

STATE OF MICHIGAN
COURT OF APPEALS

HAROLD DALE WALLEY,

Plaintiff/Counterdefendant-
Appellant/Cross-Appellee,

v

CITY OF LIVONIA FIRE DEPARTMENT,

Defendant/Counterplaintiff-
Appellee/Cross-Appellant.

UNPUBLISHED

June 6, 2000

No. 210436

Wayne Circuit Court

LC No. 97-711626-CZ

Before: Hood, P.J., and Gage and Whitbeck, JJ.

PER CURIAM.

Plaintiff Harold Dale Walley appeals as of right from the trial court's order granting defendant City of Livonia Fire Department (the Department) summary disposition pursuant to MCR 2.116(C)(4) in his action to enforce a workers' compensation award. The Department cross-appeals, arguing alternate grounds to affirm summary disposition in its favor and also arguing that summary disposition in its favor on its counterclaim would have been appropriate. We affirm.

I. Basic Facts And Procedural History

Walley began his career with the Department as a firefighter. The Department promoted him first to the position of assistant driver, then engineer, followed by promotions to the positions of lieutenant, captain, senior captain, and finally battalion chief over the course of almost thirty years of service. In late May 1990, Walley felt ill so, at the end of his shift, he drove himself to the emergency room where he told the hospital staff he was having a heart attack. Hospital staff transferred Walley to another hospital where physicians performed heart surgery on him. Following his surgery, Walley sought workers' compensation benefits from the Department. He received sick pay from May 25, 1990 to December 10, 1991, the period in which his workers' compensation claim was pending until he retired with a non-disability pension.

After hearing testimony in the workers' compensation action, the magistrate issued an opinion finding that Walley met the standard for benefits articulated in §418.301 of the Worker's Disability

Compensation Act (WDCA), MCL 418.301; MSA 17.237(301), because he had heart damage and there was a relationship between that heart damage and specific events at work. The magistrate also determined that Walley's receipt of a non-disability pension did not affect his entitlement to workers' compensation benefits and found that Walley had not received, and was not receiving, like benefits. Accordingly, the magistrate ordered the Department to pay Walley weekly benefits in the amount of \$427 from May 26, 1990 until further order of the Bureau of Workers' Compensation (the Bureau) as well as all reasonable and necessary medical expenses for the work-related health condition.

The Department appealed the magistrate's decision to the Workers' Compensation Appellate Commission (WCAC), arguing that factors unrelated to employment caused Walley's heart problems. However, the WCAC affirmed the magistrate's decision in an opinion dated December 15, 1994. Having failed to obtain relief from the WCAC, the Department applied for leave to appeal in this Court. When this Court denied leave to appeal in May 1995, the Department applied for leave to appeal in the Michigan Supreme Court. However, in December 1995, the Supreme Court also denied leave to appeal.

The Department then audited the amount of money it owed Walley. The calculations involved are reasonably complex and not directly relevant to the basic jurisdictional issue involved here. Suffice it to say that the parties disagreed about the amount due to Walley. Walley then commenced an action in the trial court pursuant to MCL 418.863; MSA 17.237(863), which states in pertinent part:

Any party may present a certified copy of an order of a workers' compensation magistrate . . . to the circuit court of the circuit in which the injury occurred . . . The court, after 7 days' notice to the opposite party or parties, shall tender judgment in accordance with the order unless proof of payment is made

The Department counterclaimed and moved for summary disposition, arguing that it had paid the workers' compensation benefits to Walley, that even if it had not made those payments the trial court lacked jurisdiction to decide the issue, and that if the trial court entered judgment for Walley the Department should prevail on its counterclaim.

