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# Recent Developments: 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

Christopher Hale

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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 66 $\frac{2}{3}$ % 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 deter-

mined 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*,

282 Md. 413, 384 A.2d 742 (1978). In *Feissner*, liability of the employer and its insurer was simultaneously discharged under a statutory offset provision when the claimant received superior benefits from a government pension plan. This discharge occurred before the attorney had filed a fee petition. However, in the case herein as well as in *Hoffman*, the appellee's liability was not discharged. The attorney's lien "subsequently did attach to a portion thereof, obligating the appellees to pay claimant's attorney." *Id.* at 53, 517 A.2d at 354.

The court in *Staley* has clarified any ambiguity that may have existed concerning the procedures to follow for attorney fees stemming from workers' compensation cases. It is clear that the court here has rightfully placed the interests of the compensation claimant ahead of governmental bureaucracy.

— Christopher Hale

**Dade County School Board v. Polite:**  
**FLORIDA ACCEPTS THE**  
**PREMISES EXCEPTION TO THE**  
**GOING AND COMING RULE FOR**  
**WORKERS' COMPENSATION**  
**BENEFITS.**

In *Dade County School Board v. Polite*, 495 So.2d 795 (Fla.App. 1 Dist. 1986), the District Court of Appeal of Florida affirmed the Deputy Commissioner's determination that a teacher's injuries were compensable in that they arose out of and in the course of employment. The District Court of Appeal of Florida also held that the teacher was not precluded from receiving benefits by the rule that an employee going and coming from work is normally considered outside the scope of his employment, thereby recognizing the premises exception.

In *Dade County*, a physical education teacher, Ms. Cheryl Polite, was injured when her automobile was struck by a hit-and-run driver after she had left a track meet. At the time of the accident she was returning the track equipment to the school from which she had borrowed it. Polite was employed by the Dade County School Board as a physical education teacher. Polite taught at North Glade Elementary School in the morning and at Lake Stevens Elementary School in the afternoon, five days a week. Although her workday officially ended at 3:05 p.m. daily, Polite participated in after-school activities which were officially encouraged and reflected in a positive fashion on teacher evaluations. Throughout Polite's employment she had

consistently participated in extracurricular activities with which the Dade County School Board had knowledge of and given its approval.

On the day of the accident, a track meet involving students from Polite's morning school, North Glade, was held at Skylake Elementary School in the afternoon. Polite was to teach physical education at Lake Stevens Elementary School that afternoon, but, on this day the Lake Stevens' students were released from school at 1:45 p.m. Nevertheless, Polite was required to remain until 3:05 p.m. Polite then requested and was granted permission to leave Lake Stevens earlier than 3:05 p.m. Before leaving Polite collected some of Lake Stevens' track equipment which she knew might be needed at the track meet. Because she felt that the equipment might be needed the following day by Lake Stevens' instructors, Polite intended to return the equipment immediately following the track meet.

Ms. Polite went to the track meet and assisted at the starting line. She left Skylake before 4:00 p.m. traveling the *only* road leading away from the school en route to Lake Stevens to return the track equipment. While on the road, Polite's automobile was struck in the rear by a hit-and-run driver, causing injury to her back, foot, right knee and right hand.

Appellants Dade County School District and their insurer, Gallagher Bassett Insurance Service, argued that Polite's claims for medical expenses should be denied because of the "going and coming rule." In the alternative, the appellants argued that Polite's injuries were not compensable because attendance at the meet was not in the course of her employment because there

was no requirement that she attend. The Deputy Commissioner in determining that the injuries were compensable held that the "after hours teacher participation was expected and considered in performance evaluations." 495 So.2d at 797. The Deputy Commissioner further held that Ms. Polite was not precluded from benefits by the going and coming rule because she was not traveling to her home, but was en route back to Lake Stevens to return the track equipment. Therefore, the commissioner determined that the injuries arose out of and in the course of Polite's employment, thereby allowing the medical benefits sought and not precluding them by the going and coming rule. *Id.* at 797.

The District Court of Appeal of Florida, in affirming the Deputy Commissioner's determinations, stated that the encouragement and reward by way of positive performance teacher evaluations was "competent" and "substantial evidence" to show Polite was in the course of her employment. *Id.* at 797. Further support for the court's holding was found in the fact that Polite "did not merely elect to attend" the after school activity since the activity was related to her field of expertise. The court also found other evidence from which it could have been reasonably inferred that "Polite arrived and assisted at the meet at least partially during her regular working hours, since she sought and obtained official permission to leave her afternoon assignment early in order to attend." *Id.*

In affirming the commissioner's decision that medical benefits are not precluded by the "going and coming rule," the court first stated the general proposition expounded in *Stacy v. Cherry Farms, Inc.*, 449 So.2d

