IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald Ball,	:	
Petitioner	:	
	:	
v.	:	
	:	
Metro Imports, Inc. (Workers'	:	
Compensation Appeal Board),	:	No. 1621 C.D. 2025
Respondent	:	Argued: October 13, 2026

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge (P.)
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION
BY JUDGE FIZZANO CANNON FILED: November 16, 2026

Donald Ball (Claimant) petitions for review of the November 13, 2025, order of the Workers' Compensation Appeal Board (Board). The Board affirmed a May 2, 2025, order of the workers' compensation judge (WCJ), which granted a modification petition filed by Metro Imports, Inc. (Employer) and modified Claimant's benefits status from temporary total disability (TTD) to temporary partial disability (TPD) based on an impairment rating evaluation (IRE) that Claimant underwent in October 2023. Upon review, we affirm.

I. Background

The underlying facts are not in dispute. Claimant sustained a work-related lower back injury in March 1991. Certified Record (C.R.) at 31.[1] Employer accepted the injury via notice of compensation payable (NCP) in April 1991. *Id.* Claimant began receiving TTD benefits of $436.00 per week based on an average

[1] Certified Record (C.R.) references are to electronic pagination.

weekly wage of $1,404.88. *Id.* Employer sought to modify Claimant's benefits in 2001 and 2007; both petitions were denied by WCJs because Employer failed to establish that the jobs it offered or referred were within Claimant's physical restrictions due to his injuries. *Id*. In 2019, a WCJ denied two utilization review petitions filed by Employer after concluding that pain management treatment by two of Claimant's doctors was reasonable and necessary, including daily morphine medication, drug use monitoring tests, and monthly office visits. C.R. at 31.

Relevant to this appeal, the IRE process for modification has been in place since the June 1996 passage of Act 57,[2] which largely supplanted the prior basis for modification under the Workers' Compensation Act (Act).[3] Previously, employers could modify a claimant's TTD status to TPD by showing medical evidence of a change or improvement in the claimant's condition and an offer or referral of jobs within the claimant's physical abilities. *See Kachinski v. Workmen's Comp. Appeal Bd. (Vepco Constr. Co.)*, 532 A.2d 374, 380 (Pa. 1987). With the advent of the IRE in 1996, under former Section 306(a.2) of the Act,[4] employers could satisfy their modification burden through an IRE conducted by a doctor whose calculations in accordance with the "most recent edition" of the American Medical Association (AMA) "Guides to the Evaluation of Permanent Impairment" (AMA Guides) returned an impairment rating of 50 percent or higher compared to that of a whole and unimpaired person. *See DiPaolo v. UPMC Magee Women's Hosp.*

[2] Act of June 24, 1996, P.L. 350, No. 57, repealed by Act 111. Act 57 added Section 306(a.2) of the Act, which provided for the rights and remedies of the parties with regard to IREs and applied to injuries suffered on or after the effective date of Act 57. *Formerly* 77 P.S. § 511.2.

[3] Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§ 1-1041.4 & 2501-2710.

[4] Added by the Act of June 24, 1996, P.L. 350, *formerly* 77 P.S. § 511.2, repealed by the Act of October 24, 2018, P.L. 714, No. 111 (Act 111).

(Workers' Comp. Appeal Bd.), 278 A.3d 430, 432 (Pa. Cmwlth. 2022). TTD status has no time limit, but TPD status is limited to 500 weeks of benefits. *Id*. at 432-33.

Section 32.1(a) of Act 57 included language limiting its application "only to claims for injuries which are suffered on or after the effective date of this section," which was June 24, 1996. In light of that temporal limitation, Employer initially could not use the IRE process to modify Claimant's TTD status, hence its 2001 and 2007 attempts to modify Claimant's TTD status based on *Kachinski*.

Our Supreme Court struck former Section 306(a.2) in its entirety in *Protz v. Workers' Compensation Appeal Board (Derry Area School District)*, 161 A.3d 827, 835-36 (Pa. 2017) (*Protz II*), after concluding that former Section 306(a.2) impermissibly delegated legislative authority to the AMA. *See id*. at 836. Thereafter, the General Assembly formally repealed former Section 306(a.2) and enacted Act 111 of 2018 (Act 111), which replaced former Section 306(a.2) with Section 306(a.3).[5] Like the previous IRE provisions, Act 111 enabled an employer to require a claimant to undergo an IRE once the claimant had received at least 104 weeks of total disability benefits. *DiPaolo*, 278 A.3d at 432. However, Act 111 did not replicate Section 32.1(a) or incorporate any language that similarly limited Act 111's application to work-related injuries occurring after Act 57's June 1996 effective date when IREs became part of the workers' compensation landscape.

