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SUPREME COURT OF ARKANSAS

No. 10-1148

Opinion Delivered May 26, 2011

SECOND INJURY FUND, ANDERSON ENGINEERING, ONE BEACON INSURANCE, and TRANSPORTATION INSURANCE COMPANY, APPELLANTS	APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION, NOs. F107011 & F304582
VS.	
CLEVELAND OSBORN, APPELLEE	ARKANSAS WORKERS' COMPENSATION COMMISSION AFFIRMED; OPINION OF THE COURT OF APPEALS VACATED.

JIM GUNTER, Associate Justice

The Second Injury Fund (the Fund) appeals the decision of the Arkansas Workers' Compensation Commission (the Commission) finding that the Fund was not entitled to a statutory offset for appellee's Veterans Administration (VA) benefits. On appeal, the Fund asserts that the Commission erred in its interpretation of Ark. Code Ann. § 11-9-411 (Repl. 2002). We have granted a petition for review in this case pursuant to Ark. Sup. Ct. R. 1-2(e), and we affirm.

The appellee in this case, Cleveland Osborn, born February 2, 1948, graduated from high school and earned a technical degree in Foundation Engineering. In 1967, he began serving in the United States Army and, in 1982, sustained an injury to his back. In 1984, he was medically discharged after receiving a thirty-percent disability rating from the VA. Osborn

worked in Arizona for several years, and in 1992, returned to Arkansas and began working for Anderson Engineering, where he primarily performed steel inspections, concrete inspections, and picked up concrete and soil samples.

While working for Anderson on June 1, 2001, Osborn was injured when he fell into a nine-foot hole. He was diagnosed with contusions to the head and back and a compression fracture of the lumbar spine. Osborn received further injuries to his back on March 10, 2003, while he was moving thirty-pound concrete cylinders, and he was unable to return to work after March 11, 2003. Anderson's workers' compensation insurance provider denied the compensability of the March 10, 2003 injury. In addition, the Fund controverted Osborn's entitlement to permanent disability benefits in excess of thirty percent above the three percent anatomical impairment that Osborn was given stemming from the March 10, 2003 injury. The Fund also requested a credit, pursuant to Ark. Code Ann. § 11-9-411, for the $2,200 in VA benefits that Osborn receives each month.

In an opinion filed September 17, 2008, the administrative law judge found that Osborn was permanently and totally disabled and that the Fund was not entitled to a credit pursuant to Ark. Code Ann. § 11-9-411. The Fund appealed both of these findings. The Commission reversed the ALJ's finding that Osborn was permanently and totally disabled and instead awarded Osborn a fifty-percent wage-loss disability. However, the Commission affirmed the ALJ's finding that the Fund was not entitled to the credit. On appeal, the court of appeals affirmed the finding that Osborn was entitled to only a fifty-percent wage-loss

disability but reversed and remanded on the statutory offset issue, finding that the Commission's opinion lacked sufficient findings of fact to determine whether substantial evidence supported the decision to deny the offset. *See Second Injury Fund v. Osborn*, 2010 Ark. App. 120.

Upon remand, the Commission again found that the Fund was not entitled to a statutory offset for Osborn's VA benefits. The Commission found that under the plain meaning of the language in the statute, VA benefits were not included, and had the legislature intended to include VA benefits among those enumerated in Ark. Code Ann. § 11-9-411(a), it would have done so. The Commission also found that the VA benefits were not employer-based benefits but were instead based on Osborn's service-connected disabilities. One commissioner dissented from this decision, finding that Osborn was receiving a double recovery for his VA benefits and that the Fund was entitled to an offset. The Fund again appealed to the court of appeals, which affirmed the Commission's decision. *See Second Injury Fund v. Osborn*, 2010 Ark. App. 697. We subsequently granted the Fund's petition for review on April 14, 2011.

When we grant review of a decision by the court of appeals, we review the case as though the appeal had originally been filed in this court. *Hudak-Lee v. Baxter County Reg'l Hosp.*, 2011 Ark. 31, 378 S.W.3d 77. This court reviews issues of statutory construction de novo, as it is for this court to decide what a statute means. *MacSteel v. Ark. Okla. Gas Corp.*, 363 Ark. 22, 210 S.W.3d 878 (2005). The first rule in considering the meaning and effect of

a statute is to construe it just as it reads, giving the words their ordinary meaning and usually accepted meaning in common language. *Id.* When the language of the statute is plain and unambiguous, there is no need to resort to rules of statutory construction. *Id.* When the meaning is not clear, we look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject. *Id.* Although an agency's interpretation is highly persuasive, where the statute is not ambiguous, we will not interpret it to mean anything other than what it says. *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 190 (1998).

