STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

ALDO MANGIANTINE	)	
	)	
VS.	)	W.C.C. 2008-05100
	)	
ELECTRIC BOAT CORPORATION	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the employee's appeal from the denial of his petition seeking specific compensation for disfigurement stemming from his work-related injury which occurred on January 22, 2002. After thorough review of the relevant case law and consideration of the arguments of the parties, we deny the employee's appeal and affirm the decision and decree of the trial judge.

The parties submitted an agreed statement of facts to the trial judge which we have summarized for purposes of this decision. While employed at Electric Boat, the employee sustained a work-related injury, namely, bilateral carpal tunnel syndrome/occupational disease. An Employee's Claim for Compensation, Form LS-203, under the Longshore and Harbor Workers' Compensation Act (hereinafter LHWCA), was filed on January 22, 2002, alleging an injury to both hands/arms. An Employer's First Report of Injury, Form 202, was filed on February 6, 2002, indicating the same. Several years later, the employee underwent left carpal tunnel release surgery performed by Dr. Arnold-Peter C. Weiss. According to the report of Dr. Weiss dated September 6, 2007, the employee's surgical scar had reached an end result.

The employee was paid under the LHWCA pursuant to 33 U.S.C. §8(c)(3) and (19) in the amount of $28,373.13 for loss of use to the left and right hands on October 15, 2003 as a result of his work-related injury. From this total, the amount designated solely for the left hand was 8.5% multiplied by 244 weeks at a rate of $553.73 per week for a total of $11,484.36. Under the LHWCA, the employee's average weekly wage is $830.60, with a weekly compensation rate of $553.73.

On August 5, 2008, the employee filed an original petition with the Rhode Island Workers' Compensation Court requesting specific compensation for scarring to the left hand/arm as a result of the carpal tunnel surgery pursuant to the Rhode Island Workers' Compensation Act. A pretrial order was entered on September 16, 2008, awarding the employee an amount of 100 weeks at $90.00 per week, or $9,000.00, for a four (4) inch scar to the left upper extremity. The pretrial order also stated that the employer was to receive credit for amounts paid pursuant to the LHWCA. The employee filed a claim for trial in part to dispute the statement regarding the credit. On November 5, 2008, the employee filed a petition to enforce the pretrial order as a result of the employer's failure to pay the $9,000.00 for scarring as ordered. On January 5, 2009, a pre-trial order was entered denying said petition. The employee then timely filed a claim for trial.

The sole issue before the trial judge was whether or not the employer was entitled to a credit against the disfigurement award because the employee had already received benefits under the LHWCA in excess of the award. In finding that the employer was indeed entitled to a credit against the disfigurement award, the trial judge relied on Lagasse v. General Dynamics, W.C.C. No. 90-08040 (App. Div. 3/24/94) and Bienkowski v. Robert E. Derecktor of RI, Inc., W.C.C. No. 93-07522 (App. Div. 12/8/94), two (2) appellate decisions which were not appealed to the

Rhode Island Supreme Court, which rely in turn on a First Circuit case, D'Errico v. General Dynamics Corporation, 996 F.2d 503 (1st Cir. 1993). The trial judge concluded that "[r]ead together these cases establish that the State is to give credit for payments made under the federal scheme for the same injury regardless of the nature of payment." (Decision at 4.) We agree with the trial judge's conclusion.

In reviewing a trial judge's decision, we are guided by the standard set forth in R.I.G.L. § 28-35-28(b), which states that "[t]he findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous." In the present matter, the essential facts have been stipulated to by the parties. Consequently, our focus is simply on whether the pertinent law was properly applied to those facts by the trial judge.

The employee sets forth fourteen (14) reasons of appeal; however they can be narrowed down to a few main arguments. The employee's focus is the trial judge's allegedly erroneous application of a dollar-for-dollar credit to the employer for benefits already paid under the LHWCA to offset benefits awarded under the Rhode Island Workers' Compensation Act. He contends that employers should only be credited for benefits paid in an alternate benefit scheme using a category-by-category approach.

