

Workers' Compensation
Commission Division
Filed: February 11, 2013

No. 1-11-3394WC

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

WOOD DALE ELECTRIC,)	APPEAL FROM THE
)	CIRCUIT COURT OF
Appellant,)	COOK COUNTY
)	
v.)	No. 11 L 50366
)	
THE ILLINOIS WORKERS COMPENSATION)	
COMMISSION, <u>et al.</u> ,)	
(RICHARD BILSON,)	HONORABLE
)	JAMES C. MURRAY,
Appellee.))	JUDGE PRESIDING.

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

Presiding Justice Holdridge and Justices Hudson, Harris and Stewart concurred in the judgment and the opinion.

OPINION

¶1 Wood Dale Electric appeals from an order of the circuit court of Cook County which, among other things, reversed that portion of a decision of the Illinois Workers' Compensation Commission (Commission) that awarded it a credit pursuant to section 8(j)2 of the Workers' Compensation Act (Act) (820 ILCS 305/8(j)2 (West 2008)) against benefits due its injured employee, Richard Bilson (hereinafter referred to as the "claimant"), and affirming the Commission's award of a weekly wage

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differential to the claimant for injuries he suffered while working. For the reasons which follow, we vacate a portion of the circuit court's order and affirm the remainder.

¶ 2 The claimant filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), seeking benefits for a left shoulder injury he received while in the employ of Wood Dale. The following factual recitation is taken from the record on appeal, including the record of an arbitration hearing conducted on the claim on April 18, 2008.

¶ 3 The claimant, a journeyman electrician, testified that he fell at work and injured his left shoulder. He stated that he was unable to work as an electrician after the accident, so he sought other work through a vocational specialist. Eventually, with the consent of Wood Dale's insurance carrier, he accepted a job as a school bus driver, and he held that job at the time of the hearing. The job paid him \$12.50 per hour for 20 hours per week—substantially less than the \$37.80 per hour he would have received as an electrician. The claimant testified that, upon his reaching the age of 62 on May 27, 2008, he would be entitled to pension retirement benefits that are payable regardless of any disability. He testified that he had planned to wait until he was 65 years old to retire, but as a result of his injury, he applied to receive those benefits starting in May 2008.

¶ 4 Wood Dale did not dispute that the claimant's is entitlement to benefits under the Act as a result of his accident. It did, however, assert a right to a credit for the claimant's pension benefits. On June 23, 2008, following the hearing, the arbitrator found that the claimant's injury was compensable under the Act, and he awarded the claimant a total of 56 ⁶/₇ weeks of temporary total disability (TTD) benefits, a weekly wage differential of \$841.33 for the duration of the claimant's

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disability, and medical expenses. The arbitrator denied Wood Dale any credit for the claimant's pension benefits.

¶ 5 Wood Dale sought review of the arbitrator's decision before the Commission. On January 27, 2009, the Commission affirmed and adopted the arbitrator's decision, with two exceptions. First, the Commission modified the claimant's wage differential award to \$840.65, per week, the maximum weekly wage differential that could be awarded under the Act. Second, the Commission found that, pursuant to section 8(j)2 of the Act, Wood Dale should be entitled to a credit for any pension benefits that accrued during the claimant's time working for Wood Dale. Accordingly, the Commission remanded the case to the arbitrator to determine the amount of Wood Dale's pension credit.

¶ 6 On April 6, 2010, the arbitrator issued a decision calculating Wood Dale's pension credit at \$432 per week. Both parties sought review before the Commission, which, on March 21, 2011, affirmed and adopted the arbitrator's decision.

¶ 7 The claimant filed a petition for judicial review of the Commission's decision in the circuit court of Cook County. On October 25, 2011, the circuit court issued an order finding that section 8(j)2 of the Act does not allow a credit for pension benefits. The court thus set aside that part of the Commission's decision awarding Wood Dale a credit and confirmed the decision in all other respects.

The court also added the following language to the end of its order:

"The parties *** disagree as to whether and to what extent [the claimant] is entitled to pension payments, given that he apparently has not yet retired. *** The record before this Court is insufficient to resolve the dispute. Therefore, this case is remanded to the Commission to determine, as a factual matter, the extent to which [the claimant] is entitled

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to receive pension benefits. Because [the claimant's] pensions are not disability pensions, [he] will be entitled to receive the same amount from his pensions as he would have had his injury never occurred."

Thereafter, Wood Dale filed this appeal.

