

=====
This opinion is uncorrected and subject to revision before
publication in the New York Reports.

3 No. 121
In the Matter of Ronnie Ramroop,
 Appellant,
 v.
Flexo-Craft Printing, Inc. et
al.,
 Respondents.
Workers' Compensation Board,
 Respondent.

Joel M. Gluck, for appellant.
Rudolf Rosa Di Sant, for respondents.
Sameer M. Ashar et al.; New York City Central Labor
Council, AFL-CIO et al., amici curiae.

JONES, J.:

The question before us is whether claimant may recover
"additional compensation" under Workers' Compensation Law §
15(3)(v). We conclude that he may not.¹

¹ Enacted in 1913 as the Workmen's Compensation Law (see L
1913, ch 816), the statute provides compensation for four
different types of injury: permanent total disability, temporary
total disability, permanent partial disability and temporary
partial disability (see LaCroix v Syracuse Exec. Air Serv., Inc.,
8 NY3d 348, 353 [2007], citing Workers' Compensation Law § 15[1],
[2], [3], [5]). "Permanent partial disability . . . is called a
schedule loss of use award because the statute assigns--as by a
'schedule'--a fixed number of lost weeks' compensation according

On March 28, 1995, claimant, then employed and working as a printer for respondent Flexo-Craft Printing, Inc., sustained a severe crush injury involving four fingers when he caught his right hand in a printing press.² After claimant's March 8, 1996 workers' compensation hearing (where his claim for a compensable injury to the right hand was established), the Workers' Compensation Board awarded claimant temporary disability benefits that were paid by respondent employer's workers' compensation carrier, the State Insurance Fund (Fund). The Board ultimately ordered a 75 percent schedule loss of use award. In sum, under the Board's awards, claimant received primary compensation benefits from March 29, 1995 until January 18, 2000, when the award was fully paid. Claimant's case was subsequently closed.

In 1997, claimant was interviewed and evaluated by the Board's Office of Rehabilitation and Social Service for vocational purposes. Claimant was eventually referred to the New York State Education Department's Office for Vocational and

to the bodily member injured" (LaCroix, 8 NY3d at 353, citing Workers' Compensation Law § 15[3]). As claimant here injured his hand, the number of weeks assigned by statute is 244 (see Workers' Compensation Law § 15[3][c]). Schedule loss of use awards "compensate for loss of earning power" and, like all other compensation awards, "are intended to provide a limited and certain, not full but uncertain remedy regardless of the fault of the employer, and to continue the wage income as nearly uniform as the provisions of the law would permit after the employee's injury" (LaCroix, 8 NY3d at 353 [citations omitted]).

² Claimant underwent seven surgical procedures. His right third and fourth fingers were so severely injured that they required amputation.

Educational Services for Individuals with Disabilities (VESID), but the agency found that he was ineligible for services because he is an undocumented alien who cannot be legally employed in the United States.

In July 2002, more than two years after the schedule award had been fully paid, claimant requested that the case be reopened and restored, and that he receive "additional compensation" pursuant to Workers' Compensation Law § 15(3)(v). After a hearing in October 2003, a Workers' Compensation Law Judge (WCLJ) awarded claimant section 15(3)(v) benefits in the amount of \$200 per week from September 2002 through October 2003 and ordered the Fund to make such payments. The Fund appealed the decision to a Board panel based on VESID's finding that claimant was ineligible for training for non-work related reasons. A Board panel rescinded the WCLJ's decision and ordered further hearings regarding whether claimant's impairment of earning capacity was due "solely" to his work-related injury, as required by section 15(3)(v). At a subsequent hearing held in September 2004, the Board's rehabilitation counselor testified that claimant was ineligible for VESID training due to his undocumented status. The WCLJ reinstated the additional compensation award and the carrier appealed the decision to a Board panel.

