

RATING PERMANENT DISABILITIES IN COMBINATION.

BY

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The question of rating permanent disabilities in combination is one with which every Industrial Accident Commission will have to deal at some time.

There are a great many employees working today who have suffered a permanent disability involving the loss of an eye or an arm, or some other part of the body, who are likely to be injured again, the second injury resulting in permanent disability and causing a combination of injuries which must be rated.

The Industrial Accident Commission of the State of California has had occasion to discuss several cases of this character. In one instance, a worker who had previously lost the sight of one eye suffered total blindness as the result of a subsequent injury. This case was as severe as any but there were many other cases of similar character where the separate injuries were of less importance.

The question of adequately compensating employees for disabilities of this character is a very interesting one, and several plans have been suggested. During the recent session of the California Legislature a plan was proposed to the commissioners of the Industrial Accident Commission which would have removed all permanently disabled employees from the protection of the Workmen's Compensation, Insurance and Safety Act. This scheme would have required employees who suffer permanent injuries to furnish their own protection by purchasing insurance in the form of personal accident policies. The idea was to prevent a discrimination against crippled workers, for it is a foregone conclusion that if the Commission were to allow total permanent disability for the loss of a second eye, employers would not care to have one-eyed workers in their employment. The permanently disabled worker under this scheme would be called upon to pay his insurance premiums regularly to his insurance carrier for his personal protection, and the cost of his personal insurance would represent the price of an opportunity to seek employment without being discriminated against because of a more or less crippled condition. It goes without saying that this

plan was not proposed by an insurance man, for it is a well known fact that insurance carriers are not particularly anxious to secure substandard risks. This plan would have removed employees from the protection of the Act, and would have placed them in a position where they might possibly have been unable to secure protection at all, or if protection were secured it would have been necessary to purchase this protection at a cost in excess of the cost upon which the proposed scheme was based, that is, the cost of insurance for the standard man.

Another suggestion which has been followed in California is a good one practically, for its tendency is to overcome the discrimination which might exist should permanent disabilities of this character be rated in another manner. At present, the Industrial Accident Commission of the State of California rates permanent disabilities with reference to the immediate injury only, leaving out of consideration all injuries which might have existed previously. An eye is an eye, and each worker receives the same amount whether the loss of the eye causes total blindness or not.

The Commission was forced to assume this attitude because certain large employers threatened immediately to discharge all workers who were crippled in any way should another method of rating these disabilities be adopted.

The plan which we propose to discuss here is not of practical interest under existing conditions, because this question of meeting the discrimination against crippled workers is not taken into consideration. It is of interest only from a theoretical standpoint. This should be borne in mind in criticizing the plan suggested.

It is probably known to all readers that the California schedule for rating permanent disabilities makes use of the percentage system by rating permanent disabilities in accordance with the loss in earning capacity produced by the injury. Certain injuries which are conclusively presumed to create total permanent disability are enumerated; in all other cases the degree of permanent impairment is measured by comparing the injury to be rated with the injuries enumerated as causing 100 per cent. impairment, by taking into consideration not only the item of physical injury but also the items of occupation and age. The schedule of compensation itself, as set forth in the Act, makes full use to a certain degree of physical impairment of the rehabilitation theory. Theoretically, the rehabilitation theory is used for disabilities rated 60 per cent. and under.

The reason for using the rehabilitation theory up to 60 per cent. impairment has been very thoroughly explained by Professor A. W. Whitney in a paper presented before the Actuarial Society of America, Vol. XIV, Part II, No. 50. After carefully investigating the subject, it was determined that the worker himself requires 40 per cent. of his wage for his own support. When a worker is 60 per cent. impaired he can theoretically earn but 40 per cent. of his former wage, which in accordance with the result of this investigation is sufficient to provide for the upkeep of the worker alone, leaving no funds for the maintenance of the worker's family; consequently for a 60 per cent. permanent impairment the same amount of compensation is awarded as is awarded in the case of death with total dependency. Theoretically, the family of the worker who is 60 per cent. disabled is in just exactly the same circumstances as the family of the worker who is killed outright, for every cent the worker can earn following a 60 per cent. permanent impairment is used for the support of the worker and nothing is left to support his family.

Under 60 per cent. the rehabilitation theory used with reference to the Workmen's Compensation, Insurance and Safety Act, allows an injured person if permanently disabled, a period of 4 weeks from the date of injury for every 1 per cent. of physical impairment in which to regain his former efficiency as a wage earner. Thus, the worker is given 80 weeks for a 20 per cent. permanent disability, in which time he must regain his former status as a wage earner in the industrial community.

