UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1937

September Term, 2014

CHARLES C. REGER

v.

WASHINGTON COUNTY BOARD OF EDUCATION, et al.

Krauser, C.J.,
Kehoe,
Leahy,

JJ.

Opinion by Leahy, J.

Filed: August 5, 2016

On November 12, 2007, Appellant Charles C. Reger, Jr., was injured in an on-the-job accident at Williamsport High School. Mr. Reger sought and received both workers' compensation benefits and disability retirement benefits based on his work accident. On October 23, 2013, Appellees, the Washington County Board of Education and the Maryland Association of Boards of Education Workers' Compensation Self-Insurance Fund, filed issues with the Workers' Compensation Commission ("WCC") arguing that, under Maryland Code (1991, 2008 Repl. Vol.), Labor and Employment Article ("LE") § 9-610, the benefits paid for Mr. Reger's injury through workers' compensation should be offset by Mr. Reger's disability retirement benefits. On November 13, 2013, the WCC found that Appellees were entitled to the offset under LE § 9-610.

Mr. Reger appealed, and the Circuit Court for Washington County, on cross motions for summary judgment, upheld the WCC decision on September 24, 2014. The court decided the statutory offset applied because the ordinary retirement benefits and the workers' compensation benefits that Mr. Reger received were tied to the same injury and incapacity and operated mutually as wage loss benefits for his position as a custodian.

On October 17, 2014, Mr. Reger filed a notice of appeal. On appeal, Mr. Reger asks: "Should a claimant be denied workers' compensation benefits[] when he receives retirement disability [benefits] for reasons other than his workers' compensation accident?"

We conclude the circuit court did not err in determining that Mr. Reger's workers' compensation and disability retirement benefits served as wage loss benefits tied to the same underlying injury and incapacity. Accordingly, we hold that the offset provision in

LE § 9-610 must be applied to ensure only a single recovery for the single injury. We affirm.

BACKGROUND

Mr. Reger worked for the Washington County Board of Education as a custodian for approximately 29 years. According to his deposition testimony, Mr. Reger suffered injuries to his neck, back, left leg, and left elbow while he was at work on November 12, 2007, and a large cafeteria table fell on him as he was moving it. Mr. Reger claimed that he had never injured his lower back prior to that date. He recalled (without specifics) an earlier injury but did not believe that injury involved his back and stated: "I can't remember what day or what year it was. I had an injury. Something about a file cabinet but I was okay with that." Mr. Reger also testified that, prior to the November 12 accident, he had never received any medical treatment for his back or neck.

Mr. Reger was able to work on light-duty for a period of time following the accident but, after May 13, 2008, he was unable to return to work as a custodian. According to Mr. Reger, he could no longer work as a custodian as a result of the injuries to his neck, back, and leg suffered during the November 12 accident.

Medical Treatment Reports

Approximately three and a half months after his work injury, on February 29, 2008, Mr. Reger saw Dr. Thomas Larkin at Parkway Neuroscience and Spine Institute about his

injuries. Dr. Larkin's notes indicated a diagnosis of "SPONDYLOLISTHESIS (738.4)."[1] After a follow-up visit on or about March 19, 2008, "CERVICAL STENOSIS (723.0)" was added to Mr. Reger's diagnosis. Dr. Larkin's reports from subsequent visits on June 4, July 2, and September 10, 2008 each list Mr. Reger's past medical history as "Arthritis, Depression, [and] Myocardial Infarction." In a letter dated November 24, 2008, Dr. Larkin stated that Mr. Reger "had a pre-existing spondylolisthesis" but "his current condition is a result of his accident at work."

Mr. Reger presented to Dr. Charles Sansur on December 1, 2009, for a surgical consultation and examination. Dr. Sansur wrote to Dr. Larkin and stated that Mr. Reger "was found to have a resultant spine injury from [the November 12, 2007] accident and has a diagnosis of a L5-S1 spondylolisthesis with pars fractures bilaterally." On March 10, 2010, Mr. Reger underwent lumbar surgery—a surgical fusion at L5-S1—and, thereafter, participated in rehabilitative treatment. The follow-up independent medical examination ("IME")—conducted by Orthopaedic Surgeon Robert A. Smith, M.D. as part of Mr. Reger's workers' compensation claim—indicated that by September 2010, Mr. Reger had reached maximum medical improvement from the "Grade I spondylolisthesis" resulting from his work accident.

