<u>From the Bench: How Indiana Courts are Interpreting Worker's Compensation</u>

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The Indiana Worker's Compensation Act[2] ("the Act") provides compensation and benefits to employees who suffer injuries that occur by accident arising out of and in the course of their employment.[3] The employee has the burden of proving each statutory element of the claim in order to be entitled to statutory compensation and benefits.[4]

The Worker's Compensation Board of Indiana ("the board") has exclusive jurisdiction to determine whether an employee is entitled to receive statutory compensation and benefits and, if so, what statutory compensation or benefits are appropriate. These determinations are fact sensitive and often depend on the circumstances of each case. A single hearing member, a judge assigned to districts within the state, first evaluates evidence related to the claim. If the decision is appealed, all seven judges review the evidence at a Full Worker's Compensation Board hearing. If either party disagrees with the board's decision, the claim can be appealed directly to the Indiana Court of Appeals. Below is a review of the recent Indiana Court of Appeals and Indiana Supreme Court decisions interpreting the Indiana Worker's Compensation Act's provisions and related issues, organized by the following topics:

I. Board Jurisdiction and Filing Requirements
II. Burden of Proof
III. Evidentiary Disputes
IV. Exclusive Remedy
V. Retaliation Claims
VI. Miscellaneous Issues

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[2] Ind. Code §§ 22-3-1-1 through 22-7-2-28.
[3] Ind. Code § 22-3-2-2.
[4] *Id.*

I. BOARD JURISDICTION AND FILING REQUIREMENT

The Act requires an employee to file a worker's compensation claim with the board within two years of the date of an accident.[5] Filing an application for adjustment of claim with the Worker's Compensation Board of Indiana is a threshold issue for a viable claim. Ind. Code § 22-3-3-3(a) states:

> The right to compensation under [the Act] shall be forever barred unless within two (2) years after the occurrence of the accident…a claim for compensation thereunder shall be filed with the worker's compensation board.

Ind. Code § 22-3-3-3(a). The Legislature revised Ind. Code § 22-3-3-3 to extend the filing deadline if the employee received statutory compensation.[6]

This section represents a non-claim provision rather than a statute of limitations. If the application for adjustment of claim is not filed timely, the board lacks jurisdiction to adjudicate the claim and related disputes.

Sharp v. Armstrong Relocation[7]

The court of appeals addressed the statutory filing requirement in two recent decisions and reached different conclusions. In the first case, *Sharp v. Armstrong Relocation*,[8] the employee appealed the board's dismissal of his claim based on its conclusion that his application was not timely filed. The court affirmed the board's dismissal, concluding the board did not have jurisdiction because the employee failed to file an Indiana claim within the requirements of the non-claim statute.

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[5] Ind. Code § 22-3-3-3(a).
[6] Ind. Code § 22-3-3-3(b) (2022).
[7] 210 N.E.3d 849 (Ind. Ct. App. 2023).
[8] *Id*. at 852.

Sharp was an Indiana resident working for a Kentucky company. He sustained an injury in a car accident in Indiana in December 2018. Sharp pursued a worker's compensation claim in Kentucky and received compensation and benefits under the Kentucky system. On June 17, 2021, while still receiving disability benefits from his employer under the Kentucky system, Sharp filed an application for adjustment of claim with the Indiana Worker's Compensation Board. The single hearing member granted the employer's motion to dismiss because the employee did not file an application within two years of the date of injury as required by the Indiana non-claim statute. The board concluded that although the employee could file for benefits in both states, he had to timely file the application with the Indiana Board for it to consider the merits of his claim. The full board affirmed the dismissal.

The employee did not dispute that he did not file within two years of the date of injury, but he argued that he timely filed under another statute, Ind. Code § 22-3-3-27. This section provides the board with continuing jurisdiction to modify an award due to a *change in conditions* within two years of the last date for which compensation is paid.[9] Sharp asserted that he timely filed his application because he was still receiving indemnity benefits; however, he received benefits in Kentucky, not Indiana. When he filed the Indiana claim, there was no existing award in Indiana to be modified.

The court concluded that the board properly dismissed the claim because it was not filed within two years of the accident as required by § 22-3-3-3.[10] It emphasized that the non-claim statute "is self-executing and imposes a condition precedent to the enforcement of the right of action."[11] The court also affirmed that non-claim statutes, like § 22-3-3-3, "generally are not

[9] *Sharp*, 210 N.E.3d at 851, citing *Ind. Spine Grp., PC v. Pilot Travel Ctrs., LLC,* 959 N.E.2d 789, 793 (Ind. 2011).
[10] *Id*. at 851.
[11] *Sharp,* 210 N.E.3d at 581, citing *Blackford v. Welborn Clinic*, 172 N.E.3d 1219, 1225 (Ind. 2021).

subject to equitable exceptions."[12] Finally, the court affirmed that § 22-3-3-27 did not apply since there was no existing award in Indiana for the Indiana Board to modify.

An interesting footnote to this decision includes discussion that the Legislature amended Ind. Code § 22-3-3-3 effective July 1, 2022, one year after the employee filed his application, to include a provision that extended the filing deadline to two years after the last date *for which* the employee receives compensation.[13] Neither party addressed this amendment or argued that it applied; however, one could assume the court would reach the same conclusion as it did using Ind. Code § 22-3-3-27 since Sharp did not receive statutory compensation under the Indiana system.

Santos v. Franciscan Health[14]

Shortly after issuing the *Sharp*[15] decision, the court addressed another non-claim statute dispute which involved the application of trial rules to the Act's filing deadline. In *Santos*,[16] the court reversed the board's dismissal concluding that the non-claim statute did not preclude applying trials rules to render the filing timely.[17]

Santos, a health-unit coordinator, suffered lower back pain arising out of and in the course of her employment with Franciscan Health on December 5, 2019. She received statutory medical care until the authorized physician determined her low back condition reached maximum medical improvement (MMI).[18] Santos declined the permanent partial impairment (PPI) offered and continued to work for Franciscan Alliance.

