Below the Red Line

Heyl Royster
Workers' Compensation Newsletter

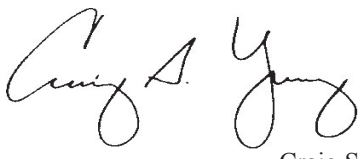
A Newsletter for Employers and Claims Professionals — *June 2012*

A Word From The Practice Group Chair

We wish to thank those who were able to attend our 27th Annual Claims Handling Seminar on May 17th. We had a great turn out, and it is encouraging to discuss the many developing defenses currently available to employers. The statutory changes and the new approach of the Workers' Compensation Commission have given us opportunities for success in the continued defense of our workers' compensation claims. The written materials from that seminar are now available on our website and we hope you find them instructive.

If you were able to attend, you know we discussed in some detail the changes at the Commission involving the Arbitrators and the new hearing sites. Downstate, consolidation has resulted in much larger hearing sites in Urbana, Bloomington, Peoria, Rockford, Springfield, Quincy, and Collinsville. Our firm has had a strong presence at these venues for years and we are encouraged by the developments we are seeing with the Arbitrators assigned to these venues. You should always feel free to contact us with any questions you have regarding issues relating to these active hearing sites, or any other hearing site around the state.

We are pleased to highlight John Langfelder of our Springfield office in this edition with a very interesting article on the defense of stress claims. We also hope you find the additional information contained in this newsletter regarding developments at the Commission to be helpful.



Craig S. Young
Chair, WC Practice Group
cyoung@heylroyster.com

The cases and materials presented here are in summary and outline form. To be certain of their applicability and use for specific claims, we recommend the entire opinions and statutes be read and counsel consulted.

House Bill 1084, sponsored by representatives Mussman (D-Schaumburg) and Cullerton (D-Chicago), recently passed both houses of the General Assembly and, if signed into law, will require the Governor to appoint all arbitrators with the advice and consent of the Senate. Current procedure has the Governor making the initial appointments with the advice and consent of the Senate, but all subsequent appointments are made by the Workers' Compensation Commission.

This Month's Author:

John Langfelder began his career with Heyl Royster in 2003 in our Springfield office after 20+ years in claims with Country Insurance (formerly Country Companies) and a year in private practice in Columbus, Ohio. John focuses his practice in workers' compensation, civil, and toxic tort defense, and has represented numerous employers at arbitration, before the Commission, and at the appellate level. John is a graduate of Western Illinois University (B.S. in Chemistry) and Capital University Law School in Columbus, Ohio.

Stress in one's life seems to be present on a daily basis whether at work or home. From time to time, stress at work and its effect on one's life can be a normal subject of conversation with friends, family, co-workers, and occasionally your boss. People handle stress differently and stress from a variety of factors can have an effect on a person's physical and mental well-being. In the workers' compensation arena, claimants can recover for psychological disability under certain circumstances.

This month we look at psychological disabilities and recovery under the three different theories: mental-mental; mental-physical; and physical-mental. The cases contained in this discussion will show the elements of each theory, necessary proof, and the facts considered in determining compensability.

MENTAL-MENTAL

In *Pathfinder Co. v. Industrial Comm'n*, 62 Ill. 2d 556, 343 N.E.2d 913 (1976), the Illinois Supreme Court first addressed the question of whether an employee who suffers a sudden, severe emotional shock, traceable to a definite time and place and to a readily perceivable cause, which produces psychological disability, can recover under the Workers' Compensation Act, despite the fact the employee suffered no physical injury. The claimant in *Pathfinder* had been instructing another employee in the operation of a punch press. The claimant turned away after the employee assured her that the employee was able to operate the press. The claimant then heard cries for help and turned back to see the employee's hand caught in the press. Claimant shut off the machine and attempted to help remove the employee from the machine, but her hand had been severed. When claimant pulled the severed hand from the machine, she immediately fainted and the next thing she remembered was waking up in the hospital.

Claimant returned to work in the same area of the accident, but complained of headaches, difficulty seeing, numbness in her hands and feet, and nervousness. Claimant switched work stations but the symptoms continued and she also became fearful of the machines. Claimant quit working because she felt too ill to continue to perform her job. She was later hospitalized on two separate occasions with reports of headaches and numbness in her hands and feet. The records noted claimant was nervous and high strung.