In August 2023, Employer commenced the IRE process in this case by requesting designation of an IRE physician to evaluate Claimant; the IRE conducted by Dr. Naftulin, who is board certified in physical medicine, family practice, and rehabilitation, took place on October 23, 2023. C.R. at 32. Claimant's IRE resulted in an impairment rating of 27 percent, below Act 111's 35 percent cutoff, a reduction

[5] Act of October 24, 2018, P.L. 714, No. 111 (Act 111), 77 P.S. § 511.3.

from Act 57's 50 percent cutoff, that would have allowed him to maintain his TTD status. C.R. at 6. Employer filed a modification petition to that effect in December 2023. *Id*. Claimant filed an answer asserting that Act 111 could not be applied retroactively to his pre-Act 57 injury. *Id*. at 12.

At a November 2024 hearing, Claimant testified that he had been a repair shop foreman at an automobile dealership when he injured his lower back in 1991. C.R. at 91. He stated that he had been diagnosed with two herniated discs and had undergone five surgeries along with chiropractic and physical therapy, none of which helped, and that he endured depression and homelessness before beginning medical pain management several years later. *Id*. at 92. He noted that his medication had recently been reduced, which had been a difficult adjustment. *Id*. at 93. He averred that he still had difficulty with average daily living activities, had a service animal, and hired aides for more strenuous activities. *Id*. at 93. He lived only on the first floor of his house and traveled every winter in a recreational vehicle modified for his needs to Arizona for its warmth and dry climate. *Id*. at 99 & 105.

On May 2, 2025, the WCJ issued an opinion and order granting Employer's modification petition. C.R. at 15-24. The Board affirmed in a November 13, 2025, decision and order. *Id*. at 42-49. Claimant timely appealed to this Court and this matter is now ripe for disposition.

II. Issues

Claimant argues that Section 32.1(a) of Act 57, which barred the use of IREs for injuries occurring before Act 57's June 1996 effective date, was never repealed and remains in effect and that applying Act 111 to a pre-Act 57 injury is an

improper retroactive application of a substantive change to the Act that violates the Remedies Clause of the Pennsylvania Constitution.[6] Claimant Br. at 2.

III. Discussion

A. Ongoing Vitality of Section 32.1(a) of Act 57

Statutory interpretation is a pure question of law over which our review is plenary and *de novo*.[7] *In re Three Pa. Skill Amusement Devices*, 358 A.3d 385, 409 (Pa. 2026). We are guided by our Statutory Construction Act of 1972 (Statutory Construction Act), pursuant to which the "object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly." *Id*. at 409-10. "Generally, the plain language of the statute provides the best indication of legislative intent." *Id*. at 410. "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." *Id*. Only when "the words of the statute are not explicit" may a court proceed to consider other indicia of legislative intent. *Id*. Statutes "are *in pari materia* when they relate to the same persons or things or to the same class of persons or things," in which case they "shall be construed together, if possible, as one statute." *Id*. However, under the principle of *expressio unius est exclusio alterius*, "the expression or inclusion of one thing in a statute implies the exclusion of an alternative." *Downs Racing, L.P. v. Commonwealth*, 288 A.3d 542,

[6] PA. CONST. ART. I, § 11.

[7] Our review of workers' compensation matters generally is limited to determining whether necessary findings of fact were supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated. Section 704 of the Administrative Agency Law, 2 Pa. C.S. § 704. When the constitutionality of a statutory amendment is challenged, the scope of review is plenary, and the standard of review is *de novo*. *Konidaris v. Portnoff Law Assocs., Ltd.*, 953 A.2d 1231, 1239 (Pa. 2008).

548 n.11 (Pa. Cmwlth. 2022). "[A]lthough one is admonished to listen attentively to what a statute says; one must also listen attentively to what it does not say." *Thompson v. Thompson*, 223 A.3d 1272, 1277 (Pa. 2020).