¶ 8 Before addressing the issues raised by Wood Dale, we find need to address the question of our own jurisdiction. Although neither party raises a jurisdictional issue, we have a duty to consider our jurisdiction and to dismiss this appeal if our jurisdiction is lacking. *St. Elizabeth's Hospital v. Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 883, 864 N.E.2d 266 (2007). It is well settled that our jurisdiction is limited to the review of final judgments, unless an exception is provided by statute or Supreme Court Rule. *Trunek v. Industrial Comm'n*, 345 Ill. App. 3d 126, 127, 802 N.E.2d 1268 (2003). An order of the circuit court which reverses a decision of the Commission and remands the matter back to the Commission is interlocutory and not appealable. *A.O. Smith Corp. v. Industrial Comm'n*, 109 Ill. 2d 52, 54, 485 N.E.2d 335 (1985); *Stockton v. Industrial Comm'n*, 69 Ill. 2d 120, 124, 370 N.E.2d 548 (1977). Under normal circumstances, then, the circuit court's order, which purports to remand this matter to the Commission for further findings, would be nonfinal, and we would lack jurisdiction over this appeal.

¶ 9 However, there lies an important distinction between the typical remand order and the circuit court's remand order in this case: here, the remand order was entered in excess of the circuit court's jurisdiction. "Although the circuit courts are courts of general jurisdiction and enjoy a presumption of subject matter jurisdiction, that presumption does not apply in workers' compensation proceedings where the court exercises special statutory jurisdiction." *Rojas v. Illinois Workers' Compensation*

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Comm'n, 406 Ill. App. 3d 965, 971, 942 N.E.2d 668 (2010). See also Ill. Const. Art. VI, § 9 ("Circuit Courts shall have original jurisdiction of all justiciable matters," but "Circuit Courts shall have such power to review administrative action as provided by law"). In workers' compensation cases, "[t]he circuit court's jurisdiction to review a decision of the Commission is a special statutory power." *Forest Preserve District of Cook County v. Industrial Comm'n*, 305 Ill. App. 3d 657, 660, 712 N.E.2d 856 (1999). Courts exercising this special statutory jurisdiction "may exercise their powers within the limits of the jurisdiction conferred by the statute" that empowers them, but "the jurisdiction depends upon the grant of the statute." *Smith v. Smith*, 334 Ill. 370, 379-80, 166 N.E. 85 (1929). When a court acting under special statutory jurisdiction enters a judgment that "transcends the statute conferring jurisdiction on the court," the court "exceed[s] its jurisdiction." *Thayer v. Village of Downers Grove*, 369 Ill. 334, 339, 16 N.E.2d 717 (1938) (disapproved of on other grounds in *James v. Frantz*, 21 Ill. 2d 377, 383, 172 N.E.2d 795 (1961)). We have that situation here.

¶ 10 Just as with our obligation to examine our own jurisdiction, we are also obligated to examine the jurisdiction of the circuit court. *Reichert v. Court of Claims*, 203 Ill. 2d 257, 261, 786 N.E.2d 174 (2003); *Baldwin v. Workers' Compensation Comm'n*, 409 Ill.App. 3d 472, 476, 949 N.E.2d 1151 (2011). The Act confers upon the Commission the authority to settle disputed questions of law or fact pertaining to claims brought under the Act (see 820 ILCS 305/19 (West 2008)), and, in turn, it confers upon the circuit court special statutory jurisdiction to review Commission rulings (see 820 ILCS 305/19(f)(2) (West 2008)). Thus, the circuit court's subject matter jurisdiction extends only to review of the Commission's determinations of parties' rights under the Act. Here, the Commission

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determined that Wood Dale was obligated to pay benefits under the Act, but it determined that Wood Dale was entitled to a credit for non-disability pension benefits the claimant had earned. The circuit court had jurisdiction to review that conclusion, because it affects the parties' rights under the Act. The circuit court did not, however, enjoy jurisdiction over any issues relating to the claimant's right to the pension benefits themselves, as such matters are not governed by the Act.

