

No. 5-23-0815WC

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

THE AMERICAN COAL COMPANY,)	Appeal from the
)	Circuit Court of
Appellant,)	Franklin County.
)	
v.)	No. 23-MR-12
)	
)	
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i>)	Honorable
)	Eric J. Dirnbeck,
(David McCain Jr., Appellee).)	Judge, presiding.

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

OPINION

¶ 1 Employer, The American Coal Company, appeals from an order of the circuit court of Franklin County, confirming the decision of the Illinois Workers' Compensation Commission (Commission) awarding claimant, David McCain Jr., benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2020)).¹ For the following reasons, we affirm.

¹We note that the Illinois State Treasurer, as *ex-officio* custodian of the Second Injury Fund and

¶ 2

I. Background

¶ 3 The parties do not dispute the facts underlying claimant's workers' compensation case. On March 21, 2017, claimant, a long-time underground coal miner, filed an application for adjustment of claim pursuant to the Act, seeking benefits for injuries affecting multiple parts of his body that he sustained while working for employer as a longwall shear operator on November 5, 2016. The matter proceeded to an arbitration hearing on March 25, 2022. The following factual recitation was taken from the evidence adduced at the hearing.

¶ 4 The parties agreed that claimant's injuries arose out of and in the course of his employment and that claimant's injuries were causally connected to the accident. As a result of the accident, claimant suffered blindness in both eyes, as well as physical injuries to his spine, hip, abdomen, and head (psychological issues).

¶ 5 The issues in dispute concerned the nature and extent of claimant's injuries. Relevant to this appeal, the parties stipulated that claimant was entitled to permanent total disability (PTD) for loss of use of both eyes pursuant to section 8(e)(18) of the Act (*id.* § 8(e)(18)). However, employer disputed claimant's entitlement to permanent partial disability (PPD) benefits under section 8(d)(2), 8(c), and 8(e) of the Act, in addition to the stipulated award of section 8(e)(18) benefits (*id.* § 8(e)(18), (d)(2), (c), (e)).

¶ 6 At the time of the hearing, claimant was 42 years old, recently divorced, with six children.² Claimant testified that he worked for employer as a longwall shear operator from 2002 until the date of the accident on November 5, 2016. Claimant testified that he sustained injuries to his stomach area while working for employer on November 5, 2016, in Saline County, Illinois, after

Rate Adjustment Fund, was originally a named party to this appeal. The Illinois State Treasurer, however, filed a motion to dismiss as a party to this appeal, which this court granted on March 14, 2024.

²Claimant had five dependent children at the time of the accident.

he “got caught in between the 20-ton chunk of steel equipment and the coal block, and it squished [him] in the stomach *** to the point of passing out.” Following the accident, claimant lost consciousness and was airlifted to Deaconess Hospital in Indiana, where he received inpatient medical attention for several weeks. Claimant realized he lost his vision in both eyes when he woke up at the hospital. While hospitalized, claimant underwent several surgeries, including a colon resection surgery that resulted in a temporary colostomy bag.

¶ 7 Following discharge from the hospital, claimant spent several weeks at a rehabilitation center in Herrin, Illinois, before he returned home. Sometime after, claimant received care at Barnes-Jewish Hospital in St. Louis, Missouri, where he underwent colostomy reversal and gallbladder removal surgeries. Claimant testified that he lacked control of his bowels following the colostomy reversal surgery. Claimant also received care from Dr. Sophia Chung, an eye specialist with St. Louis University Hospital, who confirmed that claimant suffered permanent blindness due to permanent damage to his optic nerves. Prior to the November 5, 2016, accident, claimant had no vision or abdomen issues.

¶ 8 Claimant also testified that he experienced a continuous “numbing feeling” on the right side of his abdomen that extended from his waistline to his right pectoral muscle. During his testimony, claimant lifted up his shirt and showed the arbitrator his “incision injury,” demonstrating a vertical line from his pectoral area to his waistline. Due to surgical intervention, claimant’s abdomen consisted of mesh and contained no muscle in the area where the injury took place. Claimant took hydrocodone as a result of his abdomen pain. Claimant also testified that he sustained fractures to his lumbar spine during the accident, which caused him mild to extreme pain every day. Claimant’s pain began in his lower back and radiated down his left side into his left hip. Claimant experienced lower back and left hip pain with prolonged standing, walking, sitting, or

lying down, and he took hydrocodone as a result. When asked how his pain impacted his life, claimant stated that the pain “ruins my life.” Claimant also testified that he had “[s]tinging, numbing pains” in his hands and arms.