At arbitration, there was conflicting medical testimony as to claimant's symptoms and causal connection to the accident she witnessed. The arbitrator found claimant was temporarily disabled and the decision was affirmed by the Commission. On appeal, the circuit court reversed the decision of the Commission holding that claimant did not "*sustain accidental injuries arising out of or in the course of her employment*" and the Commission's decision in favor of claimant was against the manifest weight of the evidence. Claimant appealed.

In addressing the question for the first time, the Court stated its holdings in tort cases are not controlling under the Act as the rights and remedies of an employee are statutory and an employee need not show negligence on the part of the employer or that he was free from contributory negligence to receive an award of compensation.

The court stated the Act must be and is consistently liberally construed to accomplish its purposes and objectives. "Accident" was held to include "*anything that happens without design or event which is unforeseen by the person to whom it happens*" and that a psychological disability is "*not noncompensable*" under the Act. The court concluded that *an employee who suffers a sudden, severe emotional shock, traceable to a definite time and place and to a readily perceivable cause, which produces psychological disability, can recover under the Workers' Compensation Act, despite suffering no physical injury.*

Citing to numerous prior cases, the court went further to state that claimants had previously been allowed recovery and awards for psychological disability or injury where physical contact or injury was minor. The court stated it could not support a rule that allows a claimant an award for a psychological disability caused by a minor physical injury, but denies a claimant recovery for a similar psychological disability caused by a sudden, severe emotional shock, who luckily escaped physical injury in the accident. The court also referred to decisions in other states affirming awards based on this question, stating such decisions are preferred.

In adopting this rule, the court did not consider any fears this holding would encourage the filing of these claims by malingering employees as there was no evidence or suggestion that this had occurred in the cases or authorities in other jurisdictions allowing these awards. While noting the Commission has not experienced such a problem in granting awards

for psychological disabilities in the past, the court reminded the Commission to be vigilant in its assessment of claims that may be easily fabricated or exaggerated. The court reversed the circuit court, noting that claimant suffered a sudden, severe emotional shock, which would be the reaction of a person with normal sensibilities, when claimant withdrew the severed hand from the press. Although there was conflicting medical testimony, the determination of which testimony to accept was for the Commission to decide and its decision was not against the manifest weight of the evidence.

Practice Tip:

A sudden, severe emotional shock or event should have an immediate impact on the employee and can be verified by medical treatment immediately or shortly after the event. Delay in seeking treatment and/or claimant continuing to work and function without any ill effect can be used to show the incident did not have the emotional impact claimed or could be related to other causes.

What if the psychological disability is not due to a sudden, severe shock traceable to a definite time and place or specific incident, but develops gradually over a period of time and in the absence of physical trauma or injury? In *Chicago Bd. of Education v. Industrial Comm'n*, 169 Ill. App. 3d 459, 523 N.E.2d 912 (1st Dist. 1988), claimant was an elementary school teacher and sought compensation for mental disability caused by unruly and unmanageable students, lack of support from the administration, physical assault by students, working conditions, increased work load, and inability to control students. Claimant was awarded benefits by the arbitrator and the Commission affirmed the decision but vacated the rehabilitation award. On appeal, claimant's interpretation of the holding in *Pathfinder* was rejected by the appellate court. Claimant maintained that mental disorders suffered without physical injury which develop over a period of time are compensable without the need to show it occurred at the result of specific incidents, or traceable to a definite time and place.

The appellate court stated on-the-job stress alone is not compensable as conditions and events that produce stress are present in all employment environments. An employee must show the risk to which exposed arose out of and in the course of employment and has a clear causal connection to the disability suffered. The court recognized that to allow compensation for any mental disability caused by on-the-job stressful events or conditions could open a floodgate to workers easily affected by the pressure of everyday life. In its analysis, the court stated mental disorders not due to trauma must arise from a risk or situation of greater dimensions than the day to day emotional strain and tension experienced by all employees. The employee must show the employment subjected him or her to an identifiable condition of employment not common or necessary to most occupations and that the condition or risk must be real and not simply the employee's perception. An employee must prove employment conditions, when compared to non-employment conditions, were the major contributing cause of the mental disability.

The appellate court reversed the Commission's decision as the analysis of the facts of the case showed the conditions alleged by claimant were no greater than those any teacher may face in an educational setting. Testimony showed this particular school was no different than any other inner city school and the majority of students were manageable. It was noted that unruly students, an unresponsive administration, and the burdens of paperwork and record keeping are not unusual. In addition, it was significant that claimant's breakdown did not occur during the course of employment as treatment for his depressive disorder commenced at the end of summer vacation and prior to returning for the school year.