[1] Under the International Classification of Diseases, 9th Revision, Clinical Modification ("ICD–9–CM") promulgated by the World Health Organization, diagnosis code 738.4 corresponds to Acquired Spondylolisthesis. Spondylolisthesis is "[t]he slipping forward (or occasionally backward) of a vertebra over the one below it." The American Medical Association, *Encyclopedia of Medicine*, 935 (Charles B. Clayman, ed. 1989).

However, on November 16, 2010, Dr. Sansur wrote another letter to Dr. Larkin stating:

> While the accident in 2007 is not the exact cause of [Mr. Reger's] spinal stenosis, it is quite clear that such an incident certainly exacerbated his symptoms and resulted in him requiring further medical and surgical treatment. While his lower back has been treated, the cervical spine and ulnar neuropathy appear to [be] progressing, and it is my feeling that these conditions have been worsened by the accident.

Contemplating a second surgery, Mr. Reger underwent another IME, this time at Georgetown University Hospital. Following the IME related to Mr. Reger's continuing workers' compensation claim, Neurosurgeon Dr. Kevin M. McGrail reported on April 5, 2011:

> The history, which I obtained from [Mr. Reger] in the office today, as well as the medical records reveal that [Mr. Reger] suffered a work-related accident which occurred on 11/12/2007. He was working as a custodian for the Board of Education in Washington County, Maryland. He was moving a large table when that table fell on him knocking him to the ground.
>
> Following this traumatic injury, [Mr. Reger] complained of pain and discomfort involving his neck, upper extremities, as well as his lower back.

The Workers' Compensation Claim

Following the accident, Mr. Reger received initial temporary total disability payments from the insurer, the Maryland Association of Boards of Education, for the period from March 6, 2008, through July 15, 2008. On July 18, 2008, Mr. Reger filed an Employee's Claim with the WCC based on the November 12, 2007 accident seeking continued temporary total disability payments. In his claim, Mr. Reger stated that the

accident occurred when he was "moving [a] large cafeteria table – table fell on me and I fell to [the] floor hurting my back, neck, and hand and legs."

On November 7, 2008, the WCC held a hearing on Mr. Reger's claim. At that time, Mr. Reger sought continued benefits based on a surgical recommendation from his physicians. During direct examination, in an attempt to prove a causal connection between the accident and the contemplated surgery, Mr. Reger testified that he had never missed any time from work or sought any medical treatment for "any back problems" prior to the November 12 accident. When questioned about an earlier injury involving a file cabinet, Mr. Reger acknowledged going to after-work physical therapy but denied that the injury had resulted in any back problems. The WCC entered an order finding that Mr. Reger had reached maximum medical recovery and that the requested lumbar surgery was not causally related to the November 12 accident.

On November 24, 2008, Mr. Reger filed a request for rehearing before the WCC. Attached as an exhibit, he provided a letter from his treating physician, Dr. Larkin, that stated:

> [Mr. Reger] had a pre-existing spondylolisthesis in which he managed to work effectively for years with this problem until he had an accident at work. This temporal relationship of his accident indicates to me that there is a reasonable degree of medical certainty that his current condition is a result of his accident at work.

Rehearing was denied.

Mr. Reger promptly sought judicial review of the WCC's decisions in the Circuit Court for Washington County, and a one-day jury trial was held on September 9, 2009.

The jury returned a verdict finding that Mr. Reger's lumbar surgery was causally related to the November 12 accidental injury. On September 16, 2009, the circuit court vacated the order of the WCC and remanded to WCC for entry of an order

> finding that 1 Mr. Reger has not attained maximum medical improvement with regard to his work-related back injury. 2 That Mr. Reger's need for back surgery is causally connected to the accidental injury of November 12, 2007, and Mr. Reger was temporarily totally disabled from July 16, 2008 to September 9, 2009[.]

