Do YOU Know the Value of "Specific Loss" in Your Client's Case?

Presented by:

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I. Specific Loss Defined.

Section 8(c): Disfigurement

Highlights:

1. Must be "serious and "permanent."

2. Must be to the hand, head, face, neck, arm, leg below the knee or the chest above the axillary line.

3. To be determined by agreement at any time or by arbitration under this Act, at a hearing not less than 6 months after the date of the accidental injury.

4. Total amount paid shall not exceed 150 weeks if before February 1, 2006 or 162 weeks if on or after February 1, 2006.

5. Paid at the PPD rate provided in subparagraph 8(b)(2).

6. Not due where compensation is payable under paragraphs (d) (*wage differential or person as a whole*), (e) (*specific loss*) or (f) (*permanent total disability*) of this Section.

7. Members of a fire department in a city larger than 500,000 can only recover if scarring is from burns.

Section 8(d)2: Person-as-a-Whole

Highlights:

1. Must be "serious and permanent."

2. Must be for injuries not covered by paragraphs (c) (*disfigurement*) and (e) (*specific loss*) of this Section unless, in addition to those, has

   a. other injuries which do not prevent return to work in prior job but which could limit pursuit of other work; or
   b. other injuries resulting in physical impairment; or
   c. is partially incapacitated from performing full duties but the injuries have no impact on earning capacity; or
   d. has loss of earnings but elects not to recover until Section 8(d)(1) (*wage differential*).

3. Paid in addition to compensation for temporary total disability.

4. Paid at the PPD rate.

5. Paid on a percentage of 500 weeks.
6. Statutory minimum of not less than 6 weeks for a fractured skull or for each fractured vertebra.
7. Statutory minimum of not less than 2 weeks for facial bones: nasal, lachrymal, vomer, zygoma, maxilla, palatine or mandible.
8. Statutory minimum of not less than 3 weeks for a fracture of each transverse process.
9. Statutory minimum of not less than 10 weeks for the loss of a kidney, spleen or lung

Section 8(e): Schedule of Injuries

Highlights:

1. Payable in addition to temporary total disability.
2. Sets for a schedule of injuries, with a maximum number of weeks for each.
3. Maximum number of weeks increased for injuries on/after February 1, 2006.
4. Sets forth minimums if the first phalanx or more of the thumb, finger or toe is lost.
5. Sets forth minimums if more than multiple phalanges or fingers are lost.
6. Sets forth a greater maximum number of weeks for loss of use of the arm if amputations at the elbow or shoulder joint are sustained.
7. Sets forth a greater maximum number of weeks for loss of use of the leg if amputations at the knee or hip are sustained.
8. Sets forth a greater maximum number of weeks for loss of use of the eye if an enucleation is sustained.
9. Sets forth a greater maximum number of weeks if total loss of hearing is sustained in both ears.
10. Uses audiometric measurements to set forth percentage of loss of use for loss of hearing.

Section 8(e)17: Deduction for Prior Awards

1. Gives a credit for prior specific loss of use under Section 8(e) toward any subsequent specific loss.

2. Gives no credit for prior disfigurement under Section 8(c) or person as a whole under Section 8(d)(2).

Section 8.1b: Determination of PPD

Highlights:

1. Sets forth the qualifications for a physician providing a permanent partial disability report.

2. Sets forth the five factors for determining the level of permanent partial disability:

   a. the reported level of impairment in the rating;
   b. the occupation of the claimant;
   c. the age of the claimant at the time of the injury;
   d. the claimant's future earning capacity;
   e. the evidence of disability corroborated by the treating records.

3. Sets forth that no one of the five factors shall be the sole determinant of disability.

4. Sets forth that the arbitrator and/or Commission "must" set forth the relevance and weight of each of the factors as well as the level of impairment, in its permanency determination.

5. Provides that permanent partial disability shall be established using this criteria.

II. When is Specific Loss Set?

A. What defines "serious and permanent?"

Merriam Webster defines "serious" as "having an important or dangerous result," "involving a lot of attention or work," or "not joking or trifling." "Permanent" is defined as "lasting or continuing for a very long time or forever." (Merriam-Webster, 2014).