Now take the case of a worker who is say 80 per cent. disabled. This worker cannot theoretically earn the 40 per cent. of his former wage required for his own support. Unless he receives an adequate amount of compensation the cost of his upkeep will become a drain upon his family, to the extent of 20 per cent. of his former wage. The family in the case of a worker who is 80 per cent. permanently disabled is not in as good a position financially as the family of the worker who is killed outright. The worker, as far as the family is concerned, is worse than dead, because as before mentioned, the cost of his support becomes in part a drain upon the earnings of the members of his family.

In this case, and in all cases where injuries are sustained which are rated over 60 per cent., the family of the worker receives compensation equivalent to the compensation received in the case of

death with total dependency, and the worker is provided with a pension of a percentage sufficient when taken together with the percentage of his former earnings he is theoretically able to earn, to make up 40 per cent. of his former earnings. In the case of the worker who is 80 per cent. permanently disabled, this pension is 20 per cent.; in the case of a worker who is 100 per cent. permanently disabled this pension is 40 per cent. For practical reasons, no pension is paid until the amount of the pension is 10 per cent. Thus a worker does not receive a pension unless he suffers a 70 per cent. permanent impairment of his earning capacity. For these same practical reasons, the rehabilitation theory is accepted for disability up to and including 69½ per cent., and the same method of allowing 4 weeks rehabilitation time for each 1 per cent. of disability is followed. Thus the worker who is 69½ per cent. permanently disabled, receives compensation for 279 weeks. The rehabilitation theory is not, therefore, carried to its logical conclusion in the Workmen's Compensation, Insurance and Safety Act, because persons who are badly disabled are not considered as being able ever to regain their former earning capacity.

The dividing line has been placed at 60 per cent., and for all practical purposes at 70 per cent. Below 60 per cent. or 70 per cent., the rehabilitation theory is accepted.

If a man receive compensation for 120 weeks, for example, at the end of the 120 weeks his status as a worker should have been regained. For purposes of simplification, we shall assume that the rehabilitation process proceeds as a simple function of time allowed for its completion. In the case cited, at the termination of 60 weeks the person will be supposed to have regained 15 per cent. of his earning capacity, or to have assumed a status which we may term an 85 per cent. status. Under these conditions, the worker at the end of 60 weeks must be considered 15 per cent. inefficient, or 85 per cent. efficient.

In all cases, then, whenever the aggregate amount of compensation called for by a rating determined by consulting the schedule for the rating of permanent disabilities has been paid the injured person will be assumed to have regained all of his lost earning capacity. In some instances, the earning capacity, as far as one particular employer is concerned, is regained immediately, as for example in the case of the laborer who loses an eye and is immediately given employment as soon as he is able to return to work

by the employer in whose employment he was injured. In cases of this kind the compensation money is assumed to constitute a fund with which the employee will meet future contingent wage losses due to inability to find work to perform because of a loss in competing power.

When we speak of the status of a wage earner, we mean his power to get along in the industrial community as an industrial worker. If a crippled worker cannot secure employment we must provide a fund which, while allowing a proper share of the burden to fall upon the employee, maintains a certain standard of living. While a worker is actually disabled, he is allowed 65 per cent. of his average weekly earnings under the California Act. This places a burden of 35 per cent. of the employee's average weekly earnings upon the employee himself, and requires that he meet the contingency of disablement by industrial accident through some method of personal provision. In cases of permanent disability where the percentage of disability is low, the worker will probably be disabled principally through the effect of competition in his line of employment. Crippled workers find it difficult to find employment. It takes them longer to secure employment. Crippled workers are the first to suffer when periods of depression in the trade cause employees to be laid off. They are laid off for a greater period of time than workers who are sound, because of their crippled condition. While they work in a great many cases they are able to earn 100 per cent. of the wage they were earning when the permanent disability was sustained. When we speak of these workers having regained their status, we mean that they have been given enough compensation to form a fund to take care of these short periods of unemployment.

In discussing the problem of rating permanent disabilities in combination, it is taken for granted that the first injury in combination will never cause a disability which will require a rating in excess of 60 per cent. or 70 per cent. at the most. Thus we shall accept the rehabilitation theory in its complete form in discussing a method for compensating losses in combination of different members of the body when these losses occur at successive intervals.

If the period of time allowed for rehabilitation from the disability occasioned by the loss of one eye has been completed before the second eye is lost, the worker will be considered as having regained his status as a wage earner. If a percentage of this rehabilitation period has been completed the worker will be considered as having

regained a certain status which may be assigned a percentage. A status equivalent to the status at the time of the original accident we will term a 100 per cent. status. If a wage earner is allowed 200 weeks in which to rehabilitate his earning capacity he will have regained a 100 per cent. status at the end of 200 weeks, a 75 per cent. status at the end of 100 weeks, a 60 per cent. status at the end of 40 weeks, and his status immediately following the injury will be taken as 50 per cent.

