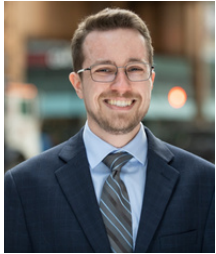


Subsequent Injuries to the Same Member

By: Michael Verbic

Associate



In *Dejarnatt v. Ill. Workers' Comp. Comm'n*, No. 5-23-0624WC, 2024 Ill. App. 735 (Apr. 4, 2024), the appellate court affirmed the Commission's finding that calculating the amount of PPD benefits owed to a claimant required the deduction of a previous award for an injury to the same body part.

Petitioner filed an Application on 10/4/20 seeking benefits for her 2019 bilateral carpal tunnel syndrome injury. She previously received 17.5% loss of use for both hands in a prior settlement.

On 8/6/20 she underwent open revision surgery on her right hand. In December 2020, she underwent open revision surgery on her left hand. In January 2021, Petitioner was released at maximum medical improvement.

Petitioner testified that she experienced soreness in both hands as well as fatigue. The arbitrator awarded 22.5% loss of use of her right hand and 20% loss of use of her left hand. The arbitrator then applied a credit from her prior settlement by subtracting the prior PPD settlement from the award, resulting in a net loss of 5% loss of use for her right hand and 2.5% loss of use for her left hand. The Commission affirmed and adopted the arbitrator's decision and the circuit court affirmed.

On appeal, the Appellate Court examined Section 8(e)(9) and Section 8(e)(17) to reach its decision. Petitioner contended that the phrase "such loss shall be taken into consideration" from Section 8(e)(17) is ambiguous. The Appellate Court disagreed, citing *Village of Niles v. Illinois Workers' Compensation Comm'n*, 2023 IL App (1st) 221617WC-U, 17. "By its plain language, section 8(e)(17) provides that, for the permanent or partial loss of use of a specified member for which compensation has been paid, the loss shall be deducted from any award for a subsequent injury to the same member. It is the prior loss that is subtracted from the award for the subsequent injury."

The Appellate Court recognized that Section 8(e)(9) was revised between the period of Petitioner's initial injury and her most recent injury. Petitioner was originally entitled to 205 weeks but was subsequently entitled to 190 weeks after the amendment of the Act. However, the Appellate Court noted that they cannot "add provisions that are not found in a statute, nor may [we] depart from a statute's plain language by reading into the law exceptions, limitations, or conditions that the legislature did not express." *Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 408 (2010). Since the legislature omitted the language in this section, the court presumed that the legislature acted intentionally and purposely in the inclusion or exclusion.

Ultimately, the Appellate Court affirmed the circuit court's decision and found that a credit for a prior PPD settlement must be deducted from any award made for a subsequent injury to the same body part.

Practice Tip:

Investigate prior claims using the IWCC website or ISO ClaimSearch to determine whether petitioner suffered a subsequent injury to the same member. From there, calculate the loss that should be deducted from the award.

Law of Case Doctrine Bars Re-litigation

By: Natalie Christian

Associate



In *Danley v. City of Chicago*, the Commission held that the "law of the case doctrine" bars Petitioner from "relitigating" the issue of causation for his right shoulder in a second 19(b) hearing.

Petitioner worked as a construction laborer and claimed injury to multiple body parts, including his right shoulder, after being hit on the head by a floorboard while inspecting a leak. The Arbitrator found that Petitioner established causation for his cervical spine condition but failed to prove

causation for any right shoulder condition. Neither party sought review.

Thereafter, Petitioner alleged a worsening right shoulder condition which culminated in a surgical recommendation. Petitioner wanted to proceed with a 19(b) hearing. However, Respondent objected and filed a Motion to Strike arguing that Petitioner was barred from re-litigating the issue of causation previously decided. Respondent's Motion was denied citing *Weyer v. IWCC's* determination that the law of the case doctrine did not prohibit the litigation of new and different legal and factual issues than those addressed in a prior 19(b) hearing. See 387 Ill.App.3d 297 (1st Dist. 2008). Respondent sought review and the Commission remanded the matter to the arbitrator for lack of jurisdiction.

Over Respondent's continued objection, a second 19(b) hearing proceeded. Consistent with the Arbitrator's prior reasoning, the Decision found Petitioner's current right shoulder condition was causally related to the work accident, treatment had been reasonable and necessary, and prospective medical treatment and TTD were awarded. Respondent sought review.

The Commission reversed and found that the initial 19(b) hearing and Decision on causation of the right shoulder condition became 19(b) final when neither party sought review of the initial decision. An immediate Hearing "shall be conclusive as to all other questions except the nature and extent of said disability." 820 ILCS 305/19(b). Thus, the law of case doctrine prohibited Petitioner from re-litigating the issue of causation for his right shoulder.

Practice Tip:

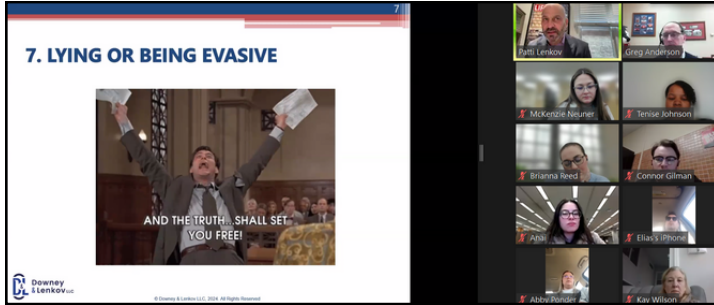
Be mindful to include all issues at a 19(b) hearing to avoid preclusion from litigation in any subsequent hearings.