This court has already considered the issue of whether an employer is entitled to a credit for workers' compensation benefits paid to an employee under the LHWCA against benefits awarded under the Rhode Island Workers' Compensation Act in Lagasse and Bienkowski. W.C.C. No. 90-08040; W.C.C. No. 93-07522. In those cases, we relied on Section 3(e) of the LHWCA, as amended in 1984. Section 3(e) reads in relevant part:

> Notwithstanding any other provision of law, *any* amounts paid to an employee for the same injury, disability, or death for which benefits are claimed under this Act pursuant to any other workers'

> compensation law…shall be credited against *any* liability imposed by this Act.[1]

Longshore and Harbor Workers' Compensation Act Amendments of 1984, § 3(e), 33 U.S.C. § 903(e) (emphasis added). In Lagasse and Bienkowski, we determined that the employer was entitled to a credit for those monies paid under the federal system against those awarded under the state system, relying heavily on the First Circuit's holding in D'Errico. W.C.C. No. 90-08040; W.C.C. No. 93-07522; *see* D'Errico, 996 F.2d 503. In D'Errico, the court held that if all of the benefits were paid as a result of the same injury, it made no difference that some of the award was paid for disfigurement or for loss of use as compared with an award for total disability; the employer was still entitled to a full credit. 996 F.2d at 505-06. The court also noted that the clear language of this subsection speaks for itself and that it is required to follow it even if doing so produces a "painful outcome." Id. at 504.

The employee argues that the trial judge erred in relying on these cases and that a category-by-category credit scheme should be used. This would preclude the employer from offsetting the amount of money the employee receives in a disfigurement award with the weekly compensation benefits and loss of use the employee was awarded under the LHWCA. For the bulk of the employee's argument, he relies on Bouford v. Bath Iron Works Corp., 514 A.2d 470 (Me. 1986), in which the Supreme Court of Maine found that an employer was not entitled to a credit against disfigurement benefits awarded to the employee under the state act from weekly benefits paid under the LHWCA. The court applied a category-by-category approach and rejected the employer's argument that the approach was against public policy in that there was an opportunity for double recovery for the employee's injuries. Id. at 474. The court held that since

[1] The LHWCA was amended in 1996, replacing the word "Act" with the word "chapter," among other changes.

the employee had not received any disfigurement award under the LHWCA, there would be no danger of double recovery for his injuries. Id.

While this court recognizes and appreciates the Maine Supreme Court's reasoning behind its decision in Bouford, the cases heard and decided by this court follow the same reasoning utilized in D'Errico and apply a dollar-for-dollar approach. Neither Lagasse nor Bienkowski were appealed to the Rhode Island Supreme Court and therefore remain controlling on this issue and binding on this court. *See* R.I.G.L. § 28-35-28(a). We find that the trial judge correctly relied on the precedent set forth in these cases in offsetting the employee's disfigurement award.

The employee in D'Errico argued that under Section 3(e), the award under the LHWCA was not "for the same injury," as required under the statute, therefore the employer should not be entitled to a credit. 996 F.2d at 505. Although the employee here does not couch his argument in the same terms as the employee in D'Errico, it is essentially the same. Mr. Mangiantine argues that the disfigurement award is a specific type of compensation awarded for a specific effect of his injury, and should therefore be considered a separate remedy more along the lines of "damages" as opposed to a payment for a lost opportunity to earn wages. The D'Errico court explained:

> The benefits [the employee] received under the [state act] may have been awarded to compensate him for one or more effects of, or disabilities arising from, that injury, while the benefits he received under the [LHWCA] may have been awarded to compensate him for others. Nonetheless, the physical injury upon which all of those benefits were ultimately based was the same.

Id. The court found that the language of the statute was plain and it made no difference that the awards under the two different acts were categorized differently. Id.