The deadline for the employee to file an application for adjustment of claim was December 5, 2021, a Sunday. She mailed her application for adjustment of claim the next business day, a

[12] *Id*.
[13] *Sharp* footnote 2, referencing Ind. Code § 22-3-3-3(b).
[14] 216 N.E.3d 449 (Ind. Ct. App.), *trans. denied*, 222 N.E.3d 930 (Ind. 2023).
[15] 210 N.E.3d 849.
[16] 216 N.E.3d 449.
[17] *Id.* at 455.
[18] *Id.*

Monday. The board received the mailed application four days later. The single hearing member granted the employer's motion to dismiss finding that Ind. Code § 22-3-3-3 is a "non-claim statute with requirements that cannot be set aside or excused" and that a claim is "extinguished if not exercised within the proscribed time limit."[19] Because the employee did not file on or prior to December 5, 2021, the board concluded her filing was untimely, and granted the employer's motion to dismiss. The full board affirmed the single hearing member's dismissal, and the employee appealed.

The court identified Ind. Code § 22-3-3-3 as a non-claim statute that "creates a right of action and has inherent in it the denial of a right of action."[20] It recognized that, unlike a statute of limitations, the non-claim statute created a "condition precedent to the right to maintain the action" and that it is self-executing.[21] The employee argued that because the Act did not address the manner of filing, the trial rules should apply to extend the filing deadline and define filing methods.

The court acknowledged that the board has authority to adopt its own administrative rules and that the Indiana Trial Rules are not binding on the board, an administrative agency. The court further recognized that the Act itself and the Indiana Administrative Code contained language reflecting the board's intent not to be bound by the trial rules in its procedures for conducting hearings, but it concluded this was not the case related to the filing procedure or the computation of time for filing.[22]

Although the court agreed that the board could create and apply its procedures for litigating claims, it concluded that the non-claim statute did not preclude application of the trial rules to govern filing and computing time. The court concluded that where the statute was silent as to the

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[19] *Id.* at 451.
[20] *Id*. at 452.
[21] *Id*.
[22] *Id.* at 453, citing Ind. Code § 22-3-1-3 and 631 Ind. Admin. Code 1-1-3.

methods of filing and the computation of time, both Indiana Trial Rule 5 and Trial Rule 6(A) apply. Finding that the Act was silent regarding method and calculations for filing, the court applied the trial rules to conclude the employee's application was timely filed. It remanded the claim to the single hearing member for determination of the employee's statutory benefits.[23]

Enforcing and Collecting the Board Award

The court recently evaluated three cases[24] addressing the timing for enforcing worker's compensation decisions and the plaintiff's burden of collecting the award. In all three cases, the court affirmed dismissals for failure to prosecute. Each case stemmed from a 2003 Board award that held the employer responsible for medical expenses incurred by an employee. The plaintiff's healthcare providers filed suit five years later to collect the payment for their portions of the award. The plaintiffs failed to take meaningful action for over fifteen years.

The plaintiffs argued that under Ind. Code § 22-3-4-9 the trial court was obligated to enter judgment on the Board's award upon its filing and therefore no further action was required on the plaintiffs' part. The court rejected the argument, however, emphasizing that while the statute mandates the court to render judgment, it does not relieve plaintiffs of their duty to diligently prosecute their claims. The court noted that none of the plaintiffs requested entry of judgment on the award. Furthermore, a Board award is not self-executing and must be reduced to a court judgment to be enforceable. From these cases, providers seeking to enforce Worker's Compensation Board awards can learn that they must actively pursue judgment in court under Ind. Code § 22-3-4-9, as courts will not automatically enter judgment or excuse prolonged inaction.

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[23] *Id*. at 455.
[24] *Lafayette Anesthesiologists v. Hites*, 2025 WL 2992731 (Ind. Ct. App. Oct. 24, 2025); *Lai v. Hites*, 2025 WL 2992729 (Ind. Ct. App. Oct. 24, 2025); *Unity Surgical Ctr. v. Hites*, 2025 WL 2992586 (Ind. Ct. App. Oct. 24, 2025).

II. BURDEN OF PROOF

The employee has the burden of proving all the required statutory elements to be entitled to compensation or benefits under the Act.[25] The first two statutory elements an employee must prove are that 1) there was an injury and 2) the injury arose out of, was caused by, employment.[26] During the evidentiary hearing, the board weighs the evidence to determine whether there is credible evidence to conclude that an injury occurred and, if so, whether there is a causal nexus between the injury sustained and the employee's employment activities.

The court of appeals was asked to determine whether employees produced sufficient evidence to support a claim under the Act. In each case, the court declined the request to reweigh the evidence and, instead, deferred to the board as tier of facts for the weight and sufficiency of the evidence presented.

PeopLease/PLC Services LLC v. Snuffer[27]

In *PeopLease/PLC Services LLC v. Snuffer*, the court addressed the sufficiency of evidence and disputed evidentiary issues. It affirmed the board's determination, concluding that the employee met his burden of proving he suffered work-related injuries entitling him to statutory medical care and compensation. It also found the board's decision to limit evidence submitted to the board physician was a harmless error considering all the evidence the board considered in making its final determination.

Snuffer drove trucks for several trucking companies ("Trucking Companies"). He asserted that he suffered injuries from a fall while on a delivery route. The employee reported the incident to one of the Trucking Companies and pursued treatment from physicians who concluded that his

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[25] Ind. Code § 22-3-2-2.
[26] *Id.*
[27] 211 N.E.3d 518, *unpub.* (Ind. Ct. App.), *trans. denied*, 221 N.E.3d 1208 (Ind. 2023).

injuries were from a work-related event and that he would benefit from surgery. Snuffer requested benefits and reimbursement of his medical expenses. The Trucking Companies denied the claim on the basis that there was "no causal relationship" and engaged a physician to conduct a medical evaluation. The Trucking Companies' physician initially concluded that the injuries were causally related to the accident; however, after reviewing video footage of the asserted incident, the physician issued a supplemental report concluding there was no evidence of any injury.

The single hearing member ordered an independent medical examination ("IME") to address the inconsistent physician conclusions. The board did not allow the IME physician to review the video footage as part of the evaluation. The board IME physician determined the employee's current condition was causally related to the asserted injury. The board concluded there was a causal relationship between the injury and the driver's work and, therefore, found the claim compensable.[28] The board ordered the Trucking Companies to reimburse the employee's medical expenses. The Trucking Companies appealed arguing, among other things, that the single hearing member could not exclude the video footage.[29] The full board affirmed the decision, finding the driver provided sufficient evidence to support the claim.

