

SUPREME JUDICIAL COURT OF MAINE

Damon v. S.D. Warren Co., 2010 ME 24

990 A.2d 1028 (2010) · No. WCB-09-17 and WCB-09-157 · Decided March 23, 2010

SUMMARY

The Maine Supreme Judicial Court held that the workers' compensation retiree presumption did not apply because Damon immediately transitioned from employment with S.D. Warren to full-time work at his post-injury earning capacity. The court also held that employer-paid retiree health and life insurance premiums were not subject to offset under the coordination-of-benefits statute because those benefits had not been included in calculating his average weekly wage, and it remanded for further proceedings on that issue.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Saufley, C.J.; Alexander, J.; Levy, J.; Silver, J.; Mead, J.; Gorman, J.; Jabar, J.
JURISDICTION	Maine
DECIDED	March 23, 2010
DOCKET	WCB-09-17 and WCB-09-157
DISPOSITION	other
PROCEDURAL POSTURE	Both parties petitioned for appellate review of a Workers' Compensation Board hearing officer's decision. S.D. Warren challenged the refusal to apply the retiree presumption of ineligibility for benefits; Damon challenged offsets for employer-paid retiree health and life insurance premiums.
STANDARD OF REVIEW	The court accepted the hearing officer's factual findings absent fraud under 39-A M.R.S. § 318. It reviewed statutory construction de novo, first considering the plain statutory language and, if ambiguous, other indicia of legislative intent.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	S.D. Warren Co. v. Edward Damon

TOPICS

workers compensation

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether an employee who retires from one employer and immediately begins full-time employment with another employer has terminated active employment for purposes of the retiree presumption under 39-A M.R.S. § 223.
2. Whether employer-paid retiree health and life insurance premiums may be offset against workers' compensation incapacity benefits under 39 M.R.S.A. § 62-B when the value of those fringe benefits was not included in the calculation of the employee's pre-injury average weekly wage.
3. Whether the hearing officer erred in considering Damon's permanent-impairment petition, treating a litigation-related permanent-impairment evaluation as a compensable medical expense, or concluding that the medical-expense claim was not barred by the statute of repose.

HOLDINGS

1. An employee does not necessarily terminate active employment for purposes of 39-A M.R.S. § 223 merely by retiring from the employer from whom workers' compensation benefits are sought. Because Damon immediately moved into full-time employment at his full post-injury earning capacity and continued working steadily without a break, the retiree presumption did not apply.
2. Employer-paid retiree health and life insurance premiums were not subject to an offset under 39 M.R.S.A. § 62-B because the premiums were not wage-replacement benefits and their value had not been included in Damon's pre-injury average weekly wage. Allowing the offset would not prevent a double recovery or stacking of benefits.
3. The court rejected S.D. Warren's additional arguments concerning the permanent-impairment petition, the compensability of a litigation-related permanent-impairment evaluation, and the statute of repose, but did not discuss them further.

KEY QUOTATIONS

“Thus, when deciding whether an employee terminates active employment, the hearing officer is not restricted by law to considering only the employee's actions with regard to the employer from whom workers' compensation benefits are sought.” (1033)

“Such an offset would expand the scope of the coordination of benefits statute beyond what the Legislature intended.” (1035)

FACTUAL BACKGROUND

Edward Damon worked for S.D. Warren for thirty-six years and developed bilateral carpal tunnel syndrome and related work injuries. During a 2003 downsizing, he accepted voluntary early retirement but immediately

transitioned to full-time custodial work for the Scarborough School Department, where he continued working at his full post-injury earning capacity. He later sought restoration and other workers' compensation benefits for the 1991 injury. The hearing officer awarded partial incapacity benefits but offset pension, Social Security, and employer-paid retiree health and life insurance benefits.

PROCEDURAL HISTORY

The hearing officer granted Damon's petition for restoration and awarded ongoing partial incapacity benefits for his 1991 work injury. The officer applied offsets for pension, Social Security, and employer-paid retiree health and life insurance benefits. After the officer made minor changes in response to Damon's motion for additional findings, both parties petitioned the Supreme Judicial Court for appellate review, which granted review.

DISPOSITION

other

REMAND INSTRUCTIONS

Vacate the hearing officer's decision regarding the offset of retiree health and life insurance benefits and remand for further calculations and proceedings consistent with the opinion. If the inclusion of fringe benefits in the average weekly wage remains disputed, the parties may seek clarification from the hearing officer.

CASES CITED

- Nichols v. S.D. Warren/Sappi, 2007 ME 103, 928 A.2d 732
- Dep't of Corrs. v. Pub. Utils. Comm'n, 2009 ME 40, 968 A.2d 1047
- Bowie v. Delta Airlines, Inc., 661 A.2d 1128 (Me. 1995)
- Pendexter v. Tilcon of Maine, Inc., 1999 ME 34, 724 A.2d 618
- Temm v. S.D. Warren Co., 2005 ME 118, 887 A.2d 39
- Jordan v. Sears, Roebuck & Co., 651 A.2d 358 (Me. 1994)
- Berry v. H.R. Beal & Sons, 649 A.2d 1101 (Me. 1994)

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