

BRIAN T. VAN CAMP
(Appellee)

v.

S.D. WARREN COMPANY
(Appellant)

and

CCMSI

Conferenced: December 6, 2017
Decided: March 12, 2018

PANEL MEMBERS: Administrative Law Judges Collier, Elwin and Hirtle
BY: Administrative Law Judge Hirtle

[¶1] S.D. Warren Co. appeals from a decision of a Workers' Compensation Board administrative law judge (*Knopf, ALJ*) granting Brian Van Camp's Petition to Compel Payment of Compensation. S.D. Warren had paid Mr. Van Camp workers' compensation benefits from March 7, 2015, to April 9, 2016, while he simultaneously received Old Age Social Security benefits. The ALJ construed 39-A M.R.S.A. § 221 (Supp. 2017) to bar S.D. Warren from withholding Mr. Van Camp's present weekly workers' compensation benefits until it recouped the past overpayment of such benefits caused by not contemporaneously coordinating workers' compensation and Social Security benefits.

[¶2] The ALJ's decision was based on *Urrutia v. Interstate Brands International*, Me. W.C.B. No. 16-35 (App. Div. 2016). In that case, an Appellate Division panel construed section 221(1) to limit coordination of workers' compensation and Social Security benefits to those benefits received during the same time period. *Id.* ¶ 7. The employer in that case was not permitted to reduce the current payment of workers' compensation benefits to recover a past overpayment caused by failure to coordinate the two kinds of benefits. *Id.* ¶¶ 7-9. The Law Court, however, granted appellate review and vacated the Appellate Division decision. *Urrutia v. Interstate Brands Int'l*, 2018 ME 24, ¶ 21, --- A.3d ---. The Law Court decision permits recoupment of past overpayments caused by missed offsets through a present payment holiday. *Id.* ¶ 13.

[¶3] The Law Court also determined that an administrative law judge is authorized, based on a hardship analysis pursuant to 39-A M.R.S.A. § 324(1) (Supp. 2017), to consider the financial effect of the employer's benefit payment holiday on the employee, and to tailor the implementation of that holiday to accommodate any hardship that the holiday creates. *Urrutia*, 2018 ME 24, ¶ 22. Accordingly, we remand the case to the administrative law judge to give the parties the opportunity to develop this issue further.

The entry is:

The administrative law judge's decision is vacated and the Petition to Compel Payment is denied. S.D. Warren is entitled to a credit in the amount of the offset that could have been taken from March 7, 2015, to April 9, 2016. Additionally, the case is remanded to the administrative law judge for proceedings addressing the application and effect of section 324, consistent with the Law Court's decision in *Urrutia*.

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. 2016).

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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