

WHEN ARE PAYMENTS FOR UNDISPUTED AMPUTATIONS DUE?

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It is now the law that weekly payments of compensation for permanent disability for an undisputed amputation must be made as soon as the employer is aware of the nature and extent of the amputation (i.e., usually the date of accident for a traumatic amputation or the date of surgery for a causally related surgical amputation), even if the employee is also off work and receiving temporary total compensation benefits. In Greene Welding and Hardware v. Illinois Workers' Compensation Commission, 2009 WL 5159751, decided 12/23/09, the Fourth District Appellate Court stated:

“We hold the Act established a bright-line test for payment of such benefits. Where there is no dispute regarding whether a claimant's amputation injuries arose out of and in the course of his or her employment, statutory benefits for amputation are to be paid no later than the time at which the employer reasonably knows the extent of the amputation and is capable of calculating the appropriate average weekly wage.”

In Greene Welding there was no dispute the employee sustained a compensable injury which entitled him to receive compensation for statutory losses of 50% of the right middle finger and 100% of the right ring finger; there also was no dispute as to the corresponding dollar amount to which he was entitled under the Act. He returned to light duty within days of the accident but the employer did not tender any payment for the statutory losses until the employee retained counsel. The Commission, relying upon Lester v. Industrial Commission, 256 Ill.App.3d 520, 628 N.E.2d 191, 194 Ill.Dec. 694 (1st Dist. 1993), found the delay of payment unreasonable and vexatious and awarded sanctions in the form of penalties and attorney fees against the employer. Affirming the Commission's determination the Appellate Court noted that Lester mandated “immediate” and “prompt” payment for undisputed amputations, although the Lester court also made it clear the Commission properly calculated penalties and attorney fees based only on the amount accrued until payment was tendered, and that penalties should not be based on benefits which have yet to accrue. 628 N.E.2d at 194.

Author's Comment: Until this recent decision it was generally understood that payments for undisputed amputations became due when temporary total benefits ended; this was not only implicit from the Lester opinion but the Commission also so stated in several published decisions. See Pidgeon v. Lube Pros, 08 I.W.C.C. 187; Aguilar v. Ferrera Pan Candy Co., 05 I.W.C.C. 479; Luna v. Modern Die Casting Co., 01 I.I.C. 618; Fitton v. Chicago Park District, 99 I.C.C. 301. However the recent Greene Welding case is quite clear that weekly payments must be made immediately after the employer is aware of the amputation, even if temporary total benefits are also being paid simultaneously.