A year later, on or about September 27, 2010, Mr. Reger was notified that, based on the IME report prepared by Dr. Smith on September 23, 2010, his temporary total disability payments were being terminated because he had reached maximum medical improvement. Once again, Mr. Reger filed issues with the WCC, and on January 5, 2011, Mr. Reger again appeared before the WCC.

By this time, Mr. Reger had undergone the contemplated lumbar surgery and his physician was recommending cervical spine and left elbow surgery. Again, Mr. Reger testified that prior to November 12, 2007, he had never had any discomfort or sought treatment for a problem with his neck. In an order dated January 10, 2011, the WCC found that Mr. Reger was entitled to temporary total disability from September 25, 2010, and continuing "until the completion of an independent neurosurgical evaluation and assessment." The WCC found that the disability to Mr. Reger's elbow was not causally related to the November 12 accident and reserved ruling on whether the cervical spine injury was causally connected to the accident until the independent neurosurgical report

was submitted. The parties engaged Kevin McGrail, M.D. to conduct another IME and prepare the neurosurgical report (quoted above).

On or about November 11, 2011, and after reviewing the neurosurgical report, the WCC denied coverage for Mr. Reger's cervical surgery. Mr. Reger filed a petition for judicial review of that decision on December 14, 2011. Following another one-day jury trial in August 2012, the WCC's November 2011 order was vacated and Mr. Reger's cervical surgery was found to be causally related to the November 12, 2007 accident. Nevertheless, Mr. Reger's temporary total disability terminated on October 26, 2012.

On May 7, 2013, Mr. Reger filed issues with the WCC, again, seeking additional workers' compensation benefits. Following a hearing on July 18, 2013, the WCC awarded Mr. Reger continuing benefits from August 12, 2012 to June 9, 2013 and from June 23, 2013 going forward in the amount of $843.00 per week.

The Application for Disability Retirement Benefits

After the November 2008 WCC decision finding that he had reached maximum medical recovery, Mr. Reger sought benefits through a different avenue and filed an application with the Maryland State Retirement Agency for accidental disability retirement benefits on or about February 23, 2009. In his application, Mr. Reger's witness, Bob Miller, described the November 12 accident stating, "[Mr. Reger] was moving a folding table with assistance of Bob Miller (another custodian) when table lost balance and fell on Mr. Reger's legs and put him to the floor, landing hard on his back." The State Retirement Agency's "Physician's Medical Report," dated February 23, 2009, indicated that Mr. Reger

had been diagnosed with "cervical spinal stenosis" and "lumbosacral spondylosis" and was unable to work at that time.

On August 19, 2009, the Medical Board of the State Retirement and Pension System of Maryland issued its written recommendation, which stated:

> It is the recommendation of the Medical Board that [Mr. Reger] be approved ordinary disability due to cervical spondylosis and stenosis lumbar spondylosis. The medical evidence submitted supports a conclusion that the member is permanently disabled and unable to perform his job duties.
>
> However, the Medical Board denied accidental disability since the evidence submitted concerning the accident did not prove that this event caused the permanent disability.

(Emphasis in original). On September 15, 2009, the Disability Unit of the State Retirement Agency transmitted a letter to Mr. Reger accepting the Medical Board's recommendation, that Mr. Reger was "entitled to an ordinary disability, due to Cervical Spondylosis and Stenosis Lumbar Spondylosis." (Emphasis in original). Mr. Reger's accidental disability claim, however, was denied based on the Medical Board's recommendation. The letter outlined three options for Mr. Reger:

1. Accept an ordinary disability retirement allowance and withdraw your claim for an accidental disability retirement allowance.

2. Accept an ordinary disability retirement allowance and pursue your claim for an accidental disability retirement allowance.

3. Accept a service retirement, if eligible or continue to receive your service retirement allowance and pursue your claim for an accidental disability retirement allowance.

