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2025 IL App (4th) 240771WC-U

Order filed

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT

FILED
January 28, 2025
Carla Bender
4th District Appellate
Court, IL

WORKERS' COMPENSATION COMMISSION DIVISION

PANDA EXPRESS, INC.,)	Appeal from the Circuit Court
)	of Boone County, Illinois
)	
Appellant,)	
)	
v.)	Appeal No. 4-24-0771WC
)	Circuit No. 2023 MR 26
)	
ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION, <i>et al.</i> , (Epifanio Nieva,)	Stephen E. Balogh,
Appellees.))	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Mullen, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 (1) The Commission properly found that the claimant suffered compensable disfigurement to his feet under section 8(c) of the Act; (2) the circuit court erred in finding that the claimant was entitled to permanent partial disability benefits as a percentage of the loss of the man as a whole under section 8(d)(2) of the Act, rather than disfigurement benefits under section 8(c).

¶ 2 I. INTRODUCTION

¶ 3 The claimant, Epifanio Nieva, filed an application for adjustment of claim under the

Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2018)), seeking benefits for injuries to both of his feet that he sustained on September 25, 2018, while he was employed by respondent Panda Express, Inc. (employer). A hearing on the claimant's petition was held before an arbitrator on February 2, 2022. The only issue litigated before the arbitrator was the nature and extent of the claimant's injury. The arbitrator found that the claimant had sustained disfiguring injuries to both of his feet and awarded 58 weeks of disfigurement benefits pursuant to section 8(c) of the Act (820 ILCS 305/8(c) (West 2018)).

¶ 4 The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission affirmed and adopted the arbitrator's decision.

¶ 5 The employer sought judicial review of the Commission's decision in the circuit court of Boone County. The circuit court held that the claimant was not entitled to disfigurement benefits. However, the circuit court awarded the claimant permanent partial disability (PPD) benefits under section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2018)).

¶ 6 This appeal followed.

¶ 7 II. BACKGROUND

¶ 8 On September 25, 2018, the claimant was working for the employer. His experience qualified him to train new employees. On that date, the claimant was attempting to show new workers how to properly transfer hot oil from the fryer to a disposal area. He took the hot oil into a large pan and was transporting it on a rolling cart. The wheels on the cart got caught on one of the tiles and the cart tipped over, causing hot oil to pour onto the claimant's feet. The oil spilled primarily onto his left foot and ankle, but it also splashed onto his right foot.

¶ 9 The claimant was taken to a hospital, where he received specialized care for his burns. The initial assessment was that the claimant had third-degree burns over his left ankle which

could result in the loss of his foot. He was admitted to the hospital for further treatment. He remained hospitalized for more than a week.

¶ 10 On October 3, 2018, the claimant underwent a skin graft procedure. The surgery was performed by Dr. Stathis Poulakidas, a critical care surgeon. Dr. Poulakidas excised burned tissue from the claimant's left ankle and foot, removed skin from the claimant's left calf, and then meshed and stapled the harvested skin into position over the left foot and ankle.

¶ 11 On October 8, 2018, the claimant underwent a "graft takedown" (a surgical procedure wherein a medical professional removes the dressings and sutures from a previously applied skin graft.) It was noted that the claimant had "100% graft take" to the left lower extremity. The claimant needed to apply medications to prevent infections to the graft take site. He underwent physical therapy while he was hospitalized, and his condition was improving.

¶ 12 The claimant was discharged from the hospital on October 9, 2018. The final diagnoses upon discharge were a third degree burn of multiple sites of the left ankle and foot, second degree burn of multiple sites of the right ankle and foot, and cellulitis of the left lower limb. The doctor prescribed cream that the claimant had to apply to his wound sites daily. The doctor also instructed the claimant to begin physical therapy with OSF Home Healthcare.

¶ 13 The claimant followed up with Dr. Poulakidas on October 17, 2018, at the OSF Surgical Group in Rockford. It was noted that the claimant had approximately 2% full thickness burns to his bilateral feet and ankles after being splashed by hot grease. The graft site was well-healed, and there were no signs of infection. The claimant was applying Eucerin cream to the burn sites. He was taking Norco for pain control. Dr. Poulakidas instructed the claimant to continue using Eucerin cream 5-10 times per day. He also recommended that the claimant begin outpatient physical therapy. Dr. Poulakidas told the claimant to remain off work pending a reevaluation.

¶ 14 On October 24, 2018, the claimant returned to OSF Surgical Group in Rockford for a reevaluation. He reported experiencing mild tingling pain. However, it was noted that the claimant was gradually improving since his last examination. The wounds were clean, dry, and intact without signs of infection. Scarring was noted. The claimant was instructed to begin therapy, use a cane, and remain off work.

