

Illinois Official Reports

Appellate Court

<p><i>Village of Niles v. Illinois Workers' Compensation Comm'n,</i> 2023 IL App (1st) 221617WC</p>

Appellate Court
Caption

THE VILLAGE OF NILES, Appellant, v. THE ILLINOIS
WORKERS' COMPENSATION COMMISSION *et al.* (Fotis
Markadas, Appellee).

District & No.

First District, Workers' Compensation Commission Division
No. 1-22-1617WC

Filed
Rehearing denied

September 29, 2023
October 19, 2023

Decision Under
Review

Appeal from the Circuit Court of Cook County, No. 21-L-50449; the
Hon. Daniel P. Duffy, Judge, presiding.

Judgment

Circuit court judgment reversed; Commission award reversed in part
and remanded with directions.

Counsel on
Appeal

Daniel R. Egan, of McCabe & Hogan, P.C., of Palatine, for appellant.

Lane Allan Corday, of Bowman & Corday, Ltd., of Chicago, for
appellee.

Panel

JUSTICE HOFFMAN delivered the judgment of the court, with opinion.

Presiding Justice Holdridge and Justices Mullen, Cavanagh, and Barberis concurred in the judgment and opinion.

OPINION

¶ 1 The Village of Niles (Village) appeals from the circuit court's judgment that confirmed the Illinois Workers' Compensation Commission's (Commission) award of 24.5 weeks of permanent partial disability (PPD) benefits to the claimant, Fotis Markadas, for a net 10% loss of use of his right leg pursuant to section 8(e)(12) of the Workers' Compensation Act (Act) (820 ILCS 305/8(e)(12) (West 2018)) after granting a credit pursuant to 8(e)(17) of the Act (*id.* § 8(e)(17)). For the reasons which follow, we reverse the judgment of the circuit court, reverse the Commission's PPD award, and remand the matter to the Commission with directions.

¶ 2 The facts of this case are not in dispute. In 1999, the claimant was employed by the Village in a civilian capacity. On February 5, 1999, he suffered a work-related injury to his right leg while working. A claim for that injury was made pursuant to the Act (820 ILCS 305/1 *et seq.* (West 1998)) and docketed with the Commission as claim No. 99-WC-48781. As a result of that accident, the claimant suffered a right knee meniscus injury that required a meniscectomy. Claim No. 99-WC-48781 was settled on December 20, 1999, for a 20% loss of use of the claimant's right leg for which he was awarded 40 weeks of PPD benefits pursuant to section 8(e)(12) of the Act (*id.* § 8(e)(12)).

¶ 3 Since 2001, the claimant has been employed by the Village as a police officer. On May 4, 2015, while on patrol, the claimant suffered a work-related accident when he slipped on wet grass while responding to a burglary call, again injuring his right knee. The claimant filed an application for adjustment of claim with the Commission pursuant to the Act, seeking benefits for injuries to his right knee.

¶ 4 As a result of the May 4, 2015, accident, the claimant suffered an additional tear of the lateral meniscus for which he underwent a right partial lateral meniscectomy, chondroplasty, and debridement. Following an arbitration hearing that was held on October 15, 2009, the arbitrator issued a corrected written decision on May 26, 2020, finding that the claimant sustained an accident on May 4, 2015, that arose out of and in the course of his employment with the Village. The arbitrator found that the claimant's current condition of ill being is causally related to his work accident and ordered the Village to pay \$4046.43 for reasonable and necessary medical services provided to the claimant. In addition, the arbitrator awarded the claimant 24.5 weeks of PPD benefits. The arbitrator found that the claimant suffered a permanent partial disability to the extent of 30% loss of use of his right leg, the benefit for which is 64.5 weeks of compensation pursuant to section 8(e)(12) of the Act. The arbitrator granted the Village a credit for the prior 20% loss of use of the claimant's right leg for which he received compensation pursuant to the settlement in claim No. 99-WC-48781, leaving a net award of PPD benefits for 10% loss of use of the right leg. To arrive at the number of weeks of compensation that the claimant is entitled, the arbitrator appears to have subtracted the 40 weeks of compensation that the claimant received as a result of the settlement in claim No. 99-

WC-48781 from the 64.5 weeks of compensation for a 30% loss of use of the claimant's right leg sustained as a result of the May 15, 2015, accident, to arrive at 24.5 weeks of compensation that the claimant is entitled for the net 10% loss of use of his right leg.

¶ 5 Both the claimant and the Village filed petitions for review of the arbitrator's decision before Commission. On October 6, 2021, the Commission issued a unanimous decision affirming and adopting the arbitrator's decision.

