



\$721.66, Plaintiff's maximum possible weekly benefit given his stipulated weekly wage of \$1,354.00. Defendant did not appeal the Arbitrator's decision, so for the purpose of this proceeding the court considers these calculations correct and binding on Defendant.

Despite acknowledging that it must pay permanent partial disability benefits to Plaintiff, Defendant has declined to pay Plaintiff's permanent partial disability award in a single lump sum, opting instead, against Plaintiff's wishes, to pay the award in weekly installments. Defendant argues that paying permanent partial disability benefits in weekly installments is fully compliant with the Arbitrator's decision and the Act. Plaintiff disagrees and commenced the instant proceeding in order to compel Defendant to pay the entire award in a single lump sum.

### **DISCUSSION**

The Commission does not have the power to enforce payment of its awards. The only way a successful litigant can compel an adverse party to pay a Commission award is by filing a motion in the circuit court pursuant to section 19(g) of the Act. In proceedings brought under section 19(g), courts confine their inquiry to whether the movant has met the statutory requirements without considering the underlying merits of the Commission decision. In short, 19(g) provides a successful litigant with the means to turn a Commission award into a legally enforceable judgment. *Blacke v. Industrial Comm'n*, 268 Ill. App. 3d 26, 28 (3rd Dist. 1994).

In order for a movant to obtain a judgment under section 19(g), he must: (i) file a certified copy of the final Commission decision with a circuit court of appropriate jurisdiction, and (ii) provide the adverse party with 15 days' notice of the application for entry of judgment. 820 ILCS 305/19. In the instant case, the parties do not dispute that this court has jurisdiction, that the court has been provided with a certified copy of the Commission decision, and that Defendant received notice as the Act requires. The only issue before the court is whether, by paying

permanent partial disability benefits on an installment basis rather than in a single lump sum, Defendant is actually in compliance with the Arbitrator's decision and the Act.

### **Permanent Partial Disability Lump Sum**

Whether permanent partial disability benefits under 8(d)(2) must be paid as a lump sum is a question that has apparently not been addressed in Illinois appellate law. Neither Plaintiff nor Defendant nor the court, researching independently, has found any binding precedent that definitively answers this question.

The court notes that the Arbitrator's award is ambiguous on the lump-sum question stating only that "Petitioner is entitled to permanency in the amount of 35% loss of use of the person as a whole under Section 8(d)2, equating to 175 weeks of benefits. The Arbitrator awards permanency at the applicable maximum rate of \$721.66 per week, based on the stipulated average weekly wage of \$1,354.00."

The text of section 8(d)(2) of the Act is similarly ambiguous on the question of a payment schedule, stating only that eligible petitioners shall receive "compensation at the rate provided in subparagraph 2.1 of paragraph (b) of this Section for that percentage of 500 weeks that the partial disability resulting from the injuries covered by this paragraph bears to total disability." 820 ILCS 305/8(d)(2).

Defendant cites *Skaggs v. Industrial Comm'n* for the assertion that "lump sum awards are the exception and not the rule." 371 Ill. 535, 539 (1939). The court is not convinced by this general assertion. That case was decided more than three decades before the 1975 amendments to the Act created the 8(d)(2) provision for recovery for loss of use of the person as a whole, at issue in this case. Furthermore, *Skaggs* itself did not reject the litigant's request for a lump sum benefit outright,

but merely remanded the case in order to give the litigant an opportunity to prove that a lump sum would be to her and her child's benefit. *Id.* at 542.

In the face of statutory ambiguity and with the lack of any binding precedent, the court looks to the law of other jurisdictions for guidance. Some states strictly require that while a weekly calculation is used to calculate the *amount* of permanent partial disability a Plaintiff is owed, the award "shall be automatically paid in a lump sum." Colo. Rev. Stat. 8-42-107 (8)(d). See also Alaska Stat. § 23.30.190 (a) ("The compensation is payable in a single lump sum...").

Other jurisdictions give workers the discretion to decide whether they would prefer to receive their award in installments or a lump sum. See, e.g., Mont. Code Ann. § 39-71-703(7) ("An undisputed impairment award may be paid biweekly or in a lump sum *at the discretion of the worker...*") (emphasis added). This court is not aware of any jurisdiction, however, that allows for permanent partial disability benefits to be paid in installments *without* the consent of the recipient.

The court finds the approach of neighboring jurisdictions to be consistent with its own understanding of the Act and the concept of permanency. A permanent disability is immutable. It will not go away. The worker who suffers from a permanent disability is therefore entitled to a lump sum benefit in exchange for the loss of the complete use of their person. This is in sharp contrast to a temporary disability. It makes sense that temporary disability benefits would accrue on an installment basis during the pendency of the disability—the purpose of temporary disability benefits is to compensate the worker during their period of incapacity. Likewise for lost wages, that is a benefit that is paid over time because it is compensating for a loss that is paid over time. For these reasons, the court grants Plaintiff's petition to enforce the Commission's decision.

## **Interest**

Plaintiff further requests that the court award interest on the unpaid amount of the award, citing *Radosevich v. Industrial Comm'n* for the assertion that “Once a claimant implements Section 19(g) of the Act, a resulting order of the circuit court is an enforceable judgement, and Section 2-1303 interest is properly awarded from the date of the arbitrator’s award through the date judgement was entered on the award.” 367 Ill.App.3d 769, 778.