The court declined the Trucking Companies' request to reweigh the evidence. Instead, on appeal, the court evaluated the sufficiency of evidence to support the board's conclusion. It concluded that even if it were error to exclude the video footage, it would have been harmless since there existed ample evidence to support the board's award. The court further concluded that the board adequately explained its reasoning in its findings.

[28] *Id.*
[29] *Id.* at 4.

Ostrowski v. Indiana University[30]

The court next addressed the sufficiency of evidence an employee presented to support a claim that the work event permanently aggravated her pre-existing, personal conditions, resulting in permanent and total disability. In *Ostrowski*,[31] the board concluded that the employee did not carry her burden of proving the statutory elements and, therefore, she was not entitled to compensation or benefits under the Act. The court affirmed the board's decision to deny this claim, finding that neither the board's findings of fact nor its conclusions of law were clearly erroneous, as the employee asserted.

Ostrowski, an Associate Director at Indiana University ("the University") asserted that undergoing a longer walk to work on the Bloomington, Indiana campus in June 2018 caused her to suffer permanent aggravations of her personal (cardiac and arthritic) conditions. Ostrowski filed a worker's compensation claim against the University one year later, after she pursued other litigation and disability claims. The University denied her claim.

After reviewing the evidence and testimony presented, the single hearing member determined that Ostrowski did not meet her burden of proving she was entitled to statutory compensation or benefits. Specifically, the single hearing member found that the evidence supported the conclusion that her symptoms were temporary, caused by her pre-existing health conditions, and could have occurred anywhere.[32] With these findings, the hearing member concluded the employee's symptoms did not arise out of her employment. The full board affirmed the single member's conclusion.

[30] 237 N.E.3d 638, *unpub.* (Ind. Ct. App. 2024), *trans. den.* 244 N.E.3d 906 (Ind. 2024).
[31] *Id.*
[32] *Id*. at 4.

On appeal, the court declined the employee's invitation to reweigh the evidence or judge witness credibility. It found that there was sufficient evidence to support the board's conclusions. The court concluded neither the board's findings of fact and conclusions of law were clearly erroneous and affirmed the board's decision denying the employee's claim for benefits.[33]

The employee filed a Petition to Transfer asking the Indiana Supreme Court to revisit the decision that she did not carry her burden of proving she suffered a compensable claim. She continued to argue that the board did not weigh her evidence correctly. The Supreme Court denied the request.[34]

Smoot v. Lowe's[35]

The court continued its analysis of whether a Board's determination was clearly erroneous in a more recent case. Smoot was employed part-time as a cashier at Lowe's and received accommodations for his diabetes, including additional breaks, permission to eat at the register to regulate blood sugar, and the use of a chair or stool while working. While on duty, Smoot fell and was taken to the hospital, where he was diagnosed with a left femur fracture. He subsequently filed a claim for worker's compensation benefits. After the employer denied the claim, Smoot filed an application for adjustment of claim, asserting that the injury arose out of his employment because missing a meal break was incidental to his job duties.

During his deposition, Smoot testified that he was not relieved for a break on the day of the incident and experienced symptoms of low blood sugar; however, he acknowledged that he did not request a break, nor was he instructed that he could not take one. The First Report of Injury reflected that Smoot initially attributed the fall to low blood sugar, and emergency department

[33] *Id.* at 6.
[34] *Id.*
[35] *Smoot v. Lowe's*, 2025 WL 2682155 (Ind. Ct. App. Sept. 19, 2025), *on petition for transfer* Oct. 20, 2025.

notes reflected that he fell after standing up too quickly due to low blood sugar. At the hearing, Smoot reiterated that he felt weak prior to the fall and again confirmed he had not asked for a break. His supervisor corroborated that Smoot reported low blood sugar immediately following the incident. The single hearing member concluded that Smoot failed to establish that his injury arose out of his employment. Rather, the injury was attributed to Smoot's personal health condition.

Although the court agreed on appeal that the injury occurred "in the course" of employment, it found that the injury did not "arise out of" employment. The court found that an injury arises out of employment when it results from a risk incidental to the employment or when the facts demonstrate a connection between the injury and the conditions of employment. Risks incidental to employment fall into three categories: (1) risks distinctly associated with employment, (2) risks personal to the claimant, and (3) risks neither distinctly associated with employment nor distinctly personal. While the first and third categories are compensable, the second—risks personal to the claimant, including those stemming from pre-existing conditions—are not. Because Smoot repeatedly acknowledged that his symptoms and fall were caused by low blood sugar, the court concluded that his injury was the result of a personal health condition and not a risk incidental to employment. Accordingly, the court affirmed the board's determination that Smoot did not meet his burden of proof. The parties are pursuing further court evaluation with the Indiana Supreme Court.[36]

[36] *Id.*

Arnold v. County Line Landfill Partnership.[37]

The court again addressed the burden of proof and evidence an employee must produce to support claims for permanent and total disability and for assertions of bad faith or lack of diligence. In *Arnold*, the court found that the employee did not carry his burden on either assertions and affirmed the board's conclusions.

Arnold, a heavy equipment operator, fell from a bulldozer and suffered a concussion. During the employer's investigation, Arnold experienced ongoing symptoms, including headaches, dizziness, vomiting, and neck and arm pain, and he sought medical treatment. The employer discovered Arnold suffered from pre-existing conditions that could cause fainting and asked a physician to evaluate Arnold. The physician attributed some symptoms to non-work-related causes.

The employer provided statutory medical care for the concussion-related conditions and began paying statutory compensation (temporary total disability). The employer disputed that Arnold was entitled to treatment for anxiety and depression. Months later, the employer terminated the statutory compensation, claiming Arnold's inability to work was unrelated to the work injury.

Arnold obtained a Board-ordered independent medical evaluation. The Board physician concluded that Arnold's cervical spine condition was aggravated by the fall and recommended surgery. Arnold initially declined the recommended treatment but underwent cervical spine surgery one and a half years later. The authorized physician determined Arnold's work-related conditions reached maximum medical improvement (MMI) and that he was entitled to 11% permanent partial impairment (PPI). Arnold obtained a physician opinion that he was entitled to

[37] *Arnold v. County Line Landfill Partnership*, 2025 WL 2233495 (Ind. Ct. App. 2025), *on petition for transfer* Sept. 5, 2025.

