

## WHEN SHOULD ILLINOIS EMPLOYERS PAY FOR STATUTORY AMPUTATIONS?

By

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An oft asked question is “When should payments for statutory amputations begin?” The generally given answer has been that, if there is no dispute as to liability, weekly payments should be made for any week during which Petitioner has not been paid TTD once the fact of the amputation is determined. A recent case has raised questions as to whether or not the PPD can be deferred during weeks in which Petitioner receives TTD.

In *Greene Welding and Hardware vs. Illinois Workers’ Compensation Commission*, Petitioner suffered amputations corresponding to 100 percent loss of the use of the right ring finger and 50 percent loss of use of the right middle finger on Dec. 9, 2005. Petitioner received TTD for Jan. 9-15, 2006 and, for most of the other time, received temporary partial disability while he worked light duty. Petitioner received a full duty release on Feb. 15, 2006, the date on which it is presumed that he reached maximum medical improvement. On Mar.4, 2006, after hiring a lawyer, Petitioner received a check dated February 28, 2006, for \$2,309.16 which indicated it was for 12 weeks PPD. Thereafter, claimant began receiving weekly checks until early November 2006.

The Arbitrator found Respondent’s conduct was neither unreasonable nor vexatious. Petitioner reviewed to the Commission solely on the issue of penalties. The Commission awarded penalties for Respondent’s delay in paying the statutory amputation benefits. The Commission assessed penalties on the statutory amputation benefits which had accrued from the date of accident through the date on the first payment check. In reinstating the Commission’s decision the Appellate Court held:

We hold that 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.

The Commission’s decision, which was affirmed by the Appellate Court, does not toll the accrual of statutory amputation benefits during periods during for which TTD is paid.

It does recognize that the statutory benefits will be paid on a weekly basis as they accrue. The case establishes the principle that undisputed statutory amputation benefits accrue from the date of accident and should be paid as soon the facts of the amputation and the average weekly wage are determined. If a dispute over the average weekly wage exists, employers should pay the benefits at the rate which it believes to be correct. Respondents should be alert to the obligations outlined in *Greene* because the report of this case is likely to alert petitioners to the opportunity to obtain penalties for delayed payments.

Should you have any questions or concerns, please do not hesitate to contact an Evans & Dixon attorney.

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