



ILLINOIS STATE BAR ASSOCIATION

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Employer avoids "commutation" order

By Arnold G. Rubin

Section 24 of the Illinois Workers' Compensation Act provides authority for the Commission to order and direct an employer to deposit the commuted value of the total unpaid compensation with the State Treasurer or with any savings and loan association or State or national bank or trust company doing business in the State. The section also allows for the purchase of an annuity in order to comply with this section.

In *Rios v. Industrial Commission*, 838 N.E.2d 52, 297 Ill.Dec. 565 (1st Dist. I.C. Div. 2005), claimant filed a motion under Section 24 in connection with a previous award for wage differential benefits under Section 8(d)1 of the Act. Claimant had been awarded benefits based on an injury that he had sustained while working for United Parcel Service and was being paid wage differential benefits in the amount of \$363.33 per week.

On November 6, 2003, claimant filed a motion pursuant to Section 24 to seek an order directing the employer and/or Liberty Mutual Insurance to deposit money, as calculated under Section 24, in order to ensure compliance with the decision of the Commission. The claimant expressed "fear," based on the current state of the economy, the

past history in recent times of bankruptcies, and failures of insurance companies, that his employer and/or Liberty Mutual Insurance Company may not continue to pay claimant his compensation.

On April 21, 2004, the Commission denied claimant's motion. The Commission determined that claimant had failed to provide facts that would lead to the belief that claimant's benefits are in danger of being discontinued. The circuit court affirmed the Commission's order.

The appellate court reviewed Section 24 under the familiar principles of statutory construction. The appellate court rejected claimant's contention that upon the request of a claimant, the Commission has no discretion to deny claimant's motion to order commutation of the value of the total unpaid benefits. The court determined that it was within the Commission's discretion to enter an order pursuant to Section 24 of the Act, and that the Commission properly considered the "financial soundness" of both the employer and its workers' compensation insurance provider in determining whether to dismiss claimant's motion.

This decision of the appellate court is

quite relevant to those of us practicing before the Workers' Compensation Commission today. Many times, cases are tried before the arbitrators and awards for future benefits are made under Section 8(d)1 or for permanent total disability benefits. Those benefits are often paid throughout the lifetime of the claimant. Certainly, many claimant's attorneys are asked questions by their clients as to the consequences of the employer going bankrupt or the insurance company going bankrupt. It is clear that the Illinois Insurance Guaranty Fund does provide protection for bankrupt insurance companies.

If a claimant becomes aware of facts that would question the financial soundness of either the employer or its workers' compensation insurance provider, then an order of commutation may be filed under Section 24. However, as the appellate court pointed out, the claimant's "fear" that the employer may become bankrupt is not sufficient to support a motion under Section 24. Claimant must provide the Commission with facts that would lead to the belief that claimant's benefits "are in danger of being discontinued." ■

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