¶ 11 For a court exercising statutory jurisdiction, "[a]ny action the trial court takes that is outside the statute's stricture is void." *Cushing v. Greyhound Lines, Inc.*, 2012 IL App (1st) 100768, ¶ 103 (quoting *In re Haley D.*, 2011 IL 110886, ¶ 90). "A void order is a complete nullity from its inception and has no legal effect." *Cushing*, 2012 IL App (1st) 100768, ¶103. When a court acts beyond its limited jurisdiction, the portion of the judgment that exceeds the court's jurisdiction must be considered void and must be vacated. See *People v. Sweeney*, 2012 IL App (3d) 100781, ¶ 24 (citing *In re T.E.*, 85 Ill. 2d 326, 423 N.E.2d 910 (1981) (part of sentence that exceeded statutory authority is considered void and must be vacated)). We therefore vacate that portion of the circuit court's judgment that purports to remand the matter to the Commission to adjudicate the claimant's pension benefits. With that portion of the circuit court's order excised, we have a proper final order to trigger our own jurisdiction over the case.

¶ 12 On the merits, Wood Dale argues that the circuit court erred in concluding that the Act does not allow it to claim a credit against its workers' compensation liability for the claimant's pension benefits. "The right to credits, which operates as an exception to liability created under the Act, is narrowly construed." *Elgin Board of Education School District U-46 v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 943, 953, 949 N.E.2d 198 (2011). Wood Dale, nonetheless,

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argues that section 8(j)2 of the Act sets forth a clear exception to its liability.

¶ 13 The parties agree that Wood Dale presents us with an issue of statutory interpretation. The interpretation of a statute is a issue of law (*Branson v. Department of Revenue*, 168 Ill. 2d 247, 254, 659 N.E.2d 961 (1995)), and we review it *de novo* (*Elliot v. Industrial Comm'n*, 303 Ill. App. 3d 185, 187, 707 N.E. 2d 228 (1999)).

¶ 14 The statute in question here, section 8(j) of the Act, contains three subparts. The first subpart pertains to credits for group benefit plans, and the parties agree that it does not apply to this case. The third subpart pertains to the time for filing applications for adjustments of claim, and, again, it has no direct application here. The second subpart provides as follows:

"Nothing contained in this Act shall be construed to give the employer or the insurance carrier the right to credit for any benefits or payments received by the employee other than compensation payments provided by this Act, and where the employee receives payments other than compensation payments, whether as full or partial salary, group insurance benefits, bonuses, annuities or any other payments, the employer or insurance carrier shall receive credit for each such payment only to the extent of the compensation that would have been payable during the period covered by such payment." 820 ILCS 305/8(j)2 (West 2008).

¶ 15 The parties offer contrasting interpretations of this statutory language. For his part, the claimant argues that the above language must be read to forbid credits for pension payments, because any other reading obviates the statute's emphatic first words that "[n]othing contained in this Act shall be construed to give" a credit. Wood Dale, on the other hand, argues that, by honoring the first

part of the paragraph, the claimant's interpretation obviates the second, which refers clearly to credits an employer "shall receive" for payments. Wood Dale also offers legislative history—the law once unequivocally disallowed credits in both parts, before the second part was changed in 1965—to support its view that the new language was meant to allow credits for pension benefits. *Compare* Ill. Rev. Stat. 1963, ch. 48, par. 138.8(j) with 820 ILCS 305/8(j)2 (West 2008).

¶ 16 If we were interpreting this statutory language in the first instance, these arguments might present us with a difficult issue of statutory construction. However, we are not interpreting this language in the first instance. It has been construed at least twice before, in *Tee-Pak, Inc. v. Industrial Comm'n*, 141 Ill. App. 3d 520, 490 N.E.2d 170 (1986), and again in *Elgin*, 409 Ill. App. 3d 943. In *Tee-Pak*, the claimant argued that the Commission had erred in allowing the employer a credit for money paid to him under "a benefit program which ensure[d] a full salary to *** employees who are off work due to an accident or illness." *Tee-Pak*, 141 Ill. App. 3d at 522. In reversing the Commission's decision, this court cited section 8(j) generally for the proposition that "[u]nder the Act, the employer receives no credit for benefits which would have been paid irrespective of the occurrence of a workers' compensation accident." *Tee-Pak*, 141 Ill. App. 3d at 529. Although the circuit court relied on *Tee-Pak* in reaching its conclusion that section 8(j)2 does not permit Wood Dale a credit, Wood Dale refers to the decision only in passing in its brief, by citing it and then summarily stating that it dealt with subsection 8(j)1, not 8(j)2.

