

2025 IL App (3rd) 240306WC-U
No. 3-24-0306WC
Order filed January 17, 2025

NOTICE: This order was filed under Supreme Court Rule 23(b) and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

VILLAGE OF ROSELLE,)	Appeal from
Appellant,)	Circuit Court of
v.)	DuPage County
THE ILLINOIS WORKERS' COMPENSATION)	No. 23MR546
COMMISSION <i>et al.</i> (Glen Thomas, Appellee).)	Honorable
)	Anne Therieau Hayes,
)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Mullen, and Barberis
concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court vacated the decision of the Illinois Workers' Compensation Commission, finding the calculation of wage-differential benefits was erroneous as a matter of law when the Commission included the hourly-rate multiplier, which was intended for part-time employees who were simultaneous full-time employees. Claimant's retirement from his full-time employment affected this simultaneous status and, as a result, affected the calculation of his entitled wage-differential benefits.

¶ 2 The Village of Roselle (Village) appeals the order of the circuit court of DuPage County, confirming the decision of the Illinois Workers' Compensation Commission (Commission), which awarded claimant, Glen Thomas, benefits under the Workers'

Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)) for injuries he sustained on February 17, 2015, while working for the Village. On appeal, the Village argues only that the Commission erred in its calculation of wage-differential benefits. We agree.

¶ 3 As a result of an uncontested February 17, 2015, work-related accident, claimant filed an application for adjustment of claim pursuant to the Act. Claimant worked as a full-time public works employee in the water department and as a part-time firefighter/paramedic for the Village. Claimant sought benefits from the Village, claiming he injured his right shoulder while fighting a fire. The Village does not contest the occurrence or cause of the accident or that claimant is entitled to benefits as a result. Further, the Village does not contest claimant is entitled to wage-differential benefits. Rather, in this appeal, the Village contests only the *calculation* of those wage-differential benefits. It claims the Commission's calculation was improper based on its erroneous interpretation of the relevant statute and the collective bargaining agreement (CBA) and the erroneous application of the law to the undisputed facts.

¶ 4 Following an August 26, 2022, hearing, the arbitrator found claimant successfully proved he was entitled to wage-differential benefits in the amount equivalent to his hourly rate as a firefighter, which included 1.5 times his public works employee hourly rate, as of the last date of his employment on April 29, 2022. Claimant retired on April 30, 2022. The Village disagreed, arguing claimant's wage-differential benefits should not include the firefighter multiplier but only his hourly rate of pay as a public works employee. On review, the Commission affirmed and adopted the arbitrator's decision. On judicial review, the DuPage County circuit court affirmed the Commission's decision. The Village appeals.

¶ 5 I. BACKGROUND

¶ 6 At the August 26, 2022, arbitration hearing, claimant testified as follows. On

February 17, 2015, he was 48 years old and had been working for the Village for 15 years as a full-time public works employee and as a part-time firefighter paramedic. On that date, claimant was injured while fighting a fire. Although he was unable to ever resume work as a firefighter after the accident, he returned to his full-time duties as a public works employee on September 22, 2016. On September 28, 2021, claimant was involved in a non-work-related motorcycle accident. He was completely off work, using medical leave and all of his accrued vacation and sick time, until he retired from the Village on April 29, 2022.

¶ 7 Claimant testified that, pursuant to a CBA, as a firefighter, he earned 1.5 times his hourly rate as a public works employee. The parties stipulated claimant worked as a firefighter for an average of 29.31 hours per week. At the time of his retirement, claimant's hourly rate of pay as a public works employee was \$21.70 and, after applying the 1.5 multiplier, \$32.55 as a firefighter. These amounts are undisputed.

¶ 8 Article XII of the CBA states: "Full-time Village employees who also work part-time at the Fire Department shall receive 1 ½ times the hourly rate for their Fire Department job classification." In 2022, the Village paid claimant wage-differential benefits at the weekly rate of \$636.03, applying the 1.5 multiplier for an hourly rate of \$32.55. However, upon claimant's retirement on April 30, 2022, the Village reduced the amount to reflect an hourly rate of \$21.70, without the multiplier, because claimant was no longer a full-time Village employee. According to the Village, the multiplier only applied when the employee worked full-time. It claimed, pursuant to the CBA, full-time employment status was a condition precedent to the higher rate of pay and because claimant had retired, he was no longer a full-time employee and therefore, no longer entitled to the higher hourly rate.

