

OPINION NO. 72-050**Syllabus:**

1. A permanently and totally disabled claimant who, because of his low weekly wage, is entitled to payments from the Disabled Workmen's Relief Fund under Section 4123.412, Revised Code, and who commutes all compensation for which he is entitled by the taking of a lump sum payment under Section 4123.64, Revised Code, is entitled to continue receiving payments under the provisions of Section 4123.412, Revised Code, following the commutation.

2. A permanently and totally disabled claimant entitled to payments from the Disabled Workmen's Relief Fund under Section 4123.412, Revised Code, who enters into a final settlement agreement, is not entitled to continue receiving payments under the provisions of Section 4123.412, Revised Code, following his acceptance of the settlement.

**To: Joseph J. Sommer, Administrator, Bureau of Workmen's Compensation,
Columbus, Ohio**

By: William J. Brown, Attorney General, June 15, 1972

Your request for my opinion reads in pertinent part as follows:

"Section 4123.58 of the Ohio Revised Code, provides for the payment of compensation where a claimant has become permanently and totally disabled. The principle in Ohio is now well established that compensation is based upon the provisions of the law in effect as of the date of injury. Persons who are permanently and totally

disabled are not permitted to participate in subsequent increases in benefits enacted by the Ohio Legislature and must remain at the benefit level in effect as of the date of their injury. In order to alleviate the hardship that was created by this situation Sections 4123.411 to 4123.419 were enacted by the Legislature. This established the Disabled Workmen's Relief Fund and this fund is used to supplement the benefits paid to permanently and totally disabled claimants up to a minimum level established by the Legislature.

"Ohio Revised Code, Section 4123.64, provides that the Ohio Industrial Commission may under special circumstances, in order to render financial relief or further rehabilitation, commute payments of compensation to one or more lump sum payments. Whenever such a lump sum payment is granted, the weekly benefits payable to the recipient are reduced.

"Ohio Revised Code, Section 4123.414, sets forth the method for computing the amount of payments under the Disabled Workmen's Relief Fund and states as follows:

"'. . . provided that in determining such difference a participant shall be considered as receiving the amount of such participant's compensation which shall have been commuted under the provisions of Section 4123.64 of the Revised Code.'

"Pursuant to the above sections, the Industrial Commission has in some instances granted lump sum advancements to claimants who were permanently and totally disabled to such a degree that the claimant's weekly benefit has been reduced to zero dollars. * * *

"I, therefore, respectfully request that you provide me with your legal opinion as to whether or not the Bureau of Workmen's Compensation is authorized to continue the payments under the Disabled Workmen's Relief Fund to a claimant who is permanently and totally disabled in a case where the Ohio Industrial Commission has granted Lump Sum advancements to said claimant that has reduced his weekly benefits for permanent and total disability payable under Section 4123.58 to zero dollars per week."

The question presented by this request involves a consideration of Sections 4123.58, 4123.412, 4123.413, 4123.414 and 4123.64, Revised Code. Section 4123.58, supra, reads in part as follows:

"In cases of permanent total disability, the employee shall receive an award to continue until his death in the amount of sixty-six and

two-thirds per cent of his average weekly wage, but not less than seventy-seven dollars per week nor not less than a minimum of forty-nine dollars per week, unless the employee's average weekly wage is less than forty-nine dollars per week at the time of the injury, in which event he shall receive compensation in an amount equal to his average weekly wage." (Emphasis added.)

Section 4123.412, supra, known as the Disabled Workmen's Relief Fund, reads as follows:

'For the relief of persons who are permanently and totally disabled as the result of injury or disease sustained in the course of their employment and who are receiving workmen's compensation which is payable to them by virtue of and under the laws of this state in amounts, the total of which, when combined with disability benefits received pursuant to The Social Security Act is less than two hundred forty-three dollars per month, there is hereby created a separate fund to be known as the disabled workmen's relief fund, which funds shall consist of such sums as are from time to time appropriated by the general assembly and made available to the order of the industrial commission to carry out the objects and purposes of sections 4123.412 to 4123.418, inclusive, of the Revised Code. Said fund shall be in the custody of the treasurer of the state and disbursements therefrom shall be made by the industrial commission to those persons entitled to participate therein and in such amounts to each participant as is provided in section 4123.414 of the Revised Code."

