WC Appellate Division Decision issued on May 14, 2019 – Social Security Retirement Benefits and 14-Day Violation

Social Security Retirement Benefits and 14-Day Violation The Appellate Division recently issued a notable decision in a case titled Butler v. City of Portland. This decision addresses two issues: (1) the applicability of the Social Security retirement benefit authorized under the coordination of benefits provision in §221; and (2) whether a 14 day violation exists in the absence of an affirmative request for lost time benefits. The first argument was that the City of Portland was not entitled to take the statutory offset for Social Security retirement benefits being paid because the City had never contributed to the Social Security system on the employee's behalf. Based on the plain language of the statute, the Administrative Law Judge had rejected this argument and allowed the City to take the offset. The Appellate Division affirmed this finding and expressly noted that while the legislature could have implemented a provision limiting the offset to the contributing employer, it chose not to do so. The employee had also argued that a 14 day violation occurred when the City's insurer had failed to either increase his partial benefits to total or file a Notice of Controversy within 14 days of having actual knowledge that he was taken out of work in part due to his restrictions. The employee had been working part time in an accommodated position due to his work injury while receiving partial benefits based on his reduced wages. He ultimately left work when the City told him that they could no longer accommodate the restrictions. He took a disability retirement package and continued to receive partial benefits. The administrative law judge found that he did not seek an increase in incapacity benefits when he went out of work, neither did anyone on his behalf. Per these facts, the administrative law judge rejected the argument of a Rule 1.1 violation. On appeal, the employee did not dispute the factual findings but argued that the City's actual knowledge of his out of work status was sufficient to trigger Rule 1.1. The Appellate Division disagreed and affirmed the underlying decision. In doing so, they noted that Mr. Butler continued to have earning capacity and in fact found part-time work thereafter. "As a matter of law, he was not automatically entitled to benefits on account of the circumstances that ended his employment. To invoke the penalty provision in Me. WCB Rule, ch. 1, § 1, he had to make an affirmative claim for benefits." Of note, a footnote suggests a potentially different answer may have been reached if the employer had "knowledge 'from the circumstances of the injury' that is responsible to pay benefits. This could occur when an ALJ finds as fact an actual loss of earning capacity implied by the circumstances of the injury." We continue to recommend that Notice of Controversies be filed anytime when there is knowledge that an employee loses time as a result of an injury; regardless of whether a verbal assertion of a claim is made. With that said, this case will clearly be helpful in defending allegations of a 14 day violations premised on what the employer knew or should have known. Please feel free to contact Lindsey M. Sands, Esq. at lsands@nhdlaw.com with any questions.

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