

No. 31534 – State of West Virginia ex rel. William R. Beirne v. Robert J. Smith, Commissioner, West Virginia Bureau of Employment Programs

No. 31537 – State of West Virginia ex rel. Delano Bradley v. Robert J. Smith, Commissioner, West Virginia Bureau of Employment Programs

**FILED**

**December 8, 2003**  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

Maynard, Justice, concurring:

I concur wholeheartedly to the findings and the results in these cases. That is, I agree that the Legislature did not violate the Equal Protection Clause of the West Virginia Constitution when it provided that PTD benefits shall be payable until the claimant attains the age necessary to receive federal old age retirement benefits under the Social Security Act. I write separately, however, because I do not agree with many of the sentiments expressed in this opinion.

Unlike the majority, I do not consider the legislation at issue to be “draconian.” Slip Op. at 13. I also do not believe that the result of the Legislature’s decision to cut off benefits at age 65 “will be to further impoverish some of our poorest citizens[.]” Slip Op. at 7. My belief, which may not hold true in every case, is that the source of the money paid to retirees simply will change from the Workers’ Compensation fund to the Social Security system and other retirement funds, just like it does for most working people when they retire. In other words, when a person retires, he or she goes off the employer’s payroll and begins to receive Social Security and/or other retirement plans.