¶ 9 Claimant also testified to the mental health challenges resulting from the accident. Claimant suffered from—and took medication for—anxiety, depression, and posttraumatic stress. Following the accident, claimant experienced nightmares of being crushed to death. Claimant continued to experience nightmares and poor sleep, testifying that he slept only two hours at a time due to restlessness. Fearful of losing control of his bowel movements as a result of the colostomy reversal surgery, claimant testified that he limited public outings with his children and spent more time at home.

¶ 10 Claimant also testified that he last worked on November 5, 2016. Claimant believed the accident caused “a career ending injury,” stating “there’s no way with being full mesh from [his abdomen] all the way down, *** there was no way I would ever work in the coal mine either way, and then the blindness on top of it.” Claimant testified that he believed his blindness overshadowed his other physical injuries and that people “wrote [him] off,” assuming he would never work again or ever regain “full normal strength” to work. On cross-examination, claimant testified that he did not sustain injuries to his arms, hands, fingers, legs, or feet as a result of the accident.

¶ 11 On June 15, 2022, the arbitrator issued a decision. The arbitrator found that claimant sustained an injury arising out of and in the course of his employment and that his current condition of ill-being was causally related to the work accident. Per the parties’ stipulations, the arbitrator awarded claimant statutory PTD benefits of \$1008.40 per week for life, pursuant to section 8(e)(18) of the Act, commencing on March 25, 2022,³ for 100% loss of use of claimant’s left eye

³The arbitrator included a written order titled, “Findings of Facts,” as part of her decision. We note

and 100% loss of use of claimant's right eye. The arbitrator also awarded claimant PPD benefits of \$775.18 per week for 21 weeks, pursuant to section 8(d)(2) of the Act, for five transverse fractures to claimant's lumbar spine at L1, L2, L3, L4, and L5, and a spinous process fracture at L4. Additionally, the arbitrator awarded claimant PPD benefits of \$775.18 per week for 300 weeks for 60% loss of claimant's body as a whole, pursuant to section 8(d)(2) of the Act, for injuries to claimant's spine, hip, abdomen, and head (psychological issues).

¶ 12 With reliance on *Beelman Trucking v. Illinois Workers' Compensation Comm'n*, 233 Ill. 2d 364 (2009), where our supreme court held that the claimant could recover under sections 8(e)(18) and 8(e)(10) of the Act, the arbitrator in the instant case determined that the Act permitted claimant to recover under section 8(e)(18) of the Act for the loss of use of both eyes and under section 8(d)(2) of the Act for claimant's unscheduled losses to claimant's spine, hip, abdomen, and head (psychological issues). The arbitrator reasoned that denying claimant compensation above and beyond the two members compensable under section 8(e)(18) would leave claimant uncompensated for additional losses that could further impact his earning capacity. The arbitrator further stated that "[t]here is no evidence that but for the loss of vision, the injuries to [claimant's] spine, hip, abdomen, and head resulted in a total incapacitation or impairment of earning capacity." The arbitrator determined that awarding claimant benefits under section 8(d)(2) for injuries to his spine, hip, abdomen, and head—while concurrently awarding claimant benefits under section 8(e)(18) for the loss of use of both eyes—did not result in double recovery, as contemplated by the Illinois Supreme Court in *Beelman Trucking*, where the "statutory permanent total disability falls far short of addressing the full scope of [claimant's] injuries from this accident." Employer filed a

a discrepancy, where the arbitrator stated in the "Findings of Facts" that claimant was entitled to statutory PTD benefits of \$1008.40 for life, commencing on November 6, 2016, the date after the accident at issue.

timely petition for review of the arbitrator's decision with the Commission.