The Illinois Supreme Court defined the appropriate point at which permanent partial disability could be set as "a long period of time without substantial improvement . . . (thus) time to justify a finding that the injury is permanent;" Overland Construction v. Industrial Commission, 37 Ill.2d 525, 229 N.E.2d 500 (1967).

Eligiblity for benefits under Sections 8(c), 8(d)(2) or 8(e) would be determined by an injury which is "serious and permanent" and results in "permanent partial disability or impairment;" Archer Daniels Midland Company v. Industrial Commission, 99 Ill.2d 275 (1983). In 1983, the Illinois Supreme Court explained that to be entitled to any benefits, in this case under Section 8(d)(2) of the Act, the claimant needed to 1) provide proof permanent disability could exist from the injury, and 2) provide proof she sustained permanent disability. The court held this claimant had met her burden of meeting that first requirement simply with her testimony as to injury and medical evidence as to the nature of that injury, a T1 process fracture.

Turning to the second prong of that requirement, however, the court held that the claimant had failed to meet her burden of showing that her injury was "serious and permanent." The supreme court noted the treating doctor's testimony that other than a small "dimple" over T1 "she had recovered from her fracture and no permanent functional problems are anticipated," further, that "this type of fracture does not cause secondary osteoarthritis," and finally, "there are no permanent consequences of the acute cervical strain." Thus, the supreme court affirmed the Commission denial of any permanency under Section 8(d)(2) of the Act.

Clearly even the court could not agree on whether a "serious and permanent" injury was sustained. In his dissent Justice Goldenhersh disagreed with the majority holding, noting the surgery to address the fracture required a three inch incision and "that this is a permanent injury can hardly be disputed since it is not suggested that the spinous process, once having been excised, is likely to grow back," and further noting that any other vertebral fracture other than a transverse process fracture resulted in a statutory minimum permanency award.

Subsequent cases in Illinois acted under the principle permanent partial disability would be established when a claimant reached a level of stability, a point at which no further medical intervention would likely offer any improvement, a point at which the claimant had ceased treatment, and the condition was such that permanent partial disability could be set.

With the amendments and implementation of Section 8.1b of the Act, which defines what is needed in order to establish an entitlement to permanent partial disability, by inference this also sets forth <u>when</u> permanent partial disability can be established as three of the five prongs require that "level of stability" and "permanency"—when an impairment rating can be obtained, when the claimant's future earning capacity can be established, and when the evidence of disability corroborated by the medical records exists.

The AMA Impairment Guides specifically set forth that impairment cannot be determined until the claimant has reached maximum medical improvement. An impairment rating requires "measurements of impairment" such as loss of range of motion, strength, atrophy and "any other measurements that establish the nature and extent of the injury."

Following passage of the amended Act, much discussion was had as to whether the "shall" language of Section 8.1b required a claimant to provide evidence of all five factors, and whether an absence of proof of any/all of those five factors would doom a permanent partial disability claim.

In a memo from the Illinois Workers' Compensation Commission dated November 28, 2011, the Commission set forth its interpretation of Section 8.1b, recommending to the arbitrators that an impairment rating is not required to be submitted with submission of a settlement contract for approval, and that if an impairment rating is not entered into evidence at trial, this does not preclude a finding of disability.

In deciding cases utilizing Section 8.1b, the arbitrators and Commission have demonstrated a willingness to award permanent partial disability without proof of at least one of the five elements of Section 8.1b.

In Flannigan v. City of Springfield, 14 IWCC 21, the Commission reduced an award of 7.5% of a person to 5% of a person, however, confirmed entitlement to the benefits under Section 8(d)(2) of the Act without an impairment rating submitted by either party. The arbitrator had noted the absence of an impairment rating, stating "this factor is thereby waived."

