

Reminder to Employers: Keep an Eye on Potential Offsets Against PA Workers' Compensation Benefits

By: Sandra L. Niemotka
Workers' Compensation Alert
 3.4.22

The Pennsylvania Workers' Compensation Act (Act) was amended in 1996 to allow an employer to take an offset against workers' compensation wage loss benefits for 50% of Social Security retirement benefits received, if that begins after the work injury. The Act does not allow the offset to be taken for Social Security disability benefits. However, employers and their insurance carriers can take a credit against workers' compensation benefits when a claimant who is receiving Social Security disability benefits reaches his/her retirement age. *Ropoch v. WCAB (Cmwlth. of Pennsylvania/DPW)*, 941 A.2d 726 (Pa. Cmwlth. 2008).

In *Ropoch*, the claimant suffered a work-related injury to his back on July 3, 1997, while in the course and scope of his employment with the Commonwealth of Pennsylvania. The claimant began receiving temporary total disability benefits as a result. Subsequently, the employer, through its workers' compensation carrier, filed a Notice of Benefit Offset based on the claimant's receipt of Social Security benefits as of April 3, 2006. On that date, the claimant's Social Security disability benefits were converted to Social Security retirement benefits pursuant to operation of law as contained in the United States Code dealing with those benefits.[1] The claimant filed a Petition to Review Compensation Benefits Offset, alleging that the employer was inappropriately taking an offset. The Workers' Compensation Judge denied the Petition to Review, noting that once the claimant achieved his full retirement age (in this instance 65 ½ years old), the Social Security disability benefits automatically converted to retirement benefits and the employer was entitled to a credit. The Workers' Compensation Appeal Board and the Commonwealth Court affirmed, stating the language in the Act is clear, unambiguous and mandatory.

Employers in Pennsylvania and their insurance carriers should review their files to determine if a workers' compensation claimant who is receiving Social Security disability benefits has reached his/her full retirement age. If such is the case, the carrier should file a Notice of Benefit Offset (LIBC-761). A potential offset should always be a consideration in estimating future liability for workers' compensation wage loss benefits. This can have a positive impact on settlement negotiations and in setting indemnity reserves.

The below information can be found on the Social Security Administration website:

Year of Birth:	Full Retirement Age:	Year of Birth:	Full Retirement Age:
1937 or earlier	65	1943 - 1954	66
1938	65 and 2 months	1955	66 and 2 months
1939	65 and 4 months	1956	66 and 4 months
1940	65 and 6 months	1957	66 and 6 months
1941	65 and 8 months	1958	66 and 8 months
1942	65 and 10 months	1959	66 and 10 months
		1960 and later	67

If you have questions or would like more information, please contact Sandra Niemotka (niemotkas@whiteandwilliams.com; 215.864.6338).

[1] 42 USC § 423 (a)(1)(B) and 42 USC §416 (i)(2)(d) indicate that Social Security disability benefits convert to Social Security retirement benefits when the person attains his/her full retirement age.