IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cheryl McCartney, Petitioner	:	
v.	:	No. 327 C.D. 2025
	:	Argued: March 4, 2026
Commonwealth of Pennsylvania (Workers' Compensation Appeal Board), Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE STELLA M. TSAI, Judge

OPINION BY
PRESIDENT JUDGE COHN JUBELIRER FILED: November 9, 2026

Under Pennsylvania's Workers' Compensation Act (Act),[1] injured workers typically receive workers' compensation (WC) wage loss benefits equal to approximately two-thirds of their pre-injury salary when they suffer a disability.[2] Upon the injured worker's retirement and receipt of Social Security Retirement (SSR) benefits, the employer is entitled to reduce the WC benefits paid by 50% of the amount of the SSR benefits under Section 204(a) of the Act, 77 P.S. § 71(a). An employee's SSR **regular** benefits are funded by **both** the employee and the

[1] Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§ 1-1041.1, 2501-2710.

[2] For purposes of the Act, disability is synonymous with a loss of earnings. *Bradford County v. Pasko*, 323 A.3d 39, 46 n.4 (Pa. Cmwlth. 2024) (en banc).

employer; thus, the 50% offset represents the General Assembly's recognition that an employer's contribution to its employee's SSR benefits is only partial. *Sadler v. Phila. Coca-Cola (Workers' Comp. Appeal Bd.)*, 269 A.3d 690, 705 (Pa. Cmwlth.), *petition for allowance of appeal denied*, 282 A.3d 687 (Pa. 2022); *Caputo v. Workers' Comp. Appeal Bd. (Commonwealth of Pa.)*, 34 A.3d 908 (Pa. Cmwlth. 2012) (en banc).

The United States Congress, recognizing the inflationary pressures on retirees, provides occasional Cost-of-Living Adjustments (COLA) for SSR benefits, as well as other Social Security benefits. Section 215(2)(A)(ii) of the Social Security Act, 42 U.S.C. § 415(2)(A)(ii); 20 C.F.R. § 404.270. It is undisputed that COLA increases in SSR benefits are **not funded by employer** or employee contributions into the Social Security system. Nor is it disputed that the COLA provided by Congress is intended to allow a recipient's benefits to keep up with the costs of living and not be reduced by inflation. Section 215(i)(1)(G), (2)(A)(ii) of the Social Security Act, 42 U.S.C. § 415(i)(1)(G) & (2)(A)(ii); 20 C.F.R. § 404.270; *State v. Herny*, 781 So.2d 1067, 1068 (Fla. 2001);[3] *Engelbrecht v. Hartford Accident & Indem. Co.*, 680 P.2d 231, 233 (Colo. 1984). Unlike the Social Security Act, and some other states' WC legislation, the Act does not provide for COLAs in wage loss benefits.

In this case, an employer wants to apply the 50% offset against the Social Security Act benefit COLA, thereby reducing by half the cost-of-living increase to the SSR benefits the injured worker would otherwise receive. According to Cheryl McCartney (Claimant), allowing the Commonwealth of Pennsylvania (Employer) to take this offset is contrary to the General Assembly's grant of only a partial offset

[3] The Florida Supreme Court adopted the reasoning of *State v. Herny*, 776 So.2d 932, 933-34 (Fla. Dist. Ct. App. 1999).

tied to an employer's partial funding of SSR benefits, to the humanitarian purpose of the Act, and to the intent of Congress when it awards COLAs to aid retirees in fighting the impact of inflation. Upon careful review of the Act and the Social Security Act, which we read *in pari materia* because there is ambiguity in the Act as to how SSR benefit COLAs should be treated for offset purposes and both statutes address a retired worker's receipt of SSR benefits, we reverse the Workers Compensation Appeal Board's (Board) Order.

I. BACKGROUND

A. Relevant Legal Provisions

The issue before the Court involves the interplay between Section 204(a) of the Act and the Social Security Act's COLA provisions. Accordingly, we begin with the relevant statutory and regulatory language.

Section 204(a) of the Act relevantly states:

> Fifty per centum of the benefits commonly characterized as "old age" benefits under the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.) shall also be credited against the amount of the payments made under [S]ections 108 and 306, [77 P.S. §§ 27.1, 511,] except for benefits payable under [S]ection 306(c): Provided, however, That the Social Security offset shall not apply if old age Social Security benefits were received prior to the compensable injury.

77 P.S. § 71(a). Section 204(c) of the Act requires injured employees to report their receipt of SSR benefits "under the Social Security Act . . . which post-date the compensable injury under this [A]ct." 71 P.S. § 71(c). The Act contains no other provision relating to this offset, but the Board's Regulations provide guidance as to

how SSR benefit offsets under Section 204(a) may be taken by employers and challenged by injured workers. 34 Pa. Code §§ 123.4, 123.7.[4]

In *Caputo*, this Court addressed the General Assembly's intent in approving a 50% offset for an employer based on a claimant's receipt of SSR benefits. We explained that the 50% offset

> **is traceable to the Social Security tax contribution every employer makes toward its employees' [S]ocial [S]ecurity retirement**. The General Assembly recognized that **the employer's contribution is only partial** by enacting a 50% offset rather than a dollar for dollar offset. . . .
>
> The General Assembly chose a **50% offset as a fair approximation of the employer's contribution** because of the burden to **tailor the offset in each individual case to the actual Social Security tax contributions made by an employer for the employee subject to the offset**. Further, former employers will benefit by having the offset apply where they, in turn, have a short history with an employee who is injured and then retires. **The goal of the 50%**

[4] The Regulation at 34 Pa. Code § 123.4 explains the application of the offset, including the notice an employer must provide before taking the offset advising of the offset amount, how it is calculated, and when it begins, and how the claimant can challenge the offset. The Regulation at 34 Pa. Code § 123.7 states:

> (a) [WC] benefits otherwise payable shall be offset by 50% of the net amount received in [SSR] benefits. The offset shall only apply to amounts which an employe receives subsequent to the work-related injury. The offset may not apply to [SSR] benefits which commenced prior to the work-related injury and which the employe continues to receive subsequent to the work-related injury.
>
> (b) The offset may not apply to benefits to which an employe may be entitled, but is not receiving.
>
> (c) The offset shall be applied on a weekly basis. To calculate the weekly offset, 50% of the net monthly [SSR] benefit received by the employe shall be divided by 4.34.

34 Pa. Code § 123.7.

> **offset is to achieve fairness to the group of all Pennsylvania employers**. . . . It is not for this Court to speculate as to whether Section 204(a)'s 50% offset is the wisest or best means to accomplish the legitimate legislative goal of cost containment.

Caputo, 34 A.3d at 917-18 (emphasis added).[5] *See also Sadler*, 269 A.3d at 705-07 (reiterating the General Assembly's intent in using 50% as the amount of an employer's offset for a claimant's SSR benefits was to **approximate the employer's partial contribution** for those benefits).

Caputo references the "legitimate legislative goal of cost containment," which relates to the 1996 amendments to the Act.[6] The legislative purpose of these amendments has been described as being "[r]easonable workers' compensation cost containment for employers, and the concomitant competitive benefit such cost containment offers for Pennsylvania's businesses[.]" *Kramer v. Workers' Comp. Appeal Bd. (Rite Aid Corp.)*, 883 A.2d 518, 535 (Pa. 2005). Moreover, this Court has stated that Section 204(a) "serves [the] important policy objective [of] reduc[ing] the cost of the workers' compensation system by eliminating double payment for the same loss of wages." *City of Pittsburgh v. Workers' Comp. Appeal Bd. (Wright)*, 90 A.3d 801, 811 (Pa. Cmwlth. 2014).

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[5] *Caputo* contains a discussion of how other jurisdictions treat the receipt of SSR benefits for purposes of WC benefits. As *Caputo* points out, some states do not allow for any offsets (reasoning that they are not duplicative benefits), others allow for an offset of some amount, and still others stop all WC benefits when the claimant begins to receive SSR benefits. The cases cited, and *Caputo* itself, do not discuss whether the offsets apply to a COLA increase in SSR benefits.

[6] The 1996 amendments are often referred to as Act 57. Section 204(a)'s credits are among the most "dramatic amendments" to the Act. David B. Torrey & Andrew E. Greenberg, WEST'S Pa. Prac., Workers' Comp. § 1:68 (4th ed. 2022). "The [1996] amendments were the most dramatic since the 1972/1974 changes to the law which . . . worked, of course, a great liberalization of the law, which were followed by two decades of expansive interpretation by the Commonwealth and Supreme Courts. The 1996 reforms, like those of 1993, mirrored a national movement aimed at reducing costs and restoring efficiency." *Id.* (footnotes omitted).

The Social Security Act identifies SSR benefits, as well as disability and survivor benefits, as "primary insurance" for those eligible for those benefits, and their calculation is based on the provisions set forth in that act and in the Code of Federal Regulations. 42 U.S.C. § 415(a)-(g); 20 C.F.R. §§ 404.201-404.290. In addition to the amount calculated using the above provisions, the Social Security Act specifically contemplates beneficiaries receiving COLA increases in their benefits, outlining when such increases are applicable and how the increases are to be calculated. *See generally* 42 U.S.C. § 415(i) (titled "Cost-of-living increases in benefits"). Simplified, the Social Security Act provides that the Commissioner of Social Security (Commissioner) will determine each year if the base quarter ("the calendar quarter ending on September") in that "year is a cost-of-living computation quarter," and, if the Commissioner determines it is such a quarter, "the primary insurance amount of each . . . individual" is increased "effective with the month of December of that year . . . ." 42 U.S.C. § 415(i)(1)(A), 415(i)(2)(A)(i), 415(i)(2)(A)(ii)(II).

The federal regulations clearly advise beneficiaries that their "primary insurance amount may be automatically increased each December so that it keeps up with rises in the cost of living." 20 C.F.R. § 404.270. Those regulations also more plainly describe how an increase in the cost of living will be measured by using the Consumer Price Index (CPI) or Average Wage Index depending on what the Old-Age, Survivors, and Disability Insurance Fund ratio is, provides that if the cost-of-living increase an automatic increase in benefits will occur, and explains how the COLA is calculated. 20 C.F.R. §§ 272-273, 275. Unlike for an employee's primary insurance benefits, an employer does not contribute to the employee's COLA increase. In addition to the express statement in the federal regulations that the SSR

COLA is intended to ensure that the SSR benefits "keep up with rises in the cost of living," 20 C.F.R. § 404.270, numerous courts in other jurisdictions have recognized, in the context of an employer's claim of an increased WC offset, this purpose and the **federal government's intent to maintain the buying power of Social Security benefits**. *See, e.g.*, *Herny*, 776 So.2d at 933-34; *Wilson v. Jim Snyder Drilling*, 747 P.2d 647, 652 (Colo. 1987); *Engelbrecht*, 680 P.2d at 233; *McClanathan v. Smith*, 606 P.2d 507, 511 (Mont. 1980).

It is this statutory and regulatory language, and the legislative intent behind it, that we are called upon to examine, along with the facts in this matter, to determine if Employer is entitled to increase its WC offset due to the federal government's grant of automatic COLAs in Claimant's SSR benefits.

B. Factual and Procedural Background

The relevant facts are as follows. Claimant sustained a work-related injury in 1997 that Employer accepted via a notice of compensation payable. Claimant began receiving SSR benefits in March 2017, and Employer, after issuing a Notice of Workers' Compensation Benefits Offset, reduced Claimant's WC benefits to $247.56 per week pursuant to Section 204(a). Claimant subsequently received COLA increases to her SSR benefits in multiple years. Each time, Employer increased its offset, without challenge by Claimant. In 2023, however, Claimant filed a Petition to Review Benefit Offset (Offset Petition), challenging Employer's entitlement to increase its offset.