The trial court, after extensive briefing and argument, issued its opinion and order on February 27, 1998 granting the Department's motion for summary disposition and dismissing the Department's counterclaim. The trial court determined that the central issue in the case was whether the Department could retroactively characterize payments that it made to Walley as workers' compensation benefits. Citing *Molengraff v Holland Transmission Services, Inc*, 188 Mich App 107, 110-111; 469 NW2d 15 (1991), the trial court determined that this was a controversy regarding compensation and, therefore, it did not have subject matter jurisdiction. In pertinent part, the trial court stated:

Our case presents a situation parallel to that involved in Molengraff, with the exception that plaintiff [Walley] has not yet filed a petition with the Bureau, seeking what he maintains is full compensation for his accrued benefits. In both cases the defendant attempted to show that, in fact, the plaintiff had received full payment. In our case, much like Molengraff, the dispositive issue depends on an examination of the various

provisions of the workers' compensation act that bear on whether the defendant [the Department] is entitled to retroactively characterize the payment previously made to plaintiff for pension or other benefits as having actually been made in discharge of its liability to pay workers' compensation benefits. The practical effect of allowing defendant to do this is very much akin to allowing defendant an offset (as in Molengraff) or to coordinate benefits. Molengraff, thus, teaches that this issue is one within the exclusive jurisdiction of the Bureau, and the court cannot enter a judgment on the merits.

Because resolution of the plaintiff's right to a judgment is dependent upon resolution of an issue that lies within the exclusive jurisdiction of the Bureau, this court finds that it lacks subject matter jurisdiction to proceed in this case, at least until such time as plaintiff secures a final order from the Bureau that establishes his right to accrued benefits. Unlike the situation in Molengraff, there are no pending proceedings in the Bureau[.] [T]his court will not hold this case in abeyance and will grant defendant's motion based on lack of subject matter jurisdiction pursuant to MCR 2.116(C)(4).

The trial court also dismissed the Department's counterclaim as moot.

II. Standard Of Review

Walley argues that the trial court erred in granting summary disposition in favor of defendant because the trial court had jurisdiction to determine the issue. We review de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(4), which necessarily alleges that the trial court lacks subject matter jurisdiction. MCR 2.116(C)(4); *Rudolph Steiner School of Ann Arbor v Ann Arbor Charter Twp*, 237 Mich App 721, 730; 605 NW2d 18 (1999).

III. The Bureau's Jurisdiction

In MCL 418.841(1); MSA 17.237(841)(1), the Legislature plainly mandated that "[a]ny dispute or controversy concerning compensation or other benefits shall be submitted to the bureau and all questions arising under this act shall be determined by the bureau or a worker's compensation magistrate, as applicable. . . ." However, as we noted above, in order to enforce the Bureau's orders, a party may seek a judgment on a certified copy of an order from the Bureau in a circuit court as if that matter had been tried in the circuit court. MCL 418.863; MSA 17.237(863).

Walley attempted to enforce the magistrate's order by presenting the order to the trial court under MCL 418.863; MSA 17.237(863). The Department claimed that it had paid the amount due to Walley in the form of other benefits, which it retroactively characterized as workers' compensation benefits, after the Michigan Supreme Court denied leave to appeal the Bureau's order. As the trial court correctly concluded, the critical issue in this case is whether, after the Bureau's order became final, the Department can characterize payments it made *before* the final order as workers' compensation benefits.

We conclude that the trial court was correct in deciding that this was a controversy within the exclusive jurisdiction of the Bureau. In *Molengraff*, *supra*, this Court faced a similar situation in which the plaintiff attempted to enforce a Bureau order in circuit court because the employer-defendant had subtracted overpayments, made during the appeal period, from the final payment to the plaintiff. *Id.* at 110. The plaintiff in *Molengraff* also attempted to enforce the magistrate's order through the Bureau, but the Bureau concluded that the employer could not take the credit, which was at odds with the circuit court's decision that the employer could take the credit. *Id.* On appeal from the circuit court's decision, this Court, in an unpublished, per curiam opinion, held that the Bureau had exclusive jurisdiction and vacated the trial court's decision because the Workers' Compensation Appeal Board¹ did not address the overpayment issue. *Id.*

Maner v Ford Motor Co, 196 Mich App 470; 493 NW2d 909 (1992), *aff'd* 442 Mich 620 (1993), also supports the trial court's decision in this case. The *Maner* Court convened a special panel to determine if the employers in the consolidated appeal could deduct sickness, accident, and other benefits from the workers' compensation wage loss payments due to the employees under MCL 418.811; MSA 17.237(811), if the other benefits "were not caused to be paid by the employer as provided in the Worker's Disability Compensation Act" *Id.* at 473. The Court decided that the benefits were not deductible from the workers' compensation benefits under § 811 because the WDCA did not require the employers to make the disputed benefit payments to the plaintiff-employees. *Id.* at 489.

