

CASE: Arellano v. Sunrise Homes

Legal Question:

- **Whether the recognition of a hazardous condition and recognition that severe injury could result is sufficient to invoke the unprovoked physical aggression exception.**
(CONTINUED...)

CASE: Arellano v. Sunrise Homes

Conclusion:

- **No, recognition is insufficient, there must be conduct knowing of a substantially certain result.**

Procedural History:

- **Arellano appeals the district court's grant of summary judgment (*CONTINUED...*)**

CASE: Arellano v. Sunrise Homes

Factual Summary:

- **Arellano was injured while at work and paid benefits through his “statutory” employer because his direct employer failed to carry workers’ compensation insurance.**
- **Arellano filed a negligence claim against Sunrise Holmes. (*CONTINUED...*)**

CASE: Arellano v. Sunrise Homes

Factual Summary:

- **Sunrise moved for summary judgment, maintaining that under Idaho workers' compensation laws the negligence claims were barred by the exclusive remedy rule (72-209(1)).**
- **Arellano argued that his claims qualified for the unprovoked physical aggression exception (72-209(3)). *(CONTINUED...)***

CASE: Arellano v. Sunrise Homes

Factual Summary:

- **Arrelano argued that statements made by his direct employer and his proposed OSHA expert raised a genuine issue of material fact.**
- **The district court granted summary judgment after finding no genuine issue of material fact.**
(CONTINUED...)

CASE: Arellano v. Sunrise Homes

Factual Summary:

- **They opined that Arellano failed to show that Sunrise “affirmatively ordered Arellano onto the roof” or that Sunrise had “actual knowledge that injury of death” was substantially likely. (*CONTINUED...*)**

CASE: Arellano v. Sunrise Homes

Rule:

- **To prove whether the exception applies, the worker must establish both knowledge and conduct to remove his case from the realm of workers' compensation. (*CONTINUED...*)**

CASE: Arellano v. Sunrise Homes

Analysis:

- **The court reviewed the deposition testimony of the owner of Sunrise (Cheney)) and held that Arellano did not submit evidence sufficient to raise a genuine issue of material fact as to whether Sunrise engaged in conduct knowing death or injury was substantially likely to occur. (*CONTINUED...*)**

CASE: Arellano v. Sunrise Homes

Analysis:

- **In Cheney's deposition, it was only ever established that under common sense principles, a fall from a roof could, under correct circumstances, kill a person.**

(CONTINUED...)

CASE: Arellano v. Sunrise Homes

Analysis:

- **The court in dicta seems to state that knowledge of the dangerous condition must be held by the employer or their agent prior to the occurrence of a resulting injury; contemporaneous knowledge would be insufficient. (*CONTINUED...*)**

CASE: Arellano v. Sunrise Homes

Analysis:

- **The Court emphasized that in order for the exception to apply, the worker must show conduct “knowing” that injury is substantially likely to occur; this is more than “consciously disregarded knowledge.” (*CONTINUED...*)**

CASE: Westman vs. ISIF

Legal Question:

- **Whether Westman's pre-existing impairment combined with the 2015 accident to render ISIF liable. (*CONTINUED...*)**

CASE: Westman vs. ISIF

Conclusion:

- **In this case, Westman failed to show that the only pre-existing injury (left wrist injury) combined with the 2015 accident to render him completely and totally disabled as shown by competent medical testimony regardless of contrary testimony. (*CONTINUED...*)**

CASE: Westman vs. ISIF

Factual Summary:

- **Prior to the 2015 industrial accident, Westman had suffered three other accidents, which injured various parts of his body, including his:**
 - **abdomen,**
 - **thoracic and lower spine,**
 - **right shoulder,**
 - **left knee, and**
 - **left wrist. (*CONTINUED...*)**

CASE: Westman vs. ISIF

Factual Summary:

- **Westman returned to work after all the above-listed injuries.**
 - **However, in 2015, his right hand was caught in a meat grinder.**
 - **His treating physician assigned him a 52% upper extremity impairment rating.**
- CONTINUED...)***

CASE: Westman vs. ISIF

Factual Summary:

- **At the hearing, the Referee concluded that**
 - **the meat grinder accident alone rendered Westman completely and totally disabled and that**
 - **this injury, combined with no other injury to cause his disability. (*CONTINUED...*)**

CASE: Westman vs. ISIF

Rule:

- **The claimant must show more than the presence of a pre-existing injury that was a subjective hinderance;**
- **instead, it requires demonstration that the last injury in isolation would not have rendered the claimant totally and permanently disabled. (*CONTINUED...*)**

CASE: Benbow v. Bender Family Farms, LLC, et. al.

Legal Questions:

- 1. Whether the Commission has jurisdiction**
- 2. Whether Petitioner's (Bender Family Farms) is entitled to a subrogation right pursuant to 72-223. (*CONTINUED...*)**

CASE: Benbow v. Bender Family Farms, LLC, et. al.

