

SUPREME COURT OF FLORIDA  
TALLAHASSEE, FLORIDA

STATE OF FLORIDA,  
DEPARTMENT OF LABOR  
AND EMPLOYMENT SECURITY,  
WORKERS' COMPENSATION  
ADMINISTRATION TRUST FUND,

Petitioner,

vs.

CASE NO. 94,103

BOISE CASCADE CORPORATION  
and WAUSAU INSURANCE COMPANY  
and WILLIAM M. BOWMAN, JR.,

Respondents.

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**REPLY BRIEF OF PETITIONER**

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**CERTIFICATION OF TYPE SIZE AND STYLE**

This brief is typed with 12 point Courier New font.

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**PRELIMINARY STATEMENT**

In this Brief, the Petitioner, STATE OF FLORIDA, DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY, WORKERS' COMPENSATION ADMINISTRATION TRUST FUND, will be referred to as "the Division." The Respondent WILLIAM M. BOWMAN, JR. will be referred to as "Mr. Bowman" or "the claimant." The Respondents BOISE CASCADE CORPORATION and WAUSAU INSURANCE COMPANY will be referred to as "Employer/Carrier" or "E/C."

References to the Record on Appeal will be referred to as "R-Vol.\_\_\_\_, p. \_\_\_\_."

## ARGUMENT

THE FIRST DISTRICT COURT OF APPEAL ERRED IN RULING THAT THE PETITIONER CANNOT INCLUDE ANNUAL INCREASES IN PERMANENT TOTAL DISABILITY SUPPLEMENTAL BENEFITS IN THE OFFSET.

In its Answer Brief, the Respondent attempts to minimize the Division's fiscal argument by stating that the Division has not had an obligation to pay PTD supplemental benefits since July 1, 1989. Although the Division is not responsible for payment of PTD supplemental benefits after July 1, 1984, presently there are still approximately 3,300 cases in which the Division pays PTD supplemental benefits. A large percentage (25%) of the Workers' Compensation Administration Trust Fund expenditures each year is for PTD supplemental payments on these 3,300 cases. Thus, although the Division is not currently incurring additional liability of PTD supplemental payments, the liability it currently has on 3,500 cases cannot be ignored and the fiscal impact of the decision in this case on those 3,500 cases should not be overlooked by this Court.

The Respondent attempts to distract this Court from considering the windfall that claimants receive under the First District Court of Appeal's decision in this case by arguing that the WCATF, employers, and self-insureds received a windfall in 1996 due to the First District Court of Appeal's decision in Holley v.



Ace Disposal, 668 So. 2d 645 (Fla. 1<sup>st</sup> DCA 1996). This case is irrelevant to the instant case. The Holley case required all PTD claimants to apply for social security disability benefits, and has nothing to do with the calculation of the social security offset, the issue in this appeal. The impact of the Holley decision on Medicare is also irrelevant in the instant case.

The Respondent argues that the WCATF was administered improperly in this case because the Division failed to apprise itself of the status of the claimant's dependents. Neither the statute (Chapter 440, Florida Statutes), the case law or administrative rules impose a duty on the Division to regularly check on the status of claimant's dependents. The record evidence in this case demonstrates that once the Division was notified of the claimant's dependents' change in status, the claimant's benefits were promptly amended to reflect the changes. (R-Vol. I- p. 45)

Additionally, this issue is irrelevant in the instant case because the issue before this Court is whether the annual increases in PTD supplemental benefits can be included in the offset calculation. If the Respondent wanted to argue the issue of whether the Division must update its records to reflect the change in the claimant's dependents' status, it should have done so by cross-appeal in the First District Court of Appeal. This issue,

however, was not raised in the District Court and thus should not be addressed by this Court.

Finally, the Respondent requests his attorney's fees be paid by the Division. The case law is well settled in this regard. Penalties, interest, attorney's fees or costs are not available from the Division for nonpayment of supplemental benefits unless statutory authority exists for the award. Shipp v. State of Florida Workers' Compensation Trust Fund-, 481 So. 2d 76, 79 (Fla. 1<sup>st</sup> DCA 1986) (denying penalties, interest and attorney's fees); Knight v. City of Miami, Dept. of Labor & Employment Sec., 421 So. 2d 21 (Fla. 1<sup>st</sup> DCA 1982) (denying attorney's fees); Dept. of Labor & Employment Sec. V. Vaughan, 41 So. 2d 294, 295 (Fla. 1<sup>st</sup> DCA 1982) (denying interest). There is no statutory authority for an award of attorney's fees against the Division in a case such as the case at bar. The Respondents have not cited any valid reason or authority for a change in the current case law. In fact, the record reflects that as soon as the Division was made aware of the claimant's dependents' change in status, it properly corrected its records and increased the claimant's PTD supplemental benefits.

For the reasons set forth above and in the Initial Brief the Division requests this court reverse the First District Court of Appeal's decision that annual increases in permanent total

supplemental benefits cannot be included in the offset taken by the Division.

**CONCLUSION**

The First District Court of Appeal's decision that the Division cannot include the annual increases in permanent total supplemental benefits in the offset taken should be reversed. This Court should also deny the Respondents' request for attorney's fees, as attorney's fees cannot be assessed against the Division for nonpayment of PTD supplemental benefits.

Respectfully submitted this \_\_\_\_\_ day of January, 1999.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Brief has been furnished by U.S. Mail to Irvin M. Meyers, Esquire, Attorney for Bowman, 17 South Lake Avenue, Orlando, FL 32801; and to Richard H. Weisberg, Esquire, Attorney for Employer/ Carrier, 201 East Pine Street, 15<sup>th</sup> Floor, Orlando, FL 32801, this \_\_\_\_\_ day of January, 1999.

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Katrina D. Callaway