*2006 Ill. Wrk. Comp. LEXIS 619, **

JACK **CARSON,** PETITIONER, v. **BEELMAN TRUCKING,** RESPONDENT

No. 95 WC 27905

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF ST. CLAIR

2006 Ill. Wrk. Comp. LEXIS 619; 06 IWCC 0587

July 21, 2006

CORE TERMS: arbitrator, right arm, arm, computer system, permanent, handicap, shoulder, van, total disability, amputation, modification, paralysis, elbow, entitled to receive, insurance premium, recommended, prescribed, prosthesis, activated, nursing, logical, vocational rehabilitation, totally disabled, disputed issues, internet, computer-related, accommodate, myoelectric, permanently, above-elbow

JUDGES: Susan O. Pigott; James F. DeMunno; Mario Basurto; James J. Giordano, Arbitrator

OPINION:

[*1] DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue(s) of permanent total disability, permanent partial disability, van insurance rider, voice-activated computer and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

After considering the entire record, the Commission modifies the Decision of the Arbitrator by increasing the right arm permanency award. The Arbitrator awarded Petitioner 250 weeks for the above-elbow amputation of his right arm. Section 8(e)(10, however, provides for an award of 300 weeks if the arm is amputated "so close to the shoulder joint that an artificial arm cannot be used". On November 18, 1998, Gordon Stevens, a prosthetic expert, reported that Petitioner lacked sufficient upper body strength to operate a conventional right arm prosthesis. He recommended that Petitioner obtain a "Utah myoelectric prosthesis". PX 3. A year later, however, Dr. Kuiken of the Rehabilitation Institute **[*2]** of Chicago determined that Petitioner did not have enough shoulder power to be able to position and use a myoelectric prosthesis. PX 4. The record supports an increase of the right arm permanency award to 300 weeks. The Commission otherwise affirms and adopts the Decision of the Arbitrator, a copy of which is attached hereto and made a part hereof.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 396.89 per week for a period of 300 weeks, as provided in § 8(e)(10) of the Act, for the reason that the injuries sustained caused the above the elbow amputation of Petitioner's right arm and that Respondent pay to Petitioner the sum of $ 396.89 per week for a period of 235 weeks, as provided in § 8(e)(10) of the Act, because the injuries sustained caused paralysis of Petitioner's left arm below the shoulder.

IT IS THEREFORE ORDERED BY THE COMMISSION that commencing April 19, 1995 Respondent pay to Petitioner the sum of $ 498.69 per week for life under § 8(e)(18) of the Act for the reason that the injuries sustained caused the total permanent disability of Petitioner.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of **[*3]** $ 12,674.35 for his prescribed computer-related purchases of the Act and Respondent shall pay Petitioner $ 708.00 for the handicap modification part of his insurance premium under Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under § 19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 75,000.00. The probable cost of the record to be filed as return to Summons is the sum of $ 35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED: July 21, 2006

ATTACHMENT:

ARBITRATION DECISION

Jack Carson
Employee/Petitioner
v.
Beelman Trucking
Employer/Respondent

Case # **95** WC **27905**

Belleville

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party.

The matter **[*4]** was heard by the Honorable **Jennifer Teague**, arbitrator of the Commission, in the city of **Belleville**, on **October 27, 2005**. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES
L. [X] What is the nature and extent of the injury?
O. [X] Other **unpaid medical services and devices: compensation for statutory PTD and/or PPD In addition to PTD: compensation for TTD/Maintenance In addition to statutory PTD.**

FINDINGS
. On **April 19, 1995**, the respondent **Beelman Trucking** was operating under and subject to the provisions of the Act.
. On this date, an employee-employer relationship ***did*** exist between the petitioner and respondent.
. On this date, the petitioner ***did*** sustain injuries that arose out of and in the course of employment.
. Timely notice of this accident ***was*** given to the respondent.
. In the year preceding the injury, the petitioner's average weekly wage was $ **748.02**.
. At the time of injury, the petitioner was **30** years of age, ***married*** with **1** child **[*5]** under **18.**
. Necessary medical services ***have in part*** been provided by the respondent
. To date, $ **274,348.07** has been paid by the respondent for TTD and/or maintenance benefits.

ORDER
. Petitioner's claim for TTD/Maintenance benefits is denied.
. The respondent shall pay the petitioner the sum of $ **498.69/** week for life, as provided in Section **8(a)(18)** of the Act, because the injuries sustained caused **statutory permanent and total disability**.
. The respondent shall pay the petitioner the sum of $ **396.89/** week for a further period of **250** weeks, as provided in Section **8(e)(10)** of the Act, because the injuries sustained caused **an above the elbow amputation of Petitioner's right arm**.
. The respondent shall pay the petitioner the sum of $ **396.89/** week for a further period of 235 weeks, as provided in Section **8(e)(10)** of the Act, because the injuries sustained caused **paralysis of Petitioner's left arm below the shoulder.**
. The respondent shall pay the petitioner compensation that has accrued from **April 19, 1995** through **October 27, 2005**, and shall pay the remainder of the **[*6]** award, if any, in weekly payments.
. The respondent shall pay the further sum of $ **12,674.35** for necessary medical services, as provided in Section 8(a) of the Act Additionally, Respondent shall pay Petitioner $ 708.00 for the handicap modification part of his insurance premium.
. The respondent shall pay **$ 0** in penalties, as provided in Section 19(k) of the Act
. The respondent shall pay **$ 0** in attorneys' fees, as provided in Section 16 of the Act

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of 4.18 % shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of arbitrator

November 22, 2005

Date

The Arbitrator hereby makes the following Findings of Fact:

The parties agree that Petitioner was rendered quadriplegic immediately after **[*7]** his work related truck accident on April 19, 1995. Petitioner has no sensation below the mid-chest level and his right arm was surgically amputated above the elbow following the accident. Though his left arm remains, it is paralyzed below the level of the shoulder.

Respondent has paid statutory permanent total disability benefits to the present and has provided substantial services pursuant to Section 8(a) for Petitioner's needs, including medical care for the direct and secondary effects of his quadriplegia, full-time nursing assistance in his home; extensive modifications to his house; and motorized wheelchairs and other devices, including customized vans for his transportation.

Petitioner's condition has been stable for several years. Since these major issues are not in dispute, the record does not include the voluminous records that have been generated in the course of Petitioner's medical and home care; or the details of the household modifications and devices Respondent has provided.

The parties have disputes regarding the following issues:

1. Whether Petitioner is entitled to an award under Section 8(e) of the Act in conjunction with an award under Section 8(e)(18);

2. Whether [*8] Respondent is liable under Section 8(a) of the Act for the voice activated computer system and related charges;

3. Whether Petitioner is entitled to TTD/Maintenance benefits during the period of vocational rehabilitation even though Respondent paid statutory PTD benefits; and

4. Whether Respondent is liable to pay for Petitioner's increased car insurance charges due to coverage of the handicap accessories.

As a result of this accident, Petitioner lost almost complete use of his body. He lives alone, except for regular visits by his 12-year-old son. He is totally dependent on others for virtually all movement and activity. Respondent provides Petitioner with round the clock nursing care.

After Petitioner's condition stabilized, Respondent Initiated vocational rehabilitation. The occupational medicine specialists Respondent consulted in December, 1996, recommended the computer and components Petitioner eventually purchased. They identified jobs that might be available to Petitioner if he had that computer system, based on an analysis of his intellect, interests and remaining physical capabilities. Respondent's vocational counselor continued contact with Petitioner, including some exploration [*9] of employment opportunities through May 27, 1997. At no time did Respondent provide the recommended devices.

Petitioner's primary physician throughout the course of his injury, Dr. Lieb, prescribed the computer set-up for purely therapeutic purposes. In 1996, Dr. Lieb indicated the computer would be very helpful for the Petitioner, even if it was clear he was unable to achieve any vocational goals. With the computer, Petitioner would be able to access the Internet and interact with individuals around the world with disabilities and other areas of interest. Dr. Lieb emphasized the importance of this device as it relates to Petitioner's mental health and general: wellbeing.

Per the recommendation of Dr. Lieb, Petitioner purchased a voice activated computer system. This system also has a mouth activating device. Petitioner is able to use this system to perform a multitude of daily tasks. Petitioner can access the internet and is able to conduct searches and obtain reading material online.

Petitioner also uses this system to make and receive phone calls on his own. He is also able to send and receive emails from family and friends. The system also allows Petitioner to operate his television [*10] and VCR in addition to controlling the lighting in his bedroom.

The computer system is wireless and occasionally has an interrupted signal. During those instances, Petitioner's nurses would aid him with accomplishing desired tasks.

Respondent has additionally provided Petitioner with a handicap accessible van. The van is titled in Petitioner's name and Petitioner maintains the insurance. Petitioner's six month premium totals $ 1,002.90. This premium includes a charge of $ 708.00 which is attributable to the handicap accessories on the van.