On November 12, 2009, Mr. Reger submitted a letter of intent to the Medical Board Secretary electing the first option and withdrawing his accidental disability retirement

claim. Mr. Reger began receiving ordinary disability benefits from the State Retirement and Pension System on a payment schedule that began on his date of retirement, March 1, 2009.

Appellees' Request for Benefit Offset

Mr. Reger received both ordinary disability retirement benefits and workers' compensation temporary total disability payments for various periods from July 2009 to July 2013. On October 23, 2013, Appellees filed issues with the WCC arguing that, under LE § 9-610, the benefits paid for Mr. Reger's injury through workers' compensation should be offset by Mr. Reger's disability retirement benefits. On November 8, 2013, another hearing was held before the WCC. Mr. Reger argued that the two benefits were "not at all [for] the same condition" and that "there is clear evidence that there is pre-existing [injury]." Mr. Reger further argued that the State Retirement Agency granted Mr. Reger ordinary (rather than accidental) disability retirement benefits, and, therefore, the WCC was bound by the agency determination that the benefits were not for accidental injury. Mr. Reger maintained that the workers' compensation benefits were properly for aggravation of the pre-existing condition by the November 12, 2007 accident. Appellees countered that both benefits stem from the November 12, 2007 accidental injury, and that the legislature clearly "want[ed] to prevent a public employee from receiving benefits from two sources for the same problem."

By order dated November 13, 2013, the WCC found that Appellees were entitled to an offset under LE § 9-610 and were, therefore, entitled to a credit against future awards

in the amount of $54,486.50. Thus, until the remaining credit balance was exhausted, Mr. Reger was not entitled to additional workers' compensation benefits.

Mr. Reger appealed the WCC's decision on November 22, 2013 under Maryland LE § 9-737, and requested a jury trial pursuant to LE § 9-745. Thereafter, the parties each filed motions for summary judgment. Both parties averred in their respective motions that there were no disputed facts and that the controversy was appropriate for disposition on summary judgment. On September 24, 2014, the circuit court held a hearing on the cross-motions for summary judgment.

Before the circuit court, Mr. Reger argued that his award of temporary total disability benefits from the WCC was distinguishable from his award of ordinary disability retirement benefits because the retirement benefits were for a permanent partial disability rather than a temporary total disability. Appellees responded, arguing that Mr. Reger was involved in a work related accident on November 12, 2007, which he used as the basis for requesting both workers' compensation and disability retirement benefits. Appellees noted that Mr. Reger testified three times that he had never experienced physical problems with his neck or back in performing his job duties prior to the 2007 accident. Counsel for Appellees stated:

> It doesn't matter whether [the retirement benefit] was accidental or ordinary. It matters whether or not the conditions for which he was granted both benefits are the same. And they are. He cannot say that – I was granted these ordinary disability benefits because of spondylosis in his back and in his neck. He didn't even know he had it.

Ruling on the record, the circuit court stated:

> Now in the instant case, the same medical records were used to receive both the ordinary retirement disability payment as well as the Workers' Compensation awards in this case.
>
> The injury occurred November 12th, 2007. The Workers' Compensation claim [was] first filed May 27, 2008. That resulted in a Circuit Court order where a jury reversed, as I recall, the Commission's order. It said the back surgery was causally related to the November 12th, 2007 accident.
>
> And then September 15th, 2009, the state retirement agency accepted the plaintiff's claim for ordinary disability retirement benefits based both on lumbar and cervical problems specifically due to cervical spondylosis and stenosis, lumbar spondylosis. And that's in the letter that was attached to the papers. And, again, it's the same medical records for both claims.
>
> * * *
>
> So . . . in using the *Reynolds* [*v. Board of Education of Prince George's County*, 127 Md. App. 648 (1999)] language, the ordinary retirement benefit in this case that was accepted by [Mr. Reger] is tantamount to a wage loss benefit for his position as a custodian. And it is analogous to the temporary total disability Workers' Compensation benefit, which is also a wage loss from his custodial position.
>
> Hence, as a matter of law in this case, I find that there is no . . . genuine dispute as to any material facts. As a matter of law in this case, the benefits are indeed within the statute similar and therefore the statutory offset applies.

