

RICHARD R. PRATT
(Appellee)

v.

S.D. WARREN COMPANY
(Appellant)

and

CCMSI
(Administrator)

Argued: September 21, 2017
Decided: April 30, 2019

PANEL MEMBERS: Administrative Law Judges Collier, Pelletier, and Stovall
BY: Administrative Law Judge Stovall

[¶1] S.D. Warren appeals from a decision of a Workers' Compensation Board administrative law judge (*Jerome, ALJ*) denying its Petition for Approval of Discontinuance of Incapacity Benefits. S.D. Warren contends that an employee's obligation under 39-A M.R.S.A. § 221(4) (Supp. 2018) to "make application" for regular social security benefits at the time the employee becomes age-eligible implies an obligation to accept the benefits applied for, rather than defer receiving benefits. We affirm the ALJ's decision.

[¶2] Mr. Pratt suffered a compensable back injury on January 21, 2011, while working for S.D. Warren. In a 2012 decree, he was awarded ongoing partial incapacity benefits, which continue. Mr. Pratt was born on July 8, 1949. He applied

for and began receiving social security disability benefits at age 63. He attained the regular retirement age of 66 on July 8, 2015. *See* 20 C.F.R. § 404.409 (2019). Thereafter, S.D. Warren informed Mr. Pratt of his obligation under 39-A M.R.S.A. § 221(4) to apply for regular social security retirement benefits, and to provide proof of his application and a release authorizing S.D. Warren to obtain his social security benefit information.

[¶3] Social security disability benefits automatically convert to regular retirement benefits at an applicant’s regular retirement age. 20 C.F.R. § 404.310. An employer may reduce incapacity benefits by 50% of the amount of social security retirement benefits received by the employee. 39-A M.R.S.A. § 221(3)(A)(1).

[¶4] When Mr. Pratt learned of the conversion from S.D. Warren’s notice, he applied for regular retirement benefits, but instructed the Social Security Administration to suspend his retirement benefit checks until age 70, so that he could obtain increased benefits at that later time. *See* 20 C.F.R. § 404.313. The deferment took effect after Mr. Pratt received one social security retirement benefit check, against which S.D. Warren took the allowable offset.

[¶5] S.D. Warren contends that section 221 required Mr. Pratt not only to apply for regular social security benefits, but also to accept them at the time he became eligible to receive such benefits. S.D. Warren asks us to construe the language in section 221(4) requiring an injured employee to “make application” for

benefits to also require that employee to accept those benefits at full retirement age, and to prohibit and the injured employee from deferring receipt of those benefits.

[¶6] Title 39-A M.R.S.A. § 221(4) provides:

Notification and release of social security benefit information. The board shall adopt rules to provide for notification by an employer to an employee of possible eligibility for social security benefits and the requirements for establishing proof of application for those benefits. Notification must be promptly mailed to the employee after the date on which by reason of age the employee may be entitled to social security benefits. A copy of the notification of possible eligibility must be filed with the board by the employer. Within 30 days after receipt of the notification of possible employee eligibility the employee shall:

- A. Make application for social security benefits;
- B. Provide the employer or carrier with proof of that application; and
- C. Provide the employer or carrier with an authority for release of information which may be used by the employer to obtain necessary benefit entitlement and amount information from the social security administration.

The authority for release of information is effective for one year.

[¶7] Compensation benefits may be discontinued if an individual fails to apply for social security retirement benefits, or provide the employer with a release of social security information. 39-A M.R.S.A. § 221(7). Nothing in section 221 “may be considered to compel an employee to apply for early federal social security old-age insurance benefits or to apply for early or reduced pension or retirement benefits.” *Id.* at § 221(8).

[¶8] “When construing provisions of the Workers’ Compensation Act, our purpose is to give effect to the Legislature’s intent.” *Hanson v. S.D. Warren Co.*, 2010 ME 51, ¶ 12, 997 A.2d 730. “In so doing, we first look to the plain meaning of the statutory language, and construe that language to avoid absurd, illogical, or inconsistent results.” *Id.* We also consider “the whole statutory scheme of which the section at issue forms a part so that a harmonious result, presumably the intent of the Legislature, may be achieved.” *Davis v. Scott Paper Co.*, 507 A.2d 581, 583 (Me. 1986).

[¶9] The Law Court recently construed section 221(1) to authorize an employer to take a credit against present incapacity benefits to recoup incapacity benefits paid during a period when, unbeknownst to the employer, the employee was collecting both social security retirement benefits and incapacity benefits. *Urrutia v. Interstate Brands Int’l*, 2018 ME 24, ¶ 21, 179 A.3d 312. The Law Court based its decision both on the plain language of section 221(1) and the legislative policy disfavoring double recovery. *Id.*

[¶10] This case is distinguishable. Neither the plain language of section 221(4) nor the policy against double recovery require the broad reading suggested by S.D. Warren. Instead, a plain reading of section 221(4) compels us to conclude that Mr. Pratt fulfilled his obligation under that provision. He provided proof that he applied for social security benefits and a release to S.D. Warren to gather information

regarding his eligibility for those benefits. Although an employee plainly must apply, no language in section 221 prohibits an employee from deferring receipt of social security retirement benefits until a date after regular retirement age. Moreover, at no point will there be a double recovery. When Mr. Pratt begins receiving social security retirement benefits, S.D. Warren will be entitled to coordinate those benefits with any incapacity benefits being paid, consistent with section 221(3).

The entry is:

The administrative law judge's decision is affirmed.

Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within twenty days of receipt of this decision and by filing a petition seeking appellate review within twenty days thereafter. 39-A M.R.S.A. § 322 (Supp. 2018).

Pursuant to board Rule, chapter 12, § 19, all evidence and transcripts in this matter may be destroyed by the board 60 days after the expiration of the time for appeal set forth in 39-A M.R.S.A. § 322 unless (1) the board receives written notification that one or both parties wish to have their exhibits returned to them, or (2) a petition for appellate review is filed with the law court. Evidence and transcripts in cases that are appealed to the law court may be destroyed 60 days after the law court denies appellate review or issues an opinion.

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