¶ 15 On November 7, 2018, the claimant returned to Dr. Poulakidas. The claimant told Dr. Poulakidas that he was improving, but he still had significant pain. The claimant was diagnosed with a deep full thickness burn on his left foot. When the claimant returned to Dr. Poulakidas two weeks later, he exhibited significant pain upon palpation and had a limited ability to stand on his left foot. He was diagnosed with a deep full thickness burn of his right foot.

¶ 16 The claimant saw Dr. Poulakidas again on January 16, 2019, for a follow-up visit. The claimant was still taking Norco as needed. He complained of moderate, cramping pain at the level of 4-6 out of 10. Dr. Poulakidas noted that the claimant had an excellent graft take with minimal scarring of the left ankle. The claimant had mild tenderness to palpation with excellent function. There were no signs of infection. The claimant indicated that he wanted to return to work. Dr. Poulakidas released him to return to part-time work, at six hours a day for four days per week, for one month. After that time, the claimant would be released to full duty work.

¶ 17 The claimant followed up with Dr. Poulakidas on February 20, 2019. The claimant reported that he was having persistent pain, especially after working for 5-6 hours. Dr. Poulakidas continued the claimant's work restrictions.

¶ 18 On March 28, 2019, the claimant returned to Dr. Poulakidas. The claimant reported that he was improving. Dr. Poulakidas diagnosed the claimant with a "[p]ainful scar" and cleared him to work 30 hours per week.

¶ 19 The claimant saw Dr. Poulakidas again on May 8, 2018. Dr. Poulakidas noted that the claimant was “improving” and “doing well.” He had “excellent graft take” at the left foot with “good function.” The claimant reported that his left foot pain severity was mild. However, Dr. Poulakidas’s medical record of that visit noted that the claimant was experiencing “moderate” pain on a level of 4-6 out of 10. Dr. Poulakidas released the claimant to return to work full duty.

¶ 20 During the arbitration hearing, the claimant testified that he was still working for the employer. Recently he had been working 30 hours per week. He testified that he had previously worked a second job transporting gutters to local building sites, but he no longer did so.

¶ 21 The claimant testified that he had sustained burns to both feet. The burns to his right foot were less severe and had “kind of disappeared.” The burns to his left foot were primarily on the top and side of the left foot. The skin graft area on the lateral aspect of the left shin is sizeable; approximately 8” x 4” 11 in size. The skin graft area is markedly different from the surrounding skin in that it is “shiny” in appearance and there is no hair growth. The right foot also exhibits circular burn areas on the top of the foot and the ankle. The claimant showed his burns to the arbitrator and to counsel. He also submitted into evidence previous photographs that he had taken of the wounds.

¶ 22 The claimant testified that he has chronic pain in his left foot. The arbitrator noted that the claimant pointed to the top of the foot to indicate the area that hurt. His left foot hurt with movement. He wore normal shoes, but it hurt if he touched his burn site. If he walked for more than 10 hours at work, he had pain in his right foot for the entire day. He stretched his foot in the morning to relieve the pain and to increase the ease of mobility. He continued to use Eucarin, and he massages his burn site every night.

¶ 23 The claimant did not submit any medical records to substantiate his claim of ongoing pain. The extensive medical records he submitted into evidence had no reference of ongoing complaints. The claimant did not submit evidence indicating he has had any continuing treatment for his injuries after May 8, 2019.

¶ 24 On cross examination, the claimant testified that he did not recall the last date he saw the doctor, but if the record showed that the last date was May 8, 2019, he stated that he trusted that date. He had not seen a doctor regarding his ongoing subjective complaints of pain and sensitivity since 2019, but the claimant could not recall the specific date he last sought treatment relative to his accident.

¶ 25 The arbitrator found that the claimant had sustained disfiguring injuries to both of his feet and his left leg, and awarded 58 weeks of disfigurement benefits pursuant to section 8(c) of the Act. Specifically, the arbitrator awarded 10 weeks of disfigurement of the left leg, 3 weeks of disfigurement of the right foot and 45 weeks of disfigurement of the left foot. The arbitrator based his ruling on his viewing of the claimant's injuries. The arbitrator noted that he "was not tendering any award for permanency and therefore *** will not be addressing the 5 factors as set forth in Section 8.1b."

¶ 26 The employer appealed the arbitrator's decision to the Commission, which affirmed and adopted the arbitrator's decision.

