

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 23, 2002

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 01-3210
STATE OF WISCONSIN**

Cir. Ct. No. 01-CV-207

**IN COURT OF APPEALS
DISTRICT IV**

JOEL D. SCHAALMA,

PLAINTIFF-APPELLANT,

v.

**LABOR AND INDUSTRIAL REVIEW COMMISSION, BR
METAL TECH INC., A WISCONSIN CORPORATION, AND
WEST BEND MUTUAL INSURANCE COMPANY, A
WISCONSIN MUTUAL INSURANCE COMPANY,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dodge County:
ANDREW P. BISSONNETTE, Judge. *Affirmed.*

Before Vergeront, P.J., Dykman and Deininger, JJ.

¶1 PER CURIAM. Joel D. Schaalma appeals an order affirming a Labor and Industrial Review Commission (LIRC) decision, which held that Schaalma was not entitled to a 25% increase in disability awards for injuries to his

dominant hand since he did not suffer a total loss of use of his hands or fingers. We affirm.

¶2 The relevant facts are undisputed. Due to a workplace injury, four fingers on Schaalma's dominant hand were amputated. A surgeon was able to successfully reattach his fingers, but Schaalma lost some use of those fingers and his wrist. A doctor examined Schaalma's injuries and indicated that Schaalma suffered the following permanent partial disabilities:

18% permanent partial disability of the index finger due to lost motion at the proximal interphalangeal joint

12% permanent partial disability of the long finger due to lost motion

20% permanent partial disability of little finger due to lost motio[n]

15% permanent partial disability of the ring finger due to lost motion

8% additional permanent partial disability at the left wrist for lost strength, diminished dexterity, slight loss of sensation of the dominan[t] left hand.

Using Dr. Daley's conclusions and a standardized worker's compensation worksheet, the administrative law judge (ALJ) calculated Schaalma's disability as follows: (1) 18% lost use of the distal joint and 18% lost use of the middle joint of the left index finger; (2) 11% lost use of the middle joint of the left middle finger; (3) 6.2% lost use of the distal joint and 8.5% lost use of the middle joint of the left ring finger; (4) 8.4% lost use of the distal joint and 58.75% lost use of the middle joint of the left little finger; and (5) 8% lost use of the left wrist.

Using the multiple injury factor set forth in WIS. STAT. § 102.53 (1995-96),¹ the ALJ calculated the total amount of partial permanent disabilities at 71.02 weeks. The ALJ rejected Schaalma's argument he was entitled to a 25% increase in worker's compensation awards for injury to his dominant hand pursuant to WIS. STAT. § 102.54. Section 102.54 provides:

Injury to dominant hand. If an injury to an employee's dominant hand causes a disability specified in s. 102.52(1) to (9) or amputation of more than two-thirds of the distal joint of a finger, the period for which indemnity is payable for that disability or amputation is increased by 25%. This increase is in addition to any other increase payable under s. 102.53 but, for cases in which an injury causes more than one permanent disability, the increase under this section shall be based on the periods specified in s. 102.52(1) to (9) for each disability and not on any increased period specified in s. 102.53.

¶3 Schaalma appealed to LIRC and LIRC agreed with the ALJ's decision, adopting the ALJ's findings and order. LIRC concluded that WIS. STAT. § 102.54 provided for a 25% increase only if there was a total loss as specified in WIS. STAT. § 102.52(1) to (9) or amputation of more than two-thirds of the distal joint of a finger, and not if there was a partial loss of use. Schaalma appealed LIRC's decision to the circuit court and that court affirmed LIRC's decision.