> Also, Section 1961 of the Statutory Construction Act states:
>
> > Whenever a statute reenacts a former statute, the provisions common to both statutes shall date from their first adoption. *Such provisions only of the former statute as are omitted from the reenactment shall be deemed abrogated*, and only the new or changed provisions shall be deemed to be the law from the effective date of the reenactment.

1 Pa.C.S. § 1961 (emphasis added). In *Livingston v. Unis*, 659 A.2d 606 (Pa. Cmwlth. 1995), this Court addressed whether our Supreme Court's "failure to reiterate" in an opinion "all of the examples" of a particular issue that this Court had listed in its underlying opinion had any particular significance to the ultimate disposition of that case. *Id*. at 611. We concluded that our Supreme Court's drafting choices in that case had "little significance," but added the following in a footnote: "An omission of this nature would have significance, for example, if the General Assembly had included a term in the prior version of a statute, but had neglected to incorporate it when promulgating the updated version." *Id*. at 611 n.6 (citing 1 Pa.C.S. § 1961); *see also Commonwealth v. Ness*, 491 A.2d 234, 235-36 (Pa. Super. 1985) (citing 1 Pa.C.S. § 1961 and concluding that when the legislature "reenacted" the Vehicle Code in 1976, its omission of particular provisions from the prior version

meant that the legislature "did not intend to preserve that requirement" and that "the provisions omitted were intended to be abrogated").[8]

Section 32.1(a), which appeared in Act 57 separately from former Section 306(a.2), stated: "The amendment or addition of sections 204(a), 306(a.2) and (b)(2) and 309 of the act shall apply only to claims for injuries which are suffered on or after the effective date of this section,"[9] which was June 24, 1996. Section 32.1(a) does not appear to have ever been officially codified or included in Purdon's unofficial codification of Pennsylvania's statutes; however, it was properly enacted and had legal effect. *Gantz v. Giroux* (Pa. Cmwlth., No. 2180 C.D. 2015, filed July 13, 2016), slip op. at 7, 2016 WL 3745525, at *3 (unreported) (citing *In Re Appeal of Tenet HealthSystems Bucks Cnty., LLC*, 880 A.2d 721, 725 (Pa. Cmwlth. 2005), and concluding that when "statutes are uncodified does not mean they lack legal effect").[10] However, when the legislature enacted Act 111 in 2018 to restore the IRE process after *Protz II*, Section 32.1(a) was not included, nor did the legislature

[8] While Superior Court decisions are not binding on this Court, they offer persuasive precedent where they address analogous issues. *Lerch v. Unemployment Comp. Bd. of Rev.*, 180 A.3d 545, 550 (Pa. Cmwlth. 2018).

[9] The other listed provisions in Section 32.1(a) pertain to other parts of Act 57. Section 204(a), 77 P.S. § 71(a), relates to offsets and credits that may be deducted from workers' compensation benefits if the claimant also receives unemployment compensation, Social Security retirement benefits, or severance or pension payments; Section 306(b)(2), 77 P.S. § 512(2), pertains to vocational earning power assessments; and Section 309, 77 P.S. § 582, pertains to the computation of the claimant's average weekly wage. Because those aspects of Act 57 have not been repealed or found unconstitutional, Section 32.1(a) remains in effect and bars those sections from application to cases preceding Act 57's June 1996 effective date.

[10] Under Section 414(a) of this Court's Internal Operating Procedures, an unpublished memorandum opinion of this Court issued after January 15, 2008, although not binding precedent, may be cited for its persuasive value. 210 Pa. Code § 69.414(a).

include in Act 111 any provision barring employers from seeking modification via the IRE process for claimants with injuries predating Act 57.