City of Springfield v. Industrial Comm'n, 214 Ill. App. 3d 301, 573 N.E.2d 836 (4th Dist. 1991), further illustrates this point. There the claimant was a city fire inspector who suffered from anxiety and panic disorder alleged to be the result of a heavy workload, disputes with his supervisors, continual denial of requests to attend training schools, and political activity associated with his public employment. The arbitrator and the Commission awarded benefits and the decision was affirmed by the circuit court. In review of the facts, the appellate court found that all inspectors had a heavy workload, disputes with supervisors were common with all fire department employees, and requests to attend schools and training were routinely denied based on budget constraints. Claimant's assertion that he was singled out for endorsing the director's opponent in an election was without support as several other members of the department endorsed the same candidate without repercus-

sion. In reversing the Commission, it held that claimant failed to show he was exposed to an identifiable condition of greater dimensions than the day to day emotional strain and tension all employees would experience. The court agreed claimant's employment may subject him and the other employees to similar conditions capable of producing stress, but the conditions were not unique to claimant's employment or claimant himself. The court also questioned whether the conditions were real as the trial testimony failed to support claimant's perception of the conditions claimed to be the source of his mental disability. Claimant failed to prove the conditions were uncommon to all or a great many other occupations.

Timing of treatment for the mental disability is another factor considered in the evaluation of compensability. In *General Motors Parts Div. v. Industrial Comm'n*, 168 Ill. App. 3d 678, 522 N.E.2d 1260 (1st Dist. 1988), claimant filed a claim for depression resulting from a confrontation with the factory's personnel director in which claimant was subjected to profane language and racial slurs. After the verbal tirade, claimant stated he was subjected to ridicule by co-workers, began drinking heavily, became unkempt in appearance, and reclusive, gradually deteriorating into depression and a breakdown. The arbitrator denied benefits, but the Commission reversed the decision and was affirmed by the circuit court. The appellate court reversed stating that the language to which claimant was subjected, while not polite, was street jargon commonly used in the factory. The court also held that claimant failed to establish his disability flowed from the confrontation as he continued to work for over five months until injuries sustained in a fall at a relative's home prevented him from returning to work. In addition, claimant did not seek treatment for depression until 15 months after the incident and six months after being told to seek treatment by his primary care physician. The evidence showed claimant's breakdown to be caused by a variety of factors unrelated to work and not due to a single work related event or risk.

PHYSICAL-MENTAL

Chicago Park District v. Industrial Comm'n, 263 Ill. App. 3d 835, 635 N.E.2d 770 (1st Dist. 1994), shows the importance of physical trauma. Claimant was an attorney who alleged he was injured as a result of an altercation with his supervisor. Claimant was a 20-year employee when he began working for a new supervisor. Despite no prior complaints about his work or performance, claimant came under constant scrutiny and criticism from the new supervisor. On the date of the incident, claimant alleged the supervisor began yelling and screaming at him and then began to punch and slap claimant as he was walking away until the supervisor was restrained by another employee. Claimant sought medical treatment and began to experience difficulty concentrating and was physically sick whenever he saw his supervisor after the incident. Claimant subsequently sought psychiatric help and improved when placed under the supervision of a different individual. Claimant had occasion to see his prior supervisor and would still become agitated. Claimant later learned he would soon be under this individual's supervision again and became extremely upset. Claimant saw the employer's physician, went home sick and did not return to work. Claimant was placed on sick leave and later terminated when his position was written out of the budget.

At arbitration, claimant had not worked in several years and was found to be permanently and totally disabled as a result of the incident, which arose out of and in the course of his employment. The Commission upheld the arbitrator's decision and the circuit court affirmed. On appeal, the appellate court found there was sufficient evidence in the record to show claimant sustained a physical trauma and the resulting mental disability was causally related to the assault by the supervisor. The evidence showed the supervisor was the aggressor and, at the least, responded inappropriately and unreasonably in striking claimant. Recognizing claimants can recover for psychological disability or injury when there is minor physical contact or injury, the appellate court found the Commission's finding of compensability was clearly supported by the evidence, which showed the supervisor made physical contact with claimant and claimant's medical disability resulted from the incident.

Unlike the claimant in *Northwest Suburban Special Education Organization v. Industrial Comm'n*, 312 Ill. App. 3d 783, 728 N.E.2d 498 (1st Dist. 2000), who physically reacted to a non-physical event (another teacher pointing a finger and using hand gestures while talking), there must be actual physical trauma. Reacting to the gestures, claimant in *Northwest Suburban* grabbed and pushed the teacher down. There were no facts in that case to support claimant's perception that he

was being assaulted by the teacher. The testimony confirmed claimant was the one making contact and compensability was denied.

Practice Tip:

Proof of actual physical trauma is required under a physical-mental theory of recovery. When available, eyewitness statements will confirm or rebut a claim of physical contact. Obtaining such statements in employee altercations will also verify if the claimant was the aggressor and initiated the contact, which could bar recovery.

It should be noted that the appellate court in *Chicago Park District* case, reversed the Commission's finding that claimant was permanently and totally disabled. Claimant was capable and qualified to obtain employment without seriously endangering his health or life. In reaching this decision, factors to be considered by the Commission include the extent of claimant's injury, nature of his employment, age, experience, training and capabilities. Despite the fact claimant had not worked for several years after the incident, the evidence suggested he should be able to function in some other less threatening setting and a person with claimant's experience and education would be qualified for a wide variety of jobs in the legal and non-legal fields.

Matlock v. Industrial Comm'n, 321 Ill. App. 3d 167, 746 N.E.2d 751 (1st Dist. 2001) shows the potential for a claimant to recover under a physical-mental or mental-mental theory. Claimant was a flight attendant for American Air Lines and was working an international flight from Chicago to London. A passenger was allowed to board the flight after she was assessed to be fit for travel albeit eccentric in her behavior. During the flight, this passenger was routinely out of her seat, entering the galley where access was restricted, attempted to ignite an oxygen container, and eventually sprayed a chemical later determined to be a dental anesthetic, which could cause nausea, vomiting, hyperventilation, low blood pressure, shock and heart palpitations. The fumes permeated the cabin and claimant became ill and had to seek medical attention once the plane landed after being diverted. After her release, claimant worked the flight back on the same plane and experienced fear, anxiety, and heart palpitations. Claimant was debriefed by the FBI upon her return home and was provide a pamphlet entitled "Understanding Traumatic Stress Responses (a handout for victims and/or family members)." The employer authorized claimant to see a counselor for three visits after which the employer refused to pay for anymore visits despite the recommendation claimant receive additional treatment for her continuing mental disability.

At arbitration, claimant was able to show she sustained a sudden severe emotional shock traceable to a definite time and place, and physical injury. In finding the claim compensable, the arbitrator awarded penalties for the employer's unreasonable and vexatious conduct and delay in making payments. The Commission affirmed the decision but vacated the award of penalties and the circuit court affirmed. Based on the facts of the case, the appellate court concurred with the Commission's finding that claimant could recover under a physical-mental theory or a mental-mental theory. The evidence showed claimant was exposed to emotional and physical trauma due to the passenger's actions. Claimant suffered immediate physical consequences (nausea, dizziness, and heart palpitations) when exposed to the chemical spray, which occurred in the course of her employment. Medical testimony showed claimant was diagnosed with post traumatic stress disorder and that the diagnosis of PTSD was causally related to the traumatic events she experienced on the plane. The court found claimant's psychological disability arose from a situation of greater dimensions than the day to day emotional strain and tension to which all employees, including flights attendants, are subjected. While flight attendants may be trained to regularly handle unruly passengers, they are not normally exposed to passengers who attempt to blow up the plane or spray toxic chemicals.

As an additional note, the appellate court did reverse the Commission's decision as to penalties. Although the burden of proof in these types of cases are difficult and it may be reasonable for an employer to initially deny compensation, the evidence clearly showed the employer was on notice of the incident, provided claimant with a pamphlet regarding traumatic stress, and authorized counseling. Penalties were appropriate especially since the employer failed to pay for claimant's initial emergency room visit.

