2016 IL App (3d) 150557WC-U

FILED: July 5, 2016

NO. 3-15-0557WC

IN THE APPELLATE COURT

OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

CENTRAL GROCERS, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Marque Smart, Appellees).	)))))))))	Appeal from Circuit Court of Will County Nos. 14MR1392 14MR1413 Honorable Roger Rickmon, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hutchinson and Stewart concurred in the judgment.
Justice Hoffman specially concurred.

ORDER

¶ 1 *Held:* (1) The Commission's calculation of claimant's average weekly wage was supported by the evidence.

(2) The Commission's reliance on its calculation of claimant's average weekly wage to determine TTD benefits was supported by the record.

(3) The Commission's award of PPD benefits was appropriate, despite the absence of a PPD impairment report.

(4) Claimant's contention regarding fees and penalties presented no controversy and was moot.

¶ 2 On March 7, 2012, claimant, Marque Smart, filed an application for adjustment of claim pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2006)), seeking benefits from the employer, Central Grocers. He alleged to have suffered a back injury while working on January 11, 2012.

¶ 3 Following a hearing, the arbitrator found that claimant sustained an accident arising out of and in the course of his employment and that claimant's current condition of ill-being in his back was causally related to the accident. In awarding benefits, the arbitrator calculated claimant's average weekly wage at $990. He awarded claimant 3 2/7 weeks' temporary partial disability (TPD) benefits in the amount of $577.50 for the period of January 24, 2012, through February 16, 2012, and 41 2/7 weeks' temporary total disability (TTD) benefits in the amount of $660 per week for the period of February 17, 2012, through December 2, 2012. In addition, the arbitrator found claimant permanently partially disabled and awarded him permanent partial disability (PPD) benefits in the amount of 25% loss to the person as a whole. Last, the arbitrator declined to award penalties and attorney fees.

¶ 4 On review, the Illinois Workers' Compensation Commission (Commission), with one Commissioner dissenting, affirmed and adopted the decision of the arbitrator. On judicial review, the circuit court of Will County confirmed the Commission's decision.

¶ 5 On appeal, the employer argues the Commission erred in (1) calculating claimant's average weekly wage; (2) awarding TTD benefits based on the improperly calculated average weekly wage; and (3) awarding claimant PPD benefits where claimant failed to introduce into evidence a PPD impairment report as described in section 8.1b(a) of the Act (820 ILCS 305/8.1b(a) (West 2012)). In addition, the employer asserts the Commission's denial of penalties and fees was proper. We affirm.

¶ 6 I. BACKGROUND

¶ 7 The following evidence relevant to the disposition of this appeal was elicited at the February 13, 2013, arbitration hearing.

¶ 8 Claimant testified he worked for the employer as an "order selector" in the warehouse, a position that required him to lift 1,800 to 2,300 boxes per day, each ranging from 5 to 100 pounds. On January 11, 2012, his second day back to work after being off for more than one year due to a carpal tunnel injury, claimant was working in the meat department. According to claimant, as he lifted a box weighing between 90 and 95 pounds, he felt a sharp pain in his low back. He "stopped for a minute or two" and then finished his shift. When claimant returned for his next shift that evening, he reported the accident to his supervisor. Claimant stated he filled out an accident report but declined medical attention at that time. He continued to work his normal schedule up to January 18, 2012, at which time he sought treatment at Physician's Immediate Care (Immediate Care) due to increasing pain in his low back. Care providers at Immediate Care diagnosed claimant with a lumbar strain, provided him with a back support, prescribed pain medication, and released him to full-duty work without restrictions effective his next scheduled shift.

¶ 9 At a January 24, 2012, follow-up appointment at Immediate Care, claimant reported he had not been able to finish a full shift at work due to his back pain. Immediate Care ordered claimant to continue wearing the back support and taking pain medication. In addition, Immediate Care noted claimant could continue full-duty work but restricted him to four- to six-hour shifts.

¶ 10 On February 8, 2012, claimant sought treatment for his low back pain with Dr. Kern Singh, an orthopedic spine surgeon, at Midwest Orthopaedics at Rush University. Dr.