In *City of Pittsburgh v. Dobbs (Workers' Comp. Appeal Bd.)* (Pa. Cmwlth., No. 1431 C.D. 2021, filed Jan. 27, 2023), 2023 WL 491182 (unreported) (*Dobbs*), the claimant's injury occurred in 1993. *Id*., slip op. at 2, 2023 WL 491182, at *1. In 2021, the employer sought to modify the claimant's TTD status to TPD based on an IRE. *Id*., 2023 WL 491182, at *1. The WCJ denied the employer's petition and the Board affirmed. *Id*., slip op. at 3-4, 2023 WL 491182, at *2. The parties' arguments to this Court resembled those presented in this case, including the employer's assertion that "after the General Assembly heard comments from the public, various entities, and organizations, this Court should not assume that the General Assembly 'forgot' to include such language in drafting Act 111 when it was clearly set forth in Act 57." *Id*., slip op. at 4-5, 2023 WL 491182, at *2. This Court agreed with the employer, noting that Section 32.1(a) had not been incorporated into Act 111 and concluding that "when examining a statute, we are bound by its plain language; accordingly, we should not insert words into the Act that are plainly not there. Without an express limitation, Act 111 applies to all injuries, not just those after the effective date."[11] *Id*., slip op. at 7, 2023 WL 491182, at *3. Accordingly, we reversed, which resulted in the claimant's status being modified from TTD to TPD. *Id*., slip op. at 11, 2023 WL 491182, at *5.

Relying on *Dobbs*, the WCJ here concluded that Act 111 did not bar Employer from seeking to modify Claimant's status to TPD based on the October 2023 IRE; the Board agreed. C.R. at 22 & 48. Claimant argues that Section 32.1(a), which was enacted separately from former Section 306(a.2) and was never expressly

[11] Our Supreme Court denied the claimant's petition for allowance of appeal in *Dobbs*. *City of Pittsburgh v. Dobbs (Workers' Comp. Appeal Bd.)*, 305 A.3d 546 (Pa. 2023).

repealed, cannot be deemed "repealed by implication." Claimant Br. at 15. Claimant avers that Section 32.1(a) remains in effect and, when read *in pari materia* with current Section 306(a.3), bars Employer from using the IRE process to modify his TTD status, which predated Act 57. Claimant Br. at 9-11. Employer maintains that because former Section 306(a.2) was repealed in its entirety and replaced with Act 111, which did not include a similar time limitation corresponding to Section 32.1(a), the General Assembly did not intend for Act 111 to be applied only to injuries occurring after the June 1996 effective date of Act 57. Employer Br. at 9-16.

As noted, this Court concluded in *Dobbs* that the plain language of Act 111, lacking an express temporal limitation, results in Act 111 being applicable "to all injuries, not just those after the effective date" of that enactment in October 2018. *Dobbs*, slip op. at 7, 2023 WL 491182, at *3. Claimant critiques that decision as lacking a sufficient analysis of whether Section 32.1(a) of Act 57 remains effective such that Employer was barred from using the IRE process to modify Claimant's benefit status to TPD. Claimant Br. at 10-12. We provide such an analysis here. To the extent that the mere omission of Section 32.1(a) or similar temporal limitation language in Act 111 may be viewed as ambiguous, principles of statutory construction lead us to conclude that Section 32.1(a) is no longer viable.

Under the principle of *expressio unius est exclusio alterius*, the inclusion in Act 111 of former Section 306(a.2)'s substantive IRE process, but without the temporal limitation set forth in Section 32.1(a) of Act 57, suggests that the legislature did not intend for Act 111 to be limited in the same way. Claimant's argument that Section 32.1(a) was never formally repealed, cannot be repealed by implication, and may be read *in pari materia* with current Section 306(a.3) fails.

Section 32.1(a), which stated only that former Section 306(a.2) could not apply to injuries prior to its June 1996 effective date, depended on the substantive aspects of former Section 306(a.2), which was repealed and replaced by Act 111, but without an express temporal limitation corresponding to Section 32.1(a). We may not speculate whether this was intentional on the legislature's part, and we certainly cannot read a temporal limitation into Act 111's restoration of the IRE mechanism that the legislature did not include. The fact remains that such language was excluded from Act 111, and its absence cannot be overlooked.

Moreover, Section 1961 of the Statutory Construction Act instructs that Section 32.1(a) must be viewed as having been abrogated. After *Protz II* struck former Section 306(a.2) in its entirety, when the legislature enacted Act 111 in 2018, Section 32.1(a) was not a provision "common to both statutes" such that it could be viewed as ongoing. *See* 1 Pa.C.S. § 1961. Rather, it was a provision "only of the former statute as [was] omitted from the reenactment" of the IRE regime through Act 111; and consequently "shall be deemed abrogated, and only the new or changed provisions shall be deemed to be the law from the effective date of the reenactment." *Id*. Moreover, Section 32.1(a) did not stand on its own; it depended entirely on the existence of former Section 306(a.2), and when that provision was stricken by *Protz II* and then repealed by the legislature, nothing remained for Section 32.1(a) to act upon.