In November 2005, the Board panel that originally rescinded the WCLJ's first decision reversed the decision

rendered at the subsequent hearing. The Board panel concluded that claimant did not meet the requirements of section 15(3)(v) and that Workers' Compensation Law § 17 should not change this result. Claimant appealed to the Appellate Division, which affirmed. The court held that "the Board quite properly found that because claimant was an undocumented alien, he was ineligible for employment in the United States and, thus, his loss of earning capacity was not solely attributable to his compensable injury" and that "Workers' Compensation Law § 17 [did] not compel a contrary result." We granted claimant leave to appeal and now affirm, albeit on different grounds.

Claimant and amici seek reversal of the Appellate Division order and argue, among other things, that the decision of the Board, affirmed by the Appellate Division, runs counter to the legislative history of section 15(3)(v) and Workers' Compensation Law § 17. We disagree.

Because this appeal involves a question of statutory interpretation, we must discern and give effect to the Legislature's intent:

"As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof. . . . In construing statutes, it is a well-established rule that resort must be had to the natural signification of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or take away from that

meaning"

(Majewski v Broadalbin-Perth Cent. School Dist., 91 NY2d 577, 583 [1998] [internal citations and quotation marks omitted]).

Section 15(3)(v) (see L 1970, ch 286, § 1), entitled "Additional compensation for impairment of wage earning capacity in certain permanent partial disabilities," states, in relevant part:

"[A]dditional compensation shall be payable for impairment of wage earning capacity for any period after the termination of an award under paragraphs a, b, c, or d, of this subdivision for the loss or loss of use of [50%] or more of a[n arm, leg, hand or foot], provided such impairment of earning capacity shall be due solely thereto. . . . As soon as practicable after the injury, the worker shall be required to participate in a board approved rehabilitation program; or shall have demonstrated cooperation with efforts to institute such a board approved program and shall have been determined by the board not to be a feasible candidate for rehabilitation."

(emphasis added).

Contrary to claimant's argument that the legislative history of section 15(3)(v) controls, the statute clearly and unambiguously provides that claimant must fulfill two requirements. With this in mind and assuming, without deciding, claimant can establish that the impairment of his wage-earning capacity is due solely to the compensable injury he sustained, we hold that he does not meet the second requirement under the statute. That is, because claimant was ineligible for work in the United States, claimant did not, and could not, participate

in a "Board approved rehabilitation program." Moreover, even if we assume that claimant cooperated to the extent he could, his inability to participate was not because rehabilitation was not feasible--the board never made a feasibility determination--but because no rehabilitation program is available to those who are not legally employable.

This appeal puts into clear focus the tension between the statute's vocational rehabilitation objective to return an injured worker to the marketplace, and the re-employment of a worker, as in this case, who is not authorized to so participate in the first instance. Section 15(3)(v)'s legislative history underscores this tension:

"A key feature of the bill [that became section 15(3)(v)] is the requirement that the worker receiving additional compensation participate in Board approved programs of retraining and rehabilitation. This helps both the worker and the employer since it will tend to reduce the effects of the injury, restore the worker to re-employment and help him achieve his optimum earning capacity"

(Senate Introducer Mem in Support, Bill Jacket, L 1970, ch 286 [emphasis added]). Simply put, it cannot have been the Legislature's goal to "restore . . . to re-employment" a worker who may not be lawfully employed. Reversal of the Appellate Division order would not only promote such restoration, it would effectively place the instant claimant, and others similarly situated, in a more favorable position than claimants who must meet all statutory requirements. This would amount to our

directing the Board to put its imprimatur on an "additional compensation" award in contravention of its statutory mandate, a result which the law compels against.