Therefore, the Arbitrator concludes:

1. The parties stipulate and agree that Petitioner is permanently and totally disabled by operation of Section 8(e)(18) of the Workers' Compensation Act. Petitioner's injuries include complete loss of use of both legs; above-elbow amputation of the right arm and almost complete paralysis of the left arm.

Limiting Petitioner's entitlements to the same maximum that would apply if he still enjoyed complete and unrestricted use of both upper extremities is illogical, and inconsistent with the intent of the Act

The Commission in **Guillero Rodriguez v. City of Chicago Dept of Water**, 97 IIC 0020, held that [*11] a claimant can be entitled to a specific loss and/or disfigurement award under Sections 8(e) and 8(c), respectively, in addition to a "statutory" permanent total disability award under Section 8(e)(18) of the Act The Commission found this was a logical extension of the reasoning applied in the **Freeman** case and indicated this principal would apply equally to injuries sustained as a result of the same accident.

The Arbitrator relies on the reasoning set forth by the Commission in **Rodriguez.** As such, the Arbitrator finds:

1. Section 8(e)(18) of the Illinois Workers' Compensation Act renders Petitioner permanently and totally disabled. Petitioner is entitled to receive statutory permanent total disability benefits of $ 498.69 per week beginning April 19, 1995 for life;

2. Petitioner is entitled to receive 250 weeks of compensation for the above elbow surgical amputation of his right arm. This award shall be paid at the rate of $ 396.89 per week.

3. Petitioner is also entitled to receive 235 weeks of compensation for the paralysis of his left arm below his shoulder. This award shall be paid at the rate of $ 396.89.

2. Petitioner's claim for temporary total disability and/or [*12] maintenance benefits is not proper in this case and is denied.

3. Petitioner is entitled to have and receive from Respondent, the sum of $ 12,674.35 for his prescribed computer-related purchases. These charges are reasonable and necessary.

The medical opinions in this case clearly state the obvious. Petitioner has lost almost complete use of his body and is totally dependent on others for all movement and activity. The computer system provides his only vestige of autonomy. When so much is taken away, the psychological value of any remaining independence is obviously magnified.

The following charges are hereby awarded as reimbursements to Petitioner.

Dell (Computer, Printer and Monitor)	$ 3,296.42
NanoPac, Inc	$ 4,274.00
Caragonne and Assoc	$ 5,103.93

4. It is undisputed that Respondent's 8(a) obligations include a van that is modified to accommodate Petitioner's handicap and wheelchair. There is no legal or logical basis to exclude from its duty any maintenance, replacements, or other vehicular expenses that are identifiably related to the injury, as opposed to vehicle costs common to the general public.

As such, Petitioner is entitled to have and receive the sum of $ 708.00 **[*13]** for the handicap-modification part of his insurance premium.

5. Respondent has put forth a good effort to accommodate all needs of the Petitioner. It is obvious Respondent relied on the continuous nursing care provided to meet Petitioner's needs as basis to deny purchase of the voice activated computer system. The Arbitrator finds that Respondent's conduct, albeit not correct, was not vexatious is nature. As such, penalties are denied.

Legal Topics:

For related research and practice materials, see the following legal topics:

Workers' Compensation & SSDI > Administrative Proceedings > Alternative Dispute Resolution

Workers' Compensation & SSDI > Benefit Determinations > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > Causation

Source: Legal > States Legal - U.S. > Illinois > Find Statutes, Regulations, Administrative Materials & Court Rules > IL Workers' Compensation Decisions
Terms: **carson and beelman and trucking** (Edit Search | Suggest Terms for My Search)
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Date/Time: Wednesday, July 22, 2009 - 8:54 AM EDT

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT

CLINTON COUNTY, ILLINOIS

BEELMAN TRUCKING, Plaintiff,	)	
VS	)	NO. 06-MR-80
WORKERS' COMPENSATION COMMISSION OF ILLINOIS and JACK G. CARSON, Defendants.	)	

ORDER

This is an appeal from a decision of the Illinois Worker's Compensation Commission (Commission). Oral argument took place on January 17, 2007. Attorney Hendershot appeared on behalf of the Employer, Beelman Trucking (Beelman/Employer). Attorney Glass appeared for the injured worker, Jack Carson (Carson/Employee). The Court thanks both counsel for their cogent briefs and arguments.

The Employer properly raises and preserves four issues for review. They are:

1. Whether permanent partial disability (PPD) can be awarded in addition to benefits for a statutory permanent total disability (PTD) as a result of injuries sustained in the same accident.

2. Whether the Commission's increase of the PPD award for injuries to the right arm is contrary to law.

3. Whether the award for additional insurance premiums for the handicap access rider was contrary to law.

4. Whether the award for the home computer system was contrary to law.

This Court affirms the decision of the Commission for the following reasons:

1. The Commission's decision to award PPD benefits in addition to statutory PTD benefits is based upon the *Rodriguez* case, 97 I.I.C.0020. The Commission, in *Rodriguez*, held that *Freeman United Coal Mining Company v. Industrial Commission*, 459 N.E.2d 1368 (1984) would, by logical extension, cover PPD benefits in addition to statutory PTD benefits for injuries sustained in the same accident. *Arview v. Industrial Commission* 114 N.E.2d 78 (1953) stands for the contrary proposition advanced by the Employer. This Court agrees with the Commission that PPD benefits can be awarded in addition to statutory PTD benefits for injuries arising in the same accident. The logic of *Freeman* and the rationale of the Act lead this court to believe that the Commission's decision in *Rodriguez* is correct.

2. The Commission's decision to increase benefits from 250 to 300 weeks for injuries sustained for the Employee's injuries to the right arm is not against the manifest weight of the evidence. This court adopts the rationale of the Commission set out in its Decision and Opinion on Review (Record 000264).

3. The Commission's decision to allow the increased premium for the handicap access rider is not contrary to law or against the manifest weight of the evidence. The amount awarded was awarded only for the handicap

access rider. This court does not understand the Commission to have allowed all of the insurance premium. Moreover, as a matter of common sense, the van would not be useful to Carson unless it was handicap accessible. In the absence of contradictory controlling authority in Illinois, this court declines to say that the Commission's decision on the handicap access rider is against the law or the manifest weight of the evidence.

4. The Commission's decision to award computer expenses is not against the manifest weight of the evidence. Dr. Lieb testified that the computer was useful for Carson's mental health and well being. Given the grave injuries sustained by Carson, this court cannot say the Commission's decision to award home computer expenses was against the manifest weight of the evidence. The record supports the opinion that the computer was necessary to Carson to cure or relieve him from the effects of the injury.

The Clerk is directed to send copies of this order to attorneys Hendershot and Glass.

Date 1-23-07

JUDGE WILLIAM J. BECKER

Service: Get by LEXSEE®
Citation: 381 Ill. App. 3d 701

*381 Ill. App. 3d 701, *; 886 N.E.2d 479, **;*
*2008 Ill. App. LEXIS 761, ****

BEELMAN TRUCKING, Appellant, v. WORKERS' COMPENSATION COMMISSION et al. (Jack G. Carson, Appellee).

NO. 5-07-0071WC

APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT, ILLINOIS WORKERS' COMPENSATION COMMISSION DIVISION

381 Ill. App. 3d 701; 886 N.E.2d 479; 2008 Ill. App. LEXIS 761

March 31, 2008, Opinion Filed

SUBSEQUENT HISTORY: Appeal granted by Beelman Trucking v. Workers' Comp. Comm'n (Carson), 229 Ill. 2d 618, 897 N.E.2d 249, 2008 Ill. LEXIS 1230, 325 Ill. Dec. 1 (2008)
Later proceeding at Beelman Trucking v. Workers' Comp. Comm'n, 2009 Ill. LEXIS 229 (Ill., Mar. 12, 2009)
Affirmed in part and reversed in part by Beelman Trucking v. Ill. Workers' Comp. Comm'n, 2009 Ill. LEXIS 387 (Ill., May 21, 2009)

PRIOR HISTORY: [*1]**
Appeal from the Circuit Court of Clinton County. No. 06-MR-80. Honorable William J. Becker, Judge, presiding.

DISPOSITION: Affirmed in part and reversed in part.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant employer sought review of a decision of the Circuit Court of Clinton County (Illinois), confirming a decision of appellee, the Workers' Compensation Commission, which affirmed and adopted in part an arbitrator's decision granting benefits pursuant to the Workers' Compensation Act, 820 ILCS 305/1 et seq. (2004), after an employee sustained severe injuries in a motor vehicle accident while he was driving for the employer.

