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Workers' Compensation Report

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Employer/Employee Relationship – Are Incidental Benefits Enough to Establish the Relationship?

It is well settled that for an injury to be covered under the Illinois Workers' Compensation Act, an employer/employee relationship must exist at the time the accident occurs. An entity must have a person in its service under a contract of hire, oral or written, express or implied, to create that relationship. 820 ILCS § 305/1.

Recent Decision

The Illinois Appellate Court recently looked at this issue in *Larson v. Illinois Workers' Compensation Comm'n*, 2023 IL App (4th) 220522WC-U. The court examined whether or not the petitioner, who was injured during a crash landing of the plane she was flying, was an employee of Quad City Skydiving Center, Inc.

The petitioner Larson wanted to accumulate flight hours to obtain her flight instructor rating, which would allow her to fly jets. Her friend told her of an opportunity to fly for Quad City Skydiving (QCS) to increase her flight hours. Larson met with QCS owner Dennis Jensen. They agreed that Larson would fly between 5-8 hours each Sunday, depending on the number of jumpers QCS had registered. Larson did not get paid and never expected to get paid.

On June 29, 2014, she was flying for QCS when the plane crashed while she was attempting to land. Larson flew two or three times before the accident occurred. Larson sustained blunt force trauma to her face, causing lacerations and a broken nose requiring two reconstructive nasal surgeries. She filed a claim against QCS with the Illinois Workers' Compensation Commission.

At the arbitration hearing, Jensen testified that he had owned the skydiving business for 20 years and had never paid a pilot who flew for QCS. He used only volunteer pilots for his business and had no employees. Likewise, several other pilots testified that they flew for QCS to acquire flight hours but were never paid.

QCS provided Larson with the airplane and the fuel to ferry skydivers. Although Larson used her own headset, QCS provided the other equipment and directed Larsen where to fly and the route. QCS also told Larson what altitude to fly, where skydivers could jump, how much fuel to use, and what to do while descending the plane. She was to stay until the jumps were completed, and QCS would tell her when she was allowed to leave.

She recorded the hours she flew in her flight logbook. QCS never checked those hours to ensure they were accurate, nor was it something that QCS required its pilots to do. Despite Larson's testimony, Jensen denied that he controlled the manner in which she flew. He explained that she was already qualified to fly the Cessna 182, and he only conveyed instructions from the tower to her.

Arbitration Decision

At the arbitration hearing, Larson admitted she had agreed to fly without monetary compensation in order to accumulate flight hours. *Larson*, 2023 ILApp (4th) 220522WC-U. Alternatively, she would have had to rent a plane from a flight school for $195 an hour to obtain the required hours. Therefore, for every hour she flew for QCS, she saved $195. She testified that she told Jensen that flying for QCS would benefit her by allowing her to get hours free of charge and that Jensen responded that he would benefit from the fact she could fly his plane, freeing him from performing the task. Larson admitted during cross-examination that she was "volunteering" and that she was receiving an "incidental benefit." She never received any tax documentation from QCS reflecting a monetary or other benefit.

The arbitrator found there was consideration for the parties' agreement. He held that QCS gave as consideration the implied promise that Larson could fly the company's plane and accumulate hours. Therefore, he found Larson was an employee, not an independent contractor, and awarded benefits.

Commission Reverses

On appeal, the Commission reversed the arbitrator's decision. It held that "a true employer-employee relationship does not exist in the absence of the payment or expected payment of consideration in some form by employer to employee." It relied on the Court's findings in *Board of Education of the City of Chicago v. Industrial Comm'n*, 53 Ill. 2d 167 (1972), where a volunteer assistant teacher was not entitled to benefits under the Act because there was no consideration between the parties that could give rise to an employment contract as the assistant's activities were strictly on a volunteer basis with no expectation of money. Similarly, Larson admitted that she had no expectation of being paid for the hours she flew and did not expect that it would lead to gainful future employment. She used this volunteer opportunity to gain additional flight hours required for a higher rating. Therefore, because no consideration or payment was given in exchange for Larson's agreement to volunteer, no employer/employee relationship was created, and she was not entitled to workers' compensation benefits.

Circuit Court Reverses Commission

Larson sought judicial review in the circuit court. The court reversed the Commission's decision and reinstated the arbitrator's decision, finding she was an employee and was entitled to benefits.

Appellate Court Confirms Commission Decision

The matter was then appealed to the appellate court, which confirmed the Commission's decision and found it was not against the manifest weight of the evidence. Focusing on whether or not an employer/employee relationship existed at the time of the accident, the appellate court noted there could be no employer/employee relationship and no liability of an employer under the Act, absent a contract for hire, express or implied. *Pearson v. Industrial Comm'n*, 318 Ill. App. 3d 932, 935 (2001). An employer/employee relationship is a product of mutual assent and is reached by a meeting of the minds. In this case, the facts did not give rise to a contract for hire being established, despite the fact that both parties benefited from the agreement. It simply was the petitioner volunteering for a task that provided her an incidental benefit and both parties a mutual gratuity—not consideration for the petitioner's services.

Take Away

When a claim is filed by a party who may not be an employee, such as an independent contractor, volunteer, or agricultural or seasonal worker, it may be difficult to determine if the claimant is an employee under the terms of the Act. An early miscalculation can be costly.

About the Authors

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.

Heidi Agustsson joined *Heyl Royster* in 2006 after graduating from the University of Illinois Chicago School of Law in 2000. She currently concentrates her practice on civil defense matters and represents agricultural companies, companies in toxic torts, and employers in Workers' Compensation cases. Working out of the Rockford Office, she has cases pending in northern and central Illinois. Ms. Agustsson has been named a Leading Lawyer, authored articles which have been published by various defense organizations including *For The Defense*, and presented on several topics at claims handling seminars, bar associations, and the Defense Research Institute.

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