Section 4123.413, supra, which sets forth the requirements for participation in the Disabled Workmen's Relief Fund, provides:

"In order to participate in said fund a participant must be permanently and totally disabled and be receiving workmen's compensation payments, the total of which, when combined with disability benefits received pursuant to The Social Security Act is less than two hundred forty-three dollars per month."

Section 4123.414, supra, reads as follows:

"Each participant is entitled to receive payments, without application, from the disabled workmen's relief fund of a monthly amount equal to the difference between two hundred forty-three dollars and such lesser amount as he is receiving per month as disability benefits pursuant to The Social Security Act, but payments from said fund shall not exceed the difference between two hundred forty-three dollars and such lesser sum as he is receiving monthly under the workmen's compensation laws for permanent and total disability; provided that in determining such difference a participant shall be considered

as receiving the amount of such participant's compensation which shall have been commuted under the provisions of section 4123.64 of the Revised Code. Such payments shall be made monthly during the period in which such participant is permanently and totally disabled."

Section 4123.64, supra, reads as follows:

"The industrial commission, under special circumstances, and when the same is deemed advisable for the purpose of rendering the injured or disabled workman financial relief or for the purpose of furthering his rehabilitation, may commute payments of compensation or benefits to one or more lump sum payments."

It should be noted from the outset that a claimant does not have a right to a commutation of an award. The allowance of a commutation, as well as the amount of the commutation, is a power which is discretionary with The Industrial Commission of Ohio.

Section 4123.413, supra, provides that in order to participate in the Disabled Workmen's Relief Fund, a claimant must be (1) permanently and totally disabled, (2) receiving workmen's compensation, and (3) such compensation, when combined with disability benefits received pursuant to The Social Security Act, must total less than two hundred forty-three dollars per month. The question presented presumes the claimant has initially met these qualifications. Thus, it becomes necessary to inquire whether a claimant receiving Disabled Workmen's Relief Fund payments, who thereafter takes a lump sum payment pursuant to Section 4123.64, supra, and commutes all compensation to which he is entitled under Section 4123.52, supra, so that he will no longer receive periodic permanent total payments, continues to qualify for the Disabled Workmen's Relief Fund payments following the commutation.

A commutation of a claimant's permanent total disability benefits pursuant to Section 4123.64, supra, to a single lump sum payment, is not a determination by the Industrial Commission that claimant is no longer permanently and totally disabled, but rather it is an order changing the form, or the manner, in which the permanent total benefits will be paid. Accordingly, the claimant will continue to meet the first requirement of Section 4123.413, supra, following the commutation.

The real problem arises when one attempts to determine if a claimant, in the situation under consideration here, would continue to meet the second requirement. The argument can be advanced that the Disabled Workmen's Relief Fund was created to provide a subsidy to the biweekly permanent total payments; that following a total commutation the claimant will no longer receive any payments; therefore, nothing remains to be subsidized and the Disabled Workmen's Relief Fund payments should cease.

If one reads Section 4123.413, supra, as standing alone, such an argument is plausible since a literal reading of the statute requires the claimant be receiving workmen's compensation "payments". Such a reading, however, would place this Section in apparent conflict with Section 4123.414, supra,

which provides, in part, that Disabled Workmen's Relief Fund payments, "shall be made monthly during the period in which such participant is permanently and totally disabled". This Section does not demand that claimant continue to meet the other two requirements, but merely that he remain permanently and totally disabled.

This same Section further provides that, in determining the amount of the Disabled Workmen's Relief Fund payment, "* * * a participant shall be considered as receiving the amount of such participant's compensation which shall have been commuted under the provisions of section 4123.64 * * *." A literal reading of this language would necessitate the conclusion that a claimant in our situation would continue to receive the Disabled Workmen's Relief Fund payment, since it appears clear that such an award can be made even following a commutation and the amount of the Disabled Workmen's Relief Fund payment will be based upon the permanent total benefits he had been receiving, whether those benefits had been commuted by 1 per cent or 100 per cent. Thus, it becomes necessary to ascertain which of these conflicting Sections should prevail.

