VICTOR URRUTIA
(Appellant)

v.

INTERSTATE BRANDS INTERNATIONAL
(Appellee)

and

ACE AMERICAN INSURANCE COMPANY
(Insurer)

Argument held: February 4, 2016
Decided: October 31, 2016

PANEL MEMBERS: Administrative Law Judges Collier, Goodnough, and Knopf
BY: Administrative Law Judge Knopf

[¶1] Victor Urrutia appeals from a decision of a Workers' Compensation Board administrative law judge (*Stovall, ALJ*) granting his Petitions for Award and Review and granting Interstate Brands International's Petition to Determine Entitlement to Reduction of Compensation. In the decree, the ALJ found that Mr. Urrutia was totally incapacitated from a work-related injury, and also permitted Interstate Brands to stop benefit payments pursuant to 39-A M.R.S.A § 221(1) (Supp. 2015) until it exhausted a credit of $24,141.38 for Social Security retirement benefits that Mr. Urrutia received while concurrently receiving workers' compensation benefits. Mr. Urrutia contends that the ALJ erred in permitting a payment holiday for past overpayments because it does not comport with the plain language of section 221(1). We agree.

I. BACKGROUND

[¶2] Victor Urrutia sustained a work-related to injury to his low back, lower extremities, and upper extremities on July 19, 2009. The injury occurred when he slipped on a catwalk and hung onto a ladder to catch himself. Interstate Brands International started paying Mr. Urrutia total incapacity benefits in December 2010, and there is no dispute that Mr. Urrutia remained totally incapacitated at the time of hearing. Unbeknownst to Interstate Brands International, Mr. Urrutia had begun to receive Social Security retirement benefits in August 2010. Mr. Urrutia continued to receive both total incapacity benefits under the Workers' Compensation Act and Social Security retirement benefits through November 2013. Interstate Brands International began taking a weekly credit in November 2013, resulting in a reduction of Mr. Urrutia workers' compensation benefits. Mr. Urrutia does not contest the legality of this ongoing reduction in benefits.

[¶3] In addition to the ongoing reduction of presently paid workers' compensation benefits against presently paid Social Security retirement benefits, Interstate Brands International also sought permission, through its Petition for Reduction of Benefits, to essentially recoup the amount it "overpaid" to Mr. Urrutia from December 2010 through November 2013 in the amount of $24,141.38 by way of a *future* payment holiday: that is, to reduce ongoing workers'

compensation benefits on a weekly basis until the full amount of the *prior* workers' compensation benefit "overpayment" is recouped.

II. DISCUSSION

A. Statutory Construction

[¶4] When faced with a question of statutory interpretation, the Appellate Division first turns to the plain language of the statute and "construe[s] that language to avoid absurd, illogical or inconsistent results." *Estate of Joyce v. Commercial Welding Co.*, 2012 ME 62, ¶ 12, 55 A.3d 411. We will look beyond a statute's plain meaning only "if the statutory language is ambiguous;" that is, "if it is reasonably susceptible to different interpretations." *Id*.

[¶5] Title 39-A M.R.S.A § 221(1) provides, in part:

> **Application.** This section applies when either weekly or lump sum payments are made to an employee as a result of liability pursuant to section 212 or 213 with respect to the same time period for which the employee is also receiving or has received payments for:
>
> > A. Old-age insurance benefit payments under the United States Social Security Act, 42 United States Code, Sections 301 to 1397f;

The ALJ, allowing the credit, found there to be no language in the Workers' Compensation Act that requires payment of Social Security retirement benefits and workers' compensation benefits at the same time in order for an employer to receive a credit, and determined that the term credit, considered within the context

of section 221, meant something the employer is entitled to as a result of something already paid.

[¶6] Mr. Urrutia argues that the phrase "received or being received" applies when past-due workers' compensation benefits are awarded, permitting, for example, a one-time offset to be taken against a lump sum of retroactive Social Security retirement benefits. In that situation, he points out, the offset would be taken when incapacity benefit payments are made for "the same time period" in which the employee "has received" Social Security retirement benefits. Further, he contends that permitting an ongoing future workers' compensation benefit offset against Social Security retirement benefits that were received in the past would allow an offset to be taken for a different time period than the one in which the retirement benefits were received, which does not comport with the plain language of section 221.