Additionally, claimant's reliance on section 17 is misplaced. Section 17, as amended in 1985 (see L 1985, ch 538), provides, in pertinent part, that "[c]ompensation . . . to aliens not residents or about to become nonresidents of the United States or Canada, shall be the same in amount as provided for residents" (emphasis added). By its plain terms, section 17 is concerned solely with the treatment of aliens (not just undocumented aliens) who reside, or are about to reside, somewhere other than the United States or Canada. Under section 17, as originally enacted, the Board had the authority to commute in half all death and disability compensation awarded to such aliens; thus, such aliens were paid only half of the compensation they would have otherwise received. This practice was eliminated when the Legislature amended section 17 in 1985. This amendment was intended to "delete[] the provision from the Workers' Compensation Law which provides that upon an alien becoming a non-resident alien, the benefits to which he is entitled under the Workers' Compensation Law are reduced by 50%" and "restore the amount of compensation paid to non-resident aliens to 100%" (Sponsor's Mem, Bill Jacket, L 1985, ch 538). Put differently, section 17, as amended, is meant to ensure that an alien's relocation outside the country (or Canada) will not result in

diminished "compensation" to that alien. Based on the legislative purpose of section 17 and because claimant, according to the record, resides in New York State, section 17 is inapplicable here.

Although some workplace protections³ and primary workers' compensation benefits⁴ have been held to be available to injured workers who cannot demonstrate legal immigration status, the terms of section 15(3)(v) are clear and we are constrained to give effect to their plain meaning.

Accordingly, the order of the Appellate Division should be affirmed, with costs.

³ See e.g., Balbuena v IDR Realty LLC (6 NY3d 338 [2006] [holding that our state Labor Law protections are not preempted by the federal Immigration Reform & Control Act of 1986 (8 USC § 1324a et seq), which is designed to deter the employment of aliens who are not lawfully present in the United States and those who are lawfully present, but not authorized to work]).

⁴ See e.g., Matter of Testa v Sorrento Rest. (10 AD2d 133 [3d Dept 1960], lv to appeal denied 8 NY2d 705 [1960]).

Matter of Ramroop v Flexo-Craft Printing, Inc.

No. 121

CIPARICK, J.(dissenting in part):

I agree with the majority that section 17 of the Workers' Compensation Law is not applicable to the facts of this case. However, because the record fails to establish whether a Board approved rehabilitation program is available to those persons who are not legally employable, I respectfully dissent.

The majority today holds that the claimant's

"inability to participate was not because rehabilitation was not feasible--the board never made a feasibility determination--but because no rehabilitation program is available to those who are not legally employable" (majority op at 6).

The record reveals otherwise. At an October 25, 2005 hearing before the Workers' Compensation Board, Commissioner Mona Barnesei asked whether there was a rehabilitation service that did not require the participant to have a green card. Neither Mr. Hilfer (counsel for Mr. Ramroop), nor Mr. Zenkewich (counsel for Flexo-Craft Printing and the State Insurance Fund) knew whether such a program was available. Indeed respondents' counsel replied:

"He went where they generally send them. They sent him to the VESID program . . . Well, I would think that . . . since it has to be a Board approved program that if there was another program that he could have done.

I -- Personally, I would have hoped that the VESID people could say we can't handle you because of your status but you should go someplace else if there was another place, so I don't know" (Oct. 25, 2005 Hearing held before the State of New York Workers' Compensation Board, transcript at 14).

Because the question of whether there exists a Workers' Compensation Board approved rehabilitation program willing to enroll a person with an immigration status impairment has not been answered, I would reverse the order of the Appellate Division and remit for further proceedings to determine the availability of an alternative program.

All workers, whether or not they are authorized to work in this country, are eligible for workers' compensation benefits as such benefits are available.

"To further the claimant's ability to establish his [or her] right to benefits, the statute creates a presumption that the injuries are compensable. The statute was enacted for humanitarian purposes, framed, in the words of Chief Judge Cardozo, to insure that injured employees might be saved from becoming one of the derelicts of society, a fragment of human wreckage. To further that purpose, we have held that the statutory obligation to compensate injuries sustained in the course of employment which are causally related to it does not depend on the equities of a particular case, nor may it be avoided because of the workers' fraud or wrongdoing: it is absolute" (Matter of Richardson v Fiedler Roofing, 67 NY2d 246, 251 [1986] [internal citations omitted]).