A well established rule of statutory construction provides that sections and acts in pari materia should be construed together. Further, the Ohio Supreme Court in the case of Industrial Commission v. Hilshorst, 117 Ohio St. 337 (1927), held in the second syllabus as follows:

"Where different provisions of an act are in irreconcilable conflict, that provision which is most in harmony with the fundamental purpose of the statute must prevail."

Accordingly, when these two conflicting Sections are considered in light of the entire Workmen's Compensation Act, it appears clear that the legislature intended the fundamental purpose of the Disabled Workmen's Relief Fund to be that of providing those employees, who are receiving minimal permanent total benefits, with a certain minimum monthly income for the remainder of their lives. To discontinue the claimant's Disabled Workmen's Relief Fund payments following total commutation, would certainly run counter to such a purpose.

Another rule of statutory construction provides that the General Assembly will not be assumed or deemed to have intended to enact a law producing unreasonable or absurd consequences and that doubtful provisions should, if possible, be given a reasonable, rational, or intelligent construction. 50 O. Jur. 2d, Section 238, page 222. With this rule in mind, it is easy to imagine certain situations arising which would be unreasonable and absurd in result if the rationale of Section 4123.413, supra, were to prevail. For instance, assume a claimant has qualified under Section 4123.413, supra, and he is receiving Disabled Workmen's Relief Fund payments. He then requests a total commutation. The Industrial Commission feels he should be given a total commutation; however, the Commission knows the claimant will no longer meet the second requirement of Section 4123.413, supra, and his Disabled Workmen's Relief Fund payments will be cut off. In order to avoid this result, they commute 99.9 per cent of his permanent total benefits to a single lump sum payment. Thus, he will continue to qualify for his Disabled Workmen's Relief Fund payments since he will still receive his biweekly

compensation payment, even though that payment might only amount to two cents per check.

In 1958, the Ohio Supreme Court decided the case of State ex rel. Jackson v. Industrial Commission, 167 Ohio St. 290 (1958), which involved Sections 4123.412, 4123.413, and 4123.414, supra. In this case, the Court held that in computing the amount of the Disabled Workmen's Relief Fund payment, no reduction shall be made by reason of additional compensation being paid to a disabled workman as a result of a determination that his injuries were the result of a violation by his employer of a specific safety requirement. While this decision does not directly deal with the problem under consideration, the Court did make the following pertinent statement at page 292:

"Even if an ambiguity exists in the three sections, which we do not concede, the decisions of this court would require that such ambiguity be resolved in favor of the injured workman.* * *"

In addition to this Supreme Court statement, Section 4123.95, Revised Code, provides:

"Sections 4123.01 to 4123.94, inclusive, of the Revised Code shall be liberally construed in favor of employees and the dependents of deceased employees."

In view of these rules of statutory construction, I am of the opinion that any ambiguity or conflict which exists between Sections 4123.413 and 4123.414, supra, regarding the second requirement of "receiving workmen's compensation payments", should be resolved in favor of the claimant and it should be determined that such an employee continues to qualify for the Disabled Workmen's Relief Fund payment.

As to the third requirement of Section 4123.413, supra, there can be no doubt that a claimant who had been receiving less than two hundred forty-three dollars per month before a total commutation, will continue to receive less than that amount following the commutation, since his workmen's compensation benefits will have been reduced to zero dollars per month. Thus, he will continue to qualify under the third requirement.

