



Workers' Compensation Report

Bruce L. Bonds*

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

Compensability of Injuries While Working from Home

Over two years after Covid-19 forced employees throughout Illinois to work remotely, many Illinoisans continue to work from home exclusively or some of the time. As we all become accustomed to remote work and workers find rhythms to their day, we must remember that work injuries can, and do, occur in the remote setting also. Someone might trip on a door frame while rushing to find headphones before a video call. Someone else might slip a disc while grabbing a backpack with a work laptop from the backseat of the car. Discussing the workers' compensation implications of injuries that occur in home offices seems timely, but the problems presented by remote work are not new. Since the 1980s, workers' compensation cases in Illinois have addressed injuries that occur in home offices or workshops. As attorneys attempt to navigate the "new normal" that has resulted from the past two years of "unprecedented" change in the workplace, they can rest assured that when it comes to injuries that occur when people work from home, Illinois has plenty of precedent.

Pre-Covid-19 Decisions

Before the Covid-19-induced increase in remote work, Illinois workers' compensation attorneys addressed injuries that occurred at home for decades. Breaking these decisions down into four core categories helps illustrate important principles these precedents provide. First, earlier cases considered time spent working from home offices in Illinois to establish jurisdiction to hear a workers' compensation case. After clearly establishing jurisdiction, workers' compensation cases addressing home injuries generally fall into the following categories: (1) injuries that occur in home offices; (2) injuries that occur during the transition between home and office; and (3) injuries that occur on the job, but outside of an office.

Establishing Jurisdiction in Illinois

Before getting into the substance of a case, the specific facts of a claim made by employees with a home office have historically mattered for establishing jurisdiction for the Illinois Industrial Commission (now the Illinois Workers' Compensation Commission). In 1988, *Associates Corporation of North America v. Industrial Commission*, 167 Ill. App. 3d. 988, 990 (1st Dist. 1988), involved a traveling salesperson who had a heart attack in Providence, Rhode Island, while on a business trip. The decedent lived in Illinois for the entirety of his employment and had an office in his home. *Assocs. Corp. of N. Am.*, 167 Ill. App. 3d. at 990. He held work meetings, received five to seven work phone calls per day, and received work mail at home. *Id.* When determining whether the Industrial Commission had jurisdiction to hear a case about the decedent's injuries, the court considered the number of days he worked from home and the use of his Illinois address and phone for work purposes to "conclude that the decedent established a fixed, non-temporary employment situs in Illinois...." *Id.* at 995. This finding by the court upheld the reversal of the initial Illinois Industrial Commission's

determination that it lacked jurisdiction. *Id.* Overall, this decision demonstrates the importance of determining the home-based work set up before arriving at the substance of a particular case.

Injuries that Occur in Home Offices

Although cases like *Associates Corporation* indicate that people who get hurt in home offices could receive compensation, not every set of facts presents a compensable injury. For example, in *West v. Illinois Workers' Compensation Commission*, 2013 IL App (5th) 120134WC-U, ¶¶ 4-5, the claimant sold insurance in the field for his employer. The claimant alleged that he spent most of his time typing on a work laptop that he used in the insurance company's office, in an office he set up in his bedroom at home, in the car, and in customers' homes. *West*, 2013 IL App (5th) 120134WC-U, ¶ 6. When he sought compensation for repetitive stress injuries resulting in carpal tunnel release and cubital tunnel release surgeries, the commission determined that his injuries did not arise out of his employment, and both circuit and appellate courts affirmed that decision. *Id.* ¶ 58.

A similar outcome occurred in *Garrett v. Illinois Workers' Compensation Commission*, 2018 IL App (4th) 170606WC-U, ¶ 5, when a sales representative for Liberty Mutual started working from an office in his home in the fall of 2006. He provided his own desk. *Garrett*, 2018 IL App (4th) 170606WC-U, ¶ 5. Liberty Mutual provided the docking station for a computer and an ergonomic chair. *Id.* Here, the appellate court affirmed the circuit court and commission findings that the claimant's injuries did not result from a work-related repetitive trauma injury to his back. *Id.* ¶ 64. Overall, *Associates Corporation* and *Garrett* show that injuries that occur in home offices receive the same standard for "arising out of work" as injuries that occur in office buildings.

Injuries that Occur During Travel Between Home and Office

Sometimes Illinois workers get injured during the period of travel, or transition, between their home and office. For example, in *R.J. Reynolds Tobacco Co. v. Industrial Commission*, 133 Ill. App. 3d 322, 326 (3d Dist. 1985), the claimant suffered injuries in an accident that occurred during work hours as he drove a company car, containing company materials, from his employer's premises to a workshop in his home. The employer knew that the claimant sometimes completed work from his home workshop because the company did not have certain power tools. *R.J. Reynolds Tobacco Co.*, 133 Ill. App. 3d at 326. The claimant left work early to complete a display for his employers using the tools in his home workshop. *Id.* Here, the court noted that it "would not find compensable every accidental injury that might have occurred after the plaintiff left his office until he completed work on the company's display rack" but affirmed the commission's finding that these particular injuries arose out of work and did not go against the weight of the evidence. *Id.*

More recently, a similar determination was made in *Bolingbrook Police v. Illinois Workers' Compensation Commission*, 2015 IL App (3d) 130869WC. One morning, a police officer hurt his back as he lifted his duty bag into his personal car and got ready to drive to the police station. *Bolingbrook Police*, 2015 IL App (3d) 130869WC, ¶ 3. The police department neither required nor prohibited officers from transporting their duty bags between their homes and the station. *Id.* ¶ 5. In this case, the court held that the officer "was injured while performing actions that were directly related to his job-related task" of "maintain[ing] the safekeeping of the equipment that is necessary for [his] duties on patrol." *Id.* ¶ 4. Again, the case hinged on how the task related to the officer's work duties rather than whether he was lifting a work bag at the station or in his home garage.

