

JOHN R. MARTELL  
(Appellant)

v.

CITY OF PORTLAND  
(Appellee)

and

MAINE MUNICIPAL ASSOCIATION  
(Insurer)

Argued: July 12, 2023  
Decided: July 25, 2023

PANEL MEMBERS: Administrative Law Judges Elwin, Rooks, and Sands  
BY: Administrative Law Judge Sands

[¶1] John R. Martell appeals from a decision of a Workers' Compensation Board administrative law judge (*Knopf, ALJ*) on a Petition to Determine Proper Workers' Compensation Rate. Mr. Martell contends that the ALJ erred when determining pursuant to 39-A M.R.S.A. § 221(3)(A)(1)<sup>1</sup> that the City of Portland was entitled to coordinate his partial incapacity benefits with Social Security benefits

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<sup>1</sup> Title 39-A M.R.S.A. § 221(3)(A)(1) provides, in relevant part:

**Coordination of benefits.** Benefit payments subject to this section must be reduced in accordance with the following provisions.

- A. The employer's obligation to pay or cause to be paid weekly benefits other than benefits under section 212, subsection 2 or 3 is reduced by the following amounts:

(1) Fifty percent of the amount of the old-age insurance benefits received or being received under the United States Social Security Act.

received, even though the City had not paid into the Social Security system on his behalf.

[¶2] Despite Mr. Martell’s contentions, we conclude that the ALJ did not err when construing section 221(3)(A)(1) to authorize the offset. *See Hanson v. S.D. Warren Co.*, 2010 ME 51, ¶ 12, 997 A.2d 730 (stating that when construing provisions of the Act, we look first to plain meaning of the statutory language). The plain statutory language allows an employer to take a 50% offset of any Social Security benefit “received,” regardless of whether the employer contributes. *Butler v. City of Portland*, Me. W.C.B. No. 19-16, ¶ 14 (App. Div. 2019) (construing identical language in a prior version of the coordination of benefits provision, 39 M.R.S.A. § 62-B).

[¶3] Moreover, in light of the specific language in section 221(3)(A)(1), the ALJ did not err when determining that section 221(3)(F)<sup>2</sup> does not prohibit the offset. *Butler*, No. 19-16, ¶ 16 (quoting *Darling’s v. Ford Motor Co.*, 2003 ME 21, ¶ 7, 825 A.2d 344 (“Though we consider the language of a particular section of a statute in the context of the whole statutory scheme, we will not apply other sections to create doubt when the meaning of any phrase or section is clear standing alone.”)). We

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<sup>2</sup> Title 39-A M.R.S.A. § 221(3)(F) provides:

No savings or insurance of the injured employee independent of this Act may be taken into consideration in determining the compensation to be paid, nor may benefits derived from any source other than the employer be considered in fixing the compensation due.

further are unconvinced that section 221(3)(F) is intended to preclude the offset particularly in light of the plain language of section 221(3)(E).<sup>3</sup>

The entry is:

The administrative law judge's decision is affirmed.

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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.

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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<sup>3</sup> Paragraph E of 39-A M.R.S.A. §221(3) reads, in part, "Disability insurance benefit payments under the Social Security Act are considered payments from funds provided by the employer and are considered primary payments on the employer's obligation under section 212 or 213 as old-age benefit payments under the Social Security Act are considered pursuant to this section."