

KOEPKE & HILTABRAND

Attorneys at Law

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Bachelor of Arts/Political Science – 1991, Illinois Wesleyan University
Juris Doctor – 1997, Southern Illinois University School of Law
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Professional Affiliations: Illinois State Bar Association
American Bar Association
Sangamon County Bar Association

Practice Areas: Worker's Compensation Defense
Auto Liability Defense
Employment Law

SIGNIFICANT ARBITRATION DECISIONS

1. *Bolin v. Dermatology Center*

The petitioner claimed to have suffered a back injury when the patient chair she was adjusting gave way and she bore the weight of the patient. The petitioner had filed a prior worker's compensation claim for a herniated disc in her low back which had been settled one month prior to the new alleged injury. The petitioner alleged that she had reported the injury to the office manager, however, testimony on cross-examination contradicted various dates and times. The arbitrator found that the petitioner did not sustain her burden of proving that she suffered an accident arising out of or in the course of her employment and specifically found that the condition she alleged to suffer from was related to her prior claim which had been previously settled. The Illinois Workers' Compensation Commission affirmed the arbitrator's decision and the Circuit Court additionally affirmed the arbitrator's decision. The matter was appealed to the 4th Dist. Appellate Court and affirmed.

2. *Mammen v. Shell Air Jiffy*

The petitioner, a carpenter by trade, was injured while painting the exterior of the respondent's business. The arbitrator found that the petitioner was not an employee of respondent given his prior business dealings with another individual he was working with and given various statements that he made to medical personnel as to his employer. The arbitrator also specifically found the petitioner not credible given the fact that he denied

doing any work since the date of his injury and surveillance video taken of the petitioner clearly showed him working in a construction-type capacity approximately one month after the alleged injury. This matter was affirmed by the Illinois Workers' Compensation Commission for review.

3. *Williams v. ServPro*

The petitioner alleged that she injured her back while working at a site restoring flood damage. The incident was unwitnessed but the petitioner reported injuring her back several days later. Medical records subsequent to the accident revealed a history of injury that occurred at a friend's house rather than a work-related injury. The arbitrator found that the petitioner had not proven that she suffered an accident arising out of or in the course of her employment nor that she had established a causal connection between her current condition of ill-being and an accident.

4. *Hagene v. Construx of Illinois*

The petitioner was a construction worker who alleged that he injured his low back while lifting a manhole cover weighing several hundred pounds. He was diagnosed with an aggravation of a pre-existing low back condition but continued to work for the respondent. Due to his wife's transfer to another part of the state, the petitioner voluntarily terminated his employment with respondent and moved to Southern Illinois. The petitioner worked at two different construction companies while in Southern Illinois and approximately two years after the alleged accident underwent surgery for his low back condition. Following surgery he was released to return to work in a light duty capacity and was unable to find work at or near his prior wage rate (\$19.00 an hour). The petitioner alleged that given his failure to obtain work at or near his prior wage rate that he was entitled to a wage differential. The arbitrator found that, given the petitioner's voluntary move to an area which was economically depressed compared to his prior work location and the fact that the respondent would have had work within the petitioner's restrictions and at his prior rate of pay, the petitioner was not entitled to a wage differential and awarded instead a percentage of a man as a whole.

5. *Rodden v. Christian Farm Supply*

Petitioner, a diabetic, alleged a severe chemical burn to his lower leg and foot requiring extensive skin grafting and surgery. The petitioner initially told the emergency room that the blisters were caused by his work boots and was originally diagnosed with diabetic cellulitis. The arbitrator found that the initial history was inconsistent with the history of the chemical burn and denied benefits. The matter was appealed to the Illinois Workers' Compensation Commission which upheld the arbitrator's denial of benefits.

6. *Burdell v. Community Healthcare*

Petitioner, a home healthcare worker, alleged that she injured her low back assisting an elderly patient. When she was released to return to work light duty, a job was offered to her in the home office approximately 25 miles from her home. Petitioner refused to drive the 25 miles to the light duty position and continued to demand TTD due to her restrictions. The arbitrator found that due to the fact that petitioner had refused to return to work to light duty as offered by the respondent she was not entitled to any further TTD benefits and awarded only 3% loss of use man as a whole for her lumbar strain.

7. *Marvell Kirkwood v. Bemco Mattress*

Petitioner, Marvell Kirkwood, alleged that he suffered a low back injury as a result of carrying mattresses. Respondent testified through its employees that petitioner did not report any injury until ten days after the accident but instead reported that he would be missing work to have his wisdom teeth removed. Petitioner testified that he reported the incident four days after it occurred and stated that in addition to his low back pain he was also missing work due to having his wisdom teeth removed. The initial emergency room records did not reflect any history of an injury and the arbitrator denied all benefits due to the inconsistency between petitioner's testimony and the medical records. The Arbitrator's Decision was affirmed by the Commission.