¶ 13 On January 9, 2023, the Commission issued a unanimous decision affirming the arbitrator's decision. Employer sought timely judicial review of the Commission's decision before the circuit court of Saline County. On February 23, 2023, the case was transferred to the circuit court of Franklin County.

¶ 14 On September 21, 2023, the circuit court of Franklin County entered an order confirming the Commission's decision. Employer filed a timely notice of appeal on October 3, 2023.

¶ 15 II. Analysis

¶ 16 On appeal, employer argues that the Commission erred in awarding claimant PPD benefits for non-scheduled body parts under section 8(d)(2) of the Act, in addition to an award of statutory PTD benefits under section 8(e)(18) of the Act. Employer argues that our supreme court in *Beelman Trucking* held that the Act permits an employee to recover for the loss of two members under section 8(e)(18) and for any additional scheduled losses (*e.g.*, arms, hands, fingers, legs, feet), not non-scheduled losses. Claimant responds, arguing that denying compensation beyond the two members compensable under section 8(e)(18) would leave him uncompensated for additional non-scheduled losses (injuries to claimant's hip, spine, abdomen, and head) that could further impact his earning capacity. We agree with claimant.

¶ 17 The fundamental rule of statutory interpretation is to ascertain and effectuate the legislature's intent. *Hamilton v. Industrial Comm'n*, 203 Ill. 2d 250, 255 (2003). We look to the statutory language, which, given its plain and ordinary meaning, is the best indication of intent. *Id.* In addition to the statutory language, we also consider the reason for the law, the problems to be remedied, and the objects and purposes sought. *General Motors Corp. v. State of Illinois Motor Vehicle Review Board*, 224 Ill. 2d 1, 13 (2007). The Act is a remedial statute intended to provide

financial protection for injured workers and it is to be liberally construed to accomplish that objective. *Flynn v. Industrial Comm’n*, 211 Ill. 2d 546, 556 (2004). Issues involving the interpretation of a statute present questions of law that courts review *de novo*. *Gruszczka v. Illinois Workers’ Compensation Comm’n*, 2013 IL 114212, ¶ 12. With this in mind, we turn to the two provisions of the Act at issue.

¶ 18 Section 8(e) of the Act provides for compensation of a worker who suffers a PPD. *Beelman Trucking*, 233 Ill. 2d at 371. Section 8(e) is organized into subsections, with each subsection fixing compensation for a particular body part, or member, that a worker might lose in a workplace accident. *Id.* Relevant to this appeal is section 8(e)(18) of the Act, which provides for certain combinations of losses for injuries that constitute a “total and permanent” disability. *Id.* at 372. Section 8(e)(18) of the Act provides:

“The specific case of loss of both hands, both arms, or both feet, or both legs, or both eyes, or of any two thereof, or the permanent and complete loss of the use thereof, constitutes total and permanent disability, to be compensated according to the compensation fixed by paragraph (f) of this Section. These specific cases of total and permanent disability *do not exclude other cases.*” (Emphasis added.) 820 ILCS 305/8(e)(18) (West 2020).

Dissimilar to other subsections of section 8(e), section 8(e)(18) provides for the loss of more than one body part or member. *Id.*; *Beelman Trucking*, 233 Ill. 2d at 372. Unlike paragraph (f)—which provides for a weekly benefit awarded for life, equal to 66 2/3% of the workers’ average weekly wage—section 8(e)(18) does not fix compensation for a set number of weeks but pays benefits for life. 820 ILCS 305/8(e)(18), (f) (West 2020); *Beelman Trucking*, 233 Ill. 2d at 372.

¶ 19 The next provision at issue, section 8(d)(2) of the Act, provides:

“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 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." (Emphasis added.) 820 ILCS 305/8(d)(2) (West 2020).

¶ 20 Employer asserts that the legislature could have easily included language in section 8(e)(18) of the Act, allowing for awards of both PTD and non-scheduled PPD under section 8(d)(2). Because the legislature failed to include such language, employer argues that a reading of the statute indicates the legislature intended to limit additional compensation under section 8(e)(18) to scheduled body parts only. Moreover, employer argues that the legislature enacted

section 8(e)(18) prior to section 8(d)(2) and failed to amend section 8(e)(18) at any time to include non-scheduled body parts, which further demonstrates the legislature’s intent to limit additional compensation under section 8(e)(18) to scheduled body parts only. We cannot agree.

