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Ametek v. O'Connor:

Employer and Insurer are Entitled to a Credit for the Number of Weeks Benefits Were Paid When a Workers' Compensation Award is Increased on Judicial Review

By Kimberly Lensing

In a case of first impression, the Court of Appeals of Maryland held that when a workers' compensation award of permanent partial disability benefits is increased on judicial review, the employer and its insurer are entitled to a credit for the number of weeks that benefits were paid, rather than a credit for the total amount paid. *Ametek v. O'Connor*, 364 Md. 143, 771 A.2d 1027 (2001). In so holding, the court focused on the language of Md. Code Ann., Lab. & Empl. §§ 9-627(k), 9-628, 9-629 (1999 & Cum. Supp. 2000), which demonstrates a legislative commitment to the payment of permanent partial disability benefits on a weekly basis, consistent with the purposes of the Workers' Compensation Act, Md. Code Ann., Lab. & Empl. tit. 9 (1999 & Cum. Supp. 2000).

Susan O'Connor ("O'Connor") filed a claim for workers' compensation benefits against her employer, Ametek, Inc. ("Ametek"), and its insurer, Home Indemnity, pursuant to the Workers' Compensation Act ("Act"). The Workers' Compensation Commission ordered Ametek and Home Indemnity to pay O'Connor permanent partial disability benefits of \$81 for 50 weeks for 10% loss of use of her body. Dissatisfied with the order, O'Connor filed a Petition for Judicial Review in the Circuit Court for Anne Arundel County.

There, her disability was increased from 10% to 70% loss of use of her body. On remand, the Commission increased O'Connor's benefits to \$134 for 467 weeks. Moreover, the Commission credited Ametek and Home Indemnity for the 50 weeks of compensation already paid and reduced O'Connor's award from 467 to 417 weeks.

O'Connor again sought judicial review in the circuit court and was awarded a judgment of \$2,650, for 50 weeks at \$53, to compensate her for the 50 weeks she received only \$81 per week. The court of special appeals affirmed the ruling, holding that Ametek and Home Indemnity were entitled to a credit based upon the actual amount paid and not the number of weeks benefits were paid. The Court of Appeals of Maryland granted certiorari, reversed the court of special appeals, and remanded the case with instructions to reverse the circuit court's judgment.

The court began its analysis by reviewing *Philip Elecs. N. Am. v. Wright*, 348 Md. 209, 703 A.2d 150 (1997), which controlled the result in *Ametek*. *Id.* at 148, 771 A.2d at 1075. In *Philip Electronics*, the claimant's workers' compensation award for a permanent partial disability was reduced on judicial review. The court held a credit based on the number of weeks benefits were paid was proper, rather than a credit for the actual amount paid.

Id. at 144, 771 A.2d at 1072, 1075. In so holding, the court focused on the language of Md. Code Ann., Lab. & Empl. §§ 9-627(k), 9-628, 9-629, and 9-630 (1999 & 2000 Cum. Supp.), which clearly and unambiguously revealed a legislative commitment to the payment of permanent partial disability benefits on a weekly basis. *Id.* at 149-50, 771 A.2d at 1076.

The *Philip Electronics* court first analyzed section 9-627(k), which authorized the claimant's award. It noted that subsection (k)(3) provides that the Commission shall award compensation for a loss up to 500 weeks. *Id.* at 149, n.1, 771 A.2d at 1075, n.1. The court further noted that a weekly framework is consistent with the purposes of the Act, which is to minimize hardship to the employee and his or her family. *Id.* at 146, 771 A.2d at 1075. The Act "compensate[s] employees for the loss of earning capacity resulting from accidental injury, disease, or death occurring during the course of employment." *Id.* at 155, 771 A.2d at 1078-79. The Act also benefits Maryland taxpayers by preventing the State from assuming the financial responsibility of caring for injured workers. *Id.*

Philip Electronics also addressed the remedial nature of the Act, which resolves any uncertainty in the claimant's favor. *Id.* That court

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acknowledged that when the intent of the legislature is unclear or ambiguous “this Court... may not stifle the plain meaning of the Act, or exceed its purposes, so that the injured worker may prevail” and “may not create ambiguity or uncertainty in the Act’s provisions where none exists ...” *Id.* Although the court of special appeals acknowledged the holding in *Philip Electronics* was consistent with the purposes of the Act, it nonetheless reached the opposite result in its decision in *Ametek*. *Id.* at 154, 771 A.2d at 1079.

The court of appeals analyzed section 9-627(k)(4), which references three sections of the Act that govern the award of permanent partial disability benefits and reinforce the weekly payment schedule. *Id.* Specifically, sections 9-628, 9-629, and 9-630 govern disabilities requiring benefits for a determined number of weeks. *Id.* at 150-51, 771 A.2d at 1076. Sections 9-629 and 9-630 (a)(1)(i) provide that the employer or its insurer pay the covered employee weekly benefits. *Id.* at 151, 771 A.2d at 1077. Based on the plain language of these sections, the court of appeals in *Philip Electronics* concluded “[t]hese statutory provisions reflect the intent of the General Assembly that the payment of permanent partial disability benefits be based upon a weekly framework.” *Id.* at 151-52, 771 A.2d at 1077. Although factually distinguishable, the court of appeals held that the analysis in *Philip Electronics*, involving the subsequent reduction of a workers’ compensation award, was nonetheless applicable to *Ametek* when the award has been subsequently increased. *Id.* at 152, 771 A.2d at

1077.

The court of appeals further noted that other jurisdictions have ruled similarly. *Id.* For example, in *Humpty Dumpty v. Moorehead*, 569 P.2d 998 (Okla. 1977), a credit was given to an employer for the number of weeks that benefits were paid. In that case, the claimant was originally awarded temporary total disability benefits of \$45 for 298 weeks and was later awarded 500 weeks of permanent total disability at a weekly rate of \$40. *Id.* The Oklahoma Supreme Court held “the calculation of credit for temporary total disability payments made ... is to be made on the basis of the number of weeks payments were made, and not on the basis of the amount of money paid out.” *Id.*

Ametek did not place the purposes of the Workers’ Compensation Act at risk because there was no overpayment by the employer or insurer and no risk that O’Connor would not receive her day-to-day support. *Id.* at 156, 771 A.2d at 1080. After the credit, O’Connor was entitled to an additional 417 weeks payable at a higher rate. *Id.* However, the court addressed the equity issue of the underpayment affecting O’Connor. *Id.* The court rejected a similar equity argument in *Philip Electronics* stating that whether “the overpayment ... is unjust or equitable must be considered in light of the operation of the Act as a whole,” and that “[a] single transaction does not represent the appropriate focal point to determine the fairness or equity of the application of the Act.” *Id.* at 156-57, 771 A.2d at 1080. The court held that O’Connor’s situation, an award that resulted in an underpayment, must be

considered in the context of the Act as a whole as well. *Id.*

The court of appeals’ holding in *Ametek* creates a bright-line rule governing the award of permanent disability benefits by requiring that the employer and insurer receive a credit for the number of weeks for which benefits were paid, rather than a credit for the total amount paid. This ensures that the Workers’ Compensation Act will be consistently interpreted in different claims. Although predictability makes the Act less flexible and allows for fewer exceptions, this uniform system guarantees every claimant receives equal treatment.