

ILLINOIS OFFICIAL REPORTS
Appellate Court

Curtis v. Illinois Workers' Compensation Comm'n, 2013 IL App (1st) 120976WC

Appellate Court Caption	TONY L. CURTIS, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION <i>et al.</i> (The Village of Lansing, Appellee).
District & No.	First District, Workers' Compensation Commission Division Docket No. 1-12-0976WC
Filed	March 11, 2013
Rehearing denied	April 18, 2013
Held <i>(Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.)</i>	The denial of claimant's request pursuant to section 8(a) of the Workers' Compensation Act for additional temporary total disability benefits in connection with the "destabilization" of his injury was upheld on the ground section 8(a) applied only to medical expenses, not temporary total disability benefits.
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 11-L-50114; the Hon. Daniel T. Gillespie, Judge, presiding.
Judgment	Affirmed.

Counsel on Appeal Amylee Hogan Simonovich, of James M. Ridge & Associates, P.C., of Chicago, for appellant.

Gregory E. Ahern, of Scopelitis, Garvin, Light, Hanson & Feary, of Chicago, for appellees.

Panel JUSTICE HUDSON delivered the judgment of the court, with opinion. Presiding Justice Holdridge and Justices Hoffman, Harris, and Stewart concurred in the judgment and opinion.

OPINION

¶ 1 Claimant, Tony L. Curtis, appeals from the judgment of the circuit court of Cook County confirming a decision of the Illinois Workers' Compensation Commission (Commission). The Commission denied claimant's request under section 8(a) of the Workers' Compensation Act (Act) (820 ILCS 305/8(a) (West 2010)) for additional temporary total disability (TTD) benefits related to the "destabilization" of his work-related injury. We affirm.

¶ 2 I. BACKGROUND

¶ 3 The facts underlying this appeal are undisputed. Claimant is employed by respondent, the Village of Lansing, as a police officer/paramedic. On February 4, 2002, claimant filed an application for adjustment of claim, alleging that he sustained an accidental injury to his right hand on September 1, 2000, when he tripped and fell while chasing a suspect. The matter proceeded to arbitration pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2000)). The arbitrator concluded that claimant sustained a compensable accident. As such, he awarded claimant TTD benefits of \$634.13 per week for a period of 55 weeks (see 820 ILCS 305/8(b) (West 2000)) and medical expenses in the amount of \$14,383.92 (see 820 ILCS 305/8(a) (West 2000)), subject to any credit pursuant to section 8(j) of the Act (820 ILCS 305/8(j) (West 2000)). The Commission affirmed and adopted the arbitrator's decision and remanded the case to the arbitrator for a determination of a further amount of TTD compensation or compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). No appeals were taken from the decision of the Commission.

¶ 4 Upon remand, an arbitration hearing was held. In a decision dated January 25, 2005, the arbitrator noted that respondent agreed that there were outstanding medical expenses totaling \$8,349.04. As such, he ordered respondent to pay this amount pursuant to section 8(a) of the Act (820 ILCS 305/8(a) (West 2000)), subject to any credit due under section 8(j). In addition, the arbitrator awarded claimant \$516.15 per week for 76 weeks as permanent partial disability (PPD) benefits, representing 40% loss of use of the right hand (see 820 ILCS

305/8(e)(9) (West 2000)). Neither party filed for review before the Commission.

¶ 5 On January 21, 2010, claimant filed a “Petition for Hearing Pursuant to Section 8(a).” In his petition, claimant alleged that as a result of the prior proceedings before the Commission, he was entitled to “open medical rights.” Claimant asserted that pursuant to these rights, he underwent a causally connected surgery on October 5, 2009, after which he was authorized to remain off work by his treating physician. Claimant acknowledged that respondent paid for the cost of this medical treatment. However, he complained that respondent refused to pay TTD benefits for the period of temporary disability that resulted from the October 2009 surgery. In conjunction with his section 8(a) petition, claimant filed a petition for the assessment of penalties pursuant to sections 19(k) and 19(l) of the Act (820 ILCS 305/19(k), (l) (West 2010)) and attorney fees pursuant to section 16 of the Act (820 ILCS 305/16 (West 2010)) based on respondent’s failure to pay TTD benefits.

¶ 6 A hearing on claimant’s petitions was held before Commissioner Sherman on February 11, 2010. At the hearing, claimant urged the Commission to award him TTD benefits for the period from October 5, 2009, through February 8, 2010, due to lost time from work resulting from the October 5, 2009, surgery. Respondent denied liability for additional TTD, asserting that any request for such benefits must be sought under section 19(h) of the Act (820 ILCS 305/19(h) (West 2010)). Respondent contended, however, that the 30-month statutory time limit in which to seek benefits under section 19(h) had long ago expired. Respondent acknowledged that medical rights were left open pursuant to section 8(a) of the Act (820 ILCS 305/8(a) (West 2010)), but maintained that there is no right to TTD under that provision.