We also note that not only did Act 111 *not* incorporate an express time limitation or an "update" of Section 32.1(a), it *did* include provisions expressly allowing employers credit for weeks of TTD and TPD paid prior to its October 2018 enactment:

> (1) For the purposes of determining whether an employee shall submit to a medical examination to determine the

> degree of impairment and whether an employee has received total disability compensation for the period of 104 weeks under section 306(a.3)(1) of the act, an insurer shall be given credit for weeks of total disability compensation paid prior to the effective date of this paragraph. This section shall not be construed to alter the requirements of section 306(a.3) of the act.
>
> (2) For the purposes of determining the total number of weeks of partial disability compensation payable under section 306(a.3)(7) of the act, an insurer shall be given credit for weeks of partial disability compensation paid prior to the effective date of this paragraph.

Act 111, § 3(1), (2).

This Court has examined these "credit provisions," which have no analog in Act 57, on multiple occasions and concluded that they reflected a legislative intent that Act 111 have "retroactive effect" in terms of its application to injuries that occurred before its October 2018 effective date. *Pierson v. Workers' Comp. Appeal Bd. (Consol Pa. Coal Co., LLC)*, 252 A.3d 1169, 1179-80 (Pa. Cmwlth. 2021); *Rose Corp.*, 238 A.3d at 561-62; *see also Dobbs*, slip op. at 9-10, 2023 WL 491182, at *4-5. Had the legislature intended to bar application Act 111 to injuries that predated Act 57, it could have done so in the course of drafting of these credit provisions. That the legislature did not take that step cannot be viewed by this Court as an oversight.

We are cognizant of the Act's remedial and salutary policy goals and the requirement that the Act be interpreted liberally in the claimant's favor. *DiPaolo*, 278 A.3d at 440. However, we may not read into a statute something that it does not say. *Thompson*, 223 A.3d at 1277. Accordingly, we are constrained to conclude, as we did in *Dobbs*, that "[w]ithout an express limitation, Act 111 applies to all injuries, not just those after [its] effective date." *Dobbs*, slip op. at 7, 2023 WL 491182, at

*3. Accordingly, as a matter of statutory interpretation, Claimant's 1991 injury date did not exclude him from the IRE process under Act 111.

B. Constitutional Issues

The foregoing statutory analysis does not end our inquiry because the legislature's omission of a temporal limitation in Act 111, which enables the IRE mechanism to apply to claimants with injuries predating Act 57, could constitute an unconstitutional retroactive application of the Act in violation of the "due course of law" protections of the Pennsylvania Constitution's Remedies Clause.[12]

This Court has examined the impact of Act 111 on the Remedies Clause in various cases, including *DiPaolo*, which stated that "the right to 'due course of law' provides an independent guarantee of legal remedies for private wrongs by one person against another, through the state's judicial system." 278 A.3d at 434. Due course of law requires a party to establish a vested right that would be impacted by a retroactive statutory action, and the definition of a vested right is "something more than a mere expectation based upon an anticipated continuance of existing law. It must have become a title legal or equitable to the present or future enforcement of a demand, or a legal exemption from a demand made by another." *Id*.

The question, then, is whether a workers' compensation claimant attains a vested right in TTD benefit status. *DiPaolo*, 278 A.3d at 434-35. While a workers' compensation claimant does have a "certain right to benefits until such time as he is found to be ineligible for them," there are also "reasonable expectations under the Act that benefits may change." *Id*. at 435 (quoting *Pierson*, 252 A.3d at

[12] The Remedies Clause states in relevant part: "All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay[.]" PA. CONST. art. I, § 11.

1179). This was true even prior to 1996, when Act 57 brought the IRE to the workers' compensation landscape. Before then, an employer could still modify a claimant's benefit status from TTD to TPD by showing a change or improvement in the claimant's condition and offering or providing referrals to available jobs within the claimant's capacities. *Kachinski*, 532 A.2d at 380. The advent of the IRE did not change the fact that modification from TTD status to TPD, with its 500-week limit, has always been part of the Act.