While the court agrees with Plaintiff’s assertion that Plaintiff is entitled to interest, the court does not agree with Plaintiff’s calculation of the amount of interest Plaintiff is owed. Plaintiff calculates the 2-1303 interest rate at 9% despite the fact that Defendant is a government body, therefore subject to the 6% interest rate. Furthermore, the court does not agree with Plaintiff’s application of section 19(n) of the Act since section 19(n) interest is not also awarded in 19(g) judgments. *Id.*

Finally, Plaintiff notes that because, as of August 6, 2018 when Plaintiff filed the instant petition, \$63,319.48 of the \$261,176.48 award remained unpaid, section 19(n) applies to \$197,857.00 of the award. The court does not agree. It seems rather more appropriate that interest would accrue *on the unpaid amount*, \$63,319.00. Calculating interest in this case is somewhat complicated by the fact that Defendant’s installment payments have led the unpaid amount to be changing every month. Bearing all of these facts in mind, the court believes additional briefing in order to determine the correct interest award is required from the parties.

## **Attorneys’ Fees and Costs**

Section 19(g) of the Act allows successful movants to petition the court for “reasonable costs and attorney fees in the arbitration proceedings and in the court entering the judgment” in

cases where Defendants refuse to pay Commission awards. 820 ILCS 305/19(g). Plaintiff argues that all of these conditions having been met, it is entitled to collect attorneys' fees.

Defendant, for its part, argues that it has not in fact refused to pay the award since it has made periodic installment payments. Because it has not refused to pay the judgment, Defendant argues that attorneys' fees under 19(g) are not warranted. The court does not agree. Defendant's decision to refuse to pay the lump sum owed constitutes a refusal to pay for all intents and purposes. The fact that Defendant asserts that it has a good faith reason for refusing to pay is inapposite. Defendant's argument would lead to the unjust situation where a Plaintiff is forced to petition the court for relief under section 19(g), is successful, and is unable to recover attorneys' fees because a Defendant willfully refuses to pay the lump sum and periodically sends some amount.

Plaintiff's attorney requests that the court award fees based on a \$350.00 hourly rate. The court finds that this is a reasonable rate for a seasoned workers' compensation specialist practicing in the Chicago area. Plaintiff's attorney has submitted detailed billing records indicating that he has spent 97.25 hours of work on Plaintiff's case since agreeing to handle the 2014 arbitration, and further indicates having incurred \$210.00 in court costs in that time.

The court has carefully reviewed the petition and finds this period of time reasonable, and further finds that counsel's performance in this case was of the quality and diligence to justify the petition for fees. This court finding that the petition for fees and costs is reasonable and fair, Plaintiff's petition for attorney's fees and costs in the amount of \$34,247.50 is granted.

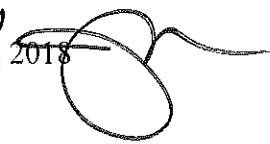
## CONCLUSION

Plaintiff's Application for Entry of Judgment is granted. Plaintiff has met all of the requirements outlined by section 19(g), and Defendant failed to provide a lawful reason that justifies paying Plaintiff's permanent partial disability benefits in installments. Plaintiff's request for interest is granted pursuant to *Radosevich*, but the court will await supplemental briefing before determining the precise amount of interest Plaintiff is owed. Plaintiff's request for attorneys' fees is granted, since the court finds that Plaintiff has met all of the requirements for attorneys' fees under section 19(g) and the fees requested are reasonable considering all relevant factors.

**II. ORDER**

This matter having been fully briefed, and the court being fully apprised of the facts, law, and premises contained herein, it is ordered as follows:

- A. Plaintiff's Application for Entry of Judgment of the arbitration decision issued on March 21, 2018 with docket no. 14 WC 13036 is **GRANTED**. The court hereby considers the entire unpaid amount of the award in the above-captioned decision to be due and payable in a single lump sum.
- B. Plaintiff's petition for attorneys' fees is **GRANTED** in the amount of \$34,247.50.
- C. Plaintiff's request for interest is **GRANTED**. Plaintiff has 7 days from the date hereof, until **November 5, 2018** to submit a supplemental brief regarding the correct manner to calculate the interest Plaintiff is owed.
- D. Defendant has 15 days from the date hereof, until **November 13, 2018**, to file a response brief regarding calculation of Plaintiff's interest.
- E. Plaintiff has 22 days from the date hereof, until **November 20, 2018**, reply brief regarding interest calculations, if necessary.
- F. No further oral argument is required in this matter.
- G. This court will issue a decision on the interest owed on December 4, 2018 at 9:30 a.m., in courtroom 2505.
- H. Counsel are not required to appear at that time. They may collect the Decision from the court clerk at that time or later from the clerk in the antechamber.

Date: October ~~29~~<sup>30</sup>, 2018 

Judge James M. McGing

OCT 30 2018

Circuit Court - 1926

ENTERED: \_\_\_\_\_

Judge James M. McGing

Judge James M. McGing  
Circuit Court of Cook County  
Law Division Tax and Miscellaneous Section  
50 West Washington, Room 2505  
Chicago, Illinois 60602