¶ 6 The Village sought a judicial review of the Commission's decision in the circuit court of Cook County. On September 20, 2022, the circuit court confirmed the Commission's decision, and this appeal followed.

¶ 7 Before addressing the claim of error raised by the Village in this appeal, we first address the claimant's argument that the Village's citation to decisions of the Commission should be stricken and portions of its brief should be stricken and disregarded by this court. A fair reading of the Village's brief reveals that it has not cited Commission decisions as authority for its argument but rather to establish that the Commission has been inconsistent in the manner in which it calculates credits due pursuant to section 8(e)(17) of the Act (820 ILCS 305/8(e)(17) (West 2018)) when one injury occurred before February 1, 2006, and a second injury to the same body part against which a credit is given occurred on or after February 1, 2006. Our conclusion in this regard is supported by the portion of the Village's brief which states: "In looking at decisions from the Illinois Workers' Compensation Commission, which are not binding as precedential upon this Court, one will note that not only are the decisions on the issue less than few and far between, they fall into two camps." The brief goes on to state: "Simply put, looking to the Illinois Workers' Compensation Commission, the agency charges [*sic*] with administration of the Illinois Workers' Compensation Act, for guidance is of no help either." Consequently, we decline to strike any portion of the Village's brief.

¶ 8 We turn now to the only issue to be resolved in this appeal, namely, the proper method of calculating the compensation to which an injured employee is entitled for a permanent partial disability when the employer is entitled to a credit pursuant to section 8(e)(17) of the Act. As noted earlier, by affirming and adopting the decision of the arbitrator, the Commission awarded the claimant 24.5 weeks of PPD benefits that the claimant is for the net 10% loss of use of his right leg. The 24.5 weeks of benefits was arrived at by subtracting the 40 weeks of compensation that the claimant received for a 20% loss of use of his right leg as a result of the settlement of his claim No. 99-WC-48781 from the 64.5 weeks of compensation for a 30% loss of use of his right leg that resulted from his May 4, 2015, injury.

¶ 9 The Village argues that the method of calculation that the Commission used to determine the number of weeks of PPD benefits to which the claimant is entitled was legally erroneous. According to the Village, the correct method of calculation pursuant to section 8(e)(17) of the Act is to subtract the 20% loss of use of the claimant's right leg for which he received compensation pursuant his settlement of claim No. 99-WC-48781 from the 30% loss of use of his right leg that resulted from his May 4, 2015, injury, resulting in a net award of 10% for loss of use of his right leg and then multiplying the 215 weeks of compensation provided in section 8(e)(12) of the Act loss of use of a leg by 10% to arrive at 21.5 weeks of compensation.

¶ 10 In support of the Commission's award of 24.5 weeks of PPD benefits, the claimant argues that the award is not against the manifest weight of the evidence and is "consistent with the discretion and flexibility afforded by § 8(c)(17) [*sic*]." According to the claimant, "[t]he Commission utilized the discretion afforded to it under § 8(c)(17)'s [*sic*] limitation on credits

for prior losses to those ‘for which compensation has been paid.’ ” Relying upon the holding in *Keil v. Industrial Comm’n*, 331 Ill. App. 3d 478, 481 (2002), the claimant contends that section 8(e)(17) of the Act does not restrict the Commission as to how it should determine the proper amount of credit and instead requires only that the Commission take the prior loss into consideration and deduct it from any award. As to the lack of uniformity in the manner by which the Commission computes the compensation to which an injured employee is entitled after a credit pursuant to section 8(e)(17) of the Act has been subtracted, the claimant asserts that “the lack of a uniform method is by design” to allow the Commission flexibility to address each situation on a case-by-case basis and reach a fair result.

¶ 11 The parties disagree as to the appropriate standard of review. The Village argues that we are to review the Commission’s decision *de novo* as only a question of law is involved; namely the interpretation of section 8(e)(17) of the Act. The claimant argues that the Commission’s calculation of a PPD award is a factual question that should be disturbed on review only if it is against the manifest weight of the evidence. In the alternative, he argues that resolution of this appeal involves a mixed question of fact and law which is subject to the clearly erroneous standard.

¶ 12 We reject the claimant’s proposed alternative standard of review. The supreme court has only applied the clearly erroneous standard of review to the decisions of administrative agencies governed by the Administrative Review Law (735 ILCS 5/3-101 to 3-113 (West 2018)). *Samour, Inc. v. Board of Election Commissioners of Chicago*, 224 Ill. 2d 530, 542 (2007). The clearly erroneous standard is inapplicable when reviewing a decision of the Commission because review of the Commission’s decisions is not governed by the Administrative Review Law. *Rechenberg v. Illinois Workers’ Compensation Comm’n*, 2018 IL App (2d) 170263WC, ¶ 43. But see *Dodaro v. Illinois Workers’ Compensation Comm’n*, 403 Ill. App. 3d 538, 543-45 (2010).