Given that TTD status has always been subject to modification, claimants did not "automatically lose anything by the enactment of Act 111," which, like Act 57, "simply provided employers with the means to change a claimant's disability status from total to partial by providing the requisite medical evidence [through an IRE] that the claimant has a whole body impairment of less than 35%, after receiving 104 weeks of TTD benefits." *DiPaolo*, 278 A.3d at 435. Since *Pierson* and *DiPaolo*, this Court has consistently held that "Act 111 does not abrogate or substantially impair a claimant's vested rights in workers' compensation benefits because there is no right to ongoing TTD status." *DiPaolo*, 278 A.3d at 435; *see also, e.g.*, *Dunetz v. Charles H. Sacks D.M.D., P.C. (Workers' Comp. Appeal Bd.)*, 304 A.3d 134, 144 (Pa. Cmwlth. 2023) (stating that the claimant's arguments "against the retroactive application of and unconstitutionality of Act 111 have already been considered and rejected by our Court" and "[a]lthough [Dunetz] asserts *Pierson* and its progeny should be reconsidered, we are unpersuaded that reconsideration is warranted, particularly where multiple petitions for allowances of appeal were filed with and denied by our Supreme Court").

In *Dobbs*, this Court came to the same conclusion with regard to the claimant's 1993 injury in that case, reasoning that "although [Dobbs's] injury

preceded the institution of the IRE process, application of Act 111 did not automatically change his disability status or otherwise deprive him of vested rights under the Act. Rather, Act 111 simply provided a mechanism for Employer to pursue a change in Claimant's disability status[.]" *Dobbs*, slip op. at 10-11, 2023 WL 491182, at *5.

Here, the WCJ and the Board, both relying largely on our precedents holding that modification from TTD status to TPD does not impact a vested right or violate the Remedies Clause, concluded, in the Board's words, that "Act 111 is not unconstitutional as applied to claimants injured prior to its effective date, so long as the IRE does not predate Act 111."[13] C.R. at 47; *see also id*. at 22. In large part, Claimant asserts the same arguments that this Court has rejected in *DiPaolo* and other similar cases but maintains that because Claimant's injury predated Act 57 and the IRE process, a "materially different constitutional question" is presented here. Claimant Br. at 19.

However, Claimant's constitutional argument rests on his position that Section 32.1(a)'s temporal limitation in Act 57, which barred application of IREs to claimants whose injuries preceded Act 57's June 1996 effective date, remains in effect and requires the same limitation with regard to Act 111. *See* Claimant Br. at 19. As explained above, Claimant's premise is unavailing because Section 32.1(a) was not incorporated into Act 111 and must be deemed abrogated. Claimant is now on the same footing as the many other claimants who have asserted unsuccessfully

[13] This Court has held that a claimant's TTD status cannot be modified to TPD based on an IRE that predated Act 111's October 2018 effective date because those prior IREs were performed under former Section 306(a.2) before it was deemed unconstitutional. *See Rose Corp. v. Workers' Comp. Appeal Bd. (Espada)*, 238 A.3d 551, 563 (Pa. Cmwlth. 2020). Here, Claimant's IRE took place in October 2023 and under Act 111 rather than former Section 306(a.2), so it was not infirm in that regard.

that Act 111 violates the Remedies Clause. Again, we recognize the salutary and remedial goals of the Act as well as Claimant's testimony about the challenges he continues to face. However, the law is clear that Act 111 does not violate the Remedies Clause of the Pennsylvania Constitution as applied to a claimant whose injury predates Act 57.[14]

IV. Conclusion

In light of the foregoing, the Board's November 13, 2025, order affirming the WCJ's order granting Employer's modification petition is affirmed.

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CHRISTINE FIZZANO CANNON, Judge

[14] As we noted in *DiPaolo*, a claimant in this situation "is not without recourse, because Act 111 specifically provides that a claimant placed in partial disability status based on an IRE may challenge the change in his or her status by either presenting a subsequent IRE reflecting a 35% or more impairment rating or establishing through litigation that his or her earning power has decreased." 278 A.3d at 436 (citing 77 P.S. § 511.3(3), (4)).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald Ball,	:	
Petitioner	:	
	:	
v.	:	
	:	
Metro Imports, Inc. (Workers' Compensation Appeal Board),	:	No. 1621 C.D. 2025
Respondent	:	

O R D E R

AND NOW, this 16th day of November, 2026, the November 13, 2025, order of the Workers' Compensation Appeal Board is **AFFIRMED**.

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CHRISTINE FIZZANO CANNON, Judge