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ARTIFICIAL APPLIANCE—INJURED EMPLOYEE—UPON RECOMMENDATION BY BUREAU OF VOCATIONAL REHABILITATION, INDUSTRIAL COMMISSION OF OHIO, UPON UNANIMOUS VOTE, HAS AUTHORITY TO REPLACE ARTIFICIAL APPLIANCES FOR REHABILITATION PURPOSES—SECTION 1465-80d, G. C.

SYLLABUS:

Under the provisions of Section 1465-80d, General Code, the Industrial Commission of Ohio has within its sound discretion, upon unanimous vote, the authority to replace an artificial appliance of an injured employee upon a recommendation by the Bureau of Vocational Rehabilitation that it is necessary to replace said artificial appliance for rehabilitation purposes irrespective of whether said injured employee had theretofore been provided with an artificial appliance.

Columbus, Ohio, December 14, 1951

Mr. Joseph J. Scanlon, Secretary, The Industrial Commission of Ohio
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“The Industrial Commission has directed the writer to secure your opinion as to the authority of the Industrial Commission to purchase more than one artificial appliance for an injured claimant out of the surplus fund, as provided for in the following paragraph, which is a part of Section 1465-80, Ohio General Code.

“In all cases arising under paragraph (c) hereinabove,

if the bureau of vocational rehabilitation shall determine that an artificial appliance will be serviceable in the vocational rehabilitation of the injured employe, the industrial commission may by unanimous vote pay the cost of such artificial appliance out of the surplus created by paragraph 2 of section 1465-54 of the General Code.'

"Ever since September 4, 1941 when the above section became operative, the Industrial Commission has interpreted it according to its wording to mean that they are authorized to purchase one artificial appliance. No exception has been made unless a subsequent operation has made the first appliance un-serviceable. For example, if the second operation was made above the knee and the first operation was below the knee, a whole artificial leg was purchased. The mere fact that the artificial appliance does not fit, either due to atrophy of the stump or to the fact that the size of the stump has increased, is not held sufficient for the Commission to purchase even an artificial socket.

"Your opinion with regard to the foregoing matter is respectfully requested."

So far as I am able to determine, this statute has not been the subject of judicial inquiry and, therefore, there are no cases which can be cited as precedent. We must, therefore, resort to the application of the general rules of statutory construction.

From conversation I have learned that there are those who feel that since Section 1465-80d, General Code, provides for "*an* artificial appliance," and since "*an*" is a singular word, therefore only one artificial appliance can ever lawfully be purchased for an injured employe.

All the language of the Act must be read in *pari materia*, with the most reasonable interpretation being placed on said language. *Noggle v. Industrial Commission of Ohio*, 129 Ohio St., 495.

The Workmen's Compensation Act is in the nature of a remedial statute and, as such, is to be liberally construed. 42 Ohio Jurisprudence, 578. In *Industrial Commission v. Weigandt*, 102 Ohio St., 1, it is said at page 7:

"We are likewise impressed that this law is intended to provide an inexpensive, humane remedy as a substitute for outworn and unsatisfactory methods, and it should be liberally construed in favor of employes."

It should be borne in mind that Section 1465-80d, General Code, also makes provision for the promotion of vocational rehabilitation of persons

disabled in industry, and provides that such employes are entitled to receive living maintenance when the bureau shall have certified that vocational rehabilitation is feasible. Further, it is provided that a course of instruction shall be established for such persons, and following these provisions it is further stated that an artificial appliance shall be provided if the bureau of vocational rehabilitation shall determine that this would assist in the rehabilitation of an injured employe.

Reading the portion of Section 1465-80d, General Code, quoted in your letter, in conjunction with the other language in said section, it is obvious that the purpose and intent of this section is to provide the *means for vocational rehabilitation of injured employes*.

Rehabilitation is defined in Webster's New International Dictionary to mean:

"1. * * * to restore to a former capacity; * * *

"* * * 4. * * * to restore a person, as a disabled soldier, to a status of independent earning power through a course of instruction under state supervision, especially along vocational lines."

To the same effect see also Black's Law Dictionary, page 1451.

An "appliance" has been defined as something applied to or used as a means to an end. 3 Words and Phrases 747. In *Palmer v. Great Northern Ry. Co.*, 119 Mont., 68, it was said:

"Appliance is defined in Funk & Wagnalls New Standard Dictionary of the English Language as 'anything through or by which something is effected or accomplished, or which appertains or is essential to the conduct, course, or operation of a particular thing; an instrumental means, aid, appendage, or device.' Corpus Juris defines appliance as follows: 'A thing applied or used as a means to an end; something applied as a means to an end, either independently or subordinately; something applied or used directly; that which is adapted to the accomplishment of a purpose; the thing applied or used; an instrumental means, aid, or appurtenance; an apparatus or device. * * *'"

If one "artificial appliance" is purchased for an injured employe as a substitute for a leg and such "artificial appliance" cannot be used because the stump has either increased in size or has atrophied, then, so far as that person is concerned, it is no longer an "artificial appliance." It does not tend to restore to former capacity and serve the end or the accomplishment of the purpose of vocational rehabilitation.

Accordingly, in specific answer to your question, it is my opinion and you are advised that under the provisions of Section 1465-80d, General Code, the Industrial Commission of Ohio has within its sound discretion, upon unanimous vote, the authority to replace an artificial appliance of an injured employe upon a recommendation by the Bureau of Vocational Rehabilitation that it is necessary to replace said artificial appliance for rehabilitation purposes, irrespective of whether said injured employe had theretofore been provided with an artificial appliance.

Respectfully,

C. WILLIAM O'NEILL
Attorney General