

Award Credit Eligibility

By: Ryan Dezonno
Associate



In a recent Illinois Appellate Court decision, the First District confronted the mysterious issue of Respondent's entitlement to a permanency credit for awards on Petitioner's prior injuries of the same body part.

In an unpublished decision, the Appellate Court reviewed a case where a Petitioner, a police officer, was injured when he slipped on wet grass while responding to a call when he injured his right knee in 2015.

Petitioner previously injured his right knee while working for the same Respondent in 1999.

Section 8(e)(17) of the Illinois Workers' Compensation Act grants a credit to Respondent for injuries to the same body part. Petitioner received a 20% PPD award toward the loss of use of his right leg for the 1999 case. The arbitrator awarded 30% PPD toward the loss of use of Petitioner's right leg in the present case. Applying the rules of the Act, the arbitrator correctly awarded a total of 10% loss of use of the right leg to Petitioner.

Both parties agreed with the percentage, but disputed the method the arbitrator used to calculate the final percentage. Petitioner claimed that calculating a prior award credit meant subtracting the amount of PPD previously awarded from the current award in units of weeks. Under this analysis, Petitioner would be entitled to 24.50 weeks of PPD benefits.

Respondent argued that calculating a prior award credit meant finding the difference of the percentages first and then applying the result to body part schedule to determine PPD owed in weeks. Under this analysis, Petitioner would be entitled to 21.50 weeks of PPD benefits.

The Commission, on appeal, affirmed and adopted the Arbitration Decision. The Circuit Court confirmed the Commission's Decision. The Appellate Court reversed the judgment of the Circuit Court and Commission Decision.

The Appellate Court determined that the main issue is whether the ambiguity of a statute is a question of law to be resolved de novo or a question of fact subject to the clearly erroneous standard. Here, the issue of calculating a prior award was to be resolved de novo.

The Court looked to the plain meaning of the language in Section 8(e)(17) and did not find ambiguities.

The Court held in favor of Respondent that prior losses shall be deducted from subsequent injuries as a percentage of loss. The fact that compensation was made payable serves only as a condition precedent to the deduction, not as a subtraction from compensation awarded.

Practice Tip:

Thorough investigations of a claimant's past can net prior award credits at the start of a case. Be sure to utilize the IWCC website and ISO reports to investigate prior claims on all new cases in order to determine whether prior award credit eligibility.

Know Where the Contract Sits

By: Brian Rosenblatt
Income Member



The Illinois Workers' Compensation Commission ("IWCC") recently denied a petitioner's case based on lack of jurisdiction. In *Heather Clarkson v School Town of Griffith*, 23IWCC0471, the IWCC affirmed the Arbitration Decision, albeit with a dissent, finding that the contract for hire between Petitioner and Respondent was not entered into in Illinois and thus Illinois had no jurisdiction to hear and decide the case.

Section 1(b)(2) of the Illinois Workers' Compensation Act sets forth the requirements for Illinois jurisdiction in workers' compensation cases. The Illinois Appellate Court, in *Cower v IWCC*, 313 Ill.App.3d 364, 728 N.E.2d 789, 793, 245 Ill.Dec. 707 (5th Dist 2000) simplified the language of Section 1(b)(2) into 3 factors:

1. Whether the contract for hire was made in Illinois,
2. Whether the accident occurred in Illinois, OR
3. Whether Petitioner's employment was principally located in Illinois.

At trial, Petitioner acknowledged that she was both injured and principally employed in Griffith, Indiana. Accordingly, Illinois could only have jurisdiction if the contract for hire was made in Illinois.

Petitioner argued that Illinois had jurisdiction because she was at home in Monee, Illinois when she accepted Respondent's job offer via a video conference. It is well established in Illinois that a contract for hire is made where the last act necessary to give validity to the contract occurs. The evidence showed that following her verbal acceptance, Petitioner signed the written employment contract in Indiana. Respondent's witness, a member of the School Board, confirmed that the School Board has final authority to approve or deny a hire; once the offer is verbally confirmed, the School Board signs the written employment contract and then the new hire is required to sign. Petitioner signed her contract in Griffith, Indiana.

Practice Tip:

When hiring out-of-state residents, remember to define the hiring process and to verify the situs of the final steps in creating the contract for hire.



FIRM NEWS

Downey & Lenkov Participates in USLI's October Stronger Together Auction

We are proud to have participated in USLI's October Together—Stronger Together Silent Auction benefiting Breastcancer.org. They were able to raise \$500,000 this year!



Rich Lenkov Completes First Semester of Teaching

Rich Lenkov was thrilled to teach 649.1 Workers' Compensation to Northern Illinois University 2Ls & 3Ls this past semester.



Kirsten Kaiser Kus' Article Featured in the November issue of CLM Magazine.

Capital Member Kirsten Kaiser Kus collaborates with Ben Kincheloe and Kate Claudio to provide insights on the best ways to defend against an unwitnessed workers' compensation accident. Read full article [here](#).



Kirsten Kaiser Kus & Michael Milstein Speaking at 2024 CLM Annual Conference in San Francisco

Capital Members Kirsten Kaiser Kus and Michael Milstein are each speaking on a panel at the 2024 CLM Annual Conference in San Francisco in April.

Michael will present *To Test or Not to Test: Does It Really Matter What Caused Workplace Impairment?*

Kirsten will present *Strategies to Undermine Employees Prosecuting Workers' Comp and Employment Claims at the Same Time*

To learn more click [here](#).



