# Workers' Compensation Report

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## Recent Appellate Court Decisions Provide Guidance on Analysis of Injuries Resulting from Everyday Activities

The appellate court's recent rulings provide guidance for injuries arising from everyday activities, such as bending, walking and twisting. In *Noonan v. Illinois Workers' Compensation Commission*, 2016 IL App (1st) 152300WC, the Illinois Appellate Court First District, Workers' Compensation Commission Division, affirmed a denial of benefits for an injury sustained while reaching for a pen on the floor.

In *Noonan*, the claimant, Terry Noonan, alleged he sustained a work-related injury to his right wrist while working for the City of Chicago as a clerk. At arbitration, the claimant testified that his job duties included filling out forms called "truck driver sheets" and answering the phone when no one else was available. *Noonan*, 2016 IL App (1st) 152300WC, ¶ 4.

The claimant testified that on the date of accident he was sitting in his desk chair filling out truck driver sheets when he accidentally knocked his pen off the desk with his elbow. The pen fell on the ground to the right of the claimant's chair. He testified that he put his left hand on the desk for support and reached down to his right side to pick up the pen. When he was approximately two inches from picking up the pen, the chair slipped out from under him and he stuck his right hand out to brace his fall. *Id.* ¶ 5. The claimant testified he struck his right hand on the floor and felt like he "jammed" his wrist. He sought medical treatment and eventually underwent surgery to his right wrist. *Id.*

The arbitrator found that the claimant failed to prove his right wrist injury "arose out of" his employment and denied benefits. According to the arbitrator, the claimant "failed to prove that the simple act of sitting in a rolling chair and reaching for a pen exposed him to an increased risk of injury that was beyond what members of the general public are regularly exposed to." *Id.* ¶ 7. The claimant appealed and the Commission ultimately affirmed. *Id.* ¶ 8. On appeal, the appellate court held that the Commission did not err in determining that the claimant failed to prove an injury "arising out of" his employment. *Id.* ¶ 36.

In order for a claimant to show his injury "arose out of" his employment, he must show: (1) the risk of injury is a risk peculiar to the work; or (2) is a risk to which the employee is exposed to a greater degree than the general public. *Id.* ¶ 18. In this case, the claimant asserted his wrist injury arose out of his employment because the act of attempting to retrieve a pen that he was using to fill out forms was in furtherance of his duties and, thus, was incidental to his employment. *Id.* ¶ 20.

The appellate court disagreed with the claimant and held that reaching for a dropped item while sitting in a chair was not an act the claimant was instructed to perform or had a duty to perform. *Id.* The court also found that this act was not incidental to the claimant's assigned job duties. *Id.* ¶ 21. In making this determination, the court distinguished the claimant's actions from those in *Young v. Illinois Workers' Compensation Commission*, 2014 IL App (4th) 130392WC (injury from reaching and stretching into a narrow box were employment-related risks because these acts were necessary for fulfillment of part inspector's job duties), and *Autumn Accolade v. Illinois Workers' Compensation Commission*, 2013 IL App (3d) 120588WC (injury from reaching for a soap dish while assisting a patient was an employment-related risk



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because this act was in furtherance of caregiver's job duties to ensure patient safety at assisted living facility). The *Noonan* court determined that the act of sitting in a chair and reaching to the ground was not one the employer might reasonably have expected the claimant to perform incidental to his clerk duties. *Id.*

Although the claimant was at work, the court found that the act he was performing when he was injured—reaching for a dropped pen—was not one he was instructed to perform or had a duty to perform. The court determined the act as claimant described was not incidental to his assigned duties. *Id.* ¶ 27.

Instead, the court determined the act of sitting in a chair and reaching to the ground to retrieve a pen is an act that presents a neutral risk. *Id.* ¶ 27. Injury from this act would only be compensable if claimant showed he was exposed to the risk to a greater degree than the general public. Employment related risks associated with injuries from a fall are those which the general public is not exposed, or performing some work-related task which contributes to the risk of falling. The court found there was no evidence of a defective condition on the employer's premises which contributed to the fall and that there was no evidence that any work-related task contributed to the claimant's fall. *Id.* ¶ 29.

Finally, the claimant argued that he was exposed to a risk that was greater than the general public because he had suffered a previous work-related back injury, which prevented him from bending forward and required him to bend sideways to pick up the dropped pen. *Id.* ¶ 31. The court again disagreed with the claimant, finding that this injury did not involve a "progression" of a work-related injury to the same body part. *Id.* ¶ 33. The court noted that the claimant had previously injured his back, whereas this claim related to a right wrist injury. The claimant could not show that bending to the right increased his risk of falling over while reaching in the chair. The act of turning or bending in a chair to reach to the ground, without more, was found insufficient to establish a work-related cause to his accidental injury. *Id.*

Most recently, on November 10, 2016, the Illinois Appellate Court First District, Workers' Compensation Commission Division, filed a decision in *Mytnik v. Illinois Workers' Compensation Commission*, 2016 IL App (1st) 152116WC. There, the appellate court reversed the Commission's finding and determined a claim was compensable where the claimant's act of bending down to pick up a bolt was an employment-related risk. *Mytnik*, 2016 IL App (1st) 152116WC, ¶ 45.

In *Mytnik*, the claimant sustained a low back injury from twisting and bending. The claimant worked installing rear suspensions on vehicles as they moved along the assembly line. The claimant testified that he stood on a platform that moved in a circular fashion and was required to twist and turn to grab equipment, like bolts and brackets, and then reach behind him to grab the articulating arm on a machine. *Id.* ¶ 5. The claimant testified he had less than one minute to install a rear suspension on a vehicle and installed approximately 62 per hour. *Id.* ¶ 6. On the date of accident, claimant testified he felt a sharp pain in his back when he bent down to retrieve a bolt that had fallen to the ground. *Id.* ¶ 7.

