

What's My Job?: A Look at Voluntary Undertakings Considered "In the Course" of Employment

By [Joe Rust](#): Chicago Office

As we know, for a Workers' Compensation claim to be considered compensable under the Illinois Workers' Compensation Act, it must "aris[e] out of" and be "in the course of" his or her employment. 820 ILCS 305/2. A common defense to workers' compensation claims is the injury did not occur while the employee was performing a task within the scope of their employment with the employer.

While the determination of whether an injury is compensable is largely fact specific, the Illinois Appellate Court recently addressed the topic of whether claimant sustained an accidental injury arising out of and occurring in the course of his employment while voluntarily performing tasks outside the scope of his job responsibilities in *Purdy Brothers Trucking, LLC v. Illinois Workers' Compensation Comm'n*. 2021 IL App (3d) 200463WC-U. Ultimately, the Third District Illinois Appellate Court affirmed the finding of the Commission that claimant sustained an accidental injury arising out of and in the course of his employment. Although a favorable decision for claimants, the *Purdy Brothers Trucking* decision is certainly illustrative for employers as will be discussed below.

Factual Background

In *Purdy Brothers Trucking*, claimant suffered an injury to his left hand and wrist on June 6, 2018, when he tripped and fell while unloading a truck. *Id.* ¶ 4. In July 2018, claimant worked as a 'spotter' at respondent's food processing plant in Amboy, Illinois which was operated by a third party, Sensient. *Id.* ¶ 5.

Claimant's spotter job required him to position tractor trailers in docks of the manufacturing plant. *Id.* For this position, respondent provided no job manual or training on either claimant's job duties or use of any equipment. *Id.* ¶ 6. Claimant testified he was simply instructed 'to do as [another spotter] did.' *Id.*

On the day of the accident, claimant was instructed by a Sensient employee to get a trailer containing barrels that were used to ship Sensient's products. *Id.* ¶ 9. Claimant drove the spotter truck and trailer filled with barrels to the dock. *Id.* Claimant then told the Sensient employee he would help get the barrels off the trailer. *Id.* When claimant grabbed one of the barrels and walked it to the back of the trailer, he tripped on a strap that was used to secure the barrels. *Id.* Claimant fell to the ground, injuring his left knee and left wrist. *Id.*

At arbitration, Claimant acknowledged he was taking direction from someone who was not employed by the respondent. *Id.* ¶ 12. Respondent's witness testified a spotter's responsibility is to move trailers into and out of the docking area, and spotters were instructed not to load or unload trailers. *Id.* ¶ 13. On cross-examination, the witness admitted respondent did not have an employee manual or specific job description for spotters, which would have confirmed his testimony spotters were instructed not to load or unload trailers. *Id.* ¶ 14. The arbitrator determined claimant suffered an injury that arose out of and in the course of his employment with respondent. *Id.* ¶ 16. In support of the finding, the arbitrator was critical of the respondent not having a job manual or specific job description for the spotter position, and at the time of the accident, claimant was not doing anything that could be deemed unreasonable or unusual. *Id.* The Commission affirmed and adopted the decision of the arbitrator. *Id.* ¶ 18. On judicial review, the Circuit Court of Bureau County confirmed the decision of the Commission and respondent appealed to the Illinois Appellate Court.

Appellate Court Analysis

On appeal before the Illinois Appellate Court, respondent argued the Commission finding that claimant's injuries arose out of and occurred in the course of his employment as a spotter was against the manifest weight of the evidence because claimant was voluntarily performing activities he knew were outside the scope of his job duties, as he was specifically told not to unload trailers, when he was injured. *Id.* ¶ 22.

"An injury is said to 'arise out of' one's employment if its origin is in some risk connected with or incidental to the employment so that there is a causal connection between the employment and the accident injury." *Id.* ¶ 26; citing *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, ¶ 36. Illinois courts recognize three categories of risks to determine whether a claimant's injury arose out of his or her employment: "(1) risks distinctly associated with employment; (2) risks personal to the employee; and (3) neutral risks." *Id.* ¶ 26.

"Employment risks are those that are inherent in one's employment." *Id.* ¶ 27; citing *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 352 (2000). These include the more obvious injuries: falling on slippery ground at the worksite or performing some work-related tasks which contributes to the risk of falling. *Id.* Personal risk, the second category, includes "nonoccupational diseases, personal defects or weaknesses, and confrontations with personal enemies." *Id.* ¶ 28; citing *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 352 (2000). These risks include something akin to a fall due to a bad knee or a fall due to an episode of dizziness. *Id.* These risks are generally noncompensable unless the employment conditions increase the risk of injury. *Id.* The third category, neutral risks, "have no particular employment or personal characteristics." *Id.* ¶ 29; citing *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 353 (2000). Examples of neutral risks include stray bullets, dog bites, lightning strikes, etc. *Id.*

"A risk is distinctly associated with one's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident[al] to his or her assigned duties. *Id.* ¶ 30; citing *McAllister*, 2020 IL 124848, ¶ 46. The Court determined claimant's injury in *Purdy Brothers Trucking* arose out of an employment-related risk based on the third prong, reasoning claimant was performing a task he reasonably believed to be part of his job. *Id.* ¶ 30.

Respondent's central argument on appeal relied on the findings in *George S. Mephram & Co. v. Industrial Comm'n*, to posit claimant was 'volunteering to perform duties,' which would be considered outside the scope of his employment. *Id.* ¶ 34; *George S. Mephram & Co. v. Industrial Comm'n*, 289 Ill. 484 (1919). In *George S. Mephram*, "the employee worked in a paint factory, operating paint mixers driven by belts." *Id.* ¶ 35. On the day of the injury, one of the belts broke and claimant offered to help fix the belt, although respondent specifically hired millwrights to fix and maintain the belts. *Id.* Ultimately, the case reached the Illinois Supreme Court, which held "an injury to an employee, 'while engaged in a voluntary act not accepted by or known to the employer and outside the duties for which he is employed, cannot be said to arise out of his employment.'" *Id.*; citing *George S. Mephram & Co.*, 289 Ill. at 488.

Respondent argued the *George S. Mephram & Co.* case was directly on point, but ultimately the Appellate Court was unconvinced. It determined there was zero evidence claimant was specifically prohibited from unloading trailers, even though claimant admitted it was not a task he normally performed. *Id.* ¶ 32. The Court disagreed claimant made himself a volunteer. The Court was also critical there was not a written policy about spotters loading and unloading trailers. *Id.*

Conclusions

One can see how this issue becomes so fact specific to a particular case. Since it is so fact specific and may come down to the trier of fact's findings on conflicting witnesses' credibility, it is important for an employer to do everything they can to avoid such a situation. Employers should maintain detailed job manuals and/or job descriptions clearly setting out their employee's responsibilities. If it is foreseeable an employee may help another position's duties, it should be clearly defined if this action is forbidden.