31% PPI and a vocational opinion that he was permanently and totally disabled as a result of the work injury.

After an evidentiary hearing, the single hearing member ordered the employer to pay all neck and spine-related expenses from the accident date. The single hearing member did not find Arnold permanently and totally disabled. While Arnold alleged bad faith and lack of diligence, the board disagreed. The court initially remanded the claim with instructions for the board to address Arnold's bad faith and lack of diligence allegation. On remand, the board concluded there was no actionable lack of diligence but held that the employer's refusal to provide some recommended treatment contributed to Arnold's higher impairment and later MMI date.

On appeal, Arnold argued that the board's decision was inconsistent and created uncertainty around standards for bad faith and lack of diligence. The court disagreed, concluding that Arnold's claim for bad faith failed because Arnold did not produce evidence of the employer's ill will. The employer presented evidence that it had reason to question the work-relatedness of Arnold's symptoms and that it provided care with multiple physicians over several years, which highlighted the complexity of the case. The court could not say as a matter of law that the employer acted without due diligence and declined to reweigh the evidence.[38] The court also concluded that the board is not required to set standards for future bad faith claims and diligence.

The court next considered whether the board abused its discretion in finding Arnold was not permanently and totally disabled. It clarified that the employee bears the burden of proving total and permanent disability, which doesn't require showing an inability to do any work—only that the person cannot perform reasonable, available employment suited to their abilities. Once plaintiff establishes a degree of impairment and other factors limiting attempts to work, the burden

[38] *Id.*

of producing evidence of reasonable, available employment shifts to the employer. The Board, as fact-finder, may accept or reject expert testimony.[39] The board weighed the evidence and determined that Arnold was not permanently and totally disabled. The court declined plaintiff's invitation to reweigh the evidence. Importantly, the court noted that Arnold did not provide evidence that he tried unsuccessfully to find work.

The court's decision impacts the worker's compensation practice arguments related to plaintiff's burden of proof and the level of evidence needed to support assertions of bad faith or lack of diligence and permanent total disability claims. Both assertions are commonly pursued before the board. The parties filed a request for transfer to the Indiana Supreme Court asking for further evaluation on the Board's and court's conclusions.[40]

III. EVIDENTIARY DISPUTES

Once an employee meets the burden of producing credible evidence to support the statutory elements found in Ind. Code § 22-3-2-2, the board may clarify the extent of statutory benefits the employee should receive. In addition to determining burden of proof issues, the board must weigh the evidence presented to determine what, if any, statutory compensation or benefits an employee is entitled to receive. These decisions are usually complex, fact specific, and based on the hearing member's conclusions as the trier of fact. As discussed above, the court is reluctant to reweigh the evidence presented before the board.

Pessouore v. Frito Lay, Inc.[41]

After sustaining a compensable injury, the employee involved in *Pessouore v. Frito Lay,*

[39] *See also Consolidation Coal Co. v. Director, Office of Workers' Compensation Programs,* 129 F.4th 409 (7th Cir. 2025) (finding that the Board has discretion for evaluating expert testimony).
[40] *Arnold v. County Line Landfill Partnership*, 2025 WL 2233495 (Ind. Ct. App. 2025), *trans. pending.*
[41] *Pessouore v. Frito Lay, Inc*., 219 N.E.3d 119, *unpub*. (Ind. Ct. App. 2023).

Inc.[42] asked the board to order his employer to pay statutory compensation and additional benefits. In support of his requests, the employee submitted additional medical treatment records, but he did not submit evidence to support his request for additional treatment or an impairment. Based on the evidence presented, the single hearing member ordered a portion of the requested relief. On appeal, the employee argued that the board's decision was contradictory to the evidence; however, the court found the evidence was sufficient and affirmed the board decision.[43]

Pessouore injured his wrist while he worked as a packer for Frito Lay. He received conservative medical care and work restrictions, and the physician referred him to an orthopedic specialist before his employment ended one month later. The employee continued to receive medical treatment for wrist inflammation until the physician concluded the condition resolved with no recommendations for further treatment or workplace limitations. At that time, the physician also released the employee to return to work with no restrictions and a zero percent permanent partial impairment (PPI).

The employee sought treatment with two more physicians before filing an application for adjustment of claim. At the evidentiary hearing, the employee requested the board order, among other things, statutory compensation (temporary total disability (TTD), temporary partial disability (TPD), and permanent partial impairment (PPI)), statutory medical care, vocational training, lost wages, and mileage reimbursement. After the hearing but before the board's decision, the employer paid the employee TTD through the date the initial physician determined his work injury resolved. The board awarded the employee some of the relief requested: 1) TTD through the MMI determination; 2) $3,000 penalty for the employer's lack of diligence for not paying the TTD

[42] *Id.*
[43] *Id*. at 3.

timely; and 3) reimbursement of actual wage loss incurred for authorized treatment.[44] The board concluded that the employee did not show that he was entitled to additional statutory compensation (TTD or TPD) or that he suffered a permanent injury. The full board affirmed and adopted the single hearing member's decision.[45]

On appeal, Pessouore argued the board's award was contradictory to the evidence. He also asserted a new claim of retaliatory discharge. The court correctly declined to reweigh the evidence and noted its standard of review of a negative judgment. Reviewing the board's findings and conclusions and the record did not convince the court that the evidence led inescapably to the conclusion opposite to that reached by the board. Therefore, the court affirmed the board's judgment.[46]

Vass v. Barklay Purkans, LLC[47]

The *Vass* case illustrates another court decision based on the board's review of medical opinions and its evidentiary determinations that palliative medical care was appropriate. The employee challenged the board's determinations regarding the MMI date and the conclusion that he was not entitled to additional statutory compensation. The court affirmed the board's decision that the employee was not entitled to additional compensation after the maximum medical improvement (MMI) determination, which it determined was supported by ample evidence.[48] The court also affirmed the board's conclusion that the employee was entitled to additional statutory medical care because it concluded the medical care was necessary to *further limit or reduce the employee's impairment*,[49] or palliative care.

