IN THE COURT OF APPEALS OF MARYLAND

No. 21

September Term, 1996

MARY F. HUNDT

v.

MAYOR AND CITY COUNCIL OF BALTIMORE

Bell, C.J.,
Eldridge
Rodowsky
Chasanow
Karwacki
Raker
Wilner, JJ.

Dissenting Opinion by Eldridge, J.

Filed: March 13, 1997

Eldridge, J., dissenting.

In holding that a volunteer school aide is not entitled to weekly monetary benefits for an injury she sustained in the course of her employment, the majority adopts an overly restrictive view of Maryland Code (1978, 1997 Repl. Vol.), § 6-106 of the Education Article. Moreover, the majority's view is inconsistent with the remedial purpose underlying the Maryland Workers' Compensation Act.

Section 6-106 of the Education Article provides in pertinent part as follows:

> "**§ 6-106. Volunteer aides.**
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> * * *
>
> "(d) *Agents for purposes of liability insurance and workers' compensation.* -- A volunteer aide is considered an agent of the county board for the limited purposes of:
> (1) Comprehensive liability insurance coverage under § 4-105 of this article; and
> (2) Workers' compensation coverage under the Maryland Workers' Compensation Act."

Under the Maryland Workers' Compensation Act, there are two principal types of compensation to which employees injured out of and in the course of their employment may be entitled -- weekly monetary payments and medical expenses. According to the majority, however, the phrase "workers' compensation coverage" as it appears in § 6-106(d)(2) of the Education Article encompasses only payments for medical expenses. I find no support for this position either in the statute's language or legislative history. Had the General

Assembly intended to restrict an injured volunteer aide's remedy under the Workers' Compensation Act to medical expenses, it could easily have said so. Instead, the Legislature used the broad phrase "[w]orkers compensation coverage under the Maryland Workers' Compensation Act." Given the broad scope of coverage under § 6-106(d), it is both reasonable and more consistent with the underlying purpose of the Workers' Compensation Act that volunteer education aides injured in the course of their volunteer employment should receive weekly cash payments in addition to their medical expenses.

Subsection (d) of § 6-106 was originally enacted by Chapter 220 of the Acts of 1972 for the purpose of "providing for comprehensive liability insurance and workman's compensation coverage for said [volunteer] aides." While there is no statutory definition of the term "coverage," the term "compensation" is both specifically defined in the Act and has been examined in different contexts by the Maryland courts.

Code (1991, 1996 Supp.), § 9-101(e) of the Labor and Employment Article, defines "compensation" as "the money payable under this title to a covered employee or the dependents of a covered employee," and includes "funeral benefits payable under this title."[1] This definition clearly covers weekly monetary

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[1] Pursuant to § 9-226 of the Labor and Employment Article, "[a] volunteer aide under § 6-107 of the Education Article is a covered employee." A "covered employee" is defined under § 9-

(continued...)

payments and is not restricted to medical benefits.

Similarly, Maryland courts have never adopted a definition of "compensation" which limits its meaning to medical expenses only. *See Vest v. Giant Food Stores, Inc.*, 329 Md. 461, 467, 620 A.2d 340, 343 (1993) ("This definition of compensation [under § 9-101(e)] is broad and encompasses most forms of payment to employees provided under the statute . . . "). The Court of Special Appeals in *University of Md. v. Erie Ins.*, 89 Md. App. 204, 211-212, 597 A.2d 1036, 1039 (1991), discussed the meaning of the term "compensation" as follows:

> "The word `compensation' itself has more than one meaning as used throughout the Workers' Compensation Law. In various places within the statute, `compensation' has the limited meaning of the payments ordered in accordance with the schedules in § 36[2] for permanent total disability, temporary total disability, or permanent or temporary partial disability, as distinguished from various other benefits awardable by the Commission. In other places throughout the Workers' Compensation Law, however, the legislature used the word `compensation' in its broad sense, referring to all benefits provided in the article, which would include medical benefits as well as rehabilitation."

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[1](...continued)
101(f) of the Labor and Employment Article as "an individual listed in Subtitle 2 of this title for whom a person, a governmental unit, or a quasi-public corporation is required by law to provide coverage under this title."

[2] Former Article 101, § 36, was repealed and recodified as Code (1991, 1996 Supp.), §§ 9-601 *et. seq*. of the Labor and Employment Article.

See Uninsured Employ. Fund v. Booker, 13 Md. App. 591, 594, 284 A.2d 454, 456 (1971) ("Examination of the entire [Workers' Compensation] article . . . makes inescapable the conclusion that the legislature used the word `compensation' sometimes in a limited sense, referring to the payments called for by the schedules in § 36, but more frequently in a broad sense, referring to all benefits provided in the article"). *See also Holy Cross Hosp. v. Nichols*, 290 Md. 149, 428 A.2d 447 (1981) (holding that medical benefits are not "compensation" under former Article 101, § 40(c),[3] which authorizes the Workers' Compensation Commission to modify a prior award of compensation). Thus, even in its most limited sense, the term "compensation" would, at the very least, include weekly monetary payments.