Furthermore, I cannot agree with the majority's conclusion that

"it cannot have been the Legislature's goal

to restore to re-employment a worker who may not be lawfully employed. Reversal of the Appellate Division order would not only promote such restoration, it would effectively place the instant claimant, and others similarly situated, in a more favorable position than claimants who must meet all statutory requirements" (majority opinion at 6 [internal alteration omitted]).

The legislative history of Workers' Compensation Law § 15 (3) (v) demonstrates that only health-related restrictions on eligibility were contemplated. This intent is articulated in the Governor's Program Bill which notes that compensation is available "if the worker continues to suffer loss of earnings because of the injury" (Governor's Program Bill, Bill Jacket, L. 1970, ch 286, at 2). Nowhere within the legislative history does it state that in order to qualify the worker must be legally authorized to work within the United States. What is stated is that the purpose of the bill is "[t]o provide additional compensation benefits to certain workers suffering impairment of earning capacity because of a job-connected loss of an arm, hand, leg, or foot" (id.).

Section 15 (3) (v) of the Workers' Compensation Law has two requirements: (1) that the worker suffer an injury involving 50% or more loss, or loss of use of an arm, hand, leg or foot; and (2) that the worker participate in a retraining and rehabilitation program approved by the Workers' Compensation Board or cooperate with such efforts and be deemed not to be a feasible candidate. Here, claimant has suffered a 75% loss to his right hand. However, this record is devoid as to whether

there exists an alternative rehabilitation program approved by the Workers' Compensation Board that could provide the necessary services to help this claimant to return to the workplace or to determine that rehabilitation is not feasible, as the Workers' Compensation Law intended.

Providing claimant, and others similarly situated, with additional compensation will not effectively place them in a more favorable position than claimants who must meet all statutory requirements because it has yet to be established that VESID is the only rehabilitation program approved by the Workers' Compensation Board. As stated by Workers' Compensation Board Commissioner Michael Berns during the October 25, 2005 Hearing

"I have a suspicion . . . that everybody is hanging on the letter of the law here. In the meantime, we have a claimant who may have other alternatives. We don't know because the State Insurance Fund is not doing anything . . . In the meantime, the claimant has not been given any alternatives for service how he could conceivably get back to the workplace" (October 25, 2005 Hearing held before the State of New York Workers' Compensation Board, transcript at 13).

As we stated in Matter of Smith v Tompkins County Courthouse, it is a "fundamental principle that the Workers' Compensation Law is to be liberally construed to accomplish the economic and humanitarian objects of the act" (60 NY2d 939, 941 [1983]). The purpose of section 15 (3) (v) is to re-employ the worker and maximize the worker's earning capacity (see Governor's Program Bill, Bill Jacket, L. 1970, ch 286, at 3). For this

Court to now hold that a worker's earning capacity is diminished because of a lack of authorization to work in this country -- when the lack of authorization existed pre-injury defeats this legislative purpose.

The majority today forecloses the availability of additional compensation for severely injured workers solely because they may lack permanent residency status or authorization to work in this country, ignoring the history of our Workers' Compensation Law and this State's commitment to protect all workers, irrespective of immigration status (see Balbuena v IDR Realty LLC, 6 NY3d 338, 358-359 [2006]).

Therefore, I would reverse the order of the Appellate Division and remit to the Workers' Compensation Board for a hearing in order to establish whether there exists such an alternative rehabilitation program.

* * * * *

Order affirmed, with costs. Opinion by Judge Jones. Judges Graffeo, Read, Smith and Pigott concur. Judge Ciparick dissents and votes to reverse in an opinion in which Chief Judge Kaye concurs.

Decided June 26, 2008