

Chairman's Update



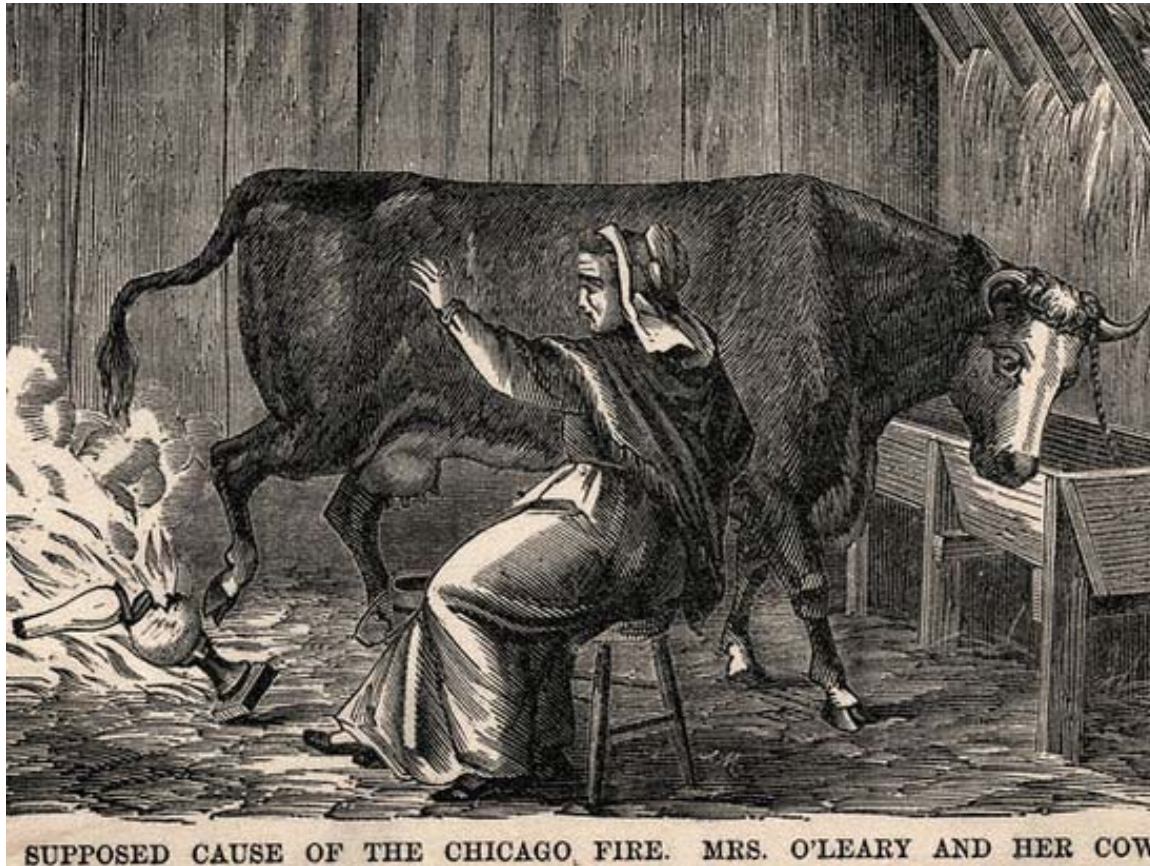
Michael P. Latz

Illinois Workers' Compensation Commission

February 26, 2014

Chairman's Update - Overview

- Common Misconception
- HB 1698 Reform Legislation
- Current Legislation
- Wage Differential
- Admissibility of Proposed Decisions As Evidence
- Reassignment of Arbitrators
- Rules Of Professional Conduct
- Civility at the Commission



SUPPOSED CAUSE OF THE CHICAGO FIRE. MRS. O'LEARY AND HER COW

Mrs. O'Leary's cow kicking over a lantern started the Great Chicago Fire.

A story published in the *Chicago Republican* stated that Mrs. O'Leary was milking a cow in her barn and that the cow kicked over the lamp, which caused the fire. While the fire did begin in her barn, Mrs. O'Leary always maintained that her entire family was asleep in the house when it started. Years later, in 1893, Michael Ahern, the reporter who wrote the story, admitted he had made it up.

HB 1698 Reform Legislation

- 3 years since its effective date – where are we now?
- Editorials
- Filed legislation

HB 1698 Reform Legislation



HB 1698 Reform Legislation

NCCI Advisory Rates

- Since the enactment of HB 1698 in 2011, the cumulative rate change has been -13.3%.
- This includes the most recent reduction of -5.8% which took effect on January 1, 2014.

