

NOTICE
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2026 IL App (5th) 250301WC

NO. 5-25-0301WC

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

AZCON METALS,)	Appeal from the
)	Circuit Court of
Appellant,)	Madison County.
)	
v.)	No. 24-MR-241
)	
THE ILLINOIS WORKERS' COMPENSATION,)	
COMMISSION <i>et al.</i>)	Honorable
)	Dennis R. Ruth,
(Tom Snyder, Appellee).)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court, with opinion.
Justices Rochford and Cavanagh concurred in the judgment and opinion.
Justice Mullen specially concurred, with opinion, joined by Presiding Justice Holdridge.

OPINION

¶ 1 Employer, Azcon Metals, appeals from the order of the Madison County circuit court confirming the decision of the Illinois Workers' Compensation Commission (Commission) that awarded claimant, Tom Snyder, benefits under section 8(d)(2) of the Workers' Compensation Act (Act) (820 ILCS 305/8(d)(2) (West 2024)) and denied employer credit for payments employer previously made under section 8(e)(11) of the Act (*id.* § 8(e)(11)). On appeal, employer argues that (1) the Commission's concurrent awards under section 8(e) and 8(d)(2) of the Act were erroneous as a matter of law and (2) the Commission's denial of credit for previously paid section

8(e) benefits constituted legal error. For the following reasons, we affirm in part, reverse in part, and remand with directions.

¶ 2

I. BACKGROUND

¶ 3 On April 17, 2020, claimant filed an application for adjustment of claim pursuant to the Act, seeking benefits for an injury he sustained to his right foot and leg while working for employer on March 19, 2020. As a result of the March 19, 2020, work injury to his foot and leg, claimant underwent an amputation of his right leg below the knee. Employer paid claimant a total of \$97,010.30 for permanent partial disability (PPD) benefits for the scheduled loss of his right foot pursuant to section 8(e)(11) of the Act. Employer paid claimant the PPD benefits in two installments, the first on April 20, 2020 (\$60,716.19), and the second on April 28, 2022 (\$36,294.11). The parties subsequently requested an arbitration hearing on the following issues: medical expenses, the nature and extent of claimant's injuries, and employer's entitlement to a credit for the payment made under section 8(e)(11) against any award of PPD benefits.

¶ 4 On January 27, 2023, the matter proceeded to an arbitration hearing. At the outset of the hearing, the arbitrator noted the parties' agreement that employer paid claimant, and was entitled to a credit for, \$17,438.31 in temporary total disability (TTD) benefits and \$42,822.94 in maintenance benefits. The arbitrator additionally acknowledged the parties' agreement that employer previously paid claimant \$97,010.30 in PPD benefits for the scheduled loss of claimant's right foot but that the parties disagreed on employer's entitlement to a credit for that amount.

¶ 5 The evidence presented at the arbitration hearing generally established that claimant's right foot was crushed between two rail cars while he was working for employer on March 19, 2020. Claimant initially underwent surgery that resulted in the amputation of four of his toes on his right foot; however, he underwent additional surgery the following day that resulted in the amputation

of his leg at the mid-tibia, or below his right knee. Following the surgeries, claimant was fitted for a transtibial prosthetic. Thereafter, he performed physical therapy and work hardening. Claimant subsequently underwent a functional capacity evaluation, which indicated that claimant had the ability to perform in the heavy physical demand level but that his ability was limited due to decreased tolerance for prolonged standing and walking on uneven surfaces. Claimant participated in vocational rehabilitation and expressed his intent to find employment in heating, ventilation, and air conditioning (HVAC) or in the construction industry. Claimant acknowledged these jobs may require him to traverse uneven ground, but he believed he could perform these slower-paced jobs.

