

Commonwealth Court Finds that Workers' Compensation Offsets are Based upon Net, not Gross Receipts

The Commonwealth Court of Pennsylvania recently held that the offset of pension benefits received by a claimant is based upon the net amount received by claimant, not the gross pension amount. In so doing, the Court has effectively overruled its prior decisions on nearly identical issues.

In Philadelphia Gas Works (PGW) v. WCAB (Amodei)¹ the Commonwealth Court held that the workers' compensation offset an employer is entitled to take from a claimant's receipt of pension benefits is based upon the net amount of pension benefits, not the gross amount.

Although the Court had not previously spoken specifically to the manner in which an offset is taken from a claimant's pension benefits, in 1998 and 2004 it held in separate Decisions that an offset taken for severance payments and unemployment compensation (UC) benefits should be calculated using the gross amounts received by the claimant.²

Given that the pension benefits discussed in PGW, as well as severance benefits discussed and UC benefits, are governed by Section 204(a) of the Act,³ it must be concluded that the Court in the PGW case effectively overruled all prior holdings dealing with the manner in which Section 204(a) credits are to be taken. After PGW, the rule is now that offsets for severance, pension, UC and social security (old age) benefits must be

¹ Philadelphia Gas Works (PGW) v. WCAB (Amodei), No. 350 C.D. 2008, 2009 Pa. Commw. LEXIS 26, February 4, 2009.

² Steinmetz v. WCAB, 858 A.2d 182 (Pa Cmwlth. 2004), citing to Ferrero v. WCAB, 706 A.2d 1278 (Pa Cmwlth. 1998). The former case dealt with severance benefits; the latter with UC benefits.

³ Social Security (old age) offsets, in addition to pension, severance and UC offsets, are also discussed in Section 204(a) of the Act.

calculated based upon the net amount of benefits received by the claimant, not the gross amount.

While we don't wish to be alarmists, this is one of the bigger workers' compensation issues issued by the appellate courts in some time. It affects a huge class of employers and claimants. Anyone who has paid out or received a benefit mentioned in Section 204(a) of the Act - UC, severance, pension, and/or social security (old age) benefits - is effected. There is a concern that all claimants whose past benefits were subject to offsets taken against their gross receipts will now be filing petitions asking for money back because the offsets should have been taken on the net. While we will argue those cases are not effected by the instant holding, as PGW it represents a substantive change in the law, it is impossible to state with certainty that such an argument will succeed. What is certain is that going forward is that offsets must be calculated on net amounts received by the claimant.

In raising an additional cause for concern, the court in PGW clearly indicated that Bureau Regulations suggest that offsets should have been taken upon the net all along. Hence, one wonders whether we will be facing numerous Review and/or Penalty Petitions, with an additional 50% exposure on back due compensation.

Accordingly, your defense counsel must be prepared to argue that the mechanism of calculating the offset should still be taken based upon the gross amount received and that it is claimant's burden to then request the difference once the net amount is known in the next taxable year.

The Chartwell Law Offices, LLP, remains available at all times to handle the complex and indeed troubling holding of the PGW case, which could both retroactively

and prospectively cost the Workers' Compensation defense community notable amounts in back due compensation and possible penalties.

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