HB 1698 Reform Legislation

WCRI Research

- In a study published in October 2013, WCRI reported medical cost reductions in Illinois as a result of the changes instituted by HB 1698.
- For claims with more than 7 days of lost time, medical payments per claim decreased 5%.
- Medical Prices Paid for Workers' Compensation Down 24% since 2011

Current Legislation

- This General Assembly – Several substantive workers' compensation bills have been filed
- Commission monitors all legislation
- HB 3390 – Streamlining the administration of the Workers' Compensation Commission

Current Legislation

- HB 4189 (Rep. Kay) – Allows for health care providers to file liens on workers' compensation awards
- HB 5792 (Rep. Hernandez) – Requires employers to file a “statement” regarding termination of employee covered under the Workers' Compensation Act
- HB 3470 (Rep. Kay) – Causation, Average Weekly Wage, Interstate Scaffolding and Will County Cases

Wage Differential

- Are Wage Differential Claims under 8(d)(1) Subject to the Statutory Attorney Fee Under Section (16)(a) of the Illinois Workers' Compensation Statute?

Garcia v. Magid Glove & Safety; 04 WC 09555.

In a recent Cook County Circuit Court case, the Judge reversed the decision of the Commission -and the Judge awarded petitioner's attorney fees above the statutory fee of 820 ILCS 305 (16)(a). The Petitioner's attorney argued that wage differential awards under 820 ILCS 305 (8)(a) do not fall within the definition of the disabilities outlined in (16)(a), and thus are not subject to statutory attorney fees set forth in (16)(a).

Wage Differential, Claims and Section 16

- **Section 16(a):** Section 16(a) of the Illinois Workers' Compensation Act provides that in death cases, total disability cases and partial disability cases, the amount of attorneys' fees should be capped at 20% of the sum which would be due under this Act for 364 weeks of permanent total disability benefits "based upon the employee's average gross weekly wage," "unless further fees shall be allowed to the attorney upon a hearing by the Commission fixing fees." 820 ILCS 305/16(a)(b).
- **Section 8(1):** According to Section 820 ILCS 305/8(d), if, after the accidental injury has been sustained, the employee as a result becomes partially incapacitated from pursuing his usual and customary line of employment, he shall, except in cases compensated under the specific schedule set forth in paragraph (e) of this Section, receive compensation for the duration of his disability, subject to the limitations as to maximum amounts fixed in paragraph (b) of this Section.... 820 ILCS 305/8(d).

Wage Differential Contd.

- The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Phoenix Bond & Indemnity Co. v. Pappas*, 194 Ill. 2d 99, 106 (2000). The language used in the statute is normally the best indicator of what the legislature intended. *Id.* Where the statutory language is clear, it will be given effect without resort to other aids for construction. *Kunkel*, 179 Ill. 2d at 534.
- In applying the “plain meaning” rule to Section (16)(a) it appears that Section 16 limits apply to all disability cases. Section 16(a) of the Illinois Workers’ Compensation Act provides that in death cases, total disability cases and partial disability cases, the statutory attorney fee applies. The question then is whether wage differential incapacity as used in Section (8)(1) is a form of disability.
- According to the doctrine of *ejusdem generis* (of the same kind, class, or nature), the general words are construed to embrace only objects similar in nature to the objects enumerated by the preceding specific words of the statute. *Ejusdem generis* saves the legislature from having to spell out in advance every contingency to which the statute could apply. Applying a *ejusdem generis* to Section 8(1), it appears that incapacity and disability are of the same kind, class, or nature and thus are subject to the Section (16)(a) attorney fee cap.
- Another maxim of statutory construction is *expressio unius est exclusio alterius*. Roughly translated, this phrase means that whatever is omitted is understood to be excluded. The maxim is based on the rationale that if the legislature had intended to accommodate a particular remedy or allowance, it would have done so expressly; if the legislature did not provide for such an allowance or event, it should be assumed that it meant not to.
- Section (8)(1) does not specifically allow for a different or separate calculation of attorney fees for “incapacity.” Further, since incapacity is a form of disability, and Section 16 applies to both partial and total disability, the limitations for attorney fees in Section (16)(a) would apply to Wage Differential cases.

Admissibility of Proposed Decisions as Evidence

Proposed decisions, are they evidence?

Commission rules mandate that proposed decisions are to be submitted “at the close of proofs.” 50 Ill. Adm. Code § 7030.80(a). Therefore, proposed decisions are outside the record and are not evidence. *See* 50 Ill. Adm. Code §7040.70(a) (appellant before the commission must cite evidence in the record to obtain exception or addition to arbitrator’s decision); 50 Ill. Adm. Code § 7040.80(d) (commission's findings of fact and conclusions of law for each claim of exceptions or for additions to the Arbitrator’s decision should include a statement of the particular *evidence in the record* upon which the findings and conclusions are based) (emphasis added).

Can an Arbitrator Rule based only on what is in a proposed decision?

In *O'Connell v. University of Illinois*, 13 IWCC 740, the respondent contested the nature and extent of a specific injury at arbitration, but the petitioner argued that the respondent's proposed decision contained a judicial admission that estopped the respondent from appealing this issue. The petitioner cited no case law or other authority to support his estoppel argument. The panel found that the proposed decision was not admitted into evidence, and therefore it could not be properly considered on review regardless of its contents.

