

Penalties and Fees Served Up for Frivolous Contention of Issues at Hearing

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Earlier this summer, the First District Illinois Appellate Court affirmed a decision requiring McDonald's to pay penalties and attorney's fees in a workers' compensation case. To impose penalties, the First District relied on Sections 19(k) and 16 of the Workers' Compensation Act 820 ILCS 305/19(k) and 820 ILCS 305/16. Rather than a reason for concern, employers can view the *McDonald's* decision as a reminder of the importance of making legitimate arguments grounded in reasonable interpretations of the facts surrounding an injury.

Factual Background

In October of 2012, Evangelina Bedoy worked at McDonald's, where her typical tasks included cooking hamburgers, bringing food from the refrigerator to the kitchen, and cleaning. *McDonald's v. Illinois Workers' Comp. Comm'n*, 2022 IL App (1st) 210928WC, ¶ 6. On October 3, 2012, Bedoy took a box of meat from the top shelf of the refrigerator and placed it on her left shoulder. *Id.* The box began to fall, and as she tried to stop it, she felt a twist in her lower back and pain in her right shoulder. *Id.*

After taking the box of meat to the kitchen, Bedoy told two of her supervisors what happened in the refrigerator. *Id.* She continued working, but when her manager arrived he called an ambulance, which Bedoy did not use. *Id.* Later that night, Bedoy took herself to the emergency room and complained of pain in her lower back caused by lifting heavy boxes at work. *Id.* at ¶ 8. She was diagnosed with a back strain but returned to work within two days. *Id.* at ¶ 10.

On the day of the accident, one of Bedoy's supervisors sent a Form 45 Report of Injury to the main McDonald's franchise office, and the office administrator confirmed receiving it. *Id.* at ¶ 7. "October 3, 2012" appeared on the Form 45 in both handwriting and as printed by the fax machine indicating the date sent. *Id.* On October 4, 2012 McDonald's insurance carrier received notice of Bedoy's back injury from handling a box of meat. *Id.* Four days later, on October 8, 2012, the insurer sent a letter to Bedoy telling her that it had received notice of her work-related injury. *Id.* at ¶ 9.

Within two weeks of the initial incident, Bedoy went to the Chicago Pain and Orthopedic Institute for treatment of her low back and right shoulder pain. *Id.* at ¶ 10. Between October of 2012 and September of 2014, Bedoy saw numerous medical providers for a variety of treatments ranging from steroid injections to physical therapy. *Id.* at ¶¶ 12-23. By 2014, Bedoy only worked ten hours per week, rather than the approximately thirty-eight hours per week she worked before the accident. *Id.* at ¶ 25.

From the facts alone, the case seems typical. Initially the arbitrator's decision seems standard, too. The arbitrator noted "that a work-related accident occurred, that claimant gave timely and appropriate notice to McDonald's, and that claimant's current condition of ill-being was causally related to the accident." *Id.* at ¶ 29. From this, the arbitrator found that the claimant was entitled to all past medical expenses and awarded a percentage loss of her person as a whole. *Id.* The case became noteworthy when the arbitrator went a step further and awarded attorney's fees and penalties under Sections 19(k) and 16 of the Workers' Compensation Act 820 ILCS 305/19(k) and 820 ILCS 305/16. To understand why McDonald's received those penalties, we need to look beyond the bare facts to how McDonald's framed the issues in this case.

What did McDonald's contest?

Workers' compensation cases often involve arguments over whether an accident caused a particular injury or whether a specific treatment was reasonable. If McDonald's had only used these traditional avenues, the arbitrator may not have issued penalties. Instead, McDonald's contested five separate

issues: (1) whether a work-related accident occurred; (2) whether the claimant provided appropriate notice of the accident; (3) causal connection between the alleged accident and injuries; (4) reasonableness and necessity of medical care; and (5) nature and extent of disability.

After the arbitrator found for Petitioner on all these issues and added penalties and fees, McDonald's appealed to the Illinois Workers' Compensation Commission, which affirmed the arbitrator's decision (with a few minor clerical adjustments). *McDonald's v. Illinois Workers' Comp. Comm'n*, 2022 IL App (1st) 210928WC, ¶¶ 29-30. From there, both the Circuit Court of Cook County and the First District Appellate Court also affirmed the arbitrator. *Id.* at ¶ 30.