¶ 17 We disagree with Wood Dale's treatment of the *Tee-Pak* decision, for two reasons. First, as noted, the *Tee-Pak* decision does not cite subsection 8(j)1 of the Act instead of subsection 8(j)2; it cites the whole of section 8(j). Second, as also noted above, section 8(j) addresses credits in two

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subsections: subsections 8(j)1 and 8(j)2. Subsection 8(j)1 pertains to credits for group benefit plans. See 820 ILCS 305/8(j)1 (West 2008). In *Tee-Pak*, the court stated that the benefit payments it was considering were not made pursuant to a group insurance program (*Tee-Pak*, 141 Ill. App. 3d at 529). Thus, *Tee-Pak* must have been considering subsection 8(j)2 of the Act.

¶ 18 If *Tee-Pak* did not speak loudly enough on the issue, we amplified it recently in *Elgin*. In *Elgin*, the employer argued that it was entitled to a credit under section 8(j)2 for "wages paid to claimant in lieu of [temporary total disability] payments for the period of time [she] was off work due to her injury." *Elgin*, 409 Ill. App. 3d at 952. After quoting subsections 8(j)1 and 8(j)2 of the Act and reciting the guidelines for statutory interpretation, we explained section 8(j)2 as follows:

"The first clause of section 8(j)2 states that an employer is entitled to a credit only for compensation payments made pursuant to the Act. [Citations.] The second clause of section 8(j)2 states that when an employer pays money other than compensation payments under the Act, the employer 'shall receive credit for each such payment only to the extent of the compensation that would have been payable during the period covered by such payment.' [Citation.]

Although the second clause would appear to qualify the broad language in the first clause of section 8(j)2, in [*Tee-Pak*], we seemingly rejected this interpretation of the statute. In [*Tee-Pak*], the Commission allowed the employer a section 8(j) credit ***. On appeal, we reversed, noting that under section 8(j) of the Act, 'the employer receives no credit for benefits which would have been paid irrespective of the occurrence of a workers' compensation accident.' [Citation.]" *Elgin*, 409 Ill. App. 3d 953-54.

¶ 19 We then proceeded to distinguish *Tee-Pak* on the basis that, in *Elgin*, unlike in *Tee-Pak*, there was evidence that the employer intended its employees to be able to collect both salary and workers' compensation payments. *Elgin*, 409 Ill. App. 3d at 954. "Thus," we said, "the limitation of section 8(j) imposed in [*Tee-Pak*] does not apply here." *Elgin*, 409 Ill. App. 3d at 954. In their briefs, neither party offers us any reason to depart from its statement that, under *Tee-Pak*, section 8(j)2 allows credits only for payments that would not have been made but for the workers' compensation accident. For that reason, we adhere to the holdings in *Tee-Pak* and *Elgin*.

¶ 20 Here, the parties do not dispute that the pension payments, unlike those in *Tee-Pak* and *Elgin*, are the result of normal pension retirement benefits, wholly unrelated to the claimant's workers' compensation accident. Accordingly, under the rule in *Tee-Pak* and *Elgin*, those payments cannot entitle Wood Dale to a credit against its liability under the Act.

¶ 21 In the alternative to its credit argument, Wood Dale asserts that the claimant should not be entitled to a wage differential benefit under the Act because he has voluntarily removed himself from the work force by electing to retire. We disagree.

¶ 22 To qualify for a wage differential award, a claimant must prove (1) a partial incapacity that prevents him from pursuing his usual and customary line of employment and (2) an impairment of earnings. 820 ILCS 305/8(d)(1) (West 2008); *First Assist, Inc. v. Industrial Comm'n*, 371 Ill. App. 3d 488, 494, 867 N.E.2d 1063 (1007). Whether the claimant has satisfied each element is a question of fact to be resolved by the Commission, whose determination will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Morton's of Chicago v. Industrial Comm'n*, 366 Ill. App. 3d 1056, 1061, 853 N.E.2d 40 (2006). For a finding of fact to be contrary to the

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manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918 (2006).

¶ 23 A claimant's voluntary decision to remove himself from the work force does not preclude a wage differential award. *Copperweld Tubing Products Co. v. Illinois Workers' Compensation Comm'n*, 402 Ill. App. 3d 630, 634, 931 N.E.2d 762 (2010). Instead, a wage differential award is determined by comparing the claimant's prior earning capacity to the amount he "is earning or is able to earn in some suitable employment or business after the accident." 820 ILCS 305/8(d)(1) (West 2008); see *Copperweld Tubing Products*, 402 Ill. App. 3d at 634.