[44] *Id.* at 2.
[45] *Id.*
[46] *Id.*
[47] 233 N.E.3d 987, *unpub.* (Ind. Ct. App. 2024).
[48] *Id.* at 5.
[49] *Id. (emphasis added).*

The employee suffered a work-related injury which caused him to need a total knee replacement three years later. After the knee replacement, the employee continued to experience pain and received treatment until the authorized physician released him with no restrictions. The employee disagreed. After the employee refused to attend a Functional Capacity Evaluation (FCE), the physician determined his condition was at maximum medical improvement (MMI) and assigned a 31% permanent partial impairment (PPI) of his right leg, based on motion deficit and subjective pain complaints. The employer terminated temporary total disability (TTD) based on the MMI opinion.

The employee went to another physician, who could not make a diagnosis, but recommended additional tests to explore infection. The employee, then, returned to the first doctor, who found his knee to be normal with full range of motion, but ordered more blood tests to check for potential infection. This physician, again, released the employee to return to work without restrictions.

At the evidentiary hearing, the employee requested additional medical treatment and temporary total disability (TTD). The single hearing member concluded 1) the work-related injury reached MMI on or before the date the initial physician made the determination; 2) he was not entitled to TTD benefits; 3) he was entitled to a 31% PPI to his right leg; and 4) the FCE and other tests were necessary to determine the employee's permanent restrictions and need for additional medical care.[50] Therefore, the single hearing member ordered the employer to pay the PPI, arrange for an FCE, and additional medical testing, which was needed to specifically determine any additional medical services necessary to limit or reduce the right leg impairment.[51]

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[50] *Id.* at 2.
[51] *Id.*

The employee continued to resist undergoing the FCE. As a result, the board ordered him to appear for an FCE. The FCE results were inconclusive, however, since the employee refused to participate fully in the exam. Nonetheless, the initial physician diagnosed the employee with another condition (iliotibial band, ITB, syndrome,) and recommended conservative treatment. The physician again released the employee at MMI with no restrictions. Without explanation, the physician reduced the impairment to 25%. The physician later related the ITB to the knee replacement and, thus to the original work injury.

After a second hearing, the single hearing member determined the ITB surgery was "necessary to limit or reduce the 31% right leg PPI" and that the employer was responsible for providing the surgery and any associated medical services.[52] The hearing member denied the employee's request for additional TTD, based on the earlier MMI determination and the medical opinions that he could return to work. The full board affirmed the single hearing member's decision and issued additional conclusions of law. The board concluded that the employee should not receive additional disability but ordered the employer to provide additional medical services necessary to limit or reduce the right leg impairment.[53]

The employee disagreed with the Board's MMI determination based on the earlier release date rather than the subsequent release after he received additional medical care. The court denied the employee's request for additional TTD benefits and confirmed there was ample evidence to support the board's MMI determination. The court confirmed the Act allows the board to award additional medical treatment – palliative care – to reduce pain and limit the extent of an employee's

[52] *Id*. at 4.
[53] *Id.*

permanent impairment.[54] Ind. Code § 22-3-3-4(c) contemplates the potential need for medical (palliative) care despite reaching MMI with a PPI award:

> After an employee's injury has been adjudicated ... on the basis of permanent partial impairment and within the statutory period for review in such case as provided in section 27 of this chapter, the employer may continue to furnish a physician or surgeon and other medical services and products, and the worker's compensation board may within the statutory period for review as provided in section 27 of this chapter, on a proper application of either party, require that treatment by that physician and other services and products be furnished by and on behalf of the employer as the worker's compensation board may deem *necessary to limit or reduce the amount and extent of the employee's impairment*.[55]

(emphasis added). Because the statute grants the Board the power to award additional medical treatment to reduce pain or limit a permanent impairment, the court affirmed the Board's decision.[56]

IV. EXCLUSIVE REMEDY

The Worker's Compensation Act contains an exclusive remedy provision[57] which precludes a trial court from hearing a common law action brought by an employee against an employer for the same injuries brought against the employer under the Act, for injuries arising out of and in the course of employment. The Act specifies:

> The rights and remedies granted to an employee subject to [the Act] on account of personal injury or death by accident *shall exclude all other rights and remedies* of such employee, … at common law or otherwise, on account of such injury or death…

Ind. Code § 22-3-2-6 (emphasis added). As the case law illustrates, the employer-employee relationship defines the parameters of the immunity granted by the Act's exclusive rights and remedies provision.

[54] *Id.* at 6.
[55] Ind. Code § 22-3-3-4(c).
[56] *Vass*, 233 N.E.3d 987 at 6.
[57] Ind. Code § 22-3-2-6.

Trial courts and federal courts[58] continue to be asked to address whether a civil action should be dismissed based on the board's exclusive jurisdiction to adjudicate the issues. In the cases that follow, the courts' analysis focused on the nature of the relationships to determine whether the Act's exclusive remedies provision applied or if the exception found in Ind. Code §22-3-2-13, allowing for actions brought against third parties who are not an employer or fellow employee, was appropriate.

Ind. Code § 22-3-2-13 (a) provides:

> Whenever an injury or death, for which compensation is payable under [the Act] shall have been sustained under circumstances *creating in some other person than the employer and not in the same employ* a legal liability to pay damages…the injured employee…may commence legal proceedings against the other person to recover damages…

Ind. Code § 22-3-2-13(a) (emphasis added). Although this section is usually applied to allow the employer or insurer to assert a statutory lien against recovery in the civil suit, parties in the cases discussed asserted this section recognizes the employee's ability to pursue litigation against another individual who is not a coworker as defined by the Act. In the cases that follow, the court evaluated various employment relationships as it addressed the Act's applicability.

