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~~Attorney General's Office~~
STATE OF MAINE *Retirement & Fixing of rights to benefits*

Inter-Departmental Memorandum Date June 29, 1976

To W. G. Blodgett, Exec. Secretary Dept. Maine State Retirement System
From Donald G. Alexander, Deputy Dept. Attorney General
Subject Workmen's Compensation Off-Set Applicable to Stephen D. Ellis

This opinion results from your request of March 24, 1976, and subsequent materials which you provided on the matter.

FACTS:

Mr. Stephen D. Ellis, an employee of the Lewiston Fire Department, a participating local district in the Maine State Retirement System was injured in a fall from an aerial ladder on May 23, 1973. Subsequently, medical records indicate that Mr. Ellis' injuries (broken bones in feet and ankles) were subject to continuing attention and review by doctors, it finally being determined that the injuries were such that Mr. Ellis would not be able to return to work. Therefore, on August 21, 1974, Mr. Ellis applied for a disability retirement allowance.

The law relating to disability retirement benefits in effect on May 23, 1973, provided that workmen's compensation payments paid by the State, but not by participating local districts, would be off-set against any retirement allowance payable on account of the same disability. Thus there was no off-set against workmen's compensation benefits payable to employees of participating local districts. 5 M.R.S.A. § 1122-5. By P.L. 1973, Chap. 122, the law relating to disability payments was amended so that workmen's compensation payments made to members eligible for disability retirement would be offset against retirement benefits regardless of whether the particular worker was employed by the State or a participating local district. That law became effective October 3, 1973, after Mr. Ellis' injury but prior to Mr. Ellis' application for retirement benefits.

The Maine State Retirement System proposes to apply the off-set of retirement benefits to the benefits Mr. Ellis received as a result of workmen's compensation. This decision was initially stated in a letter of March 20, 1975, to Mr. Ellis' attorney, and it has been subsequently confirmed by conversations and other correspondence. It is the position of the Maine State Retirement System that the date of application for disability benefits, not the date of injury, governs the applicability of the off-set provisions. This position is based on the provisions of law relating to application for disability benefits which applied at the time the application was made, i.e., August 21, 1974. That

law, 5 M.R.S.A. § 1122-2-A, commences with the words: "Upon the filing, with the Board of Trustees, of an application by a member in service or by his department head. . . ." In the Retirement System's view this provision indicates that the rights providing the off-set provisions are established as of the date of application for disability benefits.

QUESTION:

Are the off-set provisions which apply to Mr. Ellis' case those in effect as of the date of injury or those in effect as of the date of application for disability retirement benefits?

ANSWER:

The rights to receive benefits for an injury are fixed according to the laws in effect as of the date of injury unless the law clearly specifies otherwise. The law does not clearly specify otherwise in this case.

DISCUSSION:

Consideration of this matter initially requires examination of the principles of law which would apply to it. The matter is most analogous to workmen's compensation problems, therefore, in light of the lack of case law in Maine directly on point with regard to the provisions of the Retirement Law, examination of analogous workmen's compensation case law is most appropriate. In the area of workmen's compensation, a governing principle of the law is that compensation must be determined pursuant to the terms of the applicable statute, and such statutes must be construed liberally for the benefit of the injured employee, Flores v. Workmen's Compensation Board, 111 Cal. Rptr. 424 (1974); Hood v. Texas Indemnity Insurance Company, 209 S.W.2d 345; 99 C.J.S., Workmen's Compensation, § 289.

It is also generally established that: "The date of injury controls the time for filing claims, the amount of compensation to be paid, the coverage of an insurer. . . ." Brophy's Case, 99 N.E.2d 922, 923 (Mass. 1951); Flores v. Workmen's Compensation Appeals Board, supra, 430. Additionally, statutory changes which effect substantive rights such as the amount one is considered to be entitled to for an injury are viewed as operating prospectively only, Gianforte v. Crucible Steel Co. of America, 95 A.2d 632, 635 (N.J. 1953).

Therefore, according to these precedents, the rights of the person in question, Mr. Ellis, and the amount of compensation he is entitled to receive upon making an application would be set as of the date of injury, unless a statute

specified otherwise. The question then becomes whether the provisions of 5 M.R.S.A. § 1122-2-A, as they were in effect in 1973 and 1974 specify that rights are fixed upon the date of application as opposed to the date of injury. In this area, the statute is ambiguous. However, in light of the doctrine that statutes relating to workmen's compensation and disability are to be construed liberally in favor of the injury, it would appear that the most appropriate construction would be the obvious, that a member cannot collect benefits prior to the time the member applies for benefits. However, such construction would contain no implication that the right to benefits is fixed according to the statutes in effect as of the date of application as opposed to those in effect as of the date of injury. To construe the statute otherwise could have the adverse effect of benefitting a member who, after injury, quickly applied for disability benefits and made no serious effort to remain on the job while penalizing someone who, as Mr. Ellis' medical records seem to indicate, made considerable effort to be rehabilitated and get back on the job before deciding that such was not possible and applying for disability benefits. With an interpretation focusing on date of application, persons injured in the same incident on the same date theoretically could get widely varying benefits depending on when they applied for them. Fixing rights as of the date of injury would avoid such a result, give equity and clarity to the processing of all disability claims, and avoid confusion that may result from different application dates.

Therefore, it is our conclusion that the set-off provisions of law which apply to Mr. Ellis' case are those in effect on the date of his injury, May 23, 1973. Therefore, as Mr. Ellis is an employee of a participating local district, his disability retirement benefits should not be setoff against the workmen's compensation benefits he received.

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