

HOW MUCH DEFERENCE DOES THE WISCONSIN COURT OF APPEALS GIVE A STATE AGENCY DECISION?

Recently a case was decided by the Wisconsin Court of Appeals on the subject of whether worker's compensation benefits are subject to the social security offset. In Michaels Pipeline v. LIRC, decided in March, 2008, a Michaels Pipeline injured employee receiving temporary disability benefits while engaged in a vocational rehabilitation program discovered that his temporary disability benefits were being offset by social security benefits. He objected and both the administrative law judge of the Wisconsin Department of Workforce Development, Worker's Compensation Division, and the LIRC determined that the social security offset may not be taken against payments during a period that the injured employee is receiving vocational instruction. Michaels appealed.

The Court of Appeals held that the court's standard practice in reviewing a state agency's conclusions of law and statutory interpretation are applied at three different levels of deference to the agency's decision. The Court stated that the agency's decision would receive "great weight" deference if the agency's experience, technical competence and specialized knowledge aid the agency in its interpretation and application of the statutes. The Court said that it would only give "due weight" deference to an agency decision that addresses what are very nearly issues of first impression. Finally, it stated that in reviewing an agency's conclusions of law and statutory interpretations where it was clear that the agency had no special expertise or experience in resolving the legal question presented would result in the Court's review without deference to the agency's interpretation.

Under the circumstances in the Michaels Pipeline case, the Court concluded that "due weight" deference was appropriate in reviewing the DWD and LIRC decisions. The Court held that LIRC's conclusion that the offset does not apply because the DWD followed a practice that the offset does not apply was not based upon sound reasoning or special expertise. It noted that

the Worker's Compensation Division offered no legal analysis as to why the social security offset did not apply during vocational rehabilitation and the LIRC had addressed the question in only two cases in the past 16 years.

In responding to the LIRC's argument that the worker's compensation law should whenever reasonably possible be liberally construed in favor of compensation, the Court of Appeals agreed but said that such liberal construction must give way to clear statutory language. The Court noted that worker's compensation benefits derive solely from legislative enactments and said, "We ascertain nothing in the statutes that authorizes LIRC to recast temporary disability benefits as vocational rehabilitation benefits at its discretion. Temporary disability, the term the legislature defined to include the period during which the employee receives vocational rehabilitation, is the same term the legislature employed when crafting the social security offset." The Court concluded that LIRC's legal conclusion that the offset did not apply when the statute said it did bordered on the unreasonable.

This case is a helpful example that the courts will reject the legal position of the Worker's Compensation Division of DWD and the LIRC decisions awarding benefits where the Wisconsin statutes do not support the agencies' decisions. All too often, employers assume that the state's position on matters of employment are the final word on the subject. The Michaels Pipeline case is a good example that these agencies are to carry out the laws as passed by the legislature...rather than simply providing liberal statutory constructions favoring benefits.