¶ 7 The Commission denied claimant’s petition for additional TTD benefits as well as his request for penalties and attorney fees, explaining, in pertinent part, as follows:

“All the cases cited by [claimant’s] attorney *** involve § 19(h) petitions. Here, no § 19(h) petition was filed, presumably because the 30 month period from the last Decision dated January 25, 2005 had expired. In essence, [claimant] is requesting TTD and penalties and attorneys’ fees on claimed unpaid TTD under § 8(a) of the Act. Section 8(a) deals with medical, not TTD. Maintenance under a vocational rehabilitation situation is provided under § 8(a), but that is not the same as TTD, although the amount of the benefit rate for TTD and maintenance is the same. There is no provision in § 8(a) that provides [for] the relief sought by [claimant].”

On judicial review, the circuit court of Cook County confirmed the decision of the Commission. Thereafter, claimant filed a timely appeal.

¶ 8

II. ANALYSIS

¶ 9

On appeal, claimant argues that the Commission erred in denying his request for additional TTD benefits for the interval of temporary disability that followed his causally-connected surgery. According to claimant, section 19(h) of the Act (820 ILCS 305/19(h) (West 2010)) does not apply to TTD benefits. He maintains that section 8 of the Act (820 ILCS 305/8 (West 2010)) authorizes the payment of additional TTD benefits for the “destabilization” of a work-related injury beyond the 30-month statutory time limit set forth

in section 19(h) where medical rights remain open.

¶ 10 We begin our analysis with a review of section 19(h). Section 19(h) of the Act allows either the employee or the employer to petition the Commission to reopen an installment award for a limited period of time. *Cassens Transport Co. v. Illinois Industrial Comm'n*, 218 Ill. 2d 519, 527 (2006). Section 19(h) provides in relevant part:

“[A]s to accidents occurring subsequent to July 1, 1955, which are covered by any agreement or award under this Act providing for compensation in installments made as a result of such accident, such agreement or award may at any time within 30 months, or 60 months in the case of an award under Section 8(d)1 [820 ILCS 305/8(d)(1) (West 2010)], after such agreement or award be reviewed by the Commission at the request of either the employer or the employee on the ground that the disability of the employee has subsequently recurred, increased, diminished, or ended.

On such review, compensation payments may be re-established, increased, diminished, or ended.” 820 ILCS 305/19(h) (West 2010).

The purpose of section 19(h) is to set a period of time in which the Commission may consider whether an injury has recurred, increased, decreased, or ended. *Hardin Sign Co. v. Industrial Comm'n*, 154 Ill. App. 3d 386, 393 (1987). The time limit set forth in section 19(h) is jurisdictional. *Eschbaugh v. Industrial Comm'n*, 286 Ill. App. 3d 963, 967 (1996). The limitations period begins to run from the date of the Commission's decision. *Cuneo Press, Inc. v. Industrial Comm'n*, 51 Ill. 2d 548, 549 (1972); *City of Chicago v. Industrial Comm'n*, 363 Ill. 298, 301-02 (1936). However, when no review of the arbitrator's decision is sought, the decision of the arbitrator becomes the decision of the Commission for purposes of calculating the limitations period in section 19(h). *Greenway v. Industrial Comm'n*, 73 Ill. 2d 273, 275-76 (1978); *City of Chicago*, 363 Ill. at 301; *Behe v. Industrial Comm'n*, 365 Ill. App. 3d 463, 466 (2006).

¶ 11 In light of the foregoing, we find that claimant's petition is untimely under section 19(h). With an exception not relevant here, section 19(h) clearly provides that either party may petition the Commission to reopen an agreement or award under the Act for compensation paid in installments for a period of only 30 months after the date of the Commission's decision. In this case, claimant sustained an industrial accident occurring subsequent to July 1, 1955. Pursuant to the Act, claimant filed an application for adjustment of claim arising from the accident and was awarded compensation in installments, *i.e.*, TTD and PPD benefits. The decision on remand was issued by the arbitrator on January 25, 2005, and neither party sought review before the Commission. Therefore, pursuant to section 19(h), claimant had 30 months from January 25, 2005, to request the Commission to reopen the installment award. Claimant did not file the petition at issue until January 21, 2010, almost 60 months after the arbitrator filed his decision. As such, we find that claimant's request for additional TTD benefits was untimely and the Commission did not err in denying claimant's petition.

¶ 12 Despite the foregoing, claimant insists that section 19(h) “is silent on temporary total disability benefits.” Specifically, he contends that the term “disability” as used in section 19(h) was intended to refer only to permanency.

¶ 13 To address claimant’s argument, we must engage in statutory construction. The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Cassens Transport Co.*, 218 Ill. 2d at 524. The best indicator of the legislature’s intent is the language of the statute itself, which must be given its plain and ordinary meaning. *Will County Forest Preserve District v. Illinois Workers’ Compensation Comm’n*, 2012 IL App (3d) 110077WC, ¶ 18. Moreover, “[w]e must construe the statute so that each word, clause, and sentence is given a reasonable meaning and not rendered superfluous, avoiding an interpretation that would render any portion of the statute meaningless or void.” *Cassens Transport Co.*, 218 Ill. 2d at 524. We review issues of statutory construction *de novo*. *Cassens Transport Co.*, 218 Ill. 2d at 524.

