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Supreme Court, Appellate Division, Third Department, New York

In the Matter of JASON COVERT, Appellant
v.

NIAGARA COUNTY, Respondent
and
WORKERS' COMPENSATION BOARD, Respondent

May 16, 2019

Facts: In 2011, the claimant was receiving public assistance and sustained an injury while assigned to work as part of a County work experience program ("WEP"). The judge established the claim and the average weekly wage. The claimant did not return to work but did not receive indemnity benefits because he was receiving public assistance benefits. The claimant attempted to reopen the claim for indemnity benefits because his public assistance benefits had been suspended because of a change in his household composition and income. The judge directed the County to produce medical evidence of permanency. Eventually, the county appealed the direction to the Third Department, who found the appeal was interlocutory. The judge then found the claimant had a schedule loss of use ("SLU") award, with no reimbursement to the County. While the Board Panel affirmed the SLU, it directed that the entire award be reimbursed to the County. The County appealed to the Third Department and argued that the public assistance the claimant received was not "wage," as defined by WCL § 2(9).

Holding: Affirmed.

Discussion: The Third Department does not need to defer to the Board's interpretation as the issue was purely of statutory construction. Statutory schemes must be construed together and harmonized in a way that renders them compatible and that achieves the legislative purpose. The Third Department considered the definition of

“wage” in the context of the claimant’s WEP. A public assistance recipient may be required to participate in a WEP and the number of hours a recipient is required is determined by dividing the assistance received by the federal or state minimum wage. A recipient who does not participate in a WEP may have their public assistance reduced or forfeited. The public assistance paid to WEP participants serves as compensation for the work performed. Thus, public assistance benefits paid to WEP participants are wages under the WCL. This conclusion is consistent with the statutory scheme governing WEPs, which requires that a participant is provided appropriate workers’ compensation protection for on-the-job injuries as other people in the same or similar positions. Workers’ compensation coverage is the exclusive remedy for unintentional employer-related injuries and defining public assistance benefits as wages fulfills the statutory intent. Awards benefit WEP participants who have disabilities affecting their ability to work after public assistance ends and additionally benefit employers who host WEP participants as workers’ compensation would be the exclusive remedy. In rendering its decision, the Third Department essentially relied on its interpretation of wages under the WCL as being consistent with the statutory scheme and legislative purpose

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