England v. Siebe and FedEx Freight[59]

The courts recently addressed the statutory provisions found in Ind. Code § 22-3-6-1 that recognize exclusive remedy protection for subsidiary companies as joint employers. The court concluded that the trial court properly dismissed the employee's suit against a subsidiary and its employee because the plain language of the Act includes "all tiered subsidiaries." Since the

[58] *Johal v. FedEx Corp.*, 2022 WL 10075380 (S.D. Ind. Oct. 17, 2022) (federal decision containing a good analysis of the state law requirements).
[59] *England v. Siebe,* 249 N.E.3d 619, 621 (Ind. Ct. App. 2024), *trans. denied,* 255 N.E.3d 438 (Ind. 2025), *and cert. denied,* 2025 WL 2824154 (U.S. Oct. 6, 2025).

subsidiaries had the same parent corporation, the employee's claim was barred by the Act's exclusive remedies provision.[60]

Theresa England worked for FedEx Express Corporation, a 100% owned subsidiary of Fed Corporation. In August 2020, England suffered catastrophic injuries when Steven Siebe backed a tractor-trailer into her. Siebe was employed by FedEx Freight, Inc., which is also 100% owned subsidiary of FedEx Corporation. The trial court dismissed England's complaint against Siebe and FedEx Freight based on evidence reflecting the parent and subsidiary relationships of the various FedEx business.

The Act defines an "employer" in relevant part to expressing include a parent corporation and its subsidiaries, which "shall each be considered joint employers" of the injured employee.[61] Effective July 1, 2000, the definition of employer under the Act was amended to provide that a parent or subsidiary of a corporation or a lessor of employees shall be considered to be the employer of the corporation's, the lessee's, or the lessor's employees for purposes of the Act.[62] In 2001, the Legislature further amended the definitions of "employer" for purposes of the Act to provide "a parent corporation and its subsidiaries shall each be considered joint employers of the corporation's, the parent's, or the subsidiaries' employees for purposes of Ind. Code § 22-3-2-6 and § 22-3-3-31." The court agreed with the trial court that the relevant statutory definition of a "subsidiary" includes "all tiered subsidiaries." Since England's direct employer and the alleged tortfeasor are joint employers under the Act, the court concluded that her civil action was barred by the Act's exclusive remedies provision and upheld the dismissal as to these parties.

[60] *Id.* at 13.
[61] Ind. Code § 22-3-6-1(a).
[62] *Id*.

Specialties Company, LLC v. Hunt[63]

In an earlier case, the court evaluated another asserted exclusive remedy defense case and reversed the trial court's conclusions related to the duty owed to an independent contractor. KBT Enterprises ("KBT") employed Douglas Hunt as a driver of a tracker trailer. Specialties Company, LLC ("Specialties") operated a facility which distributed cement dust and kiln dust. KBT provided hauling services for Specialties. When KBT dispatched Hunt to Specialties' facility to load and transport materials, he lost his balance and fell from the top of the trailer. Hunt was not wearing a safety harness.

A year later, Hunt filed a complaint against Specialties based on breach of duty. The court did not allow KBT's petition to intervene. Specialties filed a motion for summary judgment arguing, among other things, that the Act's exclusive remedies provisions barred Hunt's claim. The trial court denied the motion finding the action represented a premises liability case. It further concluded that Hunt was a business invitee to whom Specialties owed a duty of care and that there were genuine issues of material fact related to whether Specialties breached its duty to Hunt.[64]

The court of appeals reversed, finding that the trial court erred when it concluded Specialties owed a duty to Hunt and denied Specialties' motion for summary judgment.[65] The court further concluded that premises liability did not apply. Rather than a business invitee, the court determined that Hunt was an independent contractor, to whom Specialties did not owe a duty of care.

[63] *Specialties Company, LLC v. Hunt*, 219 N.E.3d 80, *unpub*. (Ind. Ct. App. 2023).
[64] *Id.* at 2.
[65] *Id.* at 5.

Gardner v. Anonymous Physician[66]

The court next addressed another independent contractor argument representing a different working relationship involving professional coworkers and corporate subsidiaries. Gardner, a nurse at St. Mary Medical Center, Inc., suffered an exposure while treating a patient at the hospital. She received medical care from a physician at the hospital for the exposure. Gardner filed a worker's compensation claim against the hospital, which she settled.

Gardner also filed a complaint against Anonymous Physician ("Physician") for malpractice, asserting the physician failed to protect her from exposure and negligently managed her case after exposure. Physician sought dismissal, arguing that he and Gardner were employed by the same parent corporation and that Gardner's exclusive remedy was to pursue a worker's compensation claim, which she exhausted by her settlement. The trial court granted Physician's motion for summary judgment.

Gardner appealed the court's dismissal and argued that the Act did not apply because Physician was an independent contractor and, therefore, she could pursue an action under the exception related to third-party litigation.[67] The court found that Physician had two different relationships with Gardner – one as a coworker and another as a treating physician. Based on its conclusions, the court reversed the dismissal and remanded the case.[68]

First, the court determined that Physician was a coworker. The Act defines an employer to include a parent corporation and its subsidiaries, which shall each be considered joint employers.[69] Based on this definition, the court found that Physician was an employee of the hospital and the

[66] *Gardner v. Anonymous Physician,* 222 N.E.3d 1062 (Ind. Ct. App. 2023).
[67] Ind. Code § 22-3-2-13(a).
[68] *Gardner*, 222 N.E.3d at 1070.
[69] Ind. Code § 22-3-6-1(a).

corporate parent.[70] Because Physician and Gardner were working in a coworker capacity, Gardner's exclusive remedies for the injury were through the Act.

The court determined that the relationship changed into a third-party relationship and subjected the Physician to liability when Physician entered a doctor-patient relationship with Gardner. The court found Gardner's allegations that "Physician negligently directed her case, failed to provide appropriate and timely treatment, and failed to refer her to appropriate specialists for treatment" were sufficient to suggest a doctor-patient relationship strong enough to remand the case.[71]

Anonymous Provider 2 v. Estate of Askew by Askew[72]

At the same time, the court addressed another exclusive remedy argument related to physicians as coworkers employed by subsidiaries. The court concluded that the relationship at issue did not meet the coworker or subsidiary definitions and allowed the case to proceed.

Ryan Askew, a hospital security guard died after a patient shot him during an encounter. Askew's estate exhausted its statutory remedy against the hospital and filed a medical malpractice case against the physician who provided care after the shooting and two other parties with the Indiana Department of Insurance.

