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MUNICIPAL LAW GROUP

**Firefighter’s Heart Attack While Shoveling Snow
At Fire Station Not Compensable Injury**

In *Johnston v. Illinois Workers’ Compensation Commission*, 2017 IL App (2d) 160010WC, the Illinois Appellate Court, in a 4-1 decision, ruled that a firefighter described by the Arbitrator as “a heart attack waiting to happen” should not receive Workers’ Compensation benefits for a heart attack sustained while he was shoveling snow in the fire department’s parking lot. The Arbitrator noted that the employee had so many risk factors for a heart attack that his cardiac event could have occurred “anytime and anywhere.”

Johnston was an employee of the East Dundee Fire Protection District for 15 years when he went into work on a cold winter day in February 2014. Known as a heavy smoker who often brought high cholesterol and sodium rich fast food into work, the 6’1”, 265-pound Johnston was in the process of attempting to get healthier. He had even recently switched to e-cigarettes after having smoked a pack a day for twenty years straight.

Johnston went outside to clear some snow near his car outside the firehouse, and a coworker found him lying in the snow about ten minutes later. His colleagues administered life-safety procedures to him instantly, likely saving his life. The next day, he underwent emergency quadruple bypass surgery and survived the cardiac event.

Two weeks after the incident, Johnston filed his Workers’ Compensation claim. The East Dundee Fire Protection District denied his application, and the matter went to hearing five months later at the arbitrator level. At the hearing, four coworkers testified that Johnston smoked “quite a bit” and was “not the healthiest eater.” Two of his doctors testified as well: one who had treated Johnston, and the other who performed an independent medical examination on him at the District’s request.

For any questions or comments you might have regarding this newsletter, please feel free to contact:

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The treater testified that Johnston's 15 years as a firefighter could be considered a risk factor for coronary artery disease, and that he had additional risk factors: obesity, a family history of coronary artery disease and a history of smoking. But the doctor noted that it would be just as likely that Johnston would suffer a heart attack while at rest, or performing any other activity, as he would while clearing snow. Johnston also testified that he was "mildly diabetic." The independent doctor noted that just performing activity outside in the cold weather could have triggered the heart attack.

The Arbitrator found that Johnston was "a heart attack waiting to happen" and ruled for the District. The Commission panel affirmed and adopted the Arbitrator's opinion. Kane County Circuit Court Judge David Akemann, also confirmed the decisions below.

On appeal, Johnston argued that the Commission's finding was contrary to the manifest weight of the evidence. The Court first had to consider whether the District presented enough evidence to prove that Johnston's coronary artery disease was not linked to work, thus rebutting the presumption in Illinois law that firefighters' heart conditions are compensable. This is because in Illinois, there is a presumption that cardiac issues are compensable when experienced by firefighters with five years of service. The Appellate Court, in its April 13, 2017 opinion, decided that the District presented enough evidence to rebut the presumption, and affirmed the ruling below.

A copy of the full decision can be found at:

<http://www.illinoiscourts.gov/Opinions/WorkersComp/2017/2160010WC.pdf>

This ruling is important to consider, given the often voluminous Workers' Compensation claims that originate from public safety employees in local municipalities. It shows that despite long-standing presumptions and often knee-jerk reactions that can be given to Workers' Compensation claims, every case must be considered in great detail when a compensability decision and/or litigation strategy is being developed. We at Klein, Thorpe & Jenkins, Ltd. are well equipped to manage and defend your Workers' Compensation claims, from initial review to appellate hearing, or to negotiate a reasonable settlement. If we can be of assistance in any Workers' Compensation matters, please do not hesitate to contact us.