FIRM NEWS

Rich Lenkov Presents To NIU Law Students

Rich Lenkov presented "10 Ways To Ruin An Interview" to Northern Illinois University Law 516 students.



Kirsten Kaiser Kus Highlighted in New Series

Kirsten Kaiser Kus was highlighted in a new series by WorkersCompensation.com to honor women in the workers' compensation field. The series is called "Celebrating the Unseen Heroes of Workers' Compensation: A Prelude to Women's History Month". Read full article [here](#).



WorkersCompensation.com
Let's Simplify the Work

Brian Rosenblatt Editor-in-Chief

Brian Rosenblatt is the Editor-in-Chief of the ABA's Forum on Entertainment and Sports Law Industries' quarterly law journal, The Entertainment and Sports Lawyer. One of the articles previously published on the Music Modernization Act was recently cited as authority by the 9th Circuit.



ABATM
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Kirsten Kaiser Kus & Michael Milstein 2024 CLM Presentations

Capital Members Kirsten Kaiser Kus and Michael Milstein were panelists at the 2024 CLM Annual Conference in San Francisco in April.

Michael presented *To Test or Not to Test: Does It Really Matter What Caused Workplace Impairment?*

Kirsten presented *Strategies to Undermine Employees Prosecuting Workers' Comp and Employment Claims at the Same Time*.



CLM

Rich Lenkov Radio Show Appearances

Rich Lenkov made guests appearances on the John Williams show, the Pete McMurray show, and The Steve Cochran Show to discuss topics such as the conviction of Jennifer Crumble and Donald Trump.



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Natalie Christian 5k Participation

Natalie Christian participated in the Chicago Bar Association's 1st Annual 5K to celebrate their 150th anniversary.



Welcome to the Team

Please join us in welcoming our new Indiana attorney Matthew Hobson.



Mat concentrates his practice in workers' compensation and general liability. He is a dedicated attorney who provides unique strategies and effective counsel to his clients.

Downey & Lenkov also welcomes back Illinois attorney Kristin Lechowicz, as she was previously with the firm in 2022.



Kristin focuses her practice on workers' compensation defense. Her experience representing both employees and employers in workers' compensation claims gives her a unique perspective on strategizing and resolving claims.

Downey & Lenkov Celebrates International Women's Day

We celebrated the remarkable women of Downey & Lenkov, acknowledging their invaluable contributions of intelligence, resilience, and unwavering determination to our firm.



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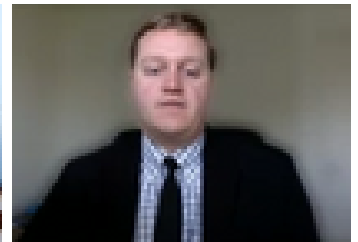
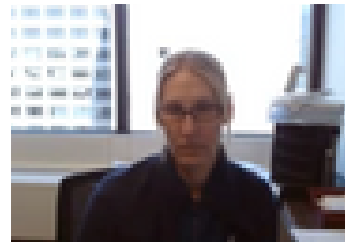
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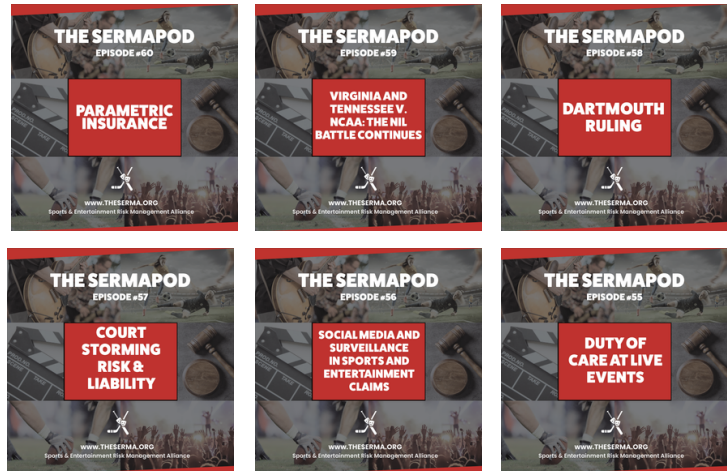
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- Hidden Treasures Revealed Within the Illinois Workers' Compensation Act & Rules
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- Bending, Flexing and Rotating: Defending Shoulder, Elbow, & Wrist Claims
- Eerie Lessons in Illinois Workers' Compensation
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**Jonathan Hak on AI
usage in court
proceedings**
Criminal justice expert

“You've got an algorithm deciding what it thinks should be there, even though when, in fact, it may not actually be there. And that's the challenge in Washington. And that's the challenge in general, because AI hallucinates what should be there when that may not actually be there.”

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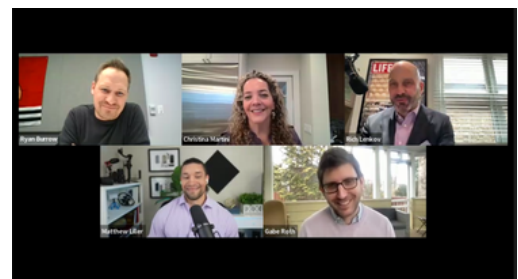
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