¶ 6 Following the hearing, the arbitrator issued a written decision. The arbitrator awarded claimant all requested medical expenses. With regard to the nature and extent of claimant's injury, the arbitrator noted that it was undisputed claimant underwent an amputation at the mid-tibia and that employer paid claimant "a statutory loss payment of \$97,010.30 under Section 8(e)(11) of the Act, using a stipulated minimum statutory amputation rate of \$580.90." The arbitrator further noted that claimant waived his right to a wage-differential award under section 8(d)(1) of the Act (*id.* § 8(d)(1)). After considering the factors required by section 8.1b(b)(v) of the Act (*id.* § 8.1b(b)(v)), the arbitrator found that claimant sustained permanent partial disability to the extent of 65% of the loss of his body as a whole, pursuant to section 8(d)(2) of the Act. The arbitrator awarded benefits accordingly.

¶ 7 With regard to employer's request for a credit for the prior payment made under section 8(e)(11) of the Act, the arbitrator noted the stipulation of the parties that employer paid claimant \$97,010.30 for "the statutory loss of [claimant's] right foot." The arbitrator noted that the amount represented 167 weeks at the stipulated statutory minimum rate of \$580.90 for amputations. The

arbitrator further noted that employer “does not dispute that [claimant] is entitled to compensation under both Sections 8(e) and 8(d)2 of the Act; however, [employer] claims it is entitled to a credit for the statutory loss payment made under Section 8(e)11 of the Act against any [PPD] benefits awarded under Section 8(d)2.” The arbitrator ultimately denied employer’s request for a credit. Employer sought review of the arbitrator’s decision before the Commission.

¶ 8 On July 15, 2024, the Commission issued a unanimous decision and opinion on review. The Commission reduced the arbitrator’s award of PPD benefits under section 8(d)(2) to 45% loss of the use of the person as a whole, finding that claimant was young and remained capable of physically demanding work. With regard to employer’s request for a credit, the Commission agreed with the arbitrator’s conclusion that employer could not receive credit for the \$97,010.30 paid pursuant to section 8(e)(11) of the Act toward claimant’s award under section 8(d)(2). In doing so, the Commission acknowledged that employer made a prompt payment of benefits but noted that the payment was made under the incorrect section. The Commission noted that employer paid 167 weeks for 100% loss of the right foot; however, section 8(e)(12) (*id.* § 8(e)(12)) stated that an injury that resulted in the amputation of a leg below the knee shall be compensated as a loss of a leg. Accordingly, the Commission noted that the proper payment would have been 215 weeks for 100% loss of the right leg.

¶ 9 The Commission indicated that the issue of credit presented an issue of first impression. After reviewing the relevant statutory language, the Commission concluded that section 8(d)(2) did not permit an offset for the previously paid amputation benefits. Thus, the Commission concluded that employer was not entitled to a credit against the award under section 8(d)(2). The Commission’s order additionally indicated that employer “shall have credit for all amounts paid,

if any, to or on behalf of the [claimant] on account of said accidental injury.” Employer sought judicial review of the Commission’s decision in the circuit court of Madison County.

¶ 10 On March 14, 2025, the circuit court issued a written decision confirming the Commission’s decision. In doing so, the court rejected employer’s argument that “it should receive credit for the Section 8(e) payment against the award for 8(d)2 benefits.” Employer filed a timely notice of appeal.

¶ 11 II. ANALYSIS

¶ 12 On appeal, employer first argues that the Commission erred as a matter of law by awarding claimant benefits under both section 8(e) and 8(d)(2) of the Act. We note, however, that employer has improperly framed the issue before this court.

¶ 13 The Commission in this case did not “award” claimant benefits under section 8(e) of the Act. Employer made a voluntary payment of benefits under that section prior to the arbitration hearing. The Commission noted in its decision that employer erred in its calculation of benefits under section 8(e) of the Act but only awarded claimant benefits under section 8(d)(2) of the Act. The Commission also considered whether employer was entitled to a credit for the payments it made under section 8(e) of the Act. Accordingly, the issue before this court, as framed by employer in its second argument on appeal, is whether the Commission erred by denying employer credit for its voluntary payment made pursuant to section 8(e) of the Act.