Additionally, it should be noted that to obtain a commutation a claimant must file a Form C-32, "Application for Lump Sum Payment". This application is positively void of any language to indicate or infer that if a total commutation is awarded, the claimant will be completely and finally closing out his claim, and along with it, his right to receive any further or supplemental compensation. Certainly if such a possibility in fact, existed, it would be incumbent upon the Industrial Commission to clearly apprise a claimant of that fact and to fail to do so would run contrary to public policy. Obviously, when a partial commutation of a permanent total award is granted, that claim remains open. Similarly, when a total commutation is granted, that claim also remains open, since it cannot be disputed that a claimant in such a situation would still be entitled to be compensated for medical expenses due to his allowed injuries. The fundamental basis upon which a Disabled Workmen's Relief Fund award is founded, is the existence of a permanent

total compensation claim. If that claim remains in existence, then the basis for the Disabled Workmen's Relief Fund relief also remains in existence.

In view of the foregoing, it is my opinion that a claimant who has initially qualified for Disabled Workmen's Relief Fund payments, will continue to qualify for those payments following a commutation of all his permanent total benefits to a single lump sum payment.

It would be a different matter if the question asked were whether a claimant, entitled to participate in the Disabled Workmen's Relief Fund, may continue to so participate if he settles his claim. Section 4123.65, Revised Code, provides:

"Before any final settlement agreement is approved by the industrial commission, application therefor shall be made to the commission. Such application shall be signed by the claimant and shall clearly set forth the circumstances by reason of which the proposed settlement is deemed desirable and the nature of the controversy. Notice of the hearing of such application shall be given to the employee and his representative and the employer and his representative. Such application shall be heard by the members of the industrial commission or a majority thereof sitting en banc. No member may delegate his authority to hear and determine the matters raised by such application."
(Emphasis added.)

A claimant initiates a settlement agreement at the administrative level by filing Form L-102, "Application for Lump Sum Settlement." This application reads, in part, as follows:

"I, * * *, am the claimant in the above numbered claim, filed with The Industrial Commission of Ohio. I desire and offer to settle my claim in full. I will forever release the Commission from any further compensation on this or any other claim which I may now have against the Commission, whether such claim has been filed or has not been filed with the Commission.

"I certify that I fully understand that any settlement accepted by me as herein proposed, will prevent me from ever again receiving compensation or medical help on account of the injuries covered by this or any other claim I now have or may have against the Commission for disability due to bodily injuries. It is understood that this does not settle any claims for injuries I may have after the date of this settlement."

Unlike the C-32 application for commutation, the L-102 application makes it emphatically clear that claimant's acceptance of the agreement will constitute full and complete satisfaction of all claims which are then pending and for all injuries sustained or occupational diseases contracted up to the date of the release, whether or not claims have been filed. If an employee

has a claim pending in the court of common pleas, he may still enter into a final settlement agreement by signing an "Agreement" prepared by the Attorney General's Office. This agreement also contains language to the same effect as that found in Form L-102, quoted above.

Consequently, when a claimant enters into a final settlement agreement, he forever closes out any and all claims or rights he then has against the Commission. With this action, his right to participate in the Disabled Workmen's Relief Fund must also be closed out. Clearly, this right is encompassed by the settlement agreement language " * * * of any other claim I now have against the Commission". Here the claimant has been apprised of the consequences of accepting a final settlement and has made his election.

The existence of a permanent total compensation claim must be considered to be the most basic element necessary for participation in the Disabled Workmen's Relief Fund. When a claimant accepts a final settlement, that basic element ceases to exist. Without it, there is no foundation for continued participation in the Relief Fund. Therefore, under these circumstances, any Disabled Workmen's Relief Fund payments a claimant is receiving should be discontinued.

In specific answer to your question it is, therefore, my opinion, and you are so advised, that:

1. A permanently and totally disabled claimant who, because of his low weekly wage, is entitled to payments from the Disabled Workmen's Relief Fund under Section 4123.412, Revised Code, and who commutes all compensation for which he is entitled by the taking of a lump sum payment under Section 4123.64, Revised Code, is entitled to continue receiving payments under the provisions of Section 4123.412, Revised Code, following the commutation.

2. A permanently and totally disabled claimant entitled to payments from the Disabled Workmen's Relief Fund under Section 4123.412, Revised Code, who enters into a final settlement agreement, is not entitled to continue receiving payments under the provisions of Section 4123.412, Revised Code, following his acceptance of the settlement.