OVERVIEW: The employee's injuries included a complete loss of use of both legs and near complete paralysis of his left arm. He was dependent as to self-care and activities of daily living. Although the employer refused to pay for it, based on recommendations from a doctor and therapists, the employee purchased a voice-activated computer and environmental control system to enable him to communicate and have some control over his household environment. The employer provided a modified van to accommodate the employee's wheelchair, but the employee paid the insurance premiums, including a charge for the handicap modifications endorsement. On appeal, the court set aside an award for specific losses under 820 ILCS 305/8(e)(10) (2004) because the injuries were incurred in the same accident, which resulted in a total permanent disability award. However, the court upheld the award for the voice-activated computer and environmental control system as necessary rehabilitative services, and for that portion of the automobile insurance premium covering the handicap modifications endorsement, which was a unique expense incurred as a result of the employee's work-related injuries and disabilities.

OUTCOME: The court set aside the award for specific losses under 820 ILCS 305/8(e)(10) (2004), but affirmed the circuit court's decision in all other respects.

CORE TERMS: total disability, disability, right arm, modification, claimant, arm, amputation, endorsement, handicap, van, loss of use, environmental, legs, insurance premium, work-related, conjunction, degloving, shoulder, earning, voice-activated, accommodate, wheelchair, paralysis, burst, computer system, rehabilitation, rehabilitative, above-elbow, arbitrator's, fracture

LEXISNEXIS® HEADNOTES Hide

Labor & Employment Law > Disability & Unemployment Insurance > Disability Benefits > Coverage & Definitions > Disabilities
Workers' Compensation & SSDI > Benefit Determinations > Cumulative & Successive Disabilities
Workers' Compensation & SSDI > Benefit Determinations > Permanent Total Disabilities

HN1 See 820 ILCS 305/8(e)(18) (2004).

Labor & Employment Law > Disability & Unemployment Insurance > Disability Benefits > Coverage & Definitions > Disabilities
Workers' Compensation & SSDI > Benefit Determinations > Cumulative & Successive Disabilities
Workers' Compensation & SSDI > Benefit Determinations > Permanent Total Disabilities

HN2 Inasmuch as adjudications of permanent total disability under 820 ILCS 305/8(e)(18) (2004) are to be made without regard to a worker's future employment prospects, and awards under that section do not reflect actual unemployability, the Workers' Compensation Act anticipates that a recipient of section 8(e)(18) benefits may in addition recover temporary total disability benefits should he retain or recover his ability to earn wages only to lose that ability because of a work-related accident. In these circumstances, the Act contemplates that the employee, notwithstanding the previous award, is to be compensated for his current loss of earning power. More Like This Headnote | *Shepardize:* Restrict By Headnote

Labor & Employment Law > Disability & Unemployment Insurance > Disability Benefits > Coverage & Definitions > Disabilities
Workers' Compensation & SSDI > Benefit Determinations > Cumulative & Successive Disabilities
Workers' Compensation & SSDI > Benefit Determinations > Permanent Total Disabilities

HN3 It would be specious reasoning to conclude that the loss of more than two members would not constitute permanent and total disability, but revert to a condition of specific loss. The loss of the additional members over and above the two specified in the act cannot convert such statutory permanent and total disability into a case of specific losses. That an employee disabled by the loss of more than two members may sustain greater hardship than an employee who has lost only two members should be recognized by the legislature and provision made for him in the act. However, this circumstance does not modify his condition into one of specific losses under the present law, or give him the right to elect whether he will itemize his disabilities or claim permanent total disability. More Like This Headnote

Labor & Employment Law > Disability & Unemployment Insurance > Disability Benefits > Coverage & Definitions > Disabilities
Workers' Compensation & SSDI > Benefit Determinations > Cumulative & Successive Disabilities
Workers' Compensation & SSDI > Benefit Determinations > Permanent Total Disabilities

HN4 There is no provision in the workers' compensation act giving any employee, previously handicapped or otherwise, the right to elect whether he will claim compensation for the cumulative loss of members sustained in one accident, or claim statutory permanent and total disability. Any such interpretation of the act would render meaningless both the provision relating to the sum payable for permanent and total disability and the provision defining the loss, or loss of use of two members, or the sight of both eyes as permanent total disability. An employee so disabled could either add up the compensation due for loss or loss of use of members sustained in an accident and compare that sum with the amount payable to him for permanent total disability, and then label his condition so as to procure the greatest amount of compensation. It is evident that such a procedure is not within the purport of the act. More Like This Headnote | *Shepardize:* Restrict By Headnote

Labor & Employment Law > Disability & Unemployment Insurance > Disability Benefits > General Overview
Workers' Compensation & SSDI > Benefit Determinations > Medical Benefits > Rehabilitation

HN5 820 ILCS 305/8(a) (2004) requires an employer to pay for all reasonable medical services and rehabilitative services that are necessary to cure or relieve the effects of the injury. Whether an expense constitutes a necessary medical or rehabilitative expense under § 8(a) is a question for the Workers' Compensation Commission. More Like This Headnote

Labor & Employment Law > Disability & Unemployment Insurance > Disability Benefits > General Overview
Workers' Compensation & SSDI > Benefit Determinations > Medical Benefits > Rehabilitation

HN6 See 820 ILCS 305/8(a) (2004).

Labor & Employment Law > Disability & Unemployment Insurance > Disability Benefits > General Overview
Workers' Compensation & SSDI > Benefit Determinations > Medical Benefits > Rehabilitation

HN7 In Illinois, the employer's obligation to provide medical and rehabilitative services has been broadly interpreted to include nursing care, home care, and expenses for modifications to a home to make it accessible. More Like This Headnote

COUNSEL: For Appellant: Robert N. Hendershot, Evans & Dixon, St. Louis, MO.

For Appellee: Mark Glass, Glass & Korein, LLC, St. Louis, IL (Attorney for Jack Carson); Charles G. Haskins, Jr, John W. Powers, Cullen, Haskins, Nicholson & Menchetti, P.C., Chicago, IL (Attorneys for Amicus Curiae, Illinois Trial Lawyers Association).

JUDGES: PRESIDING JUSTICE McCULLOUGH delivered the opinion of the court. HOFFMAN, GROMETER, and HOLDRIDGE, JJ., concur. JUSTICE DONOVAN, concurring in part and dissenting in part.

OPINION BY: JOHN T. McCULLOUGH

OPINION

[480]** **[*702]** PRESIDING JUSTICE McCULLOUGH delivered the opinion of the court:

The claimant, Jack G. Carson, sought benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)), after he sustained severe injuries in a motor vehicle accident that occurred while he was driving for the respondent, Beelman Trucking (Beelman), on April 19, 1995. Carson's injuries included a burst fracture at C5-6 resulting in the complete loss of use of both legs and the near complete paralysis of the left arm and a degloving injury to **[*703]** the right **[***2]** arm that required a midhumeral amputation. The parties agree that Carson's injuries arose out of and in the course of his employment with Beelman. There is disagreement in regard to the appropriate method and scope of the compensation that Carson is entitled to receive under the Act. The disputed issues were whether Carson was entitled to temporary total disability (TTD) or maintenance benefits during the period of vocational rehabilitation **[**481]** even though he was receiving statutory permanent total disability (PTD) benefits under section 8(e)(18) of the Act (820 ILCS 305/8(e)(18) (West 2004)); whether Carson was entitled to awards under section 8(e)(10) of the Act (820 ILCS 305/8(e)(10) (West 2004)) for the losses of each arm in conjunction with a PTD award under section 8(e)(18); whether the respondent is liable under section 8(a) of the Act (820 ILCS 305/8(a) (West 2004)) for a voice-activated computer system; and whether the respondent is liable under section 8(a) to pay that portion of Carson's motor vehicle insurance premium pertaining to the handicap modifications endorsement.

Following a hearing on October 27, 2005, arbitrator Jennifer Teague awarded statutory PTD benefits of $ 489.69 **[***3]** per week for life under section 8(e)(18), a benefit of $ 396.89 for 250 weeks pursuant to section 8(e)(10) for the above-elbow surgical amputation of the right arm, and a benefit of $ 396.89 for 235 weeks pursuant to section 8(e)(10) for the paralysis of the left arm just below shoulder level. Arbitrator Teague also awarded $ 12,674.35 to reimburse Carson for the expenses of the voice-activated computer system and $ 708 to cover the costs of the handicap modifications endorsement to his automobile insurance premium. The computer and premium expenses were awarded pursuant to section 8(a) of the Act. The arbitrator denied Carson's claim for TTD or

maintenance benefits and his motion for penalties and attorney fees.

The following factual recitation is taken from the evidence presented at the arbitration hearing on October 27, 2005.