Downey & Lenkov named in 2024 Best Law Firms® rankings by Best Lawyers®

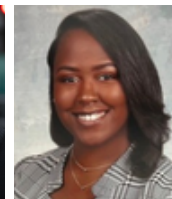
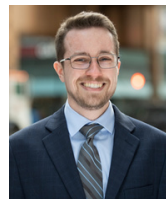
We're excited to share that Downey & Lenkov has been named in the 2024 Best Law Firms® rankings by Best Lawyers®. This year, we were selected as Tier 1 in Construction Law both nationally and regionally. Additionally, we've been ranked nationally and regionally in the practice areas of Construction Litigation and Workers' Compensation.

We appreciate the recognition and are thankful for the support! To view details about our rankings, visit our profile [here](#): [Downey & Lenkov LLC - United States Firm | Best Law Firms](#).



Welcome to the Team

Please join us in welcoming associates Michael Verbic, Melissa Van Ordstrand, Kealia Hollingsworth, Special Counsel Mary Yong, and Of Counsel David Ryan.



Downey & Lenkov Attorneys Selected to Super Lawyers and Leading Lawyers

Nine attorneys at Downey & Lenkov have been recognized by Super Lawyers® as leading practitioners in their fields. Ten attorneys have also been selected for Leading Lawyers' 2024 rankings.

Capital Members [Rich Lenkov](#) and [Storrs Downey](#); Income Members [Margery Newman](#) and [Brian Rosenblatt](#); Associate [Jessica Jacker](#); and Of Counsel [Samuel Levine](#) have been selected on both esteemed lists.

[Read the full article here.](#)



Tis' The Season

Holidays are all about good company, great food, and exciting games! Downey & Lenkov had a fantastic time at Flight Club, playing darts and indulging in delicious food at the annual holiday party.



DL Webinars

IL, IN and WI Workers' Compensation Liens & Subrogation Recovery: There's More Than Meets the Eye!

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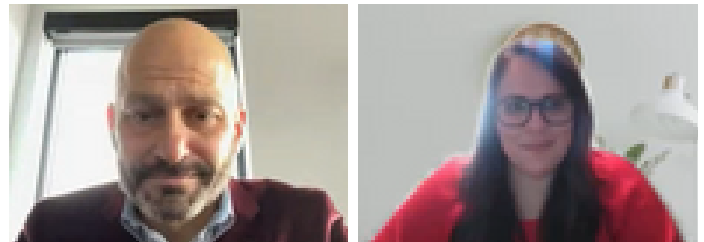
Storrs Downey and Ryan Danahey



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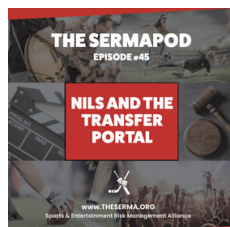
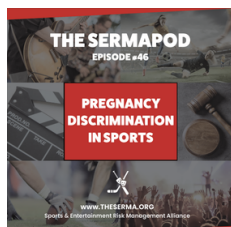
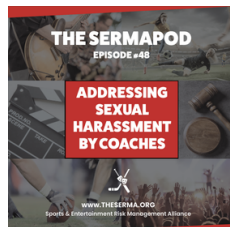


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20 Counsel for Covington & Burling LLP

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Managing Stanley Cup Final Risk
July 27 | 11:00 AM CDT

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JOHN PETERSON
Peterson Risk
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PAUL MILLER
Kreweke Sports & Entertainment
VP Risk Management

JENNIFER WYNN
MGM Resorts International
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TOM CALDWELL
NFF Sports & Entertainment
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Avoiding Nuclear Verdicts in Sports
April 18 | 11:00 AM CDT

Members: Free
Non-members: \$15

LEAHY LUK
Wilson Elser
Partner

WENDY LERNER
SERMA
CEO/Founder

Lunch with a Risk Manager: Reducing Venue Slip & Fall Claims
February 7 | 12 PM CST

Members: Free
Non-members: \$15

SHARON BOLLINGER
New Pig Corporation
Vice President, Accounts Manager

SHARON BOLLINGER
Major League Soccer
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JOHN LERNER
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How To Break Into Sports Risk Management
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- 1/30/24 - Cheerleading Risk Webinar
- 2/8/24 - Managing Super Bowl Risk
- 3/7/24 - SERMANAR in Colorado Springs, CO

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Legal Face-Off

Legal Face-Off is a fast-paced, high energy legal podcast dealing with the hottest issues of the day. Rich Lenkov and Christina Martini provide a point/counterpoint perspective on a variety of breaking legal news topics.



**Steven Schwinn on
Chicago's migrant crisis**
University of Illinois at
Chicago, Law School
Professor

“But in my view, what’s key to this is some kind of coordinated effort between governors at the border. Like Governor Abbot, for example, and cities like Chicago or other sanctuary jurisdictions so that we can provide a kind of coordinated pipeline, services and provisions for individuals who are coming to the United States seeking asylum.”

[Listen to the full episode here.](#)

Want to be a guest on a future episode? [Contact us.](#)

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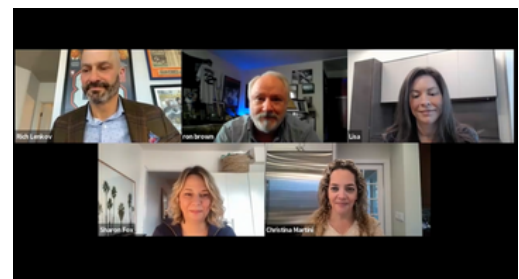
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