The parties stipulated the above facts to the WCJ, who issued a decision observing that this legal issue was one of first impression. The WCJ noted that the **Act is silent** as to annual **COLA increases** in SSR benefits and how such increases would affect the receipt of WC benefits. The WCJ recognized that the Act does not

provide COLAs for wage loss benefits and explained that to permit an employer to reduce the amount of those benefits by a COLA increase in SSR benefits "does not seem to serve the humanitarian purposes of the . . . Act or the purpose of the COLA increase in SSR benefits." (WCJ Decision, Finding of Fact (FOF) ¶ 10.) Allowing such offset, the WCJ held, would cause economic hardship to an injured claimant, whose WC benefits do not fluctuate to address increases in the cost of living. The WCJ concluded that "[t]he offset allowed [in Section 204(a)] is set at the time the SSR benefit is received and shall not be readjusted based on SSR COLA increases." (*Id.*) As Claimant had not challenged the prior offsets taken, the WCJ's decision applied to the 2023 increase and future COLA increases.

Employer appealed, and the Board reversed. The Board, looking **only** at Section 204(a) of the Act, found that statutory language to be unambiguous. That language, the Board explained, "states unambiguously that 50% of [SSR] benefits 'shall also be credited against the amount of the payments made under [S]ections 108 and 306.'" (Board Opinion (Op.) at 3 (quoting 77 P.S. § 71(a)).) Based on this language, the Board held

> it is clear the General Assembly chose to not include any language concerning an exception to the Social Security offset in terms of COLA increases. The statute unambiguously allows the offset of 50% of all SSR benefits, which would include all benefits paid to claimants, even if those benefits were increased over time because of regular COLA increases. . . . While the WCJ points to the fact the Act itself does not include COLA on [WC] benefits, and that allowing an offset on the [SSR] COLA increases could negatively impact a [c]laimant financially, these are policy concerns that would be up to the General Assembly to rectify in any future amendments to the Act.

(*Id.*) Ultimately, the Board concluded it was "constrained to follow the actual plain language of the Act where there [was] no ambiguity and . . . [could] not read into the

offset language of the Act an exception for COLA increases to Social Security offsets where there is no language to indicate that exception." (*Id.* at 3-4.)

Commissioner Krebs dissented, stating:

> The Act is silent as to such credit and is to be construed in favor of the injured worker. The 50% credit is for the employer's contribution to [S]ocial [S]ecurity. Once the claimant became disabled, the employer's [S]ocial [S]ecurity contribution ceased and so the employer receives no credit on the COLA.

(Board Op. at 5 (Krebs, Commissioner, dissenting).)

Claimant now petitions this Court for review.[7]

II. DISCUSSION

A. The Parties' Arguments

Claimant argues the Board's decision is contrary to the humanitarian purpose of the Act, which the Supreme Court recently reaffirmed in *Steets v. Celebration Fireworks, Inc. (Workers' Comp. Appeal Bd.)*, 335 A.3d 1076 (Pa. 2025). Claimant maintains that Section 204(a) is ambiguous, and that an employer's offset for a claimant's SSR benefits is limited to the initial amount of SSR benefits awarded and does not include any subsequent increases to the SSR benefits due to a COLA. Claimant asserts the language of Section 204(a) is not clear, as is reflected by the divergent positions taken by the majority of the Board and Commissioner Krebs' dissent and the WCJ. According to Claimant, neither Section 204(a) nor the regulation at 34 Pa. Code § 123.7 addresses how benefits are calculated under the

[7] This Court's review "is limited to determining whether necessary findings of fact are supported by substantial evidence, whether an error of law was committed, or whether constitutional rights were violated." *Elberson v. Workers' Comp. Appeal Bd. (Elwyn, Inc.)*, 936 A.2d 1195, 1198 n.2 (Pa. Cmwlth. 2007). However, "[o]ur standard of review in matters involving statutory interpretation is de novo, and our scope of review is plenary." *Mimi Invs., LLC v. Tufano*, 297 A.3d 1272, 1284 (Pa. 2023).

Social Security Act or how COLAs are to be treated, and this silence as to offsets for COLAs creates an ambiguity that must be read in the injured worker's favor.

Citing *Sadler*, Claimant further argues the use of a 50% offset by the General Assembly is to reflect **both** the employer's and the claimant's respective contributions to the Social Security system, and attempting to impose this offset on the SSR COLA creates a latent ambiguity because of how those COLAs are funded. Claimant observes that the 50-50 split cannot be said to apply to any COLA added to an individual's SSR benefits because the COLA is based on the CPI for each quarter of the year and is intended to help SSR recipients retain their purchasing power in the face of inflation. Because the COLA is **not paid by** either **the employer** or the employee, Claimant argues the purpose of the offset is not met by increasing it when an injured employee's SSR benefits increase due to a COLA. Claimant contends that allowing an employer to take that offset is likewise **contrary to Congress's intent** in approving COLAs as it results in the loss of the very **purchasing power** the COLA was intended to supplant (and which the Act does not provide for WC benefits). Given the ambiguity in Section 204(a), Claimant asserts that provision must be interpreted in favor of her, the injured worker, and in accord with the humanitarian purpose of the Act. When this is done, the Board's Order should be reversed and the WCJ's Decision reinstated.[8]

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[8] Amicus Curiae Pennsylvania Association of Justice (PAJ) filed a brief in support of Claimant's position. PAJ argues Section 204(a) must be analyzed in accordance with the humanitarian purpose of the Act, and its liberal construction must be informed by the fact that SSR benefits are a **safety net for claimant retirees** in particular because they provide a COLA that is unavailable under the Act. Like Claimant, PAJ asserts the Court should not read **silence** on the issue of the effect of SSR COLAs as assent for an increased offset for employers. PAJ further argues that the focus in Sections 123.7 and 123.8 of the regulations on calculating the WC offset based on "the **net** amount received in [SSR] benefits," and cases that have analyzed the purpose of using the "net" amount, such as *Philadelphia Gas Works v. Workers' Compensation Appeal* **(Footnote continued on next page…)**

Employer responds that Section 204(a) is crystal clear regarding the offset available to an employer for 50% of the amount of SSR benefits a claimant receives without limitation or exception. Where the statutory language is clear, as it is here Employer argues, that language cannot be disregarded in the pursuit of a law's spirit. *Herold v. Univ. of Pittsburgh*, 329 A.3d 1159 (Pa. 2025). According to Employer, because automatic COLAs for SSR benefits were approved in 1975, and Section 204(a)'s offset language was added in 1996, the General Assembly had to have been aware of the possibility of COLAs for SSR benefits and intentionally provided no exception to the offset for the amounts received as a COLA. The arguments centered on the humanitarian purpose of the Act and Congress's intent for COLAs, Employer argues, are misdirected and irrelevant given the plain language of Section 204(a). Employer disputes that the offset strips the COLA increase from Claimant or offends the purpose of that increase because she is still receiving the full amount of the increase and it is only the WC benefits that are being offset by 50%.

B. Analysis

We begin by examining the language of Section 204(a), using the principles of statutory interpretation to ascertain the legislative intent for that section's offset provision, which is the fundamental goal of statutory interpretation. *Hannaberry HVAC v. Workers' Comp. Appeal Bd. (Snyder, Jr.)*, 834 A.2d 524, 531 (Pa. 2003). The relevant portion of Section 204(a) states:

Board (Amodei), 964 A.2d 963 (Pa. Cmwlth. 2009) (en banc), demonstrate that employers can only take the **net amount** and that employers often take incorrect offsets because they do not consider the tax implications thereof (SSR benefits may be taxable under certain circumstances). PAJ observes that allowing an increased offset on WC benefits for COLA increases in SSR benefits compounds the economic damage an injured worker experiences due to the static nature of WC benefits and defeats Congress's intent behind the granting of the SSR COLA.

> **Fifty per centum of the benefits commonly characterized as "old age" benefits under the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.) shall also be credited** against the amount of the payments made under [S]ections 108 and 306, except for benefits payable under [S]ection 306(c): Provided, however, That the Social Security offset shall not apply if old age Social Security benefits were received prior to the compensable injury.

77 P.S. § 71(a) (emphasis added).

As our Supreme Court has recently set forth regarding the principles of statutory construction, a court's

> first and primary interpretive concern is the statutory text, which is the best indication of the General Assembly's intent. [*Mimi Invs., LLC v. Tufano*, 297 A.3d 1272, 1284 (Pa. 2023)]. When the text clearly commands a particular result, we will not ignore it in furtherance of the broader goals or principles driving the statutory framework under consideration. *See* [Section 1921(b) of the Statutory Construction Act of 1972 (SCA),] 1 Pa.C.S. § 1921(b) ("When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit."). It is only when we discern ambiguity in statutory text that we endeavor to resolve it with other considerations that assist in determining legislative intent. [*A.S. v. Pa. State Police*, 143 A.3d 896, 903 (Pa. 2016)]; 1 Pa.C.S. § 1921(c).

Steets, 335 A.3d at 1089.

Ultimately, if a statute's plain language is unambiguous, the Court must abide by the legislative intent shown there, even if the result is harsh and contrary to a statute's spirit. *Koken v. Reliance Ins. Co.*, 893 A.2d 70, 82 (Pa. 2006). However, if the language is ambiguous, the Court must engage in statutory construction by considering, among other factors, "[t]he object to be attained" and "[t]he consequences of a particular interpretation." 1 Pa.C.S. § 1921(c)(4), (6).[9] In effect,

[9] Subsection (c) states, in its entirety:

(Footnote continued on next page…)

these factors relate to the purpose of the statute in question and whether the consequences of an interpretation are consistent with that purpose.

The Supreme Court, in *Steets*, expounded on the Act and its purpose, explaining

> [t]he [Act] "is remedial legislation designed to compensate claimants for earnings loss occasioned by work-related injuries." *Triangle Bldg. Ctr. v. W*[*orkers' Comp. Appeal Bd.*] *(Linch)*, . . . 746 A.2d 1108, 1111 ([Pa.] 2000). As we recently discussed in *Herold* . . . , the [Act] and its counterparts in our sister states emerged more than a century ago as the product of a grand bargain struck to balance the interests of employers and workers in light of their "mutual dissatisfaction with the common law negligence system for remedying workers for their work-related injuries." [] 329 A.3d at 1181. On one side, "workers gave up the right to sue their employers for job-related injuries" in exchange for defined benefits following work-related injuries where relief for workers under the common law tort paradigm had been fraught with risk. *Id*. On the other side, employers sacrificed a variety of tort defenses for "a no-fault system" that insulated them from "punitive damages and exorbitant unexpected costs." *Id*. As we explained in *Herold*, the essence of this grand bargain entails "(1) certain compensation for the injured worker without regard to fault; and (2) the exclusivity of the administrative forum for resolving such guaranteed compensation, i.e., employer immunity from common law liability." *Id.* at 1183. Consequently,

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> (c) When the words of the statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters:
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> (1) The occasion and necessity for the statute.
> (2) The circumstances under which it was enacted.
> (3) The mischief to be remedied.
> (4) The object to be attained.
> (5) The former law, if any, including other statutes upon the same or similar subjects.
> (6) The consequences of a particular interpretation.
> (7) The contemporaneous legislative history.
> (8) Legislative and administrative interpretations of such statute.