We agree with the First Circuit's interpretation and analysis of the statute and conclude that it makes no difference how the benefits are categorized under the federal and state statutes;

the employer is entitled to a credit for the full dollar value against any subsequent award. In the present matter, the employee received a disfigurement award for the scar arising out of the same work-related injury for which he received benefits for permanent partial disability (or loss of use) under the LHWCA. Although the two (2) awards compensated the employee for different results or effects of his injury, the physical injury which they are derived from is the same, and therefore, the employer is entitled to a credit. The employee's argument that Lagasse and Bienkowski are not on point because they do not deal specifically with disfigurement benefits is clearly wrong. In D'Errico, upon which Lagasse and Bienkowski rely, the court gave credit for the full amount of an award of specific compensation for loss of use and disfigurement to offset the award of total disability benefits under the LHWCA. The D'Errico court clearly held that the category of benefits is irrelevant so long as they are all derived from the same work-related injury. *See* D'Errico, 996 F.2d 503.

The employee asserts that in Rison v. Air Filter Systems, Inc., 707 A.2d 675 (R.I. 1998), the Rhode Island Supreme Court "distinguished specific compensation from weekly benefit payments that compensate for a lost opportunity to earn wages." Id. at 681. We are of the opinion that the Rison decision provides no support to the employee's position. The employee in Rison had received a substantial settlement from a third party tortfeasor and then obtained an award for disfigurement and loss of use in the Workers' Compensation Court. The Rhode Island Supreme Court concluded that specific compensation benefits for disfigurement and loss of use were included in the term "compensation" as utilized in R.I.G.L. § 28-35-58, and would therefore be offset against the third party settlement in the same manner as weekly benefits for total disability. Rather than distinguishing specific compensation benefits from those for partial

or total disability, the Court determined that they were simply another type of workers' compensation. Id. at 682.

The employee also maintains that the trial judge erred in his reliance on D'Errico because the employee in that case had first collected disfigurement benefits from the state compensation system and then applied for disability benefits under the LHWCA, and here, as in Bouford, the employee first collected from the LHWCA. He suggests that it makes a difference as to which approach is used to credit the employer depending on which benefit scheme the employee collected from first. Section 3(e) simply reads that "*any amounts* paid to an employee for the same injury…for which benefits are claimed under this chapter…*shall be credited* against any liability imposed by this chapter." 33 U.S.C. § 903(e) (emphasis added). In a plain reading of Section 3(e), we find no language suggesting that a dollar-for-dollar approach under this section applies only when the employee collects first under the LHWCA.

The Appellate Court of Connecticut, which deals with many concurrent jurisdiction issues involving its own state system and the LHWCA due to its location, dealt with this issue in McGowan v. General Dynamics Corporation, 15 Conn.App. 615, 546 A.2d 893 (1988). After receiving disability benefits under the LHWCA, the employees in McGowan applied for benefits for scarring in the state system. In construing Section 3(e) of the LHWCA to mandate that a dollar-for-dollar credit is always applied, the court stated, "[i]t is at best paradoxical to suggest that Congress intended that 'any amounts paid' under a state act be credited against 'any liability imposed' by the LHWCA, but that…awards first received pursuant to the LHWCA should be offset against subsequent state awards on a category by category basis." Id. at 621, 546 A.2d at 897. We agree with this reasoning. It would defy logic to conclude that the method of offset is determined by where the employee files first. Furthermore, to accept the category by category

approach advocated by the employee would allow the employee to choose the superior benefits of each system and would result in a total award greater than that available under either the state or federal system alone. We find no basis for allowing such a result.

Based on our review of the relevant case law, in particular our own appellate decisions regarding this issue, and the discussion of such above, we find no error on the part of the trial judge and we, therefore, deny and dismiss the employee's reasons of appeal and affirm the decision and decree of the trial judge.

In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a copy of which is enclosed, shall be entered on

Hardman and Ferrieri, JJ. concur.

ENTER:

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Olsson, J.

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Hardman, J.

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Ferrieri, J.

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the claim of appeal of the petitioner/employee and upon consideration thereof, the appeal is denied and dismissed, and it is

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on January 28, 2009 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

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John A. Sabatini, Administrator

ENTER:

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Olsson, J.

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Hardman, J.

_____
Ferrieri, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Stephen J. Dennis, Esq., Robert S. Thurston, Esq., and Conrad M. Cutcliffe, Esq., on

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