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LEGAL ALERT

KNEE INJURY SUFFERED AT WORK WHILE RISING FROM KNEELING POSITION NOT COVERED BY WORKERS' COMPENSATION

Following a knee injury suffered at work by a chef as he rose from a kneeling position to standing, the chef filed a claim for workers' compensation benefits. The appellate court held that the risk posed to this employee while at work, from the act of standing from a kneeling position while looking for a colleague's missing food container, was not a compensable work-related injury. The Court found that the employee was not injured due to an employment risk, as such an injury was not distinctly related to, or incidental to his employment, since he was not required to perform the specific activity of looking for food misplaced by a co-worker.

For a copy of the complete appellate court decision:

McAllister v. Illinois Workers' Compensation Comm'n,
2019 IL App (1st) 162747WC (March 22, 2019)

A more detailed summary of the Court decision is set forth herein.

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

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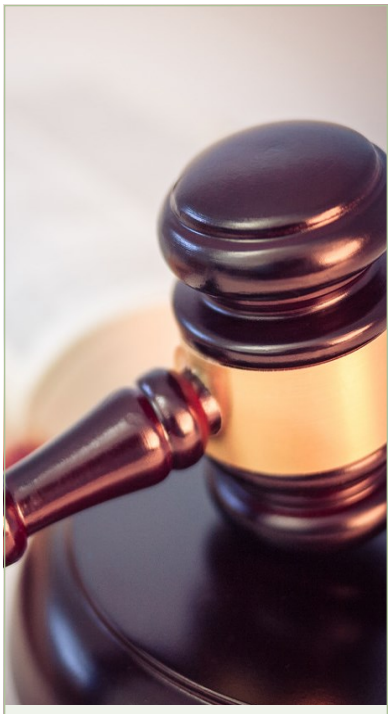
Inside This Issue



BACKGROUND

The claimant in this action was a chef who applied for workers' compensation benefits after suffering a knee injury while at work. While looking for a food container for a colleague in a walk-in cooler, he rose from a kneeling position to standing up when his knee "popped", damaging a ligament. The claimant's work as a chef included checking orders, organizing the restaurant's walk-in refrigerator and preparing sauces and food. On the day of his injury, a fellow chef could not locate a food container that he needed. The claimant tried to help his fellow chef by checking all of the food shelves in the walk-in refrigerator. He found nothing on the top, middle and bottom shelves. He explained that he then knelt down on both knees to look for the container under the bottom shelf because sometimes things get knocked underneath the shelves. He did not find anything there but as he stood back up from kneeling his felt his right knee "pop" and he could not straighten his leg. He was unable to walk properly and needed medical attention. His knee injury required time off from work, surgery and physical therapy.

ANALYSIS BY THE COURT

The fundamental principle upon which a Worker's Compensation award is based is a showing that the injury "arose out of" and "in the course of" a person's employment. Injuries resulting from a risk distinctly associated with an employment-related risk, are compensable under the Act. The Court noted that the occurrence of an accident at the claimant's workplace does not automatically establish that the injury "arose out of" the claimant's employment. The Court emphasized that the requirement that the injury arise out of a person's employment is based on the necessary causal connection. That connection is demonstrated when a claimant shows that the injury had its origin in some risk connected with, or incidental to, the employment. The Court has stated the analysis as follows:

> "The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. [Citation.]

> Stated otherwise, 'an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties. A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties. " *Sisbro, Inc*. v Industrial Commission, 207 Ill. 2d 197 at 203-204 (Ill. 2003). See also *Ace Pest Control, Inc. v. Industrial Comm'n*, 32 Ill. 2d 386 (1965) ("The *** Act was not intended to insure employees against all accidental injuries but only those which arise out of acts which the employee is instructed to perform by his employer; acts which he has a common law or statutory duty to perform while performing duties for his employer [citations]; or acts which the employee might be reasonably expected to perform incident to his assigned duties.")

In determining whether a risk is employment related under the Act and therefore compensable, the Court noted that there are three types of risks to which employees may be exposed: (1) risks that are distinctly associated with employment; (2) risks that are personal to the employee, such as idiopathic falls; and (3) neutral risks that do not have any particular employment or personal characteristics (i.e. the employee was exposed to the risk to a greater degree than the general public).

Practical examples noted by the Court of what is or is not a "neutral risk" included:

Compensation Granted – Risk of Injury Greater Than That to General Public

- The necessity for a truck driver to be on the highway at all times of the day and night, and in all kinds of weather, subjected the claimant *** to a greater risk of injury from [a] tornado than that to which the general public in that vicinity was exposed. Campbell "66" Express, Inc. v. Industrial Comm'n, 83 Ill. 2d 353 (1980)
- The regular and continuous use of the parking lot by employees, most particularly at quitting time when there is a mass and speedy exodus of the vehicles on the lot, would result in a degree of exposure to the common risk beyond that to which the general public would be subjected. Chmelik v. Vana, 31 Ill. 2d 272 (1964)

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Compensation Denied – Risk of Injury is Neutral– Same as That to General Public

- A claimant injured while traversing a curb to reach his vehicle, was subjected to a noncompensable neutral risk. Caterpillar Tractor, 129 Ill. 2d 52 (1989)
- A claimant was not exposed to the neutral risk of reaching to retrieve a dropped pen to a greater degree than the general public) Noonan v. Illinois Workers' Compensation Comm'n, 65 N.E.3d 530 (2016)
- A claimant who fell on pavement that was wet from rainfall, presented no evidence suggesting her employment duties contributed to her fall or enhanced her risk of slipping. Dukich v. Illinois Workers' Compensation Comm'n, 86 N.E.3d 1161 (2017)

UPHOLDING DECISION OF COMMISSION ON APPEAL

The arbitrator concluded that the knee injury was compensable under the Act as an accidental injury arising out of and in the course of the chef's employment. She held that a chef looking for food products to prepare meals that evening and suffering an injury while performing those duties was one that an employer could reasonably expect a chef to engage in while fulfilling a chef's work responsibilities.

On appeal, the Commission reversed the arbitrator's ruling, concluding that the claimant did not prove that he suffered an accidental injury arising out of his employment as required by the Workers' Compensation Act. The Court upheld the decision of the Commission. The Commission noted that the chef's injury which resulted from simply standing up after having knelt down once did not result from an employment related risk. Such an activity was not one that was particular to the chef's work responsibilities or employment. The chef did not establish that he was instructed to perform, or that he had a duty to perform, that particular activity. There was no evidence the activity was incidental to his employment, in that it was not necessary to the fulfillment of the chef's specific job duties. The claimant did not establish that his employment increased or enhanced his risk of injury in any way. The Commission therefore found that the injury did not arise out of or in the course of the chef's employment, because the injury resulted from being exposed to a "neutral risk", to no greater degree than the general public, with no relation to the chef's employment.

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