STATE OF MICHIGAN

COURT OF APPEALS

JILES SEARCY,

Plaintiff-Appellant,

v

CHRYSLER CORPORATION,

Defendant-Appellee.

UNPUBLISHED
January 4, 2002

No. 228271
WCAC
LC No. 95-000008

Before: Bandstra, C.J., and White and Collins, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the order of the Worker's Compensation Appellate Commission (WCAC), which on remand from this Court refused to address the questions presented on the basis of res judicata. We affirm.

This case has a long history. Plaintiff began working for Chrysler Corporation (Chrysler) in May 1951. He also worked simultaneously for the City of Detroit beginning in April 1964. In 1987, plaintiff filed an application for hearing contending that he had become disabled as a result of separate and distinct back injuries suffered while working for Chrysler and for the City of Detroit (*Searcy I*). In a decision mailed April 20, 1989, a magistrate found plaintiff totally disabled as a result of last day of work injuries at both employers, on May 3, 1985 at Chrysler and on June 3, 1985 while working for the City of Detroit. However, the magistrate denied plaintiff an open award of benefits from Chrysler because of the retiree presumption contained in § 373 of the Worker's Disability Compensation Act, MCL 418.373. The magistrate awarded plaintiff benefits against the City of Detroit only at the rate of $214.35 per week.

Plaintiff appealed, and in an opinion and order mailed May 18, 1992, the WCAC agreed with plaintiff that the magistrate erred in applying the retiree presumption. However, a majority of the panel disagreed with plaintiff on the proper method of awarding compensation in light of dual employment. Plaintiff contended that he was entitled to a full award of benefits from each employer at the 1985 maximum weekly rate of $358. The majority held that plaintiff was entitled only to the maximum apportioned between the two employers based on the percentage of plaintiff's total wages each employer contributed under MCL 418.372. The WCAC ordered Chrysler to pay plaintiff 62.13% of the maximum amount and the City of Detroit to pay 37.87%, i.e., $222.43 and $135.57, respectively.

Plaintiff and Chrysler each applied for leave to appeal to this Court. Both applications were denied on the merits, and the Supreme Court denied leave to appeal.

On November 9, 1993, plaintiff filed a new application for hearing, contending that Chrysler was not paying him in accordance with the final orders of the magistrate and WCAC (*Searcy II*). Plaintiff claimed that Chrysler was improperly coordinating certain benefits plaintiff is receiving from other sources under MCL 418.354, including nondisability pension benefits, disability insurance benefits, and 50% of plaintiff's old-age social security benefits. Although plaintiff did not contest Chrysler's right to coordinate those benefits, plaintiff argued that just as Chrysler is obligated to pay only 62.13% of plaintiff's weekly wage loss benefits, Chrysler should be allowed to coordinate only that percentage of the pension, disability, and social security benefits. The magistrate disagreed and the WCAC affirmed. Plaintiff's application to this Court was denied on the merits.

Plaintiff applied to the Supreme Court for leave to appeal. While leave was pending, the WCAC issued an opinion in *McCalla v Marine City Nursery, Inc,* 10 MIWCLR 1445, 1997 ACO #504. Plaintiff filed an "addendum" to his application, asserting that *McCalla* brought into question the WCAC's decision in *Searcy I.* In lieu of granting leave, the Supreme Court remanded to this court for consideration as on leave granted. In a memorandum opinion dated August 3, 1999, this Court reversed and remanded to the WCAC for reconsideration in light of its ruling in *McCalla.*

In an opinion and order dated June 8, 2000, the WCAC reaffirmed its previous decision because it found that res judicata prevented it from addressing both the dual recovery and the coordination of benefits issues.

> Plaintiff now argues that he should be granted the whole award against Chrysler on the basis of the reasoning stated in *McCalla* and he insists that res judicata does not prohibit the Commission from, as he puts it, "redetermining the amount of plaintiff's benefits." Plaintiff proposes that what he is seeking is "merely a redetermination of [the] amount of benefits and the methodology by which the amount is determined." We disagree with the plaintiff's proposal for the avoidance of res judicata.
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> To some extent, every compensation litigation which seeks to overcome a prior final decision involves a change in the "amount" of benefits. But the law provides a much more refined examination of the impact of res judicata. Foundational benefit entitlement determinations are governed by res judicata. Wage rate determinations are not. Here, the 1992 determination of the Commission, which went to final judgment after both the Court of Appeals and the Supreme Court declined to grant leave, outlined the basic contours of liability between the three parties involved in the first litigation. It concerned the underlying entitlement; the elements of compensability; and eligibility. Plaintiff was found entitled to one award against both defendants for whom plaintiff worked, not two separate awards against each. This was not a matter of a wage rate determination, but a substantive matter of entitlement against the defendants. Res judicata must therefore be deemed to apply.

Plaintiff argues in this appeal that the WCAC erred in holding that res judicata prevents it from addressing the questions remanded by this Court, that the WCAC should reverse itself and grant plaintiff separate awards against each employer and not one combined award, and that the WCAC erred in holding that Chrysler is entitled to coordinate 100% of certain additional benefits as opposed to 62.13% of those benefits, which is the percentage of weekly wage loss benefits for which Chrysler is liable.

With regard to the issue whether plaintiff is entitled to separate awards against each employer and not one combined award, the doctrine of law of the case controls. The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue. *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001). The primary purpose of the doctrine is to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit. *Id.* However, the doctrine does not preclude reconsideration of a question if there has been an intervening change of law. *Id.* For this exception to apply, the change of law must occur after the initial decision of the appellate court. *Id.*

The question whether plaintiff is entitled to two maximum awards or only one award at the maximum rate apportioned between the two employers was raised and decided against plaintiff in the May 18, 1992 decision of the WCAC (*Searcy I*). That order became final after this Court denied the applications for leave to appeal for lack of merit and the Supreme Court denied applications for leave to appeal. Further, we discern no intervening change in law in this case. *McCalla* was decided well after the WCAC's May 18, 1992 decision became final by virtue of denial of the applications for leave to appeal. Moreover, *McCalla* does not purport to overrule any prior decision made in this case, nor could it. The prior decisions of the WCAC in this case and in *McCalla* were made by coequal panels of the WCAC, the decisions of which do not bind other panels. Accordingly, the WCAC did not err in declining to revisit the issue of dual recovery.

Plaintiff also argues that the WCAC erred in *Searcy II* when it affirmed the magistrate's conclusion that MCL 418.354(1) does not provide for partial coordination. Plaintiff contends that if defendant need only pay a percentage of plaintiff's total weekly wage loss benefits, defendant should not be allowed to coordinate more than an equal percentage of other benefits, such as nondisability pension benefits and old-age social security benefits. We disagree. Because § 354(1) recognizes no partial coordination except in certain circumstances, neither the WCAC nor this Court has any authority to order partial coordination. *Paschke v Retool Industries*, 445 Mich 502, 511; 519 NW2d 441 (1994). Moreover, partial coordination would defeat the intent of the coordination provision, which is to avoid duplicative payments or otherwise relieve an employer of its compensation liability when wage-loss benefits are paid by some other means. *Drouillard v Stroh Brewery Co*, 449 Mich 293, 299-300; 536 NW2d 530 (1995).

The issue of coordination of social security benefits by the City of Detroit is not yet ripe for adjudication. The City of Detroit has made no effort to coordinate against plaintiff's social

security benefits. If and when it does, plaintiff will be entitled to file a new application for hearing and have the issue adjudicated by the Bureau.

Affirmed.

/s/ Richard A. Bandstra
/s/ Jeffrey G. Collins