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Recent Developments: McDaniels v. District of Columbia Dep't of Employment Servs.: The D.C. Court of Appeals Holds That Workers' Compensation Claimants Are Entitled to the Lesser of 66%% of Average Weekly Wages or 80% of Spendable Earnings

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McDaniels v. District of Columbia Dep't of Employment Servs.:
THE D.C. COURT OF APPEALS HOLDS THAT WORKERS' COMPENSATION CLAIMANTS ARE ENTITLED TO THE LESSER OF 66⅔% OF AVERAGE WEEKLY WAGES OR 80% OF SPENDABLE EARNINGS.

In *McDaniels v. Department of Employment Services*, 512 A.2d 990 (1986), the D.C. Court of Appeals held, pursuant to the D.C. Workers' Compensation Act, D.C. Code Ann. § 36-308 (1986), (hereinafter 36-308) that the petitioners in the case at bar were entitled to compensation at the lesser of 66⅔% of their average weekly earnings or 80% of their spendable earnings. In so holding, the court affirmed the D.C. Department of Employment Service's (hereinafter referred to as D.O.E.S.) interpretation of 36-308.

In *McDaniels*, the petitioners, Fletcher McDaniels and Jeffrey Hightower, challenged the D.O.E.S. interpretation of 36-308. The D.O.E.S. determined that the petitioners were entitled to 80% of their spendable earnings. The petitioners' appealed to the D.C. Court of Appeals from the D.O.E.S. determination.

On appeal, petitioner McDaniels, who was permanently disabled, contended that the first two sentences of 36-308(e) were contradictory and also that the D.O.E.S. interpretation of 36-308(e) was contradictory with 36-308(A)(1) and 36-308(A)(3). McDaniels further alleged that 36-308(A)(1) could be subject to an interpretation in which he would receive 66⅔% of his average weekly earnings, which was higher than 80% of his spendable earnings. Petitioner Hightower, who also was permanently partially disabled, asserted that 36-308 guaranteed him 66⅔% of his weekly wages and that the 80% provision is only applicable to claimants suffering from temporary total disability.

Before addressing the petitioners arguments, the court of appeals cited case law that established that when an agency such as the D.O.E.S. has the power to effectuate a statute's provisions, the court must give deference to the agency's reasonable interpretation of the statute. *Hughes v. D.C. Dep't of Employment Services*, 498 A.2d 567 (D.C. 1985); *Thomas v. D.C. Dep't of Labor*, 409 A.2d 164 (D.C. 1979). In determining whether the D.O.E.S. made a reasonable interpretation of 36-308, the court of appeals had to ascertain whether the statutory language was clear and unambiguous. If the statute's language is clear and unambiguous the court must give effect to the plain meaning of the statute. *Office of Peoples Counsel v. Public Service Commission*, 477 A.2d 1079 (D.C. 1984). The court then examined the relevant sections of 36-308, which follow:

§ 36-308. Compensation for disability.
(a) Compensation for disability shall be paid to the employee as follows.
  (1) In case of total disability adjudged to be permanent, *sixty-six and two thirds percent of the employee's average weekly wages shall be paid to the employee during the continuance thereof* . . .
  (2) In case of disability total in character but temporary in quality, *sixty-six and two-thirds percent* of the employee's average weekly wages shall be paid to the *employee during the continuance thereof*;
  (3) In case of disability *partial in character but permanent in quality, the compensation shall be sixty-six and two-thirds percent of the employee's average weekly wages which shall be in addition to compensation for temporary total disability or temporary partial disability* paid in *accordance with paragraph (2) or (4)* of this subsection respectively, and shall be paid to the employee, as follows
  . . . .
(e) For the purpose of this chapter, payment of *benefits at the rate of 80 percent of the spendable earnings of an employee shall be deemed to be not less than sixty-six and two-thirds percent of such employee's average weekly wage.* In all cases, payment of benefits shall be at the lesser of sixty-six and two-thirds percent of the employee's average weekly wage or 80 percent of spendable earnings. Spendable earnings shall be the *employee's gross average weekly wage reduced by an amount determined to reflect amounts which would be withheld from such wage under Federal and state or District of Columbia* income tax laws, and under Subchapter IV of Chapter 21 of the Internal Revenue Code of 1954 (relating to social security taxes). In all cases, it is to be assumed that the amount withheld would be determined on the basis of anticipated liability of such employee for tax for the taxable year in which such payments are made without regard to any itemized deductions but taking into account the maximum number of personal exemption deductions allowable. (emphasis added).