1 Pa.C.S. § 1921(c).

> [WC] benefits are creatures of statute that fully supplanted the common law tort remedies that preceded them.[]

335 A.3d at 1089.

As the Act is "remedial legislation[,] . . . [it is] subject to a liberal construction to effectuate [its] purpose of benefitting injured workers and their dependents." *Peters v. Workers' Comp. Appeal Bd. (Cintas Corp.)*, 263 A.3d 275, 286 (Pa. 2021). Given the thrust of the Act is to make claimants economically whole, "[b]orderline interpretations . . . are to be construed in the injured party's favor." *Hannaberry HVAC*, 834 A.2d at 528 (citing *Harper & Collins v. Workmen's Comp. Appeal Bd. (Brown)*, 672 A.2d 1319, 1321 (Pa. 1996)). The Act's liberal interpretation, however, is not without limits. Our Supreme Court explained shortly after the Act's enactment that

> [c]ourts can give words a liberal interpretation, when construing an act such as the one now before us, in order to carry out its advanced humane intentions, as we have repeatedly done, and shall continue to do, in the administration of this law; but we have no power to depart from the clear meaning of a plainly expressed phrase.

Maguire v. James Lees & Sons Co., 116 A. 679, 680 (Pa. 1922).

Employer argues, and a majority of the Board found, that Section 204(a)'s language is clear on its face and, therefore, commands that Employer be allowed to increase its offset to account for 50% of the COLA increase to Claimant's SSR benefits. In contrast, Claimant asserts and Commissioner Krebs would hold that Section 204(a) is silent as to how a COLA increase in SSR benefits should be treated for offset purposes and this silence, along with consideration of other facts and circumstances, create ambiguity in the statutory language thereby mandating a liberal construction of the section.

Upon careful review, we conclude the Board erred in finding Section 204(a)'s language unambiguous. First, where a statute is **silent** about a particular topic, we have held that the statute is **ambiguous** because the language does not explicitly express the legislature's intent. *Borough of Pitcairn v. Westwood*, 848 A.2d 158, 164-65 (Pa. Cmwlth. 2004). *See also Keystone Sanitary Landfill, Inc. v. Monroe Cnty. Mun. Waste Mgmt. Auth.* (Pa. Cmwlth., No. 746 C.D. 2020, filed March 27, 2024) ("[I]f the statute is silent, ambiguous, or 'not explicit,' then we are guided by certain presumptions in 'ascertaining the intent' of the legislature in enacting a statute. [Section 1922 of the Statutory Construction Act,] 1 Pa.C.S. § 1922.").[10] Both this Court and our Supreme Court have declined to rely on the General Assembly's silence in a statute as expressing a particular intent. *Hannaberry*, 767 A.2d at 533; *Borough of Pitcairn*, 848 A.2d at 165; *see also Bradford County v. Pasko*, 323 A.3d 50-51 (quoting *Hannaberry*, 767 A.2d at 533). Indeed, in contrast to its interpretation here, the Board, in *Pasko*, **refused** to interpret silence in a similar offset provision within Section 204(a) to accept the employer's position that, "'by silence,'" the General Assembly had "'intended a result at odds with the otherwise logical and consistent slant of the legislation and its humanitarian purpose.'" 323 A.3d at 43 (quoting *Pasko v. Bradford County* (Pa.Work.Comp.App.Bd., No. A21-0732, filed Aug. 3, 2022), slip op. at 5).

Second, that statutory language **appears clear** on its face **does not always mean that the language is unambiguous** for purposes of statutory construction. A statute may contain a **latent ambiguity**. "A latent ambiguity is an actual ambiguity that arises when text that was originally thought clear **is revealed to contain an**

[10] This unreported panel opinion is cited for its persuasive value pursuant to Pennsylvania Rule of Appellate Procedure 126(b), Pa.R.A.P. 126(b), and Section 414(a) of the Court's Internal Operating Procedures, 210 Pa. Code § 69.414(a).

ambiguity upon consideration of extraneous facts and circumstances." *Burke ex rel. Burke v. Indep. Blue Cross*, 103 A.3d 1267, 1273 n.7 (Pa. 2014) (emphasis added); *see also Steuart v. McChesney,* 444 A.2d 659, 663 (Pa. 1982). If a latent ambiguity exists, courts may rely upon the canons of construction as if the ambiguity was on the statute's face. *Malt Beverages Distribs. Ass'n v. Pa. Liquor Control Bd.*, 974 A.2d 1144, 1153 (Pa. 2009); *Commonwealth v. McCoy*, 962 A.2d 1160, 1167 (Pa. 2009).

The General Assembly designated the offset amount of the SSR benefits to be 50% to reflect the **legislative intent to connect the offset to an employer's contribution to the SSR benefits**. *Sadler*, 269 A.3d at 705-07; *Caputo*, 34 A.3d at 917-18. Section 204(a) of the Act is silent as to how a COLA, which is **not connected** to an employer's contribution, should be treated for offset purposes. The COLAs are created and funded under the Social Security Act, **not the Act**, and are governed by Section 215(i) of the Social Security Act. The COLAs are **not funded by employer contributions**. As this Court has held, the 50% offset was utilized to reflect the General Assembly's acknowledgement that an employer's contribution to an employee's SSR benefits is only **partial**, with the employee making the remaining contributions. *Sadler*, 269 A.3d at 705-07; *Caputo*, 34 A.3d at 917-18. In allowing for **only** a 50% offset, the amount of the offset is **tied to an employer's partial contributions** to the SSR system. Accordingly, Section 204(a) does not purport to provide an offset for amounts that are **not** contributed by the employer.

COLA increases for SSR benefits are governed by Section 215(i) of the Social Security Act and are granted each December based solely on the CPI for each quarter. If the annual CPI increase meets a certain level, the primary insurance award (Social Security benefits for retirement, disability, or death) shall be

increased. *See* 20 C.F.R. § 404.275. Cost-of-living increases are paid to all Social Security recipients, not just to those receiving retirement benefits. The purpose of this automatic COLA increase is for the Social Security benefits to "keep up with rises in the cost of living." 20 C.F.R. § 404.270. **The COLA increase is paid for by federal funding, not by an employer's contributions to the Social Security system.** The COLA increase was enacted by Congress. The legislative intent of Congress when enacting the COLA increase, and providing the federal funding for the increase, is intended to ensure that the SSR benefits "keep up with rises in the cost of living," 20 C.F.R. § 404.270.

"Consideration of [the] extraneous facts and circumstances" related to the distinction in funding SSR benefits generally, the federal funding of COLA increases in those benefits, and Section 204(a)'s use of 50% to tie the offset amount to an employer's partial contribution to the SSR system, create a latent ambiguity in that it makes "text that was originally thought clear" to be unclear. *Burke*, 103 A.3d at 1273 n.7. The silence of Section 204(a) as to whether the offset applies to these COLAs, and the Congressional intent in creating and funding the COLAs, contribute to ambiguity of the statutory language on this issue.[11] Thus, Employer's arguments,

[11] Judge Dumas posits, in her dissent, that "[t]he General Assembly **contemplated automatic COLAs** when it enacted the offset with exceptions for, *inter alia*, specific loss benefits; however it provided no exception for a COLA." *McCartney v. Com. of Pa. (Workers' Comp. Appeal Bd.)*, __ A.3d __, __ (Pa. Cmwlth., No. 327 C.D. 2025, filed Nov. 9, 2026) (Dumas, J., dissenting), slip op. at 6 (emphasis added). As support, this dissent points to Section 204(a)'s exception to the offset for specific loss benefits and to the legislative history, which "contemplated a COLA (generally) in debating the statute." *Id.* at 6-7 & n.13. *See also id.* at 10-11 (discussing *Hannaberry* and concluding that the General Assembly did not "fail to contemplate" this scenario in drafting Section 204(a)). But, there is nothing in the cited legislative history that reflects such contemplation. A close reading of those statements reflect that they were made by those opposed to the SSR offsets because the offsets harmed hard working Pennsylvanians. Senate J., June 19, 1996, at 2163-64, 2179-80; House J., June 19, 1996, at 1580, 1598-99. More importantly, the **(Footnote continued on next page…)**

and the Board's conclusion, that Section 204(a) is unambiguous and that the remedial nature and humanitarian purpose of the Act are irrelevant are not persuasive.[12]

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references to COLAs were related to, or criticisms of, **the Act not providing COLA increases to injured workers**, not to the COLA in SSR benefits. Senate J., June 19, 1996, at 2163-64; House J., June 19, 1996, at 1590. Thus, this legislative history is not indicative of the General Assembly's contemplation of SSR benefit COLAs as claimed in this dissent.

The dissent also relies on the exception to the offset provided for specific loss benefits, but, unlike indemnity benefits, specific loss benefits **are not paid as wage loss benefits**. *Allegheny Power Serv. Corp. v. Workers' Comp. Appeal Bd. (Cockroft)*, 954 A.2d 692, 702 (Pa. Cmwlth. 2008) ("[S]pecific loss benefits are recognized as compensation 'for the *loss of use* of designated bodily members rather than for general loss of earning power,' *Turner v. Jones & Laughlin Steel Corp*[.], . . . 389 A.2d 42, 43 ([Pa.] 1978)" (emphasis in original).). Respectfully, this exception does not reflect, as Judge Dumas's dissent reasons, that the General Assembly contemplated **SSR benefit** COLAs as being subject to the offset.

[12] In her dissenting opinion, Judge Dumas asserts the majority does not offer "competing interpretations of 'benefits' (facial or latent) to support excluding the COLA" and "is examining how the offset *applies* to a COLA[] . . . not *interpreting* 'benefits.'" *McCartney*, __ A.3d at __, slip op. at 7-8 (Dumas, J., dissenting) (emphasis in original). We are not reading this statutory language, including the term "benefits," in a vacuum or on a clean slate. Our Court, sitting en banc, has interpreted this language previously to ascertain the General Assembly's intent behind granting an employer only a partial offset of SSR benefits and concluded that its intent was to limit the offset in recognition that an employer's contribution to those benefits was only partial. *Caputo*, 34 A.3d at 917-18; *see also Sadler*, 269 A.3d at 705 (panel holding the same based on *Caputo*). This interpretation, which is unchallenged, connects the SSR benefits available for offset to an employer's contribution to those benefits and limits an offset for benefits that are not tied to an employer's contribution. Nonetheless, Section 204(a) is silent as to how COLA increases in SSR benefits should be treated. The majority's interpretation of this silence is in accord with the principles of statutory construction, with *Sadler* and *Caputo*, with Congress's intent behind the SSR benefit COLAs, with the purpose of Section 204(a) to avoid duplicative wage replacement, and with the humanitarian and remedial nature of the Act.

Judge Dumas also looks to the regulations as providing support for her interpretation, but the regulations must be read in context of the Act and this Court's interpretations thereof. Thus, Judge Dumas' reliance on the regulation's use of the "net amount received," 34 Pa. Code § 123.7(a), to mean SSR benefits received inclusive of any COLA increase, **regardless of whether that increase was funded by an employer's contribution**, is contrary to *Sadler* and *Caputo*.

