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Illinois Appellate Court Upholds Denial of Benefits for Employee Who Fell While Bringing Treats for Co-Worker

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Yes, employers can still win before today's appellate court.

At our May 2014 seminar, we talked about several recent "arising out of" cases that have not gone well for employers. We also mentioned to you that we had a rather significant case pending before the appellate court awaiting disposition.

In a 4-1 unpublished Rule 23 order entered June 25, 2014, the Appellate Court, **Workers' Compensation Commission Division**, upheld the Commission's denial of benefits in a case where a secretary, who brought in treats to share with co-workers, fell on the steps while entering the building. In ***Anderreg v. Illinois Workers' Compensation Comm'n***, 2014 IL App (4th) 130418WC-U, the claimant had brought in homemade treats to share with her co-workers in celebration of the return of another employee who had previously quit. The secretary, who was 81 years old at the time of her accident, was carrying two plactic containers containing baked goods, and had entered the building through an employee entrance and was approaching a small landing and two steps. The claimant was carrying no other work-related items, and the two plastic containers were stacked on top of each other. When she reached the stairs, one of the plastic containers started to slip and as she attempted to catch the top container, she lost her balance, caught her toe on a metal strip, and fell, sustaining a broken arm.

The Commission unanimously denied benefits, finding there was no defect with the stairs or entranceway, that the claimant was not required to bring in the treats, and that she had been acting solely on her own accord. Moreover, the Commission concluded that the claimant did not face a risk to a degree than any other member of the general public. The circuit court confirmed.

On appeal, the appellate court majority affirmed the Commission 4-1, finding that there was neither an employment nor personal risk, but rather a neutral risk, which required a comparison of the risk faced by the claimant and risks faced by the general public.

Despite the favorable employer ruling, there is some language in the decision that is potentially troublesome. The majority noted "there was no evidence of record to suggest that any non-occupational disease, personal defect or weakness contributed to claimant's fall." We believe this language is a subtle distinction of the case from the court's recent *Villa Park* ruling, which found a fall

at work compensable where the employee's knee (injured apart from work) gave way while walking down a flight of stairs.

Justice Stewart filed a dissent, arguing that the employer's acquiescence in employee's bringing in food meant her actions were incidental to her employment. Justice Stewart further found that office celebrations are not purely personal, but are also business related. "Office celebrations boost office morale, build employee engagement, foster a sense of appreciation, rejuvenate office energy, and increase productivity." All of these, he concluded, are a benefit to the employer. "When a claimant, as in this case, is carrying items of both a personal and business purpose, and the items increase her risk of falling, her injuries arise out of her employment."

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