The court determined that the language in the second sentence of 36-308(e) which provided "that beneficiaries shall receive the lessor of 66⅔ percent of their average weekly wages or 80 percent of their spendable earnings" was clear and unambiguous. The court stated that unless the petitioners established that the second sentence was not controlling in their respective cases, the D.O.E.S. determination that the petitioners were entitled to 80% of their spendable earnings would be affirmed.

In rejecting the petitioners' initial argument that the first two sentences of 36-308(e) are contradictory, the court held that the first sentence "did not change the calculation specified by the second sentence, but only the legal significance to be attached to a calculation resulting in the payment of less than 66⅔ percent of their average weekly wage." *McDaniels*, 512 A.2d at 992. Petitioners also argued that the language in 36-308(A)(1) and 36-308(A)(3), which provides for benefits equal to 66⅔% of average weekly wages to persons who are on total permanent disability and partial permanent disability is inconsistent with the 80% provision in 36-308(e). Acknowledging an inconsistency in the language, the court determined that the inconsistency was merely superficial and that when the statute was construed with "well settled" principles, the ambiguity in 36-308's meaning was abrogated.

The court of appeals further reconciled the inconsistency by determining that the D.C. Council drafted 36-308(e) to cover all subsections of the statute rather than repeat the same language in each subsection of 36-308. Therefore the first sentence of 36-308(e) "acted as a bridge between the calculation formula of 36-308(e) and the placemarkers in 36-308(A) assuring against subsequent uncertainty as to their interrelationship". *Id.* at 993. In refuting the petitioners' alternative argument that the 80% provision applies only to temporarily totally disabled claimants, the court held that the petitioners failed to read critical language in 36-308(e) which provides that 80% of a claimant's spendable earnings would be awarded in all cases where the figure is less than 66⅔% of the claimant's average weekly wage. The court stated that "all cases" means that the 80% provision applies to all categories of workers' compensation claimants.

The court then rejected the petitioners contention that the first sentence of 36-308(e) entitles the claimant to receive the greater of 66⅔% of their average weekly wage or 80% of their spendable earnings. The

court tersely stated that the sentence lacked any indicia that the higher sum would be awarded.

The court substantiated their construction of the statute by examining the legislative history behind 36-308. The court found the following reasons to include the 80% provision in the statute: (1) cost saving; (2) prevention of disability recipients' receipt of more after tax income than if they worked; and (3) the preservation of the work incentive. *Report of the D.C. City Council Committee on Housing and Economic Development* on Bill 3-106, 01/08/80, pp. 4, 16-17. The court concluded that the petitioners failed to demonstrate why these goals were not attained by applying the 80% provision to them and others in their disability categories.

The *McDaniel* court clarifies the meaning of 36-308. It is now clear that claimants are entitled to the lesser of 80% of their spendable earnings or 66⅔% of their average weekly wage. The court's strict interpretation of 36-308 narrows the avenue of statutory attack available to workers' compensation claimants. Future attack on 36-308 will be best pursued through the legislative process.

—Avery Berdit

Staley v. Board of Education of Washington County: ATTORNEY'S FEES ALLOWED EVEN THOUGH AMOUNT PAID IN WORKERS' COMPENSATION CLAIM EXCEEDED TOTAL SUM DUE UNDER A MODIFIED AWARD.

The Court of Appeals of Maryland in *Staley v. Board of Education of Washington County*, 308 Md. 42, 517 A.2d 349 (1986) held that an employer and its insurer were required to pay legal fees to a workers' compensation claimant's attorney even though the amount already paid to the claimant exceeded the total amount due under a modified award. In so holding, the court of appeals reversed the court of special appeals and affirmed the circuit court ruling.

Claimant Joy M. Renehan Staley, a school teacher, fractured her hip in the course of her employment. The Workers' Compensation Commission (Commission) determined that Ms. Staley suffered a 55% permanent partial disability and set compensation benefits accordingly. Ms. Staley's employer and the insurer appealed the Commission's order to the Circuit Court of Maryland for Washington County. There the circuit court determined that the Commission had erred and ruled that Ms. Staley suffered only a 35% permanent partial disability. The court therein modified her award commensurately.