Moreover, the normal broad meaning of the term "compensation" is fully warranted here under the principle that the Workers' Compensation Act should be construed "as liberally in favor of injured employees as its provisions will permit in order to effectuate its benevolent purposes." *Howard Co. Ass'n, Retard. Cit. v. Walls*, 288 Md. 526, 530, 418 A.2d 1210, 1213 (1980). *See Vest v. Giant Food Stores, Inc.*, *supra,* 329 Md. at 467, 620 A.2d at 342; *Lovellette v. City of Baltimore*, 297 Md. 271, 282, 465 A.2d 1141, 1147 (1983); *Ryder Truck Lines v. Kennedy*, 296 Md. 528, 537,

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[3] Now § 9-736(b) of the Labor and Employment Article.

463 A.2d 850, 856 (1983); *Beth.-Sp. Pt. Shipy'd v. Hempfield*, 206 Md. 589, 594, 112 A.2d 488, 491 (1955); *Watson v. Grimm*, 200 Md. 461, 472, 90 A.2d 180, 185 (1952); *Beth.-Fair. Shipyard v. Rosenthal*, 185 Md. 416, 425, 45 A.2d 79, 83 (1945). *See also* § 9-102(a) of the Labor and Employment Article (the Maryland Workers' Compensation Act "shall be construed to carry out its general purpose").

The fundamental purpose of the Workers' Compensation Act is not simply to reimburse injured employees for medical expenses. Instead, the Workers' Compensation Act "is designed to provide workers with compensation for loss of earning capacity resulting from accidental injury, disease or death arising out of and in the course of employment, to provide vocational rehabilitation, and to provide adequate medical services." *Queen v. Agger*, 287 Md. 342, 343, 412 A.2d 733, 734 (1980). *See Beth. Shipyard v. Damasiewicz*, 187 Md. 474, 480, 50 A.2d 799, 802 (1947) ("The general purpose of the [Workers'] Compensation Act is to provide compensation for loss of earning capacity resulting from accidental injuries sustained in industrial employment"). A volunteer education aide may, as a result of an injury in the course of voluntary school work, suffer a loss of earning capacity affecting the aide in his or her regular job.

Even assuming arguendo that there is a "gap" in the law, as the majority states, as to whether the Legislature intended that

injured volunteer education aides receive weekly cash benefits, any uncertainty in the Act should be construed in favor of the claimant. *Baltimore v. Cassidy*, 338 Md. 88, 97, 656 A.2d 757, 761-762 (1995); *R & T Construction Co. v. Judge*, 323 Md. 514, 529, 594 A.2d 99, 107 (1991); *Victor v. Proctor & Gamble*, 318 Md. 624, 629, 569 A.2d 697, 700 (1990); *Trotta v. Country Car Center*, 292 Md. 660, 663, 441 A.2d 343, 344 (1982); *Howard Co. Ass'n, Retard. Cit. v. Walls*, *supra,* 288 Md. at 530, 418 A.2d at 1213; *Barnes v. Ezrine Tire Co.*, 249 Md. 557, 561, 241 A.2d 392, 395 (1968).

Section 9-625 of the Labor and Employment Article provides further support for affording injured volunteer education aides weekly monetary payments under the Workers' Compensation Act. Part IV of the Act applies to those employees, including the volunteer employee in this case, who have sustained a permanent partial disability. Specifically, the scope of Part IV is set forth in § 9-625 as follows:

> **"§ 9-625. Scope of part.**
> A covered employee who is permanently partially disabled due to an accidental personal injury or an occupational disease shall be paid compensation in accordance with this Part IV of this subtitle."

Part IX, and not Part IV, provides for the payment of medical expenses to injured employees. The only benefits payable to an injured employee under Part IV are specifically provided for in § 9-626, which states as follows:

> **"§ 9-626. Minimum compensation.**
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> (a) *In general*. -- Except as provided in subsection (b) of this section, a covered employee who is entitled to compensation under this subtitle for a permanent partial disability shall receive minimum weekly compensation of $50.
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> (b) *Covered employee with average weekly wage less than $50.* -- If the covered employee has an average weekly wage of less than $50 at the time of the accidental personal injury or the last injurious exposure to the hazards of the occupational disease, the covered employee shall receive minimum compensation that equals the average weekly wage of the covered employee."

As provided in § 9-625, a covered employee aide who suffers a permanent partial disability in the course of her employment shall be compensated in accordance with Part IV of the Workers' Compensation Act. It follows that, as a covered employee, a volunteer aide who does not have an "average weekly wage" is nonetheless entitled to minimum weekly compensation of $50 under § 9-626(a).

In support of its holding, the majority relies upon the General Assembly's decision in 1991 not to adopt the recommendation of the Department of Legislative Reference to create an average weekly wage for volunteer aides. In my opinion, this recommendation was at best ambiguous as to whether it actually informed the Legislature that volunteer aides would otherwise be limited in their recovery to reimbursement for medical expenses. It seems to me equally as likely that the General Assembly found it unnecessary to create an average weekly wage for such volunteers in light of

the language of § 6-106(d) of the Education Article and § 9-626 of the Labor and Employment Article. I simply cannot adopt the majority's position that inaction by the Legislature, as to one recommendation included within a 52 page report, restricts the language of § 6-106(d) of the Education Article.

For the above reasons, I would reverse the judgment of the Circuit Court for Baltimore City.