Once the ambiguous language of Section 204(a) is construed pursuant to the rules of statutory construction and precedent requiring the liberal construction of the Act due to the Act's remedial purpose and humanitarian nature, increasing Employer's offset for amounts **it did not contribute** to the SSR system violates those principles. Two of the considerations for construing ambiguous statutory language are the consequences of a particular interpretation and the object to be obtained by the statute. 1 Pa.C.S. § 1921(c)(4), (6). The Court has no difficulty in concluding that the consequences of Employer's (and the Board's) interpretation would result in economic harm to claimants. In short, accepting this interpretation means injured workers would not receive the full benefit of monies the federal government provides to cover increases in the prices of everyday goods; half that benefit would be taken by employers through the increased offset. This consequence is further exacerbated by the Board's interpretation because, unlike the Social Security Act, the Act does not provide for adjustments to a claimant's WC benefits to account for inflation and, therefore, the amount of a claimant's WC benefit is set at the time benefits are awarded and remains unchanged, regardless of the state of the economy. Moreover, this interpretation is contrary to the legislative intent of the federal legislative body that enacted the COLA increase.

As for the object to be obtained by Section 204(a), the General Assembly intended the offset to allow an employer **to reduce its costs** by receiving the benefit of a return on **the employer's partial contribution** to an employee's SSR benefits, and to **avoid double payment** or recovery by the injured worker. *Sadler*, 269 A.3d at 705-07; *Caputo*, 34 A.3d at 917-18. However, the COLA given to SSR benefit recipients is **not funded by the employer**, and, therefore, no double payment occurs through a claimant receiving the full amount of the **federally funded** COLA increase

to their SSR benefits. Moreover, although allowing an employer to offset WC benefits based on COLA increases in SSR benefits **it does not fund** would reduce the employer's costs, it would do so in contravention of the General Assembly's authorization of only a partial offset linked to the employer's contribution to its employee's SSR benefits. In short, the purpose of the 1996 amendments to provide **reasonable** cost containment for employers should not be used to allow employers to obtain a **windfall** by receiving credit for amounts not intended by the General Assembly.

It is long settled that the Act's language, where ambiguous, must be liberally construed in the injured worker's favor and consistent with the Act's humanitarian purpose. *Peters*, 263 A.3d at 286; *Hannaberry HVAC*, 834 A.2d at 528. There is no question that adopting Employer's and the Board's interpretation is contrary to these well-settled principles. It is an interpretation that allows Employer to receive one half of the **federally funded** COLA increase in Claimant's SSR benefits that Congress **intended to protect Claimant against a reduction of her buying power caused by inflation**. Therefore, increasing the offset based on the COLA, funded in the federal budget, is contrary to the humanitarian purpose of the Act,[13] as well as the very purpose of the COLA enacted by Congress.

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[13] Judge Dumas' dissent maintains the majority's result is unequitable, citing a scenario where an employer's offset increases depending on when a claimant begins receiving SSR benefits. *McCartney*, __ A.3d at __, slip op. at 14-15 (Dumas, J., dissenting). Per the dissent's example, two claimants, one who begins receiving SSR benefits in December and one who begins receiving SSR benefits in January of the next year, both receive a COLA in January but are treated inequitably because the latter's offset amount increases and the former's does not. *Id.* While this may be accurate in the claimants' first year, both claimants receive the benefit of limiting their employer's WC offset moving forward. The contrary interpretation, permitting an employer to increase its offset, provides employers a windfall by allowing them to take an offset for amounts that they did not contribute and are unrelated to the claimants' wage loss. That the benefit to a claimant may be delayed a year is not inequitable; allowing an employer to deprive an injured **(Footnote continued on next page…)**

On this last point, the purpose of the COLA, we are mindful that because both Section 204(a) of the Act and the Social Security Act address the payment of SSR benefits to retired workers, they relate to the same persons or things and, therefore, are *in pari materia* and must be construed together where there is statutory ambiguity. *Goodwin v. Goodwin*, 280 A.3d 937, 948 n.7 (Pa. 2022); *Dura-Bond Coating, Inc. v. Marshall*, 328 A.3d 559, 566 (Pa. Cmwlth. 2024) (en banc). It is apparent from the Social Security Act and its corresponding regulations, as have been interpreted by courts throughout the nation, that **Congress's intent** in authorizing COLAs for those receiving Social Security benefits is to, *inter alia*, "keep up with rises in the cost of living," 20 C.F.R. § 404.270, "maintain the buying power of [S]ocial [S]ecurity payments," *Engelbrecht*, 680 P.2d at 233, and keep beneficiaries "up-to-date with respect to the value of their earnings," *In re N.H. Youth Development Center*, 871 A.2d 67, 70 (N.H. 2005). The interpretation offered by Claimant and Commissioner Krebs, with which we agree, gives effect to the legislative intent of **both** the General Assembly in providing the 50% offset in Section 204(a) for an employer's partial contribution to its employee's retirement and Congress in authorizing COLAs for Social Security benefit recipients. Conversely, the Board's interpretation gives no effect to Congress's intent to maintain the buying power of Social Security beneficiaries, as it gives half of that benefit to an employer, and extends the General Assembly's intent beyond that necessary to meet the purpose of the 1996 amendments authorizing the offsets. Accordingly, when Section 204(a) and the relevant provisions of the Social Security

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employee a portion of funds intended to preserve the employee's buying power, where the Act provides no such relief, is unquestionably inequitable and contrary to the humanitarian purpose of the Act.

Act are read *in pari materia*, they support reversing the Board's interpretation of Section 204(a).

The offset of WC benefits by Social Security benefits a claimant receives, including SSR benefits, has been addressed by courts in other jurisdictions, and we have not found any other state that would allow for an increased offset of WC benefits for a COLA increase in Social Security benefits. Instead, our conclusion that no increase in offset is permitted is consistent with how other jurisdictions have examined and resolved the question of whether an employer may increase its offset from an injured workers' WC benefits for a COLA increase in the workers' Social Security benefits. Many of those jurisdictions cite, as we do above, the distinction in funding of regular Social Security benefits and a COLA increase, and the purposes of Social Security benefits, COLAs, and WC benefits, as reasons for denying an increase in the offset of WC benefits based on a COLA increase in Social Security benefits. Research reveals that, in the other jurisdictions where offsets from WC benefits are permitted based on injured workers' receipt of Social Security benefits, whether SSR, Social Security Disability (SSD), or death benefits, **none** allow for an increased offset based on a COLA increase to the Social Security benefits. *See In re N.H. Youth Dev. Ctr.*, 871 A.2d at 69-70; *Herny*, 781 So.2d at 1068 (adopting reasoning of *State v. Herny*, 776 So.2d 932, 933-34 (Fla. Dist. Ct. App. 1999)); *Wilson*, 747 P.2d at 652; *Engelbrecht*, 680 P.2d at 233; *Great Atl. & Pac. Tea Co. v. Wood*, 380 So.2d 558 (Fla. Dist. Ct. App. 1980); *McClanathan*, 606 P.2d at 511.

In *Wilson* and *Engelbrecht*, the Colorado Supreme Court held that employers and insurers could not use COLA increases in federal Social Security benefits to offset WC benefits.[14] In *Engelbrecht*, which involved SSD benefits, that court

[14] The Colorado statute at issue provided, at the time of *Engelbrecht* and *Wilson*:
(Footnote continued on next page…)

concluded that the purposes of Colorado's WC act was to "protect employees who suffer injuries arising out of their employment and to give injured workers a reliable source of compensation" and of the offset as being to avoid double awards. Given these purposes, the Colorado Supreme Court stated that the SSD COLA increase could not be used to increase the WC offset because

> [a]llowing an injured worker to keep his cost-of-living increase better protects the worker and gives him a more reliable source of income. In addition, **a cost-of-living increase does not result in a double award. The federal government has decided that it will maintain the buying power of [S]ocial [S]ecurity payments**, not that it will provide additional benefits for a particular injury. **Because Colorado does not provide benefits to keep pace with inflation, there is no double payment.**

Engelbrecht, 680 P.2d at 233 (emphasis added). In later applying this rationale to an offset request based on a COLA increase in Social Security survivor benefits, the Colorado Supreme Court reiterated its position and added that "[t]he cost-of-living increases **simply preserve the purchasing power of the federal [S]ocial [S]ecurity benefits**." *Wilson*, 747 P.2d at 652 (emphasis added).

Florida appellate courts have addressed offsets to WC benefits for COLA increases to "collateral benefits," such as Social Security benefits, on multiple

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> In cases where it is determined that periodic disability benefits granted by the federal old-age, survivors, and disability insurance act are payable to an individual and his dependents, **the aggregate benefits payable** for temporary total disability, temporary partial disability, permanent partial disability, and permanent total disability **pursuant to this section shall be reduced**, but not below zero, **by an amount equal as nearly as practical to one-half such federal periodic benefits**.

Former C.R.S. § 8-51-101 (emphasis added). Another provision replaced this section and includes similar offset language. *See* C.R.S. § 8-42-103(c)(I). Thus, like Section 204(a), Colorado's statute provides for a 50% offset.

occasions. On each occasion the courts have **denied the increased offset** to WC benefits. In *Great Atlantic*, the statute at issue provided for an offset for SSD benefits such that the combined SSD and WC benefits would not exceed 80% of the injured workers' average weekly wage (AWW). 380 So.2d at 558. The insurer sought to offset a COLA increase because, without the offset, the worker received more than 80% of the AWW. The Florida appellate court held that no offset was available, stating,

> [a]lthough at first glance it might seem inequitable or harsh that a claimant may receive more than eighty percent of his [AWW] because of cost[-]of[-]living increases, **the cost of living increases actually reflect the diminution of the value of the dollar and the fact that the claimant's [AWW] may not at present adequately or accurately reflect a basis upon which to determine and pay [WC] or Social Security benefits**. . . .

Id. at 559 (emphasis added). Later, in the *Herny* cases, Florida's appellate courts held that cost-of-living increases in SSR or SSD could **not** be used to offset WC benefits because "**injured workers [should] not suffer an erosion in the value of the benefits they receive by depriving them of the cost-of-living increases believed necessary by government to counter the effect of inflation and, thereby, to maintain that value**." *Herny*, 776 So.2d at 933-34 (emphasis added); *Herny*, 781 So.2d at 1068 (Florida Supreme Court adopting this reasoning). This holding, the courts concluded, was consistent with past precedent, including *Hunter v. South Florida Sod*, 666 So.2d 1018 (Fla. Dist. Ct. App. 1996), in which an appellate court held that COLA increases to SSD benefits accrued after the work injury could not be included in the offset calculation. *Herny*, 776 So.2d at 934.

In *McClanathan*, the Supreme Court of Montana held that the statute there, which provided for a 50% offset of WC benefits for any Social Security benefits

received by an injured worker, "could **not** be applied to that portion of [the claimant's] **[S]ocial [S]ecurity benefits attributable to cost-of-living increases allowed by the federal government**." 606 P.2d at 511 (emphasis added). That court explained that such offsets could not be had because "[t]he benefits to which [the employer] is entitled under [federal law] are disability benefits, not cost-of-living benefits." *Id.*

Finally, the Supreme Court of New Hampshire upheld that state's statutory scheme that terminated an injured worker's eligibility for a COLA increase in state WC benefits if the worker received Social Security benefits.[15] *N.H. Youth Dev. Ctr.*, 871 A.2d at 69. That court observed, however, that

> **[i]njured workers who receive [SSD] benefits are kept up-to-date with respect to the value of their earnings**, even though they do not receive cost-of-living adjustments to their [WC] benefits, **because [SSD], themselves, contain [COLAs].** 42 U.S.C. § 415(i) (2000); *see, e.g.*, *Engelbrecht* . . . . **It is only when an injured worker is not entitled to [SSD] benefits** that the need for RSA 281-A:29 [(granting a COLA increase for WC benefits under certain circumstances)] becomes apparent. That is because, without the cost-of-living adjustments provided by RSA 281-A:29, **an injured worker's benefits will fail to adjust to modern prices, as that worker will receive no [COLA] whatsoever.**

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[15] The statute at issue provided:

> For all compensable injuries occurring on or after July 1, 1963, for which total disability continues, **except those injuries for which the employee is entitled to benefits under the federal Social Security Act**, as amended, the injured employee shall be entitled to an adjustment in the weekly compensation rate . . . based upon the following formula:
>
> . . . .
>
> IV. The injured employee shall be entitled to an adjustment in the weekly compensation rate at one year intervals on July 1 in each year with the initial review occurring on or after the third anniversary of the injury.