¶ 14 Employer specifically argues that the Commission’s denial of credit for the previously paid section 8(e) benefits against the Commission’s award of benefits under section 8(d)(2) constituted legal error. We agree with employer.

¶ 15 While the Commission’s determination of whether an employer is entitled to a credit is ordinarily reviewed for an abuse of discretion (*Payetta v. Industrial Comm’n*, 339 Ill. App. 3d 718,

722 (2003)), the Commission in the present case interpreted various provisions of the Act and determined that section 8(d)(2) of the Act did not “permit an offset for the previously paid amputation benefits.” This presents “a question of statutory interpretation, which is reviewed *de novo*.” *City of Chicago v. Illinois Workers’ Compensation Comm’n*, 409 Ill. App. 3d 258, 262 (2011).

¶ 16 In addressing the issue of credits in *World Color Press v. Industrial Comm’n*, 125 Ill. App. 3d 469, 471-72 (1984), this court concluded that an employer could receive a credit for the overpayment of TTD benefits in the absence of a statutory bar. Although *World Color Press* involved the overpayment of TTD benefits, we find the reasoning of that case relevant in determining whether employer’s voluntary payment of benefits under section 8(e) of the Act could be credited toward the Commission’s award of benefits under section 8(d)(2) of the Act. In our view, absent a statutory prohibition, the Commission should have credited employer for the voluntary payment it made under section 8(e) of the Act unless claimant was entitled to compensation under both section 8(e) of the Act and section 8(d)(2) of the Act for the same injury. As the Commission correctly noted, the question of whether a claimant is entitled to benefits under both section 8(e) of the Act and section 8(d)(2) of the Act presents an issue of first impression.

¶ 17 Employer in this case made a voluntary payment to claimant pursuant to section 8(e)(11) of the Act, which provides, in relevant part, as follows:

“(e) For accidental injuries in the following schedule, the employee shall receive compensation for the period of temporary total incapacity for work resulting from such accidental injury, under subparagraph 1 of paragraph (b) of this Section, and shall receive in addition thereto compensation for a further period for the specific loss herein mentioned, but *shall not receive any compensation under any other provisions of this Act*. The

following listed amounts apply to either the loss of or the permanent and complete loss of use of the member specified, such compensation for the length of time as follows:

* * *

11. Foot-

167 weeks if the accidental injury occurs on or after February 1, 2006.”

(Emphasis added.) 820 ILCS 305/8(e)(11) (West 2024).

Here, it is undisputed that employer paid claimant \$97,010.30 for the loss of his foot pursuant to this section. It is also undisputed that employer’s calculations of benefits under this section was incorrect.¹ At issue, here, is whether employer is entitled to a credit for the amount paid toward the Commission’s award of benefits under section 8(d)(2) of the Act.

¶ 18 Section 8(d)(2) of the Act provides, in pertinent part, as follows:

“If, as a result of the accident, the employee sustains serious and permanent injuries not covered by paragraphs (c) and (e) of this Section or having sustained injuries covered by the aforesaid paragraphs (c) and (e), he shall have sustained in addition thereto *other* injuries which injuries do not incapacitate him from pursuing the duties of his employment but which would disable him from pursuing other suitable occupations, or which have otherwise resulted in physical impairment; or if such injuries partially incapacitate him from pursuing the duties of his usual and customary line of employment but do not result in an impairment of earning

¹As the Commission noted, however, employer should have paid claimant under section 8(e)(12), which provides that, “[w]here an accidental injury results in the amputation of a leg below the knee, such injury shall be compensated as loss of a leg.” 820 ILCS 305/8(e)(12) (West 2024). Employer does not dispute that it should have paid claimant pursuant to this section, which requires payment of 215 weeks, as opposed to 167 weeks.

