

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dennis Repko, :
 :
 Petitioner :
 :
 v. : No. 2156 C.D. 2009
 : Submitted: February 19, 2010
 Workers' Compensation Appeal :
 Board (Helen Mining Company), :
 Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN FILED: April 13, 2010

Dennis Repko (Claimant) petitions for review of the October 6, 2009, order of the Workers' Compensation Appeal Board (WCAB), which affirmed the decision of a workers' compensation judge (WCJ) to grant a petition filed by Helen Mining Company (Helen Mining) to modify and review a pension offset. We affirm.

Claimant began working for Helen Mining in 1975. At the time, North American Coal Company (North American) owned Helen Mining. However, in the 1980s, North American sold Helen Mining to Valley Camp Coal Company (Valley Camp).

On June 16, 1990, Claimant suffered a work-related injury to his left knee. Claimant received workers' compensation benefits pursuant to a Notice of

Compensation Payable, which named “The Helen Mining Company” as Claimant’s employer. (WCJ’s Findings of Fact, No. 1.)

Helen Mining’s mines were closed on February 13, 1993, at which time Claimant became permanently separated from his employment with Helen Mining. In March 1993, Claimant filed a reinstatement petition against “Helen Mining Company c/o The Valley Camp Coal Company.” (WCJ’s Findings of Fact, No. 2.) A WCJ granted the reinstatement petition; in doing so, the WCJ found that Claimant had been employed by Helen Mining at the time of his work injury.

In addition to workers’ compensation benefits, Claimant applied for a disability pension through the United Mine Workers of America Health and Retirement Funds (Retirement Fund) based on his June 16, 1990, work injury. The Retirement Fund approved Claimant’s application effective January 1, 1994. Prior to August 3, 2007, Claimant received a weekly disability pension benefit of \$127.33. After that date, Claimant received a weekly disability pension benefit of \$137.79.

Claimant’s disability pension was funded by contributions from Helen Mining and The Florence Mining Company (Florence Mining). The mining companies made their contributions based on the number of hours that Claimant worked each year, up to 1,000 hours. In other words, if Claimant worked more than 1,000 hours in a year, Claimant received pension credit only for 1,000 hours. Helen Mining made all of the pension contributions for Claimant between April 1, 1976, and April 13, 1994. Florence Mining made contributions for Claimant based on 188 hours worked in January of 1979. However, Claimant worked a total of 1,423 hours

in 1979; thus, Claimant would have received the maximum annual pension credit based solely on his hours with Helen Mining.

On July 10, 2007, Helen Mining filed a petition to review whether Helen Mining is entitled to modify Claimant's workers' compensation benefits by taking an offset for Claimant's disability pension benefits. Helen Mining sought the offset only as of the petition filing date. After holding hearings on the matter, the WCJ granted Helen Mining's petition. Claimant appealed to the WCAB, which affirmed the WCJ. Claimant now petitions this court for review.¹

Claimant initially argues that Helen Mining is not entitled to an offset for pension benefits with respect to his June 16, 1990, injury because, pursuant to section 204(a) of the Workers' Compensation Act (Act),² as amended by the Act of June 24, 1996, P.L. 350 (Act 57), the offset for pension benefits only applies to individuals with claims for injuries suffered on or after June 24, 1996.

¹ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

² Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §71(a). Section 204(a) of the Act provides, in part, that "benefits from a pension plan to the extent funded by the employer directly liable for the payment of compensation which are received by an employe shall ... be credited against" the employee's workers' compensation benefits.

Claimant is correct that Act 57 limits the applicability of section 204(a) of the Act in this manner.³ However, although section 204(a) of the Act does not apply to Claimant's injury, case law governing injuries suffered prior to June 24, 1996, allows employers to take an offset for pension benefits where: (1) the employee did not help fund the disability pension benefits; (2) the benefits were available only because the employee suffered a work-related disability; and (3) the benefits would again be available if the employee returned to work and suffered yet another work-related disability.⁴ *Oleksa v. Workers' Compensation Appeal Board (Keystone Coal Mining Corporation)*, 734 A.2d 79 (Pa. Cmwlth.), *appeal denied*, 560 Pa. 752, 747 A.2d 372 (1999). Those elements have been met here.⁵

Claimant next argues that his employer, whether it is Valley Camp or Helen Mining, is not entitled to a pension benefits offset under Act 57 because Valley Camp is paying his workers' compensation benefits, and Helen Mining, a separate corporate entity, funded his pension plan. In asserting that Valley Camp is paying his workers' compensation benefits rather than Helen Mining, Claimant argues that the

³ Under section 32.1(a) of Act 57, the amendments to section 204(a) of the Act apply only to claims for injuries which are suffered on or after the effective date of section 32.1. *See also* 34 Pa. Code §123.4(a)(2) (stating that the offset for pension benefits only applies to individuals with claims for injuries suffered on or after June 24, 1996).

⁴ The WCJ found that, had Claimant returned to work and suffered another work-related injury, Claimant could have re-applied for disability pension benefits. (WCJ's Findings of Fact, No. 16.)

⁵ We note that, in *Oleksa*, this court rejected an argument that the Act 57 amendments to section 204(a) of the Act prove that an employer is not entitled to a pension benefits offset with respect to injuries suffered prior to June 24, 1996.

record lacks substantial evidence to show that Valley Camp is paying his workers' compensation benefits on behalf of Helen Mining. However, the record contains Valley Camp check stubs showing that it paid workers' compensation benefits to Claimant on behalf of Helen Mining. (R.R. at 106a-136a.) Thus, we reject this argument.⁶

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

⁶ Moreover, Claimant bases this argument on the Act 57 amendments to section 204(a) of the Act, and, as explained above, the Act 57 amendments do not apply here.

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Board (Helen Mining Company),	:	
Respondent	:	

ORDER

AND NOW, this 13th day of April, 2010, the order of the Workers' Compensation Appeal Board, dated October 6, 2009, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge