

WCLA MCLE 7-25-19

- Take A Leap: Is Jumping Off a Dock Compensable?
- July 25, 2019
- 12:00 noon to 1 pm
- James R. Thompson Center Auditorium, Chicago, IL
- 1 hour general MCLE credit

Nathan Benson v. Kirby Medical Center

14WC036242

- The surveillance video showed Petitioner jumping from a loading dock onto a hydraulic lift and falling to the ground.
- Petitioner testified he purposefully jumped from the loading dock in order to get down to the ground quicker so he could enter a company vehicle parked in the loading dock bay area.
- Petitioner testified there were stairs to the immediate right he could have taken which he estimated would have taken an extra 30 seconds to get off the loading dock.
- Petitioner also testified there was another set of stairs on the other end of the loading dock he could have taken which he estimated would have taken an extra 60 second to get off the loading dock.
- Petitioner was not directed, either verbally or in writing, to ever jump from the loading dock or to use the hydraulic lift to get down off the loading dock.
- Job description did not mention jumping from loading dock and required Petitioner to observe “all safety protocols.”

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- It is clear from the surveillance video, Petitioner's actions took him entirely out of the scope of his employment and he was injured while violating common sense safety rules.
- Petitioner chose to voluntarily, without the knowledge of Respondent to engage in a hazardous method of taking himself off the loading dock when his duties required him to make the trip in a safer manner.
- Alternative route cases
- Injury "was not result of fulfilling any duties required of his employment and thus there was no employer/employee relationship at the time of the accident."
- Personal/Employment/Neutral risk analysis
- When Petitioner ventures from a safe route provided by the employer for ingress/egress and instead, purposefully jumps from a loading dock onto a hydraulic lift thus falling off to the ground, he has exposed himself to an unnecessary personal risk, for his own personal convenience; therefore, any injury sustained while performing this activity **is not within the employment relationship and does not arise out of or in the course of the employment.**
- Claim DENIED

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17 IWCC 0770

- The Commission finds that Petitioner did establish an employee-employer relationship at the time of the injury. The Commission does not disturb the Arbitrator's ultimate determination. However, that the injury is not compensable in so far as **it did not arise out of his employment.**
- Regarding the Arbitrator's finding that there was no employer/employee relationship, in as much as Petitioner took himself out of the course of employment, the Commission does not take so draconian a view. Case precedent finds that for conduct to produce severance from employment, such conduct must be egregious, reckless, or unrelated to the claimant's employment; mere negligence or violation of a safety rule will not in and of itself suffice to sever an employee from the employment risk when an employee's actions were otherwise aimed at the furtherance of his employment duties.
- Nevertheless, Petitioner's injury is not compensable under the Act. **While his injury occurred in the course of his employment, it did not arise out of the employment.**
- Further, Petitioner's preferred route off this particular dock (a dock not too far off the ground, and free of any debris or premises defect) **was not especially risky.** While the parties may assume reasonably that the stairs would have been a less risky route than the non-stairs option selected by Petitioner, the **proposition that Petitioner's chosen route (regardless of whether Respondent acquiesced in this choice) was inherently dangerous is not warranted.** The reality is that Petitioner's fall **did not stem from any dangerous conditions of his employment or work-related increased risk of harm, but from a fluke:** video of this incident shows that he was intending to clear the side of the lift, but inexplicably, one foot was caught on the lift and caused him to fall. As he testified, he just took a misstep; "My foot slipped out from under me."

Benson v. IWCC

2019 IL App(4th)180702WC-U

- When, as in this case, more than one inference might be drawn from the undisputed facts, we apply a manifest-weight standard on review
- Petitioner: Required to go down from the loading dock to ground level to reach that truck (employment risk?)
- Respondent: Jumping off dock was not an act incidental to employment...voluntarily exposed himself to an unnecessary personal danger for his own convenience...actions took him out of the sphere of his employment...as a consequence, his injuries did not arise out of his employment (Personal risk; not in course of?)
- In this case, the claimant was injured while working and on Kirby's premises. Clearly, he was injured in the course of his employment.

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2019 IL App(4th)180702WC-U

- Risk analysis: The initial step in considering the “arising out of” component of a worker’s compensation claim is to determine the type of risk to which the claimant was exposed at the time of his injury
- **Not PERSONAL**: There is no evidence that his injury was the result of a personal risk such as an idiopathic fall.
- **Not EMPLOYMENT**: Nor is there any evidence that the risk of injury from descending from an elevated platform to ground level was peculiar to the claimant’s work or that the risk was the result of a defect in Kirby’s premises
- **NEUTRAL**: Members of the general public encounter the risk of injury as they descend from elevated platforms or structures to ground level in their everyday living

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- WE AGREE: did not stem from any employment requirement such as would have exposed him to risk greater (qualitatively or quantitatively) than that faced by the general public
- The risk that resulted in the injury was that of jumping off of the loading dock, an act which was not reasonably expected to be performed in connection with the assigned duties
- The Commission found that the claimant's injury "did not originate in any cognizable employment risk and therefore did not 'arise out of' employment."
- Based upon the foregoing analysis, we cannot say that the Commission's finding in this regard is against the manifest weight of the evidence.