

RENDERED: NOVEMBER 26, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2003-CA-001154-WC

SIDNEY COAL COMPANY
D/B/A FREEDOM ENERGY MINING COMPANY

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-01-93114

PERRY STUMP;
LAWRENCE F. SMITH, ADMINISTRATIVE LAW
JUDGE; AND THE WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BAKER, KNOPF, AND TACKETT, JUDGES.

KNOPF, JUDGE: Sidney Coal Company, d/b/a Freedom Energy Mining Company (Freedom), appeals from an order of the Workers' Compensation Board, entered May 7, 2003, affirming an award of disability benefits to Perry Stump. Freedom contends that it should be permitted a credit against its liability for

permanent-disability benefits because of supplemental short-term disability benefits it paid to Stump under the company's income-continuation policy. The ALJ and the Board denied the credit, and Freedom appealed. It contends that KRS 342.730(6), which mandates offsets for certain privately extended benefits, compels a different result. We disagree.

Stump, a salaried employee for Freedom, injured his back at work on March 10, 2001. He was awarded temporary total disability benefits (TTD) of about \$530.00 per week through March 16, 2002. Under a company-funded income-continuation policy, Stump was entitled to his full regular salary of \$1,084.00 per week for twenty-six weeks. The policy provided that this payment would be reduced to the extent of workers' compensation payments. In effect, this policy provided supplementary, short-term disability benefits of about \$554.00 per week (the difference between Stump's weekly salary and his weekly TTD award). Because the company did not immediately learn of Stump's TTD benefits, for five weeks it paid Stump his full salary without deducting the TTD amount. The ALJ correctly ruled that Freedom was entitled to recoup these five over-payments.

The ALJ also awarded Stump permanent partial disability benefits of about \$488.00 per week beginning March 17, 2002, and continuing for 425 weeks. Freedom contends that

its liability under this permanent-disability award should be reduced to the extent of the short-term benefits it previously provided. The ALJ and the Board disagreed, and so do we.

Freedom relies on KRS 342.730(6), which provides that all income benefits otherwise payable pursuant to this chapter shall be offset by payments made under an exclusively employer-funded disability or sickness and accident plan which extends income benefits for the same disability covered by this chapter, except where the employer-funded plan contains an internal offset provision for workers' compensation benefits which is inconsistent with this provision.

We are not persuaded that this statute entitles Freedom to the credit it seeks. The benefits provided by Freedom's plan, short-term disability benefits, were not extended for the same disability, Stump's permanent disability, for which Stump is now covered by KRS chapter 342.

Temporary and permanent disabilities are distinct concepts under our statutory scheme,¹ and the compensation provided for them serves separate purposes. Temporary total disability benefits are designed to sustain the employee until maximum medical recovery is reached. Permanent disability benefits are designed to compensate the employee for loss of

¹ KRS 342.0011(11).

future earning capacity.² To credit short-term payments against long-term liability, as Freedom claims the right to do, would, except possibly in unusual circumstances not present here, nullify the statutory distinction and would tend to undermine the purpose of permanent-disability compensation. We are not persuaded that this was the General Assembly's intent when it authorized an offset against the employer's workers' compensation liability for the same benefits provided under an employer-funded plan.

The ALJ and the Board correctly coordinated the short-term benefits Stump received under the Act and under Freedom's income-continuation plan. They were also correct in refusing to coordinate Stump's short-term with his long-term benefits. Accordingly, we affirm the May 7, 2003, order of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

A. Stuart Bennett
Jackson Kelly PLLC
Lexington, Kentucky

BRIEF FOR APPELLEE STUMP:

David L. Williams
Stanville, Kentucky

² W.L. Harper Construction Company, Inc. v. Baker, Ky. App., 858 S.W.2d 202 (1993); Cantrell v. Electric Power Board, 811 S.W.2d 84 (Tenn. 1991).