Physical trauma may not always be clear or obvious as demonstrated in *City of Springfield v. Industrial Comm'n*, 291 Ill. App. 3d 734, 685 N.E.2d 12 (4th Dist. 1997). Claimant filed a claim for psychological disability (debilitating depression)

she suffered after her supervisor forced her to engage in five acts of non-consensual sexual intercourse over a five-month period. The Commission found claimant's disability compensable as the physical contact explicit in non-consensual sexual intercourse is sufficient to meet the physical contact requirement necessary to satisfy a physical-mental theory of recovery. In upholding the Commission's decision, the appellate court determined the supervisor's forcing of non-consensual sex upon an employee can constitute physical contact. It was noted that rape, sexual assault and battery are all physical bodily injury crimes in Illinois and physical contact may be shown by actual injury (bruises) or inferred by the trier of fact based by use of common knowledge. The court held it was proper that the Commission infer that a non-consensual sexual assault was likely to involve physical trauma and its decision was not against the manifest weight of the evidence. The Commission's decision that there was a causal connection between claimant's injury and employment was based on unrefuted testimony. Although the employer attempted to argue the acts were consensual and claimant's depression was related to other causes, the supervisor did not testify in the case and the employer provided no medical testimony in rebuttal to refute claimant's testimony and evidence.

MENTAL-PHYSICAL

The third theory of recovery involves claims where the stress of the job causes a condition to develop or aggravates a pre-existing physical condition. In *City of Springfield, Illinois Police Dept. v. Industrial Comm'n*, 328 Ill. App. 3d 448, 766 N.E.2d 261 (4th Dist. 2002), claimant was a police officer assigned to the Juvenile Detective Division after spending time investigating murders and suicides. Claimant was responsible for investigating criminal and gang activities of juvenile offenders, interviewing suspects and victims of crimes, and making arrests including drug arrests at crack houses. Claimant was diagnosed with hypertension for which he was taking medication. Claimant began to experience headaches and eye pressure at work and the medication was unable to control his hypertension while at work. Claimant was eventually unable to continue work in law enforcement as his symptoms were increasing and he was diagnosed with signs of organ damage.

The Commission reversed the arbitrator's denial of benefits finding claimant had proven he had sustained accidental injuries and there was a causal connection between his employment and his current condition. On appeal, the appellate court held claimant's acute hypertension arose out of his employment as an officer as any time claimant was at work, his blood pressure would be essentially uncontrollable due to the stress, but when he was away from work, his blood pressure was easily controlled to the point he did not need to use medication. The medical testimony showed claimant's hypertension was exacerbated by his stressful job duties. The evidence showed a juvenile officer is one of the most stressful jobs of police work due to volume, recidivism, frustration and overriding sense of futility. Claimant's condition was characterized as mental-physical as claimant's pre-existing condition (hypertension) was aggravated by work related stress. An employer takes his employee as he finds him and the argument that claimant's hypertension was a pre-existing condition failed.

Mental trauma (work related stress) can aggravate a pre-existing condition. The medical evidence was uncontroverted that claimant suffered from a pre-existing condition, which was aggravated by job-related stress to the point claimant could no longer engage in police work without endangering his health. If work related stress, physical or emotional, aggravates a disease so as to cause a physical disability, there is an accidental injury arising out of and the course of employment and the claim is compensable. See *City of Waukegan v. Industrial Comm'n*, 298 Ill. App. 3d 1086, 700 N.E.2d 687 (2d Dist. 1998) (claimant's well-documented prolonged and substantial occupational stress led to development of premature coronary disease and caused the heart attack that followed).

In *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 775 N.E.2d 908 (2002), the Illinois Supreme Court held the Commission erred in its application of law when it denied compensation to claimant by stating claimant failed to prove he was subjected to a greater degree of stress than his co-workers. Claimant is only required to prove that the stress of the workplace is greater than the stress experienced by the general public. In citing to prior rulings, the court clarified its reference to "a higher than normal degree of stress" stating it merely relates to normal stress levels experienced by the general public. It does not mean comparison to stress levels of other co-workers or to a higher level of stress at the time of the injury. The court also found the Commission's ruling as to causation was in error.

Claimant was a high school industrial arts teacher who collapsed at work as a result of a bleeding ulcer, which resulted in reduced blood volume and led to cardiac arrest and brain

damage. Testimony from 14 witnesses (family, friends, students, and faculty) showed claimant had stressful supervisory duties, was under time completion deadlines, and monitored construction activities involving students. The employer eliminated half the time claimant was allowed to spend with student workers, which delayed work and caused the project to be five weeks behind schedule. Claimant was also charged with supervising and disciplining students working with and around scaffolding, power tools and other hazardous construction activities. Five medical doctors provided testimony as to whether stress caused claimant's injury. There was no dispute claimant suffered from a peptic ulcer. The medical testimony was sufficient to show the peptic ulcer was the source of the bleeding. The Commission found that claimant failed to prove stress was a causative factor of his bleeding. To recover, claimant needed to show that it was more probably true than not that he had an ulcer and the ulcer was aggravated by the stress of his employment.