¶ 24 Wood Dale has never disputed the diminution in the claimant's earning capacity following his accident, and the evidence adduced before the Commission illustrated his efforts to find suitable post-accident employment. Based on that undisputed evidence, we conclude that the Commission's finding, that the claimant is entitled to a wage differential award, is not against the manifest weight of the evidence.

¶ 25 Based on the foregoing analysis, we vacate that part of the circuit court's order remanding the matter to the Commission for calculation of the claimant's pension benefits and affirm its order in all other respects.

¶ 26 Affirmed in part and vacated in part.



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RICHARD BILSON, PETITIONER, v. WOOD DALE ELECTRIC CO., RESPOND-
ENT.

NO: 07WC 30342

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

2011 Ill. Wrk. Comp. LEXIS 315; 11IWCC 0286

March 21, 2011

JUDGES: David L. Gore; James F. DeMunno; Mario Basurto

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of wage rate, 8(j) credit, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Respondent filed a Motion to Strike Portions of Petitioner's Statement of Exceptions Relating to Issues Not Currently Pending Before This Commission on August 30, 2010. The Commission finds that this Motion should be denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 6, 2010 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under § 19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent's Motion to Strike Portions of Petitioner's Statement of Exceptions Relating to Issues Not Currently Pending Before This Commission on August 30, 2010 is hereby denied.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if [*2] any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$ 100.00. The probable cost of the record to be filed as return to Summons is the sum of \$ 35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

ATTACHMENT

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Arbitrator Edward Lee, Arbitrator of the Commission, in the city of Chicago, on

March 19, 2010. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

O. Other - The only issue at trial held March 19, 2010 is the determination of the credit due Respondent based on the accrual of pension benefits during Petitioner's employment with Respondent.

FINDINGS

On [*3] , Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$; the average weekly wage was \$

On the date of accident, Petitioner was years of age, *single* with dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$ for TTD, \$ for TPD, \$ for maintenance, and \$ for other benefits, for a total credit of \$.

Respondent is entitled to a credit of \$ under Section 8(j) of the Act.

ORDER

Respondent is entitled to a credit in the sum of \$ 432.40/wk commencing on May 27, 2008 and for the duration of Petitioner's disability, [*4] as and for pension benefit credits based on the accrual of pension benefits during Petitioner's employment with Respondent, pursuant to Section 8(j)(2) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

4/6/10

Date

Legal Topics:

For related research and practice materials, see the following legal topics:

2011 Ill. Wrk. Comp. LEXIS 315, *

Workers' Compensation & SSDI Administrative Proceedings General Overview Workers' Compensation &
SSDI Compensability Course of Employment General Overview Workers' Compensation &
SSDI Compensability Injuries General Overview



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RICHARD BILSON, PETITIONER, v. WOOD DALE ELECTRIC CO., RESPOND-
ENT.

NO: 07WC 30342

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

9 IWCC 83; 2009 Ill. Wrk. Comp. LEXIS 84

January 27, 2009

JUDGES: David L. Gore; James F. DeMunno; Mario Basurto

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of wage differential and credit due Respondent and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Arbitrator awarded a wage differential of \$ 841.51. However, the current average weekly wage in Illinois at the time was \$ 840.65, which was the maximum wage differential that could be awarded. The Commission modifies the award of the Arbitrator accordingly.

In addition, the Arbitrator found that Respondent was not entitled to any credit for pension benefits to which Petitioner was to receive. Petitioner testified that he had been a journeyman electrician for 42 years, 20 of which for Respondent. He planned on retiring upon his 65th birthday prior to his accident; Petitioner was 60 years of age at the time of arbitration. The Commission finds that Respondent should be entitled to credit for pension benefits, but only for the pension benefits Petitioner [*2] accrued during the period of time he actually worked for Respondent. The Commission remands the case to the Arbitrator to determine the credit due Respondent based on the accrual of pension benefits during Petitioner's employment with Respondent.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$ 924.04 per week for a period of 56 6/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$ 840.65 per week for a period of the duration of Petitioner's disability, as provided in §8(d)1 of the Act, for the reason that the injuries sustained caused the partial incapacitation preventing him from pursuing his usual and customary line of employment.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$ 2,045.51 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner [*3] on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that the case be remanded to the Arbitrator to determine the credit due Respondent based on the accrual of pension benefits during Petitioner's employment with Respondent.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$ 75,000.00. The probable cost of the record to be filed as return to Summons is the sum of \$ 35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED: JAN 27 2009

ATTACHMENT:

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Edward Lee, arbitrator of the Commission, in the city of Chicago, on 4/18/2008. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- J. Were the medical services that [*4] were provided to petitioner reasonable and necessary?
 N. Is the respondent due any credit?