¶ 14 In support of his contention that the term “disability” as used in section 19(h) was intended to refer only to permanency, claimant relies principally upon a decision of the Commission, *Ickes v. H&F Constructions*, 96 WC 35577 (July 30, 2004). However, as this court has repeatedly stated, decisions of the Commission are not precedential and thus should not be cited. *Global Products v. Illinois Workers’ Compensation Comm’n*, 392 Ill. App. 3d 408, 413 (2009); *S&H Floor Covering, Inc. v. Illinois Workers’ Compensation Comm’n*, 373 Ill. App. 3d 259, 266 (2007); *Young v. Industrial Comm’n*, 248 Ill. App. 3d 876, 881 (1993). In any event, we do not find claimant’s position persuasive. Claimant reasons that the word “disability” was intended to refer only to permanency is indicated by the legislature’s use of the modifiers “increased” and “diminished” in section 19(h). Claimant suggests that an employee’s temporary disability cannot “increase” or “diminish,” it can only begin and end. Thus, he concludes, it would be illogical to find that section 19(h) applies to TTD benefits. However, this argument ignores the plain language of section 19(h).

¶ 15 Notably, the legislature also used the modifier “recurred” when referring to the term “disability” as referenced in section 19(h). While permanent injuries can “increase” or “diminish,” only temporary disabilities can “recur.” Similarly, the statute allows the Commission to “re-establish[]” compensation payments. Since only temporary disabilities can recur, it necessarily follows that only TTD payments may be “re-established.” Thus, when section 19(h) is read as a whole, it is clear that the legislature did not intend to limit the scope of section 19(h) only to permanency benefits. Rather, the statute was meant to cover TTD benefits as well. Accordingly, claimant’s position to the contrary finds no support in the statute, and we reject it.

¶ 16 Indeed, we note that this holding comports with other decisions from Illinois courts which suggest that TTD benefits are available under section 19(h). See, e.g., *United States Steel Corp. v. Industrial Comm’n*, 35 Ill. 2d 506, 507-11 (1966) (affirming award of additional benefits, including TTD, pursuant to a section 19(h) petition); *Poore v. Industrial Comm’n*, 298 Ill. App. 3d 719, 724 (1998) (concluding that to be entitled to additional TTD under section 19(h), a claimant must establish that his disability destabilized and required more treatment or recovery time); *World Color Press v. Industrial Comm’n*, 249 Ill. App. 3d 105, 109 (1993) (holding that TTD benefits are available pursuant to section 19(h), on the basis that a period of TTD can be the result of a period in which a claimant’s partial disability, which was once thought to be permanent, becomes unstable or degenerates and requires additional treatment to restabilize).

¶ 17 Alternatively, claimant argues that the Act does not place a time limit on the availability of TTD benefits. In support of this contention, claimant asserts that section 8 of the Act (820 ILCS 305/8 (West 2010)) does not contain any language differentiating the availability of “benefits pre and post a finding of permanent disability.” He also emphasizes that section 8 was amended in 1975 to abolish a 64-week time limit on TTD benefits that had previously been in effect. See Pub. Act 79-79 (eff. July 1, 1975) (amending Ill. Rev. Stat. 1973, ch. 48, ¶ 138.8). In addition, claimant notes that the Act was amended on various other occasions, but the legislature never limited the benefits available under section 8. We find claimant’s reliance on section 8 and its amendatory history unpersuasive.

¶ 18 Claimant filed his request for additional TTD benefits pursuant to section 8(a) of the Act. As the Commission correctly noted, however, section 8(a) governs medical expenses, not TTD benefits, and there is no provision in section 8(a) that provides for the relief claimant requests. At the hearing before Commissioner Sherman, claimant’s attorney requested that the petition be amended on its face to reflect that it included a request for TTD benefits pursuant to section 8(b) of the Act (820 ILCS 305/8(b) (West 2010)), which governs TTD benefits. However, even if we were to consider claimant’s request as one made pursuant to section 8(b), we would not overturn the Commission’s decision. While section 8 may not contain a time limit for petitioning for additional benefits, the plain language of section 19(h) unambiguously does. Were we to adopt claimant’s position, we would essentially render meaningless the 30-month limitations period in section 19(h) as it relates to TTD benefits. This we cannot do. See *Cassens Transport Co.*, 218 Ill. 2d at 524 (noting that in interpreting a statute, a court must avoid an interpretation that would render any portion of the statute meaningless or void).

¶ 19 Finally, claimant urges this court to interpret the Act as broadly as possible, given that it is a remedial statute intended to provide financial protection for injured workers. See *Flynn v. Industrial Comm’n*, 211 Ill. 2d 546, 556 (2004). According to claimant, to deny TTD benefits where a period of incapacity occurs would frustrate the purpose of the Act. However, as noted above, adopting claimant’s position would require us to read section 19(h) out of the Act. While the result we reach may appear harsh to claimant, we believe that it is a concern better addressed to the legislature.

¶ 20 III. CONCLUSION

¶ 21 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County, which confirmed the decision of the Commission.

¶ 22 Affirmed.