The Supreme Court held that to recover in a mental-physical injury case, a claimant need only show the usual stress of the workplace is greater than the stress experienced by the general public and that the stress was a contributing factor to the injury. The Court also held that a claimant need not show increased or elevated stress at the time of injury nor demonstrate a sole strict correlation between stress and physical injury. Susceptibility to stress does not appear to be an available defense in such cases.

Stress was shown to be a causative factor in claimant's cerebral hemorrhage sustained while giving a speech at a retirement dinner. In *Pinckneyville Community Hospital v. Industrial Comm'n*, 365 Ill. App. 3d 1062, 851 N.E.2d 595 (5th Dist. 2006), claimant was the director of nursing and was placed in charge of a committee to arrange a retirement dinner for one of the physicians and then assigned the task of giving a speech as she was the one who knew the physician the longest. The employer argued that the dinner was not a work activity and attendance was voluntary. The Commission found that claimant was designated, ordered or assigned to give the speech, making attendance mandatory and not a voluntary recreational activity. The medical testimony showed the stress of the speech to be a causative factor in claimant's cerebral hemorrhage as the stress of the speech caused a sudden increase in blood pressure causing increased stress on blood vessels and played a role in the hemorrhage. The evidence presented also detailed the numerous other work related stressors claimant endured over the course of the year prior to the speech. In affirming the Commission's decision, the appellate court stated the credibility of the witnesses and the weighing of competing medical opinions is a determination for the Commission and its findings were not against the manifest weight of the evidence.

A final look at work related stress involves termination of employment. In *Glenda Skidis v. Industrial Comm'n*, 309 Ill. App. 3d 720, 722 N.E.2d 1163 (5th Dist. 1999), claimant sought benefits for stress induced anxiety and heart arrhythmia due in part to her claimed termination from employment. Claimant also claimed stress from racial and sexual slurs routinely made over the course of five years, but only made two complaints in the same time period. Claimant also had numerous personal issues (deaths in family and non-work health concerns) deemed to be causes of her claimed disability. The arbitrator denied compensation and the Commission affirmed. In upholding the Commission, the appellate court stated claimant failed to show her condition was a product of anything other than normal stress associated with all employment coupled with problems in her personal life. Ordinary on the job stress is not sufficient and claimant's termination was disputed. Transfers, demotions, new responsibilities, and layoffs or terminations are normal and expected conditions of employment along with the accompanying insecurity and worry associated with each. While involuntary termination may be traumatic, it does not rise to the level or meet the criteria set forth in *Pathfinder*.

CONCLUSION

Psychological disabilities are compensable under the Act. The three separate theories of recovery have required elements to be proven for a claimant to prevail. Although difficult to prove, the chances of recovery are greater if physical trauma is involved. In the absence of physical trauma, if there is a sudden severe emotional shock, or event traced to a specific time and place, claimant's actions and treatment following the event as well as eyewitness accounts are important to document. A claimant may recover compensation for a physical injury if work related stress has been found to be a causative factor. Aggravation of a pre-existing condition could be found compensable despite a claimant's susceptibility to stress. A claimant must show the stress in the workplace was greater

than the stress experienced by the general public and such stress contributed to the physical injury.

If you have any questions concerning psychological injuries or any other workers' compensation matter, please feel free to contact one of our attorneys.

CALCULATING INTEREST

Some petitioner's counsel still insist on requesting 9 percent judgment interest on workers' compensation awards rendered by the Commission. However, section 735 ILCS 5/2-1303 regards judgment interest, which does not accrue on a Workers' Compensation Commission decision unless and until it has been reduced to judgment per section 19(g) of the Act.

For this conclusion we rely on the following passages from *Radosevich v. Industrial Comm'n*, 367 Ill. App. 3d 769, 777-778, 856 N.E.2d 1 (4th Dist. 2006):