¶ 13 For the reasons which follow, our review of the interpretation of 8(e)(17) of the Act is *de novo*. We apply the manifest weight standard to the Commission’s PPD award of 24.5 weeks of compensation. The extent of disability is a question of fact to be resolved by the Commission (*Oscar Mayer & Co. v. Industrial Comm’n*, 79 Ill. 2d 254, 256 (1980)), as is the mathematical computation of the compensation to which an injured employee is entitled as a result of that disability. The Commission’s resolution of a fact question will not be disturbed on review unless it is against the manifest weight of the evidence. A factual determination is against the manifest weight of the evidence when an opposite conclusion is clearly apparent. *Tolbert v. Illinois Workers’ Compensation Comm’n*, 2014 IL App (4th) 130523WC, ¶ 39.

¶ 14 At the time that the claimant’s case No. 99-WC-48781 was settled, section 8(e)(12) of the Act provided that an injured employee was entitled to 200 weeks of compensation for the loss of use of a leg. 820 ILCS 305/8(e)(12) (West 1998). Subsequently, section 8(e)(12) of the Act was amended to provide that, for accidental injuries occurring on or after February 1, 2006, an injured employee is entitled to 215 weeks of compensation for the loss of use of a leg. 820 ILCS 305/8(e)(12) (West 2018).

¶ 15 Section 8(e)(17) of the Act provides, in relevant part, that:

“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 *** for which compensation has been paid, then the loss shall be taken into consideration and deducted from any award for the subsequent injury.*” (Emphasis added.) *Id.* § 8(e)(17).

¶ 16 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. In some cases involving an agency’s interpretation of a statute that it is charged with administering, the agency’s interpretation is considered relevant but not binding on the court. *Branson v. Department of Revenue*, 168 Ill. 2d 247, 254 (1995). However, if the language of the statute is clear and unambiguous, we interpret the statute according to its terms without resorting to aids of construction. *Id.* It is only when the statute is ambiguous that we give weight and deference to the agency’s interpretation. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 97-98 (1992). 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).

¶ 17 In construing a statute, our primary objective is to ascertain and give effect to the intent of the legislature, the best indication of which is the language of the statute, given its plain and ordinary meaning. *Corbett v. County of Lake*, 2017 IL 121536, ¶ 30. We find no ambiguity in section 8(e)(17) of the Act.

¶ 18 By 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. The only condition precedent to the deduction of the prior loss is that compensation for that loss must have been paid. The loss is the permanent or partial loss of use of a member, not the compensation that was paid or is payable. Nothing in the statute provides for the subtraction of the compensation awarded for the initial loss from the compensation provided for the subsequent injury.

¶ 19 It is undisputed that compensation was paid to the claimant for the 20% permanent partial loss of use of his right leg pursuant to the settlement in claim No. 99-WC-48781. Applying the clear language of section 8(e)(17) of the Act to the facts in this case, the 20% loss of use of the claimant’s right leg, which was the result of his February 5, 1999, work-related accident, should be subtracted from the award of 30% loss of use of his right leg resulting from his May 4, 2015, work related accident. The remaining 10% is then multiplied by 215 weeks of benefits provided in section 8(e)(12) of the Act for the loss of use of a leg. The result is that the claimant is entitled to 21.5 weeks of PPD benefits, not the 24.5 weeks awarded by the Commission. We conclude, therefore, that the Commission’s PPD award of 24.5 weeks compensation is against the manifest weight of the evidence, as a contrary conclusion is clearly apparent.

¶ 20 The claimant’s reliance on the decision in *Keil* is misplaced. That case involved the question of whether a credit is to be given under section 8(e)(17) of the Act for a compensation award of another state. See *Keil*, 331 Ill. App. 3d at 481. The method of calculating the credit was not an issue in *Keil* as the claimant readily admits in his brief.

¶ 21 For the reasons stated, we reverse the judgment of the circuit court, which confirmed the Commission’s PPD award, reverse the Commission’s award of 24.5 weeks of PPD benefits, and remand the matter to the Commission with directions to award the claimant 21.5 weeks of

PPD benefits for the net 10% loss of use of his right leg.

¶ 22 Circuit court judgment reversed; Commission award reversed in part and remanded with directions.