

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000362-WC

STEVE MARTIN

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-98-00510

PASCHALL TRUCK LINES; DONNA TERRY,
Administrative Law Judge; and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: EMBERTON, CHIEF JUDGE; GUIDUGLI AND MILLER, JUDGES.

EMBERTON, CHIEF JUDGE: The single issue in this appeal is whether the Workers' Compensation Board correctly concluded that appellant's employer, Paschall Truck Lines, is entitled to a dollar for dollar credit for voluntary overpayments made pursuant to the terms of a written agreement concerning those payments. In reaching the determination that such credit should be allowed, the Board found that the credit did not substantially impair appellant's entitlement to future benefits nor was it contrary to the dictates of Triangle Insulation and Sheet Metal Company v.

Stratmeyer.¹ Because we are in complete agreement with the Board's reasoning and analysis of applicable case law and, with Judge Gardner's most lucid and erudite opinion, we affirm its decision in this case.

The facts pertinent to resolution of this appeal commence in November 1996, when appellant sustained a work-related shoulder injury which necessitated extensive medical treatment and several surgeries. Commencing on the date of injury, the employer paid appellant temporary total disability benefits at the maximum rate through September 25, 1998, the date on which Dr. Daniel Dethmers, appellant's treating orthopedic surgeon, expressed his opinion that appellant had reached maximum medical improvement. Through counsel, appellant subsequently sought an extension of voluntary payments and sent a letter to Paschall's counsel which contained the following agreement:

Mr. Martin and I have no choice but to agree that any benefits received at this time be credited dollar for dollar against future PPD benefits.

My client is destitute. Can you expedite this payment?

At the end of the typed portion of the letter is the following handwritten statement signed by appellant: "I consent to allowing credit against PPD for benefits paid." Voluntary payments were then continued from September 26, 1998, through May 25, 2000.

After Paschall indicated that it no longer intended to make voluntary payments, appellant's claim was removed from abeyance and assigned to an Administrative Law Judge for

¹ Ky., 782 S.W.2d 628 (1990).

resolution. After a hearing, the ALJ concluded that Paschall was entitled to credit for its overpayment of the voluntary income benefits paid to appellant. Upon petition for reconsideration, the ALJ amended her previous order to reflect the following findings: (1) that the defendant-employer shall be entitled to credit "to the extent that Plaintiff's future benefits are not affected;" and (2) that any credit against past due benefits would be on a week to week basis.

In its appeal to the Board the employer argued that it was entitled to a dollar for dollar credit for the overpayment of voluntary benefits paid. Appellant alleged in a cross-appeal that the ALJ erred in awarding any credit for overpayment of benefits because the employer's entitlement to such credit had not been raised as a contested issue. In a thorough and well-reasoned opinion, the Board not only rejected appellant's contention that the ALJ erred in awarding the employer any credit for voluntary overpayments, but also concluded that the employer was entitled to a dollar for dollar credit as set out in the parties' agreement. We find no error in the Board's decision.

First, as to appellant's contention with respect to failure to list entitlement to the credit as a contested issue, we agree with the Board that based upon the controverted facts of this case, it is questionable whether this was in fact a contested issue. It appears that there was some miscommunication between appellant's Kentucky counsel and his Illinois counsel who had negotiated with the employer for the continuation of the voluntary payments. While it may be that Kentucky counsel was

surprised to learn of the agreement for a dollar for dollar credit at the hearing before the ALJ, that does not, to use the words of the Board, "create a contested issue where previously there was none."

Next, appellant argues that the Board erred in enforcing the agreement for a dollar for dollar credit for the voluntary overpayments, insisting that Triangle Insulation, supra, permits dollar for dollar credits only where future benefits are not affected. Like the Board, we are convinced that appellant takes too narrow a view of that decision. In addressing the question of how credit for overpayment of voluntary benefits is to be handled, the Kentucky Supreme Court offered the following explanation:

The two methods of computing credit [dollar for dollar versus week by week] are not mutually exclusive. It is important to encourage employers to make voluntary payments to injured employees. Employers are not obligated to pay benefits until a claim has been litigated and an award entered. Such payments are voluntary. The circumstances involved in each specific case must be carefully evaluated so that the employee is not unduly harmed and the employer is encouraged to make voluntary payments. (Citations omitted).

A rigid limitation on the method of credit by an employer works an ultimate disservice to an employee. There is a considerable social and economic benefit to an employee who obtains voluntary income benefits in the initial stages of an injury. (Emphasis added).²

The court goes on to hold that an employee who has benefitted from an overpayment of income benefits should not be

² 782 S.W.2d at 630.

deprived of future income as a result of the credit for the overpayment. In this case, the Board carefully examined the impact that a dollar for dollar credit would have on appellant's future benefits and concluded that he would not be unduly harmed "nor his entitlement to periodic payments substantially impaired." We agree.

Under the specific and undisputed facts of this case, it is clear that appellant has not been deprived of any compensation; rather, at his own request, he simply received that compensation in advance of the date on which it was due. Having negotiated an agreement with his employer that he would continue to receive voluntary payments on the basis that the employer would be entitled to a dollar for dollar credit, appellant cannot subsequently renege on that agreement by complaining that future payments may be affected. Appellant received the benefit of his bargain and thus we agree with the Board that the dictates of Triangle Insulation have not been offended.

The decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jackson W. Watts
Bradly Slutskin
Versailles, Kentucky

BRIEF FOR APPELLEE PASCHALL
TRUCK LINES, INC.:

E. Frederick Straub, Jr.
WHITLOW, ROBERTS, HOUSTON &
STRAUB, PLLC
Paducah, Kentucky