

## Moorehead; No Survival or Cognizance requirement for scheduled loss benefit, a medical perspective

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### I. Introduction; 2005-1121. State ex rel. Moorehead v. Indus. Comm., 2006-Ohio-6364

Under provisions of Ohio's workers' compensation law, when a worker is rendered quadriplegic by a workplace accident and survives for a short time but does not regain consciousness before dying, the worker's surviving spouse is entitled to scheduled loss compensation for her spouse's loss of use of both arms and legs.<sup>1</sup>

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<sup>1</sup> The case involved William Moorehead, who suffered major spine injuries that rendered him a quadriplegic in a workplace accident where he fell approximately 15-20 feet and landed head-first on a concrete floor. He was taken to an emergency room, where he died less than two hours after the accident due to massive head trauma and hemorrhaging without regaining consciousness. His widow, Sandra Moorehead, filed a death claim under the state workers' compensation program and was granted a death benefit. Sandra subsequently filed a second claim seeking benefits under R.C. 4123.57(B), a section of the workers' compensation statute that provides for the state to make continuing scheduled payments over a number of weeks to a worker who suffers the loss, or loss of use, of one or both arms or legs. If a qualifying worker dies before all of these loss-of-limb benefits have been paid, the statute allows the surviving spouse of the injured worker to continue receiving the scheduled weekly benefit payments under certain circumstances. The Industrial Commission denied Sandra's claim for scheduled loss-of-limb benefits. It held that Moorehead did not suffer an "actual" loss of use of his arms or legs because he was comatose for the brief time between the accident and his death, and therefore did not "perceive or experience" any suffering or disability as a result of his quadriplegia before he died. Sandra appealed the commission's ruling. A magistrate of the 10th District Court of Appeals recommended that that court grant a writ of mandamus ordering the commission to recognize Moorehead's injuries as an actual loss of use of his limbs and to process his wife's claim accordingly. The 10th District rejected the magistrate's recommendation, holding that the Industrial Commission's ruling denying Sandra Moorehead's loss-of-limb claim was not an abuse of the commission's discretion. Mrs. Moorehead exercised her right to appeal the 10th District's ruling to the Supreme Court.

Chief Justice Thomas J. Moyer, the Court overruled the 10th District and held that Moorehead was entitled to scheduled loss benefits under the loss-of-limb provision. The Chief Justice wrote that: "The court of appeals deferred to the commission's interpretation that 'loss of use' does not occur when an injured worker 'survives an industrial injury in an unconscious state for only a brief period and never actually experiences the disabling effects of the injury.' We disagree." Citing the plain language of the statute, Chief Justice Moyer noted that it "provides that compensation is payable to an employee when the employee loses a body part that is listed on a schedule set forth in the statute," and said the statute makes no reference to either a worker's duration of survival after an injury or cognizance of his injuries.

"We have long recognized that neither administrative agencies nor this court 'may legislate to add a requirement to a statute enacted by the General Assembly.' ... Rather, in interpreting statutes 'it is the duty of this court to give effect to the words used, not to delete words used or insert words not used,' wrote the Chief Justice. "We therefore cannot condone the commission's addition of a requirement that a worker survive for some extended period of time, left unspecified by the commission or General Assembly, when considering the worker's entitlement to a scheduled loss benefit. Similarly, there is no language in R.C. 4123.57(B) requiring that an injured worker be consciously aware of his paralysis in order to qualify for scheduled loss benefits."

Moyer concluded that "(t)his court should not graft duration-of-survival or cognizance requirements to R.C. 4123.57(B), because the statute has no text imposing them. Public policy arguments relative to the requisites of scheduled loss benefits pursuant to R.C. 4123.57 are better directed to the General Assembly." The majority opinion was joined by Justices Alice Robie Resnick, Paul E. Pfeifer, Maureen O'Connor and Judith Ann Lanzinger.

Justice Evelyn Lundberg Stratton entered a separate concurring opinion, joined by Justice Terrence O'Donnell, in which she agreed with the majority holding that the commission's denial of scheduled loss of limb benefits for Moorehead's injury was not supported by R.C. 4123.57. She added, however, that in her view a recent Supreme

- II. Loss of use – definitions, historical
- III. Workers' Comp Law Sets No 'Survival' or 'Cognizance' Requirement for Scheduled Loss Benefit
- IV. Medical perspective and definition of quadriplegic, consciousness, and survival for "a short time."
- V. Loss of vision and hearing
- VI. Discussion

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Court ruling in State ex Rel. Estate of McKenney v. Industrial Commission should be applied to limit Sandra Moorehead's award to one week of scheduled loss benefits.

Citing the Court's holding in McKenney that "the loss of earning capacity that scheduled loss compensation was intended to ameliorate ceases upon the death of the injured worker," Justice Stratton wrote that "the presumed loss of earning capacity ceased upon William Moorehead's death. At that point, Sandra Moorehead became entitled to apply for death benefits under R.C. 4123.59. I do not believe that the General Assembly intended for duplicate awards under these circumstances."