Throughout its analysis section, the First District's opinion goes through each of the five initial issues McDonald's contested as well as the arguments about a lack of statutory authority to award penalties and fees. Section 19(k) states that the Commission can award additional compensation in the following circumstances:

"where proceedings have been instituted or carried on by the one liable to pay the compensation which do not present a real controversy, but are merely frivolous or for delay"

820 ILCS 305/19(k); *McDonald's* at ¶ 29.

Section 16 of the Act allows the Commission to award attorney's fees and costs when the employer "has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act..." 820 ILCS 305/16; see *McDonald's*, at ¶ 61.

In its appeal, McDonald's emphasized that it did not delay the proceedings or refuse to pay benefits. *McDonald's*, at ¶ 60. However, the First District stated that "[t]he Commission awarded additional compensation and attorney fees because McDonald's disputed the issues of accident and notice, and not because of delay or refusal to pay benefits." *Id.* at ¶ 62.

According to the arbitrator, the Commission, and the Courts, McDonald's frivolously contested Petitioner's work-related accident and notice claims. McDonald's offered no "material evidence to rebut" Petitioner's testimony regarding the accident. *Id.* at ¶ 37. Plus, evidence showed that both the McDonald's franchise owner and its expert witnesses acknowledged that a work-related accident had occurred. *Id.* at ¶ 26. Petitioner sought and received treatment for her injuries, which she identified in the emergency room as work related, on the day of the accident. *Id.* at ¶ 8.

McDonald's tried to "discredit its own expert" doctors to deny that any accident had occurred. *Id.* at ¶ 45. Beyond a lack of evidence to refute Petitioner's claim that an accident had occurred, McDonald's lacked evidence that there was no appropriate notice of the accident. *Id.* at ¶¶ 37-38. McDonald's had multiple expert doctors with opinions about the treatment Petitioner had received, the severity of her injury, and her future restrictions. *Id.* at ¶¶ 48-49. In fact, one expert doctor for McDonald's identified Petitioner's shoulder and arm injuries [as] caused by her work accident. *Id.* at ¶ 45. These concessions suggest that McDonald's recognized Petitioner's injury as work related. In this context, the choice to contest the claims of an accident occurring and providing notice of the accident seem frivolous.

Perhaps McDonald's thought contesting every claim provided the best way to protect its interests. Instead, the arbitrator, Commission, and Courts found those challenges frivolous. To avoid similar penalties, employers should stay within the parameters outlined in the First District's opinion.

Key Takeaways

The *McDonald's* decision should not cause every employer to worry that they will need to pay penalties or attorney's fees for legitimate good-faith defenses. Sections 19(k) and 16 of the Workers' Compensation Act are designed to address deliberate conduct undertaken with bad faith or for some other improper purpose. *Id.* at ¶ 71; 820 ILCS 305/19(k) and 820 ILCS 305/16.

Ultimately, the First District found that McDonald's conduct was unreasonable because it had no reason to contest Petitioner's work-related accident or notice. *McDonald's* at ¶ 72. Petitioner had proof of timely notice on the day of the accident. The employer and insurer received notice within a few days. *Id.* Given that Respondent had proof of the work related accident, lacked any evidence to the contrary, and acknowledged at least some of Petitioner's injuries, its challenges only created delay and additional costs of the litigation. *Id.* at ¶ 74. The arbitrator described these challenges as "merely vexatious." *Id.* at ¶ 29.

So long as an employer acts in good faith, it should avoid the penalties and fees McDonald's had to pay in this case. In fact, the First District explicitly stated that "[i]f an employer possesses facts that would justify its position, fees and penalties are usually inappropriate." *Id.* at ¶ 66. Given the facts in this case, McDonald's lacked a reasonable basis to contest the accident ever occurring.

Near the end of its opinion in *McDonald's*, the First District summarized the overarching theme of the opinion as follows:

"[A]n employer must have a reasonable basis to take a position. In other words, there must be some legitimate purpose served by an employer's litigation tactics. A position is not legitimate or reasonable simply because the Act permits it."

Id. at ¶ 72.

By strategically choosing which issues to contest, employers can avoid being hit with the penalties and attorney's fees McDonald's faced.