N.H. Youth Dev. Ctr., 871 A.2d at 69 (quoting R.S.A. § 281-A:29) (emphasis in original).

Id. at 70 (some emphasis omitted, bold emphasis added).

These decisions are highly persuasive and support our resolution of the question before us now. Pennsylvania, like Colorado, does not provide a COLA for its WC benefits, meaning that those benefits are static and stay the same regardless of any increase in the cost of living. This point was key in the Colorado Supreme Court's refusal to allow an increased offset that would diminish the Social Security benefit COLA increase. Adopting the contrary interpretation of Section 204(a) results in an injured worker "suffer[ing] an erosion in the value of the benefits they receive by depriving them of the cost-of-living increases believed necessary by government to counter the effect of inflation and, thereby, to maintain that value," *Herny*, 776 So.2d at 933-34 (emphasis added), because the worker does not get the **full** effect of the COLA that "[t]he **federal government** has decided [is needed to] maintain the buying power of [S]ocial [S]ecurity payments," *Engelbrecht*, 680 P.2d at 233 (emphasis added). This is because an employer would receive the benefit of one half of that increase by reducing the WC benefits being paid by that amount. Employer's argument that claimants are not stripped of their COLA because they receive the entire amount of the COLA and it is only the WC benefits that are reduced is unavailing because it still results in less money being received by claimants. Ultimately, the Board's interpretation of Section 204(a)'s ambiguous language **disregards both** the **legislative intent** of the Pennsylvania General Assembly in Section 204(a)'s SSR benefit offset and of Congress in its enactment of COLAs in Social Security benefits, and is contrary to the humanitarian purpose of the Act, and, therefore, warrants reversal of the Board's Order.

III. CONCLUSION

For the foregoing reasons, we conclude that the 50% offset language of Section 204(a) is ambiguous as to whether it applies to federally funded COLA increases to an injured worker's SSR benefits and, therefore, the Court was required to examine other factors to ascertain the General Assembly's intent in enacting that provision. After applying the rules of statutory construction and relevant precedent, and considering the persuasive decisions from other jurisdictions, we hold the Board's interpretation of Section 204(a) that permits Employer to increase its offset based on Claimant's receipt of a COLA increase to her SSR benefits, which are intended to "counter the effect of inflation and, thereby, to maintain [the SSR benefits'] value," *Herny*, 776 So.2d at 933-34 (emphasis added), is contrary to the General Assembly's intent, Congressional intent, and the humanitarian purpose of the Act. Therefore, the Board's Order is reversed.

RENÉE COHN JUBELIRER, President Judge

Judge Wallace dissents.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cheryl McCartney, Petitioner	:	
v.	:	No. 327 C.D. 2025
Commonwealth of Pennsylvania (Workers' Compensation Appeal Board), Respondent	:	

O R D E R

NOW, November 9, 2026, the Order of the Workers' Compensation Appeal Board, entered in the above-captioned matter, is hereby **REVERSED**.

RENÉE COHN JUBELIRER, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cheryl McCartney, Petitioner	:	
v.	:	
Commonwealth of Pennsylvania (Workers' Compensation Appeal Board), Respondent	:	No. 327 C.D. 2025
	:	Argued: March 4, 2026

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE STELLA M. TSAI, Judge

DISSENTING OPINION
BY JUDGE FIZZANO CANNON FILED: November 9, 2026

Unlike the majority, I conclude that Section 204(a) of the Workers' Compensation Act (Act),[1] 77 P.S. § 71(a), is neither facially nor latently ambiguous. Therefore, I respectfully dissent.

Section 204(a) provides, in pertinent part, that "[f]ifty per centum of the benefits commonly characterized as 'old age' benefits under the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 *et seq.*) shall [] be credited against the amount of the payments made under sections 108[2] and 306[3] [of the Act], except for benefits

[1] Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§ 1-1041.1 & 2501-2710.

[2] 77 P.S. § 27.1 (relating to occupational diseases).

[3] 77 P.S. §§ 511-513. Relevant here, 77 P.S. § 511 provides the schedule of compensation for total disability.

payable under section 306(c)[4]. . . .” 77 P.S. § 71(a). The majority concludes that this language is silent and, therefore, ambiguous regarding offsets of cost-of-living adjustments (COLAs) to Social Security retirement (SSR) benefits. I cannot agree.

As quoted above, Section 204(a) provides a 50 percent offset of “benefits commonly characterized as ‘old age’ benefits under the Social Security Act.” 77 P.S. § 71(a). That COLAs are not separately singled out as included in Section 204(a) does not make the Act silent regarding them. Section 204(a) applies, by its plain language, to SSR benefits, and COLAs are undeniably included in SSR benefits. Thus, Section 204(a) is clear on its face in providing for a 50 percent offset of all SSR benefits, including COLAs, against workers’ compensation benefits payable under Sections 108 and 306 of the Act. *See In re Est. of Wilner*, 142 A.3d 796, 802 (Pa. 2016) (reiterating the rule that “universal, all-inclusive statutory terms, stated without any exceptions, encompass every category of the item in view”); *Koken v. Reliance Ins. Co.*, 893 A.2d 70, 82 (Pa. 2006) (explaining that “[w]here mandatory language is employed [in a statute], there is no need to engage in the redundancy of disapproving individual exceptions”); *accord, e.g.*, *In re Fortieth Statewide Investigating Grand Jury*, 191 A.3d 750, 758-59 (Pa. 2018) (citing 1 Pa.C.S. § 1903(a) and holding that statutory language requiring “attorneys” to be sworn to secrecy in grand jury proceedings was clear and did not exclude private attorneys, where “nothing on the face of the statute suggests that the Court should attribute to the word “attorney[s]” anything other than its ordinary broad meaning”); *Wilner*, 142 A.3d at 802 (explaining that statutory references to “all wills” and “a will” did not exclude lost wills because the statutory language was all-inclusive and did not provide any exceptions); *Pa. Dep’t of Transp. v. Taylor*, 841 A.2d 108, 112

[4] 77 P.S. § 513 (relating to specific loss benefits).

(Pa. 2004) (explaining that a statute rendering the Department of Transportation's investigation records undiscoverable and inadmissible in "any" legal proceeding was not ambiguous in failing to state whether it applied to both civil and criminal proceedings, where the statute spoke "in the broadest of terms" and did not provide for any exceptions).

I am also unpersuaded by the majority's suggestion that surrounding circumstances, such as the interplay of the Act with the Social Security Act, reveal any latent ambiguity.[5] Various competing public policies are in play here. The COLA provision in the Social Security Act is aimed at allowing recipients of SSR benefits to "keep up with rises in the cost of living." 20 C.F.R. § 404.270. The Act has a legislative purpose of benefitting injured workers, but also of striking a balance with the interests of employers. *See Steets v. Celebration Fireworks, Inc. (Workers' Comp. Appeal Bd.)*, 335 A.3d 1076, 1089 (Pa. 2025); *Kramer v. Workers' Comp. Appeal Bd. (Rite Aid Corp.)*, 883 A.2d 518, 535 (Pa. 2005) (observing that "the Act balances competing interests: while offering the prospect of certain recovery to workers irrespective of fault on the part of their employers, the Act also offers employers relative cost-certainty in the form of limited exposure in the event of a work injury"). More specifically, the 1996 amendment to the Act, which enacted the 50 percent offset provision, had the express purpose of shifting the balance of interests and helping employers to cut business costs. *See Caputo v. Workers' Comp. Appeal Bd. (Com. of Pa.)*, 34 A.3d 908, 917 (Pa. Cmwlth. 2012) (*en banc*) (explaining that "[p]ermitting an employer to offset workers' compensation

[5] "A latent ambiguity arises from collateral facts which render the meaning of a document or statute uncertain even though the language of the document or statute appears clear on its face." *Allen v. Cnty. of Wayne ex rel. Wayne Cnty. Corr. Facility*, 88 A.3d 1035, 1044 (Pa. Cmwlth. 2013).

disability benefits by 50% of an employee's [SSR] benefit is reasonably related to reducing the employer's workers' compensation costs"). However, consideration of statutory purposes does not come into play unless a statute is ambiguous; it cannot be employed to impose a latent ambiguity on otherwise clear statutory language. *See, e.g.*, *Lorino v. Workers' Comp. Appeal Bd. (Com. of Pa.)*, 266 A.3d 487, 492 (Pa. 2021) (observing that "[o]nly when the language of a statute is ambiguous may courts consider statutory factors to discern legislative intent"); *In re Nomination Petitions of Rania Major*, 248 A.3d 445, 450 (Pa. 2021) (explaining that an established public policy favoring a liberal construction of a statute may come into play only if the statute is ambiguous); *Thomas Jefferson Univ. Hosps., Inc. v. Pa. Dep't of Labor & Indus.*, 162 A.3d 384, 393 n.5 (Pa. 2017) (declining to consider policy arguments where the statutory language at issue was not ambiguous).

Moreover, as stated above, the legislature clearly excepted from the offset in Section 204(a) the workers' compensation benefits paid under provisions of the Act relating to occupational diseases and specific loss benefits. The legislature plainly knew how to provide for exceptions from the offset. Had it intended to except COLAs from the offset provision, it would have done so. *See Koken*, 893 A.2d at 82 (observing that the legislature knew how to recognize an exception in a statute and intended no other exceptions than the one it listed).

I am not persuaded by the majority's cited authorities concerning the effect of silence in a statute as creating an ambiguity. In *Borough of Pitcairn v. Westwood*, 848 A.2d 158 (Pa. Cmwlth. 2004), a statute governing discretionary appointments of civil service employees was silent concerning whether outgoing council members could appoint a new police chief after they lost reelection and were about to leave office; this Court determined that the statute's silence reflected a

legislative intent not to alter preexisting law and policy on the timing of such appointments. *Id.* at 165 (citing *In re Holton's Est.*, 159 A.2d 883 (Pa. 1960)). In *Keystone Sanitary Landfill, Inc. v. Monroe County Municipal Waste Management Authority* (Pa. Cmwlth., No. 746 C.D. 2020, filed March 27, 2024),[6] a statute mandating that each county file a 10-year waste management plan was silent concerning whether the plan expired at the end of the 10-year term, but this Court found that the attendant regulations made the expiration clear. *See generally id.* In *Hannaberry HVAC v. Workers' Compensation Appeal Board (Snyder, Jr.)*, 834 A.2d 524 (Pa. 2003), this Court determined that a "gap" in the statutory formula for the calculation of a claimant's average weekly wage that failed to account for the situation where a claimant had progressed from part-time to full-time status should be construed consistently with "the otherwise logical and consistent slant of the legislation. . . ." *Id.* at 533. These cases did not concern broad and all-inclusive language like that in Section 204(a).

