

From The Bench

legal news of interest

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Q. Can an employer terminate Supplemental Earnings Benefits when an employee begins to receive old age retirement benefits under the Federal Social Security

a. No.

Q. Can an employer terminate Supplemental Earnings Benefits when an employee retires?

a. Yes.



WORKERS' COMPENSATION: Indemnity Benefits and Social Security Old Age Retirement Benefits

by Katherine M. Loos

In *Stroud v. Morrison Nursery*,¹ the plaintiff was awarded penalties and attorney's fees when her employer failed to reinstate her workers' compensation benefits after the Louisiana Supreme Court declared the provisions of *LSA-R.S. 23:1221 (3)(d)(iii)* to be unconstitutional.

LSA-R.S. 23:1221 (3)(d) addresses when supplemental earnings benefits shall terminate. The statute provides in pertinent part:

(d) The right to supplemental earnings benefits pursuant to this Paragraph shall in no event exceed a maximum of five hundred twenty weeks, but shall terminate:

(iii) When the employee retires or begins to receive old age insurance benefits under Title II of the Social Security Act, whichever comes first; however, the period during which supplemental earnings benefits may be payable shall not be less than one hundred four weeks.

Imogene Stroud, the plaintiff, injured her back in an automobile accident in 1995, while she was working for Morrison Nursery. Ms. Stroud began to receive temporary total disability benefits pursuant to a judgment of the Office of Workers' Compensation. Subsequently, Morrison Nursery filed a *Petition to Terminate* her benefits on the grounds that Ms. Stroud was receiving social security old age retirement benefits. Ms. Stroud had been receiving social security benefits since 1992 when she reached the age of 70.

The workers' compensation judge found Ms. Stroud was entitled to supplemental earnings benefits; however, she granted Morrison Nursery's *Petition to Terminate* because Ms. Stroud had received benefits in excess of 104 weeks under the statute. The judge also found Ms. Stroud was neither temporarily totally nor permanently totally disabled.

Ms. Stroud filed a *Petition for Declaratory Relief* in the district court against Morrison Nursery and the attorney general seeking to have *LSA-R.S. 23:1221 (3)(d)(iii)* declared unconstitutional. The *Petition for Declaratory Relief* was stayed pending the Louisiana Supreme Court's ruling in *Pierce v. Lafourche Parish Council*.² On May 16, 2000, the Louisiana Supreme Court ruled that *LSA-R.S. 23:1221 (3)(d)(iii)* was unconstitutional.

The provisions contained in *LSA--R.S. 23:1221 (3) (d) (iii)* which terminate supplemental earnings benefits when the claimant receives social security old

age benefits, results in the disparate treatment of employees injured in the workplace who are 62 years of age or older. A law that discriminates based upon age is unconstitutional unless it substantially furthers a legitimate governmental purpose.

In *Pierce*, the Louisiana Supreme Court left in place the portion of the statute which permits the termination of supplemental earnings benefits upon retirement. If an injured worker has received 104 weeks of benefits and then retires, his benefits may be terminated.

Following the ruling in the *Pierce* case, Ms. Stroud made written demands on her employer for the reinstatement of her benefits. Her employer did not comply with these demands; therefore, Ms. Stroud filed suit for the reinstatement of her benefits.

The Louisiana Third Circuit Court of Appeal noted Ms. Stroud was a full time employee at the time of her accident. As a result of the injuries she sustained, she was prevented from returning to work. The Third Circuit Court of Appeal found the retroactive application of *Pierce* to be appropriate.

The workers' compensation judge determined the employer's failure to reinstate benefits following the ruling in *Pierce* was not arbitrary and capricious. The Third Circuit disagreed, finding that the provisions of *LSA-R.S. 23:1201 (F)* are applicable. The court found Morrison Nursery failed to reasonably controvert the plaintiff's claim for benefits; therefore, the plaintiff was awarded penalties in the sum of \$2,000.00 and attorney's fees in the sum of \$5,000.00.

¹ *Stroud v. Morrison Nursery*, 2001-931 (La. App. 3 Cir. 12/28/01); 2001 WL 1671076.

² *Pierce v. Lafourche Parish Council*, 99-2854 (La. 5/16/00); 762 So.2d 608.



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- Update -

In *St. Bernard Parish Police Jury v. Duplessis*,¹ the Louisiana Fourth Circuit Court of Appeal held that the willful submission of exaggerated mileage reports does not require the penalty of forfeiture of all workers' compensation benefits. Referral to the Fraud Section of the Office of Workers' Compensation and forfeiture of all payments for the mileage benefits claimed in the report is an adequate remedy.

¹ 2000-2667 (La.App. 4 Cir. 1/30/02), 2002 WL 307717.

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