

IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.

RENDERED: November 18, 2004
NOT TO BE PUBLISHED

Supreme Court of Kentucky **FINAL**

2003-SC-1061-WC

DATE 12-9-04 ELLAGROUETT, D.C.

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

APPELLANT

APPEAL FROM COURT OF APPEALS

V.

2003-CA-1154-WC

WORKERS' COMPENSATION BOARD NO. 01-93114

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

APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

KRS 342.730(6) permits income benefits to be offset by certain employer-funded benefits. During some of the period in which the claimant was entitled to temporary total disability (TTD), he also received salary continuation benefits under an employer-funded plan containing an internal offset for workers' compensation benefits. The employer reduced the salary continuation benefits by the amount of TTD and sought to credit the salary continuation benefits that it paid against its liability for permanent partial disability benefits. The Administrative Law Judge (ALJ) determined, however, that the excess was a voluntary payment and was not recoverable. The Workers' Compensation Board (Board) and the Court of Appeals affirmed. Likewise, we affirm.

The claimant was injured while working on March 10, 2001, and received voluntary TTD benefits of \$530.07 per week from March 11, 2001, through March 16, 2002. It is undisputed that his salary entitled him to receive a benefit of \$1084.60 per

week for the 26 weeks from March 11, 2001, through September 7, 2001, under an employer-funded salary continuation plan. It is also undisputed that the plan's internal offset provision permitted the employer to reduce the weekly benefit by the amount of concurrent TTD benefits the claimant received. After accounting for the reduction, the plan provided the claimant with a net benefit of \$554.53 per week for the initial 26 weeks of TTD. The employer asserts, however, that it was entitled to credit the benefit against its subsequent liability for permanent income benefits.

Neither the salary continuation plan nor the employee handbook was placed into evidence. Arch Runyon, the employer's vice president for administration, testified to its terms. He explained that the claimant was entitled to receive his full salary under the plan, regardless of whether his absence was due to a work-related injury or another cause. Runyon also explained that the company took an offset for TTD benefits, with the result that the claimant's combined TTD and salary continuation benefits equaled the salary he received prior to the injury.¹ Asked by counsel for the employer whether the plan language allowed the company to take credit for salary continuation benefits in the event there was a workers' compensation award, he replied, "Yes."

On October 29, 2002, the ALJ awarded TTD benefits as paid, followed by a permanent partial disability award of \$487.68 per week. The employer requested credit against the permanent partial disability award for the salary continuation benefits that it paid, relying on KRS 342.730(6). The ALJ determined, however, that any employer payments in excess of the required TTD benefit were voluntary and refused the request, and the Board and the Court of Appeals affirmed.

¹ Pursuant to evidence that the employer did not begin to reduce the salary continuation benefit for several weeks, the ALJ granted a credit for that amount against past-due benefits. There is no dispute regarding that credit.

The employer argues that the ALJ, Board, and Court of Appeals have all misinterpreted 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.

It was undisputed that the employer's salary continuation plan had an internal offset provision that entitled it to deduct concurrent TTD benefits when calculating the claimant's salary continuation benefits. The employer asserts that Runyon's testimony proved the plan also entitled it to take credit against the workers' compensation award for the amount of salary continuation benefits it actually did pay. It argues:

There was nothing in the record showing that the plan language under which salary continuation benefits were paid was inconsistent with KRS 342.730(6). In other words, the record contained no proof that the plan language stated that the Appellant would not be entitled to the credit otherwise allowed under KRS 342.730(6).

For years the courts have grappled with questions concerning credit for various types of employer-funded benefits that duplicate workers' compensation. E.g., Gatliff Coal Co. v. Evans, Ky., 896 S.W.2d 608 (1995); Beth-Elkhorn Corp. v. Lucas, Ky. App., 670 S.W.2d 480 (1983); South Central Bell Telephone Co. v. George, Ky. App., 619 S.W.2d 723 (1981); Pierce v. Russell Sportswear, Ky. App., 586 S.W.2d 301 (1979). KRS 342.730(6) was enacted effective December 12, 1996, shortly after the decisions in American Standard v. Boyd, Ky., 873 S.W.2d 822 (1994); GAF Corporation v. Barnes, Ky., 906 S.W.2d 353 (1995); and Conkwright v. Rockwell International, Ky. App., 920 S.W.2d 90 (1996), which expressed the view that an employer should be

permitted a credit against workers' compensation benefits for duplicative employer-funded benefits if the employer-funded plan had no internal offset provision for workers' compensation benefits. Cf., Williams v. Eastern Coal Corporation, Ky., 952 S.W.2d 696 (1997), (private benefits may not reduce statutorily-mandated workers' compensation income benefits absent statutory authority to do so). Although the statute was inartfully worded, its apparent purpose was to provide such a credit. Interpreting the words "benefits for the same disability covered by this chapter" in a manner consistent with that purpose, we are convinced that they were used narrowly to refer to benefits that duplicate workers' compensation benefits. Likewise, the phrase "except where the employer-funded plan contains an internal offset provision for workers' compensation benefits which is inconsistent with this provision" was used to make it clear that a credit against workers' compensation benefits was consistent with KRS 342.730(6) only in instances where the duplicative employer-funded plan did not have an internal offset for the workers' compensation benefits that it duplicated.

The burden was on the employer to show that it was entitled to the credit that it sought. Although Runyon responded affirmatively when asked by counsel for the employer if the plan language allowed the company to take credit for salary continuation if there was a workers' compensation award, his opinion concerning the legal effect of the plan did not compel any particular result. Runyon also testified that the salary continuation plan assured a worker would receive his full salary for up to 26 weeks' absence from work, regardless of the reason for the absence. He explained that when a worker received TTD benefits, salary continuation was reduced by the plan so that the combined total equaled the worker's salary before the absence. It is apparent, therefore, that plan benefits supplemented TTD benefits and did not duplicate

subsequent permanent partial disability benefits. In other words, KRS 342.730(6) did not authorize a credit for the salary continuation benefits because they did not duplicate the benefits against which the credit was sought.

The decision of the Court of Appeals is affirmed.

All concur.

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