The physician filed a Petition for Preliminary Determination of Law and 12(B)1 Motion to Dismiss asserting the security guard was a fellow employee in the same employ as the physician. The estate argued that medical malpractice claims against fellow employee-physicians were an exception to the Act. The trial court concluded that the security guard and physician were not coworkers as defined by Ind. Code § 22-3-2-13(a), which references injuries sustained *under*

[70] *Gardner,* 222 N.E.3d at 1067.
[71] *Id.* at 1070.
[72] *Anonymous Provider 2 v. Estate of Askew by Askew,* 223 N.E.3d 727 (Ind. Ct. App. 2023).

circumstances creating in some other person than the employer and not in the same employ a legal liability to pay because security guard was employed by hospital and physician was employed by Community Care Network. Despite recognizing the subsidiary arrangement between the two employers, the court found that the hospital owned only a third of the shares of the other entity and could not control the activities. Based on these conclusions, the trial court denied the physician's 12(B)1 motion, citing Ind. Trial Rule 54(b) and including language reflecting the decision was a final and appealable order.

On appeal, the court did not address the merits of the employment relationship. Rather, it determined that the court's order was not an appealable order because it was not a final judgment. It dismissed the appeal and remanded for further proceedings.[73]

Beckner v. Maxim Crane Works.[74]

Beckner, a construction worker, brought a negligence action in state court against Maxim Crane Works ("Crane Company") under a theory of vicarious liability arising from the construction worker's injury. After removal, the U. S. District Court for the Southern District of Indiana granted summary judgment for the Crane Company. The U.S. Court of Appeals vacated this decision and remanded the case for factual determinations regarding the employment relationship.[75]

Beckner worked for Commercial Air, Inc. constructing a home. Commercial Air rented a crane from Crane Company, which provided the crane, equipment, and an operator. Construction worker contended the crane operator injured him, and he sued Crane Company for negligence. The district court determined that construction worker and crane operator were co-employees and,

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[73] *Id*. at 732.
[74] *Beckner v. Maxim Crane Works, L.P.,* 109 F.4th 968 (7th Cir. 2024).
[75] *Id.* at 5.

therefore, the Act barred suit against Crane Company. The court applied a seven-factor test to assess the employment relationship. Because the U.S. Court of Appeals determined there were fact-based questions regarding the employee-employer relationship, the court vacated the district court's judgment and remanded the case to resolve the factual issues.

V. RETALIATION CLAIMS

The Indiana Supreme court created a narrow exception to the Act's exclusive remedy provision, allowing civil actions against employers related to employment retaliation claims or intentional acts, known as *Frampton* actions.[76]

Bobay-Somers v. Professional Emergency Physicians, P.C.[77]

Bobay-Somers, a physician's assistant, filed a wrongful termination complaint against her employer Professional Emergency Physicians ("PEP"). The employer filed a motion for summary judgment and the trial court granted the motion. The court affirmed, finding that Bobay-Somers was an at will employee and that she was not expressing a statutory duty. Therefore, there was no basis for an exception under *Frampton*.[78]

In 1998, Bobay-Somers signed a contract to work for PEP as a physician assistant. During the first ten years of her employment, she changed the terms of her employment to include part-time, hourly pay, and work at different locations. In January 2020, Bobay-Somers signed a Physician Assistant Collaborative Agreement with PEP. This agreement provided specific tasks and procedures the employee could conduct under the supervision of a physician. In November 2020, the employee stopped showing up for shifts. In early 2021, the employee had a disagreement with PEP president, via Reply Email, about whether a potential use of medication for COVID

[76] *Frampton v. Central Gas Co.,* 297 N.E.2d 425 (Ind. 1973).
[77] *Bobay-Somers v. Professional Emergency Physicians, P.C.,* 228 N.E.3d 1099, *unpub.* (Ind. Ct. App. 2024).
[78] *Id.* at 2.

treatment was malpractice. PEP subsequently decided to separate her employment, referring the fact that the employee was not on the schedule for 2021.

Bobay-Somers argued that she was not an at-will employee because she had an employment contract with PEP. PEP argued that the parties abandoned the contract long before it terminated the employment relationship due to the multiple material changes made to the terms of the original contract. The trial court agreed and concluded that the parties acquiesced to the abandonment of the original contract.[79]

On appeal, the employee argued that the 2020 contract was her employment contract, rather than the original 1998 contract. The court determined, however, that argument rendered the same result because the 2020 contract was for at-will employment. Because the employee did not have a contract for a definite term, she was an at-will employee when she was discharged.

The employee also asked the court to apply a public policy exception to the at-will doctrine and alleged her discharge was in retaliation of the Reply Email she sent to the PEP president. The court recognized that the *Frampton* exception to the employment at-will doctrine existed when an employee was discharged solely for exercising a statutorily conferred right.[80] The court also considered another public policy exception that applied when an employee was discharged for refusing to commit an illegal act for which he would be personally liable.[81] The court concluded, however, that this employee had not pursued a statutory right nor had she been asked to engage in any illegal activity and it did not extend the public policy exceptions in this case. The court affirmed the trial court's judgment that employment was at-will, and that no public policy exception existed.

[79] *Id.* at 3.
[80] *Id.*
[81] *Id.,* citing *McClanahan v. Remington Freight Lines, Inc.,* 517 N.E.2d 390 (Ind. 1988).

South Bend Community School Corporation v. Grabowski[82]

In 2024, the court of appeals addressed a wrongful termination case in which employee asserted she was constructively discharged in retaliation for expressing an intent to file a worker's compensation case. After the employee received a favorable award in the lower court, the Indiana Supreme Court reversed and remanded with direction to enter an award in the employer's favor. decision.

In the lower court, the case went to a jury, which found in the employee's favor and awarded her damages. The School Corporation appealed arguing that the trial court erred when it denied the employer's motions for judgment on the evidence and for mistrial. The employer argued that the employee failed to prove the elements of her claim alleging retaliatory construction discharge for filing a worker's compensation claim.

On appeal, the court declined the School Corporation's request to reweigh the evidence and affirmed the denial of the employer's motions, finding that the evidence supported the jury's verdict. Specifically, the court of appeals determined that an employee's intention by merely mentioning she might file a worker's compensation claim, versus actually filing the claim, was actionable under *Frampton*.[83] The court found that the jury heard evidence sufficient to support the wrongful termination claim and received an instruction addressing constructive discharge of an employee solely for asserting a worker's compensation claim, both of which supported its verdict. The court further concluded the trial court did not abuse its discretion when it denied the employer's motions.[84]

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[82] *South Bend Community School Corporation v. Grabowski,* 237 N.E.3d 624, *unpub.* (Ind. Ct. App. 2024), *trans. granted, opinion vacated,* 245 N.E.3d 1020 (Ind. 2024), and *vacated*, 261 N.E.3d 222 (Ind. 2025).
[83] *Id*. at 9.
[84] *Id*. at 625.

