612 A.2d 159 (Table)
Unpublished Disposition
(The decision of the Court is referenced in the Atlantic Reporter in a 'Table of Decisions Without Published Opinions.')
Supreme Court of Delaware.

Joseph PETERMAN, Employee-Appellant Below, Appellant,
v.
L.D. CAULK, Employer-Appellee Below, Appellee.
Lorraine SCHMITTINGER, Employee-Appellant Below, Appellant,
v.
TWILLEY, JONES & FELICEANGELI, Employer-Appellee Below, Appellee.

Nos. 72, 1992, 82, 1992.
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Submitted: Aug. 5, 1992.
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Decided: Aug. 19, 1992.

Court Below: Superior Court of the State of Delaware in and for Sussex County, C.A. No. 91A-01-001.
Court Below: Superior Court of the State of Delaware in and for Kent County, C.A. No. 89A-01-001.

Synopsis
Superior Court, Sussex County in No. 91A-01-001, Superior Court, Kent County in No. 89A-01-001, 1992 WL 52196, 1992 WL 20020.

AFFIRMED.

Before HORSEY and MOORE, JJ., and BERGER, Vice Chancellor (sitting by designation).

ORDER

MOORE, Justice.

***1** This 19th day of August, 1992, the Court having considered the briefs of counsel in these consolidated appeals from the Superior Court, and it appearing that:

1) These actions originated in the Industrial Accident Board (the "Board"). We consolidated the appeals because they present the same question of law: Can the claimants combine their wages from two concurrent jobs to determine the compensation rate for total disability benefits arising from an injury occurring on one of the jobs? The Board ruled that the wages could not be combined for that purpose and the Superior Court affirmed.

2) The facts of both cases are essentially undisputed. Joseph Peterman ("Peterman") was injured while employed at L.D. Caulk ("Caulk") on July 5, 1989. As a result of the accident, Peterman was totally disabled from July 6, 1989 to July 23, 1989, and from September 25, 1989 to January 7, 1990. In addition, Peterman has a 20% permanent partial disability of his upper right arm as a result of the accident. At the time of the accident, Peterman's average full-time weekly wage at Caulk was $286.40. Peterman also worked part-time at Super Fresh where he earned an average weekly wage of $112. There are virtually no similarities between Peterman's jobs at Caulk and Super Fresh. The only issue litigated before the Board was whether Peterman's wages from dissimilar jobs should be combined to determine the correct rate for workers compensation benefits.

3) Lorraine Schmittinger ("Schmittinger") was injured while employed full-time as a real estate paralegal by Twilley, Jones & Feliceangeli ("Twilley"). She was responsible for preparing and typing mortgages, deeds, settlement sheets and other settlement related documents. Schmittinger also calculated mortgage payoff figures and prorated taxes on settlement sheets. The injury resulted from a slip and fall occurring at Twilley's premises on February 1, 1988. Although Twilley agreed the accident was compensable, a disagreement arose over the correct wage basis to be used to calculate Schmittinger's disability benefits. Twilley stated that her average weekly wage was $297, while Schmittinger contended that her average weekly wage was $369.05. Schmittinger's calculation included additional income from her private business. Again the sole issue before the Board was whether the work done at Schmittinger's secretarial/tax preparation business was similar to her work at Twilley, thus allowing both wages to be combined. At the Board hearing, Schmittinger claimed that her wages from both jobs should be combined, regardless of the nature of either job, because the

purpose behind the Worker's Compensation Act (the "Act") was to compensate the injured employee for the loss of earning capacity rather than actual wages.

4) After hearings in both matters, the Board, citing "accepted practice and interpretation," determined that Peterman could not combine the wages earned at dissimilar jobs. The Board also rejected Schmittinger's contention that both of her jobs were similar. Finding Schmittinger's home job was primarily tax preparation and her primary employment essentially secretarial, the Board concluded that just as "the jeweler and ironworker engage in trades which involve the shaping of metal and both use similar tools such as hammers and torches, ... their employments are quite different." *Schmittinger v. Twilley, Jones & Feliceangeli,* Indus. Accident Bd., Hearing No. 848385, Bd. Decision at 6 (Apr. 18, 1989). Peterman appealed to the Superior Court, which concluded that, as a matter of law, wages from two jobs, whether similar or not, may not be combined under any circumstances. After the Peterman decision, Schmittinger's appeal of the Board's decision, then pending in the Superior Court, was decided based upon the Peterman decision.

***2** 5) The Superior Court found that, as a matter of worker's compensation law, a claimant may not combine wages from concurrent jobs for the purpose of calculating a claimant's workers compensation rate. This is purely a legal question over which we exercise *de novo* review. *Brooks v. Johnson,* Del.Supr., 560 A.2d 1001, 1002 (1989).

6) It is well settled Delaware law that the purpose of the Act is to compensate employees for their earning capacity rather than actual wages lost. *See e.g., Furrowh v. Abacus Corp.,* Del.Supr., 559 A.2d 1258, 1260 (1989). In determining an employee's compensation rate after an accident, the employee's weekly wage is calculated based upon his or her wages at the time of the accident. The statutory basis for wage determination is found in 19 *Del.C.* § 2302(a) which provides: (a) The term 'wages' means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident....

(b) If the rate of wages is fixed by the day or hour, his weekly wages shall be taken to be that rate times the number of days or hours in an average work week of his employer at the time of the injury. If the rate of wages is fixed by the output of the employee, then his weekly wage shall be taken to be his average weekly earnings for so much of the proceeding 6 months as he has worked for the same employer. *If because of exceptional causes, such method of computation does not ascertain fairly the earning of the employee,* then the weekly wage shall be based on the average employee of the same or most similar employment.

(Emphasis added).

7) Schmittinger and Peterman rely on the highlighted language and argue that the statute is broad enough to permit the construction advocated. They also cite cases interpreting the Act as allowing recovery of earnings capacity. This interpretation of the Act is not contested. However, there is nothing at all in the language of section 2302 that permits wages from two separate jobs to be combined. The statute is very clear-wages are the "money rate. ... under the contract of hire," and speaks in terms of the "employer at the time of the injury." Nowhere in the statutorily specified calculations is there either expressly or impliedly a directive to combine wages from concurrent jobs.

8) Schmittinger and Peterman argue that combining multiple wages somehow falls under the "exceptional causes" of Section 2302(b). The problem with this argument is that Schmittinger and Peterman would then only be entitled to a "weekly wage of an employee of same or similar employment," not a wage rate determined by combining the wages from two separate jobs. The statute is not broad enough to permit the construction urged by the claimants without torturing its clear language. Statutes must be given their plain meaning. *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.,* Del.Supr., 492 A.2d 1242, 1247 (1985). Moreover, there are other portions of the Act which permit wages from more than one employment to be considered. For example, 19 *Del.C.* § 2312 allows a volunteer fireman to have his compensation based upon his regular employment. 19 *Del.C.* § 2354 allows wages to be combined in situations of joint employment where an employee is under the simultaneous control of both employers, performs services simultaneously for both employers, and the services performed for each employer are the same or closely related. *A. Mazzetti & Sons, Inc. v. Ruffin,* Del.Supr., 437 A.2d 1120, 1123-24 (1981). Since the General Assembly has provided for the creation of an artificial weekly wage based upon multiple employments in two separate and specific situations, it is clear that the legislature did not intend to provide for combined wages in cases like the claimants here. Thus, Schmittinger and Peterman are entitled only to have their compensation based on their full-time earnings in the jobs where they were injured.

***3** NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court be, and the same hereby are,

AFFIRMED.

All Citations

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