Jack Carson, an over-the-road trucker, was involved in a motor vehicle accident on April 19, 1995, while driving for the respondent. He was ejected from his vehicle and he sustained severe and permanent injuries. Carson suffered a burst fracture at C5-6 resulting in a complete loss of use of both legs and the near complete paralysis of the left arm. Carson sustained **[***4]** a severe degloving injury to the right arm that required surgical treatments, including a below-elbow amputation of the right arm in April 1995 and ultimately a midhumeral amputation of the right arm in May 1995. In addition, Carson suffered a near avulsion of his right ear and an injury to his right chest wall. As a result of the spinal injury, Carson has no sensation below the **[*704]** level of his midchest and his left arm is paralyzed below the level of the shoulder. This condition is referred to as tetraplegia. Carson does not have a prosthesis for his right arm because he lacks the shoulder strength to make it functional. At the time of the accident, Carson was 30 years old, married, and the father of a two-year-old boy. He was earning $ 748.02 a week.

The medical records and vocational reports show the accident left Carson dependent with regard to self-care and activities of daily living. Carson requires regular monitoring for complications that often arise from his conditions, including urinary tract infections, respiratory infections, skin breakdown, and sleep issues. Beelman continues to provide medical and adjuvant services pursuant to section 8(a). Carson has full-time nursing assistance **[***5]** in his home, a motorized wheelchair, and a customized van for transportation. Modifications were made to his home to accommodate his wheelchair.

The medical and rehabilitation records in evidence show that as early as September 1996, Carson's attending physician, Thomas F. Lieb, M.D., strongly recommended that Carson obtain a computer and environmental control unit to allow him to have some control over his household environment, to access information **[**482]** and to communicate online, and to have communication for safety and security reasons. In his progress notes, Dr. Lieb acknowledged that the system would not alleviate the need for attendant care, but he thought that it could reduce the amount of time that the attendant was needed. Dr. Lieb noted that the system would permit Carson some measure of independence and that it would be important for Carson's health and emotional well-being. Dr. Lieb indicated that Carson was not a candidate for a right arm prosthesis because he lacked the shoulder control and strength and because a prosthesis would interfere with the operation of the power wheelchair. Rehabilitation and occupational therapists concurred in the recommendation for the voice-activated **[***6]** computer and environmental control unit. Beelman would not approve payment for the computer and environmental control unit. Carson obtained it at his own expense in 2001. According to the invoices and billing statements, the costs for the equipment, installation, and training totaled $ 12,674.35.

Carson **[***7]** testified briefly during the hearing. He stated that he is no longer married. He lives alone. His son visits with him three or four times a week and on weekends. Carson testified that he obtained the computer and environmental control system in 2001 and that he paid for the equipment out of his pocket. Carson stated that the system enables him to operate his telephone, television, VCR, and lamp with his computer. He is also able to send and receive e-mail and read **[*705]** newspapers and other materials online. Carson stated that he is unable to read a book or paper unless someone holds it and turns the pages. Carson said that he is unable to drive his van and that he is homebound unless someone drives him. Beelman provided the modified van to accommodate his wheelchair. Carson pays the insurance premium on the van, which includes a biannual charge of $ 708 to cover a handicap modifications endorsement.

On review, the Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision with one modification. The Commission entered an order increasing the award for the loss of the right arm from 250 weeks to 300 weeks, finding that a prosthetic device would not restore **[***8]** some functional use of Carson's right arm. The circuit court of Clinton County confirmed the decision of the Commission. Beelman's appeal presents the following issues: (1) whether the Commission's decision to award benefits for specific losses pursuant to section 8(e)(10) in conjunction with the award of statutory permanent total disability benefits pursuant to section 8(e)(18) to compensate for distinct injuries sustained in a single accident is contrary to the law; (2) whether the Commission's decision to increase the section 8(e)(10) award for the above-elbow amputation of the right arm from 250 weeks to 300 weeks is contrary to the law; (3) whether the Commission's award for the costs of the voice-activated computer system is contrary to the law; and (4) whether the Commission's award of the additional insurance premium for the handicap modifications endorsement is contrary to the law.

The first issue addressed is whether the Commission erred in awarding benefits under section 8(e)(10) in conjunction with the statutory permanent total disability award under section 8(e)(18) where the injuries were incurred in a single accident. Carson sustained numerous injuries, the most severe **[***9]** of which were a cervical spinal injury and a degloving injury to the right arm. The C5-6 burst injury to the cervical spine resulted in the complete loss of use of Carson's legs and almost complete paralysis of his left arm. The disability from this **[**483]** injury falls within the ambit of section 8(e)(18) of the Act.

Section 8(e)(18) provides that:

> HN1"The specific case of loss of both hands, both arms, or both feet, or both legs, or both eyes, or of any two thereof, or the permanent and complete loss of the use thereof, constitutes total and permanent disability, to be compensated according to the compensation fixed by paragraph (f) of this Section. These specific cases of total and permanent disability do not exclude other cases.
>
> Any employee who has previously suffered the loss or permanent and complete loss of the use of any of such members, and in a **[*706]** subsequent independent accident loses another or suffers the permanent and complete loss of the use of any one of such members[,] the employer for whom the injured employee is working at the time of the last independent accident is liable to pay compensation only for the loss or permanent and complete loss of the use of the member occasioned by **[***10]** the last independent accident." 820 ILCS 305/8(e)(18) (West 2004).

The respondent argues that the award of 300 weeks pursuant to section 8(e)(10) is contrary to law. The facts show that award was based upon the injuries incurred in the same incident which resulted in the total and permanent disability awarded pursuant to section 8(e)(18). We agree with the respondent.

The claimant was awarded compensation pursuant to section 8(e)(18), "according to the compensation fixed by paragraph (f)."

The supreme court in *Freeman* discussed section 8(e)(18) in the context of subsequent injuries, stating:

> HN2"[I]nasmuch as adjudications of permanent total disability under section 8(e)(18) are to be made without regard to a worker's future employment prospects, and awards under that section do not reflect actual unemployability, the Workers' Compensation Act anticipates that a recipient of section 8(e)(18) benefits may in addition recover temporary total disability benefits should he retain or recover his ability to earn wages only to lose that ability because of a work-related accident. In these circumstances, the Act contemplates that the employee, notwithstanding the previous award, is to be compensated **[***11]** for his current loss of earning power." *Freeman United Coal Mining Co. v. Industrial Comm'n*, 99 Ill. 2d 487, 495, 459 N.E.2d 1368, 1372-73, 77 Ill. Dec. 119 (1984).

In *Arview v. Industrial Comm'n*, 415 Ill. 522, 534-35, 114 N.E.2d 698, 704 (1953), the supreme court, in discussing section 8(e)(18), stated:

> HN3"[I]t would be specious reasoning to conclude that the loss of more than two members would not constitute permanent and total disability, but revert to a condition of specific loss. The loss of the additional members over and above the two specified in the act cannot convert such statutory permanent and total disability into a case of specific losses. That the employee disabled by the loss of more than two members may sustain greater hardship than an employee who has lost only two members should be recognized by the legislature and provision made for him in the act. However, this circumstance does not modify his condition into one of specific losses under the present law, or give him the right to elect whether he will itemize his disabilities or claim permanent total disability. HN4There is no provision in the act giving any employee, previously **[*707]** handicapped or otherwise, the right to elect whether he will **[***12]** claim compensation for the cumulative loss of members sustained **[**484]** in one accident, or claim statutory permanent and total disability. Any such interpretation of the act would render meaningless both the provision relating to the sum payable for permanent and total disability and the provision defining the loss, or loss of use of two members, or the sight of both eyes as permanent total disability. An employee so disabled could either add up the compensation due for loss or loss of use of members sustained in an accident and compare that sum with the amount payable to him for permanent total disability, and then label his condition so as to procure the greatest amount of compensation. It is evident that such a procedure is not within the purport of the act."

Section 8(e)(18) concerns the award of permanent benefits resulting from the same accident. The employer is correct in arguing that the Commission does not have the power to award benefits for specific losses of permanent partial disability and permanent total disability resulting from that same accident. The Commission erred in awarding section 8(e)(10) benefits in conjunction with section 8(e)(18) benefits awarded for the injuries **[***13]** sustained in a single accident.

The next issue is whether the Commission's decision to award the expenses of a voice-activated computer and environmental control system was proper under section 8(a) of the Act. HN5 Section 8(a) of the Act requires the employer to pay for all reasonable medical services and rehabilitative services that are necessary to cure or relieve the effects of the injury. Whether an expense constitutes a necessary medical or rehabilitative expense under section 8(a) is a question for the Commission. Section 8(a) states in pertinent part as follows:

> ?HN6The employer shall also pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental thereto. If as a result of the injury the employee is unable to be self-sufficient the employer shall further pay for such maintenance or institutional care as shall be required." 820 ILCS 305/8(a) (West 2004).

