

**BEWARE: IF WE SNOOZE WE MAY LOSE
A CLOSER LOOK AT LIBC-756 AS INTERPRETED IN *MUIR V. WORKERS'*
*COMPENSATION APPEAL BOARD (VISTEON SYSTEMS, LLC)***

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The Pennsylvania Workers' Compensation Act, the Regulations and the governing case law guide the legal community on the proper use of Bureau forms. To determine the receipt of other benefits, such as Unemployment Compensation, Social Security (old age), severance, pension and/or other employment/wages, a Bureau form was created for employers to use to obtain this information. This form is **LIBC-756, EMPLOYEE'S REPORT OF BENEFITS (UNEMPLOYMENT COMPENSATION, SOCIAL SECURITY (OLD AGE), SEVERANCE AND PENSION BENEFITS)**. In understanding the proper use of this form, §204(a) and (c) of the Pennsylvania Workers' Compensation Act provide guidance. These sections read, in pertinent part, as follows:

(A) ... Provided, however, that if the employee receives unemployment compensation, such amount or amounts so received shall be credited as against the amount of the award made under the provision of §108 and 306, except for benefits payable under §306 (c) or 307. Fifty per centum of the benefits commonly characterized as "old age" benefits under the Social Security Act (49 Stat. 620, 42 U.S. C. 301 et seq.) shall also be credited against the amount of payments provided under §108 and 306, except for benefits payable under §306(c). The severance benefits paid by the employer directly liable for payment of compensation and the benefits from a pension plan to the extent funded by the employer directly liable for the payment of compensation which are received by an employee shall also be credited against the amount of the award made under §108 and 306, except for benefits payable under §306(c).

(C) The employee is required to report regularly to the insurer the receipt of unemployment compensation benefits, wages received in employment or self-employment, benefits commonly characterized as "old age" benefits under the Social Security Act, severance benefits and pension benefits which post-date the compensable injury under this Act, subject to the fraud provisions of Article XI...

Also to be considered in the application of this form is Regulation 123.3, which provides as follows:

- (a) Employees shall report to the insurer amounts received in unemployment compensation, Social Security (old age), severance and pension benefits on form LIBC-756 "Employee's Report of Benefits."
- (b) The form LIBC-756 shall be completed and forwarded to the insurer within 30 days of the employee's receipt of any benefits specified in subsection (a) within 30 days of any change in receipt of benefits specified in subsection(a) but at least every 6 months.

In analyzing the Court's reasoning in *Muir v. WCAB(Visteon Systems, L.L.C.)* 5 A.3d 847 (Pa. Cmwlth. 2010), one must first look to *Maxim Crane Works v. WCAB (Solano)*, 931 A.2d 816 (Pa. Cmwlth. 2007), which was decided three years earlier. In *Maxim*, the claimant suffered a work injury on October 10, 2000, continued working until terminated in January of 2003, and then applied for "old age" Social Security benefits. On June 6, 2005, the claimant received the form LIBC-756 upon which he acknowledged that he received "old age" Social Security benefits on August 3, 2005. The claimant received LIBC-761, a Notice of Work Compensation Offset, which informed him that the employer was taking a credit that would offset his weekly benefits and an additional credit

for 14 months of prior "old age" Social Security benefits, thus reducing his workers' compensation benefits to "0" for a period of 25.75 weeks.

In *Maxim*, the claimant's Petition to Review alleged the offset was in error. The claimant testified before the Judge that he never received the LIBC-756 form to report his "old age" Social Security benefits before June 6, 2005, and that, upon receipt, he reported his benefit amount. The Judge determined that the employer was entitled to a credit only from June 6, 2005, the date the claimant first received the LIBC-756 form. The employer appealed, the Appeal Board affirmed and a Petition to Review followed. The Commonwealth Court found no support in the Act or Regulations to support the employer's assertion of an absolute right to retrospective offset. Despite the claimant receiving "old age" Social Security benefits starting in January 2003, the facts revealed the claimant did not receive the LIBC-756 until June 6, 2005, and that, while the claimant owes a duty to report the receipt of "old age" Social Security benefits, the Regulations place the initial duty upon the employer/insurer to notify the employee of the reporting requirements and provide the employee with the proper forms. As such, the Commonwealth Court concluded that the Judge did not err as the employer failed to act with due diligence by not notifying the claimant of his duty to report the benefits.

In October 2010, the Commonwealth Court in *Muir* again addressed an issue with Bureau form LIBC-756. The main issue in *Muir* was whether the employer was required to supply the claimant with a new LIBC-756 form every six months to remind the claimant to update the report of benefits or otherwise be subject to possible offset.

In *Muir*, the claimant sustained a work injury in October 2000. The employer issued a Notice of Compensation Payable acknowledging a neck sprain/strain which entitled the claimant to total disability benefits of \$611.00 per week based upon a pre-injury average weekly wage of \$1,045.58. On August 8, 2005, the claimant completed LIBC-756 form and indicated he was receiving Social Security Disability benefits. At the employer's request, on June 26, 2007, the claimant completed another LIBC-756 form indicating the claimant was now receiving "old age" Social Security benefits beginning October 28, 2006, in the amount of \$1,376.90 per month. On July 31, 2007, the employer filed LIBC-761 Notice of Workers' Compensation Offset seeking 50% of the "old age" Social Security benefits received and that the offset would be deducted from the weekly compensation benefits beginning from August 28, 2007, and continuing through November 14, 2007. As a result, the claimant would receive zero in workers' compensation benefits and thereafter would receive reduced benefits in the amount of only \$452.37 per week.

