted the claimant to interact with customers.

The arbitrator determined that claimant had sustained accidental injuries arising out of and in the course of his employment, and awarded claimant benefits. The decision of the arbitrator was affirmed by the Commission. The circuit court confirmed the Commission's decision.

The Illinois Appellate Court affirmed the decision of the circuit court, thereby confirming the Commission's decision awarding claimant's benefits.

The appellate court rejected the employer's first argument that claimant's negligence removed him from the scope of his employment. It was pointed out that in order to re-

move the claimant from the protection of the Act, his actions must have been committed intentionally, with knowledge that they were likely to result in serious injury, or with a wanton disregard of the probable consequences. The court explained that, although claimant was negligent in the operation of his vehicle, the manner in which he was driving was not either intentional or rose to the level of willful and wanton conduct. The defense of the employer was, therefore, rejected.

With regard to the issue of intoxication, the appellate court explained that, in order for compensation under the Act to be denied on the basis of intoxication, the level of intoxication must be such that it can be said, "as a matter of law, that the injury arose out of his drunken condition and not out of his employment." citing, *District 141, International Ass'n. of Machinists and Aerospace Workers v. Industrial Commission*, 79 Ill.2d 544, 557, 404 N.E.2d 787 (1980). The court further explained that, although intoxication may be a contributing cause of an injury, intoxication which does not incapacitate a claimant from performing his work-related duties is not sufficient to defeat recovery of compensation under the Act.

The employer contended that claimant's medical expert's testimony was based on speculation and conjecture, since he had only reviewed the claimant's medical records and did not interview the claimant or any other witnesses. The appellate court determined that it was the function of the Commission to judge the credibility of the witnesses, including that of the medical expert. The appellate court agreed that the employer failed to establish that intoxication was the sole cause of the accident.

Accordingly, the appellate court held that claimant's injuries arose out of his employment despite the fact that there was evidence that claimant tested positive for cocaine in his system and operated the vehicle

that he was driving in a negligent matter.

See also *Lakeside Architectural Metals v. Industrial Commission*, 267 Ill.App.3d 1058, 642 N.E.2d 796 (1st Dist., 1994), wherein, the Illinois Appellate Court affirmed the circuit

court and confirmed the finding of the Industrial Commission that claimant's injuries arose out of his employment, despite the fact that evidence existed that claimant had ingested marijuana on the date of accident. ■

THIS ARTICLE ORIGINALLY APPEARED IN  
THE ILLINOIS STATE BAR ASSOCIATION'S  
*WORKERS' COMPENSATION LAW* NEWSLETTER, VOL. 43 #2, JANUARY 2006.  
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