



Workers' Compensation Report

Bradford J. Peterson

Heyl, Royster, Voelker & Allen, P.C., Urbana

Estate Entitled To Recover Accrued PPD Benefits Regardless of The Existence of Dependents

In *Bell v. Illinois Workers' Compensation Comm'n*, 2015 IL App (4th) 140028WC, Mary Nash sustained accidental injuries arising out of her employment on January 30, 2008. 2015 IL App (4th) 140028WC, ¶ 4. She fractured her femur and undertook open reduction and internal fixation. *Id.* Although the femur fracture healed without complication, she remained too weak to walk without assistance. *Id.* ¶ 5. A suspected rheumatological or neurological condition, which pre-existed the accident, contributed to her inability to ambulate without use of a cane. She was evaluated by neurologist Conrad Wiehl who suspected a form of muscle dystrophy and concluded that she reached MMI for her work related injury as of August 27, 2008. *Id.* ¶ 8. Dr. Russell Cantrell performed an independent medical evaluation and likewise concluded that Nash had reached maximum medical improvement. *Id.* ¶ 6. Prior to arbitration on August 19, 2010, Nash died of causes unrelated to her work related injuries. *Id.* ¶ 10. An Amended Application for Adjustment of Claim was filed by Nash's sister as administrator of her estate. *Id.* ¶ 10. Nash left no surviving spouse or dependents. *Id.* ¶ 14. Nash's sister, Janet Bell, sought underpaid TTD benefit, as well as medical expenses and PPD benefits. *Id.* ¶¶12-13.

At arbitration, testimony was introduced regarding the affects of the injury on the petitioner's ability to ambulate. Upon hearing, the arbitrator awarded temporary total disability benefits, as well as medical expenses. *Id.* ¶ 1. The arbitrator further concluded that although the petitioner suffered from permanent partial disability secondary to her work injury, those benefits that had accrued prior to her death had abated with her death and therefore no such benefits were awarded. *Id.* ¶ 1. The Workers' Compensation Commission unanimously affirmed and the commission's ruling was confirmed by the Cole County Circuit Court. *Id.* ¶ 2.

Relying on Sections 8(e)(19) and 8(h) the Commission found that the estate was not entitled to PPD benefits even where a portion of those benefits accrued prior to death.

The appellate court disagreed. Section 8(e)(19) provides:

In a case of specific loss and the subsequent death of such injured employee from other causes than such injury leaving a widow, widower, or dependents surviving before payment or payment in full for such injury, then the amount due for such injury is payable to the widow or widower and, if there be no widow or widower, then to such dependents, in the proportion which such dependency bears to total dependency.

820 ILCS 305/8(e)(19).

In addition, Section 8(h) provides:

In case death occurs from any cause before the total compensation to which the employee would have been entitled has been paid, then in case the employee leaves any widow, widower, child, parent (or any grandchild,



grandparent or other lineal heir or any collateral heir dependent at the time of the accident upon the earnings of the employee to the extent of 50% or more of total dependency) such compensation shall be paid to the beneficiaries of the deceased employee and distributed as provided in paragraph (g) of Section 7.

820 ILCS 305/8(h).

The appellate court concluded that Section 8(e)(19) and 8(h) merely established to whom benefits will be paid if the employee dies with a spouse or dependents before they have been fully compensated for their work related injury. *Id.* ¶ 19. The court concluded that the provisions did not limit the ability of a deceased employee's estate to collect accrued, unpaid benefits that were due and owing at the time of the employee's passing. *Id.* ¶ 19.

The appellate court relied in part upon the Illinois Supreme Court's holding in *Republic Steel Corp. v. Industrial Comm'n*, 26 Ill. 2d 32 (1962). There the supreme court ruled that although an employee's death extinguishes all payments falling due after the employee's death, an administrator of the claimant's estate may recover for the "payments accrued to the date of death." *Republic Steel*, 26 Ill. 2d at 46.

The appellate court disagreed with the Commission finding that *Republic Steel Corp.* stood for the proposition that the employee's estate lacks standing to collect accrued benefits as such benefits can only be paid to dependents. *Bell*, 2015 IL App (4th) 140028WC, ¶ 24. Similarly, the appellate court rejected the respondent's argument that the holding in *Republic Steel Corp.* had been overruled by the 1975 amendment to Section 8(h). The appellate court disagreed arguing that Section 8(h) by its expressed language does not address accrued benefits. *Id.* ¶ 24.

The appellate court also took issue with the Commission's finding that allowing the estate to collect PPD benefits where there are no dependents "really serves no purpose." *Id.* ¶ 28. The court concluded that contrary to the Commission's assertion, "there are good policy reasons to allow estates to collect unpaid, accrued benefits." *Id.* ¶ 28. They stated that "a contrary rule would encourage employers to, litigate and delay the payment of compensation due a legitimately disabled individual to a point beyond his death and thereby defeat his right to compensation." *Id.* ¶ 28.

The distinction between Sections 8(h) and 8(e)(19) is that the letter applies to specific losses where as the former applies to person as a whole. A fair reading of either provision can lead a reasonable mind to the conclusion that an estate should not be allowed to recover accrued PPD benefits where no widow or dependents exist. Certainly, the arbitrator, Commission and the circuit court all concluded that an estate should not be entitled to recover based upon the plain language of Sections 8(e)(19) and 8(h).

The court's ruling in *Bell* may lead to further decisions producing results that appear inconsistent with Sections 8(e)(19) and 8(h). For example, assume that the decedent did not leave a surviving spouse, but left a non-dependent child. The clear language of Sections 8(e)(19) and 8(h) suggests that the non-dependent child should be precluded from recovery. Under *Bell*, however, the appellate court appears to have now created a loophole that would entitle the non-dependent child to at least partially recover benefits. By opening an estate and having the estate substituted as the petitioner, the *Bell* analysis would then suggest that the non-dependent child would be entitled to recover benefits although only to the extent the accrued prior to the decedent's passing. This result would appear to be inconsistent with both the letter and intent of Sections 8(e)(19) and 8(h).

Unfortunately, the Appellate Court, Workers' Compensation Division did not certify the case for further review by the Illinois Supreme Court.



About the Author

Bradford J. Peterson is a partner in the Urbana office of *Heyl, Royster, Voelker & Allen, P.C.* Mr. Peterson concentrates his practice in the defense of workers' compensation, construction litigation, auto liability, premises liability, and insurance coverage issues. In recent years, Mr. Peterson has become a leader in the field on issues of Medicare Set Aside trusts and workers' compensation claims. He has written and spoken frequently on the issue. He was one of the first attorneys in the State of Illinois to publish an article regarding the application of the Medicare Secondary Payer Act to workers' compensation claims, "Medicare, Workers' Compensation and Set Aside Trusts," *Southern Illinois Law Journal* (2002).

About the IDC

The Illinois Association Defense Trial Counsel (IDC) is the premier association of attorneys in Illinois who devote a substantial portion their practice to the representation of business, corporate, insurance, professional and other individual defendants in civil litigation. For more information on the IDC, visit us on the web at www.iadtc.org or contact us at PO Box 588, Rochester, IL 62563-0588, 217-498-2649, 800-232-0169, idc@iadtc.org.