HN7In Illinois, the employer's obligation to provide medical and rehabilitative services has been broadly interpreted to include nursing care, home care, and expenses for modifications to a home to make it accessible. **[***14]** *See Zephyr, Inc. v. Industrial Comm'n*, 215 Ill. App. 3d 669, 576 N.E.2d 1, 159 Ill. Dec. 332 (1991); *Burd v. Industrial Comm'n*, 207 Ill. App. 3d 371, 566 N.E.2d 35, 152 Ill. Dec. 507 (1991).

In this case, Dr. Lieb, the occupational therapists, and the rehabilitative consultant strongly recommended the computer system and the environmental control unit as reasonable and necessary appliances **[*708]** to improve the claimant's physical and psychological health and well-being. There is overwhelming competent evidence in the record to support the Commission's conclusion that the appliances were reasonable and necessary to relieve the effects of the injury. The Commission's award is in keeping with the purpose of section 8(a) and the overall purpose of the Act to fully compensate an employee for work-related injuries. In this case, the computer and environmental control system are appliances that have restored some independent function to Carson. These devices have benefitted his physical and psychological health and well-being. The award is clearly warranted under the unique circumstances in this case.&t;para&t;The next question is whether the award for that portion of the automobile **[**485]** insurance premium covering the handicap modifications endorsement **[***15]** is appropriate under section 8(a) of the Act. According to the record, Beelman provided Carson with a van that was designed to accommodate his wheelchair. Carson is not able to drive the van. He is dependent on someone to drive the van. The van is covered under an automobile policy that Carson purchased. There is a handicap modifications endorsement that covers the customized equipment in the event of a direct and accidental loss. The Commission found no legal or logical basis to exclude from an employer's section 8(a) obligations the duty to cover that portion of the insurance premium pertaining to the modifications to the vehicle which were necessary to accommodate Carson's work-related injuries and disabilities. The circuit court declined to find the Commission's decision contrary to the law or the manifest weight of the evidence in absence of controlling authority.

This is a question that has not been directly addressed by the Illinois courts. Beelman notes that the courts from two other jurisdictions have determined that the employee should bear ordinary expenses for repair, fuel, title, and insurance because the employee controls the vehicle and has some individual control over **[***16]** these expenses (*Mickey v. City Wide Maintenance*, 996 S.W.2d 144, 149-50 (Mo. App. 1999), *overruled by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003); *Manpower, Temporary Services v. Sioson*, 529 N.W.2d 259 (Iowa 1995)), and it suggests we adopt the conclusions of those courts. We disagree.

In this case, Carson would not have had to purchase a modified van were it not for his work-related injuries. Carson presented evidence of the specific cost of the handicap modifications endorsement. This cost is itemized and it is separate from the liability, comprehensive, and collision coverage provided under the auto policy. Carson continues to bear the ordinary expenses for maintenance, fuel, and motor vehicle insurance. However, the handicap **[*709]** modifications endorsement is a unique expense that is incurred as a result of the work-related injuries and disabilities. An award to cover the costs for an handicap modifications endorsement under the unique circumstances presented is in keeping with the purpose of section 8(a) and is not contrary to the law.

The section 8(e)(10) award is set aside. In all other respects, the order of the circuit court is affirmed.

Affirmed in part and reversed **[***17]** in part.

HOFFMAN, GROMETER, and HOLDRIDGE, JJ., concur.

CONCUR BY: DONOVAN (In Part)

DISSENT BY: DONOVAN (In Part)

DISSENT

JUSTICE DONOVAN, concurring in part and dissenting in part:

I concur in the majority opinion in all aspects, save one. I would affirm the decision to award a specific loss under section 8(e)(10) in conjunction with a statutory permanent total disability award under section 8(e)(18) because I find that it is supported by the facts and the law.

Section 8(e)(18) provides that the loss of both hands, both arms, both feet, both legs, both eyes, or any two thereof, or the permanent and complete loss of use thereof, constitutes total and permanent disability. 820 ILCS 305/8(e)(18) (West 2004). Disability under section 8(e)(18) is construed to be permanent and total disability by legislative pronouncement. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 99 Ill. 2d 487, 492-93, 459 N.E.2d 1368, 1371, 77 Ill. Dec. 119 (1984); *Scandroli Construction Co. v. Industrial Comm'n*, 54 Ill. 2d 395, 399, 297 N.E.2d 150, 153 (1973). A section 8(e)(18) award does not consider a measure of the claimant's **[**486]** employability and does not require that an employee be wholly and permanently incapable of work. *Scandroli Construction Co.*, 54 Ill. 2d at 399, 297 N.E.2d at 153; **[***18]** *Freeman United Coal Mining Co.*, 99 Ill. 2d at 493-95, 459 N.E.2d at 1371-73. The intent of section 8(e)(18) is not simply to replace lost earnings; it is "'broad enough to accommodate the pain and inconvenience[, rather than actual disability,] that accompany [the loss of two members] even though the employee remains able to work.'" *Freeman United Coal Mining Co.*, 99 Ill. 2d at 492-93, 459 N.E.2d at 1371 (quoting *National Lock Co. v. Industrial Comm'n*, 62 Ill. 2d 51, 56-57, 338 N.E.2d 405, 408 (1975)).

In *Freeman United Coal Mining Co.*, the Illinois Supreme Court upheld an award of temporary total disability benefits to an employee who returned to work after having been awarded section 8(e)(18) benefits for a bilateral amputation of both legs and who subsequently sustained another work-related injury. The supreme court stated that **[*710]** the subsequent injury destroyed the claimant's earning power and income stream and should not be "suffered without recompense." *Freeman United Coal Mining Co.*, 99 Ill. 2d at 494, 459 N.E.2d at 1372. The question in *Freeman United Coal Mining Co.* involved the award of TTD benefits. The supreme court noted that it had not been called upon to decide whether the **[***19]** claimant would be entitled to any permanency benefits and that the issue would be saved for another day. *Freeman United Coal Mining Co.*, 99 Ill. 2d at 495, 459 N.E.2d at 1372.

Nevertheless, the Illinois Supreme Court has affirmed the Commission's decision to award concurrent permanency benefits in cases where the claimant suffered distinct injuries in a single accident. See, *e.g.*, *C.S.T. Erection Co. v. Industrial Comm'n*, 61 Ill. 2d 251, 335 N.E.2d 419 (1975); *R.C. Mahon Co. v. Industrial Comm'n*, 45 Ill. 2d 480, 259 N.E.2d 274 (1970); *J.J. Grady Co. v. Industrial Comm'n*, 46 Ill. 2d 471, 263 N.E.2d 809 (1970).

In the case at bar, the claimant sustained numerous injuries in a single accident. It is beyond debate that the injury to the cervical spinal and the degloving injury to the right arm are concurrent and distinct injuries. The degloving injury to the right arm required multiple surgeries, including an above-elbow amputation. It resulted in a specific loss of the type contemplated under section 8(e)(10)section 8(e)(10). The C5-6 burst fracture resulted in the complete loss of use of the claimant's legs and the near-complete paralysis of his left arm. A statutory permanent total disability award under **[***20]** section 8(e)(18) of the Act is appropriate because there is no evidence that the disability resulting from the C5-6 burst fracture would have left the claimant wholly incapable of work. The degloving injury to the right arm resulted in an additional impairment to the claimant's earning power and warrants additional compensation. This is not a case where concurrent awards would represent a double recovery for the same injury. This is not a case where the maxim "a workman can only be 100% disabled" applies. There is no evidence that either injury, by itself, would have left the claimant without a market for his skills, and thus completely unemployable. To declare, as the majority has, that a statutory permanent and total disability award under section 8(e)(10) precludes an additional permanency benefit where a distinct injury results in additional impairment of earning power is to create an exception to the employer's liability that violates the letter and spirit of the Act.

[487]** After considering the reasoning of the supreme court in the above cases and the remedial purposes of the Act, I conclude that the decision **[*711]** to award a specific loss under section 8(e)(10) in conjunction with a statutory **[***21]** permanent total disability award under section 8(e)(18) is proper under the law and the facts.

I would also affirm the circuit court's decision to confirm the Commission's decision to increase the section 8(e)(10) award for the above-elbow amputation of the right arm from 250 weeks to 300 weeks. Section 8(e)(10) of the Act provides for an additional award where the accidental injury results in "the amputation of an arm at the shoulder joint, or so close to [the] shoulder joint that an artificial arm cannot be used." 820 ILCS 305/8(e)(10) (West 2004). The medical evidence shows that the above-the-elbow amputation left the claimant without adequate anatomical structures and sufficient strength to support a prosthetic device. The Commission's decision to award additional weeks of compensation under section 8(e)(10) is supported by the evidence and is not contrary to the law.

Accordingly, I would affirm the decision of the circuit court in all respects.

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Docket No. 106680.

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

BEELMAN TRUCKING, Appellee, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Jack G. Carson, Appellant).

Opinion filed May 21, 2009.

JUSTICE GARMAN delivered the judgment of the court, with opinion.

