



Workers' Compensation Report

Bruce L. Bonds*

Heyl, Royster, Voelker & Allen, P.C., Champaign

Public or Employer Provided Parking? That is the Question

A good amount of litigation over the years has centered around whether injuries to employees occurring in parking lots, both on and off the employer's premises, are compensable under the Workers' Compensation Act. In January 2023, the Illinois Appellate Court First District, Workers' Compensation Commission Division, issued an opinion regarding yet another injury in a parking lot.

Facts

In *Western Springs Police Dep't v. IWCC*, 2023 IL App (1st) 211574WC, the petitioner slipped on ice while exiting her car on the way to work, injuring her wrist. The petitioner worked for the Village of Western Springs as a crossing guard and was on her way to work outside the village hall on the morning of February 6, 2014. The petitioner testified that she parked in an angled public street space directly across from the village hall as it was close to the corner where she worked as a crossing guard, even though there were two parking lots designated for employees behind the village hall that were not for use by the general public. *Western Springs Police Dep't*, 2023 IL App (1st) 211574WC, ¶ 2. When she exited her car, she slipped on ice hidden by a thin layer of snow, lost her balance and fell, fracturing her wrist. *Id.*

The evidence presented at arbitration included testimony that the petitioner was not instructed by her employer to park in any particular area, that there were alternative employee-only lots provided by the employer, and that the petitioner chose to park in a public parking spot maintained and owned by the Village and mainly used for commuter train passengers. *Id.* ¶ 7. The spot in which the petitioner parked on the date of her injury had limitations on the duration of parking, but the petitioner testified that the Village granted her and other employees the privilege of parking in the angled spots in excess of the four-hour limitation applicable to members of the general public. She chose to park there instead of the employee lot because it was more convenient to get to the area where she performed her crossing guard duties. In order to avoid a citation for excess parking time in the spot in which she parked, the petitioner had to give the Village her license plate number. *Id.* ¶ 3.

The Law

To obtain compensation under the Act, a petitioner must show, by a preponderance of the evidence, that an accidental injury arose out of and in the course of employment. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill App. 3d 582, 591-92 (2d Dist. 2005). An injury "arises out of" one's employment if it originated from a risk connected with, or incidental to, the employment and involved a causal connection between the employment and the accidental injury. "In the course of" employment refers to the time, place, and circumstances under which the petitioner is injured. Injuries sustained while an employee is at work, or within a reasonable time before or after work, at a place where she might reasonably have

been while performing work duties, are generally deemed to be in the course of employment. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52 (1989).

Generally speaking, when an employee is injured off the employer's premises while traveling to or from work, the resulting injuries do not arise out of and in the course of employment and are subsequently not compensable under the Act. *Joiner v. Industrial Comm'n*, 337 Ill. App. 3d 812 (3rd Dist. 2003). This concept is usually referred to as the general premises rule. However, over the years, the court has carved out exceptions to the general premises rule; recovery has been allowed where the employee is injured in a parking lot provided by, and under the control of, the employer (known as the parking lot exception) and the employee is injured in a place where she was required to be in the performance of her duties and the employee is exposed to a risk common to the general public to a greater degree than other persons. See *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478 (1989); see also *Archer Daniels Midland Co. v. Industrial Comm'n*, 91 Ill. 2d 210 (1982).

In reviewing these cases, it is also important to differentiate between those cases that contain clear statements of law and those that revolve around assessments of witness credibility and announce no more than deference to the findings of the Illinois Workers' Compensation Commission under the manifest weight of the evidence standard. Where the facts are not in dispute, the issue becomes one of law and the appellate court has greater latitude in its review. Where the facts are in dispute, or where they are undisputed but permit more than one reasonable inference, the manifest weight of the evidence standard will govern.

Arbitration and Commission Decisions, Decision at Arbitration, Review and Circuit Court Review

At the trial level in *Western Springs Police Dep't*, the arbitrator found that the petitioner failed to establish her accident arose out of and in the course of her employment since she was in a parking spot open to the general public, on a public street, in a place removed from her crossing guard work location. *Western Springs Police Dep't*, 2023 IL App (1st) 211574WC, ¶¶ 3-4. The petitioner sought review by the Commission, which reversed the arbitrator's decision. The Commission found the petitioner fell in a parking spot over which her employer exercised control by exempting employees from the four-hour parking limitation, and the petitioner was therefore on the employer's "premises" at the time of the injury. *Id.* ¶ 4. The circuit court overturned the Commission's decision, finding that the accident did not arise out of and in the course of the petitioner's employment as such a finding involving injury in this public parking spot would mean the Village's "premises" for purposes of determining compensability of an injury to an employee while traveling to work would then include all the municipality's streets and sidewalks. *Id.* ¶ 5.

Appellate Court Reinstates Commission Finding

Upon review, the First District reinstated the decision of the Commission finding the petitioner sustained a compensable accident and was entitled to workers' compensation benefits. The First District rejected the circuit court's expansive definition of the term "premises" in the context of a workers' compensation claim and opined that the employer's premises included only a place where the injured employee reasonably might be in the performance of her duties and places incident thereto, including employer-provided parking areas. *Id.* ¶ 9. The employer's premises does not include all property owned by the municipality regardless of its connection to the performance of the employee's duties. The First District ruled the Commission's decision was not against the manifest weight of the evidence as it was based on the finding that the parking space where the petitioner fell was an employer provided parking area with special



privilege granted by the employer to the petitioner and other employees to park in the spaces over the time limitations applicable to the general public. *Id.* ¶¶ 9-10.

Take Aways

As the *Western Springs Police Dep't* decision demonstrates, when dealing with injuries in a parking lot, it is critical to conduct a thorough factual investigation into the relationship between the employer and the owner of the lot, the degree of control the employer retains over the lot and the route its employees take to enter the employer's place of business or work location in order to determine if the injury occurred in a place where the employer had sufficient control or dominion. In essence, is there any basis for the court to expand the employer's responsibility for injuries which do not occur on their premises? In parking lot falls, the devil is in the details. In this case, the fall occurred in a place that was open to use by the general public but was owned and maintained by the municipal employer, convenient to the employee to reach her workplace, and a special exception for parking duration was made for employees to park in the lot that were not given to members of the general public.

About the Author

Bruce L. Bonds is a shareholder in *Heyl, Royster, Voelker & Allen, P.C.*'s Champaign office and is the past Chair of the firm's state-wide workers' compensation practice. Mr. Bonds concentrates his practice in the areas of workers' compensation and third-party defense of employers. He is an Adjunct Professor of Law at the University of Illinois College of Law where he has taught workers' compensation law to upper level and graduate students since 1998. Mr. Bonds co-authored a book with Kevin Luther of the firm's Rockford office, entitled *Illinois Workers' Compensation Law 2020-2021*, which is published by Tomson Reuters. The book provides a comprehensive up-to-date assessment of workers' compensation law in Illinois. Mr. Bonds has been named to the Illinois Super Lawyers List for many years. He is a Leading Lawyer in Illinois, a Fellow in the College of Workers' Compensation Lawyers, and was named as one of the "50 Most Influential People in Workers' Compensation" by SEAK, Inc. in 2014.

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