¶4 On this appeal we review LIRC's decision, not that of the circuit court. *DOR v. Caterpillar, Inc.*, 2001 WI App. 35, ¶6, 241 Wis. 2d 282, 625 N.W.2d 338, *review denied*, 2001 WI 43, 242 Wis. 2d 545, 629 N.W.2d 784 (Wis. Apr. 5, 2001) (No. 00-0284). Statutory construction and the application of a statute to undisputed facts are questions of law. *Id.* In construing a statute we

¹ All references to the Wisconsin Statutes are to the 1995-96 version unless otherwise noted.

begin with the words the legislature chose to employ. *Id.* at ¶9. If the statutory language plainly sets forth the legislative intent, our inquiry ends and we apply that language to the facts of the case. *Id.*

¶5 Although we are not bound by an agency’s legal conclusion, we may accord it varying degrees of deference—great weight deference, due weight deference, or de novo review. *Id.* at ¶6. However, in this case we need not decide which level of deference to accord LIRC’s interpretation of WIS. STAT. § 102.54, because we conclude the statutory language on the issue Schaalma raises is plain and unambiguous. Therefore, the level of deference would not affect the outcome.

¶6 We conclude, as did LIRC, that the plain language of WIS. STAT. § 102.54 provides for an increased worker’s compensation award when there is an amputation of more than two-thirds of the distal joint of a finger or a disability as specified in WIS. STAT. § 102.52(1) to (9). All of the disabilities specified in § 102.52(1) to (9) refer to the loss of an appendage.

¶7 Schaalma argues that WIS. STAT. § 102.54 compensates for both partial as well as total loss of use of the appendages listed in WIS. STAT. § 102.52(1) to (9) because, he contends, § 102.54 implicitly includes WIS. STAT. § 102.55.² However, § 102.54 makes no reference to § 102.55, nor does the

² WISCONSIN STAT. § 102.55 provides:

Application of schedules. (1) Whenever amputation of a member is made between any 2 joints mentioned in the schedule in s. 102.52 the determined loss and resultant indemnity therefor shall bear such relation to the loss and indemnity applicable in case of amputation at the joint next nearer the body as such injury bears to one of amputation at the joint nearer the body.

(continued)

language in § 102.54 provide any basis for inferring the legislature’s intent to incorporate § 102.55.³

¶8 Although we may not use legislative history to render an unambiguous statute ambiguous, we may use it to reinforce our interpretation. *Novak v. Madison Motel Assocs.*, 188 Wis. 2d 407, 416, 525 N.W.2d 123 (Ct. App. 1994). We use it for that purpose here. When WIS. STAT. § 102.54 was being drafted, the Worker’s Compensation Division asked the drafter at the Legislative Reference Bureau for clarification. The drafter’s notes state: “Create sec. 102.54, Stats., to provide an increase of 25-percent ... for injuries to the dominant hand that result in any amputation beyond two-thirds of the distal joint or 100 percent loss of use for any disability in secs. 102.52(1) to (9).” The Department of Workforce Development included the drafter’s interpretation in a

(2) For the purposes of this schedule permanent and complete paralysis of any member shall be deemed equivalent to the loss thereof.

(3) For all other injuries to the members of the body or its faculties which are specified in this schedule resulting in permanent disability, though the member be not actually severed or the faculty totally lost, compensation shall bear such relation to that named in this schedule as disabilities bear to the disabilities named in this schedule. Indemnity in such cases shall be determined by allowing weekly indemnity during the healing period resulting from the injury and the percentage of permanent disability resulting thereafter as found by the department.

³ This interpretation has been adopted by LIRC in a previous decision. *Nelson v. Associated Milk Producers*, Claim No. 1994040617 (LIRC, Sept. 30, 1998). In *Nelson*, the appellant had urged LIRC to adopt the same reading that Schaalma asks us to adopt today. *Id.* However, LIRC rejected this reading, stating: “Had WIS. STAT. § 102.54 been meant to include losses or disability less than total at the specified joint, the statute would include a cross-reference to WIS. STAT. § 102.55(3).” *Id.*

footnote in the department's August 1996 compilation of recent amendments to the Worker's Compensation Act. The footnote states: "This provides an increase for injuries to the dominant hand that result in any amputation beyond 2/3 of a distal phalanx or 100 percent loss of use of any joint on the hand or arm."

¶9 We conclude that LIRC correctly decided that WIS. STAT. § 102.54 did not entitle Schaalma to an increase for the partial loss of use of his hand or fingers. Accordingly, we affirm.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