> A claimant is entitled to section 19(n) interest on all awards of arbitrators and decisions of the Commission. 820 ILCS 305/19(n) (West 2004). Interest pursuant to section 19(n) is "drawn from the date of the arbitrators award on all accrued compensation due the employee through the day prior to the date of payments." 820 ILCS 305/19(n) (West 2004). Cases such as *Ballard v. Industrial Commn.*, 172 Ill. App. 3d 41 (1988), and *Folks v. Hurlbert's Wholesale Siding & Roofing, Inc.*, 93 Ill. App. 3d 19 (1981), are cited for the proposition that a claimant is not entitled to section 19(n) interest on benefits that accrued after the arbitrators award. However, upon further review of these cases and the clear language of section 19(n), specifically that "[i]nterest shall be drawn from the date of the arbitrators award" (820 ILCS 305/19(n) (West 2004)), we decline to follow *Ballard*, *Folks*, and cases with similar holdings.
>
> A claimant is entitled to section 2–1303 interest if and when the arbitrator's award or Commission's decision has been reduced to an enforceable judgment. The decision by itself is not a judgment. When an employer fails or refuses to pay a final award determined by the arbitrator, which becomes the Commission's decision, and no further appeal is taken, a claimant may file a petition in the circuit court for entry of judgment pursuant to section 19(g) of the Act to reduce the award to an enforceable judgment. Only at that time does the onerous section 2-1303 interest apply. Moreover, the higher rate applies to the entire award dating back to its entry.
>
> Section 19(n) controls absent the entry of a section 19(g) order.

27th Annual Claims Handling Seminar

Thursday, May 17, 2012 • 1:00 - 4:30 p.m.

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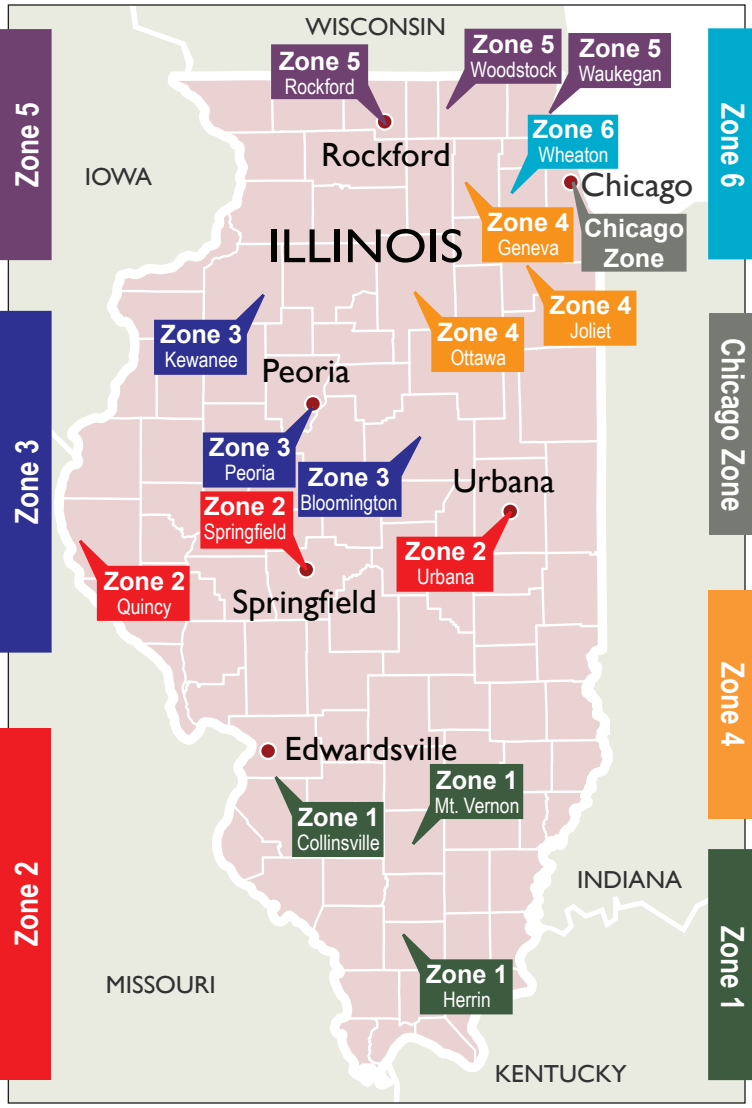
Workers' Compensation
Zone Coverage & Contact Attorneys

Heyl, Royster, Voelker & Allen



Zone 5

Dockets Covered:
Rockford • Waukegan • Woodstock

Contact Attorney:
Kevin J. Luther
kluther@heylroyster.com
815.963.4454

Zone 6

Docket Covered:
Wheaton

Contact Attorney:
Kevin J. Luther
kluther@heylroyster.com
815.963.4454

Zone 3

Dockets Covered:
Bloomington • Kewanee • Peoria

Contact Attorneys:
Bradford B. Ingram
bingram@heylroyster.com
309.676.0400
Craig S. Young
cyoung@heylroyster.com
309.676.0400