Although we do not have to resolve the substantive issue addressed in *Maner*, *Maner* is helpful with respect to the jurisdictional issue in this case because the authority on which *Maner* Court rested its decision derived solely from cases that were appealed through the Bureau and not a circuit court. See, e.g., *Aetna Life Ins Co v Roose*, 413 Mich 85; 318 NW2d 468 (1982) (the Bureau had exclusive jurisdiction to determine an insurance company's claim for reimbursement); *Smith v Michigan Bell Telephone Co*, 189 Mich App 125; 472 NW2d 32 (1991), affirmed in part and vacated in part on remand 201 Mich App 369 (1993) (the employer raised the set off issue at the initial Bureau hearing). Furthermore, even though the *Maner* Court did not directly address jurisdiction, its discussion of workers' compensation cases with similar issues leads us to conclude that the controversy here also concerns compensation and, therefore, is within the Bureau's exclusive jurisdiction. MCL 418.841; MSA 17.237(841).

Walley argues that the Bureau lost its jurisdiction once it issued a final order in his case. However, we note that Rule V² allows the Bureau to address compliance with its orders sua sponte by the director or if the matter is brought to the Bureau's attention. Thus, the Bureau has a residual and continuing capacity to address Walley's concerns regarding his benefits.

In light of our resolution of this issue, we decline to address the res judicata issue Walley raises on appeal³ and the remaining issues the Department raises on cross-appeal.

Affirmed.

/s/ Harold Hood
/s/ Hilda R. Gage
/s/ William C. Whitbeck

¹ The predecessor to the WCAC.

² 1984 AACCS, R 408.35(1-2).

³ In its opinion, the trial court stated:

In essence, the Court in Simm required that the matter of set off be raised by the employer at a contested hearing before unilaterally addressing the issue. However, as indicated at oral argument, this court is aware of a variety of situations in which the employer can [by] authority of certain amendments to the Act presently coordinate benefits without first seeking approval by the Bureau, and that in these situations *res judicata* has no application. See Scheuneman v General Motors Corp, 1995 WCACO 1704 (and cases cited therein). While defendant has repeatedly maintained that this case does not involve coordination or even set-off, but rather payment of benefits, nevertheless, given what has occurred in terms of the initial characterization of payments by the defendant to plaintiff it is similar to what legally occurs when an employer attempts to coordinate benefits or claim a set-off. Based on Scheuneman, and the cases cited therein, the present version of the Act does not make it incumbent on the employer to first raise the issue of characterization with the Bureau. Rather, under this approach, if the employer disputes how an employer has characterized certain payments previously made to it, the net effect being that the employee would recoup more than he otherwise could, then the employee has the burden to petition the Bureau for relief. In short, the underlying result reached in Simm is based on a state of law that no longer exists, at least with respect to who must first raise issues before the Bureau, and accordingly Simm does not control this case on the issue of who must raise the issue of payment characterization.

In his brief on appeal, Walley noted that this Court's decision in *Scheuneman v General Motors Corp*, unpublished per curiam opinion of the Court of Appeals, issued January 8, 1999 (Docket No. 199831) reversed the *Scheuneman* decision the trial court in this case cited. By reversing, Walley contends, the rationale for the trial court's decision in this case "vanishes." However, since Walley filed his brief, the Michigan Supreme Court issued a special order reversing this Court's unpublished decision in *Scheuneman*. *Scheuneman v General Motors Corp*, 461 Mich 906; 603 NW2d 784 (1999). In that order, the Supreme Court adopted Judge Sawyer's reasoning in his dissent and stated that "the doctrine of *res judicata* did not preclude defendant from applying the coordination of benefits provisions of §354 of the Workers' Disability Compensation Act." *Id.* Therefore, the Supreme Court's decision makes clear that the trial court did not err in relying on the WCAC's reasoning in *Scheuneman* to distinguish this case from *Simm*. The trial court's reasoning may have momentarily "vanished" as a result of this Court's decision in *Scheuneman*, but that reasoning has now

reappeared in full corporeal form as a result of the Michigan Supreme Court's later decision in the same case.