Singh diagnosed a lumbar strain and ordered physical therapy. Dr. Singh further restricted claimant to working a four-hour shift.

¶ 11 At a February 20, 2012, follow-up appointment with Dr. Singh, claimant stated the pain in his low back was increasing and had extended down his left lower extremity, into the posterior thigh and calf. At that time, Dr. Singh restricted claimant from work completely and ordered a magnetic resonance imaging (MRI) of his lumbar spine. At a March 7, 2012, follow-up appointment, Dr. Singh reviewed the results of claimant's February 28, 2012, lumbar spine MRI. Dr. Singh noted claimant's MRI revealed a large central disc herniation at L4-L5 causing severe spinal stenosis and a central disc osteophyte at L3-L4 with moderate-to-severe stenosis. Dr. Singh recommended a minimally invasive L3-L5 laminectomy.

¶ 12 On March 12, 2012, claimant saw Dr. Carl Graf, an orthopedic spine surgeon at the Illinois Spine Institute, at the request of the employer. According to a letter authored by Dr. Graf on that date, although claimant informed Dr. Graf of his recent MRI, the most recent medical record Dr. Graf reviewed prior to his independent examination of claimant was the February 8, 2012, record of Dr. Singh. Dr. Graf diagnosed claimant with a lumbar strain and opined that "four weeks of physical therapy as prescribed by Dr. Singh would be considered reasonable and appropriate" but "after that point, [claimant] would be listed at maximum medical improvement." Dr. Graf further opined "there is no reason [claimant] required limited hours since his injury" and that claimant "can return to work in the full duty, unrestricted fashion at this time." Regarding causation, Dr. Graf noted, "I *** find it extremely interesting that [claimant] was off for nearly a year secondary to a carpal tunnel release to return and claim a new work injury on the very same day."

¶ 13 On May 10, 2012, Dr. Singh submitted to an evidence deposition. Dr. Singh

testified he initially diagnosed claimant with a lumbar muscular strain. When physical therapy failed to provide relief, Dr. Singh ordered an MRI. According to Dr. Singh, claimant's MRI revealed "a large disc herniation at L4-5 that was causing severe stenosis at L4-5, and *** a disk osteophyte or a disc and a bone spur at L3-4, and that was causing moderate to severe stenosis." Dr. Singh further testified that in his opinion, claimant required surgical intervention in the form of a minimally invasive laminectomy at L3-4 and L4-5 and an L4-5 diskectomy. According to Dr. Singh, claimant's injury was causally connected to the work accident.

¶ 14 On June 4, 2012, claimant returned to Dr. Singh having obtained authorization for surgery. Surgery was scheduled for the following month. On July 6, 2012, claimant underwent a minimally invasive L3-L5 laminectomy with bilateral facetectomy and foraminotomy and a left-sided L4-L5 microscopic discectomy.

¶ 15 On August 6, 2012, claimant saw Dr. Singh for a follow-up appointment. Dr. Singh continued claimant off work and ordered physical therapy. At a September 10, 2012, follow-up appointment, Dr. Singh continued claimant off work and recommended a functional capacity evaluation and work conditioning.

¶ 16 On September 21, 2012, claimant underwent a functional capacity evaluation at Accelerated Rehabilitation Centers. During the evaluation, claimant demonstrated the ability to perform 91.6% of the physical demands of his job as an order picker and was able to function at the medium-heavy category of work. His job description provided by the employer indicated claimant needed to function at the heavy category of work. It was recommended that claimant participate in a work conditioning program four hours per day for three to four weeks to increase his overall physical capabilities.

¶ 17 At an October 22, 2012, follow-up appointment, Dr. Singh continued claimant

off work and recommended four more weeks of work conditioning.

¶ 18 On November 26, 2012, Dr. Singh noted claimant's report from his last work conditioning appointment on November 21, 2012, placed him at 97.3% of his job demand level. Dr. Singh returned claimant to work at the medium-heavy demand level and placed him at maximum medical improvement (MMI) effective December 3, 2012. According to claimant, the employer was able to accommodate his ability to function at the medium-heavy demand level.