In Booten v. Illinois Department of Transportation, 14 IWCC 837, the Commission reduced a 20% of the right leg award to 12.5%, in an instance where no impairment rating was submitted by either party. The Commission noted the absence of any impairment rating "does not influence the impairment rating."

In Wedel v. Illinois Department of Transportation, 14 IWCC 377, the Commission affirmed an award of no permanent partial disability, noting in part "both parties waived the submission of an AMA report."

However, no case has yet reached the appellate or supreme court level, and thus, no final determination has been had as to whether all five elements of Section 8.1b must be established in order to sustain an award of permanency.

Issues: Is the claimant's testimony as to residual complaints difficulties enough to support a finding of permanent partial disability? Is medical evidence required? A Section 12 exam? Testimony or a report from the treating doctor documenting residuals or lack thereof? An AMA impairment rating? Does every injury warrant an award of permanent partial disability?

B. Can permanency be determined before an employee has been released to return to work?

Before the 2011 amendments to the Act, the case law in Illinois established a couple of common principles. A claimant would be deemed entitled to temporary total disability from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the "permanent" character of his injury will permit; Westin Hotel v. Industrial Commission, 372 Ill.App.3d 527, 865 N.E.2d 342 (2007). This presupposed a claimant needed to have returned to work, or otherwise that his or her entitlement to temporary total disability would have ended, in order to assess the permanent nature of his or her condition.

Traditionally, permanency was not set until a claimant had reached maximum medical improvement. A return to work was considered a factor in determining a claimant had reached maximum medical improvement; Freeman United Coal & Mining Co. v. Industrial Commission, 318 Ill.App.3d 170, 741 N.E.2d 1144 (2000).

Issues: With the implementation of Section 8.1b and its five factors, which include an assessment of both return to work and future earning capacity, can permanent disability be set before a return to work? Certainly, such can occur by agreement of the parties in a settlement contract. In what instances can such a case proceed to trial on permanency, and result in an award?

C. Can permanency be determined while an employee is still treating?

The dispositive issue for ending temporary total disability, and thus by inference setting permanent partial disability, is whether the claimant's condition has "stabilized, i.e. whether the claimant has

reached maximum medical improvement (MMI);" Land & Lakes Co. v. Industrial Commission, 359 Ill.App.3d 582, 834 N.E.2d 583 (2005).

Another factor to consider in setting maximum medical improvement, thus permanency, is "medical testimony or evidence concerning the claimant's injury, and the extent of injury; Freeman United Coal & Mining, at 178.

Once an injured claimant has reached MMI, "the disabling condition has become permanent and he is no longer eligible for TTD benefits; Nascote Industries v. Industrial Commission, 353 Ill.App.3d 1067, 820 N.E.2d 570 (2004).

Issues: Cognizant Section 8.1b requires an assessment of impairment, which cannot be set by a doctor until treatment is completed and maximum medical improvement obtained, and some review of the "evidence of disability" as set forth in the treating records, can permanency ever be assessed by the Commission before maximum medical improvement and medical discharge is accomplished?

D. If only after returned to work and done treating, how long after?

1. For disfiguring injuries under Section 8(c), at least six months after the injury for an arbitration award.
2. For all other injuries, under Section 8.1b, once at maximum medical improvement, back to work, an earning capacity is established, a future earning capacity set, any impact the claimant's age has is determined, and an impairment rating is secured.

III. How is Specific Loss Set?

A. Viewing or photographs for disfigurement.
B. Claimant's testimony, for trial.
C. Medical records or deposition of a treating doctor, documenting subjective complaints, objective findings and residuals.
D. Section 12 examination as to condition, treatment, impact, residuals.
E. Section 8.1b impairment rating.
F. Case law – but prior precedent on post September 1, 2011 injuries may still be "one component to be considered" per the Commission, quoting McFall v. The Sygma Network, 14 IWCC 297
G. Experience of the attorneys.

Issues: Is one of the five factors proving to be more controlling than the others? Is proof of all five factors required? Is the AMA impairment rating done correctly? Does each party need to secure one, or agree to the other party's, so as to meet the due diligence requirement to one's client? Are depositions of AMA impairment rating doctors required? How does the Parisi case impact what is provided to the arbitrator?