¶ 27 The employer appealed the Commission's decision to the circuit court of Boone County. The circuit court held that the claimant was not entitled to benefits for disfigurement under section 8(c) of the Act because that section does not authorize benefits for disfiguring injuries to the feet. The circuit court noted that section 8(c) provides that compensation for disfigurement may be awarded only "[f]or any serious and permanent disfigurement to the hand, head, face,

neck, arm, *leg below the knee* or the chest above the axillary line.” (Emphasis added.) 820 ILCS 305/8(c) (West 2018). The foot is not included on the list. The circuit court then considered whether the foot may be considered to be part of the “leg below the knee.” Relying on a medical dictionary’s definition of “leg,” the circuit court concluded that it could not.

¶ 28 However, the circuit court concluded that the claimant was entitled to PPD benefits under section 8(d)(2) of the Act. 820 ILCS 305/8(d)(2) (West 2018). That section provides for person-as-a-whole compensation where a claimant has sustained a serious and permanent injury not covered by either sections 8(c) or 8(e) of the Act. Although section 8(e)(11) includes an injury to the foot as a compensable scheduled loss, the circuit court concluded that the claimant was not entitled to benefits under that section because it applies only “to either the loss of or the permanent and complete loss of use of the member specified.” 820 ILCS 305/8(e) (West 2018). The court reasoned that, although “foot” is specifically listed in section 8(e)(11), there is no evidence that the claimant has lost the permanent and complete use of his left foot.

¶ 29 The circuit court held that section 8(d)(2) benefits were appropriate in this case because the claimant testified to having permanent scarring and constant and permanent pain and stiffness in his left foot, which will require him to perform foot exercises for the rest of his life.

¶ 30 The circuit court concluded that, while it disagreed with the Commission’s finding that the claimant could receive an award for disfigurement of his left foot pursuant to section 8(c), “the Commission’s award of benefits for an injury to the person as a whole under section 8(d)(2) was proper. Accordingly, the award of the Commission confirming the decision of the arbitrator is affirmed.”

¶ 31 This appeal followed.

¶ 32

III. ANALYSIS

¶ 33 The employer argues that the Commission erred in awarding benefits for disfigurement to the claimant's feet under section 8(c) because disfigurement of the foot is not listed as a compensable injury under that section. The employer further argues that the circuit court erred in awarding benefits under section 8(d)(2) because that section applies only if the claimant has sustained a serious and permanent injury "not covered by either sections 8(c) or (e)." The employer argues that, had the claimant presented evidence of impairment of his foot (including evidence relevant to the five factors for showing impairment listed in section 8.1(b) of the Act (820 ILCS 305/8.1(b) (West 2018)), he would have been entitled to benefits under section 8(e). The employer maintains that the circuit court erred in finding that the claimant would be entitled to section 8(e) benefits only if he suffered a permanent and complete loss of use of his foot. The employer therefore argues that, because the claimant could have obtained benefits under section 8(e), he could not have obtained benefits under section 8(d)(2).

¶ 34 We will address only the applicability of section 8(c) because we find it to be dispositive. Section 8(c) provides that compensation for disfigurement may be awarded only "[f]or any serious and permanent disfigurement to the hand, head, face, neck, arm, *leg below the knee* or the chest above the axillary line." (Emphasis added.) 820 ILCS 305/8(c) (West 2018). The key question presented in this case is whether the foot is included within the definition of "leg below the knee" for purposes of the statute.

¶ 35 This presents an issue of statutory construction. The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Elgin Board of Education School District U-46 v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 943, 953 (2011). The best indicator of the legislature's intent is the plain language of the statute

itself, which must be given its plain and ordinary meaning. *Id.* A court may look to dictionary definitions to derive the plain and ordinary meaning of statutory language. *In re Detention of Bailey*, 317 Ill. App. 3d 1072, 1086 (2000). The court should give “words appearing in legislative enactments their common dictionary meaning or commonly accepted use unless otherwise defined by the legislature.” *Barry v. City of Chicago*, 2021 IL App (1st) 200829, ¶ 23; see also *Cojeunaze Nursing Center v. Lumpkin*, 260 Ill. App. 3d 1024, 1029 (1994) (“In the absence of a statutory definition indicating a different legislative intent, words are to be given their ordinary and commonly understood meaning.”); *People v. Dednam*, 55 Ill. 2d 565, 568 (1973) (“The dictionary can be used as a resource to ascertain the ordinary and popular meaning of words.”).