The arbitrator found the claimant sustained an injury that arose out of and in the course of his employment and awarded benefits. *Id.* ¶ 29. The Commission reversed the arbitrator's decision and determined claimant's injury was the result of a non-compensable neutral risk because claimant did not show he was exposed to the risk to a greater degree than the general public. *Id.* ¶ 30. The appellate court reversed finding the Commission's decision was against the manifest weight of the evidence. *Id.* ¶ 45.

The appellate court relied on the analysis utilized in the *Young* case and determined that the risk associated with claimant's act of bending down to pick up a bolt was a risk distinctly associated with his employment. *Id.* ¶ 44. The court noted that claimant's job required him to load bolts into the articulating arm, raise the arm up to the vehicle and press a button to secure the bolts. Witness testimony established that it was not uncommon for bolts to fall from the articulating



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arm to the floor and that, if a bolt was not immediately retrieved, the platform would jam and the assembly line would shut down. The court found claimant's injuries were a result of a risk distinctly associated with his employment. *Id.* ¶ 45.

In finding that this was a risk distinctly associated with his employment, the court determined the claimant established his low back injury arose out of his employment. Despite the fact that claimant was performing an everyday activity which presented a neutral risk—bending over to pick up a bolt—the court did not engage in a neutral risk analysis because it found the risk to be associated with claimant's employment.

## Impact on Current "Arising Out of" Analysis

Interestingly, these decisions did not address the court's recent decision in *Adcock v. Illinois Workers' Compensation Commission*, 2015 IL App (2d) 130884WC. In *Adcock*, the majority held that benefits should not be awarded for injuries caused by everyday activities like walking, bending, or turning, even if those activities were part of the employee's job duties, *unless* the employee's job required him to perform those activities more frequently than members of the general public or in a manner that increased the risk. *Adcock*, 2015 IL App (2d) 130884WC, ¶ 42.

In *Adcock*, the claimant injured his left knee while turning in a chair he used continuously to perform his work duties as a welder. *Id.* ¶ 3. The claimant's employer provided him with the chair as an accommodation for permanent restrictions due to a right knee condition. The Commission denied compensability finding that there was no evidence the injury was due to an increased risk connected to the claimant's work or a risk that was incidental to his employment. *Id.* ¶ 20. The appellate court reversed the Commission's decision and found that the act of turning in a chair was one of everyday life faced by all members of the general public, but found the claim compensable because the claimant was exposed to the risk to a greater degree by virtue of his employment. *Id.* ¶ 42. The *Adcock* court departed from the prior analysis it utilized in *Young* and *Autumn Accolade*, which had suggested that a neutral risk analysis is unnecessary where the employee is injured while performing his or her required work duties.

In *Noonan*, prior to a neutral risk analysis, the court first engaged in an analysis of whether claimant's act of sitting in a chair and reaching to the ground for a pen was an employment-related risk. *Noonan*, 2016 IL App (1st) 152300WC, ¶ 29. Only upon determining that this was *not* an employment-related risk, did the court proceed with a neutral risk analysis. *Id.* ¶ 30. The court's analysis suggests that injuries caused by activities of everyday life which are incidental to the employment will be found to be compensable, and a neutral risk analysis will be unnecessary.

The special concurrence in *Noonan*, authored by Justice Holdridge, concluded that injuries which stemmed from everyday activities, like the instant case, must be analyzed pursuant to neutral risk principles pursuant to *Adcock*, even if the risk is incidental to the claimant's job duties. *Id.* ¶ 41. The special concurrence concluded *Young* and *Autumn Accolade* were wrongly decided and further stated that he would decline to follow them. *Id.*

In addition, the dissenting opinion in *Noonan*, authored by Justice Stewart, argued that an employer should reasonably expect a clerical employee to bend over and pick up a dropped pen, thus, making claimant's injury the result of an employment-related risk. *Id.* ¶ 44. According to the dissent, if an employee is injured while performing an everyday activity that is incidental to his employment, the injury results from an employment-related risk and a neutral risk analysis should not be performed. *Id.* ¶ 45. However, the dissent agreed with the majority's approach that an injury stemming from an everyday activity must be analyzed for an employment-related risk first, and then, only if the risk is not employment related, move to the neutral risk analysis as established in *Young*. *Id.* ¶ 44.

However, in *Mytnik*, a unanimous court held that the type of risk which the claimant was exposed must be determined first in order to determine if the injury arose out of the claimant's employment. The court stated further that the first step



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in analyzing risk is to determine whether a claimant's injuries arose out of an employment-related risk. *Mytnik*, 2016 IL App (1st) 152116WC, ¶ 39. Relying on *Young*, the *Mytnik* court indicated it will only consider whether the injury was a result of a neutral risk if the injury is determined not to have resulted from an employment-related risk. *Id.*

The appellate court's recent decisions suggest that the court will continue to use the three-part risk analysis in determining whether an injury "arose out of" the claimant's employment, even in the event that the injury resulted from an everyday activity, such as bending, twisting, or walking.

## About the Authors

**Bradford J. Peterson** is a partner in the Rockford office of *Heyl, Royster, Voelker & Allen, P.C.* Mr. Peterson concentrates his practice in the defense of workers' compensation, construction litigation, auto liability, premises liability, and insurance coverage issues. In recent years, Mr. Peterson has become a leader in the field on issues of Medicare Set Aside trusts and workers' compensation claims. He has written and spoken frequently on the issue. He was one of the first attorneys in the State of Illinois to publish an article regarding the application of the Medicare Secondary Payer Act to workers' compensation claims, "Medicare, Workers' Compensation and Set Aside Trusts," *Southern Illinois Law Journal* (2002).

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