Chicago Zone

Contact Attorney:
Kevin J. Luther
kluther@heylroyster.com
815.963.4454

Zone 4

Dockets Covered:
Geneva • Joliet • Ottawa

Contact Attorney:
Kevin J. Luther
kluther@heylroyster.com
815.963.4454

Zone 2

Dockets Covered:
Quincy • Springfield • Urbana

Contact Attorneys:
Bruce L. Bonds
bbonds@heylroyster.com
217.344.0060
Gary L. Borah
gborah@heylroyster.com
217.522.8822

Zone 1

Dockets Covered:
Collinsville • Herrin • Mt. Vernon

Contact Attorney:
Bruce L. Bonds
bbonds@heylroyster.com
217.344.0060

Missouri Workers' Compensation Coverage

Contact Attorney:
James A. Telthorst - *jtelthorst@heylroyster.com*

HEYL ROYSTER

Statewide Appellate

Contact Attorney:
Brad A. Elward - *belward@heylroyster.com*

Office Locations

Peoria
Suite 600
124 SW Adams St.
Peoria, IL 61602
309.676.0400

Springfield
Suite 575
1 N. Old State
Capitol Plaza
PO Box 1687
Springfield, IL 62705
217.522.8822

Urbana
102 E. Main St.
Suite 300
PO Box 129
Urbana, IL 61803
217.344.0060

Rockford
Second Floor
120 W. State St.
PO Box 1288
Rockford, IL 61105
815.963.4454

Edwardsville
Mark Twain Plaza III
Suite 100
105 W. Vandalia St.
PO Box 467
Edwardsville, IL 62025
618.656.4646

Chicago
Theater District
Business Center
60 W. Randolph St.
Suite 220
Chicago, IL 60601
312.762.9237

www.heylroyster.com

HEYL ROYSTER

Below is a sampling of our practice groups highlighting a partner who practices in that area – For more information, please visit our website
www.heylroyster.com

Appellate Advocacy
Craig Unrath
cunrath@heylroyster.com

Business and Commercial Litigation
Tim Bertschy
tbertschy@heylroyster.com

Business and Corporate Organizations
Deb Stegall
dstegall@heylroyster.com

Civil Rights Litigation/Section 1983
Theresa Powell
tpowell@heylroyster.com

Class Actions/Mass Tort
Patrick Cloud
pcloud@heylroyster.com

Construction
Mark McClenathan
mmcclenathan@heylroyster.com

Employment & Labor
Tamara Hackmann
thackmann@heylroyster.com

Insurance Coverage
Patrick Cloud
pcloud@heylroyster.com

Liquor Liability/Dramshop
Nick Bertschy
nbertschy@heylroyster.com

Long Term Care/Nursing Homes
Jana Brady
jbrady@heylroyster.com

Mediation Services/Alternative Dispute Resolution
Brad Ingram
bingram@heylroyster.com

Product Liability
Rex Linder
rlinder@heylroyster.com

Professional Liability
Renee Monfort
rmonfort@heylroyster.com

Property
Dave Perkins
dperkins@heylroyster.com

Railroad Litigation
Steve Heine
sheine@heylroyster.com

Tort Litigation
Gary Nelson
gnelson@heylroyster.com

Toxic Torts & Asbestos
Lisa LaConte
llaconte@heylroyster.com

Truck/Motor Carrier Litigation
Matt Hefflefinger
mhefflefinger@heylroyster.com

Workers' Compensation
Craig Young
cyoung@heylroyster.com

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Peoria
Suite 600,
Chase Building
124 S.W. Adams Street
Peoria, IL 61602
309.676.0400

Springfield
Suite 575,
PNC Bank Building
1 North Old State Capitol Plaza
PO Box 1687
Springfield, IL 62701
217.522.8822

Urbana
Suite 300
102 E. Main Street
PO Box 129
Urbana, IL 61803
217.344.0060

Rockford
2nd Floor,
PNC Bank Building
120 West State St.
PO Box 1288
Rockford, IL 61105
815.963.4454

Edwardsville
Suite 100, Mark Twain Plaza III
105 West Vandalia Street
PO Box 467
Edwardsville, IL 62025
618.656.4646

Chicago
Theater District Business Center
60 W. Randolph St.
Suite 220
Chicago, IL 60601
312.762.9237