IV. How do you choose which remedy to pursue or set exposure for?

A. When a single remedy/recovery allowed.

Section 8(c) provides it shall be the sole remedy when disfigurement occurs, and that no compensation shall be payable under this section if compensation is also payable under Sections 8(d)(2) or 8(e) of the Act. However, Section 8(d)(2) clearly contemplates that compensation may be payable under either Section 8(c) or Section 8(e) and its purview, noting "the compensation provided in this paragraph shall not affect the employee's right to compensation payable" under either of those other two sections. Thus disfigurement will not be awarded to the same body part for which a specific loss is also awarded, but does not preclude an award of specific loss under Section 8(e) to another part of the body.

The First District Appellate Court has defined when a single recovery will be had for multiple injuries to the same body part, in Baumgardner v. Illinois Workers' Compensation Commission, 947 N.E.2d 856 (2011). The claimant had sustained three separate injuries. The cases has been consolidated for hearing. The claimant had sustained a right knee injury in April, 1996, followed by surgery and a release to return to work full duty October 16, 1996. He then sustained a second injury to the right knee in April, 1997. This second injury was deemed to have exacerbated his prior right knee condition. His treating physician recommended he participate in continuing exercises to maintain muscle strength. He was released to full duty but directed to not work on inclines or in ditches or trenches. His employer could not take him back to work with those restrictions. The claimant then returned back to work for his employer, electing to work full duty. He then sustained a third injury to his right knee. He was cleared to light duty, provided by his employer but at a reduced rate of pay. The employer was voluntarily paying the claimant at wage differential based upon those reduced earnings, at the time of trial.

Interesting in this case, the decision makes of point of reflecting what the parties had asked for in their proposed findings. The employer had recommended the claimant receive 35% loss of use of the right leg for the first, 1996 injury. While the decision is silent, it is presumed the employer recommended a single wage differential award be entered for the second and third injuries. The claimant's original proposed finding sought a single, wage differential award for the three injuries although, before the arbitrator's decision was entered, did file a motion to amend its proposed finding in the first case to request a specific loss under Secton 8(e) also be awarded in that matter.

The arbitrator issued a single award covering all three filed claims, awarding strictly a wage differential under Section 8(d)(1) of the Act. The Commission affirmed that portion of the award, noting the claimant's permanency was to be determined at the time of the arbitration hearing and not based on a condition as may have existed following the first injury, now some 10 years earlier. The Commission concluded the claimant was not entitled to a separate award of permanency for the first right knee injury, as he had sustained subsequent injuries to that same body part, and he had offered no evidence of any permanency following that second injury, either.

On appeal, the claimant argued he was entitled to a separate award of permanency under Section 8(e) for that first injury. The appellate court disagreed, noting specifically that Section 8(e) precludes an award of permanency under any other provision of the Act. Where a claimant "has sustained two separate and distinct injuries to the same body part and the claims are consolidated for hearing and decision, it is proper for the Commission to consider all of the evidence presented to determine the nature and extent of his permanent disability as of the date of hearing."

The court noted further "the propriety of this approach is demonstrated in the instant case, where the consolidated hearing was continued over several years and the Commission's decision was issued more than 11 years after Dr. Canaday last treated the claimant for (his first injury)."

Finally, the court provided:

> because the claimant suffered multiple injuries to the same body part as a result of successive accidents and those claims were tried together, the Commission properly evaluated the totality of the evidence as it related to the claimant's overall condition of ill-being at the time of hearing and entered a single award that encompasses the full extent of the disability resulting from (the injuries) . . .

