

RENDERED: MAY 3, 2002; 2:00 p.m.
 NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000779-MR

OWENSBORO MUNICIPAL UTILITIES

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE THOMAS O. CASTLEN, JUDGE
ACTION NO. 00-CI-01200

RICHARD LYNN MOSELEY

APPELLEE

OPINION
AFFIRMING AND REMANDING
* * * * *

BEFORE: COMBS, EMBERTON, AND TACKETT, JUDGES.

TACKETT, JUDGE: An Administrative Law Judge (ALJ) found Richard Lynn Moseley (Moseley) to be totally and permanently disabled as a result of back injuries he sustained while working for Owensboro Municipal Utilities (OMU). After the ALJ's Opinion was rendered, it became apparent that the parties gave differing interpretation to some provisions of the ALJ's Opinion which was further evidenced by OMU's failure to pay Moseley his benefits. Moseley filed a complaint against OMU and the Daviess Circuit Court granted summary judgment in his favor and awarded him attorney's fees and costs. We affirm.

Moseley suffered at least two injuries to his lower back while working for OMU. The first injury occurred in 1992 while OMU was insured by KACO, and the second injury occurred in 1996 while OMU was insured by Great American Insurance Company. The primary issue in the initial claim dealt with the proper division of liability for Moseley's disability between the two aforementioned insurance companies. The ALJ determined that half of Moseley's disability was the result of his 1992 work injury, while the other half was the result of the 1996 work injury.

Based upon the ALJ's findings, the following award was made:

- "1. The Plaintiff, Richard Lynn Moseley, shall recover from the defendant-employer, Owensboro Municipal Utilities, as insured by KACO, the sum of \$71.25 per week for a period not to exceed 425 weeks from and after January 13, 1993, together with interest at a rate of 12% per annum on all past due and unpaid installments. The defendant-employer shall receive credit for all benefits heretofore voluntarily paid.
2. The Plaintiff, Richard Lynn Moseley, shall recover from the Special Fund, the sum of \$71.25 per week for a period not to exceed 425 weeks from and after January 13, 1993, together with interest at the rate of 12% per annum on all past due and unpaid installments.
3. Commencing on March 8, 1996, and continuing thereafter for so long as the claimant remains totally disabled, the plaintiff shall receive weekly benefits from the defendant-employer, Owensboro Municipal Utilities, in the sum of \$207.97 per week, together with interest at the rate of 12% per annum on all past due and unpaid installments. The defendant-employer shall receive credit for all benefits heretofore voluntarily paid. However, the benefits paid for the 1992 injury shall take [precedence],

and the employer and the Special Fund shall both reduce benefits payable for the 1996 injury by the sum of \$142.50 per week for the period for which these two awards overlap.

Commencing on March 8, 1996, and continuing thereafter for so long as the claimant remains totally disabled, the plaintiff shall receive weekly benefits from the Special Fund, in the sum of \$207.97 per week, together with interest at the rate of 12% per annum on all past due and unpaid installments. The defendant-employer shall receive credit for all benefits heretofore voluntarily paid. However, the benefits paid for the 1992 injury shall take [precedence], and the employer and the Special Fund shall both reduce benefits payable for the 1996 injury by the sum of \$142.50 per week for the period for which these two awards overlap.

The defendant-employer shall pay all benefits awarded herein initially, until is [sic] has paid one-half of the dollars payable under the award. Special Fund shall pay all benefits awarded herein thereafter." (Emphasis added).

At issue in this case is the correct interpretation of the phrases underlined above. OMU contends the underlined phrases mean OMU is entitled to take two \$142.50 credits per week since it is responsible for both its own liability and the Special Fund's liability until one-half of the award has been paid, which encompasses the entire period the two awards overlap. Under OMU's interpretation, the ALJ's Opinion would contain a patent error of law in that no provision exists under the workers' compensation scheme that would allow for such a double credit. OMU further claims Moseley should have filed a petition for reconsideration rather than his complaint in circuit court.

Although we acknowledge that it is possible to read the ALJ's Opinion in a manner which allows OMU to take a double credit, we cannot agree it is correct. To give such interpretation is unreasonable under Kentucky law and, moreover, it cannot be what the ALJ intended. OMU acknowledges there is no provision for such a double credit under the workers' compensation law, and further that there is no indication in the record that the ALJ intended for OMU to receive such a credit. The only reasonable interpretation is that the ALJ was simply acknowledging that both OMU and the Special Fund are entitled to a credit against the 1996 award for the amounts paid to Moseley for his 1992 injury during the period the two awards overlap.

As to the Special Fund, it is not to receive such a credit in that it is not responsible for any payments due during the period the two awards overlap. However, if the Special Fund's payments had begun before the end of the overlap period, it would have been entitled to a \$142.50 weekly credit. The ALJ's Opinion acknowledges as much. Consequently, we do not believe Moseley should have filed a petition for reconsideration as we do not believe he could have anticipated OMU's interpretation of the opinion. Accordingly, we affirm the Daviess Circuit Court's decision to grant Moseley summary judgment.

In addition to granting Moseley summary judgment, the circuit court also awarded Moseley attorney's fees and costs pursuant to Kentucky Revised Statute 342.310. OMU claims this was error because OMU had a reasonable basis upon which to

dispute liability. However, OMU's contention that it was entitled to a double credit is contrary to the entire body of workers' compensation law in this state. We hold it was not an abuse of discretion for the Daviess Circuit Court to award Moseley his attorney's fees and costs. Based on the similarities between the case sub judice and Woolum v. Woolum, Ky. App., 684 S.W.2d 20, 23 (1984), we remand this case to the Daviess Circuit Court for the trial court's determination of an appropriate assessment of attorney fees for services before this Court.

For the foregoing reasons the judgment of the Daviess Circuit Court is affirmed and the case is remanded for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Clarence Terrell Miller
Gilbert L. Busby
Harlin Parker
Bowling Green, Kentucky

BRIEF FOR APPELLEE:

David M. Taylor
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