[J-79-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

HANNABERRY HVAC and DONEGAL MUTUAL INSURANCE COMPANIES,	:	No. 99 MAP 2001
	:	Appeal from the Order of the Commonwealth Court entered on January 24, 2001, at No. 413 CD 2000, reversing and remanding the order of the Workers' Compensation Appeal Board.
v.	:	
WORKERS' COMPENSATION APPEAL BOARD (SNYDER, JR.),	:	767 A.2d 650 (Pa. Cmwlth. 2001)
APPEAL OF: CHARLES SNYDER, JR.	:	ARGUED: May 14, 2002

DISSENTING OPINION

MR. JUSTICE EAKIN **Decided: October 22, 2003**

I respectfully dissent from the conclusion that § 309(d) is ambiguous, requiring us to engage in statutory interpretation to fashion a desired result for unfortunate cases such as appellant's. Like it or not, the statute provides a simple and explicit formula for calculation of wages, and there is no exception for the present scenario; an oversight which leads to a harsh result is not the equivalent of ambiguity. See Scanlon v. DPW, Dept. of Aging, 739 A.2d 635, 638 (Pa. Cmwlth. 1999) (statute is ambiguous or unclear if its language is subject to two or more reasonable interpretations).

In general, the Workers' Compensation Act does not distinguish between part-time and full-time employment. See 77 P.S. § 22 (defining "employe"). Section 309(d) likewise does not make this distinction; for wage calculation purposes, subsection (d) focuses on the length of employment and the amount of compensation. "Employe" and "wages," as used in § 309(d), are not subject to two or more reasonable interpretations.

See 1 Pa.C.S. § 1921(b) ("When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit."); Energy Pipeline Co. v. Pennsylvania Utility Com'n., 662 A.2d 641, 644 (Pa. 1995) (plain words of statute cannot be disregarded where language is free and clear from all ambiguity); MacDougall v. MacDougall 155 A.2d 358, 360 (Pa. 1959) (statute's plain words cannot be disregarded under pretext of accomplishing good purpose, particularly where language is free and clear from all ambiguity).

It is undisputed appellant, although a student working part-time, was employed by Hannaberry HVAC and received wages for this employment. Under the clear language of the statute, appellant was employed for at least four consecutive, 13-week quarters in the year preceding his injury, and his part-time wages are to be included in the wage calculation. The result is not an equitable one, for a part-time employee who assumes full-time status during the last quarter before an injury receives less than if there had been no prior part-time wages.

The Legislature's failure to anticipate all potential employment situations does not amount to ambiguity; it simply means there are situations where application of the statutory formula may not yield the result intended. This fact signals a definite need for revision of the statute.[1] However, adjusting this incongruity is a task for the Legislature,

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[1] The Commonwealth Court acknowledged the need for revision, quoting a comment made by Senator Gibson E. Armstrong (R. Lancaster; York) during legislative debate concerning the 1996 amendments:

> [Y]ou cannot write a bill that is perfect. I do not think we have ever written a bill here that is perfect. Some areas of this bill will probably need to be adjusted, and if they do, I am here to tell you I will work with anyone to adjust them as quickly as possible.

Hannaberry HVAC v. WCAB (Snyder, Jr.), 767 A.2d 650, 653-54 (Pa. Cmwlth. 2001) (quoting Senate Legislative Journal, June 10, 1996, p. 2157).

not this Court. See Frost v. Metropolitan Life Ins. Co., 12 A.2d 309, 310 (Pa. 1940) (hardship or equity of case cannot override plain words of statute, and legislature, not court, must correct any evil).

While the result in this case is unfortunate, I am reluctant to carve out exceptions to application of the statutory formula, absent ambiguity in the statute. Arguments of unjust or uncontemplated results of a legislative scheme do not amount to ambiguity, and courts should not manufacture ambiguity to avoid a disagreeable result. That said, I echo the hope of the Commonwealth Court "that this appeal would present a situation that would compel just such an adjustment by the General Assembly." Hannaberry HVAC, at 654.

Mr. Chief Justice Cappy joins this dissenting opinion.