In his specially concurring opinion, however, Justice Stewart noted the analysis of whether a single permanent injury or multiple injuries, upon which separate permanency awards might be due, should not be impacted strictly by whether the cases were consolidated for trial. He noted:

> whether they are tried separately or in a consolidated hearing, a claimant is entitled to separate consideration of multiple claims. By suggesting that the Commission should only consider the claimant's condition of ill-being a the time of the arbitration hearing, the majority tilts the analysis in favor of a single PPD award. In order to determine whether a claimant sustained separate compensable injuries in two accidents the Commission must consider his condition of ill-being prior to the second accident. (citing Consolidated Freightways v. Industrial Commission, 237 Ill.App.3d 459, 604 N.E.2d 962 (1992)).

B. When multiple remedies/recoveries allowed.

In Village of Deerfield v. Illinois Workers' Compensation Commission, the Second District Appellate Court addressed a prayer for relief for both specific loss under Section 8(e) and wage differential benefits under Section 8(d)(1) for three injuries resulting from three separate claims, likewise consolidated for trial. The claimant sustained an injury to his left shoulder in February, 2005. He received conservative care and returned to full duty but testified he still experienced pain and weakness in his left arm. He sustained injuries to his neck and back while working in August, 2005, receiving conservative care including physical therapy for those injuries as well as for his left shoulder, deemed as not having full healed from the prior injury. While still under conservative care, the claimant sustained a third injury to his left shoulder and neck while working in January, 2006. His therapy was continued and he then underwent left shoulder surgery. He began treating for his right shoulder, and alleged it was due to overuse. He underwent a cervical discectomy and fusion. He reported right knee pain while in therapy following that procedure, and surgery was performed on the right knee. He was released to return to work with restrictions his employer could not comply with. He obtained other employment at a diminished earning capacity.

The arbitrator found compensable injuries to the right and left shoulders and awarded 25% loss of use of the left arm and 15% loss of use of the right arm, under Section 8(e). Additionally, he found the claimant had sustained a wage loss under Section 8(d)(1) and awarded him a wage differential.

The employer reviewed the decision to the Commission, which modified the award of specific loss of each arm to 18.8% of a person under Section 8(d)(2), under Will County Forest Preserve v. Illinois

Workers' Compensation Commission, 2012 Il.App.3d 110077WC, 970 N.E.2d 361 (2012). It affirmed the separate wage differential award. The circuit court confirmed the Commission decision.

On appeal, the employer argued the Commission erred in granting relief under both Section 8(d)(2) and 8(d)(1) of the Act, arguing that where there is one condition of ill-being, the Act allows compensation under one section but not both.

The appellate court began its analysis by noting the claimant had filed separate claims for separate injuries, which were "consolidated for convenience and not for the purpose of substance." The claimant had sought separate remedies for each separate claim. The court also noted the analysis in the Baumgardner case and its holding that "where a claimant has sustained *two separate and distinct injuries to the same body part* and the claims are consolidated for hearing and decision, it is proper for the Commission to consider all of the evidence presented to determine the nature and extent of his permanent disability as of the date of hearing." (Baumgardner, 409 Ill.App.3d 274, at 279-80, 947 N.E.2d at 861).

Here, however, the court noted the same body part was not involved in all three of the claims as had been true in the Baumgardner matter. The claimant here had injuries to each of his shoulders as well as his neck and low back. While shoulder claims are now compensated under the same person as a whole section of 8(d)(2) as the neck and low back injuries are, these were clearly separate and distinctly different parts of the body. The court also noted the right shoulder injury resulted from compensating for the injured left shoulder, and further, that the claimant had been able to return to work following the first injury, then sustained the second and third. The court stressed the person as a whole award for the right and left shoulders was a separate and distinct remedy for the loss sustained, and that the wage differential "loss" did not occur until after the third injury resulted in a loss of earning capacity.

V. Increasing Values – the Petitioner's Perspective

VI. Limiting Values – the Respondent's Perspective

A. Know your file, know your medical.
B. Section 12 examinations for comments on causal connection, setting limitations therein, setting any objective findings to support subjective complaints.
C. Impairment ratings.
D. Evidence to address how occupation, age or future earning capacity is affected and thus impacts permanent partial disability under Section 8.1b.
E. Move to resolve as soon as permanency can be assessed.