¶ 9 The arbitrator disagreed with the Village's calculation and awarded claimant

wage-differential benefits using the higher rate of hourly pay—using the 1.5 multiplier designated by the CBA to be used for part-time firefighters. The arbitrator applied the award retroactively from September 22, 2016 (the date claimant returned to work in the public works department), until claimant reached 67 years of age as specified in the CBA. The arbitrator found full-time employment was not a condition precedent to receiving the higher rate of pay when calculating wage-differential benefits. Thus, the arbitrator awarded claimant wage-differential benefits in the amount of \$636.03 per week commencing September 22, 2016, and continuing until claimant turned 67, applying the firefighter hourly rate of pay of \$32.55 multiplied by 29.31 hours multiplied by 2/3.

¶ 10 On review, the Commission affirmed and adopted the arbitrator’s findings and calculations. On judicial review, the circuit court of DuPage County confirmed the decision of the Commission.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 The Village appeals, claiming the Commission erred in its calculation of wage-differential benefits by using the firefighter 1.5 multiplier rather than using claimant’s hourly public works employee rate without the multiplier. The Village insists our standard of review is *de novo* since this court will be applying undisputed facts to the law. In its brief, the Village identifies the issue on appeal as whether the Commission misapplied the law in its determination of claimant’s earning capacity and the average amount which he would be able to earn after the accident as defined under section 8(d)(1) of the Act (820 ILCS 305/8(d)(1) (West 2014). Claimant argues the Commission’s decision was not against the manifest weight of the evidence.

¶ 14 Under section 8(d)(1) of the Act, a claimant who suffers a permanent partial

disability may receive a wage-differential award. To prove entitlement to a wage-differential award under section 8(d)(1), a claimant must show that (1) he is “partially incapacitated from pursuing his usual and customary line of employment” and (2) there is a “difference between the average amount which he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident.” *Id.* § 8(d)(1).

¶ 15 “The purpose of a wage differential award is ‘to compensate an injured claimant for his reduced earning capacity, and if the injury does not reduce his earning capacity, he is not entitled to such compensation.’ ” *Lenhart v. Illinois Workers’ Compensation Comm’n*, 2015 IL App (3d) 130743WC, ¶ 44 (quoting *Dawson v. Illinois Workers’ Compensation Comm’n*, 382 Ill. App. 3d 581, 586 (2008)). Generally, the determination of whether the claimant is entitled to an award of benefits under section 8(d)(1) requires a factual determination and the manifest-weight-of-the-evidence standard of review is proper. *Village of Deerfield v. Illinois Workers’ Compensation Comm’n*, 2014 IL App (2d) 131202WC, ¶ 44. Here, the parties agree claimant is entitled to wage-differential benefits so there is no factual determination necessary. The only issue is whether the statute contemplates or justifies the use of the firefighter’s 1.5 multiplier. Thus, we agree with the Village that a *de novo* standard of review applies See *Johnson v. Illinois Workers’ Comp. Comm’n*, 2011 IL App (2d) 100418WC, ¶ 17 (“We also apply a *de novo* standard of review when the facts essential to our analysis are undisputed and susceptible to but a single inference, and our review only involves an application of the law to those undisputed facts.”).