It is the purpose of the method discussed here, always to rate the permanent injury in combination, as if the conditions existing following the last injury were the result of one accident, but to consider this rating with reference to the worker's status. Thus if a worker lose one eye in 1915 and the second eye in 1920, compensation for the 1920 accident will be computed on the basis of the loss of two eyes and the worker's status in 1920. In this case the period of time allowed for recovery from the disability occasioned by the loss of the first eye has been completed before the second eye is lost. Compensation for the loss of the second eye is therefore governed by the proper rating in the schedule for the rating of permanent disabilities by taking the following items as a basis for rating the combination disability:

1. Nature of physical injury or disfigurement: Loss of both eyes.
2. Occupation: The occupation of the injured person in 1920.
3. Age: The age of the injured person in 1920.

This rating will be used in connection with a status of 100 per cent., for the worker has theoretically regained a 100 per cent. status in the industrial community. To take a very simple case: If the rating for the loss of one eye is 30 per cent., the worker is allowed 120 weeks for rehabilitation. In the example under discussion the period elapsing before the second eye is lost is 5 years; the worker therefore has regained a 100 per cent. status before the second accident which renders him totally blind takes place. Using the proper items to consult the schedule for the rating of permanent disabilities we find the percentage of disability to be 100 per cent. One hundred per cent. of 100 per cent. gives 100 per cent. loss in earning capacity, and entitles the employee to receive compensation for total permanent disability.

If the second eye is lost during the period of rehabilitation, the

items used to consult the schedule for the rating of permanent disabilities will be exactly the same as given above, but the rating secured will be used in connection with the status not of 100 per cent., but of a percentage representing the adjusted degree of rehabilitation, considering the proportion existing between the actual period of rehabilitation consumed before the second injury to the total period of rehabilitation allowed for the original injury. Thus, to use the case cited above, if the second eye is lost within the rehabilitation period, say at the termination of 60 weeks, the rating found by consulting the schedule for the rating of permanent disabilities is 100 per cent., but the status of the worker at this time is only 85 per cent. and his loss in earning capacity is 100 per cent. of 85 per cent., or 85 per cent.

This theory may be further explained by the following examples of theoretical cases rated in accordance with the schedule for the rating of permanent disabilities issued by the Industrial Accident Commission of the State of California:

EXAMPLE I.

First Accident:

1. Nature of physical injury or disfigurement: Loss of one leg at or above knee joint.
2. Occupation: Laborer.
3. Age: 39.

The first accident causes a disability of 50 per cent. Compensation, therefore, should be paid for a period of 200 weeks.

CASE I.

Second Accident:

1. Nature of physical injury: Loss of remaining leg at or above knee joint.
2. Occupation: Laborer.
3. Age: 49.

To determine the rating which represents the degree of permanent disability in this case the schedule for the rating of permanent disabilities should be consulted with the following items in mind:

1. Loss of both legs at or above knee joint.
2. Laborer.
3. Age 49.

The schedule gives a rating in this case of 91 per cent.; the status of the worker is 100 per cent., because the period of rehabilitation allowed for the first injury has been completed, consequently the rating for the injury in combination is 91 per cent. of 100 per cent., or 91 per cent. Compensation following the second injury should be paid for a period of 240 weeks at the rate of 65 per cent. of the average weekly earnings, and for life following this period of 240 weeks at the rate of 31 per cent. of the average weekly earnings.

CASE II.

Second Accident:

1. Nature of physical injury: Loss of remaining leg at or above knee joint.
2. Occupation: Laborer.
3. Age: 41.

In this case the injured person sustains the subsequent injury, completing the combination, within the period of rehabilitation allowed for the disability occasioned by the first injury. As in Case I, the schedule for the rating of permanent disabilities is consulted with the following information:

1. Loss of both legs at or above knee joint.
2. Laborer.
3. Age 41.

The rating determined in this manner is $90\frac{1}{4}$ per cent.; the status of the injured employee at the time of the second accident is 75 per cent.; the percentage of disability is therefore $90\frac{1}{4}$ per cent. of 75 per cent. or $67\frac{3}{4}$ per cent. For this percentage of physical impairment compensation is payable in the amount of 65 per cent. of the average weekly earnings for a period of 271 weeks.

EXAMPLE II.

First Accident:

1. Nature of physical injury: Loss of major hand at wrist.
2. Occupation: Carpenter.
3. Age: 41.

Rating, 52 per cent.

Period of rehabilitation: 208 weeks.

CASE I.

Second Accident:

1. Nature of physical injury: Loss of minor arm at elbow.
2. Occupation: Laborer.
3. Age: 50.

Rating, 100 per cent.

Status, 100 per cent.

Degree of physical impairment, 100 per cent.

CASE II.

Second Accident:

1. Nature of physical injury: Loss of minor arm at elbow.
2. Occupation: Carpenter's helper.
3. Age: 44.

Rating, 100 per cent.

Status, 87 per cent.

Degree of physical impairment, 87 per cent.