After the employer's petition for transfer was granted, the Indiana Supreme Court reversed the lower court's decision. The Court concluded that the employee failed to establish that her constructive discharge was driven exclusively by the employer's intent to avoid liability under the Workers' Compensation Act; a necessary element of a valid *Frampton* claim. Notably, the employee herself acknowledged that factors such as nepotism and internal school politics also influenced the employer's actions. Given *Frampton*'s strict requirement of sole causation, the jury's verdict could not be sustained. The Court therefore reversed and remanded with instructions to enter judgment in favor of the employer.[85]

Tony v. Patrick Industries, Inc.[86]

The court of appeals decided another retaliatory discharge suit at the same time the lower court address retaliation claims in *Grabowski*. Tony filed a civil action against his employer claiming Patrick Industries, Inc. terminated his employment, in part, in retaliation for his exercising his right to receive worker's compensation benefits. The trial court granted summary judgment in favor of the employer based on its decision that Tony did not designate evidence to show that he was entitled to relief. The court of appeals affirmed the decision.[87]

Patrick Industries' plant in which Tony worked employed other drivers – three with Class A commercial driver's licenses (CDL) who were qualified to drive semi-trucks and a fourth driver, Tony, with a Class B CDL which qualified him to drive smaller tucks. Tony suffered an injury and received statutory compensation and benefits from his employer. Shortly after the physician released Tony to return to work without restrictions, Patrick Industries terminated Tony's employment based on a reduction in workforce.

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[85] *S. Bend Cmty. Sch. Corp. v. Grabowski*, 261 N.E.3d 222, 223 (Ind. 2025).
[86] *Tony v. Patrick Industries, Inc.*, 237 N.E.3d 626, *unpub.* (Ind. Ct. App. 2024), *adhered to on reh'g*, 241 N.E.3d 603 (Ind. Ct. App. 2024), *and trans. denied*, 245 N.E.3d 1016 (Ind. 2024).
[87] *Id.* at 5.

The issue of retaliation is a question for the trier of fact. In this case, the trial court granted the employer's summary judgment. The court affirmed, concluding that the employee did not carry his burden of proving his discharge was solely in retaliation for the exercise of a statutory right. Instead, it found that the employer designated evidence supporting an independent, neutral basis for its employment decision, which defeated Tony's *Frampton* claim. The court further determined that the evidence did not establish that a clear statutory expression of a right or duty was contravened and that the discharge was in retaliation for the exercise of that right or duty.[88]

Cenanovic v. Hamdard Center for Health and Human Services[89]

While *Cenanovic* addressed an Illinois claim, it reiterated the *Tony v. Patrick* decision. *Cenanovic* confirmed that the causation element for retaliation claims is not met where an employer offers a non-pretextual reason for termination. The court found the employee did not present evidence that the termination was caused by her worker's compensation claim. Instead, the employer provided a valid, non-pretextual reason, which was elimination of the employee's position through job restructuring, and her inability to participate in the retraining. Based on this evidence, the court issued an award in the employer's favor.

VI. MISCELLANEOUS

Worker's compensation issues can be involved as tangential issues in other practice areas. For instance, in *Franklin v. Senetar*[90] the parties asked the court to enforce a settlement agreement that was conditioned on resolution of a worker's compensation lien. The court remanded the case determining that the trial court incorrectly entered an order enforcing the settlement because the

[88] *Id*. at 4.
[89] *Cenanovic v. Hamdard Ctr. for Health & Human Servs.,* 2024 WL 4835246 (7th Cir. Nov. 20, 2024), *cert. denied sub nom.,* 2025 WL 2823917 (U.S. Oct. 6, 2025).
[90] *Id*.

parties had not agreed on the settlement terms.[91] Although this decision addressed a federal worker's compensation claim, it is a caution to the parties to resolve liens as part of settlement resolutions that could become issues with civil litigation.

Courts in the family law practice are often asked to address worker's compensation issues. In a dissolution action, the court recently concluded that one parent's worker's compensation settlement should be included as income during the marriage.[92] In another family law case, the court granted a father's motion to modify his support obligation based on his receipt of worker's compensation benefits and his inability to work.[93]

Finally, a cautionary tale. In *Matter of Dogan*[94] an attorney initially represented Married Couple in personal injury and worker's compensation claims related to the husband's workplace accident. Despite numerous requests from the Married Couple and a successor attorney, and a court order to do so, the initial attorney failed to withdraw his representation or turn over his file. Instead, the initial attorney asserted a $386,743.67 lien for attorney's fees and requested the court reduce the lien to judgment against his former clients. The attorney subsequently sent a letter to the successor attorney asserting the lien with interest, $552,850 and moved to intervene in the Married Couple's civil action, along with other legal filings. The Supreme Court of Indiana affirmed the Indiana Supreme Court's Disciplinary Commission's recommendations which resulted in the initial attorney's legal suspension for professional misconduct.

VII. CONCLUSION

The Indiana Worker's Compensation Act may appear to be straightforward in defining the rights and remedies for injuries arising out of and in the course of employment. As this case law

[91] *Franklin v. Senetar*, 205 N.E.3d 212, *unpub.* (Ind. Ct. App. 2023).
[92] *Cocksedge v. Cocksedge*, 213 N.E.3d 1114, *unpub.* (Ind. Ct. App. 2023).
[93] *Hill v. Hill*, 239 N.E.3d 45, *unpub.* (Ind. Ct. App. 2024).
[94] *Matter of Dogan*, 227 N.E.3d 176 (Ind. 2024).

review reveals, most judicial conclusions rest on the unique evidence presented before the board, with courts generally deferring to the trier of fact. The court will, however, weigh in on procedural issues. As employment relationships change – both with employee arrangements and joint employer entity connections - it may be more difficult for trial courts to apply some of the statutory language to the current workforce.