FINDINGS

- . On 8/07/2006, the respondent **Wood Dale Electric Co.** *was* operating under and subject to the provisions of the Act.
- . On this date, an employee-employer relationship *did* exist between the petitioner and respondent.
- . On this date, the petitioner *did* sustain injuries that arose out of and in the course of employment.
- . Timely notice of this accident *was* given to the respondent.
- . In the year preceding the injury, the petitioner earned \$ **72,075.12**; the average weekly wage was \$ **1,386.06**
- . At the time of injury, the petitioner was **60** years of age, *married* with **0** children under 18.
- . Necessary medical services *have* been provided by the respondent.
- . To date \$ **all paid** has been paid by the respondent for TTD and/or maintenance benefits.

ORDER

- . The respondent shall pay the petitioner temporary total disability benefits of \$ **924.04/week** for **56 6/7** weeks, from **8/08/2006** through **9/11/2007**, which is the period of temporary total disability for which compensation is payable. **TPD paid thereafter** [*5] .
- . The respondent shall pay the petitioner the sum of \$ **841.33/week** for **the duration of Petitioner's disability**, as provided in Section **8-d-1** of the Act, because the injuries sustained caused **Petitioner's partial incapacitation preventing him from pursuing his usual and customary line of employment, to wit: A journeyman union electrician.**
- . The respondent shall pay the petitioner compensation that has accrued from **9/11/2007** through **4/18/2008**, and shall pay the remainder of the award, if any, in weekly payments.

. The respondent shall pay the further sum of \$ 2,045.51 for necessary medical services, as provided in Section 8(a) of the Act. * Respondent has agreed to satisfy any of these unpaid charges directly with the providers pursuant to the fee schedule.

. The respondent shall pay \$ n/a in penalties, as provided in Section 19(k) of the Act.

. The respondent shall pay \$ n/a in penalties, as provided in Section 19(l) of the Act.

. The respondent shall pay \$ n/a in attorneys' fees, as provided in Section 16 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, [*6] and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of 2.35 % shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of arbitrator

6/20/08

Date

FACTS

Prior to August 7, 2006 Petitioner was employed as a full-time journeyman electrician for Respondent, with a then average weekly wage of \$ 1,386.06. Petitioner had worked for Respondent for approximately 20 years. Petitioner is right hand dominant. A 2001 work related accident necessitated a left rotator cuff repair. Upon his full duty release to work, Petitioner settled this claim for a 32 1/2% loss of that arm (RX 1). Petitioner did not treat for any medical condition referable to his left shoulder until the accident described below.

On August 7, 2006, Petitioner was working at a commercial job site in Niles, Illinois. Petitioner was walking out of his work area and stepped on freshly laid layer of glue on the floor landing [*7] causing him to fall and strike his left shoulder. Petitioner noticed immediate left shoulder pain and was seen at the Lutheran General Hospital emergency room that day.

An orthopaedic surgeon, Dr. Robert Patek, M.D. examined Petitioner on August 8, 2006, (Px 1). Dr. Patek had been the treating surgeon for Petitioner's previous left shoulder surgery. Dr. Patek ordered an MRI which was completed on August 11, 2006 (Px 1). The MRI was interpreted as showing a large full thickness tears to the supraspinatus and subscapularis tendons (Px 1).

Accordingly, Dr. Patek performed a left rotator cuff repair on August 18, 2006 (Px 1). Thereafter, Petitioner underwent a course of physical therapy with periodic office visits to Dr. Patek (Px 1).

Dr. Patek ordered a functional capacity exam (FCE) in February 2007 (Px 1). Petitioner completed this exam on February 28, 2007. Based on the valid results (showing a "medium" level of work tolerance), Dr. Patek ordered a further course of work conditioning. However, Petitioner did not complete it since it caused an elevation of his symptoms (Px 1).

Accordingly, on April 10, 2007 Dr. Patek found Petitioner to be at maximum medical improvement (MMI) with [*8] permanent restrictions which put him at the light or medium duty level (lifting floor to waist up to 40 lbs frequently, waist to shoulder 20-30 lbs. occasionally, and shoulder, to overhead 20-30 lbs only on occasion with the assistance of the opposite extremity) Px 1). Petitioner testified that he believed himself to be capable of working a 40-hour week within his restrictions.