VII. Discussion – Are the Legislative Amendments and Specifically Section 8.1b Resulting in Reduced PPD?

Talking points – is the State of Illinois trying more cases? Is the Commission giving greater scrutiny to State cases? To repetitive trauma cases? After the first few cases in which the arbitrators discussed application/misapplication of impairment ratings, has there been much discussion or issue with the manner in which impairment ratings are measured?

Appendix A

(copies of the Parisi, Baumgardner and Village of Deerfield decisions)

Appendix B

Commission Decisions Implementing Section 8.1b – A Sampling

Impairment Rating Introduced – Commission Affirms or Increases PPD Award

In Fiene v. City of Zion, (2014

) the Commission increased an arbitrator's award of 10% of a person to 15% of a person pursuant to Section 8(d)(2) for a police officer who injured his right shoulder while pursuing a suspect. The Commission noted an AMA impairment rating of 1.2% of a person. The claimant had been cleared to and did return to work as a street sergeant and member of the SWAT unit, deemed a heavy duty position. No evidence was offered as to the impact of the claimant's age of 38, and no loss of future earning capacity was shown. The Commission relied most heavily on the claimant's testimony he had suffered a "severe" shoulder injury, underwent surgery, had a successful recovery, almost full function, but had complaints using and raising his right arm for extended periods of time and could no longer play softball.

In Bandy v. Continental Tire of Americas, Inc. (14 IWCC 359) the Commission affirmed and adopted an award of 20% loss of use of the left hand under Section 8(e) to an end line inspector who fractured her left wrist, had surgery and was released to return to work. An AMA impairment rating set 2 – 9% impairment, as the doctor was not clear what specific surgical procedure the claimant had undergone. She had been released to full duty but voluntarily took a new position with her employer which she thought would put less stress on her wrist. She made the same wage but lost overtime pay as would have been afforded her on weekends, which she chose not to work. She was 46 years old, without comment on how that impacted her. She was deemed to be making the same amount of pay but losing out on weekend work. The operative report reviewed by the arbitrator showed surgical repair of cartilage fraying but no tearing.

In McFall v. Sygma Network (14 IWCC 297) the Commission increased an award from 17.5 to 22.5% person as a whole under Section 8(d)(2) to an over the road truck driver who sustained a cervical herniated disc after a fall from his truck cab. He underwent a single level fusion. He reported residual aches and pains in his arms but was cleared to full duty. A 10% impairment rating was set.

He had returned back to full duty and had no loss of earning capacity. He was 41 years old, without comment upon impact on his disability. He had occasional neck pain and arm pain deemed unrelated to his work injury and surgery.

In Watkins v. Masterbrand Cabinets, (14 IWCC 35), the Commission increased the award from 7.5 to 12% loss of use of each hand under Section 8(e) to an auditor who developed bilateral carpal tunnel syndrome due to repetitive trauma, resulting in corrective surgeries. She reported good and bad days. A 1% of the person impairment rating was set. She had returned to her full duties with her employer and but not to a side job as a cashier. She as 46 years old, without evidence as to how her age affected her disability. She had no diminishment in earning capacity. She had some diminished strength and motion, and just occasional complaints. The Commission decision noted the claimant had minor issues with opening a jar or cutting food with a knife, and had to work with both hands and use tools at work, requiring fine manipulation. While noting she no longer worked her part time job, the Commission specifically held that there was no impact on her future earning capacity shown.

In Arscott v. Conway Freight, (14 IWCC 18), the Commission increased an award of 20% loss of use of the left leg to 25% loss of use under Section 8(e) to a freight track driver sales representative who injured his left knee, resulting in arthroscopic repair of a torn meniscus. An AMA impairment rating set 20% impairment to the left leg. He had returned to his full duty job. He was 57 years old at the time of the injury, without evidence as to impact. He had no anticipated earnings loss. He had some residual complaints deemed "consistent" with the prior surgery. The Commission "viewed the evidence" differently but provided no further comment.