Injuries that Occur Outside of the Office

When injuries from neutral risks occur outside of an office space, making the connection between work duties and the injury depends on whether the worker faced greater exposure to the risk than the general public. *See Illinois Institute of Technology Research Institute v. Industrial Comm’n*, 314 Ill. App. 3d 149, 163 (1st Dist. 2000). One neutral situation occurred in *Graff v. Family Hospice*, 12 IL W.C. 11837 (Ill. Indus. Com’n Aug. 20, 2014), when an on-call nurse twisted her ankle while turning around to grab her clipboard from her kitchen table. The nurse was walking to her front door when she realized that she forgot her work clipboard on her kitchen table. *Id.* at 2. As she turned to start walking towards the kitchen table to grab the clipboard, she tripped on a clean, carpeted surface. *Id.* at 2-3. The arbitrator found that the nurse did not get hurt out of and in the course of her employment. *Id.*

In contrast, a traveling plumber who tripped on a curb while out inspecting plumbing in the City of Chicago received compensation in *Nee v. Illinois Workers’ Compensation Commission*, 2015 IL App (1st) 132609WC, ¶ 29. There, the court found that the plumber was “exposed to the risk of traversing a curb to a greater degree than a member of the general public by virtue of his status as a traveling employee at the time of his accident” and should therefore receive compensation. *Nee*, 2015 IL App (1st) 132609WC, ¶ 28. Although these cases show the historical findings of the courts regarding neutral risks, the factors for distinguishing neutral risks from risks distinctly related to employment have shifted within the past few years.

Decisions Contemporaneous with the Covid-19 Pandemic

In addition to the increase in Illinois employees working from home, another event from 2020 shaped the future of workers’ compensation cases: the *McAllister v. Illinois Workers’ Compensation Commission*, 2020 IL 124848, decision. There, the Illinois Supreme Court outlined the three categories of risks that employees may be exposed to: “(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics.” *McAllister*, 2020 IL 124848, ¶ 38 (quoting *Illinois Inst. of Tech. Rsch. Inst.*, 314 Ill. App. 3d at 162). When considering risks associated with employment, *McAllister* provided three more subcategories: “(1) acts [the employee] was instructed to perform by the employer, (2) acts that [the employee] had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties.” *McAllister*, 2020 IL 124848, ¶ 46. When applying these categories of risk to the facts in *McAllister*, the court found that searching around for a pan of carrots on one’s hands and knees qualified as “an act his employer might reasonably expect him to perform incident to fulfilling his assigned job duties as a sous-chef in arranging the walk-in cooler.” *Id.* ¶ 51. Future decisions will hinge on what acts qualify as a “reasonable expectation” for a particular position or job assignment.

Although *McAllister* drew upon earlier ideas about categories of risks, the breakdown it provided for subcategories of risks “distinctly associated with employment” will play a major role in the analysis of arbitrators and commissioners attempting to determine what injuries from remote work are compensable.



Key Takeaways for Future Decisions

Looking ahead, the frequency of workers' compensation cases that involve injured remote workers will likely only increase in Illinois. Although the circumstances may seem novel at first, arbitrators, commissioners, and the courts have decades of decisions to draw upon for guidance.

Take, for example, a hypothetical individual who lives in Rock Island, Illinois, and works remotely from her home for a company located in Davenport, Iowa. Perhaps while getting ready for a video conference one morning, she trips over a door frame of her home office after grabbing headphones from another room in her house. Analyzing the cases discussed above provides some guidance for a potential outcome.

First, based upon the holding of *Associates Corporation*, the Illinois Workers' Compensation Commission would likely have jurisdiction in this case given the amount of time and the substance of the work the employee does in Illinois. Then, *West* and *Garrett* indicate that the fact that the injury occurred at home does not change the standard applied to determining whether her injury is compensable. The hazards of her home have become the hazards of her workplace. Although the decisions in *Nee* and *Graff* might initially suggest that the hypothetical employee's injuries result from a neutral risk that would require greater exposure to tripping hazards, *McAllister* indicates that tripping could fall into one of the subcategories of "risks distinctly related to employment." Perhaps the employer instructed employees to always join video calls with headphones. Perhaps using headphones, and thus going to grab headphones, is reasonably expected pursuant to an assigned duty of participating in video conferences for work. Unlike determining the "reasonable expectations" for a role like a sous chef, which has existed for a long time, determining the "reasonable expectations" for remote roles might prove more challenging. Over the next few years, the increasing number of workers' compensation cases involving injured remote workers will help define the parameters of "reasonable expectations." As arbitrators, commissioners, and the practicing workers' compensation bar help define these new parameters, they will continue building upon and defining the precedent for employees in Illinois who sustain injuries while working from home.

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.

*The author would like to thank **Jensen A. Rehn**, a summer associate in *Heyl Royster's* Champaign office, for her assistance with this article.



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