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### Recent Cases in Pennsylvania *by John W. Zatkos, Jr., Esq.*

#### **“Old age” offset provision provided for in Section 204(a) of the Workers' Compensation Act stands**

In *Caputo v. WCAB (Commonwealth of Pennsylvania)*, the injured worker argued that the offset provision in Section 204(a) of the Workers' Compensation Act that reduced her disability benefits by a portion of her Social Security retirement benefits, was a violation of the Pennsylvania Constitution. Ms. Caputo was injured in 2002 and was awarded disability benefits. In 2006, she began receiving social security retirement benefits and pension benefits from the State Employees Retirement System (SERS). The Employer promptly filed a Notice of Workers' Compensation Benefit Offset. The credit was equal to 50% of her Social Security benefit (about \$99.31 per week), plus a portion of her SERS pension benefit. In addition, the Employer suspended her disability payments to recoup its overpayment of nearly \$3000.

Section 204(a) of the Act permits employers or insurers to take a credit against Workers' Compensation benefits for other types of benefits payable to the injured worker, including Social Security retirement benefits. The thinking is that because the Employer helps to fund those benefits, it should receive a credit. Ms. Caputo argued this violates the Equal Protection Clause of Article I, Section 1 of the Pennsylvania

Constitution, which says that

like persons in like circumstances will be treated similarly. However...[t]he right to equal protection under the law does not absolutely prohibit the Commonwealth from classifying individuals for the purpose of receiving different treatment and does not require equal treatment of people having different needs. The prohibition against treating people differently under the law does not preclude the Commonwealth from resorting to legislative classifications provided that those classifications are reasonable rather than arbitrary and bear a relationship to the object of the legislation.

Ms. Caputo argued the offset was unreasonable because Workers' Compensation benefits and Social Security benefits serve different purposes. The Court decided in the Employer's favor, finding “50% of an individual's Social Security retirement benefit is reasonably related to the legitimate governmental objectives of reducing workers' compensation costs for Pennsylvania employers and encouraging Social Security beneficiaries to participate in the workforce.”

**What does this mean?** Employers are entitled to a 50% offset when an injured worker is collecting workers' compensation benefits and social security retirement benefits.

## The importance of social security to our veterans

The Social Security Administration's recent *Social Security Bulletin* included a study on the role of Social Security Benefits in the lives of our veterans and their families. According to that study, out of nearly 44 million adult Social Security beneficiaries, more than 1 out of 5 has served in the military. That means that veterans and their families comprise 35% of the Social Security beneficiary population.

The number of veterans receiving Social Security benefits approaches 9.3 million. Approximately 93% of beneficiaries who are veterans are age 62 or older. There were 771,000 veterans who were Social Security disability beneficiaries. Approximately one-half of which were under age 60 and overwhelmingly male (91.6%)

Thus the critical role of benefits and economic security for veterans is demonstrated by the above data. It is also important to note a steady increase in the number of female and minority veterans. It should be noted that widow beneficiaries are also an important group to consider.

This past summer a special report was issued entitled *Social Security: Serving Those Who Serve Our Nation*. This report speaks about the vital role that Social Security benefits plays for veterans and features case studies of retired veterans, veterans with severe disabilities, and young widows and children of deceased veterans who all depend on Social

Security benefits as a primary source of income.

Should you wish to review the report in full it is available at <http://socialsecurity-works.org/wp-content/uploads/2011/05/VeteransReportInHousePrintVersionFinal5-23-11.pdf>.

Our underlying point is that veterans should not be dissuaded in seeking Social Security benefits or in assuming that the only benefit they can obtain is veterans' benefits. Most veterans can receive both forms of disability benefits.

### What is a Contingent Fee?

A contingent fee is any fee for services provided where the fee is payable only if there is a favourable result. In the law, it is defined as a "fee charged for a lawyer's services only if the lawsuit is successful or is favorably settled out of court.... Contingent fees are usually calculated as a percentage of the client's net recovery."<sup>1</sup>

Many injured workers think it is better to be penny-wise and pound foolish by not hiring an attorney. By the time they contact our office, it is often too late for us to help them. We do not get paid unless we succeed, so it may make sense to hire an attorney to help you.

<sup>1</sup> Black's Law Dictionary (8th ed. 2004) p. 338.

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