Conclusions:

- 1. The commission has jurisdiction pursuant to JRP Rule 15, which allows a declaratory ruling when an actual controversy exists over the construction, validity, or applicability of a statute, rule, or order. (*CONTINUED...*)**

CASE: Benbow v. Bender Family Farms, LLC, et. al.

Conclusions:

- 2. The Commission focused heavily on statements made by the Idaho Supreme Court in *Schneider v. Famers Merchant, Linc.*, where that Court said: *(CONTINUED...)***

CASE: Benbow v. Bender Family Farms, LLC, et. al.

Conclusions:

- 2. ...”in those situations where the employer is not negligent, the employer is entitled to subrogate the employee’s recovery against a third party, and thus obtain a reimbursement of the workmen’s compensation benefits he paid.” *(CONTINUED...)***

CASE: Benbow v. Bender Family Farms, LLC, et. al.

Factual Summary:

- **Claimant, while at work, was a passenger in a MVA accident on 10-6-22 and suffered injuries to their neck.**
- **The surety accepted the claim and began paying bills. (*CONTINUED...*)**

CASE: Benbow v. Bender Family Farms, LLC, et. al.

Factual Summary:

- **It later sent a notice to the claimant of a subrogation interest pursuant to 72-223.**
- **The commission is involved to JRP Rule 15, which allows a declaratory ruling when an actual controversy exists over the construction, validity, or applicability of a statute, rule, or order. (*CONTINUED...*)**

CASE: Benbow v. Bender Family Farms, LLC, et. al.

Rule:

- **72-223 creates an automatic mandatory right of subrogation. (*CONTINUED...*)**

CASE: Dwyer v. Woodward Motorcycle, LLC et. al.

Legal Question:

- **Whether a surety may waive its subrogation rights by its contributory negligence pursuant to 72-223 and *Maravilla v. JR Simplot Company*.**
- **Whether a declaratory ruling is merited.**
(CONTINUED...)

CASE: Dwyer v. Woodward Motorcycle, LLC et. al.

Conclusion:

- **The Commission declines to issue a declaratory ruling because:**
 - **the petitioner failed to provide sufficient facts or other information on which the Commission may base a ruling,...**
(CONTINUED...)

CASE: Dwyer v. Woodward Motorcycle, LLC et. al.

Conclusion:

- **The Commission declines to issue a declaratory ruling because:**
 - **...or, in the alternative, the issue should be the subject of other administrative or civil litigation or appeal. (*CONTINUED...*)**

CASE: Dwyer v. Woodward Motorcycle, LLC et. al.

Factual Summary:

- **The claimant represents her deceased husband, who was killed in an industrial accident.**
- **The deceased had a prior industrial accident where he suffered injury to his wrists.**
(CONTINUED...)

CASE: Dwyer v. Woodward Motorcycle, LLC et. al.

Factual Summary:

- **Later, while still recovering from the prior injury and acting within the course and scope of his employment, the deceased was killed in a motorcycle accident.**
- **The surety paid claims, but failed to actively seek or respond to any subrogation interest.**
(CONTINUED...)

CASE: Dwyer v. Woodward Motorcycle, LLC et. al.

Rule:

- **Any declaratory ruling must be completed with sufficient facts and analysis that the Commission could come to a reasonable conclusion as if all facts had been presented in a normal and natural manner.
(*CONTINUED...*)**

CASE: Dwyer v. Woodward Motorcycle, LLC et. al.

Analysis:

- **The Commission opined that a declaratory ruling was inappropriate because insufficient facts were presented that would allow the Commission to accurately and effectively determine whether the employer had actually engaged in any negligent acts that would prevent subrogation under *Maravilla*. (CONTINUED...)**

CASE: Dwyer v. Woodward Motorcycle, LLC et. al.

Analysis:

- **Furthermore, the Commission believes that a full hearing would provide the time and factual development necessary to make a full determination of the issues presented.
(*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Legal Question:

- **Proper weight given to non-medical factors in the event of loss of current employment
(*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Factual Summary:

- **Claimant, a CNA, slipped on some ice in her employer's parking lot and suffered a left ankle fracture and syndesmotic soft tissue injury.**
- **Claimant contends that she incurred a 34% PPD inclusive of a 4% whole person.**
(CONTINUED...)

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Factual Summary:

- **While Defendant's concede PPD but request a limit to 17% or less inclusive of PPI.**
- **Claimant has no "standard" work restrictions and is now employed as the "activities director" for the same employer.**
(CONTINUED...)

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Factual Summary:

- **Furthermore, although no longer employed as a CNA, the claimant has on limited occasions performed the duties of a CNA for her employer. (*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Factual Summary:

- **Claimant was released back to full duty without restrictions on 4-27-2022.**
(CONTINUED...)