¶ 19 Claimant testified when he returned to work in January 2012, he made $24.95 per hour pursuant to his collective bargaining agreement. Prior to May 1, 2011—the date the agreement provided for a rate increase of 65 cents—claimant made $24.30 per hour. The agreement further provided that full-time employees were guaranteed 40 hours per week. In addition, claimant testified he was subject to mandatory overtime as well. According to claimant, every employee in the same classification received the same wages if they worked the same hours, shift, and type of job.

¶ 20 As of the date of arbitration, claimant stated he continued to experience stiffness in his low back "from time to time." Claimant further testified that he can no longer lift over 50 pounds without pain and cannot play sports or engage in any activity which requires a lot of bending and lifting.

¶ 21 Dominic Rossi testified on claimant's behalf. Like claimant, Rossi was an order selector for the employer and he served as a union steward. Rossi stated that under the collective bargaining agreement, employees who work full time for the employer are guaranteed 40 hours per week and are subject to mandatory overtime. Rossi testified that the agreement provides for wage increases on May 1 of each contract year. According to Rossi, every employee who worked the same position as claimant and who had the same shift and seniority would make the

same wage.

¶ 22 Robert Ryske testified next on behalf of claimant. Ryske was a receiving clerk for the employer and he served as a union steward. Ryske testified the collective bargaining agreement governed employee wages and, pursuant to the agreement, full-time employees are guaranteed 40 hours per week and are subject to mandatory overtime. According to Ryske, any employee in claimant's position, who worked similar hours and had the same seniority, would receive the same wage. Ryske stated that on May 1, 2012, all employees received a wage increase of 65 cents per hour.

¶ 23 Jorge Valladares, a safety supervisor, testified on behalf of the employer. Valladares stated that on January 11, 2012, claimant told him he hurt his back but declined medical treatment. According to Valladares, after declining medical treatment, claimant then told him, " 'I'm not injured.' " Claimant was allowed to go back to work. On cross-examination, Valladares testified claimant properly reported the accident to him.

¶ 24 On May 29, 2013, the arbitrator issued his decision in the matter. He concluded that claimant sustained an accident arising out of and in the course of his employment and that claimant's current condition of ill-being in his back was causally related to the accident. The arbitrator calculated claimant's average weekly wage at $990 and awarded claimant 3 2/7 weeks' TPD benefits totaling $577.50 for the period of January 24, 2012, through February 16, 2012, and 41 2/7 weeks' TTD benefits in the amount of $660 per week for the period of February 17, 2012, through December 2, 2012. In addition, the arbitrator found claimant permanently disabled and awarded him PPD benefits in the amount of 25% loss to the person as a whole. Last, the arbitrator declined to award penalties and attorney fees, finding "[a] legitimate dispute existed as to whether [claimant] sustained an accident on the first day he returned to work after

being off for a previous work accident."

¶ 25 On May 20, 2014, the Commission, with one commissioner dissenting, affirmed and adopted the decision of the arbitrator. The dissenting commissioner would have reversed the arbitrator's decision regarding PPD.

¶ 26 On June 10, 2015, the circuit court of Will County confirmed the Commission's decision.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 A. Claimant's Average Weekly Wage

¶ 30 On appeal, the employer first challenges the Commission's calculation of claimant's average weekly wage. Specifically, it asserts error with the Commission's reliance on the wage of a "like employee" under section 10 of the Act (820 ILCS 305/10 (West 2012)) and its use of a 40-hour work week in calculating claimant's average weekly wage.

¶ 31 Initially, we note the parties disagree regarding the appropriate standard of review. The employer asserts the issue involves a matter of statutory interpretation and is reviewed *de novo*. See *City of Chicago v. Workers' Compensation Comm'n*, 387 Ill. App. 3d 276, 278, 899 N.E.2d 1247, 1248 (2008) (matters involving a question of statutory construction are reviewed *de novo*). On the other hand, claimant contends a wage determination is a factual finding subject to the manifest-weight-of-the-evidence standard. See *Sylvester v. Industrial Comm'n*, 197 Ill. 2d 225, 231-32, 756 N.E.2d 822, 827 (2001) ("Normally, a wage determination by the Commission is a factual finding, and thus will be upheld on appeal unless against the manifest weight of the evidence.").