capacity, or having resulted in an impairment of earning capacity, *the employee elects to waive his right to recover under the foregoing subparagraph 1 of paragraph (d) of this Section* then in any of the foregoing events, he shall receive in addition to compensation for temporary total disability under paragraph (b) of this Section, compensation at the rate provided in subparagraph 2.1 of paragraph (b) of this Section for that percentage of 500 weeks that the partial disability resulting from the injuries covered by this paragraph bears to total disability. *** *Compensation awarded under this subparagraph 2 shall not take into consideration injuries covered under paragraphs (c) and (e) of this Section and the compensation provided in this paragraph shall not affect the employee's right to compensation payable under paragraphs (b), (c) and (e) of this Section for the disabilities therein covered.*" (Emphases added.) *Id.* § 8(d)(2).

¶ 19 This court has concluded that section 8(d)(2) provides for benefits in three situations:

“(1) where a claimant sustains serious and permanent injuries not covered by section 8(c) (820 ILCS 305/8(c) (West 2008) (relating to injuries resulting in disfigurement)) or section 8(e) of the Act; (2) where a claimant covered by section 8(c) or 8(e) of the Act also sustains *other* injuries which are not covered by those two sections and such injuries do not incapacitate him from pursuing his employment but would disable him from pursuing other suitable occupations, or which have otherwise resulted in physical impairment; or (3) where a claimant suffers injuries which partially incapacitate him from pursuing the duties of his usual and customary line of employment but do not result in an impairment of earning capacity.” (Emphasis added.) *Will County Forest Preserve District v.*

Illinois Workers' Compensation Comm'n, 2012 IL App (3d) 110077WC, ¶ 14 (citing 820 ILCS 305/8(d)(2) (West 2008)).

¶ 20 Based on our reading of the applicable statutory provisions, we conclude that claimant was entitled to elect an award under either section 8(e) of the Act or section 8(d)(2) of the Act, but not both, where claimant sustained an injury to one body part as a result of the work accident. As the Commission noted, section 8(e) and 8(d)(2) contain seemingly contradictory provisions. Notably, section 8(e) provides that a claimant who receives a scheduled loss “shall not receive any compensation under any other provisions of this Act.” 820 ILCS 305/8(e) (West 2024). However, section 8(d)(2) provides that compensation awarded for loss of use of the person as a whole “shall not take into consideration injuries covered under paragraphs (c) and (e) of this Section and the compensation provided in this paragraph shall not affect the employee’s right to compensation payable under paragraphs (b), (c) and (e) of this Section for the disabilities therein covered.” *Id.* § 8(d)(2). In our view, however, the language of section 8(e) clearly precludes a claimant from recovering under both section 8(e) and section 8(d)(2) for the same injury. Unlike the Commission, we conclude that the language of section 8(d)(2) merely permits a claimant to elect an award under either section 8(e) or section 8(d)(2) for an injury sustained to a single body part during a work accident and to receive an award under both section 8(e) and section 8(d)(2) in cases where the claimant sustains multiple injuries to separate body parts during a work accident.

¶ 21 We find this conclusion consistent with our prior decisions holding that, in the event of the loss of a member, a claimant “has the choice of seeking relief under either section 8(d)(1) [(wage differential)] or section 8(e)(10) [(scheduled loss)], but not both.” *Payetta*, 339 Ill. App. 3d at 721; *General Electric Co. v. Industrial Comm’n*, 89 Ill. 2d 432, 437 (1982) (“Compensation may be proper under either section [8(e) or 8(d)(1)], though not both at once.”). In other words, this

court has held that “[a] petitioner is allowed to choose between the scheduled loss and a wage differential on the grounds that the injured party will choose the award most likely to approximate the earnings loss that the Act attempts to compensate.” *Payetta*, 339 Ill. App. 3d at 721. The Commission, here, found these cases distinguishable, noting that section 8(d)(1) of the Act specifically precludes a claimant from receiving compensation under both section 8(e) and section 8(d)(1). While we acknowledge the differences in statutory language used in section 8(d)(1) and 8(d)(2), we find the statutory language set forth in section 8(e) clearly prohibits awards for the same injury under that section and “any other provisions of this Act.” 820 ILCS 305/8(e) (West 2024).

