

CASE LAW

CASE

1. Jewel Tea Co. v. Florida Indus. Commission
235 So. 2d 289 (Fla. 1969)
2. Brown v. S.S. Kresge Company, Inc.
305 So. 2d 191 (1974)
3. Shipp V. State of Florida Workers' Compensation Trust Fund and Florida Department of Labor and Employment Security v. Vaughan
481 So.2d 76 (Fla. 1st DCA 1986)
4. K-Mart v. Young
526 So. 2d 965 (Fla. 1st DCA 1988)
5. Barragan v. City of Miami
545 So. 2d 252 (Fla. 1989)
6. Platt v. R.C. Property
574 So. 2d 176 (Fla. 1st DCA 1991)

DESCRIPTION

The employer offset the claimant's workmen's compensation benefits against the medical insurance plan and the disability plan in which the claimant participated. The claimant paid a portion of the cost of the plans. The court found that the claimant was entitled to workmen's compensation benefits in *addition* to any benefits under an insurance plan to which he contributed.

The employer offset benefits due to payments from an employer paid disability policy. The court found that an injured employee was limited to the equivalent of full wages from whatever *employer source*.

No penalties or interest due

Employer sought offset based on employer paid disability policy benefits the court found the employer was entitled to offset to the extent that claimant had received combined benefits in excess of her average weekly wage.

The employer reduced the claimant's disability pension payments by the amount of the workers' compensation benefits. The court held that although the JCC did not have jurisdiction to increase the pension payments the JCC did have the authority to increase the workers' compensation benefits to make up for any improper deduction in the pension.

The PTD benefits are paid through a third party in an annuity. PTS benefits continue to be paid.

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| 7. <u>Ross/Carter Tractor</u>
(Fla. 1 st DCA 1993) | Cannot offset more than SSA offset PLA/MFB |
| 8. <u>Hunt v. DM Stratton</u>
667 So2d 64 (Fla.1st DCA1996) | No offset can be greater than that which SSA would have taken. (<i>DWC did reimbursement in 1996</i>) |
| 9. <u>National Linen Service v. Tolliver</u>
686So2d 797 | Attorney fees offset |
| 10. <u>Rufus Brown, Jr. v. L.P. Sanitation and CNA Insurance Company</u>
22 FL. L. Weekly D375 (Fla. 1 st DCA 1997) | 20% recovery for social security over paid – from January 1, 1994 forward – only. Cannot take credit prior to January 1, 1994. |
| 11. <u>Escambia County Sheriff's Department v. Thomas Grice</u>
692 So.2d 896 (Fla. 1 st DCA 1997) | Benefits cannot exceed 100% of AWW when retirement, SSD or other collateral sources are being paid ILOD (<i>in line of duty</i>). PT supps are not to be a part of the combination of benefits.

The employer had offset the claimant's workers' compensation benefits by the amount that his combined benefits from workers' compensation, social security disability and his state disability pension exceeded his average weekly wage. |
| 12. <u>Highlands County School Board and Gallagher Bassett Service, Inc., v. Juan Carrasquillo and Florida Department of Labor and Employment Security, Division of Workers' Compensation</u>
23 FL. L. Weekly 2280 (Fla. 1 st DCA 1998) | Affirms DLES/DWC 1 st right to SS offset |
| 13. <u>Cruse Construction and Florida Insurance Guaranty Association, Inc. (FIGA) v. Frank St. Remy</u>
23 FL. L. Weekly D19? | Offset need not be recalculated |
| 14. <u>Burger King Corp. and Cigna Insurance Company v. Juana Moreno</u> | For other age scenarios for dates of accidents after July 1, 1990, the supplemental benefits do cease at age 62 (<i>During</i> |

15. Dixon v. Pasadena Yacht and Country Club
731 So. 2d 141, 13-144 (Fla. 1st DCA 1999)
16. Judith Acker v. City of Clearwater
755 So.2d 651 (Fla. 1st DCA 1998)
755 So.2d 597 (Fla. 1st DCA 1999)
17. Gracette Wilkins v. Broward County School Board
25 FL. L. Weekly D278a (Fla. 1st DCA 2000)
18. Florida Power Corporation and RSKCo V. Lloyd Van Loan
764 So. 2d 708 (Fla. 1st DCA 2000)
19. State of Florida, Department of Labor and Employment Security, Workers' Compensation Administration Trust Fund v. Richard McGrath
20. State of Florida-HRS/Division of Risk Management v. James Sever
754 So. 2d 751 (Fla. 1st DCA 2000)
21. State of Florida, Department of Labor and Employment Security, Workers' Compensation Administration Trust Fund v. Boise Cascade Corporation

*the ages 62 – 65, no supplemental benefits are due; assuming that that claimant qualifies for both SSD & SSI), but are to **begin again at age 65.***

The court found that social security retirement benefits were not a collateral source of benefits for purposes of the Grice offset.