That same day, the circuit court entered a written order granting summary judgment in favor of Appellees.[2] On October 17, 2014, Mr. Reger filed a timely notice of appeal.

DISCUSSION

On appeal, Mr. Reger argues that he "should be allowed to receive workers' compensation temporary total disability benefits due to the accident of November 12, 2007 and the ordinary disability retirement benefits he received as a result of the pre-existing back injuries (and specifically NOT received due to the accident of November 12, 2007)[.]"

[2] On September 30, 2014, the circuit court entered an amended order to correct a typographical error in the original order.

(Emphasis in original). He maintains that the State Retirement Board awarded ordinary disability retirement benefits to him due to "preexisting degenerative back problems." Thus, Mr. Reger argues that workers' compensation benefits for his November 12 injury were not "similar benefits" to those awarded by the State Retirement Board and the benefits should not be offset.

Appellees argue that Mr. Reger filed requests for both workers' compensation and retirement benefits based on injuries received as a result of the November 12 accident. Appellees maintain that Mr. Reger is entitled to only a single benefit for the single injury and that it was entitled to an offset pursuant to LE § 9-610. Appellees assert that the plain language of LE § 9-610 mandates that the statutory offset is appropriate "when disability benefits are received in conjunction with workers' compensation benefits as both are designed to protect against loss of wages." Appellees maintain that the pertinent inquiry then is whether medical condition or physical incapacity formed the basis for seeking both benefits. Where that is found to be the case, Appellees argue that "[t]o allow [a c]laimant to collect two benefits for the same condition is contrary to the legislative intent and places a burden on the public treasury that was clearly never intended."

Standard of Review

A party may seek review of a WCC decision in a circuit court "by either proceeding on the record made before the [WCC] (much like judicial review of the final decision of most state administrative agencies) or receive a new evidentiary hearing and decision before a jury (much like an original civil complaint brought in a circuit court)." *Baltimore*

Cnty. v. Kelly, 391 Md. 64, 67-68 (2006) (construing section 9-745 of the Labor and Employment Article of the Maryland Code (1991, 1999 Repl. Vol.)). In the case before us, Mr. Reger first requested a jury trial in the circuit court, placing him on the trial *de novo* branch of LE § 9-745, which ordinarily involves a fresh consideration of the facts. *See Keystone Masonry Corp. v. Hernandez*, 156 Md. App. 496, 505-06 (2004). Accordingly, the review of any factual findings made by the circuit court would be for clear error. *Granite State Ins. Co. v. Hernandez*, 191 Md. App. 548, 557-58 (2010). Ultimately, however, both parties in this matter agreed that there was no dispute as to any material fact and the case was appropriate for resolution on summary judgment. Thus, no evidentiary hearing was held, and the circuit court ruled on the issue as a matter of law. In a Workers' Compensation case, where the main issue presented is one of law, "we review the decision *de novo*, without deference to the decisions of either the Commission or the circuit court." *Long v. Injured Workers' Ins. Fund*, 225 Md. App. 48, 57 (2015) (citing *Gross v. Sessinghause & Ostergaard, Inc.*, 331 Md. 37, 45-48 (1993); *see also Hull v. Aetna Ins. Co.*, 541 N.W.2d 631, 634 (1996)). Therefore, we review the instant case *de novo*.