Chief Justice Fitzgerald and Justices Freeman, Thomas, Kilbride, Karmeier, and Burke concurred in the judgment and opinion.

OPINION

Plaintiff, Jack Carson, suffered serious injuries to his arms and legs as a result of a vehicular accident. His injuries arose out of and in the course of employment with defendant, Beelman Trucking. Carson filed a workers' compensation claim. An arbitrator awarded Carson benefits, which both the Workers' Compensation Commission and the circuit court of Clinton County upheld. Beelman Trucking appealed. The appellate court reversed in part, holding that the Commission erred in awarding Carson benefits with respect to the loss of use of his arms. 381 Ill. App. 3d 701. Carson then filed a petition for leave to appeal, which we allowed pursuant to Supreme Court Rule 315 (210 Ill. 2d R. 315(a)).

BACKGROUND

The parties do not dispute the facts underlying this workers' compensation case. On April 19, 1995, Jack Carson was severely injured in a vehicular accident. Carson had been driving a truck for his employer, defendant Beelman Trucking (Beelman). The parties agree that Carson's injuries arose out of and in the course of his employment. As a result of the accident, Carson suffered paralysis in both legs, paralysis below the shoulder in his left arm, and the surgical amputation of his right arm above the elbow.

Carson filed a claim under the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 1994)). Carson presented his claim to an arbitrator, who awarded statutory permanent total disability benefits under section 8(e)(18) for the loss of use of Carson's legs (820 ILCS 305/8(e)(18) (West 1994)). The arbitrator also awarded 235 weeks of permanent partial disability for the loss of use of Carson's left arm, and 250 weeks of permanent partial disability for the loss of Carson's right arm, under section 8(e)(10) of the Act (820 ILCS 305/8(e)(10) (West 1994)).

The arbitrator also awarded Carson various other expenses. Treating Carson's injuries has required substantial medical services. These services include full-time nursing care, modifications to Carson's house, and motorized wheelchairs. Carson also required handicap modifications to his vehicle. Although Carson cannot drive, modifications to the van were necessary to accommodate his motorized wheelchair. The arbitrator awarded these expenses, which were not disputed by the parties.

However, the parties did dispute two other expenses. The first was the cost of a home computer system, which in addition to controlling the lighting in Carson's bedroom also enables Carson to communicate with friends and family over the Internet. The arbitrator concluded that the medical opinions in the case indicated that the computer system was a reasonable and necessary expense and awarded Carson $12,674.35 for the computer-related purchases. The second expense was an award of $708 to reimburse a portion of Carson's insurance premium for his handicap modified van. The arbitrator concluded that portion of Carson's premium was identifiably related to Carson's injury.

Beelman, the employer, appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission amended the arbitrator's decision by awarding Carson an additional 50 weeks of compensation for the amputation of his right arm. This amendment was based on the Commission's conclusion that Carson's injury was such that he would be incapable of using a prosthetic arm. In all other respects the arbitrator's decision was upheld.

After receiving the Commission's order, Beelman next appealed to the Clinton County circuit court. The circuit court concluded that the Commission's decision to award benefits under both sections 8(e)(18) and 8(e)(10) was not contrary to law. With respect to the expenses awarded for Carson's computer system and automobile insurance, the circuit court concluded such awards were not against the manifest weight of the evidence. The circuit court therefore confirmed the Commission's decision.

The appellate court affirmed in part and reversed in part. The appellate court concluded that the Commission lacks the authority to award benefits for both permanent partial disability (section 8(e)(10)) and permanent total disability (section 8(e)(18)) that result from the same accident. The court then affirmed the circuit court in awarding expenses for both the home computer system and insurance premium.

Carson filed a petition for leave to appeal, which this court granted pursuant to Supreme Court Rule 315 (210 Ill. 2d R. 315(a)). We then allowed the Illinois Trial Lawyers Association to file an *amicus curiae* brief in support of Carson. 210 Ill. 2d R. 345.

Carson asserts that the language of the statute allows him to be awarded benefits under both section 8(e)(18) and section 8(e)(10) or, in the alternative, that the statute violates the equal protection clauses of the United States and Illinois constitutions and article I, section 12, of the Illinois Constitution. Additionally, on cross-appeal Beelman asserts that the Commission erred in awarding expenses for Carson's home computer system and the handicap modified van's insurance premium. For the reasons that follow, we affirm that part of the appellate court judgment confirming the Commission's award of benefits under section 8(e)(18), affirm that part of the order awarding expenses relating to Carson's home computer system and insurance

premium, but reverse that part of the judgment which set aside the Commission's award of benefits under section 8(e)(10).

ANALYSIS

Before a reviewing court may overturn a decision of the Commission, the court must find that the award was contrary to law or that the Commission's factual determinations were against the manifest weight of the evidence. *Fitts v. Industrial Comm'n*, 172 Ill. 2d 303, 307 (1996). On questions of law, review is *de novo*, and a court is not bound by the decision of the Commission. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 60 (1989). On questions of fact, the Commission's decision is against the manifest weight of the evidence only if the record discloses that the opposite conclusion clearly is the proper result. *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 786 (2005).

I. Benefits Awarded Under Section 8(e) of the Act

A. *Interpretation of the Act*

The fundamental rule of statutory interpretation is to ascertain and effectuate the legislature's intent. *Hamilton v. Industrial Comm'n*, 203 Ill. 2d 250, 255 (2003). We look to the statutory language, which given its plain and ordinary meaning, is the best indication of intent. *Hamilton*, 203 Ill. 2d at 255. In addition to the statutory language, we also consider the reason for the law, the problems to be remedied, and the objects and purposes sought. *General Motors Corp. v. State of Illinois Motor Vehicle Review Board*, 224 Ill. 2d 1, 13 (2007). In this case, the Workers' Compensation Act is a remedial statute intended to provide financial protection for injured workers and it is to be liberally construed to accomplish that objective. *Flynn v. Industrial Comm'n*, 211 Ill. 2d 546, 556 (2004). With this is mind, we turn to the applicable provisions of the Act.

Section 8(e) of the Act provides for compensation of a worker who suffers a permanent partial disability. This section is organized into subsections, commonly referred to as the "schedule." For the most part, each subsection in the schedule fixes the compensation for a particular body part, or member, that a worker might lose in a workplace accident. This schedule of losses awards benefits in terms

of a fixed number of "weeks." A "week" of compensation is equal to 60% of what is referred to as the worker's "average weekly wage." The average weekly wage is based on calculations governed by a section of the Act not at issue in this case.

The number of weeks of compensation varies depending on the specific loss suffered by the worker. Applicable to this case is subsection (10) of section 8(e), under which the Commission awarded Carson benefits for the loss of each of his arms. Section 8(e)(10) provides, in part:

> "Arm–235 weeks. *** Where an accidental injury results in the amputation of an arm above the elbow, compensation for an additional 15 weeks shall be paid, except where the accidental injury results in the amputation of an arm at the shoulder joint, or so close to shoulder joint that an artificial arm cannot be used, *** in which case compensation for an additional 65 weeks shall be paid." 820 ILCS 305/8(e)(10) (West 1994).

Not every subsection of section 8(e) provides for compensation based on a single lost member. The other subsection at issue in this case provides for certain combinations of losses. Section 8(e)(18) of the Act provides:

> "The specific case of loss of both hands, both arms, or both feet, or both legs, or both eyes, or of any two thereof, or the permanent and complete loss of the use thereof, constitutes total and permanent disability, to be compensated according to the compensation fixed by paragraph (f) of this Section. These specific cases of total and permanent disability do not exclude other cases." 820 ILCS 305/8(e)(18) (West 1994).

Section 8(e)(18) refers to paragraph (f), which provides for a weekly benefit, awarded for life, equal to 66 2/3% of the worker's average weekly wage. Thus, not only does section 8(e)(18) address the loss of more than one member, it differs from the other subsections found in the schedule of losses under 8(e) in that it does not fix compensation for a set number of weeks. Instead the benefit is payable for life. Section 8(e)(18) also differs from the other

subsections in that the injuries it applies to constitute "total and permanent" disability rather than permanent partial disability.

Here Carson challenges the appellate court's judgment that the Commission erred in awarding benefits under both section 8(e)(10) and section 8(e)(18). Specifically, Carson argues that the appellate court's decision imposes a maximum benefit that was not intended by the legislature. Carson asserts that adopting such a rule allows otherwise compensable injuries to other body parts to go uncompensated.

Beelman responds that the appellate court properly capped Carson's recovery to those benefits authorized by section 8(e)(18). Beelman suggests that because the words "total" and "permanent" have not been defined in the statute, they must be given their plain and ordinary dictionary meaning. Beelman asserts that "total" should be read to mean "whole; not divided; full; complete" and "utter; absolute." According to Beelman, section 8(e)(18) is a maximum benefit for injuries sustained in a single accident because a worker cannot be more than totally and permanently disabled under the commonly accepted definition of "total."