8. *Roger Heffron v. Super Gas America*

Mr. Heffron was an employee of a convenience store owned by respondent and alleged that his severe cervical myelopathy was aggravated by his duties as a cashier at respondent's place of business. He testified that his repetitive neck movements to keep track of customers and to stock shelves aggravated his neck condition to the point that a cervical fusion was required. Petitioner's treating surgeon provided causation for petitioner's surgery to his work duties. Respondent's independent medical examiner refuted those opinions and stated that the activities the petitioner performed in the everyday course of his duties were no different than everyday activities he would perform outside of his employment and were not enough to aggravate his condition to the point that surgery would be required. Petitioner also failed to notify his employer that he believed his condition to be related to his employment until several months after surgery had actually been performed. The arbitrator denied all benefits to the petitioner. The Illinois Workers' Compensation Commission affirmed the arbitrator's decision.

9. Donald Watson v. K-Bowl

Petitioner suffered an injury to his arm while fixing a pin setting machine. Two surgeries were required to his shoulder to repair tendon damage and then to treat a frozen shoulder. Petitioner alleged that his condition caused him substantial difficulty in using the arm and demanded 70% loss of use of the arm. The arbitrator found it significant that petitioner was able to engage in bow hunting and shotgun deer hunting following his release from care and instead awarded 40% loss of use of the arm.

10. Christopher Carter v. King Pin Lanes

Petitioner, a chef, alleged that he suffered from bilateral carpal tunnel syndrome and deQuervains syndrome as a result of his repetitive work activities as well as a near slip and fall. Petitioner amended his Application for Adjustment of Claim immediately prior to arbitration to distance that date of accident from a non-work related injury where petitioner hit his wrist with a hammer. Petitioner did not seek treatment following his alleged near slip and fall until three months after the accident and failed to mention hitting his wrist with a hammer to any of his subsequent treating physicians. The arbitrator found that the petitioner's version of events was not credible when compared to the testimony of his co-workers who saw him wearing a splint on his affected wrist prior to the alleged near slip and fall. The arbitrator denied the petitioner's 19(b) Petition and denied all corresponding benefits and medical. The Commission affirmed the arbitrator's decision.

11. James McKinney v. George Alarm

Petitioner, a diabetic, allegedly fell from a ladder injuring his foot. Petitioner subsequently developed severe cellulitis in the foot requiring a partial amputation of that foot. Petitioner alleged that the fall from the ladder either caused or aggravated his foot condition to the point that the amputation was required. Respondent presented medical records from the VA Hospital on the date of the accident demonstrating no reported injury. On that visit, petitioner claimed merely that he had a diabetic ulcer for several weeks that wasn't healing. The arbitrator also took note of the fact that petitioner was certain of the accident date due to the location the accident occurred and his investigation as to what day he was at that location. The arbitrator denied the petitioner's claim for benefits and all TTD and medical benefits associated with his injuries. The Commission affirmed the arbitrator's decision

12. Donna Roper v. Hillsboro Community Unit School District #3

Petitioner alleged that while working as a cook for Respondent she slipped on water and fell to the ground injuring her left knee. Petitioner was seen by her family physician two days after the accident and only minimal

swelling was noted with no instability. Petitioner was seen by her family physician on three separate occasions subsequent to the accident and made no complaints of knee pain. Petitioner then returned to her family physician over eight months after the accident complaining of catching and popping in the knee and was for the first time taken off work. The arbitrator found that given the lack of any complaints in the eight months after her alleged work accident and her increased work at another employer along with the degenerative arthritis in the knee that the Petitioner failed to establish a causal relationship between her work accident and eventual condition of ill-being. The arbitrator therefore denied the Petitioner's claim subsequent to her initial office visit.

13. Nicole Woods v. Capri IGA

Petitioner was employed as a deli clerk/manager for eight years prior to her manifestation date of injury. She testified to numbness and tingling in her hands beginning toward the end of 2003 and eventually sought medical attention in January 2006. An EMG was performed confirming carpal tunnel in March 2006 and a surgeon recommended carpal tunnel surgery in May 2006. Petitioner filed two Applications for Adjustment of Claim, one against Respondent for a March 2006 manifestation date and the other against Respondent for a May 2006 manifestation date. The arbitrator found that the Petitioner had established causation between her work duties for Respondent and her current condition of ill-being with respect to an accident date of March 31, 2006 but not with respect to an accident date of May 17, 2006.

TRIALS

1. Robinson v. Standfer Lawn Care and Scaduto Properties – Sangamon County, IL.

The plaintiff, a tenant of defendant Scaduto, stepped into a hole in the parking lot which had been covered by leaves blown there by the defendant lawn company. Plaintiff alleged that due to the concealed nature of the hole that both defendants were negligent for her fractured hip. The plaintiff claimed medical expenses of approximately \$17,000.00. Plaintiff asked the jury for a total of \$150,000.00. The jury returned with a not guilty verdict for both defendants.