The Intersection of Workers' Compensation and Disability Retirement Benefits

Maryland courts have long recognized that a statute may allow a governmental employer to satisfy its obligation for workers' compensation through pension benefits which provide equal or greater benefits and may shield the employer from providing excess benefits for a single disability or injury. *See Mayor and City Council of Baltimore v. Oros*, 301 Md. 460 (1984) (construing former Maryland Code 1957, art. 101, § 33(c)); *see also*

Frank v. Baltimore County, 284 Md. 655, 659 (1979) (stating that the legislative intent behind the offset provision of the workmen's compensation statute, art. 101, § 33(c), was to provide only a single recovery for a single injury for government employees covered by both pension plan and workmen's compensation).[3]

In 1991, the relevant offset provision discussed in *Oros* and *Frank*, Article 101 § 33, was recodified as part of the creation of Maryland's Labor and Employment Article. 1991 Md. Laws, ch. 8 (H.B. 1). Recodified as LE § 9-610, the offset provision and has been amended twice, in 1997 and 1999. *See* 1997 Md. Laws, ch. 279 (H.B. 1151); 1999 Md. Laws, ch. 340 (S.B. 314). LE § 9-610 currently provides, in pertinent parts:

[3] Regarding benefits furnished by a State or political subdivision, Maryland Code 1957, art. 101, § 33(c) & (d), provided:

> (c) Whenever by statute, charter, ordinances, resolution, regulation or policy adopted thereunder, whether as part of a pension system or otherwise, any benefit or benefits are furnished employees of [the State, an agency thereof, a county, a public or quasi-public corporation, or a political subdivision], the dependents and others entitled to benefits under [the Workmen's Compensation Article] as a result of the death of such employees, the benefit or benefits when furnished by the employer shall satisfy and discharge pro tanto or in full as the case may be, the liability or obligation of the employer and the Subsequent Injury Fund for any benefit under this article. If any benefits so furnished are less than those provided for in this article the employer or the Subsequent Injury Fund, or both shall furnish the additional benefit as will make up the difference between the benefit furnished and the similar benefit required in this article.
>
> (d) The Commission may determine whether any benefit provided by the employer is equal to or better than any benefit provided for in this article, and to render an award against the employers or the Subsequent Injury Fund, or both to furnish additional benefit or benefits to make up the difference between the benefit furnished by the employers and the benefits required by this article as the case may be. This section is also subject to the continuing powers and jurisdiction of the Commission provided for in this article.

> (a)(1) Except for benefits subject to an offset under § 29-118 of the State Personnel and Pensions Article, if a statute, charter, ordinance, resolution, regulation, or policy, regardless of whether part of a pension system, provides a benefit to a covered employee of a governmental unit or a quasi-public corporation that is subject to this title under § 9-201(2) of this title or, in case of death, to the dependents of the covered employee, payment of **the benefit by the employer satisfies, to the extent of the payment, the liability of the employer and the Subsequent Injury Fund for payment of similar benefits under this title.**
> (2) If a benefit paid under paragraph (1) of this subsection is less than the benefits provided under this title, the employer, the Subsequent Injury Fund, or both shall provide an additional benefit that equals the difference between the benefit paid under paragraph (1) of this subsection and the benefits provided under this title.
> (3) The computation of an additional benefit payable under paragraph (2) of this section shall be done at the time of the initial award and may not include any cost of living adjustment after the initial award.
>
> * * *
>
> (c)(1) The Commission may:
> (i) determine whether any benefit provided by the employer is equal to or greater than any benefit provided for in this title; and
> (ii) make an award against the employer or the Subsequent Injury Fund or both to provide an additional benefit that equals the difference between the benefit provided by the employer and the benefits required by this title.
> (2) A claim that comes under this section is subject to the continuing powers and jurisdiction of the Commission.

(Emphasis supplied).

In *Polomski v. Mayor & City Council of Baltimore*, the Court of Appeals analyzed a different "offset provision" of the Maryland Workers' Compensation Act "requir[ing] the reduction of workers' compensation benefits for a disability caused by an occupational disease paid to a retired fire fighter who [wa]s also receiving retirement benefits under a

service pension plan."[4] 344 Md. 70, 72-73 (1996). Noting that the precise issue presented by Polomski had not been previously addressed by the Court of Appeals, the Court looked to its decisions regarding art. 101, § 33(c) and observed that "[t]he Legislature intended that injured government employees covered by both a pension plan and the [Workers' Compensation] Act receive only a single recovery for a single injury." *Id.* at 80. The Court of Appeals continues to recognize that "the Act's purpose is to 'protect[ ] employees, employers, and the public alike.'" *Long v. Injured Workers' Ins. Fund*, ___ Md. ___, ___, slip op. at 43, No. 90, Sept. Term 2015 (filed June 22, 2016) (alteration in *Long*) (quoting *Polomski*, 344 Md. at 76 (1996) (citations and footnote omitted)).