No recalculation of O/S. First offset amount available is the amount of O/S to use during the duration of case (*until Van Loan case*)

Employers are not allowed to recalculate the offset based on yearly increases in PT supplemental payments.

On dates of accidents on or after July 1, 1990, if a claimant is younger than age 62 when injured and when accepted or ordered PTD, supplemental benefits shall end at age 62. They do not begin at age 65.

When O/S is calculated, you must use in the formula the amount of supps from the year the claimant was accepted was PTD.

Retroactivity of PTD benefits regarding Acker & Van Loan cases

Affirmed that an employer is not entitled to take O/S for accrued cost-of-living increases in claimant's supplemental benefits.

Confirms Hunt. Cannot O/S increases

(Bowman)

22. Seibels Bruce c/o Gay & Taylor and Spartan Food Systems v. Ethel Elkins
Not entitled to take O/S for SSI widow benefits
23. City of Hollywood v. Lombardi
770 So. 2d 1196 (Fla. 2000)
In cases where the employee has contributed to the source of collateral benefits the workers' compensation benefit is the primary source of benefits and cannot be reduced. The disability pension fund is entitled to the benefit of the offset.
24. Orlando Utilities Commission v. Earls
767 SO. 2d 1232 (Fla. 1st DCA 2000)
case dismissed 776 So. 2d 276 (Fla. 2000)
The employer/carrier could not take an offset based on collateral benefits the claimant received from a retirement pension.
25. Dixon v. GAB Business Services, Inc.
767 So. 2d 443 (Fla. 2000)
In situations where the claimant's ACE exceeds his/her AWW, Grice does not apply. The employer may not reduce the employee's benefits to less than 80% of the ACE even if this amount is more than 100% of the AWW. See also: Miami-Dade County v. Jerome Lovett.
26. State v. Herny
781 So. 2d 1067 (Fla. 2001)
It was proper for the JCC not to include the claimant's health insurance subsidy in calculating the "Grice" offset because the subsidy was not intended as a disability benefit.
27. Carol S. Monroe v. Publix #148 and ITT Hartford Insurance Co.
790 So.2d 1249 (Fla. 1st DCA 2001)
Increases of cost of living (5%)
28. James Jackson v. Hochadel Roofing and Claims Center
26 FL. L. Weekly D1933 (Fla 1st DCA 2001)
Affirmed Monroe and Acker cases. Can use supps in SS O/S
29. Orange County Fire Rescue and Johns Eastern Company, Inc. v. Anthony D. Antonelli
794 So. 2d 758 (Fla. 1st DCA 2001)
Refers to the calculation of the Grice offset and the inclusion of supplemental benefits.

30. Florence Boyd v. White Whale Restaurant and FEISCO
794 So. 2d 668 (Fla. 1st DCA 2001)

31. Harrell v. Florida Constr. Specialist and AARLA
(FL. 1st DCA 2003)

32. Miami-Dade County v. Jerome Lovett
888 So. 2d 136 (Fla. 1st DCA 2004)

33. McDade v. Palm Beach County School District
(Fla. 1st DCA march 2005) slip opinion

The court overturned 2 prior cases (Pickard and Johns) to find that no PT supplemental benefits should be included in the calculation of the "Grice" offset. The court also found that the Grice offset could be applied retroactively.

Affirms Jackson v. Hocadel Roofing Co.

Affirms Wilkins

A carrier may offset both the claimant's SSD benefit and collateral benefits, but only to the extent it does not reduce total benefits to less than 100% of the claimant's monthly AWW (Grice) or 80% of his monthly ACE (Dixon), whichever is greater."

Benefits paid by a different employer are not collateral benefits under Grice. There is a good summary of what is and is not a collateral benefit.