¶ 22 We also note that a wage-differential award serves to compensate an injured worker for a reduced earning capacity following a work accident (*Lenhart v. Illinois Workers’ Compensation Comm’n*, 2015 IL App (3d) 130743WC, ¶ 44), while a person-as-a-whole award serves to compensate an injured worker “for both functional incapacity *and* impairment of earnings if both elements are present” (emphasis in original) (*Freeman United Coal Mining Co. v. Industrial Comm’n*, 283 Ill. App. 3d 785, 795 (1996) (Rarick, J., dissenting)). Given that both wage-differential and person-as-a-whole awards serve to compensate injured workers for reduced earning capacity under certain circumstances, we conclude that the rationale in place behind the caselaw denying compensation under both section 8(e) and 8(d)(1) applies equally to the present case involving a single injury to the same body part. In our view, this conclusion protects the employee’s interest of electing the most valuable award based on the specific facts of the case, while also protecting the employer’s interest of preventing an employee from receiving double recovery for the same injury.

¶ 23 This court has also determined that a claimant “is entitled to an award for *his disability* based on either wage differential *or* percentage of the person as a whole” and that a “claimant is not entitled to an award for both, whether or not he suffers from both a functional disability and a loss of earning capacity.” (Emphasis added and in original.) *Id.* at 791 (majority opinion). In other words, this court has held that a “claimant is not entitled to an award under both section 8(d)(1) and section 8(d)(2) for the same condition of ill-being.” *City of Chicago*, 409 Ill. App. 3d at 265. Accordingly, this court has consistently held that a claimant is entitled to an award under one section of the Act in cases where the claimant sustains a single injury to one body part during a work accident.

¶ 24 We also find this conclusion consistent with our supreme court’s decision in *Beelman Trucking v. Illinois Workers’ Compensation Comm’n*, 233 Ill. 2d 364 (2009), and this court’s recent decision in *American Coal Co. v. Illinois Workers’ Compensation Comm’n*, 2024 IL App (5th) 230815WC. In *Beelman Trucking*, 233 Ill. 2d at 379-80, our supreme court, in applying the reasoning of *Freeman United Coal Mining Co. v. Industrial Comm’n*, 99 Ill. 2d 487, 494 (1984), held that a claimant was permitted to recover for scheduled losses under both section 8(e)(18) (loss of leg) and 8(e)(10) (loss of arm) of the Act that resulted from a single work accident. In doing so, our supreme court reasoned as follows:

“The loss of [the claimant’s] legs immediately entitled him to compensation under section 8(e)(18). Had that been the extent of his injuries, [the claimant] likely would have retained at least some earning capacity. [The claimant] may have even found further employment ***. However, [the claimant’s] earning capacity was further reduced when his workplace accident also caused the loss of his right arm and the loss of use of his left arm [in a single accident].

Those losses, above and beyond the specific case of loss of two members compensable by section 8(e)(18), would be left uncompensated if we were to accept [the employer's] argument. If [the employer] were correct, once a worker suffered a loss of both legs in an accident, *no* other specific losses, whether it be an arm, finger, eye or loss of hearing, would be compensable if the losses were all suffered in the same accident.” (Emphasis in original.) *Beelman Trucking*, 233 Ill. 2d at 377.