While the appeal to the circuit court was in progress, the employer had been paying disability benefits at the rate set for 55% disability. By the time Ms. Staley's award was modified by the circuit court, the accumulated amount already paid to her was $9,000 higher than the total modified amount. In addition, claimant's attorney had properly filed for, and had been approved by the Commission, attorney's fees at an amount commensurate to the 55% disability rate. When the claimant's disability award was modified, claimant's attorney filed a new petition and the Commission reduced the attorney's fees commensurate to the modified award. Both Commission approvals called for the attorney's fees to be paid out of the final weeks of claimant's disability payments.

When Ms. Staley's attorney was not paid his legal fees, he first filed issues with the Commission to require the employer to pay the awarded attorney's fees. After the attorney (again) was found to be entitled to his fees Ms. Staley's employer appealed this order to the circuit court where the Commission's decision was upheld. The employer then appealed to the court of special appeals. The court of special appeals reversed the circuit court basing their decision on their belief that there were no reserve funds remaining for the benefit of the attorney. The court of appeals then granted certiorari.

In analyzing the issue herein, the court of appeals looked to two specific statutes under Maryland law. Judge Couch, writing for the majority, concluded that under Md. Ann. Code art. 101 § 57 (1985) and COMAR 14.19.01.21F (Rule 21 F), when attorney's fees are approved by the Commission, a lien is placed upon the compensation award in the amount approved. When a fee petition is filed by an attorney, the employer and its insurer are put on notice, and must put in escrow, the amount requested in the petition until the Commission approves the fee request. *See* Md. Ann. Code art. 101 § 57 (1985) and COMAR 14.09.01.21F. The escrow account and the lien on the funds therein remain in existence until the attorney receives his due compensation. 308 Md. at 48, 517 A.2d at 352, citing *Hoffman v. Liberty Mutual Insurance Company*, 232 Md. 51, 55-56, 191 A.2d 575, 577-79 (1962).

After looking at the two statutes, the court concluded that on the date of filing of the attorney's fee petition, the employer and its insurer were put on notice to segregate the amount requested from claimant's award and place it into escrow. Once the attorney's fees were approved by the Commission, the lien on that approved amount materialized. The escrow amount and the lien were not extinguished when the circuit court modified claimant's award. The only effect of the Commission's subsequent modified fee award was to change the sum held in escrow to the modified amount. *Id.* at 49, 517 A.2d at 352.

The court herein made it clear that this procedure for attorney's fees is followed even in the event that there is an overpayment in compensation. The court relied on the reasoning in *Hoffman, supra.* There, the Commission awarded compensation that was subsequently reduced on appeal. As in the case herein, the total modified award was less than what the insurer had already paid out. But in *Hoffman*, money had been put in escrow to satisfy attorney's fees. The insurer therein refused to pay attorney's fees arguing that when the court reduced the award, there was no money left upon which a lien could attach. In rejecting the insurer's contention, the court of appeals therein wrote that "an insurance carrier cannot defeat an attorney's statutory lien by applying funds held in escrow to satisfy an overpayment to a claimant." *Hoffman*, 232 Md. at 55-56, 191 A.2d at 587. Judge Couch concluded that *Hoffman* applies equally as well in this case.

The court in *Staley* also analyzed the court of special appeals' rationale for their reversal. The court of special appeals reasoned that funds for satisfaction of attorney's fees were accumulated only from the final weeks of compensation due a claimant. Because there was an overpayment here, the appellees were no longer able to reserve funds to pay the attorney. The court of appeals rejected this rationale on two grounds. First, the lower court's reasoning ignores the "clear requirement of Rule 21F that compensation funds must be placed in an escrow account no later than at the time the attorney files his fee petition. It is simply incorrect to conclude that the escrow account remains empty until one reaches the final weeks of compensation." 308 Md. at 51, 517 A.2d at 353. Second, and "more fundamentally," Judge Couch argued, "the intermediate appellate court's approach would encourage those in appellee's position to postpone establishing an escrow account and placing compensation funds therein until after an appeal of the claimant's award has been decided." *Id.* at 52, 517 A.2d at 353-54.

The court herein was quick to point out that this decision is in no way inconsistent with *Feissner v. Prince George's County*,