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Factual Summary:

- **Her treating physician, Dr. Mark Wright, stated:**
- **“I am going to keep her back to full duty without restriction.**
- **I think she does fine with the activity director.**
- **As long as they leave her in that job, she will do well.” (*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Factual Summary:

- **Furthermore, her doctor stated that they spoke about additional restrictions however, the claimant believed that she could monitor herself. (*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Factual Summary:

- **In his deposition Dr. Wright stated he declined to issue permanent work restriction because of the effect it would have on the Claimant's ability to acquire future jobs.
(*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Factual Summary:

- **Post her release back to work, Claimant was seen by the Defendant's expert, Dr. James Bailey, on 6-9-2022, who opined that the claimant had reached MMI, and had a 4% whole person impairment. (*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Factual Summary:

- **Then, from 12-2-2022, the Claimant was seen by Brendan Bagely, who performed a functional capacities evaluation (FCA).
(*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Factual Summary:

- **He recorded the Claimant's physical capacities as follows:**
 - **Lift/Carry –**
 - **Occasionally 30lbs**
 - **Frequently 20lbs**
 - **Constantly 10lbs (*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Factual Summary:

- **He recorded the Claimant's physical capacities as follows:**
 - **Push/Pull–**
 - **Occasionally 72ft lbs./78 ft lbs.**
 - **Frequently 36ft lbs./39 ft lbs.**
 - **Constantly 18ft lbs./16 ft lbs.**
- (CONTINUED...)***

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Factual Summary:

- **He recorded the Claimant's physical capacities as follows:**
 - **Right/Left Hand grip—**
 - **Occasionally 62ft lbs./67 ft lbs.**
 - **Frequently 31ft lbs./33 ft lbs.**
 - **Constantly 15ft lbs./16 ft lbs.**
- (CONTINUED...)***

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Factual Summary:

- **He recorded the Claimant's physical capacities as follows:**
 - **Right/Left Pinch grip—**
 - **Occasionally 12 lbs./11 lbs.**
 - **Frequently 6 lbs./5 lbs.**
 - **Constantly 3 lbs./2 lbs. (*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Factual Summary:

- **Finally in regards to walking and standing Brendan Bagely reported “dynamic instability of left ankle with more difficulty on uneven surfaces.” (*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Factual Summary:

- **Brendan Bagely also opined that the Claimant could safely perform jobs rated “light” under the Dictionary of Occupational Titles, and for “medium” rated jobs, she could perform some lifting up to 30lbs but not on a full-time basis. (*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Factual Summary:

- **In January of 2023, Kent Granat, a vocational expert, considered Claimant's future employability.**
- **Mr. Granat interviewed the Claimant and reviewed pertinent medical records, the IME by Dr. Bailey, and the FCA. (*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Factual Summary:

- **He opined that the Claimant had a 68% loss of access to labor market and a wage loss of 0%.**
- **In September of 2024, Dr. Bailey was deposed and while reaffirming his 4% whole person PPI rating. (*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Factual Summary:

- **He also stated that he had read the Claimant's FCA and agreed with it.**
(CONTINUED...)

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Analysis:

- **The disabled rating fundamental requirement of anatomical loss after MMI has been met in this case.**
- **Both the Claimant's treating physician and the Defendant's expert contribute evidence to support a finding of 4% PPI.**
(CONTINUED...)

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Analysis:

- **Permanent disability is a combination of both medical and non-medical factors.**
- **In this case, the Claimant's injuries are clear but any relevant work restrictions are not, as the Claimant's treating physician did not provide any.(*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Analysis:

- **All supposed restriction were given during the FCA.**
- **Furthermore, the non-medical factors is the claimant's return to work.**
- **Here, Claimant is working as an activities director for her pre-injury employer, and is earning more money. (*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Analysis:

- **The Commission had reservations about the Claimant's hypothetical future loss of position as the activities director.
(*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Analysis:

- **Furthermore, the Commission expressed doubt as to the validity of Kent Granat's evaluation given that it is not founded on medical restriction designed to serve the Claimant over time, but rather the FCA which only provides a snap shot on a given day.
(*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Analysis:

- **Nevertheless, the Commission agreed that the Claimant established a PPD of 20% inclusive of her 4% PPI. (*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Commissioner White:

- **Dissented from the approval of the decision expressing that he felt the reliance of the majority on the Claimant's continued employment as an activities director minimized the Claimant's physical condition and loss of access to work that formed the majority of her career. (*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Commissioner White:

- **He opines that the FCA report gave pinpoint measurements of the Claimant's physical capacities and provided specific recommendations especially concerning Claimant's work as a CAN, with no objective evidence refuting these conclusions.
(*CONTINUED...*)**

CASE: Whiteley v. Life Care Centers of America, Inc. et. al.

Commissioner White:

- *He stated: “[t]he loss of physical capabilities and the career access it represented is a permanent present reality.”*

Note:

- *This case is now on appeal. (END)*

Questions?

finish