¶ 25 This court applied the reasoning of *Beelman Trucking* in *American Coal Co.*, 2024 IL App (5th) 230815WC, ¶ 16, where this court considered whether concurrent awards under section 8(e)(18) and section 8(d)(2) were permissible under the Act. In doing so, this court reasoned as follows:

“We recognize that our supreme court in neither case addressed concurrent awards of section 8(e)(18) benefits and section 8(d)(2) non-scheduled losses. We, however, cannot conclude that our supreme court’s rationale does not apply to the non-scheduled losses at issue in the instant case. The plain reading of section 8(d)(2) provides compensation when the employee sustains serious and permanent injuries ‘covered by the aforesaid paragraphs (c) and (e) *** in addition thereto other injuries,’ which partially incapacitated him from pursuing the duties of his usual and customary line of employment and resulted in an impairment of earning capacity (820 ILCS 305/8(d)(2) (West 2020)). Here, the award under section 8(e)(18) is statutorily authorized, provided claimant lost vision in both eyes as a result of the November 5, 2016, accident. The loss of use of both of claimant’s eyes immediately entitled him to compensation under section 8(e)(18) of the Act. Claimant also suffered additional serious and permanent injuries pursuant to section 8(d)(2) from the same accident that partially incapacitated him [from] his underground mining duties for

employer. We note that no medical opinions in the record indicate claimant reached maximum medical improvement with regard to his hip, spine, abdomen, or head, or that such injuries resulted in permanent restrictions or a loss of earning capacity. Despite this, the evidence undoubtedly demonstrates that claimant's non-scheduled injuries partially incapacitated him and further impaired claimant's earning capacity, which resulted in actual increased disability. See *Beelman Trucking*, 233 Ill. 2d at 380 (statutory total and permanent does not preclude recovery for losses which cause 'actual increased disability').

Despite the fact that section 8(e)(18) does not explicitly provide for recovery involving the loss of non-scheduled body parts, this court cannot ignore our supreme court's rationale in both *Freeman United*, 99 Ill. 2d at 495, and *Beelman Trucking*, 233 Ill. 2d at 377, 380. Specifically, that denying compensation beyond the two members compensable under section 8(e)(18) would leave additional losses uncompensated, where the additional losses above and beyond the specific case of loss of two members increased claimant's actual disability and further impaired claimant's earning capacity. As such, in the instant case, we hold that the Act permits an employee to recover for the loss of two members under section 8(e)(18), as well as to recover additional non-scheduled losses under section 8(d)(2). As the Commission correctly noted, the statutory permanent total disability in this case falls far short of addressing the full scope of claimant's injuries from this accident. To conclude otherwise would force this court to ignore the purpose of the Act, which is to provide 'a flow of benefits to compensate for lost wages' and to compensate workers for the loss of industrial earning capacity. *Freeman United*, 99 Ill. 2d at 497." *Id.* ¶¶ 24-25.

¶ 26 The claimants in both *Beelman Trucking* and *American Coal Co.* suffered injuries to multiple body parts during the same work accident, warranting additional compensation under the Act. In the present case, however, the only work-related injury claimant suffered was an injury to his right lower leg, which was covered by both section 8(e) and 8(d)(2). Under these circumstances, claimant was entitled to elect an award under either section 8(e) of the Act or section 8(d)(2) of the Act, but not both. Allowing awards under both statutory sections under the facts of this case would result in double recovery for the same injury.

¶ 27 Given our conclusion that claimant was entitled to compensation under only one of these statutory provisions, we conclude that the Commission erred by denying employer's request for credit. Employer promptly and voluntarily made a payment under section 8(e) of the Act following claimant's work accident. This provided claimant with immediate compensation to alleviate financial burdens following his work-related injury. Claimant subsequently elected, as was his right, to receive benefits under section 8(d)(2) of the Act. Under these circumstances, the Commission should have credited employer for the benefits it voluntarily paid under section 8(e) of the Act prior to arbitration against the Commission's award of benefits under section 8(d)(2) of the Act.