¶ 16 Claimant was unable to ever return to his firefighter duties after the accident on February 17, 2015. At the time of his retirement on April 30, 2022, claimant’s hourly wage as a

firefighter was \$32.55 (1.5 times his \$21.70 hourly rate as a public works employee). The Village claims, because claimant was not a full-time employee upon retirement, the multiplier did not apply and any wage-differential calculation should be based only on his \$21.70 public works employee hourly rate. The Village claims full-time employment is a condition precedent for applying the multiplier. The Village is partially correct. Indeed, claimant is entitled to wage-differential benefits. This is undisputed. The Village is correct that the multiplier does not apply upon claimant's retirement. However, the Village is incorrect that the calculation of benefits should be based on claimant's public works employee hourly rate. The calculation of wage-differential benefits should be based on claimant's hourly rate as a part-time firefighter/paramedic. It is claimant's earning capacity as a firefighter that was affected due to the accident. Applying claimant's public works employee hourly rate and the 1.5 multiplier to a wage-differential calculation would not accurately reflect the reduced earning capacity of a retired full-time village employee who was prevented from ever working as a firefighter due to his work-related injury. In other words, after retiring, claimant is not missing out on his public works full-time position pay due to the accident. Instead, he is missing out on his hourly rate as a firefighter only.

¶ 17 The fundamental purpose of the Act, including section 8(d)(1), is to make claimants whole by providing “efficient remedies, and *prompt* and equitable compensation for their injuries.” (Emphasis in original.) *Contreras v. Industrial Comm’n*, 306 Ill. App. 3d 1071, 1076 (1999). Specifically, the purpose of section 8(d)(1) is to compensate a claimant for a diminished earning capacity caused by a work-related injury. *Chlada v. Illinois Workers’ Compensation Comm’n*, 2016 IL App (1st) 150122WC, ¶ 35.

¶ 18 Claimant suffered a diminished earning capacity due to his February 17, 2015,

accident, which rendered him unable to work as a firefighter and forced him to work only as a public works employee at a lower hourly rate. Per the statute, once claimant established an entitlement to wage differential benefits, he was entitled to collect such benefits “for the duration of his disability.” 820 ILCS 305/8(d)(1) (West 2014). That is, claimant is entitled to a wage-differential calculation based upon what he would have earned if he continued his employment as a firefighter uninterrupted—as if there had been no injury. This calculation would make him whole. See *World Color Press v. Industrial Comm’n*, 249 Ill. App. 3d 105, 109 (1993) (“The underlying purpose of the Act is to provide financial protection for workers whose earning power is interrupted or terminated as a consequence of injuries arising out of and in the course of their employment.” (Internal quotation marks omitted.)). Basing the wage-differential calculation on claimant’s hourly rate of a public works employee would not compensate him for his economic injury (the diminishment of his earning capacity as a firefighter) from the February 17, 2015, injury.

¶ 19 “[T]he Commission should calculate wage-differential awards based on the amount that a claimant ‘would be able to earn’ at the time of the hearing if the claimant were able to fully perform the duties of the occupation in which he was engaged at the time of the accident.” *General Electric Co. v. Industrial Comm’n*, 144 Ill. App. 3d 1003, 1014 (1986). Here, the Commission ruled, at the time of the hearing, claimant would have been able to earn \$32.55 per hour after applying the 1.5 multiplier. Thus, the Commission determined the accurate calculation of claimant’s wage-differential benefits was as follows: $\$32.55/\text{hour} \times 29.31 \text{ hours/week} = \$954.04 \times \frac{2}{3} = \636.03 per week. Had claimant not retired, that calculation would have been supported by the record and the applicable law.

¶ 20 However, because claimant retired from his public works employment in April

2022, he is entitled to wage-differential benefits based only upon his firefighter hourly rate. That is, the calculation, based upon Exhibit IV (the 2022 Wage Schedule as it appears in the CBA), should be as follows: $\$19.15/\text{hour} \times 29.31 \text{ hours/week} = \$561.29 \times \frac{2}{3} = \374.19 per week. This calculation accurately reflects the loss of claimant's earning capacity as a firefighter at the time of the hearing due to the February 2015 work-related accident, after consideration of claimant's non-work related motorcycle accident and his retirement.

¶ 21

III. CONCLUSION

¶ 22 For the reasons stated, we reverse the circuit court's judgment, vacate the Commission's decision, and remand the cause to the Commission for the calculation of the overpayment of wage-differential benefits paid to claimant, given the calculation above.

¶ 23 Circuit Court reversed.

Commission decision vacated and cause remanded to the Commission with directions.