In *Bradford County v. Pasko*, 323 A.3d 39 (Pa. Cmwlth. 2024) (*en banc*), the only cited case relating to Section 204(a), a majority of this Court declined to read Section 204(a)'s clear language regarding pension offsets literally and instead, as the majority does again here, relied on underlying policy considerations in order to conjure a latent ambiguity. *See id.* at 50-51. I dissented in *Pasko* and do likewise here. As I explained there, unlike the situation in *Hannaberry*, "Section 204(a) does not reveal a gap in the legislative scheme that may be treated as an indication of ambiguity." *Id.* at 59 (Fizzano Cannon, J., dissenting). I continue to disagree, as I did in *Pasko*, that "the pension provision of Section 204(a) may be read and applied either literally or 'contextually,' with differing results, creating an

[6] This unreported opinion is cited as persuasive authority pursuant to Section 414(a) of this Court's Internal Operating Procedures. 210 Pa. Code § 69.414(a).

ambiguity that may be resolved with statutory interpretation techniques." *Id.* at 58. Silence regarding exceptions to an all-inclusive statute is not an ambiguity; it merely indicates there are no exceptions.

The plain language of Section 204(a) strikes a balance among various competing policies as determined by the legislature. As such, and despite any unfortunate and seemingly unfair effect on persons receiving both workers' compensation and SSR benefits, the language of Section 204(a) reflects a policy decision that this Court is not free to alter by reading an exception into Section 204(a) that is not there. *See Caputo*, 34 A.3d at 917-18 (observing that the goal of the 50 percent offset is fairness to employers and that courts may not speculate whether that offset is "the wisest or best means" to achieve that legislative goal); *Koken*, 893 A.2d at 82 (explaining that an argument contending a statute's plain language should not be applied literally "because such would lead to a harsh or draconian result purportedly in conflict with the spirit of the statute simply misses the mark. Where it is unambiguous, the plain language controls, and it cannot be ignored in pursuit of the statute's alleged contrary spirit or purpose").

I am also not persuaded by the legal authorities cited by the majority from other jurisdictions construing other states' offset provisions. First, as the majority acknowledges, states vary in their treatment of workers' compensation benefits once claimants begin receiving SSR benefits, with some states stopping all workers' compensation benefits at that point while others require no reduction in workers' compensation benefits. *See Caputo*, 34 A.3d at 914 (citing various decisions from other jurisdictions upholding either 100 percent offset or zero percent offset). Each state's legislature is free to enact its own provision for no offset, a partial offset, or a complete offset of SSR benefits. Pennsylvania need not follow

either another state's legislative policy or another state's interpretation of statutory language, whether or not it is similar to the language of a Pennsylvania statute. *See id.* (disagreeing with Utah court's analysis of that state's offset statute and then also finding, separately, that the statutory language was different from Section 204(a)).

Accordingly, for all of the reasons discussed above, I respectfully dissent.

_____

CHRISTINE FIZZANO CANNON, Judge

Judge Wallace joins in this dissent.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cheryl McCartney,	:	
Petitioner	:	
	:	No. 327 C.D. 2025
v.	:	
	:	Argued: March 4, 2026
Commonwealth of Pennsylvania (Workers' Compensation Appeal Board),	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE STELLA M. TSAI, Judge

DISSENTING OPINION BY JUDGE DUMAS **FILED: November 9, 2026**

I am mindful that the Workers' Compensation Act (Act)[1] is remedial legislation intended to benefit injured workers, and I recognize that the Workers' Compensation Appeal Board's (Board) decision in this case adversely impacts Claimant. Still, I have concluded that the plain language enacted by the General Assembly in 77 P.S. § 71(a) is not ambiguous. The regulation adopted by the Department of Labor and Industry (Department) reasonably and accurately administers that legislation. *See* 77 P.S. § 71(a); 34 Pa. Code § 123.7(a). Further, notwithstanding the efforts of the majority to fulfill the remedial purpose of the Act,

[1] *See generally* Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§ 1-1041.1, 2501-2710. For convenience, I refer to unconsolidated statutes "only by their Purdon's citation." *Herold v. Univ. of Pittsburgh*, 329 A.3d 1159, 1166 n.1 (Pa. 2025); *Aita v. NCB Mgmt. Servs., Inc.*, ___ A.3d ___, ___ (Pa., No. 25 MAP 2025, filed Oct. 29, 2026), 2026 WL 3258409, at *2 n.2, slip op. at 4 n.2.

the majority's holding will not produce equitable consequences.

I.

A.

A court reads a statute to answer a question: whether a county's 10-year waste management plan expires, whether an employer may offset an employee's pre-retirement pension against post-retirement wage loss benefits, or whether a cost-of-living adjustment (COLA) is excluded from the Act's 50% offset for Social Security benefits.[2] Clear statutory text answers the question: "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. § 1921(b).[3]

But only when the statutory text leaves the question unanswered is Section 1921(c) triggered, *i.e.*, only when (1) no statutory term encompasses the subject or (2) the text is susceptible to two reasonable interpretations.[4] Those

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[2] *Keystone Sanitary Landfill, Inc. v. Monroe Cnty. Mun. Waste Mgmt. Auth.* (Pa. Cmwlth., No. 746 C.D. 2020, filed Mar. 27, 2024) (*Keystone*), 2024 WL 1291541, at *8; *Bradford Cnty. v. Pasko*, 323 A.3d 39, 49-50 (Pa. Cmwlth. 2024) (*en banc*); *McCartney v. Commonwealth (Workers' Comp. Appeal Bd.)*, ___ A.3d ___ (Pa. Cmwlth., No. 327 C.D. 2025, filed Nov. 9, 2026) (*en banc*). I may cite to non-precedential decisions for their persuasive value. 210 Pa. Code § 69.414; Pa.R.A.P. 126(b)(1).

[3] Deciding whether a statute or regulation is silent or ambiguous is a question of law. *Lutheran Home at Kane & Siemon's Lakeview Manor Est. v. Dep't of Hum. Servs.*, ___ A.3d ___, ___ (Pa., No. 7 MAP 2025, filed Oct. 1, 2026) (*Lutheran*), 2026 WL 2958968, at *14, slip op. at 30; *S&H Transp., Inc. v. City of York*, 210 A.3d 1028, 1038 (Pa. 2019) (stating "we will interpret the terms of a statute, ordinance, or regulation in accordance with their plain meaning, unless those enactments are ambiguous" (citations omitted)); *see Crown Castle NG E. LLC v. Pa. Pub. Util. Comm'n*, 234 A.3d 665, 674 (Pa. 2020).

[4] *Pasko*, 323 A.3d at 52 (explaining that we turn to 1 Pa.C.S. § 1921(c) because when "read in context, the plain text of the statute does not unambiguously resolve the question"); *Herold*, 329 A.3d at 1176 ("If, however, the statutory language is not explicit, but, rather, is susceptible to two or more reasonable interpretations, the statute is deemed to be ambiguous." (citations omitted)); *see also Commonwealth v. Chiappini*, 782 A.2d 490, 508 (Pa. 2001) (Saylor, J., concurring and dissenting) (framing the issue as whether a disputed statutory term "encompass[es] conduct as well as verbal communications"), *abrogated on other grounds by Commonwealth v. Kyle*, 874 A.2d 12

reasonable interpretations may appear on the face of the text or only upon consideration of the facts.[5] "The 'reasonably' qualifier is important: there is no ambiguity if one of the two proffered meanings is unreasonable." *Trizechahn Gateway LLC v. Titus*, 976 A.2d 474, 483 (Pa. 2009) (*Trizechahn*); *see Union*, 992 A.2d at 118 (applying *Trizechahn*'s definition of ambiguity to a statute). Further, a court may not manufacture either trigger. *Sivick v. State Ethics Comm'n*, 238 A.3d 1250, 1264 (Pa. 2020) ("While we must consider the statutory language in its full context before we assess ambiguity, we must not overlabor to detect or manufacture ambiguity where the language reveals none." (citation modified)).[6]

Keystone, in which no statutory term encompassed expiration, illustrates the first trigger: the "Municipal Waste Act and Solid Waste Management

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(Pa. 2005); *cf. Neshaminy Fed'n of Tchrs. v. Neshaminy Sch. Dist.*, 462 A.2d 629, 633 (Pa. 1983) (resolving whether an agreement "encompass[ed] 'dismissal'" because "if the agreement did not intend to encompass the question of dismissal, then such action is not arbitrable under the agreement" (citation omitted)).

[5] *Del. Cnty. v. First Union Corp.*, 992 A.2d 112, 118 (Pa. 2010) (*Union*) (concluding, after stating the two reasonable interpretations, that "it is not entirely clear from the face of the statute" what the General Assembly intended); *Burke ex rel. Burke v. Indep. Blue Cross*, 103 A.3d 1267, 1273 n.7 (Pa. 2014) ("A latent ambiguity is an actual ambiguity that arises when text that was originally thought clear is revealed to contain an ambiguity upon consideration of extraneous facts and circumstances." (citations omitted)); *Mohamed v. Dep't of Transp.*, 40 A.3d 1186, 1193 (Pa. 2012) (reversing this Court's finding of a "latent ambiguity caused by legislative inadvertence" that would have resulted in a "more desirable" outcome because "a lack of symmetry" in the statutory text was not "an inconsistency or a latent ambiguity").

[6] *Accord Trizechahn*, 976 A.2d at 483 (explaining that a court "will not distort the meaning of the language or resort to a strained contrivance in order to find an ambiguity" (citation modified)). For example, our Supreme Court held this Court erred by finding ambiguity based on the parties' "reasonable competing applications of the statutory language, *applications* that necessarily come *after interpretation*." *Greenwood Gaming & Ent., Inc. v. Dep't of Revenue*, 306 A.3d 319, 331 (Pa. 2023) (*Greenwood*) (emphases added). "Despite declaring the existence of an ambiguity," this Court erred because it "did not identify what *competing reasonable* interpretations of this statutory language led it to that conclusion." *Id.* at 330 (emphasis added); *see Gustine Uniontown Assocs., Ltd. v. Anthony Crane Rental, Inc.*, 842 A.2d 334, 348 (Pa. 2004) (*Gustine*) (holding that the lower court erroneously "decided a question of statutory interpretation based upon public policy concerns, without any predicate finding of statutory ambiguity").

Act do not explicitly address whether a county's 10-year [waste management] plan can expire." *Keystone*, 2024 WL 1291541, at *7 (citations omitted). The Municipal Waste Act refers to 10-year terms governing submission and review of such a plan but "does not address expiration." *Id.* at *7 (citation omitted), *14.[7] However, we "may not add a statutory requirement that a plan expires after 10 years." *Id.* at *8 (citation omitted); *Burke*, 103 A.3d at 1274.

So, *Keystone* referred to "DEP's interpretations, *i.e.*, regulations construing silent statutes." *Keystone*, 2024 WL 1291541, at *8 (citations omitted). "But DEP's regulations do not explicitly state that a plan expires after 10 years. At least one DEP regulation, however, requires the [county] to submit a revised waste management plan at 'least 3 years prior to the expiration of the term of the county's approved' waste management plan." *Id.* (citation modified). Thus, *Keystone* held that the trial court erred by disregarding the regulation and holding that the county's 10-year plan did not expire. *Id.*[8]

Pasko illustrates the second trigger, *i.e.*, two reasonable interpretations. In *Pasko*, an employer had funded a retiree's pension and, after the retiree returned to work and was injured, owed the retiree wage loss benefits. *Pasko*, 323 A.3d at 42.