¶ 21 We find our supreme court’s reasoning in *Beelman Trucking* instructive. In *Beelman Trucking*, 233 Ill. 2d at 380, our supreme court determined that the language in section 8(e)(18) of the Act—“does not exclude other cases”—allowed for other section 8(e) scheduled losses resulting from a single accidental injury. Our supreme court analyzed the nature of “permanent and total” benefits contemplated by section 8(e)(18) of the Act, noting that the words “total” and “permanent” do not reflect actual loss of wages or actual permanent total disability but “ ‘ ‘a stated legislative determination that the [specific injuries suffered] shall have compensation at a fixed figure.’ ’ ” *Id.* at 374 (quoting *Freeman United Coal Mining Co. v. Industrial Comm’n*, 99 Ill. 2d 487, 494 (1984), quoting *Jones v. Cutler Oil Co.*, 97 N.W.2d 74, 76 (Mich. 1959)). As such, the court determined that the words “ ‘total’ ” and “ ‘permanent’ ” under section 8(e)(18) did not serve as a maximum benefit, or a cap on benefits, for injuries sustained in a single accident based on the court’s prior interpretation of the statute in *Freeman United*, 99 Ill. 2d at 494. *Beelman Trucking*, 233 Ill. 2d at 374.

¶ 22 Moreover, our supreme court also interpreted the remaining language of section 8(e)(18) to determine whether section 8(e)(18) imposed a cap. In reviewing the sentence, “These specific cases of total and permanent disability *do not exclude other cases*” (emphasis added) (820 ILCS 305/8(e)(18) (West 2020)), our supreme court determined that the legislature intended the word “ ‘case’ to have its commonly accepted and popular meaning, that of a synonym to ‘instance’ or ‘example.’ ” *Beelman Trucking*, 233 Ill. 2d at 376. With this in mind, the court determined that “section 8(e)(18) does not exclude other cases of loss.” *Id.* Citing to its previous ruling in *Freeman*

United, 99 Ill. 2d at 495, where our supreme court held that a worker’s subsequent loss of his arm was compensable for temporary total disability benefits even though the worker previously recovered benefits under section 8(e)(18) following a previous work-related accident, our supreme court in *Beelman Trucking* noted the different losses in *Freeman United* “were compensable because of their effect on the worker’s earning capacity, distinguishing those injuries from the injuries which resulted in the worker’s statutory total and permanent disability.” *Beelman Trucking*, 233 Ill. 2d at 376-77; see *Freeman United*, 99 Ill. 2d at 495 (“[T]he Act contemplates that the employee, notwithstanding the previous award, is to be compensated for his current loss of earning power.”).

¶ 23 Notably, similar to *Freeman United*, 99 Ill. 2d at 493, where our supreme court compensated a subsequent injury that caused “increased actual disability,” our supreme court in *Beelman Trucking* determined compensation permissible for “other cases of loss in the same accident [which] result in ‘increased actual disability.’ ” 233 Ill. 2d at 377. The court in *Beelman Trucking* further stated:

“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.) *Id.*

Thus, the court allowed the claimant to recover under section 8(e)(18) and for scheduled losses under section 8(e)(10) of the Act. *Id.* at 379-80.

¶ 24 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 for 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*, 233 Ill. 2d at 380 (statutory total and permanent does not preclude recovery for losses which cause

“actual increased disability”).

¶ 25 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.

¶ 26

III. Conclusion

¶ 27 For the reasons stated, we affirm the circuit court’s order confirming the Commission’s decision.

¶ 28 Affirmed.

American Coal Co. v. Illinois Workers' Compensation Comm'n,
2024 IL App (5th) 230815WC

Decision Under Review: Appeal from the Circuit Court of Franklin County, No. 23-MR-12; the Hon. Eric J. Dirnbeck, Judge, presiding.

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