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Recent Developments: Mayor of Baltimore v. Cassidy: When Presumption of Permanent Total Disability Is Conclusively Rebutted, the Loss of Vision in Both Eyes Is to Be Compensated under 9-627(k) "Other Cases" Section of Permanent Partial Disability Statute as Opposed to Doubling the Rate of the Scheduled Loss of Vision in One Eye

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Mayor of Baltimore v. Cassidy:

WHEN PRESUMPTION OF PERMANENT TOTAL DISABILITY IS CONCLUSIVELY REBUTTED, THE LOSS OF VISION IN BOTH EYES IS TO BE COMPENSATED UNDER 9-627(k) "OTHER CASES" SECTION OF PERMANENT PARTIAL DISABILITY STATUTE AS OPPOSED TO DOUBLING THE RATE OF THE SCHEDULED LOSS OF VISION IN ONE EYE.

In *Mayor of Baltimore v. Cassidy*, 338 Md. 88, 656 A.2d 757 (1995), the Court of Appeals of Maryland ruled that the loss of vision in both eyes is to be compensated pursuant to Maryland Annotated Code section 9-627(k) of the Labor & Employment Article, as opposed to doubling the rate for the scheduled loss of vision in one eye, when the presumption of permanent total disability has been overcome. Thus, while the Workers' Compensation Act ("WCA") is to be liberally construed in favor of injured employees, a court or reviewing body may not disregard the Act's plain meaning.

Police officer Eugene Cassidy ("Cassidy") was shot in the head on October 22, 1987, in the line of duty. The injury left him blind in both eyes and caused a permanent loss of taste and smell. Following the incident, Cassidy was given a position as an instructor at the Police Academy at a salary greater than that which he had received while on active duty. Upon Cassidy's petition for compensation, the Workers' Compensation Commission ("Commission") held a hearing to determine the nature and extent of Cassidy's injuries. In applying section 9-627(k), "Other Cases" provision of the WCA, the Commission determined that Cassidy suffered an 85% industrial loss of the use of his body and awarded him compensation at the rate of $244.00 per week for 567 weeks.

Cassidy appealed to the Circuit Court for Baltimore City. He challenged the Commission's finding that his loss of vision was determinable under section 9-627(k) and not at double the rate of the scheduled loss of vision in one eye under section 9-627(d)(1)(vi). Such a determination would have allowed Cassidy to collect compensation for an additional 100 weeks due to an adjustment for serious disability pursuant to section 9-630 of the WCA. Thus, Cassidy would have received an additional $24,400.00 from doubling the scheduled loss. The circuit court agreed with Cassidy and held that the loss of vision in both eyes should have been determined at double the rate of the scheduled loss for one eye. The Court of Special Appeals of Maryland affirmed on appeal. The Court of Appeals of Maryland granted certiorari to determine whether the loss of vision in two eyes, where the presumption of permanent total disability has been overcome, was compensable at double the rate for the scheduled loss of one eye or under section 9-627(k), "Other Cases."

The court of appeals began its analysis by determining that whether the loss of two eyes is considered a scheduled loss is a matter of statutory construction. *Cassidy*, 338 Md. at 93, 656 A.2d at 760. Accordingly, the court held that only when a statute is unclear or ambiguous is it necessary to address its legislative purpose. *Id.*

at 94, 656 A.2d at 760. As section 9-627 was specific in its use of the singular and plural for loss of body parts or their use, there was no statutory ambiguity. *Id.* at 96, 656 A.2d at 761. While recognizing that the WCA should be liberally construed in favor of the injured employee, the court of appeals explained that the Commission and reviewing courts "may not disregard the plain meaning of the Act in the name of liberal construction." *Id.* at 97, 656 A.2d at 762. The court further ruled that section 9-627 was neither unclear nor ambiguous as it related to the loss of two eyes. *Id.* Since the loss of vision in both eyes was not specifically enumerated as a scheduled loss, it must be determined under section 9-627(k), "Other Cases." *Id.*

The court of appeals then addressed the presumption of permanent total disability for the loss of both eyes under section 9-636(b) of the Labor & Employment Article. *Id.* While this type of disability did not require the claimant to be completely helpless, it did mean that the claimant "is able to perform services so limited in quality, dependability, or quantity, that a reasonably stable market for them does not exist." *Id.* The court, however, held that this presumption was conclusively rebutted by the fact that not only did a market exist for Cassidy's services, but he also earned more as an instructor at the Police Academy than he did prior to the accident. *Id.* at 98-99, 656 A.2d at 762. If Cassidy were not permanently totally disabled, he must therefore be permanently partially disabled, and thus section 9-627 must apply. *Id.* at 99, 656 A.2d 762.

The court continued its review by examining the scope of the Commission's discretion under 9-627(k) and its exercise, even though neither party had contested it. *Id.* at 103, 656 A.2d at 764. Unlike scheduled losses, a loss under section 9-627(k) required the Commission to determine the extent of disability and its impairment of the industrial use of the claimant's body, along with his specific occupational characteristics. *Id.* Although the scheduled loss for a single body part could not be doubled to determine an award *per se*, that amount was a good indication of whether the Commission had abused its discretion in making an award under section 9-627(k). *Id.* In the instant case, however, the presumption of permanent total disability for the loss of sight in both eyes had been overcome, thus foreclosing an award of 100% disability under permanent partial. *Id.* at 104, 656 A.2d at 765. The court recognized the expertise of the Commission in determining awards in such situations and stated, "[t]he question of when a specific injury becomes 'an other injuries' type often presents a shadowy line of demarcation and calls for the wise discretion of the . . . Commission . . . in the light of substantial facts of evidence." *Id.* Therefore, the court reasoned, a finding of 85% permanent partial disability under section 9-627(k) would not have been an abuse of discretion by the Commission had the issue even been raised. *Id.* at 105, 656 A.2d at 766.

In *Mayor of Baltimore v. Cassidy*, 338 Md. 88, 656 A.2d 757 (1995), the Court of Appeals of Maryland ruled a scheduled loss may not be doubled for compensation purposes and must be considered under section 9-627(k), "Other Cases." In so doing, the court clarified the scope of the permanent partial disability statute, the calculation of Workers' Compensation benefits, and the Commission's exercise of discretion in determining an award under section 9-627.

- Francis A. Pommett III