2. Glasscock v. Shop N Save – Sangamon County, IL.

Plaintiff alleged that his food poisoning was as a result of tainted meat he purchased from defendant's grocery store. The plaintiff, however, told the emergency room physicians that he had become sick after eating at Hardee's the prior morning. The plaintiff's trial testimony contradicted that

of the medical personnel and the judge directed a verdict in favor of the defendant grocery store on the issue of liability.

3. *Fafoglia v. Springfield School District 186 – U.S. Dist. Federal Court – Central District of Illinois.*

Plaintiff, an administrator with the School District, alleged sexual discrimination, sexual harassment and retaliatory discharge following the termination of her relationship with the superintendent of schools. Plaintiff and the superintendent had maintained an approximate 10 year relationship which ended, allegedly at plaintiff's request. Plaintiff claimed that following her termination of the relationship the superintendent caused her subordinates to turn against her, that she was denied a promotion into a new position and that she was essentially constructively discharged because she ended her relationship with the superintendent. The jury found for the School District on the issue of liability and thus awarded no damages to the plaintiff.

4. *Shirley v. Trendler – Macon County, IL.*

Plaintiffs, husband and wife, sued as a result of a rear-end automobile collision. Plaintiff, Julie Shirley, claimed neck and back pain, headaches and temporal mandibular joint disorder as a result of the collision. Plaintiff's husband, Steve Shirley, alleged that he suffered a loss of consortium as a result of his wife's injuries. The plaintiff's incurred medical expenses of approximately \$16,000.00, claimed future medical expenses, pain and suffering and disability adding up to \$300,000.00 and \$15,000.00 for the loss of consortium claim. The jury returned a verdict for \$1,620.19, medical bills for approximately three months following the accident, \$3,000.00 in pain and suffering, and \$0 for the husband's loss of consortium claim.

5. *Parker v. Carey – Logan County, IL.*

Property damage claim filed by Plaintiff for accident that occurred at intersection. Plaintiff alleged that he had a green light and proceeded through on a green light when Defendant turned left in front of him. Defendant alleged that as he approached the intersection the green turn arrow activated and he began his left turn when Plaintiff came through the intersection without stopping. The court noted inconsistencies in Plaintiff's testimony compared with statements given at the scene of the accident and returned a not guilty for the Defendant.

6. *Bradfield v. Hayes v. Jordan – Macon County, IL.*

Plaintiff loaned her vehicle to Defendant, Amanda Hayes. Defendant, Amanda Hayes filed a Third-Party Complaint against Steven Jordan for

contribution on the property damage claim. Defendant Hayes alleged that she stopped at a stop sign and proceeded into the intersection when her vehicle was struck by that of Steven Jordan. Steven Jordan alleged that he was traveling through an intersection with no traffic control devices when Plaintiff's vehicle came out of nowhere and he hit it. An independent witness supported Mr. Jordan's version of the facts. The court ruled that given the independent witnesses testimony and the fact that Defendant Hayes pled guilty to disobeying a stop sign that Amanda Hayes had failed to prove that Third-Party Defendant Steven Jordan was more than 50% at fault and denied her counter-claim but awarded Plaintiff her damages against Defendant, Amanda Hayes.

7. *Sherwood v. Willard – Adams County, IL.*

Plaintiff sued as a result of an intersection collision where the Defendant made a left hand turn in front of the Plaintiff. Plaintiff claimed neck and back pain as a result of the collision. Plaintiff incurred \$6,831.73 in medical expenses plus \$304.44 in lost wages. She was also claiming \$3,000.00 for honeymoon reimbursement for a total demand from the jury of \$25,000.00. The jury awarded Plaintiff's medical expenses, lost wages and pain and suffering for a total verdict of \$15,648.89.

PUBLICATIONS AND PRESENTATIONS

1. Spoke to Addus Healthcare management and officers at claims update, *Arising Out of and in the Course of Employment*, September 15, 2004.
2. Presenter at IICLE seminar on worker's compensation law, *How to Conduct a Deposition from a Respondent's Point of View*, January 2004.
3. Lorman seminar, *Employer's Perspective on Employment Discrimination, FMLA, ADA, and Worker's Compensation*, Fall 2002
4. Co-Author of IICLE supplement on *Proving Fault in Automobile Cases "Across the Center Line"* - Illinois Institute for Continuing Legal Education – 2002 and 2007.
5. Presenter at IICLE seminar on Basic Skills For New Attorneys. Discussion of the Rules of Civil Procedure concerning discovery from a defendant's point of view, May 2007.