Given the permanent limitations, Respondent then initiated vocational rehabilitation which consisted of an evaluation, labor market survey, and resume preparation (Px 2). Had Petitioner been able to resume his normal trade and occupation as a journeyman electrician after this accident, his current hourly scale would be \$ 37.80 per hour.

Petitioner was ultimately offered a full time position as a school bus driver with the Fairview School District 72 at \$ 12.50/hour. This "full time" position consists of a 20-hour workweek (Px 4).

Notwithstanding the 20-hour workweek, Respondent was informed and consented to Petitioner accepting this job on September 13, 2007. Since that date, Respondent has paid Petitioner an appropriate wage differential.

Petitioner testified that he still suffers from left arm weakness and [*9] occasional pain as a result of this accident. At the time of this hearing, Petitioner is employed by the Fairview School District 72 as a school bus driver working 20 hours per week at \$ 12.50 per hour, and Respondent is paying the current wage differential.

On May 27, 2008, Petitioner will attain the age of 62 years. At the time of trial, Petitioner had neither applied for nor was he receiving social security. Petitioner has applied for 3 pensions, IBEW pension # 2, IBEW Pension # 5, and NEBF Pension, which will pay a combined monthly amount of approximately \$ 4,674.40, gross (Rx 13). Petitioner is eligible to receive all 3 of these pensions on or after May 27, 2008 (Rx 13). These pensioners were funded by contributions made by Respondent and other previous employers pursuant to the electrical union collective bargaining agreement. These 3 vested pensions are payable to Petitioner on or after May 27, 2008, as a matter of right (Px 7). These 3 pensions are not disability pensions and no showing of occupational disability must be made to collect them.

CONCLUSIONS OF LAW

The parties to this case do not disagree on any of the underlying facts, concerning the accident, appropriateness [*10] of medical treatment, or diminution of Petitioner's earning capability as a result of his August 7, 2006 work injury. Rather, the salient issue to be decided in this case is whether Respondent's claim that any wage differential owing to Petitioner is obviated by the 3 non-duty disability pensions (which Petitioner qualifies for as of his 62nd birthday) which act as a credit pursuant to Section 8(j) (2) of the Act.

Section 8(j) states:

Benefits Received Under Group Health Plan

1. In the event the injured employee receives benefits, including medical, surgical or hospital benefits under any group plan covering non-occupational disabilities contributed to wholly or partially by the employer, which benefits should not have been payable if any rights of recovery existed under this Act, then such amounts so paid to the employee from any such group plan as shall be consistent with, and limited to, the provisions of paragraph 2 hereof, shall be credited to or against any compensation payment for temporary total incapacity for work or any medical, surgical or hospital benefits made or to be made under this Act. In such event, the period of time for giving notice of accidental injury [*11] and filing application for adjustment of claim does not commence to run until the termination of such payments. This paragraph does not apply to payments made under any group plan which would have been payable irrespective of an accidental injury under this Act. Any employer receiving such credit shall keep such employee safe and harmless from any and all claims or liabilities that may be made against him by reason of having received such payments only to the extent of such credit.

Any excess benefits paid to or on behalf of a State employee by the State Employees' Retirement System under Article 14 of the Illinois Pension Code on a death claim or disputed disability claim shall be credited against any payments made or to be made by the State of Illinois to or on behalf of such employee under this Act, except for payments for medical expenses which have already been incurred at the time of the award. The State of Illinois shall directly reimburse the State Employees' Retirement System to the extent of such credit.

2. Nothing contained in this Act shall be construed to give the employer or the insurance carrier the right to credit for any benefits or payments received by [*12] the employee other than compensation payments provided by this Act, and where the employee receives payments other than compensation payments, whether as full or partial salary, group insurance benefits, bonuses, annuities or any other payments, the employer or insurance carrier shall receive credit for each such payment only to the extent of the compensation that would have been payable during the period covered by such payment.

3. The extension of time for filing of an Application for Adjustment of Claim as provided in paragraph 1 above shall not apply to those cases where the time for such filing had expired prior to the date on which payments or benefits enumerated herein have been initiated or resumed. Provided however that this paragraph 3 shall apply only to cases wherein the payments or benefits herein above enumerated shall be received after July 1, 1969.