On appeal, the Fund asserts that the Commission erred in finding that it was not entitled to a statutory offset, pursuant to Ark. Code Ann. § 11-9-411, for VA benefits received by appellee. Arkansas Code Annotated section 11-9-411, entitled "Effect of payment by other Insurers," provides in pertinent part:

> (a)(1) Any benefits payable to an injured worker under this chapter shall be reduced in an amount equal to, dollar-for-dollar, the amount of benefits the injured worker has previously received for the same medical services or period of disability, whether those benefits were paid under a group health care service plan of whatever form or nature, a group disability policy, a group loss of income policy, a group accident, health, or accident and health policy, a self-insured employee health or welfare benefit plan, or a group hospital or medical service contract.

On appeal, the Fund argues that the Commission's opinion ignores Osborn's uncontroverted testimony that the increase in his VA benefits was based on his medical records from his work injuries at Anderson, thus proving that Osborn is receiving a double recovery of benefits. The

Fund then discusses several cases that were cited by the Commission in its ruling. In *Dollarway School District v. Lovelace*, 90 Ark. App. 145, 204 S.W.3d 64 (2005), the court of appeals held that an employer was not entitled to a credit for life insurance proceeds paid to an employee's widow because the plain language of § 11-9-411 included no mention of life insurance, death, or dependency benefits. However, the Fund asserts that *Lovelace* is factually distinguishable from the case at bar.

In *Henson v. General Electric*, 99 Ark. App. 129, 257 S.W.3d 908 (2007), also discussed by the Fund, the court of appeals held that the Second Injury Fund was entitled to a statutory offset for disability-retirement benefits paid to a claimant, citing the overriding intent of § 11-9-411 to prevent a double recovery by a claimant for the same period of disability. The Fund argues that the Commission simply failed to follow this principle announced in *Henson* and denied a credit based upon a limitation to only those sources listed in the statute.

The Fund also takes issue with the Commission's distinction between "employer-based" and "service-connected" disabilities, arguing that whether the prior condition contributing to a claimant's current disability status arises out of a work-related condition is irrelevant. Finally, the Fund engages in a discussion of Commission Rule 099.21, which requires the VA hospital to notify an employer, its insurance carrier, and the Commission if it is treating an injured employee for a work-related injury.

In response, appellee argues that a plain reading of § 11-9-411 clearly establishes that the Commission did not err in its finding that an offset was inappropriate in the case at bar.

The statute specifically mentions a variety of insurers that might be entitled to an offset, but it does not apply to veterans disability benefits, which arise from a service-related injury. Appellee also argues that the relevant case law supports the Commission's decision. Appellee asserts that *Lovelace* is clearly on point with the holding in the case at bar, and that the holding in *Henson* is likewise in line with the Commission's decision in this case due to the distinction between work-related injuries and service-related injuries. Appellee argues that while the statute is designed to prevent a windfall or double recovery to the worker, it is not designed to allow the Fund to benefit unduly from his service-related injury. Appellee asserts that for the Fund to make such an argument to that effect, it would have to provide a full analysis of the rationale employed by the VA in determining increases for benefits, but that the Fund failed to present any such evidence.

We affirm the Commission's decision. The Commission made its decision based upon the plain language of the statute, and the court of appeals has likewise stated that the language of § 11-9-411 is clear in that "the legislature intended for the amount of workers' compensation benefits payable to an injured worker to be reduced 'dollar-for-dollar' by the amount of benefits that the worker has previously received for the same medical services *under any of the listed group plans*." *Dooley v. Automated Conveyor Sys., Inc.*, 84 Ark. App. 412, 417, 143 S.W.3d 585, 588 (2004) (emphasis added). Veterans Administration benefits are not listed as one of the "group plans" in the statute. We agree with the Commission that if the legislature had intended to include VA benefits among those plans enumerated in § 11-9-

411(a), it would have done so. Therefore, we find that the Commission did not err in its interpretation of § 11-9-411.

Arkansas Workers' Compensation Commission affirmed; opinion of the Court of Appeals vacated.

HENRY, J., not participating.