¶ 32 The initial issue presented involves a matter of statutory construction which we

review *de novo*. *City of Chicago*, 387 Ill. App. 3d at 278, 899 N.E.2d at 1248. "In interpreting the Act, our primary goal is to ascertain and give effect to the intent of the legislature." *Cassens Transport Co. v. Industrial Comm'n*, 218 Ill. 2d 519, 524, 844 N.E.2d 414, 418 (2006). "The language used in the statute is normally the best indicator of what the legislature intended" and "[e]ach undefined word in the statute must be given its ordinary and popularly understood meaning." *Gruszeczka v. Illinois Worker's Compensation Comm'n*, 2103 IL 114212, ¶ 12, 992 N.E.2d 1234. "Words and phrases must not be viewed in isolation but must be considered in light of other relevant provisions of the statute." *Id*. "[W]here the statutory language is clear, it will be given effect without resort to other aids for construction." *Id*.

¶ 33 Section 10 of the Act provides four methods for computing compensation. Specifically, the Act states as follows:

> "The compensation shall be computed on the basis of the 'Average weekly wage' which shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ending with the last day of the employee's last full pay period immediately preceding the date of injury, illness or disablement excluding overtime, and bonus divided by 52; but if the injured employee lost 5 or more calendar days during such period, whether or not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than 52 weeks, the

> method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee actually earned wages shall be followed. Where by reason of the shortness of the time during which the employee has been in the employment of his employer or of the casual nature or terms of the employment, it is impractical to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury, illness or disablement was being or would have been earned by a person in the same grade employed at the same work for each of such 52 weeks for the same number of hours per week by the same employer." 820 ILCS 305/10 (West 2012).

¶ 34 In this case, the Commission calculated claimant's average weekly wage using the fourth method described in the Act because claimant "did not accrue any wages for the 52[-]week period immediately preceding [his low-back] injury." The employer maintains, however, that the Commission should have calculated claimant's average weekly wage using the first method described in the Act. According to the employer, the Commission should have considered claimant's actual earnings in the last 52 weeks claimant *actually* worked, *i.e.*, the 52-week period preceding claimant's bilateral carpal tunnel injury—an injury that kept claimant off work for more than one year. The record shows claimant's bilateral carpal tunnel injury occurred on December 17, 2010, and the average weekly wage agreed upon by the parties in claimant's carpal tunnel case was $860.09. To the contrary, claimant asserts the Commission's reliance on

the wage of a similar employee during the 52 weeks preceding his low-back injury was proper because the wages he earned in 2010 are beyond the 52-week period described in the Act.

¶ 35 The plain language of the statute indicates that the first method for calculating compensation requires the Commission to look at the actual earnings of the employee in the 52 weeks "*immediately preceding the date of the injury*, illness, or disablement." (Emphasis added.) Our supreme court recognized the plain language of the statute in *Sylvester*, 197 Ill. 2d at 231, 756 N.E.2d at 826, noting that "average weekly wage is 'actual earnings' *during the 52 week period preceding the date of injury*, illness or disablement, divided by 52." (Emphasis added.) Accordingly, we reject the employer's contention that claimant's average weekly wage should be calculated using the wage he made during the 52 weeks preceding his carpal tunnel injury. In this case, the Commission's utilization of the fourth method, *i.e.*, using the wage of a like employee to determine claimant's average weekly wage, was appropriate as claimant had only worked one day in the 52 weeks immediately preceding his low back injury.

¶ 36 The employer next argues the Commission erred in calculating claimant's average weekly wage based on a 40-hour work week. While the employer acknowledges the 40-hour work week guarantee contained in the collective bargaining agreement, it maintains "[t]he wage statement shows in the year preceding [claimant's] injury of 2010, [he] did not work 40 hours [per week] regularly" and "averaged 31.02 hours a week during the last 52 weeks that he [actually] worked." Thus, the employer argues claimant's average weekly wage should have been calculated by multiplying his hourly rate by 31.02 hours.

