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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA 10-436

SECOND INJURY FUND APPELLANT V. CLEVELAND OSBORN APPELLEE	**Opinion Delivered** October 20, 2010 APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION [NOS. F107011 & F304582] AFFIRMED

COURTNEY HUDSON HENRY, Judge

Appellant Second Injury Fund (Fund) appeals the decision of the Arkansas Workers' Compensation Commission holding that the Fund was not entitled to a credit for benefits it pays to appellee Cleveland Osborn against the disability benefits Osborn receives from the Veterans Administration (VA). For reversal, the Fund contends that the Commission erred in ruling that VA benefits do not fall within the offset provision contained in Arkansas Code Annotated section 11-9-411 (Supp. 2009). We affirm the Commission's decision.

The record reflects that Osborn worked for Anderson Engineering Consulting from 1992 until 2003. He sustained work-related injuries to his low back, elbows, and neck on June 1, 2001, when he fell into a deep hole. Osborn also suffered a compensable injury to his back on March 10, 2003, while moving concrete cylinders. Prior to entering civilian

employment, Osborn served in the United States Army from 1967 to 1984, when he was medically discharged with a thirty-percent disability rating for injuries he received to his back and neck. By 2003, the VA had increased his disability rating to fifty percent, and his rating increased to 100 percent by 2007.

In an opinion dated June 10, 2009, the Commission found that Osborn was entitled to a fifty-percent wage loss disability benefit as a result of his compensable injuries. The Commission also determined that the Fund was not entitled to the statutory credit for benefits Osborn received from the VA. Both Osborn and the Fund appealed the Commission's decision. Upon our review, we affirmed the Commission's finding limiting Osborn's wage loss benefit to fifty percent, but we remanded to the Commission for it to make additional findings on the credit issue. *Second Injury Fund v. Osborn*, 2010 Ark. App. 120.

Following our remand, the Commission entered an opinion denying the Fund's claim for the credit. Applying the rule of strict construction, the Commission determined that Arkansas Code Annotated section 11-9-411(a) did not specifically mention VA benefits and that the legislature could have included VA benefits had it intended to do so. In addition, the Commission noted that VA benefits are not employer-based benefits but are rather service-connected benefits.

On appeal, the Fund argues that the Commission erred in its interpretation of the statute. Section 11-9-411, which is entitled "Effect of payment by other insurers," provides:

> (a) Any benefits payable to an injured worker under this chapter shall be reduced in an amount equal to, dollar-for-dollar, the amount of benefits the

> injured worker has previously received for the same medical services or period of disability, whether those benefits were paid under a group health care service plan of whatever form or nature, a group disability policy, a group loss of income policy, a group accident, health, or accident and health policy, a self-insured employee health or welfare benefit plan, or a group hospital or medical service contract.

The question of the correct interpretation and application of an Arkansas statute is a question of law, which we decide de novo. *Stewart v. Ark. Glass Container*, 2010 Ark. 198, ___ S.W.3d ___. When we interpret workers' compensation statutes, however, we must strictly construe them. *Sykes v. Williams*, 373 Ark. 236, 283 S.W.3d 209 (2008); Ark. Code Ann. § 11-9-704(c)(3) (Repl. 2002). Strict construction is narrow construction and requires that nothing be taken as intended that is not clearly expressed. *Stewart*, *supra*. The rule of strict construction also requires us to use the plain meaning of the language employed. *See Curt Bean Transp., Inc. v. Hill*, 2010 Ark. App. 312, ___ S.W.3d ___. We also note that the interpretation given a statute by the agency charged with its administration is highly persuasive, and while not conclusive, it should not be overturned unless it is clearly wrong. *Death & Permanent Disability Trust Fund v. Anderson*, 83 Ark. App. 230, 125 S.W.3d 819 (2003).

We have commented that the overriding purpose of section 11-9-411 is to prevent a claimant from receiving a double recovery for the same period of disability. *Henson v. Gen. Elec.*, 99 Ark. App. 129, 257 S.W.3d 908 (2007). In *Henson*, we affirmed the Commission's determination that disability retirement benefits came within the definition of "welfare benefit plan," as listed in the statute, because such benefits are received by virtue of injury and not by meeting the minimum number of years for a normal retirement. We have also held that

life insurance, death, or dependency benefits do not fall within the ambit of the statute. *Dollarway Sch. Dist. v. Lovelace*, 90 Ark. App. 145, 204 S.W.3d 64 (2005).

Strictly construing the statute, we agree with the Commission that the Fund is not entitled to a set-off for VA benefits. The statute allows subrogation for various types of insurance-provided benefits for disability, but it does not include government-sponsored, service-connected benefits received due to disability. Had the legislature intended a set-off for such benefits, it could have expressed that intention in plain terms. Accordingly, we affirm the Commission's decision.

Affirmed.

ABRAMSON and BROWN, JJ., agree.