¶ 28 Moreover, we conclude that allowing a credit under these circumstances is consistent with the policies underlying the Act, as this court observed in *Salisbury v. Illinois Workers' Compensation Comm'n*, 2017 IL App (3d) 160138WC, ¶ 14:

“Moreover, deep policy concerns are at issue here. Encouraging employers to make prompt and voluntary payments of benefits furthers the purpose of the Act. [Citation.] It is obvious that '[d]enying credits for errors such as the one in this case would encourage administrative delays as employers attempt to resolve every ambiguity before paying

benefits.’ [Citation.] The primary purpose of the Act is to ‘provide employees with *prompt* and definite compensation.’ (Emphasis added.) [Citation.] Thus, claimant’s position [that employer was not entitled to credit for overpayment of TTD benefits] runs counter to the beneficent purposes of the Act.”

In sum, we conclude there is no statutory provision that prohibits the Commission from recognizing a credit under the circumstances of the present case and that allowing a credit under the circumstances of the present case is consistent with the policies underlying the Act—that is, to provide employees with prompt payment of benefits for work-related injuries. Therefore, we hold that the Commission erred by denying employer credit for the voluntary payments it made under section 8(e) of the Act against the Commission’s award of benefits under section 8(d)(2) of the Act.

¶ 29

III. CONCLUSION

¶ 30 For the foregoing reasons, we affirm the portion of the circuit court’s order confirming the Commission’s award under section 8(d)(2) of the Act. We reverse the portion of the court’s order confirming the Commission’s denial of credit to employer and remand the matter to the Commission with directions to credit employer for compensation paid, in accordance with this opinion.

¶ 31 Affirmed in part and reversed in part; cause remanded with directions.

¶ 32 JUSTICE MULLEN, specially concurring:

¶ 33 I specially concur for two reasons. First, I feel compelled to document that there was at least one quotation in the reply brief of employer that was inconsistent with the statute quoted. The quotation was partially correct but also egregiously incorrect, using language that would have supported employer’s position, had it been present in the statute. Counsel for employer stated that

resources using artificial intelligence were not utilized by that counsel in preparing the briefs but did advise that the briefs had been through several rounds of editing by several other lawyers. Therefore, it is undetermined exactly how the lapse occurred.

¶ 34 Regardless of the origin of the misstatement, every citation in all legal materials must be 100% accurate. The courts must and do cite check reflexively. That is our job. Where the purported rules or authorities relied upon by counsel do not comport with their alleged source, then this obviously and needlessly hinders our review, but more urgently, these errors inevitably cast doubt upon all that is written. Confidence in the legal system requires that counsel and the courts be as vigilant as is necessary to ensure the accuracy of every representation made in a legal document. Nothing less is acceptable.

¶ 35 Second, turning to the analysis, I write separately to explain that, while I believe the statute is ambiguous, I do agree with the majority's interpretation of the Act and that an employee who is partially incapacitated from his usual and customary line of line of work may not receive a concurrent award under section 8(e) and 8(d) for the same injury. That being the case, where the employer has made a voluntary payment under the schedule set forth in section 8(e), it is entitled to a credit for that payment against the person as a whole award.

¶ 36 Section 8(d)(2) provides "person as a whole" recovery for three groups of claimants: First, for claimants with "serious and permanent injuries not covered by paragraph [] *** (e)" (unscheduled injuries); second, for claimants with scheduled injuries who also sustain "other injuries" which affect employability (other injuries); and third, for claimants who, like those provided for in section 8(d)(1), lose their ability to perform in their usual and customary line of employment, but who either (a) do not suffer an impairment of income, making the section 8(d)(1)

wage differential award meaningless, or (b) whose earnings are impaired and they waive section 8(d)(1) recovery (loss of line of work). 820 ILCS 305/8(d)(2) (West 2024).