Participants in the Maryland State Retirement and Pension System "may be eligible for three different types of retirement benefits: service retirement benefits pursuant to Title 22 of the State Personnel and Pensions Article, ordinary disability retirement benefits or accidental disability retirement benefits pursuant to Title 29 of the State Personnel and Pensions Article."[5] *Reynolds v. Board of Education of Prince George's County*, 127 Md.

[4] The "offset provision" construed in *Polomski* was, at that time, codified as Maryland Code (1991 Repl. Vol., 1996 Supp.), Labor and Employment Article § 9-503(d)(2). We note that LE § 9-503 is not read in conjunction with LE § 9-610. *Mayor & City Council of Baltimore v. Polomski*, 106 Md. App. 689, 696 (1995), *aff'd sub nom. Polomski v. Mayor & City Council of Baltimore*, 344 Md. 70 (1996). Nevertheless, this Court recognized that "[w]hether construing either statue, 9-503 or 9-610, the unmistakable intent of the Legislature since 1914 has been to provide only a single recovery for governmental employees covered by both a pension plan and workers' compensation. *Id.* at 697-98 (citing *Frank v. Baltimore County*, 284 Md. 655, 399 A.2d 250 (1979)).

[5] The current governing ordinary disability retirement eligibility statute provides, Maryland Code (1993, 2009 Repl. Vol.), ("SPP") § 29-105, in part:

(continued…)

App. 648, 653 (1999). In *Newman v. Subsequent Injury Fund*, the Court of Appeals concluded that it was implicit in prior opinions of the Court that *disability pension benefits* would be offset against similar workers' compensation benefits. 311 Md. 721, 724 (1988).[6]

In *Frank v. Baltimore County*, 284 Md. at 659, the Court of Appeals stated that "the Legislature, in what is now LE § 9-610, intended to provide only a single recovery for a single injury for government employees covered by a retirement plan and workers' compensation." In *Reynolds*, this Court applied that principle. 127 Md. App. at 654-55. Comparing ordinary disability retirement benefits and workers' compensation benefits, this Court stated:

> We hold, on the facts of this case, that the ordinary disability retirement benefits awarded to appellant are similar to the workers' compensation permanent partial disability benefits awarded to appellant, and the offset provision applies.
>
> In the case before us, there was **a single medical condition** caused by appellant's exposure to diesel fuel while suffering from an asthmatic condition. **Appellant claimed the same medical condition and physical incapacity and submitted the same evidence to both the medical board and the Commission**.

> (a) *In general.* — The Board of Trustees shall grant an ordinary disability retirement allowance to a member if:
>
> (1) the member has at least 5 years of eligibility service; and
>
> (2) the medical board certifies that:
>
> (i) the member is mentally or physically incapacitated for the further performance of the normal duties of the member's position;
>
> (ii) the incapacity is likely to be permanent; and
>
> (iii) the member should be retired.

[6] The Court in *Newman*, however, held that it was improper to offset *service retirement benefits* against workers' compensation benefits because those benefits were not similar. 311 Md. at 724.

* * *

> In this case, **the same physical incapacity on the part of appellant formed the basis for the workers' compensation award and for the ordinary disability retirement award. The ordinary disability retirement benefit is tantamount to a wage loss benefit similar to a workers' compensation award** to the extent that the benefits are payable prior to a point in time when service retirement benefits would have been payable in the absence of disability or to any amount in excess of service retirement benefits.

Id. at 655 (emphasis added).