¶ 37 Since the resolution of this issue involves a factual determination, we review it under the manifest-weight-of-the-evidence standard. *Sylvester*, 197 Ill. 2d at 231-32, 756 N.E.2d at 827. A decision is against the manifest weight of the evidence only where the opposite

conclusion is clearly apparent. *St. Elizabeth's Hospital v. Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 887, 864 N.E.2d 266, 272 (2007).

¶ 38 Here, the record contains sufficient evidence to support the Commission's use of a 40-hour work week in calculating claimant's average weekly wage. As noted, the collective bargaining agreement guarantees full-time employees a minimum of 40 hours per week. The 40-hour work week guarantee was supported by the testimony of Rossi, Ryske, and claimant. The only evidence submitted by the employer to dispute a 40-hour work week was claimant's wage statements from 2010. However, claimant's 2010 wage statements are beyond the 52-week period that is to be considered. In addition, we note although the employer divided the hours claimant worked in 2010 by 52 to come up with its 31.02 hour per week average, the 2010 wage statements, upon with the employer relies, indicate claimant did not work for a six-week period in August and September 2010, with the exception of 1.75 hours in late August. Further, claimant only worked eight hours in the one-week pay period ending December 25, 2010—the period following his carpal tunnel injury. Thus, assuming *arguendo* we should look to claimant's 2010 wage statements, the employer's calculations as to his average weekly hours are erroneous. Based on the evidence, the Commission's decision to rely on the 40-hour work week guarantee in the collective bargaining agreement rather than claimant's 2010 wage statements was not against the manifest weight of the evidence.

¶ 39 B. Propriety of Claimant's TTD Award

¶ 40 Next, the employer challenges the Commission's TTD award of $660 per week. The employer's argument is based entirely on what it asserts was the Commission's improper calculation of claimant's average weekly wage. Because we have already rejected the employer's claim regarding claimant's average weekly wage, we likewise reject its contention that the

Commission's TTD award was error because it was based on an improper average weekly wage. The Commission's award of TTD benefits was not against the manifest weight of the evidence.

¶ 41 C. PPD Benefits

¶ 42 The employer also challenges the Commission's award of PPD benefits. Specifically, it argues the Commission's award of PPD benefits should be reversed because claimant did not submit an impairment report as required by section 8.1b of the Act (820 ILCS 305/8.1b (West 2012)).

¶ 43 As this issue presents a matter of statutory construction, our review is *de novo*. *Cassens*, 218 Ill. 2d at 524, 844 N.E.2d at 418.

¶ 44 Section 8.1b of the Act provides as follows:

> "Determination of permanent partial disability. For accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:
>
> (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment"

> shall be used by the physician in determining the level of impairment.
>
> (b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order." 820 ILCS 305/8.1b (West 2012).

¶ 45 The employer argues the impairment report described in section 8.1b(a) of the Act "is a fundamental piece of evidence that must be used as the basis for a [PPD] award," and without it, the Commission cannot consider the additional factors delineated in section 8.1b(b). In addressing this issue, the Commission, with one commissioner dissenting, took an opposite position, finding that a PPD impairment report was but one factor to consider in awarding PPD benefits. For support, the Commission noted section 8.1b(b) of the Act provided that "[n]o single enumerated factor shall be the sole determinant of disability" and concluded the converse must also be true, *i.e.*, "the absence of one of the enumerated factors cannot be determinant of the [PPD] award." In addition, the Commission cited a November 2011 memorandum from the Chairman of the Commission to the arbitrators, stating, in relevant part, "[i]f an impairment

rating is not entered into evidence, the [a]rbitrator is not precluded from entering a finding of disability." In the dissenting commissioner's opinion, however, the absence of an impairment reports precluded the arbitrator from awarding PPD benefits.