One of the principles of statutory construction is to view, all provisions as a whole so that no part of it is rendered meaningless. Moreover, words and phrases should not be construed in isolation, but must be construed in light of other relevant provisions of the statute. See *Brooks v. City of Peoria*, 305 Ill. App. 3d 806, 712 N.E. 2d 387, 283 Ill.Dec. 665 (3d Dist 1999). [*13]

Given this basic tenet of statutory construction, Section 8(j) should be read as a whole. Paragraph 1 states that the condition precedent for an employer to receive credit "consistent with and limited to Paragraph 2", is receipt of benefits from "any group plan covering non-occupational disabilities contributed wholly or partially by the employer". Moreover, Paragraph I further states that "this paragraph does not apply to payments made under any group plan which would have been payable irrespective of an accidental injury under this Act". Paragraph 2 goes on to define the types of payments to an employee for which an employer may take credit. See *James Micheli v. Dominick's Finer Foods, Inc.*, 07 IWCC 1380, 2007 Ill. Wrk. Comp. LEXIS 1546.

Respondent posits that Paragraph 2 should be read in isolation from Paragraph 1. This is not how Section 8(j) should be interpreted.

The Arbitrator finds that Respondent is not entitled to a credit pursuant to Section 8(j) against any future wage differential payments payable to Petitioner, in accordance with Section 8-d-1.

Illinois courts have consistently drawn a distinction between **Disability Payments** and **Non-Disability Payments** [*14]. Illinois courts have consistently held that employers receive no credit for benefits which would have been paid irrespective of the occurrence of a workers' compensation accident. *Tee Pak, Inc. v. Industrial Commission*, 141 Ill.App. 3d 520, 490 N.E.2d 170 95 Ill. Dec. 697 (4th Dist. 1986). In this case there is no dispute between the parties that the 3 pensions Petitioner qualifies to receive on or after his 62nd birthday are payable as a matter of right, and not contingent upon the showing of any duty disability (Px 7).

Petitioner's fact situation is akin to that presented to our Supreme Court in the case of *Village of Streamwood Police Department v. Industrial Commission*, 57 Ill.2d 345, 312 N.E. 2d 239 (1974). There is a policeman injured in the line of duty could not return to work. Petitioner qualified to receive a police pension. No showing was made that these policemen's pension fund benefits were limited to occupationally related disabilities, and the Supreme Court did not allow a credit pursuant to Section 8(j). All cases cited by Respondent involve Disability Payments [*15] or Disability Pensions. Where 8(j) credit was allowed, there was a showing of an occupational related disability in order to receive disability payments or a disability pension, in accord with *Village of Streamwood, Supra*. Therefore, the Arbitrator finds that Petitioner is entitled to have and receive from Respondent the sum of \$ 841.33 per week, beginning as of April 18, 2008 for the duration of his disability as provided in Section 8-d-1 of the Act, as amended, since the accidental injury of August 7, 2006, caused permanent partial incapacity to Petitioner which prevents him from pursuing his usual and customary employment in which he was engaged at the time of his accident, to wit. A union journeyman electrician who currently be earning \$ 37.80/hour (Px 3). The Arbitrator finds that the \$ 12.50 hour (at 20 hours per week) constitutes a true and valid measure of Petitioner's earning power following his discharge at MMI by Dr. Patek. ($\$ 37.80 \times 40 = \$ 1512.00/\text{week}$, $\$ 12.50 \times 20 = \$ 250/\text{week}$. $\$ 1512.00 - \$ 250.00 = \$ 1262.00 / 2/3\text{rds} = \$ 841.33$) Respondent was informed and consented to Petitioner accepting this position as a school [*16] bus driver, and has paid a wage differential thereafter. Accordingly, Petitioner's employment with Fairview School District # 72 is regular and suitable within a stable labor market.

The Arbitrator further finds that Petitioner's attorneys, the Law Firm of Goldberg Weisman & Cairo, Ltd., is entitled, pursuant to Section 16a (B) of the Act, to have and receive every fifth \$ 841.33 wage differential payment, for 364 weeks from the date that this order becomes final, as their attorneys' fees.

Petitioner presented \$ 2,045.51 in unpaid related medical bills (Px 6). Respondent agreed to satisfy any of these remaining unpaid medical charges directly with the providers pursuant to the fee schedule.

Legal Topics:

For related research and practice materials, see the following legal topics:

Workers' Compensation & SSDI Administrative Proceedings Claims Time Limitations Notice Periods Workers' Compensation & SSDI Compensability Course of Employment Business Travelers Workers' Compensation & SSDI Compensability Injuries General Overview