Undefined terms in a statute generally should be given their commonly accepted or popular meaning. *Gem Electronics of Monmouth, Inc. v. Department of Revenue*, 183 Ill. 2d 470, 477-78 (1998). Further, it is entirely appropriate to employ the dictionary as a resource to ascertain the meaning of undefined terms, and this court has done so in the past. *People ex rel. Daley v. Datacom Systems Corp.*, 146 Ill. 2d 1, 15 (1991). However, the use of a commonly accepted or popular meaning is not appropriate when the intention of the legislature is to the contrary. *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 185 (1992).

As noted above, section 8(e)(18) provides that the loss of any two enumerated members "constitutes total and permanent disability." Section 8(f), which fixes the amount of compensation, in turn provides that "[i]n case of complete disability, which renders the employee wholly and permanently incapable of work, or in the specific case of total and permanent disability as provided in [section 8(e)(18)], compensation shall be payable at the rate provided in subparagraph 2 of paragraph (b) of this Section for life." 820 ILCS 305/8(f) (West 1994). Section 8(f) refers to both "complete disability" and to

statutory total and permanent disability under section 8(e)(18). Under this section, the phrase "complete disability" applies to those workers who are rendered wholly incapable of work. In contrast, the phrase "total and permanent disability" under section 8(e)(18) contemplates that the injured worker may yet be capable of finding future employment.

This court has already addressed this distinction, and examined the meaning of "total and permanent" disability under section 8(e)(18), in *Freeman United Coal Mining Co. v. Industrial Comm'n*, 99 Ill. 2d 487 (1984). In *Freeman United* we considered the case of a worker who had been awarded compensation for total and permanent disability under section 8(e)(18) after an initial accident, but who had suffered a specific loss following a second accident. This court recognized the particular, nonliteral meaning of "total and permanent" disability:

> "Disability under section 8(e)(18), by contrast [to 'complete disability'], is 'permanent and total' only by legislative pronouncement; it is not inconsistent with a continuing ability to work, and in that event the pension mandated for it is not to be affected by the employee's return to work." *Freeman*, 99 Ill. 2d at 492.

Further, we noted that compensation under section 8(e)(18) "reflects not actual permanent total disability or actual loss of wages, but 'a stated legislative determination that the [specific injuries suffered] shall have compensation at a fixed figure.'" *Freeman United*, 99 Ill. 2d at 494, quoting *Jones v. Cutler Oil Co.*, 356 Mich. 487, 491, 97 N.W.2d 74, 76 (1959). In *Freeman United* we therefore determined that use of the commonly accepted and popular meaning of "total and permanent" was contrary to the legislature's intent to allow for "permanent and total" benefits even in the absence of actual permanent and total disability. Thus, Beelman's argument that the legislature's use of the words "total" and "permanent" serves as a cap on benefits for injuries sustained in a single accident is not supported by this court's prior interpretation of the statute.

We next turn to the remaining language of section 8(e)(18) to determine whether that section imposes such a cap. By its own terms, the text of section 8(e)(18) refers to the loss of "both" hands, arms, feet, legs, or eyes, "or of any two thereof." Likewise, section 8(f), in

addressing the case where separate accidents lead to separate injuries, provides that if an employee had previously lost the use "of one member" and incurs the loss "of another member," then the Second Injury Fund is to pay the difference between the second employer's share for the specific loss of the member and the amount owed under the statutory total and permanent disability language of section 8(e)(18).

The above provisions plainly reference the loss of only two members and do not address the situation where a worker suffers the loss of more than two members in a single accident. However, Carson argues that the final sentence of the first paragraph of section 8(e)(18), which states that "[t]hese specific cases of total and permanent disability do not exclude other cases," implicitly allows recovery for other specific losses suffered in addition to the loss of two enumerated members described in section 8(e)(18). Similarly, *amicus* argues that the word "case" refers to a "case of loss."

A general usage dictionary reveals the commonly accepted and popular meaning of the word "case" to be "a special set of circumstances or conditions." Webster's Third New International Dictionary 345 (1993). In this sense the word is synonymous with "instance" or "example." Roget's II: The New Thesaurus 363 (1988). Using this definition, section 8(e)(18) would begin: "In the specific *instance* of loss of both hands." This use of *case* conveys the legislature's intent to address that "special set of circumstances" where a worker has suffered the loss of two members.

Beelman, however, argues that other "cases" refers to other lawsuits or proceedings. Beelman relies on the law dictionary definition of "case" as "[a] proceeding, action, suit, or controversy at law or in equity." Black's Law Dictionary 206 (7th ed. 1999).

Using Beelman's definitions the sentence would read, "in the specific *proceeding* of loss of both hands" or "in the specific *action* of loss of both hands." Likewise, the final sentence in section 8(e)(18) would read: "These specific *proceedings* of total and permanent disability." In contrast to using the general usage dictionary definition, replacing the word "case" with any of Beelman's suggested definitions results in a sentence that makes little logical sense in context. The schedule of benefits in section 8(e) does not address specific actions or proceedings. Each subsection instead addresses a particular loss,

for example, a loss of individual members, a loss of eyesight, or a loss of hearing. We therefore conclude that because the statute does not indicate an intention of the legislature to the contrary, the legislature intended the word "case" to have its commonly accepted and popular meaning, that of a synonym to "instance" or "example."

Although we do not accept Beelman's definition of "case," the question remains whether the provision stating that section 8(e)(18) does not "exclude other cases" indicates that the legislature intended that workers losing more than two limbs to be entitled to recover under both section 8(e)(18) and under other scheduled losses.

As noted above, section 8(e) speaks in terms of specific losses. Each subsection of the schedule of benefits allows a benefit for each applicable case of loss of a particular member. Section 8(e)(18) in particular addresses the "specific case of loss" of two members. Section 8(e)(18) goes on to say that this specific case "does not exclude other cases." Thus, this means that section 8(e)(18) does not exclude other cases of loss. In *Freeman United*, we held that a subsequent loss of use of a worker's arm was compensable even though the worker had previously recovered under section 8(e)(18) for different losses. *Freeman United*, 99 Ill. 2d at 495. Those different losses were compensable because of their effect on the worker's earning capacity, distinguishing those injuries from the injuries which resulted in the worker's statutory total and permanent disability. *Freeman United*, 99 Ill. 2d at 493.

We noted in *Freeman United* that it was " 'permissible to penetrate the fiction of 100 per cent disability and accept the truth of [the worker's] remaining earning ability so that *** a subsequent injury with increased actual disability may be compensated.' " *Freeman United*, 99 Ill. 2d at 493, quoting *Smith v. Industrial Accident Comm'n*, 44 Cal. 2d 364, 370, 282 P.2d 64, 68 (1955). We conclude it is equally permissible to penetrate that fiction when other cases of loss in the same accident result in "increased actual disability."

The loss of Carson's legs immediately entitled him to compensation under section 8(e)(18). Had that been the extent of his injuries, Carson likely would have retained at least some earning capacity. Carson may have even found further employment, as the worker in *Freeman United* had done before again suffering injury.

However, Carson's earning capacity was further reduced when his workplace accident also caused the loss of his right arm and the loss of use of his left arm.

Those losses, above and beyond the specific case of loss of two members compensable by section 8(e)(18), would be left uncompensated if we were to accept Beelman's argument. If Beelman were correct, once a worker suffered a loss of both legs in an accident, *no* other specific losses, whether it be an arm, finger, eye or loss of hearing, would be compensable if the losses were all suffered in the same accident. Beelman urges that this result is required under this court's holding in *Arview v. Industrial Comm'n*, 415 Ill. 522 (1953).

The worker in *Arview* was injured by coming into contact with an overhead power line. The accident resulted in the amputation of both legs below the knee and the amputation of the left arm at the shoulder joint. *Arview*, 415 Ill. at 524. In a previous accident the worker had already suffered a loss of sight in his right eye. Both accidents occurred while working for the same employer.

The Commission determined that the employer was responsible for paying total permanent disability benefits, including a lifetime pension. Both parties appealed. The employer argued that its liability was limited to compensation for the specific loss of one member. At that time, as now, the Act provided that when a worker who had previously suffered the loss of one enumerated member under section 8(e)(18) suffers the loss of a second member in a subsequent independent accident, that worker's employer is liable only for the specific loss of that second member. The employer was not responsible for the full lifetime pension that would normally be awarded for statutory total and permanent disability. Instead the Act provided that the special fund, now known as the Second Injury Fund, pays the difference between the amount payable by the employer under the specific loss schedule and the amount owed to the worker under statutory total and permanent disability under section 8(e)(18). Indeed, the employer in *Arview* argued that the worker was entitled to recover from the special fund for his injuries. *Arview*, 415 Ill. at 525. The worker asserted that he was entitled to both the lifetime pension and to compensation for the specific loss of each of his three amputated members. *Arview*, 415 Ill. at 525.

