

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

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KATHLYN DeJARNATT,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Jefferson County
	)	
v.	)	No. 22MR22
	)	
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION <i>et al.</i> ,	)	Honorable
	)	Michael Valentine,
(Continental Tire North America, Inc., Appellee).	)	Judge, Presiding.

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

**ORDER**

¶ 1 *Held:* The appellate court affirmed, finding the proper method for calculating the amount of permanent partial loss benefits owed to claimant for her subsequent injury required the deduction of the previous award for an injury to the same member.

¶ 2 Claimant, Kathlyn DeJarnatt, appealed the circuit court of Jefferson County's judgment confirming the Illinois Workers' Compensation Commission's (Commission) award of permanent partial disability benefits of 22.5% loss of use of her right hand and 20% loss of use of her left hand pursuant to section 8(e)(9) of the Illinois Workers' Compensation Act (Act) (820 ILCS 305/8(e)(9) (West 2022)). After granting credit pursuant to section 8(e)(17) of the Act (*id.*

§ 8(e)(17)) for claimant's prior award for 17.5% loss of use for both hands, claimant's net loss of use of her right hand was 5% and her net loss of use for her left hand was 2.5%.

¶ 3

### I. BACKGROUND

¶ 4

In October 2020, claimant filed an application for adjustment of claim pursuant to the Act, seeking benefits from employer, Continental Tire North America, Inc., regarding her bilateral carpal tunnel syndrome and injury from May 8, 2019. The parties stipulated to all matters regarding claimant's application except the nature and extent of her injuries and the amount of credit to be applied pursuant to section 8(e)(17) of the Act.

¶ 5

Prior to claimant's recent injury, she had received 17.5% loss of use for each of her hands in a prior settlement claim in case No. 07-WC-043424.

¶ 6

In August 2020, claimant underwent open revision surgery of her right carpal tunnel surgery. In December 2020, she underwent open revision surgery of her left carpal tunnel surgery. The operative report from her right-hand surgery indicated the transverse carpal tunnel ligament had "reformed." The operative report from her left-hand surgery indicated the transverse carpal tunnel ligament "appeared to have reformed scar tissue." Claimant was released to maximum medical improvement in January 2021.

¶ 7

At the arbitration hearing, claimant testified she experienced soreness in her hands, along with her hands tiring more easily and feeling weak when performing certain activities such as pulling. She stated she holds things closer to her body rather than performing activities out in front of her body. Claimant gave an example of holding a cup with her pinky finger underneath it and holding it closer to her body near her shoulder.

¶ 8

Following the arbitration hearing, the arbitrator awarded claimant 22.5% loss of use of her right hand and 20% loss of use of her left hand. The arbitrator then applied credit from

her prior settlement claim by subtracting the prior loss of use from the award, resulting in a net difference of 5% loss of use for claimant's right hand and 2.5% loss of use for her left hand.

¶ 9 The Commission affirmed and adopted the arbitrator's decision without changes.

¶ 10 The circuit court of Jefferson County affirmed the Commission's decision.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Both parties agree that the standard of review is *de novo*. The interpretation of a statute is generally a question of law, which is reviewed *de novo*. *Cohen v. Chicago Park District*, 2017 IL 121800, ¶ 17. Where the language of the statute is clear and unambiguous, we interpret the statute according to its terms, without resorting to aids of construction. *Branson v. Department of Revenue*, 168 Ill. 2d 247, 254 (1995). The question of whether a statute is ambiguous is also a question of law, which we resolve *de novo*. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 317 Ill. App. 3d 497, 503 (2000). When construing a statute, our primary objective is to ascertain and give effect to the intent of the legislature, which is best indicated by the language of the statute, given its plain and ordinary meaning. *Corbett v. County of Lake*, 2017 IL 121536, ¶ 30.

¶ 14 At issue, in this appeal, are two statutes. Section 8(e)(9) reads as follows:

“Hand-

190 weeks if the accidental injury occurs on or after the effective date of this amendatory Act of the 94th General Assembly but before February 1, 2006.

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

190 weeks if the accidental injury occurs on or after June 28, 2011 (the effective date of Public Act 97-18) and if the accidental injury involves carpal tunnel syndrome due to repetitive or cumulative trauma, in which case the

permanent partial disability shall not exceed 15% loss of use of the hand, except for cause shown by clear and convincing evidence and in which case the award shall not exceed 30% loss of use of the hand.” 820 ILCS 305/8(e)(9) (West 2022).

Section 8(e)(17) states:

“In computing the compensation to be paid to any employee who, before the accident for which he claims compensation, had before that time sustained an injury resulting in the loss by amputation or partial loss by amputation of any member, including hand, arm, thumb or fingers, leg, foot or any toes, such loss or partial loss of any such member shall be deducted from any award made for the subsequent injury. *For the permanent loss of use or the permanent partial loss of use of any such member or the partial loss of sight of an eye, for which compensation has been paid, then such loss shall be taken into consideration and deducted from any award for the subsequent injury.*” (Emphases added.) *Id.* § 8(e)(17).

¶ 15 Claimant contends the phrase “such loss shall be taken into consideration” from section 8(e)(17) is ambiguous on its face. Claimant cites no authority for this contention. Claimant does concede that the appellate court in *Village of Niles v. Illinois Workers’ Compensation Comm’n*, 2023 IL App (1st) 221617WC-U, ¶ 17, found “no ambiguity in section 8(e)(17) of the Act.” We agree with the court in *Niles*, where it explained “[b]y its plain language, section 8(e)(17) provides that, for the permanent or partial loss of use of a specified member for which compensation has been paid, the loss shall be deducted from any award for a subsequent injury to the same member. It is the prior loss that is subtracted from the award for the subsequent injury.” *Id.* ¶ 18. We find, like the court in *Niles*, section 8(e)(17) of the Act is not ambiguous.

¶ 16 Claimant further contends section 8(e)(17) is ambiguous because the Commission

issued previous decisions using both a weeks method and a percentages method when determining the proper amount of credit to deduct for a subsequent injury. However, “[i]t is only when the statute is ambiguous that we give weight and deference to the agency’s interpretation.” *Id.* ¶ 16 (citing *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 97-98 (1992)). Because we have already found section 8(e)(17) is unambiguous, we need not consider claimant’s various examples of prior Commission decisions using differing methods to calculate the proper amount of credit to deduct.

¶ 17 We recognize that section 8(e)(9) of the Act was revised by the legislature between the period of claimant’s initial bilateral hand injury and her most recent bilateral hand injury. That is, when claimant first injured her hands, she was entitled to 205 weeks for the loss of use of a hand, but upon amendment of the Act, her recent injury entitled her to 190 weeks for the loss of use of a hand. Section 8(e)(9) explicitly distinguishes the entitlement of weeks under the Act for differing periods of when an injury occurs. However, later within the same section, at subsection (e)(17), the statute does not reference the differing time periods of an injury when requiring a loss to be deducted from an award for a subsequent injury. As a reviewing court, we cannot “add provisions that are not found in a statute, nor may [we] depart from a statute’s plain language by reading into the law exceptions, limitations, or conditions that the legislature did not express.” *Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 408 (2010). The fact that the legislature intentionally omitted discussion of the change in entitlement of weeks with regard to deducting a loss from an award for a subsequent injury suggests the change is not relevant to the deduction calculation. “Where language is included in one section of a statute but omitted in another section of the same statute, we presume the legislature acted intentionally and purposely in the inclusion or exclusion.” *People v. Edwards*, 2012 IL 111711, ¶ 27.