In November of 2007, the claimant filed a Penalty Petition alleging the employer illegally suspended benefits based upon the *Maxim* decision. The claimant contended he was under severe financial difficulty and sought 50% penalty along with unreasonable contest attorney's fees. The Judge ruled the claimant failed to establish a violation of the Act and noted that the claimant was aware at least as early as August of 2005 of the reporting requirements of "old age" Social Security benefits and that the claimant did not report receipt of those benefits until completing LIBC-756 form on June 26, 2007. The Judge distinguished the facts from *Maxim* by finding that in *Muir*, the claimant was made aware of the reporting obligations back in August 2005 but failed to report said benefits until June of 2007, and, therefore, the employer was entitled to an offset of previously received Social Security "old age" benefits. As such, the Judge awarded no penalties.

The claimant appealed to the Appeal Board contending the Judge erred because the employer and insurer had the initial duty to provide the claimant with the proper forms to report the receipt of Social Security benefits. The Board reversed and modified the offset but determined the Judge did not err when he denied penalties. The Appeal Board found that the employer was not entitled to a retrospective credit for the claimant's "old age" Social Security benefits dating back to October of 2006 based upon the holding in *Maxim*.

In *Muir*, the Board emphasized again that the claimant completed the LIBC-756 form prior to the receipt of the "old age" Social Security benefits and the Regulations placed a duty on the claimant to report the benefits within 30 days of receipt or within 30 days of any change in receipt of benefits or at least every six months. The Board further indicated that the Regulations also posed a duty on the employer to notify the claimant of the reporting requirement and to provide the claimant with the forms required to fulfill this reporting requirement.

Hence, the issue for the Board was, what was the duty of the employer to provide the claimant the LIBC-756 form? The Board's analysis focused on two possible interpretations of the Regulations: (1) whether the employer only needs to supply the claimant with the LIBC-756 form on one occasion and it is then the claimant's duty to duplicate the form or request a new form if and when there is a change in such benefits subject to the credit under

§204(a) of the Act or (2) whether the employer should be supplying the claimant with a new LIBC-756 form every six months as a reminder to the claimant to update the reporting of benefits subject to the offset. Relying upon the well-established intent of the Act, which is to be liberally construed to effectuate its humanitarian purposes, the Board was compelled to follow the latter interpretation that the employer should be supplying the claimant with a new LIBC-756 form every six months as claimants could otherwise be subjected to large retrospective offsets if several years have passed since they last received such a form from the employer. Further, the Board suggested it might be unrealistic to expect unsophisticated claimants to file the LIBC-756 form on their own volition every six months.

The employer's Petition to Review before the Commonwealth Court alleged that the Board erred when it modified the Judge's Decision regarding the appropriateness of the retrospective credit. In its analysis, the Commonwealth Court focused on Regulation 123.3 as outlined above. The Commonwealth Court also noted the Bureau required that the insurer under §204 of the Act shall notify the employee of the reporting requirements and, further pursuant to §311.1 (d), the insurer shall provide the employee with the forms required to fulfill the employee's reporting and verification requirements.

Following the reasoning in *Maxim*, the Commonwealth Court addressed the two readings of the Regulation, as outlined by the Appeal Board, and found the employer needed to supply the claimant with a new form every six months to remind the claimant to update the reporting of benefits subject to the offset. This interpretation would prevent a claimant from being subjected to large retrospective offsets. Therefore, the Commonwealth Court found no err in the Board's interpretation in light of the humanitarian objective of the Act.

In summary, from an employer/insurer's perspective, the best approach is to send the LIBC-756 form to the claimant and his/her attorney, if known, every six months.¹ Since interpreting the Act and Regulations are often varied, and given the fact-specific nature of each case, employers/insurers should carefully consider this form and utilize it on a regular basis as a way of keeping communication open with the employee and monitoring any potential credit/offset.

Footnote

¹ Related forms LIBC-750 and LIBC-760 should also be sent to claimants in a timely manner so offsets can be properly calculated and taken by the employer/insurer.

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BUREAU UPDATE

Submitted by: Cyndi Kendall, Assistant to the Director, Bureau of Workers' Compensation

CERTIFIED SAFETY COMMITTEE TRAINING

Effective July 1, 2012, the Department of Labor & Industry implemented a plan to reorganize the PENNSAFE and the Bureau of Workers' Compensation, Health & Safety Division.

All future free safety-committee certification training will be conducted by the Health & Safety Division staff as part of the Pennsylvania Training for Health and Safety (PATHS) resource. If you are interested in free safety-committee certification training or any of the free safety resources provided by PATHS, log on to the website at www.dli.state.pa.us/PATHS or contact the Health & Safety Division by telephone at 717-772-1635 or email RA-LI-BWC-Safety@pa.gov .

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IDEAS

- 💡 Regularly schedule workplace safety observations and take corrective actions for unsafe work practices.
- 💡 Actively involve employees in both the development and the updating of your health, safety and workers' compensation programs.