[¶7] We agree. The plain language of section 221(1) requires that the offset or credit be taken "*with respect to the same time period*" for which the employee is also receiving or has received payments. (Emphasis added). The credit permitted by the ALJ has no express support in section 221 and it would permit an offset when weekly incapacity benefits are being made for a different period than that in which the employee received Social Security retirement benefits. This is in contravention of the plain meaning of the language in section 221(1). Thus, an

employer may not take a "credit" against ongoing workers' compensation benefit liability for Social Security retirement benefits received by an employee in the past.

B. Policy Considerations

[¶8] Interstate Brands International argues that the ALJ's interpretation of the offset provision is consistent with the purposes of the statute as articulated in *Jordan v. Sears, Roebuck & Co*., 651 A.2d 358 (Me. 1994), namely to reduce the cost of workers' compensation for employers and to prevent stacking or double recovery of wage loss benefits.[1] However, those were not the only purposes articulated by the Law Court:

> The legislative debate suggests that the purpose of section 62-B was to ensure a minimum income during the period of an employee's incapacity and to prevent a double recovery of both retirement and compensation benefits.

Id. at 360. Allowing an offset that is concurrent with receipt of more than one type of benefit effectuates both of the articulated purposes, whereas allowing an employer to take a payment holiday from paying benefits to compensate for an offset not taken previously does not.

[1] *Jordan* involved the interpretation of Title 39 M.R.S.A. § 62-B (1989), amended by P.L. 1991, ch. 885, §§ A-9-11, repealed by P.L. 1991, ch. 885, § A-7. Section 62-B, was the predecessor to 39-A M.R.S.A § 221, and it included similar but broader language than section 221. *See Jordan,* 651 A.2d at 359. Former section 62-B provided an offset for "*any period* for which [the employee] is receiving or has received old age insurance benefit payments under the United States Social Security Act," while section 221 specifies that the offset is for "*the same time period*" for which the employer is receiving or has received such benefits. (Emphasis added).

C. Statutory Authority to Recover Overpayments

[¶9] We find that there is no statutory authority in section 221 to support the recovery of, what is essentially, an overpayment of benefits.[2] In *Pelotte v. Purolator Courier Corp*., 464 A.2d 186 (Me. 1983), the employer argued that a right "to permit past overpayments to be set off against future periodic payments" could be implied from the language of the Act. The Law Court disagreed, noting that "the law of workers' compensation is uniquely statutory." *Id*. at 188; *see also Doucette v. Hallsmith/Sysco Food Servs*., 2010 ME 138, ¶ 5, 10 A.3d 692 ("we have consistently held that we are limited to the statutory remedies for repayment of benefits ultimately determined not to be properly paid"). In the absence of such statutory authority, it was error to allow Interstate Brands International to take a credit for an overpayment of benefits.

III. CONCLUSION

[¶10] Thus, to the extent that the ALJ's decision determines as a matter of law that Interstate Brands International was allowed to take a credit of $24,141.38, it is vacated.

[2] This is unlike 39-A M.R.S.A § 324(1) (Supp. 2015), which specifically authorizes the recovery of overpayments made pursuant to a decision by an administrative law judge that is later reversed on appeal or on a Motion for Findings of Fact and Conclusions or Law. That section also provides specific safeguards for the employee, including the consideration of any financial hardship or injustice that repayment of the benefits may cause.

The entry is:

> The administrative law judge's decision is vacated insofar as it concludes that Interstate Brands International is permitted to take a credit of $24,141.28.

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. 2015).

Attorney for Appellant:
James J. MacAdam, Esq.
Nathan A. Jury, Esq.
MACADAM JURY
208 Fore Street
Portland, ME 04101

Attorney for Appellee:
Stephen W. Moriarty, Esq.
NORMAN HANSON &
DETROY, LLC
P.O. Box 4600
Portland, ME 04112-4600