

6. On July 7, 1994, Cox underwent an evaluation at Workplace Industrial Medicine.

AR, pp. 44, 78-82.

7. Workplace Industrial Medicine recommended that Cox would benefit from [REDACTED]

[REDACTED] strengthening and stretching exercise and from vocational consultation for possible job placement or to learn new skills. AR, p. 82.

8. PERF's consulting physician, Dr. Rosenberg, determined Cox's degree of impairment to be thirty-two percent (32%). AR, p. 53.

9. After reviewing Cox's medical files, Dr. Omar N. Markland gave Cox an impairment rating of thirty-four percent (34%).

10. PERF must convert the bodily impairment rating to determine the entitlement to be paid a disabled employee. AR, p. 55.

11. The controlling statute, Ind. Code § 36-8-8-13.5, provides for a monthly entitlement which is no less than ten percent (10%) but no more than forty-five percent (45%) of the employee's monthly salary in the year of the local board's determination of impairment. AR, p. 55.

12. In determining additional entitlement, PERF must spread the degrees of bodily impairment over the percentage of salary allowed. AR, p. 56.

13. PERF divides 35 by 100 to determine the percentage of salary to apply to each degree of impairment. AR, p. 56.

14. The converted percentage of salary is added to 10% (the base salary) to yield the total entitlement.

15. This conversion allows for a progression from one percent of impairment through one hundred percent impairment. AR, pp. 56-7.

16. PERF has developed a chart to show the conversion. AR, pp. 55-6, 108-13.

17. In Cox' case a 32% impairment rating would yield an entitlement equal to 21.2% of salary. A 34% impairment rating would yield an entitlement equal to 21.9% of salary. AR, p. 60.

18. All findings of fact may be considered conclusions of law.

Conclusions of Law

1. On judicial review, the court cannot reweigh the evidence. Rather, the review is limited to whether the agency possessed jurisdiction over the matter and whether its order was made in accordance with proper legal procedure, was based upon substantial evidence and did not violate any constitutional, statutory or legal principle. Eastbrook Community Schools Corporation v. Indiana Education Employment Relations Board, 446 N.E.2d 1007 (Ind. App. 1983).

2. The court cannot substitute its judgment for that of the agency. Department of Financial Institutions v. Colonial Bank & Trust Company, 176 Ind. App. 364, 375 N.E.2d 285 (1978).

3. Cox has a Class 3 disability.

4. The amount of disability paid for a Class 3 disability is controlled by Ind. Code § 36-8-8-13.5(d) and f), which provides:

(d) For applicants hired before March 2, 1992, a fund member who is determined to have a Class 3 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to the product of

the member's years of service (not to exceed thirty (30) years of service) multiplied by one percent (1%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment.

* * *

(f) If a fund member is entitled to a monthly base benefit under subsection (b), (c), (d), or (e), the fund member is also entitled to a monthly amount that is no less than ten percent (10%) and no greater than forty-five percent (45%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment. The additional monthly amount shall be determined by the PERF medical authority based on the degree of impairment.

5. PERF's determination is based upon its medical authority.

6. PERF's calculation method adheres to the dictates of Ind. Code § 36-8-8-13.5(d) and

(f).


7. The law and the facts are with PERF and against Cox.

8. All conclusions of law may be deemed findings of fact.

JUDGMENT

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of PERF and against Cox. PERF's determination is affirmed.

Dated: 2/13/95



Judge, Knox Circuit Court

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