

The City of Chicago v. The Illinois Workers' Compensation Commission, 2001 Ill. App. LEXIS 327, 947 N.E.2d 863 (1st Dist. 2011)

By: Sean M. Abernathy

The Petitioner, a laborer in the sewer department, was diagnosed with acute sciatica and a herniated disk at L4-L5 after pushing a wheelbarrow full of bricks. It was not disputed that the accident arose out of and in the course of Petitioner's employment. Petitioner underwent a microdiscectomy at L4-L5 and a subsequent microdiscectomy at L3-L4. He was then released to medium duty and full duty work following a course of work hardening. After returning to work, a trench Petitioner was working in partially collapsed on him. Petitioner did not immediately seek medical care, but sought attention for pain in his lower back 23 days later. Petitioner received a course of epidural steroid injections and eventually returned to medium duty work following some 11 months of treatment.

At trial, the Arbitrator granted permanency awards under both 8(d)(1) and 8(d)(2) for Petitioner's injuries, citing *Consolidated Freightways v. Industrial Commission*, 604 N.E.2d 962 (1992) for support. The Arbitrator noted that Petitioner's injuries were different in nature because Petitioner had been able to return to work after the first injury, but was precluded from returning to work following the second.

On appeal, the Commission affirmed and adopted the Arbitrator's decision. The Cook County circuit court confirmed the Commission decision. The City of Chicago then appealed to the Appellate Court. At issue was whether the Commission erred in awarding PPD benefits under both 8(d)(1) and 8(d)(2) for the same condition of ill being. Also argued was whether the Commission erred in awarding medical expenses based on the proofs presented and whether the Commission erred in awarding Petitioner penalties and attorney fees for unreasonable delay in payment of benefits.

As to whether the Commission erred in awarding PPD benefits under 8(d)(1) and 8(d)(2), the court found that Petitioner was not entitled to an award under both sections for the same condition of ill being. The court held:

Where a claimant has sustained two separate and distinct injuries to the same body part and the claims are consolidated for hearing and decision, unless there is some evidence presented at the consolidated hearing that would permit the Commission to delineate and apportion the nature and extent of permanency attributable to each accident, it is proper for the Commission to consider all the evidence presented to determine the nature and extent of the claimant's permanent disability as of the date of the hearing.

The court found that Petitioner presented evidence of one condition of ill being, which could only be compensated either as a percentage of the person as a whole or as a wage differential. Thus, the court vacated the award under 8(d)(2). The court also affirmed the award of penalties and attorney fees, and reversed the award of medical expenses. The issue of medical expenses was remanded to the Commission for further proceedings.

Robert Baumgardner v. Illinois Workers' Compensation Commission, 2011 Ill. App. LEXIS 328, 947 N.E.2d 856 (1st Dist. 2011)

By: Sean M. Abernathy

Petitioner, a laborer for Cook County, was injured when he slipped on an incline while pulling branches. Petitioner alleged feeling his right knee “pop” and experiencing immediate pain. Petitioner underwent surgery for a torn right lateral meniscus and a course of physical therapy. He returned to work without restrictions shortly thereafter. Approximately 2-months after returning to work, Petitioner injured his knee while walking home. Three weeks following a subsequent return to work, while wearing prescribed knee brace, Petitioner’s knee again “popped” while he was cleaning trash from a ditch. Petitioner was eventually released to return full duty, but was restricted from working on inclines or in ditches or trenches. The treating physician opined that Petitioner would likely develop steadily worsening osteoarthritis, with the possibility of necessary surgery. Despite the restrictions, Petitioner resumed his previous duties and subsequently twisted his knee after slipping down an incline. Following an eventual return to work, Petitioner fell again, injuring his right foot. Petitioner was then reassigned to a light duty position, which required payment of an 8(d)(1) wage differential. Despite this, Petitioner continued to experience knee pain and swelling. Petitioner underwent a total right knee replacement, which necessitated the use of a cane and a prescription for pain medication.

The parties stipulated that Petitioner sustained three work related accidents, that Petitioner’s condition of ill-being was causally connected to two of the accidents and that the three claims were to be consolidated. In their proposed findings, the County suggested an award of 35% loss of use of the leg or 70 weeks of PPD. Petitioner filed a motion to adopt the proposed PPD award. Disregarding these recommendations, the arbitrator found that Petitioner had suffered accidents on the three alleged dates and awarded Petitioner an 8(d)(1) wage differential for the duration of his disability as well as back and prospective TTD benefits.

Both parties sought review of the decision. The Commission, in a unanimous decision, affirmed the TTD award, corrected a clerical error, and affirmed the 8(d)(1) award. The Commission found that the question of nature and extent of Petitioner’s permanent disability was to be determined on his condition at the time of Arbitration

and not on conditions existing some 10 years earlier. The Commission reasoned that Petitioner was not entitled to a separate permanency award because he had sustained a subsequent, aggravating and intervening injury to the same body part. Petitioner sought review in the Circuit Court of Cook County, which affirmed the Commission decision. An appeal to the Appellate Court followed.

At issue was whether the Commission erred in finding that Petitioner was not entitled to a scheduled PPD award as well as the 8(d)(1) award. Petitioner contended the Act did not preclude a PPD award where a wage-differential had been granted based on a second, aggravating injury to the same body part prior to arbitration. The court held that the Act clearly contemplated a single determination as to the permanency of a claimant's condition as a result of an employment accident. They noted that Section 8(d)(1) specifically provided that the Commission may award a wage differential except in cases compensated under a specific scheduled loss. They also noted that Section 8(e) of the Act provided that a claimant may be granted a scheduled award, "but shall not receive any compensation under any other provision of this Act." They noted further that the Supreme Court has held that compensation may be proper under either 8(d)(1) or 8(e), but not both at once.

Continuing their holding, the court reasoned that where a claimant has sustained two separate and distinct injuries to the same body part and the claims are consolidated, it is proper for the Commission to consider all of the evidence presented to determine permanency as of the date of the hearing. Thus, applying that reasoning to the facts of the case, the court found that the Commission's denial of a scheduled PPD award was not against the manifest weight of the evidence and thus affirmed the Circuit Court's confirmation of the Commission decision.