Although the *Arview* case is complicated by the worker's previous eye injury, the relevant question with respect to the instant case was whether the worker could choose to itemize his lost members as cases of specific loss, rather than limit his compensation to the statutory total and permanent disability lifetime benefit provided by section 8(e)(18).

In answering that question, we noted that it would be "specious reasoning" to conclude that the loss of multiple members would cause total and permanent disability to revert to specific losses. *Arview*, 415 Ill. at 534. We further stated that "[t]here is no provision in the act giving any employee, previously handicapped or otherwise, the right to elect whether he will claim compensation for the cumulative loss of members sustained in one accident, or claim statutory permanent and total disability." *Arview*, 415 Ill. at 534.

The conclusion reached in *Arview* was that an injured worker may not elect to bypass section 8(e)(18) in favor of itemizing his specific losses. To do so would "render meaningless both the provision relating to the sum payable for permanent and total disability and the provision defining the loss, or loss of use of two members, or the sight of both eyes as permanent total disability." *Arview*, 415 Ill. at 534-35.

In this case, Carson does not seek to bypass recovery under section 8(e)(18) and recover for three specific losses. Nor does he seek a double recovery for the loss of his legs under both section 8(e)(18) and section 8(e)(12) (820 ILCS 305/8(e)(12) (West 1994) (providing for 200 weeks of compensation for the loss of a leg)). Instead, Carson contends that he is entitled to recover under section 8(e)(18) for the loss of both legs, and recover under section 8(e)(10) for the loss of earning capacity as a result of the loss of each arm. This argument was not addressed by this court in *Arview*. In *Arview* we considered whether a worker was required to accept statutory total and permanent disability benefits or whether the employee could choose between claiming multiple specific losses *or* statutory total and permanent disability. Until *Freeman United*, when we recognized the nonliteral meaning of "total and permanent" disability under section 8(e)(18), those were the only two outcomes the court could have adopted. Now, with the understanding that statutory total and permanent does not preclude recovery for losses which cause "actual increased disability," a different question is being asked in this case.

For this reason we conclude that the present case is distinguishable from *Arview*. Extending *Arview* to the present facts would run contrary to the Act's purpose of providing financial protection to workers for work-related injuries. As noted above, it would also be contrary to the rationale for our holding in *Freeman United*. Thus, we reiterate that the Act does not allow a worker to avoid section 8(e)(18) by itemizing specific losses that otherwise fall under that section. However, the Act does permit a worker to recover for the loss of two members under section 8(e)(18) as well as for any additional scheduled losses beyond the two losses compensated under that section. We therefore hold that the appellate court erred in setting aside the Commission's award under section 8(e)(10).

B. *Claims Under the United States and Illinois Constitutions*

It has long been recognized that constitutional issues will be reviewed by this court only when the case may not be decided on nonconstitutional grounds. *Mulay v. Mulay*, 225 Ill. 2d 601, 611 (2007). Our conclusion that the Act itself allows awards under both section 8(e)(18) and section 8(e)(10) therefore obviates the need for this court to consider Carson's alternative constitutional arguments.

II. Benefits Awarded Under Section 8(a)–Necessary and Reasonable Expenses

In awarding Carson benefits for his home computer system and for his automobile insurance premium, the Commission made factual determinations that each was a necessary and reasonable medical expense. As noted above, such factual determinations will not be overturned unless they are against the manifest weight of the evidence.

We first address the Commission's award of computer-related expenses. Beelman argues that although voice-activated computers and similar devices have been awarded in other cases, the devices in those cases were used for assisting the employee in returning to work or as rehabilitative tools. Beelman suggests that because Carson uses his computer primarily for interacting with friends and family and not to aid a job search or participate in vocational rehabilitation, the award is contrary to law.

Section 8(a) of the Act provides that an employer shall pay for "medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury." That section continues, indicating that the employer "shall also pay for treatment, instruction, and training necessary for the physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental thereto."

The arbitrator here in part relied on evidence from Carson's primary physician, which indicated the computer system would be set up for therapeutic purposes. According to the arbitrator, the physician "emphasized the importance of this device as it relates to the [Carson's] mental health and general wellbeing." Thus, the arbitrator concluded that "[Carson] has lost almost complete use of his body and is totally dependent on others for all movement and activity. The computers system provides his only vestige of autonomy. When so much is taken away, the psychological value of any remaining independence is obviously magnified."

Based on this record, we cannot say that the Commission's factual determination, that the computer-related expenses are necessary and reasonable medical expenses, is against the manifest weight of the evidence. Accordingly, we confirm that part of the Commission's order awarding expenses for Carson's home computer system.

Next, regarding the van's insurance premium, Beelman urges that this court consider this question as a matter of law and as a question of first impression in Illinois. Beelman cites Iowa and Missouri as jurisdictions that have considered the issue and held that the insurance costs of a handicap modified vehicle are to be borne by the injured worker. Beelman asks this court to adopt a similar rule.

In *Manpower Temporary Services v. Sioson*, 529 N.W.2d 259 (Iowa 1995), a worker was injured, as in this case, to the point where she required the use of an electric wheelchair. The court concluded that the worker's need for the wheelchair also necessitated the use of a modified van for transportation. According to the court, to hold otherwise would have rendered her, "more than need be, a prisoner of her severe paralysis." *Sioson*, 529 N.W.2d at 264. The court therefore affirmed the commissioner's decision to award the expense of the vehicle. The court held, however, that the cost of the van's repair,

fuel, title, license and insurance, were properly disallowed by the commissioner. The court reasoned that "it is exclusively up to [the worker] to set the extent of these purchases." *Sioson*, 529 N.W.2d at 264. With respect to insurance, the court concluded that the worker "will also control, for the most part, the extent of insurance coverage to be purchased." *Sioson*, 529 N.W.2d at 264.

The second case Beelman presents is a decision by a Missouri appellate court, which relies on *Sioson*. Like *Sioson*, in *Mickey v. City Wide Maintenance*, 996 S.W.2d 144 (Mo. App. 1999), the court was asked to determine whether the cost of a handicap modified van was compensable. The court concluded that the employer was responsible, in part, for the purchase of and modifications to the van. *Mickey*, 996 S.W.2d at 152-53. The *Mickey* court also adopted the reasoning of the Iowa Supreme Court in denying compensation for the van's fuel, repair, title and insurance costs. *Mickey*, 996 S.W.2d at 153.

The *Sioson* and *Mickey* decisions cited by Beelman are distinguishable from the present case. The rationale for disallowing insurance, expressed in *Sioson* and adopted by the Missouri court in *Mickey*, was that the worker was responsible for determining to what extent the vehicle was insured. Neither court considered in any detail the issue raised in this case.

Here the Commission upheld the arbitrator's factual determination that the insurance premium was an expense "identifiably related to [Carson's] injury, as opposed to vehicle costs common to the general public." The arbitrator based her decision in part on the following exchange at the arbitration hearing:

> "[Carson's Attorney, Mr. Glass] Q. The–many years ago the respondent provided a handicap modified van for you?
>
> [Carson] A. Yes.
>
> Q. And recently that had to be replaced with a newer model with different modifications to accommodate the current wheelchair technology and size, correct?
>
> A. Yes.
>
> Q. You pay the insurance on the vehicle?
>
> A. Yes.

Q. And *** part of the insurance premium, is that part of the premium that is specifically the add-on for the handicap modifications as opposed to the regular vehicle coverage?

A. Yes.

THE ARBITRATOR: Just so that I'm clear, petitioner is looking for reimbursement only for the difference between what a regular car insurance would cost–

MR. GLASS: Right, just the premium that attributable to the injury.

* * *

THE ARBITRATOR: Rather than the whole premium?

MR. GLASS: Yes."

The record reflects that unlike the workers in *Sioson* and *Mickey*, Carson did not seek expenses for fuel, repair, or title of the vehicle. Nor did Carson seek an award which covered the entirety of his van's insurance premium. Instead, Carson sought only the difference between what an owner of an unmodified van would pay and what the insurance company charged for insuring the modifications to Carson's van that his disability requires. Based on the record, we cannot say that the Commission's factual determination that the insurance premium is a necessary and reasonable medical expense is against the manifest weight of the evidence. Accordingly, we confirm that part of the Commission's order awarding expenses for Carson's partial automobile insurance premium.

CONCLUSION

For the foregoing reasons, we reverse the appellate court judgment insofar as it set aside Carson's award under section 8(e)(10), and reinstate the Commission's award. In all other respects, the appellate court judgment is affirmed.

Appellate court judgment affirmed in part
and reversed in part;
award reinstated.