In Griffin v. Caterpillar, Inc. (14 IWCC 62), the Commission affirmed an award of 15% loss of use of the left leg under Section 8(e) to a machinist who injured his left knee while carrying a ladder. He underwent surgery to repair a torn meniscus. The impairment rating was set at 2% of the left leg. He returned to full duty work, but the arbitrator had noted "his occupation and past occupations required physical, strenuous labor, with significant leg/knee activities." He was 62 at the time of the injury, and the arbitrator noted "the residuals that come with this type of injury as a result of his age." He had a reduced future earning capacity as he testified he had chosen to not transfer to nor bid on more physically demanding jobs. He testified to continued pain and stiffness, swelling and locking of the knee, corroborated by the treating and employer's plant medical records.

Impairment Rating Introduced – Commission Reduces PPD Award

In Bourque v. General Maintenance, (14 IWCC 526), the Commission reduced a 50% person as a whole award to 40% under Section 8(d)(2), to a working supervisor who injured his head, neck and right shoulder when he fell while stepping from a ladder to a table, resulting in large rotator cuff tears, surgically repaired, along with aggravation of degenerative changes in the cervical spine. An impairment rating was set at 4% of the arm or 2% of the whole person. He was released with permanent restrictions his employer could not provide. He had looked for but had not located employment at the time of trial. The Commission noted the claimant had prior injuries involving the shoulders but had been working heavy manual labor. He was noted to be in his 60's and to have only worked those type of jobs. The Commission concluded the impairment rating "appears contrary to the other evidence," and that both the claimant' reduced work capabilities and subjective complaints were supported by the medical evidence and the extent of injury and treatment. Nevertheless, the

Commission reduced the permanency by 10%, noting the arbitrator's award had been "somewhat excessive, considering prior Commission decisions of a similar nature."

In Williams v. Flexible Staffing (14 IWCC 576), the Commission reduced an award of 30% loss of use of the right arm to 25% under Section 8(e) to a welder/fabricator who injured his right arm when he grabbed for a piece of falling rail, sustaining a biceps rupture that was surgically repaired. The impairment rating was 6% of the arm. The arbitrator had concluded the AMA impairment rating had not been correctly applied. While giving the impairment rating some weight, the Commission noted it would not be the "great weight" the employer wished to have been placed on it as "to do so would be to disregard the other factors and give them no weight at all." The Commission noted the claimant had returned to a physically demanding job, was only 45 years and would therefore have to live with his disability longer, had a reduced earning capacity as, despite a full duty release, he had been laid off by his employer, had not found other work, and had encountered problems when he tried to do welding at home. It was noted his injury was to his dominant arm, that he lacked range of motion and had residual complaints. However, and despite concluding the impairment rating "does not adequately represent (the claimant's) actual disability . . . when considering the other four factors we find that (the cliamant's) permanent partial disability is 25% . . ."

In Sharpe v. Lake Land College, (14 IWCC 1006), the Commission reduced an award of 22.5% loss of use of the left arm under Section 8(e) to 17.5%, to a carpenter who sustained injuries to his left elbow while lifting plywood. He was diagnosed with a biceps tendon rupture, surgically repaired. An impairment rating was 5% of the left arm. He was cleared to return to full duty but chose to work remodeling and selling houses, which would allow him to control when and how often he used his left arm. He was 51 and the arbitrator had noted he would "have to live with the effects of this injury for the remainder of his working and natural life." No impact was noted on his earning capacity. He had surgery with use of a screw, and complaints consistent with the injury and surgery performed. The arbitrator had specifically given greater weight to the claimant's occupation and need to use his left arm, his age and the permanent residuals of his injury, over the impairment rating and lack of earnings loss. In reducing the permanency awarded, the Commission noted the claimant had returned to full duty 2-4 months following surgery and had been performing his full duties for 15 months, at the time of trial. Further, the Commission noted "everybody, including (the claimant) all agreed that he had an excellent outcome from his surgery." Finally, "in assessing the record as a whole, the Commission finds that an award of 17.5 loss of use of the left arm is appropriate in this case."