The Same Physical Incapacity and the Same Evidence

In the present case, Mr. Reger filed his application for accidental disability retirement benefits with the State Retirement Agency arguing that he was injured on November 12, 2007, while moving a folding table. In that application, Mr. Reger's witness described the cause of Mr. Reger's disability stating, "[Mr. Reger] was moving a folding table with assistance of Bob Miller (another custodian) when the table lost balance and fell on Mr. Reger's legs and put him to the floor, landing hard on his back." Thereafter, the Disability Unit of the State Retirement Agency approved "ordinary disability, due to Cervical Spondylosis and Stenosis Lumbar Spondylosis[,]" which Mr. Reger accepted. Mr. Reger withdrew his accidental disability retirement claim. However, that withdrawal does not change the basis on which Mr. Reger sought disability retirement benefits—the November 12 accident. Thus, the ordinary disability benefits he began receiving on or about March 1, 2009, are "tantamount to a wage loss benefit similar to a workers' compensation award." *See Reynolds*, 127 Md. App. at 655.

Similarly, Mr. Reger filed his workers' compensation request on the basis of the November 12, 2007 accident. His claim form described the accidental injury as follows: "moving large cafeteria table – table fell on me and I fell to [the] floor, hurting my back, neck, and hand, and legs." Moreover, in November 2008, Mr. Reger sought continued benefits based on a surgical recommendation from physician Dr. Charles Sansur, which stated:

> Mr. Reger is a 54-year-old gentleman who was **struck by a cafeteria table that fell on him while working as a custodian. He was found to have a resultant spine injury from this accident and has a diagnosis of a L5-S1 spondylolisthesis** with pars fractures bilaterally. He has seen my colleague, Dr. Karl Schmitt, who has suggested the eventual need for surgery to treat this grade 1 spondylolisthesis and foraminal stenosis.
>
> * * *
>
> I feel that surgical intervention at this point is warranted.

(Emphasis added).

Mr. Reger testified on multiple occasions that he had never missed any time from work or sought any medical treatment for "any back problems" prior to the November 12 accident. The medical reports from Dr. Larkin's office, dated June 4, July 2, and September 10, 2008 each list Mr. Reger's past medical history as only "Arthritis, Depression, Myocardial Infarction." It was not until November 24, 2008, that Mr. Reger's medical reports indicated that he suffered from "a pre-existing spondylolisthesis," and even then the report clarified that Mr. Reger's current condition and inability to work were "a result of his accident at work."

Following two separate jury trials, the jurors returned verdicts finding that Mr. Reger's back surgeries—both lumbar and cervical—were causally related to the November 12 accidental injury. It is clear from the record that Mr. Reger sought workers' compensation benefits and continued coverage for his resultant disability as a result of the November 12 accident.

Wading through the cross-motions for summary judgment in which both parties contradict their earlier litigation postures (Mr. Reger relying on a pre-existing injuries to support his disability benefit claims while Appellees now attribute all injury to the November 2007 accident), we conclude the circuit court focused on the correct legal question and correctly concluded that both sets of benefits were awarded to compensate for wages lost. Clearly, Mr. Reger submitted both of his claims based on the same medical condition and physical incapacity, and submitted the same evidence to both the State Retirement Agency and the WCC. *Cf. Reynolds*, 127 Md. App. at 655. Within the framework of LE § 9-610, it is clear that such disability pension benefits are offset against similar workers' compensation benefits. *Newman*, 311 Md. 721, 724 (1988). We agree with the circuit court's observation that "the ordinary retirement benefit in this case that was accepted by [Mr. Reger] is tantamount to a wage loss benefit for his position as a custodian. And it is analogous to the temporary total disability Workers' Compensation benefit, which is also a wage loss from his custodial position." Where, as here, both benefits serve as a wage loss benefit tied to the same underlying injury and incapacity, the offset provision in LE § 9-610 must be applied to ensure only a single recovery for the

single injury. *See Frank*, 284 Md. at 659 ("[T]he scheme that unmistakably emerges is that the General Assembly wished to provide only a single recovery for a single injury for government employees covered by both a pension plan and workmen's compensation." (citations omitted)).

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.