

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF MADISON )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input checked="" type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kenneth R. Wentz,

Petitioner,

vs.

NO: 10 WC 01279  
14 IWCC 0091

Truck Centers Inc.,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of penalties and attorney's fees, 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.

The Commission notes that the Arbitrator denied Petitioner's Petition for Penalties and Attorney's Fees, finding that Respondent's termination of Petitioner's weekly benefits on February 29, 2012, was not unreasonable or vexatious. The Arbitrator noted that Petitioner had admitted at hearing that he had driven to Wyoming "for the sole purpose of alleviating apparent boredom." (Arb.Dec.7.T.36-37) This contradicted Petitioner's earlier testimony that he drives only when necessary. (T.34-35.62) However, the Commission notes that Petitioner's undisputed testimony also shows that Petitioner's job required him to have a CDL license and B license, not just a basic driver's license, in order to perform his job for Respondent. (T.15-16) The Commission finds that Petitioner's ability to pass a basic driver's license vision test for a basic driver's license test in January 2012 does not mean the medical restriction on his driving had been lifted or that Petitioner can or has regained his CDL license. More importantly, the Commission finds that Petitioner's ability to pass a basic vision test for a driver's license does not mean that Petitioner's visual impairment has changed in any way.

As noted by Petitioner in his Statement of Exceptions and Supporting Brief, the "fact that

Petitioner had a valid driver's license does not negate the medical opinions that because of his permanent vision loss Petitioner cannot return to his job as a commercial driver." (Petitioner's Brief,pg.16) The Commission also notes that there are no restrictions on Petitioner's driving his personal vehicle. Based on the above, the Commission finds Respondent's decision to terminate Petitioner's benefits based on Petitioner's getting his driver's license erroneous, but not unreasonable or vexatious. Therefore, the Commission awards penalties pursuant to §19(l) of the Act. As explained by the Illinois Supreme Court in *McMahan v. Industrial Commission*, 182 Ill.2d 499, 515 (1998),

"The additional compensation authorized by section 19(l) is in the nature of a late fee. The statute applies whenever the employer or its carrier simply fails, neglects, or refuses to make payment or unreasonably delays payment 'without good and just cause.' If the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay, an award of the statutorily specified additional compensation is mandatory."

As explained above, Petitioner's ability to renew his regular driver's license is not, in the Commission's view, a "good and just cause" to terminate Petitioner's weekly benefits since what Petitioner required to work was a CDL license, not the regular driver's license he obtained. Furthermore, as previously noted, Petitioner has not been restricted from driving, even though his doctor has recommended that he not do so. Therefore, the Commission reverses the Arbitrator's denial of Petitioner's Petition for Penalties and Attorney's fees and awards penalties under §19(l) from February 25, 2012 through September 25, 2012, the date of hearing, totaling \$6,390.00.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on November 1, 2012, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$206.67 per week for a period of 21-6/7 weeks, from May 14, 2009 through October 27, 2009, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner \$461.78 per week for a period of 151-4/7 weeks, commencing October 28, 2009, through September 25, 2012, the date of hearing, and then ongoing for life, as provided in §8(f) of the Act, because he is permanently and totally disabled, and said payment shall continue weekly so long as Petitioner remains permanently and totally disabled.

IT IS FURTHER ORDERED BY THE COMMISSION that commencing on the second July 15<sup>th</sup> after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the *Rate Adjustment Fund*, as provided in §8(g) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay

reasonable and necessary medical expenses, as provided in §8(a) and §8.2 of the Act. (See Memorandum of Decision of Arbitrator and Petitioner's Exhibit 15 for detailed analysis thereto.)

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner \$6,390.00, pursuant to §19(l) 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 party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 26 2014  
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Daniel R. Donohoo

  
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State of Illinois )  
 )ss.  
County of Madison)

Before the Illinois Workers'  
Compensation Commission

Kenneth R. Wentz.

Petitioner.

vs.

No. 10WC01279  
14IWCC0091

Truck Centers, Inc.,

Respondent.


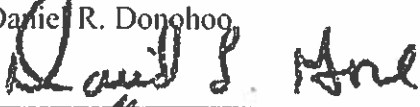

ORDER

The Commission on its own Motion recalls the Decision and Opinion on Review of the Illinois Worker's Compensation Commission under Section 19(f) of the Act for the above-captioned case dated February 10, 2014.

The Commission is of the opinion that the Commission's Decision and Opinion on Review should be recalled and corrected due to a clerical error. The order regarding the Rate Adjustment fund was omitted and the description box on the decision was incorrectly marked "None of the Above" instead of "Rate Adjustment Fund".

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated February 10, 2014 is hereby recalled and a corrected decision issued simultaneously. The parties should return the February 10, 2014 decisions to Commissioner Michael J. Brennan.

Dated: FEB 26 2014

  
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Daniel R. Donohoo  
  
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David L. Moore  
  
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Mario Basurto

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