

**THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
APRIL 2011 AT A GLANCE
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CREDIT

- Under Section 204(a) an offset is given for pension benefits, to the extent funded by the employer. To receive an offset, there is no requirement that employer be liable for payment of the pension.

That the funds it contributed are commingled in a pension fund with money paid by other employers, or that the fund was taken over by the United States Federal Pension Benefit Guarantee Corporation following employers Chapter 11 bankruptcy reorganization was of no effect.

The key inquiry was the extent to which the employer funded an employee's pension, not who is liable for payment. To the extent that an employer can establish that it funded a pension plan, it was entitled to an offset, regardless of whether the United States Federal Pension Benefit Guarantee Corporation had taken over the plan and assumed liability for it.

- Even when it is the claimant who filed the Petition to Review the Offset, it is the party seeking to receive the offset who has the burden to establish the amount of the offset.
- The extent to which an employer can take an offset is set forth in the Act's associated regulations relating to the calculation of offsets when the pension benefit is payable from a multi-employer pension plan. The regulations provide, in relevant part:

To calculate the appropriate offset amount, the portion of the annuity purchased by the liable employer's contributions shall be as determined by the pension fund's actuary. The ratio of the portion of the annuity purchased by the liable employer's contribution to the total annuity shall be multiplied by the net benefit received by the employee from the pension fund.

- The employer did not fulfill its burden where the WCJ specifically found that employer's testimony was not persuasive on what benefit offset calculation should be used and further found employer failed to prove what its post bankruptcy contribution was or by actuarial testimony.

United Airlines, v. WCAB (Gane), No. 2028 C.D. 2011 (Decision by Judge Pellegrini, April 23, 2012)