¶ 46 This court recently considered this very issue in *Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150311WC, an opinion issued after the parties' briefs were filed in this case. In *Corn Belt*, the Commission awarded the claimant PPD benefits despite neither party having submitted a PPD impairment report, finding that a PPD impairment report was not a prerequisite to awarding PPD benefits but was merely a factor to consider in addition to other criteria. *Id*. ¶ 43. On review, the employer argued that the Commission's PPD award must be set aside due to claimant's failure to comply with section 8.1b's PPD-impairment-report requirement. *Id*. We disagreed, concluding the Commission may award PPD benefits in the absence of a PPD impairment report. In so finding, we noted that section 8.1b(a) is addressed only to physicians and merely sets forth what a physician should include in a written impairment report, but it contains no language to suggest a PPD impairment report *must* be submitted as a prerequisite to an award of PPD benefits. *Id*. ¶ 45. We further noted section 8.1b(b) of the Act, addressed only to the Commission, simply lists the five factors that the Commission should consider in determining the level of PPD benefits for which a claimant is entitled, not one factor of which should "be the sole determinant of disability." *Id*. ¶ 46 (quoting 820 ILCS 305/8.1b(b) (West 2012)). We concluded

> "the plain language of section 8.1b places no explicit requirement on either party. Nor does it make the submission of a PPD impairment report a prerequisite to an award of PPD benefits by the Commission. Rather, the section speaks in terms of what

> factors the Commission is required to consider when determining the appropriate level of PPD." *Id.* ¶ 47.

We further found our holding in *Corn Belt* consistent with another recent decision of ours in *Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n*, 2015 IL App (5th) 140445, 43 N.E.3d 556—a case cited by the employer here. In *Continental Tire*, we held section 8.1b requires that the Commission consider a PPD impairment report regardless of which party submitted the report.

¶ 47 In short, this court has concluded that while a PPD impairment report need not be submitted as a prerequisite to a PPD award, when a PPD impairment report is submitted by either party, it must be considered by the Commission in addition to the other factors set forth in section 8.1b of the Act. *Corn Belt*, 2016 IL App (3d) 150311WC, ¶ 49. Thus, in this case, the absence of a PPD impairment report did not preclude the Commission from awarding PPD benefits where it had before it evidence related to the four other factors to consider. Accordingly, we reject the employer's contention that PPD benefits were not appropriate based solely on the lack of a PPD impairment report.

¶ 48 D. Fees and Penalties

¶ 49 Finally, the employer asserts the Commission's refusal to award penalties and fees was correct. Because the employer agrees with the Commission's determination, these issues present no real controversy and are moot. *Compass Group v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 121283WC, ¶ 25, 28 N.E.3d 181. Although claimant argues in his brief the Commission's denial of penalties and fees was error, he did not file a cross-appeal and, therefore, the issue is not properly before this court. *City of Chicago v. Industrial Comm'n*, 59 Ill. 2d 284, 290, 319 N.E.2d 749, 753 (1974).

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, we affirm the circuit court's judgment confirming the Commission's decision.

¶ 52 Judgment affirmed.

¶ 53 JUSTICE HOFFMAN, specially concurring:

¶ 54 In its opinion in *Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n,* 2016 IL App (3d) 150311 WC, this court had occasion to interpret section 8.1 b of the Workers Compensation Act (Act) (820 ILCS 305/8.lb (West 2012)). In that case, the majority held that section 8.1 b does not require that a permanent partial disability impairment report be filed before the Illinois Workers' Compensation Commission (Commission) may award permanent partial disability (PPD) benefits to an injured employee. In a separate opinion in *Corn Belt Energy Corp.,* I disagreed with the majority on this issue, believing then, as I do now, that the plain and unambiguous language of section 8.1 b of the Act mandates the filing of a permanent partial disability impairment report as a prerequisite to the Commission's award of PPD benefits, and that, in the absence of such a report having been submitted to the Commission for its consideration, no award of PPD benefits may be made. The majority of this Division did not agree with my reasoning, and as a consequence, the majority holding in *Corn Belt Energy Corp.* is now the interpretation of section 8.1 b and will remain so until reversed by the supreme court, overruled by a majority of this court in some later case, or the statute is amended by the legislature. Having noted my disagreement with the majority's interpretation of section 8.1 b in the separate opinion which I wrote in *Corn Belt Energy Corp.,* I must now accept the holding of the majority on the issue and apply the law as pronounced. I concur.