

ARKANSAS COURT OF APPEALS

DIVISIONS I & II

No. CA11-1239

WANDA LOUISE MILLS

APPELLANT

V.

ARKANSAS STATE HIGHWAY &
TRANSPORTATION DEPARTMENT,
ARKANSAS INSURANCE
DEPARTMENT, and DEATH &
PERMANENT TOTAL DISABILITY
TRUST FUND

APPELLEES

Opinion Delivered June 20, 2012

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F605114]

REVERSED AND REMANDED

JOSEPHINE LINKER HART, Judge

The Arkansas Workers' Compensation Commission found that Wanda Louise Mills failed to prove that she was entitled to receive payment of her previously assessed 30% wage-loss benefits without an offset for disability-retirement benefits she was also receiving. The relevant statutory subsection relied on by the Commission provides as follows:

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.

Ark. Code Ann. § 11-9-411(a)(1) (Supp. 2011). Mills argues on appeal that her wage-loss benefits should not be offset by all of her retirement benefits. We agree and reverse and

remand.¹

In her opinion, the administrative law judge cited *Henson v. General Electric*, 99 Ark. App. 129, 257 S.W.3d 908 (2007), in which the Commission approved a dollar-for-dollar credit for disability-retirement benefits from the Second Injury Fund's obligation to pay permanent-disability benefits. In *Henson*, this court held that "the Commission did not err in finding that Ark. Code Ann. § 11-9-411 applies to retirement-disability benefits, as the overriding purpose of § 411 is to prevent a double recovery by a claimant for the same period of disability." *Id.* at 137, 257 S.W.3d at 914. The ALJ found that Mills "failed to prove that she is entitled to receive payment of assessed wage loss without offset for disability-retirement program payments." The Commission adopted the ALJ's opinion.

Mills argues on appeal that rather than offsetting her wage-loss benefits with the entire amount of her retirement benefits, only that amount she receives as a result of her disability-retirement benefits over and beyond her early-retirement benefits should offset her wage-loss benefits. Unlike the claimant in *Henson*, Mills presented to the Commission a document from the Arkansas State Highway Employees Retirement System, entitled "ASHERS Disability Benefit Estimate," showing that upon her April 11, 2007 retirement, she received \$1792.50 each month of what was described as "Duty Related Disability Retirement" benefits. Mills further presented a document entitled "ASHERS Retirement Benefit Estimate" showing that

¹To the extent that Mills also argues that an amendment to the statute made in 2009 applies retroactively, this court has previously held that the statute applies prospectively only. See *Clevenger v. City of Jonesboro*, 2011 Ark. App. 579.

on that same date with an early-reduction factor she would have received either \$1615.22 or \$1659.10 each month of what was described as “Early Retirement” benefits (depending upon whether she opted to have her surviving beneficiary also receive benefits).

Thus, Mills’s uncontradicted proof established what she would have received if she had retired with an early-reduction factor instead of applying for disability benefits. The increase in retirement benefits resulting from her retirement on disability rather than early retirement amounted to, at most, \$133.40. Because the purpose of the statute is to prevent a double recovery, then the only double recovery would have been, at most, in that amount. We thus hold that rather than offsetting her wage-loss benefits with the entire amount of her retirement benefits, only the amount that Mills received as a result of her disability over and beyond her early-retirement benefits should offset her wage-loss benefits. Accordingly, we reverse and remand this case for the Commission to recalculate the offset and for other proceedings consistent with this opinion.

Reversed and remanded.

VAUGHT, C.J., and PITTMAN, WYNNE, MARTIN, and BROWN, JJ., agree.