Does a Proposed Decision Constitute Judicial Admission, Waiver or Estoppel

Ingrassia Interior Elements v. Illinois Workers Compensation Commission, 2012 IL App (2d) 110670WC

The *Ingrassia* Court, held that the respondent was bound by its decision to sign the request form – not because signing the form constituted evidence of an admission or waiver, but because the respondent had formed an enforceable contract with the petitioner. Both sides agreed in writing to adhere to all terms of the request form, including the provision regarding late-filed transcripts. *Id.*,

This contract was formed at the time the parties signed the form, and it did not matter when the form was formally filed.

Proposed decisions, not being stipulations or contracts between the parties do not constitute judicial admission or waiver.

The Appellate Court addressed what it will consider:

"The scope of judicial inquiry of factual determinations made by an administrative agency is limited to determining whether the agency's decision was contrary to the manifest weight of the evidence. While an agency's findings are considered prima facie true and correct, they must be based upon facts established by competent evidence." *Polk v. Board of Trustees of the Police Pension Fund of the City of Park Ridge*, 253 Ill. App. 3d 525, 536 (1st Dist. 1993).

Reassignment of Arbitrators

- HB 1698 amended Section 14 of the Workers' Compensation Act
- “No arbitrator shall hear cases in any county, other than Cook County, for more than 2 years in each 3-year term. “
- Commission monitors and tracks the time spent by each Arbitrator in all downstate counties.
- Questions? Contact the Chairman's Office.

Illinois Rules of Professional Conduct

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. *A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials.* While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process. [Emphasis added]

RULE 5.3: RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Joint Committee on Administrative Rules: Administrative Code

Section 7020.40 Who May Appear-Unauthorized Practice

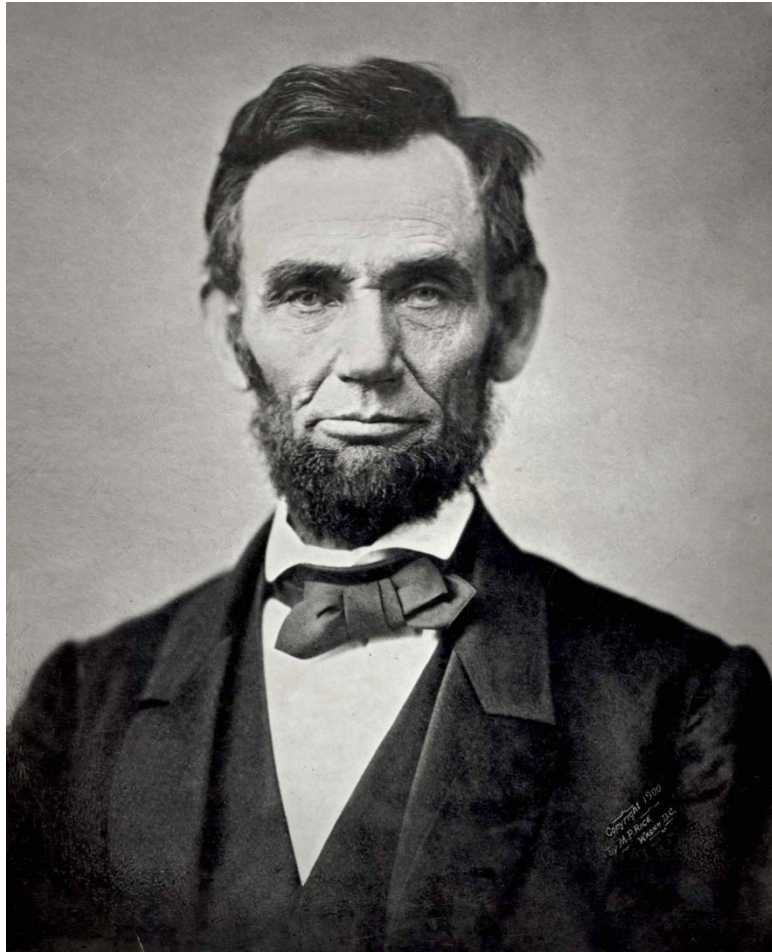
- a) Only attorneys licensed to practice in the State of Illinois may appear on behalf of parties to litigation before the Industrial Commission. This specifically includes presentation of Settlement Contracts and Lump Sum Petitions. Attorneys licensed to practice in states other than Illinois may appear with leave of the Commission.
- b) For routine matters such as agreed continuances or other agreed ministerial acts, persons other than licensed attorneys shall be permitted to appear on behalf of a party at the status call.

(Source: Amended at 15 Ill. Reg. 8221, effective May 17, 1991)

RULE 3.5: IMPARTIALITY AND DECORUM OF THE TRIBUNAL

- A lawyer shall not:
- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) communicate *ex parte* with such a person during the proceeding unless authorized to do so by law or court order;

Civility at the Commission



“Persuade your neighbors
to compromise
whenever you can. As a
peacemaker the lawyer
has superior opportunity
of being a good man.
There will still be
business enough.”

Abraham Lincoln, 1850