HARRY ADAMSKI, Employee/Appellant, v. KENNETH SETTERHOLM'S FARM and STATE FUND MUT. INS. CO., Employer-Insurer, and SPECIAL COMPENSATION FUND.

WORKERS' COMPENSATION COURT OF APPEALS
MARCH 19, 1998

HEADNOTES

CREDITS & OFFSETS - SOCIAL SECURITY RETIREMENT; STATUTES CONSTRUED - MINN. STAT. § 176.101, SUBD. 4. Pursuant to Minn. Stat. §176.101, subd. 4, the employer and insurer are entitled to an offset from permanent total disability benefits for social security retirement benefits received by the employee, regardless of whether the employee qualified for and was receiving social security retirement benefits prior to the date of injury. An offset of old age benefits does not require that the eligibility for old age benefits be occasioned by the work injury or injuries which resulted in the eligibility for permanent total disability benefits.

Affirmed.

Determined by Wilson, J., Hefte, J., and Wheeler, C.J.
Compensation Judge: John E. Jansen

OPINION

STEVEN D. WHEELER, Judge

The employee appeals from the compensation judge's determination that the employer and insurer are entitled to an offset of social security retirement benefits pursuant to Minn. Stat. §176.101, subd. 4. We affirm.

BACKGROUND

This case was submitted on stipulated facts, without oral hearing below. The employee, Harry Adamski, was born on September 11, 1923. He began receiving social security retirement benefits as of March 1992. Although he was receiving retirement benefits, the employee continued working past retirement and, on July 9, 1993, was engaged in his employment with the employer, Kenneth Setterholm's Farm. On that date, the employee sustained a work-related injury, in the nature of bilateral wrist fractures.

After the injury, the employee was temporarily and totally disabled from July 9, 1993 to April 17, 1994. He returned to work for the employer from April 18, 1994 to February 1, 1996, after which he was taken off all work activities and was permanently and totally disabled. The employer and insurer paid various benefits as a result of the injury. Continuous temporary total disability benefits paid reached $25,000.00 on or about April 28, 1997. (Exh. A: Stipulation of Facts.)

The only contested issue before the compensation judge was whether the employer and insurer are entitled to an offset for the employee's social security retirement benefits pursuant to Minn. Stat. § 176.101, subd. 4. The compensation judge held that the offset provisions of that statute apply in the situation presented. The employee appeals.

STANDARD OF REVIEW

This case presents question of law. "[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers' Compensation Court of Appeals] may consider de novo." Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

DECISION

An offset from permanent total disability compensation of certain non-workers' compensation disability benefits received by an employee is mandated pursuant to Minn. Stat. § 176.101, subd. 4, which provides, in pertinent part, that permanent total disability compensation

> . . . shall be paid during the permanent total disability of the injured employee but after a total of $25,000 of weekly compensation has been paid, the amount of the weekly compensation benefits being paid by the employer shall be reduced by the amount of any disability benefits being paid by any government disability benefit program if the disability benefits are occasioned by the same injury or injuries which give rise to payments under this subdivision.

In addition, the same subdivision goes on to provide that "[t]his reduction shall also apply to any old age and survivor insurance benefits." This court has long interpreted the language of this provision to require the offset from permanent total disability payments not only of federal social security retirement benefits, but also of a variety of state and local government retirement benefits. See, e.g., Kramer v. City of St. Paul, 33 W.C.D. 425 (Minn. 1981) (police service pension retirement benefits); Wicks v. City of S. St. Paul, slip op. (W.C.C.A., Nov. 18, 1988) (retirement benefits provided under the Minnesota Public Employees Retirement Act (PERA), Minn. Stat. Ch. 353).

The compensation judge determined that an offset was mandated in this case by the statutory language requiring application "to any old age and survivor insurance benefits." On appeal, the employee offers three arguments against the application of the offset.

First, the employee argues that the language of this statute must be construed so as to permit the offset only where the old age or survivor insurance benefits to be offset are occasioned by the same injury or injuries which give rise to the workers' compensation payments. The statute does provide that an offset for non-workers' compensation disability benefits may only

be taken where those benefits are occasioned by the same injury or injuries for which the permanent total disability is payable. We note, however, that old age and survivor insurance benefits are inherently not benefits for which an individual qualifies by virtue of an injury or disability. Thus, such benefits would never be "occasioned by the same injury or injuries" which give rise to workers' compensation payments. Accordingly, to interpret the statute in such a manner as to apply the same "occasioned by the same injury" requirement to old age and survivors' benefits would render the statutory provision requiring offset of these benefits merely surplus language of no effect whatever. This court has previously considered the same argument and declined to construe the statute in the manner suggested by the employee. See, e.g., Jones v. Metropolitan Waste Control Comm'n, 42 W.C.D. 268 (W.C.C.A. 1989); Stresemann v. Little Jack's Steakhouse, 44 W.C.D. 408 (W.C.C.A. 1991). We again decline to adopt the construction urged by the employee.

The employee next argues that the offset of social security benefits in his particular case fails to comport with the underlying intent of the offset statute, and suggests that we should distinguish cases in which an employee's injury occurs in employment subsequent to the date of qualification for retirement benefits from cases where the injury occurs prior to entitlement to retirement benefits. The employee points out that, prior to the injury, he was receiving both social security benefits and an additional income from the job in which he was injured. He argues that applying the offset provisions of the statute in such a case results in a failure to fully compensate him for the loss of this additional wage income,[1] and suggests that an exception to the clear language of the offset statute should be made in the case of "those rare individuals in this society who are vigorous and healthy enough to continue working well beyond retirement age."

We fail to see any statutory basis here to make a distinction between employees who become permanently totally disabled prior to qualification for retirement benefits, and those who become permanently totally disabled subsequently. The statute mandates offset of "any" old age benefits, without such limitation or distinction.

Nor do we necessarily apprehend any unfairness. That an employee sustains a permanently and totally disabling injury prior to qualification for old age benefits does not necessarily mean that such an employee might not, except for the injury, have continued to work past the date of eligibility for those benefits. There is no direct correlation between an employee's age at the time of injury and the possibility that employee might otherwise have been capable or motivated to continue working past qualification for old age benefits. Many employees far

[1] We note, however, that the ongoing effects of the offset on permanently totally disabled employees are potentially mitigated in part by eligibility for supplementary benefits after a specified period of total disability, as provided under Minn. Stat. § 176.132. Subdivision 2(d) of that section provides that if "an eligible recipient is receiving . . . a reduced level of compensation . . . because of reductions resulting from the simultaneous receipt of old age or disability benefits, the supplementary benefit shall be payable for the difference between the actual amount of compensation currently being paid and 65 percent of the statewide average weekly wage as computed annually."

younger than 65 years of age accept an early "retirement" or reach a combination of age and service qualifying them for some level of benefits under military or public service pension plans, but continue on in a second career for many years. To determine whether or how any distinction should be made in applying the offset provisions to address such cases would involve balancing many public policy concerns, a function which in our system of government has been committed to the legislative, rather than the judicial branch.

Finally, the employee argues that a failure to make an exception to the offset statute in cases where the workers' compensation injury occurs subsequent to qualification for old age benefits constitutes an act of discrimination under the Federal Age Discrimination in Employment Act. The jurisdiction of this court is limited to the construction and application of the Minnesota Workers' Compensation Act. Minn. Stat. § 175A.01. We have no jurisdiction to consider the employee's discrimination claim, which must be addressed to another forum.