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[7] *See Keystone*, 2024 WL 1291541, at *6 n.20 (citing *In re Tr. Under Agreement of Taylor*, 164 A.3d 1147, 1156 (Pa. 2017) (*Taylor*)). *Taylor* held a latent ambiguity existed because "both interpretations plausibly give effect to the plain language of the two provisions" and "neither section contains any explicit language addressing the issue raised here." *Taylor*, 164 A.3d at 1155-56. In *Taylor*, as in *Keystone*, the silence left the question unanswered.

[8] This Court similarly examined a statute that governs a public official's discretionary appointment: "[n]o provision addresses the outcome where a discretionary appointment is made by an outgoing appointive authority." *Borough of Pitcairn v. Westwood*, 848 A.2d 158, 164 (Pa. Cmwlth. 2004). As in *Keystone*, no statutory term encompassed that subject. *Westwood* construed that statutory silence as preserving "preexisting limitations on the timing of appointments . . . ." *Id.* at 165. *Westwood* resolved the issue on public policy grounds but explained it reached the same result upon construing the statute. *Id.* at 164-65 ("The General Assembly could have expressed its intent to supplant preexisting limitations on the timing of appointment, but it did not do so . . . .").

First, a literal interpretation of the statute at issue required "a pension offset where the employer that funded the pension is the same entity that is required to pay wage loss benefits, regardless of whether the pension and wage loss benefits are connected to separate employment relationships." *Id.* at 51-52. Second, "a more context-sensitive" interpretation of the statute looked "to the surrounding credits, which all operate to roughly make claimants whole." *Id.* Those two reasonable interpretations arose because of *Pasko*'s facts: the literal interpretation did "not meet the stated goals of the provision in this case." *Id.*; *Burke*, 103 A.3d at 1273 n.7 (explaining that a latent ambiguity may arise upon "consideration of extraneous facts and circumstances").

In *Keystone* and *Pasko* alike, the statutory text left the question unanswered. For *Keystone*, no term encompassed expiration, so the text left unanswered whether a 10-year plan expires. For *Pasko*, two reasonable interpretations existed, so the text left unanswered whether an employer may offset the pension against wage loss benefits. *See Keystone*, 2024 WL 1291541, at *8; *Pasko*, 323 A.3d at 52.[9]

B.

Unlike *Keystone* and *Pasko*, here, 77 P.S. § 71(a)'s statutory text answers the question before this Court: it credits 50% "of the benefits commonly

[9] Nevertheless, because *Pasko*'s facts differ, I would not mechanically apply its principles here. *See Precht v. Unemployment Comp. Bd. of Rev.*, 355 A.3d 856, 859 (Pa. 2026) (noting that "decisions are to be read against their facts" (citation modified)). In *Pasko*, because the pension was "wholly unrelated to [the employee's] part-time work," a literal credit "would not eliminate double recovery for [his] wage loss, rather, it would eliminate any recovery for his current wage loss." *Pasko*, 323 A.3d at 52-53 (emphasis omitted). Unlike *Pasko*'s pension, the credited benefit here is not unrelated to the wage loss: 77 P.S. § 71(a) credits a claimant's old age Social Security benefits against any wage loss benefits. The credit also does not *eliminate* a claimant's old age Social Security benefit, which includes a COLA; 77 P.S. § 71(a) merely credits 50% of that benefit against wage loss benefits.

characterized as 'old age' benefits under the Social Security Act" against wage loss benefits, "except for benefits payable under section 306(c)," and "shall not apply if old age Social Security benefits were received prior to the compensable injury." 77 P.S. § 71(a).[10] Very simply, since 1975, a Social Security benefit includes an automatic COLA.[11] Automatic COLAs annually increase the primary insurance amount "on which benefit entitlement is based," *i.e.*, the Social Security benefit itself. 42 U.S.C. § 415(i)(2)(A)(ii)(II).[12]

Two decades after automatic COLAs began, the General Assembly enacted the offset. 77 P.S. § 71(a); 34 Pa. Code § 123.4(a)(2) ("The offset for amounts received in Social Security (old age), severance and pension benefits only applies to individuals with claims for injuries suffered on or after June 24, 1996."). The General Assembly contemplated automatic COLAs when it enacted the offset with exceptions for, *inter alia*, specific loss benefits; however, it provided no exception for a COLA. *See Gustine*, 842 A.2d at 347 ("[T]he Assembly spoke in broad terms . . . while leaving the door open for specific statutory exceptions. When no such exception exists, the general rule controls. There is nothing ambiguous in such a construct." (citation omitted)).[13] So, absent a COLA exception and because a COLA

[10] "Fifty per centum of the benefits commonly characterized as 'old age' benefits under the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.) shall also be credited against the amount of the payments made under sections 108 and 306, except for benefits payable under section 306(c): Provided, however, That the Social Security offset shall not apply if old age Social Security benefits were received prior to the compensable injury." 77 P.S. § 71(a).

[11] *See McCartney*, ___ A.3d at ___, slip op. at 11 (summarizing arguments). To be clear, inflation results in an automatic COLA. 42 U.S.C. § 415(i); *see* 20 C.F.R. §§ 404.270 to .278 (2026) (providing for automatic cost-of-living increases for eligible beneficiaries); *id.* § 404.270 ("Your primary insurance amount may be automatically increased each December so it keeps up with rises in the cost of living."). No inflation means no automatic COLA.

[12] *Accord McCartney*, ___ A.3d at ___, slip op. at 6 (stating "the Social Security Act specifically contemplates beneficiaries receiving COLA increases in their benefits, outlining when such increases are applicable and how the increases are to be calculated").

[13] *Accord Commonwealth v. Taylor*, 841 A.2d 108, 112 (Pa. 2004) ("Contrary to appellee's

increases the benefits that 77 P.S. § 71(a) credits, the offset necessarily includes the COLA.

Notwithstanding *existing* statutory exceptions, *e.g.*, specific loss benefits, the majority concludes that 77 P.S. § 71(a) "is silent as to how a COLA, which is not connected to an employer's contribution, should be treated for offset purposes."[14] That silence is not *Keystone*'s, in which *no* statutory term encompassed the subject. *See Keystone*, 2024 WL 1291541, at *7. In contrast, the statutory term "benefits" encompasses a COLA. *See Taylor*, 841 A.2d at 112 (explaining that a statute applying to "any legal action" necessarily "encompasses criminal proceedings no less than civil proceedings" and that "[t]here is no ambiguity").

Yet the majority proffers no competing interpretation of "benefits" (facial or latent) to support excluding the COLA. *See Herold*, 329 A.3d at 1176; *Gustine*, 842 A.2d at 348. The majority reasons that 77 P.S. § 71(a) "does not purport

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argument, the fact that the statute does not 'explicitly state' that it applies to criminal cases does not clothe the statute in ambiguity. The statute speaks in the broadest of terms, stating that it applies in any legal action or other proceeding; such global language obviously encompasses criminal proceedings no less than civil proceedings. There is no ambiguity." (emphasis omitted)).

In any event, the General Assembly contemplated a COLA (generally) in debating the statute. Senate J., June 19, 1996, at 2163-64 ("Why would anyone want to deny a worker the compensation benefit the law allows and deny the worker the full benefit of pension and Social Security he or she contributed to? Why instead do we not just direct the employer to continue to pay the injured worker's pension plan while he is unable to work? Why do we not institute an annual cost-of-living increase for injured workers?"); House J., June 19, 1996, at 1590 ("I would just ask rhetorically, if the doctors can receive a COLA, then why, too, cannot the injured workers in this State? But perhaps that is something . . . we would have discussed had we had the opportunity to offer some amendments to make some sensible changes to this bill."); *see, e.g.*, *generally* Senate J., June 19, 1996, at 2179 (reflecting discussion about the offset); House J., June 19, 1996, at 1580 (same).

[14] *McCartney*, ___ A.3d at ___, slip op. at 15-16 (citing, *inter alia*, *Westwood*, 848 A.2d at 164-65, and *Hannaberry HVAC v. Workers' Comp. Appeal Bd. (Snyder, Jr.)*, 834 A.2d 524 (Pa. 2003) (*Hannaberry*), for the premise that courts "have declined to rely on the General Assembly's silence in a statute as expressing a particular intent.").

to provide an offset for amounts that are not contributed by the employer."[15] As the majority acknowledges, the General Assembly "chose a 50% offset as a fair approximation of the employer's contribution because of the burden to tailor the offset in each individual case to the actual Social Security tax contributions made by an employer for the employee subject to the offset."[16] That approximation reflects the General Assembly's affirmative decision: knowing an employer's actual contribution varies, the General Assembly declined to require exact measurements and opted for 50%.[17] The statutory text that follows 50%—*i.e.*, "of the benefits commonly characterized as 'old age' benefits under the Social Security Act"—identifies the type of benefits that 77 P.S. § 71(a) credits. That text asks the reader only whether a benefit is an old age Social Security benefit. It does not ask who funded the benefit. Nor does the majority's extraneous fact (that no employer funds a COLA) reveal a competing interpretation of "benefits." A theory about who funded the benefit is not a facial or latent interpretation of "benefits."

In my view, the majority is examining how the offset *applies* to a COLA; it is not *interpreting* "benefits." *See Greenwood*, 306 A.3d at 330. The majority reads 77 P.S. § 71(a)'s alleged silence as creating an exception for a COLA. But, the General Assembly could have created that exception in 1996 (after automatic COLAs began), when it first enacted the offset.

When an agency has read statutory silence like the majority does, this *en banc* Court has rejected that reading. *Dechert LLP v. Pa. Dep't of Cmty. & Econ. Dev.*, 234 A.3d 911, 918 (Pa. Cmwlth. 2020) (*en banc*). In *Dechert*, the statute was

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[15] *McCartney*, ___ A.3d at ___, slip op. at 16 (emphasis omitted).

[16] *McCartney*, ___ A.3d at ___, slip op. at 4 (quoting *Caputo v. Workers' Comp. Appeal Bd. (Commonwealth)*, 34 A.3d 908, 917-18 (Pa. Cmwlth. 2012) (*en banc*) (emphasis omitted)).

[17] As noted *infra*, the benefit that the majority credits *already reflects every prior* COLA. No employer contributed to those prior years' COLAs, either.

"silent on how to treat a business seeking to relocate from an expired" business development zone to an active one. *Id.* at 914. The agency "interpreted this omission, in conjunction with the legislative intent of providing temporary tax relief, as prohibiting businesses from obtaining tax breaks when they move from one zone to another, whether such zone is active or expired." *Id.* (citation modified). The statutory terms nonetheless encompassed the business: the statute confers tax benefits on a qualifying business that "relocates from outside a subzone," and the business at issue did. *Id.* at 918-19. Like the majority, the agency did "not offer a different construction of the terms" of the statute; it asked this Court "to disregard the statute's plain meaning in favor of its proffered construction of the statute's silence as a prohibition." *Id.* at 918.

Dechert disagreed: "We observe no ambiguity triggering deference to [the agency's] construction of the [statute] to impose a limitation that it does not contain." *Id.* (footnote omitted).[18] "To the extent [the agency] believes the statute should prohibit movement from an expired zone to an active zone, that end implicates a legislative remedy beyond its purview or that of this Court." *Id.* at 919 (citation modified). Unlike *Dechert*, which refused to construe an omission as an affirmative prohibition advancing the General Assembly's purported intent, the majority reads 77 P.S. § 71(a)'s alleged silence as an exception advancing the Act's remedial purpose. Respectfully, that reading triggers neither Section 1921(c) prong.