¶ 37 The last sentence of section 8(d)(2) provides:

“Compensation awarded under this subparagraph 2 shall not take into consideration injuries covered under paragraphs (c) and (e) of this Section and the compensation provided in this paragraph shall not affect the employee’s right to compensation payable under paragraphs (b), (c) and (e) of this Section for the disabilities therein covered.” *Id.*

The Commission contrasted this language with the clear exclusion found in section 8(d)(1) (“except in cases compensated under the *** [section 8(e)] schedule” (*id.* § 8(d)(1))) and concluded that the plain language “states that any recovery under 8(e) is to have no effect on an award under 8(d)(2) and vice versa.” Therefore, it determined the employer was not entitled to any credit. In its written ruling, the trial court took the same view but added that, “[t]o the extent that this section might be susceptible to a differing interpretation, the fundamental [tenet] that the [Act] is to be liberally interpreted *** to provide financial protection for injured workers requires this Court to adopt the same interpretation as the IWCC.”

¶ 38 While I agree with that tenet, reasonable persons could differ in their understanding of the last sentence of section 8(d). The Commission’s reading is one alternative, although if the legislature meant to void the effect of section 8(e)’s very clear exclusion from “any compensation under any other provisions of this Act” (*id.* § 8(e)) to beneficiaries of scheduled compensation, it could have done so more explicitly.

¶ 39 And it should be noted that the Commission’s interpretation that no credit is required under section 8(d)(2) leads to a result completely inconsistent with section 8(d)(1). The third group of persons entitled to “person as a whole” recovery under section 8(d)(2) includes those who have

line of work losses that have “resulted in an impairment of earning capacity,” where “the employee elects to waive” recovery under section 8(d)(1). *Id.* § 8(d)(2). But section 8(d)(1) explicitly forbids both a recovery under that subsection (wage differential) and scheduled recovery under section 8(e). Thus, where an employee with a line of work injury recovers under section 8(d)(1), the employer is entitled to a credit for payments made under the schedule. But under the Commission’s reading of section 8(d)(2), where an employee with the same injury recovers under section 8(d)(2), the employer is not entitled to a credit for payments made under the schedule.

¶ 40 Examining the language of the statute closely, the first clause of that last sentence applies only to section 8(d)(2): “Compensation awarded under this subparagraph 2 shall not take into consideration injuries covered under paragraph[] *** (e) ***.” *Id.* The second clause of that sentence refers to section 8(d) in its entirety (“and the compensation provided in this paragraph shall not affect the employee’s right to compensation payable under paragraph[] *** (e) *** for the disabilities therein covered” (*id.*)). Because the legislature used different language in each clause, we should assume it meant something different. *People v. Hudson*, 228 Ill. 2d 181, 193 (2008) (“When the legislature uses certain language in one part of a statute and different language in another, we may assume different meanings were intended.”).

¶ 41 Giving effect to this maxim, another reasonable interpretation of the first clause of the final sentence of section 8(d)(2) (“shall not take into consideration”) is that the “person as a whole” percentage assessment by the Commission should be made without entering into the calculus any concern regarding injuries covered under the section 8(e) schedule. That would lend contrast to the second clause (“shall not affect”), which allows employees to receive their prompt and immediate compensation under other paragraphs, including paragraph (e), without regard to an

eventual decision to seek either the wage differential or “person as a whole” award with the credit, if any, to be considered later.

¶ 42 Because there is more than one reasonable interpretation of the statute, I would determine the statute to be ambiguous. I do agree with the majority that where, as here, the employer has made a prompt payment under the schedule and the employee later seeks a “person as a whole” award based upon the loss of his line of work, and not based on other injuries in addition to those covered under the schedule, then the employer is due a credit.

¶ 43 PRESIDING JUSTICE HOLDRIDGE joins in this special concurrence.

Azcon Metals v. Illinois Workers' Compensation Comm'n,
2026 IL App (5th) 250301WC

Decision Under Review: Appeal from the Circuit Court of Madison County, No. 24-MR-241; the Hon. Dennis R. Ruth, Judge, presiding.

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