¶ 36 The popular, ordinary, commonly accepted use of the word “leg” includes the foot. See Definition of Leg, RxList, <https://www.rxlist.com/leg/definition.htm> (last visited Jan. 3, 2025); (“In popular usage,” the “leg” is defined the part of the body from the top of the thigh *down to the foot.*”) (emphasis added); Leg Anatomy, Healthline, <https://www.healthline.com/human-body-maps/leg> (last visited Jan. 3, 2025) (“The legs are the two lower limbs of the body. *** Each leg contains five regions. They’re known as the: upper leg, knee, lower leg, ankle, [and] *foot*”) (emphasis added); Leg, Meriam Webster online dictionary, <https://www.merriam-webster.com/dictionary/leg> (last visited Jan. 3, 2025) (defining “leg” as “a limb of an animal used especially for supporting the body and for walking: such as one of the paired vertebrate limbs that in bipeds extend from the top of the thigh *to the foot*”) (emphasis added); Leg, Britannica, <https://www.britannica.com/science/leg-anatomy> (last visited Jan. 3, 2025) (“The bones of the human leg, like those of other mammals, consist of a basal segment, the femur (thighbone); an intermediate segment, the tibia (shinbone) and the smaller fibula, and a

distal segment, *the pes (foot) consisting of tarsals, metatarsals, and phalanges (toes)* (emphasis added); Human Leg, Wikipedia, https://en.wikipedia.org/wiki/Human_leg (last visited Jan. 3, 2025) (“The leg is the entire lower limb of the human body, *including the foot*, thigh, or sometimes even the hip or buttock region.”) (emphasis added).

¶ 37 The employer, like the circuit court, points to some medical textbooks that define the leg as the part of the body extending from below the knee to the ankle. However, several of the dictionaries and other sources cited above (among others) explicitly distinguish the common understanding of the word from the specialized medical terminology. Courts should give words in legislative enactments their commonly understood meaning as used by the public (*Detention of Bailey*, 317 Ill. App. 3d at 1072), not the meaning ascribed to the word by medical specialists. See also *Barry v. City of Chicago*, 2021 IL App (1st) 200829, ¶ 23 (noting that the court should give “words appearing in legislative enactments their common dictionary meaning or commonly accepted use”) *Cojeunaze Nursing Center*, 260 Ill. App. 3d at 1029).

¶ 38 Applying the maxim of *expressio unius est exclusio alterius (expressio unius)*, the employer argues that the exclusion of the term “foot” from the list of enumerated body parts in section 8(c) establishes that the legislature did not intend to include the foot within the ambit of that section. However, *expressio unius* is a tool of statutory construction that may be resorted to only if the language of the statute is ambiguous. *People v. Roberts*, 214 Ill. 2d 106, 117 (2005). Here, the plain language of section 8(c) is unambiguous, so *expressio unius* may not be applied.

¶ 39 The employer further argues that that section 8(e) of the Act shows that the legislature did not intend to define “foot” as part of the leg because it lists those terms separately. However, there is a good reason why the legislature would define those terms separately in section 8(e), but not in section 8(c). Section 8(e) covers compensation for impairment, not

disfigurement. The level of impairment differs according to the body part that is injured, and the amount of compensation for each such injury is adjusted accordingly. (For example, an injury to the hand is more debilitating than an injury to the big toe, and results in far greater compensation.) Disfigurement, by contrast, is equally harmful wherever it occurs, and the Commission awards the same amount of benefits wherever it occurs. Therefore, although there is good reason to distinguish a foot from a leg in section 8(e), there is no reason to do so in section 8(c).

¶ 40 The employer maintains that we should follow our prior decision in *Will County Forest Preservation District v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110077WC, where we held that disfigurement to the shoulder was not included under section 8(c)'s coverage for disfigurement to the "arm" because medical dictionaries and other dictionaries defined "arm" as separate from "'shoulder.'" However, *Will County Forest Preserve* is distinguishable because, as noted above, the common understanding of the meaning of "leg" includes the foot. *Wallace v. Industrial Comm'n*, 98 Ill. 2d 33 (1983) is also distinguishable. In that case, our supreme court held that a disfiguring burn above the right knee is not covered by section 8(c), which only covers disfigurement "below the knee." *Wallace* is distinguishable because, as a matter of pure logic, coverage for injuries occurring below the knee cannot encompass (and actually excludes) coverage for injuries occurring above the knee.

¶ 41

IV. CONCLUSION

¶ 42 For the foregoing reasons, we reverse the judgment of the circuit court of Boone County, and reinstate the Commission's decision.

¶ 43 Circuit court's decision reversed; Commission's decision reinstated.