

STATE OF MICHIGAN
COURT OF APPEALS

MARTIN J. SHANNON,

Plaintiff-Appellee,

v

COUNTY OF MUSKEGON,

Defendant-Appellee,

and

SECOND INJURY FUND,

Defendant-Appellant.

UNPUBLISHED

February 7, 1997

No. 182973

WCAC No. 92-0245

Before: Gribbs, P.J., and Markey and T. G. Kavanagh,* JJ.

PER CURIAM.

Defendant Second Injury Fund (Vocationally Handicapped Provisions) appeals the Workers' Compensation Appellate Commission's (WCAC) decision affirming with modification the decision of the magistrate and holding defendant liable for payment of benefits to plaintiff Martin J. Shannon. We reverse.

Plaintiff is a court reporter. Plaintiff was working as a court reporter for a circuit court judge in Ionia and Montcalm Counties when he learned that a court reporter position for a judge in Muskegon County would soon be available. Plaintiff interviewed with the Muskegon County judge on April 21, 1981, and was offered the position. Plaintiff felt obligated to give two weeks notice to his employer, and arranged to begin work in Muskegon County on May 14, 1981. Plaintiff submitted his resignation to the Ionia/Montcalm County judge effective May 13, 1981. Plaintiff subsequently took a pre-employment physical examination and was informed that, in order to be employed, he would have to

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

obtain a vocationally handicapped workers' certificate. Plaintiff obtained the certificate from the Department of Education office in Muskegon on May 8, 1981.

Plaintiff began working for defendant County of Muskegon on May 14, 1981, and presented his certificate. Defendant completed the certificate on May 18, 1981, and returned it to the Department of Education. On June 11, 1981, defendant received a letter from the Department of Education indicating that it was protected under MCL 418.921; MSA 17.237(921). When a vocational certificate is valid, the employer's liability is limited to 52 weeks, and the Second Injury Fund becomes liable thereafter. *Id.*

On April 24, 1990, after going to the store to purchase batteries for his dictation equipment, plaintiff suffered a heart attack. At a subsequent hearing for determination of rights, a magistrate found that plaintiff was disabled due to the heart attack and pulmonary embolism. The magistrate also found that plaintiff's certificate was valid, and that, pursuant to MCL 418.905; MSA 17.237(905), defendant Second Injury Fund was liable for payment of benefits to plaintiff after 52 weeks. The WCAC modified the magistrate's award, but affirmed the magistrate's finding that defendant was liable for payments to plaintiff.

We reverse. Plaintiff was employed at the time he applied for the vocationally handicapped workers' certificate in this case, and his new employer knew about the employment. An applicant must be unemployed at the time of application for the certificate to be valid. *Tracer v Southgate*, 184 Mich App 811, 816; 459 NW2d 321 (1990). See also *Herron v Borgess*, unpublished per curiam opinion, #175733, rel'd 2-16-95. Pursuant to MCL 418.905; MSA 17.237(905), the certificate issued to plaintiff was invalid. The WCAC erred in finding defendant liable in this case.

Reversed.

s/ Roman S. Gribbs
/s/ Jane E. Markey
/s/ Thomas Giles Kavanagh