

Bilateral Loss Claims and Workers' Compensation in Pennsylvania

In Pennsylvania, workers generally must be unable to perform any type of work to receive total disability benefits, which also are referred to as "wage loss benefits." Once the worker returns to employment, then the employer may petition for a modification or termination of the worker's total disability benefits.

Until recently, there was a question as to whether workers who suffered bilateral loss injuries and were receiving total disability benefits could keep those benefits once they returned to work.

Specific Loss Benefits

Under Pennsylvania's Workers' Compensation Act, injured workers with bilateral loss injuries are entitled to specific loss benefits under §513. Bilateral loss injuries include the loss of both hands, arms, feet, legs or eyes. Generally, the amount of compensation and duration of the compensation for specific loss injuries is determined by statute. Unlike total disability benefits, specific loss benefits are not dependent on the injured worker's loss of earning power, but simply on the loss of a specific body part. Specific loss benefits are meant to compensate the worker for the loss of the body part rather than for the loss of wages, like temporary disability, partial disability and total disability benefits.

However, a provision in the Act allows injured workers with bilateral loss injuries the option of collecting total disability benefits. Under §513(23), workers with bilateral loss injuries are presumed to be totally disabled unless

otherwise determined by the WCAB. A question then arose as to whether injured workers with bilateral loss injuries collecting total disability could keep those benefits if they returned to work – or, if like workers with non-bilateral injuries, they would lose a portion or all of those benefits upon return to employment.

Allegheny Decision

In *Allegheny Power Service Corp. v. WCAB (Cockroft)*, the Commonwealth Court held that workers with bilateral loss injuries receiving total disability could retain those benefits in addition to their wages once they returned to work. In *Allegheny*, Cockroft suffered severe injuries to his upper extremities after receiving electrical burns during a workplace accident, entitling him to total disability benefits for a bilateral loss. Cockroft eventually returned to work and his employer suspended his total disability benefits. Cockroft then filed a petition to have his benefits reinstated.

The employer argued to the court that since Cockroft returned to work, he was no longer entitled to total disability benefits and if not terminated, at the very least the benefits should be offset by his currently weekly wage. The court, however, did not agree. The court found that even though Cockroft was receiving total disability benefits, he was receiving those for a specific loss under §513 of the Workers' Compensation Act. Accordingly, specific loss benefits are not subject to a reduction or suspension based on earning capacity so the fact that Cockroft returned to work did not entitle the employer's workers' comp insurer to a credit for his weekly wages.

The court further said that it was the state legislature's intent not to limit compensation for bilateral loss injuries in the same way it did for other specific loss injuries because the legislature recognized that it is not always easy to ascertain the full "devastating impact" of these types of

catastrophic injuries. Instead, the legislature gave the WCAB the discretion to limit benefits for bilateral loss victims as it sees fit.

Conclusion

If your employer has attempted to suspend, modify or terminate your workers' comp benefits, contact an experienced attorney. While there are certain situations that permit employers to take action to limit or stop workers' compensation payments, they do not always have the right to do so under Pennsylvania law. For more information, contact an experienced workers' compensation lawyer.