No Impairment Rating Introduced – Commission Affirms or Increases the PPD Award

In Wedel v. Illinois Department of Transportation, (14 IWCC 377), the Commission affirmed an award of no partial permanent disability to a clerk who reported repetitive trauma resulting in cubital tunnel syndrome. No impairment rating was provided. She returned to her full duties. She was noted to be 55 years old, without other comment. No future earnings loss was shown. She reported no pain or symptoms in the last medical record.

In MacIntyre v. Red's Body Shop (14 IWCC 567), the Commission affirmed an award of 25% of the left arm, 5% person as a whole and the denial of any disfigurement to the left arm to a tow trucker driver who was attacked, hit in the head and left forearm. He sustained multiple lacerations to the head and forearm, and a fractured ulna. No impairment rating was offered. He had returned to a

physically demanding job, and was noted at 38 to have a "long work life ahead." He had "possible impairment to his future earning capacity," not otherwise corroborated, and was noted to have residual pain, weakness, headaches, and reported memory loss. While having been cleared to full duty he had not returned to work as a tow truck driver out of fear of being attacked again, and while noting he was employed no evidence was offered as to his current earnings. The arbitrator had denied disfigurement as the claimant was also receiving a specific loss of that arm under Section 8(e).

No Impairment Rating Introduced – Commission Reduces PPD Award

In Flannigan v. City of Springfield, (14 IWCC 21), the Commission reduced a permanency award of 7.5% person as a whole to 5% person as a whole to a utility meter reader who sustained a repetitive trauma back injury resulting in aggravation of degenerative changes, and a diagnosed herniated lumbar disc with documented nerve impingement, for which a microdiscectomy might become necessary in the future. No impairment rating was provided. The claimant returned to full duty, but his duties as a meter reader would require a lot of bending and stooping which, per the arbitrator, made his permanent disability "larger" than for someone performing lighter intensity work. He was 42 a the time of the injury, and the arbitrator had noted he would therefore have "some years of work ahead of him." No evidence was presented as to his future earning capacity. The medical records were deemed to have supported his subjective complaints. In reducing the permanency the Commission noted it "reviews the evidence slightly different," pointing out that (the claimant's) "pain complaints have subsided and that he has been able to return to work full duty."

In Booten v. Illinois Department of Transportation (14 IWCC 837) the Commission reduced a permanency award from 20% loss of use of the leg to 12.5% loss of use to a highway maintainer who injured his right knee while exiting his van. He was diagnosed with a meniscus tear, underwent surgery, and returned to full duty. No impairment rating was introduced. The arbitrator had noted the full duty release, that the claimant had "potentially many future years to continue in his current occupation," did not have any demonstrated loss of future earning capacity, but did have a torn and displaced meniscus which required operative repair and resulted in lateral compartment narrowing. In reducing the permanency award, the Commission noted that following the surgery the claimant had failed to report any major issues, "did not testify he continuously struggles with his job duties or is otherwise limited as a result of his work injury," and is "able to successfully perform the same job duties he did before the accident."

In Moore v. Illinois Department of Transportation (14 IWCC 557), the Commission reduced a 2% person as a whole award to 1% to another highway maintainer, who sustained injuries to his low back while installing signs on a windy day. He was diagnosed with a sprain, was given restricted duty and conservative care before being released to full duty. No impairment rating was introduced. He was 43, noted by the arbitrator to be a "younger individual . . . (who) will likely have to live and work for a longer period of time than an older individual with the same injuries." There was no evidence of any impact on future earning capacity. He reported occasional discomfort. In reducing the permanency the Commission noted there was "minor evidence" only of any medical support for any disability, that the claimant had only been treated twice and, despite his testimony at trial he had not returned for care because he could not afford to pay his own medical bills, the medical records at the time indicate he had been released to return to work full duty and was being released from medical care due to self-reported improvement and no further complaints. He had only missed

a week from work in total. He had group insurance coverage for any disputed medical bills. He only had occasional low back complaints and no medical evidence to actually support that claim.