C.

Even if 77 P.S. § 71(a)'s alleged silence reflected a legislative oversight, that oversight would not exclude the COLA from the offset. *Burke* involved such an oversight: the statute at issue allowed appeals only from orders "disapproving" a

[18] I need not address *Dechert*'s deference rationale. *See generally Lutheran*, ___ A.3d, at ___, 2026 WL 2958968, at *18, slip op. at 37-38.

denial of insurance coverage without permitting appeals from orders "approving" a denial. *Burke*, 103 A.3d at 1273. As a result, the statute granted a right of appeal to a party that "would never have cause to exercise it." *Id.*[19] "The statutory text thus reveals, not an ambiguity, but an asymmetry stemming from an apparent legislative oversight." *Id.*; *see Sivick*, 238 A.3d at 1263 n.51 (stressing that *Burke* held "that such an asymmetry, even a critical one, does not constitute ambiguity as such"); *Mohamed*, 40 A.3d at 1193.

Unlike *Keystone* and *Pasko*, *Burke*'s statutory text answered the question because a statutory term encompassed the subject: only a decision disapproving a denial may be appealed. Despite the oversight, *Burke* declined to rewrite the statute "under the guise of statutory construction" to supply the omitted words. *Burke*, 103 A.3d at 1274. Unlike *Burke*, nothing was omitted here: a statutory term encompasses the subject, and 77 P.S. § 71(a) answers the question before this Court.

I turn to *Hannaberry*, on which the majority relies and in which the General Assembly failed to contemplate a scenario.[20] Two predicates justified

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[19] Precisely: "the text admits of only one reasonable interpretation—that a decision *disapproving* a denial or partial denial may be appealed—albeit, as discussed, one of the parties given this right would never have cause to exercise it." *Burke*, 103 A.3d at 1273 (emphasis in original). "The General Assembly evidently meant to say 'approving or disapproving,' but instead only said 'disapproving.'" *Id.* at 1274.

[20] In *Hannaberry*, after an employee suffered a devastating work injury, a dispute arose over the proper calculation of his average weekly wage (AWW). *Hannaberry*, 834 A.2d at 525-26. The employee began working for employer part-time while still in high school. *Id.* Upon his graduation, the employee accepted a full-time position, and his weekly wage increased dramatically. *Id.* This change in status fueled the dispute because amendments to 77 P.S. § 582(d) required his AWW to be calculated based on three calendar quarters of employment, two of which occurred prior to the employee's graduation. *Id.* Our Supreme Court viewed the amendments as "an attempt to ensure that the calculation of wages would be a more accurate and realistic measure of what the employee could have expected to earn had he not been injured which, in turn, would ensure both that the employee was not over-compensated and the employer not over-burdened."

Hannaberry's statutory construction: (1) 77 P.S. § 582(d) did not contemplate "the part-time to full-time paradigm presented" by the facts, and (2) reading "the statute as requiring dilution of the benefit would be contrary to the overall humanitarian purpose of the Act." *Hannaberry*, 834 A.2d at 533. For the first predicate, *Hannaberry* explained that the General Assembly's failure to contemplate that factual scenario revealed "a gap in the legislative scheme." *Id.* For the second predicate, *Hannaberry* did not rest solely on purpose because the "mere harshness of the result below *alone* cannot dictate the course of our legal analysis." *Id.* at 528 (emphasis added). *Hannaberry* explained that applying 77 P.S. § 582(d) to dilute the claimant's benefits was "an absurd and unreasonable result" unintended by the General Assembly. *Id.* at 534 (citing 1 Pa.C.S. § 1922(1)). Thus, per *Hannaberry*, 77 P.S. § 582(d) "does not control the calculation in a circumstance . . . where it would lead to a grossly and demonstrably inaccurate measure of a worker's average weekly wage." *Id.*

Here, neither predicate exists. For the first predicate, the majority acknowledges that "the Social Security Act specifically contemplates beneficiaries receiving [automatic] COLA increases in their benefits," as it has since 1975.[21] Because the General Assembly enacted the offset two decades later, it did not fail to contemplate the factual scenario. For the second predicate, 77 P.S. § 71(a) does not absurdly and unreasonably dilute a claimant's benefits. It does not, as 77 P.S. § 71(a) applies 50% equally to all claimants without singling out any particular employee for harsher, punitive treatment, *i.e.*, no absurd dilution. *See Hannaberry*, 834 A.2d at 533. In contrast, the majority's holding singles out all claimants whose benefits

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Id. at 528. However, plainly, the General Assembly had not accounted for a scenario in which an injured employee's wages were underestimated. *Id.* at 533.

[21] *McCartney*, ___ A.3d at ___, slip op. at 6, 11.

increase by a COLA after the offset begins.[22] Respectfully, the majority rewrites the statute by drafting an exception that its statutory text does not contain. *See Burke*, 103 A.3d at 1274. But courts "have no power to depart from the clear meaning of a plainly expressed phrase." *Maguire v. James Lees & Sons Co.*, 116 A. 679, 680 (Pa. 1922). Accordingly, because 77 P.S. § 71(a)'s text answers the question, it is not ambiguous, and the offset includes the COLA.

II.

Even if 77 P.S. § 71(a) contained no statutory term encompassing a COLA, as no term encompassed expiration in *Keystone*, I would turn to 1 Pa.C.S. § 1921(c)(8), which points me to the applicable regulation. *See* 1 Pa.C.S. § 1921(c)(8) (explaining that when the statutory text is not explicit, we may consider "[l]egislative and administrative interpretations of such statute"); *Lutheran*, ___ A.3d at ___, 2026 WL 2958968, at *19, slip op. at 40. Those interpretations include regulations.[23] *Youth*, 66 A.3d at 310 ("When an agency . . . promulgates published regulations through the formal notice, comment, and review procedures . . . , its resulting pronouncements are accorded the force of law and are thus denominated 'legislative rules.'" (citations omitted)); *Lutheran*, ___ A.3d at ___, 2026 WL 2958968, at *21, slip op. at 43. In *Keystone*, the regulation implied the answer that was absent from the statutory text. *See Keystone*, 2024 WL 1291541, at *8.

Here, the offset regulation states the answer. The General Assembly instructed the Department to issue regulations "as appropriate," and the Department promulgated regulations addressing the 50% offset. 77 P.S. § 71(d); 34 Pa. Code §§

[22] For an illustration of the inequitable result of the majority's reasoning, *see* Section III, *infra*.

[23] When the regulatory text is not explicit, we may turn to the agency's guidance documents. *Nw. Youth Servs., Inc. v. Dep't of Pub. Welfare*, 66 A.3d 301, 310 (Pa. 2013) (*Youth*).

123.1 to .11.[24] One such regulation provides that "[w]orkers' compensation benefits otherwise payable shall be offset by 50% of the *net amount received* in Social Security (old age) benefits." 34 Pa. Code § 123.7(a) (emphasis added).[25] "*Net*" is defined as the "amount of . . . Social Security (old age) . . . benefits received by the employe after required deductions for . . . taxes . . . ." 34 Pa. Code § 123.2 (citation omitted).

Because the regulation quantifies the offset by the amount received, it is neither silent nor ambiguous. The gross amount received includes a COLA because a COLA increases a claimant's monthly benefit. The *net amount received* excludes taxes. Only one reasonable interpretation of *net amount received* exists: the Social Security benefits a claimant receives, which include a COLA and exclude required deductions for taxes. 34 Pa. Code §§ 123.2, 123.7.

No other reasonable interpretation exists because the regulation tracks the General Assembly's enacted exceptions. *Compare* 34 Pa. Code § 123.7(a), *with* 77 P.S. § 71(a). To recap, the General Assembly excepted from the offset both

[24] "This subchapter interprets the provisions of the act which authorize the offset of workers' compensation benefits by amounts received in unemployment compensation, Social Security (old age), severance and pension benefits, subsequent to the work-related injury." 34 Pa. Code § 123.1.

[25] The regulation follows in full:

> (a) Workers' compensation benefits otherwise payable shall be offset by 50% of the net amount received in Social Security (old age) benefits. The offset shall only apply to amounts which an employe receives subsequent to the work-related injury. The offset may not apply to Social Security (old age) benefits which commenced prior to the work-related injury and which the employe continues to receive subsequent to the work-related injury.
>
> (b) The offset may not apply to benefits to which an employe may be entitled, but is not receiving.
>
> (c) The offset shall be applied on a weekly basis. To calculate the weekly offset, 50% of the net monthly Social Security (old age) benefit received by the employe shall be divided by 4.34.

34 Pa. Code § 123.7. "Employe" is the archaic spelling of "employee."

specific loss benefits and any claimant who received "Social Security benefits . . . prior to the compensable injury." 77 P.S. § 71(a). The regulation excepts three types of benefits from the offset: benefits (1) received before the work-related injury; (2) that commenced before the injury and continue after it; and (3) that an employee is entitled to but is not receiving. 34 Pa. Code § 123.7(a)-(b). Thus, the Department knew how to provide an exception to the offset; it did not provide an exception for a COLA. *See, e.g.*, *id.* § 127.128 (excepting acute trauma care from a medical fee cap). I decline to read such an exception into the Act. Absent an exception, the statutory and regulatory text controls regardless of whether an employer contributes to a COLA.[26]

III.

To illustrate my concern about the inequitable consequences, a simple example will suffice. Assume two claimants with the same injury date, wages, and Social Security benefits. In December, Claimant A receives a $1,000 Social Security benefit. Her employer's offset would be 50%, or $500. In January, a COLA increases her benefit by $200 for an aggregate $1,200 benefit, but the offset remains at $500. Per the majority, this fulfills the remedial and humanitarian purposes of the Act because it will protect this claimant against a reduction in her buying power caused by inflation.[27]

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[26] *See Iselin v. United States*, 270 U.S. 245, 251 (1926) ("To supply omissions transcends the judicial function."); *Petteys v. Butler*, 367 F.2d 528, 538 (8th Cir. 1966) (Blackmun, J., dissenting) (stating if "Congress intended to provide additional exceptions, it would have done so in clear language").

[27] It bears repeating: the majority reasons that any COLA should be excepted from the offset calculation because the employer has not contributed to this portion of an employee's Social Security benefit. *See McCartney*, ___ A.3d at ___, slip op. at 16-17. In my view, this is misleading. In any given year, the primary insurance amount reflects the prior accumulation of annual COLAs. The 50% offset is merely "a fair approximation" of an employer's contribution. *Caputo*, 34 A.3d at 917-18; *see also Pasko*, 323 A.3d at 52 n.20 (acknowledging "the imperfection inherent in the

Claimant B begins receiving Social Security in January. Her first check would include the same COLA, but it is not an "increase" to her benefit because the COLA will have already been subsumed into her aggregate benefit. Claimant B would receive a $1,200 Social Security benefit, and her offset would be $600. Thus, these claimants, similarly situated, would receive inequitable results. In my view, this will undermine the purposes of the Act.

Accordingly, I respectfully dissent.

LORI A. DUMAS, Judge

Judge Wallace joins.

Social Security offset," "regardless of whether the employer is justified in receiving" it). If an employee suffers a work-related injury long into his working years, but after only a short period with his most recent employer, that employer will necessarily benefit from the offset far more than the prior employers who contributed to the injured employee's Social Security benefit.