

STATE OF MICHIGAN
COURT OF APPEALS

LINDA D. JOHNSON,

Plaintiff-Appellee,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellant.

UNPUBLISHED

January 29, 2008

No. 275909

WCAC

LC No. 05-000228

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant, General Motors Corporation, appeals by leave granted a January 22, 2007, order of the Worker's Compensation Appellate Commission ("WCAC") affirming a magistrate's denial of defendant's petition to stop the payment of worker's compensation benefits to plaintiff, Linda D. Johnson. Because this case must be resolved within the confines of MCL 418.301(5), we vacate the WCAC's order and remand this matter for further proceedings including but not limited to a determination of plaintiff's eligibility for benefits under MCL 418.301(5) and any necessary findings of fact. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1994, plaintiff was found to suffer from a disabling knee condition attributable to her employment with defendant. Plaintiff was granted an open award of benefits by the worker's compensation bureau. However, plaintiff returned to work, albeit subject to physician-imposed restrictions. In October 2002, plaintiff filed a new petition for benefits at a different rate, based on an injury suffered while performing reasonable employment.¹

While plaintiff's new petition was pending, defendant terminated plaintiff's employment. The termination was based on an October 2004, confrontation involving plaintiff and defendant's

¹ "Reasonable Employment" is "work that is within the employee's capacity to perform that poses no clear and proximate threat to that employee's health and safety, and that is within a reasonable distance from that employee's residence. The employee's capacity to perform shall not be limited to jobs in work suitable to his or her qualifications and training." MCL 418.301(9).

representative, and occurred after a hearing in the worker's compensation bureau. Defendant contended that plaintiff "attacked" the representative. Consequently, in December 2004, defendant filed a petition to stop the payment of benefits to plaintiff pursuant to the prior award. Defendant argued that, by her actions, plaintiff effectively refused reasonable employment and removed herself from the workforce, and that because plaintiff lost her job through her own fault, she was no longer entitled to benefits.

The magistrate denied plaintiff's petition for benefits based on a new injury, and then denied defendant's petition to stop the payment of benefits under the terms of the 1994 open award. In regard to the petition to stop, the magistrate stated that it was not clear that plaintiff's termination was her own fault since the issue was still being pursued through the grievance process, and that plaintiff's filing of the grievance established that she did not wish to voluntarily remove herself from the workforce.

Defendant appealed to the WCAC. The WCAC affirmed, finding that defendant failed to offer any authority for stopping the payment of benefits under the facts of this case.

At issue here is the interpretation and application of MCL 418.301, which provides in part:

(4) As used in this chapter, "disability" means a limitation of an employee's wage earning capacity in work suitable to his or her qualifications and training resulting from a personal injury or work related disease. The establishment of disability does not create a presumption of wage loss.

(5) If disability is established pursuant to subsection (4), entitlement to weekly wage loss benefits shall be determined pursuant to this section and as follows:

(a) If an employee receives a bona fide offer of reasonable employment from the previous employer, another employer, or through the Michigan employment security commission and the employee refuses that employment without good and reasonable cause, the employee shall be considered to have voluntarily removed himself or herself from the work force and is no longer entitled to any wage loss benefits under this act during the period of such refusal.

* * *

(d) If the employee, after having been employed pursuant to this subsection for 100 weeks or more loses his or her job through no fault of the employee, the employee shall receive compensation under this act pursuant to the following:

(i) If after exhaustion of unemployment benefit eligibility of an employee, a worker's compensation magistrate or hearing referee, as applicable, determines for any employee covered under this subdivision, that the employments since the time of injury have not established a new wage earning capacity, the employee shall receive compensation based upon his or her wage at the original date of

injury. There is a presumption of wage earning capacity established for employments totalling 250 weeks or more.

(ii) The employee must still be disabled as determined pursuant to subsection (4). If the employee is still disabled, he or she shall be entitled to wage loss benefits based on the difference between the normal and customary wages paid to those persons performing the same or similar employment, as determined at the time of termination of the employment of the employee, and the wages paid at the time of the injury.

(iii) If the employee becomes reemployed and the employee is still disabled, he or she shall then receive wage loss benefits as provided in subdivision (b).

(e) If the employee, after having been employed pursuant to this subsection for less than 100 weeks loses his or her job for whatever reason, the employee shall receive compensation based upon his or her wage at the original date of injury.

Defendant essentially argues that the WCAC erred in failing to find that subsection (5)(d) is applicable to this case and renders plaintiff ineligible for benefits.

The WCAC found that plaintiff was employed in reasonable employment for more than 100 weeks, and also accepted defendant's assertion that plaintiff's employment was terminated because she attacked her manager. However, the WCAC went on to conclude that because defendant alleged that plaintiff lost her job through some fault of her own, and because subsection (5)(d) pertains only to situations where the employee loses his or her job through "no fault" of their own, that subsection was inapplicable here. In fact, the WCAC opined that no provision of subsection (5) applied, stating:

The subtle undercurrent of defendant's argument is that once an employee returns to work at reasonable employment, all rights and responsibilities of the parties both during the performance of reasonable employment, and thereafter, can be found within the confines of MCL 418.301(5). We disagree. MCL 418.301(5) is an elaborate statutory scheme filled with phrases that set forth criteria to be utilized in cases involving reasonable employment, which means that it is necessary to fit the facts of any given case into MCL 418.301(5) to see if it informs the result. If the criteria of any provision in MCL 418.301(5) is met, the result is supplied by MCL 418.301(5). However, if the provisions of MCL 418.301(5) do not apply because it is not shown that plaintiff fits within the criteria of any of the subsections, the result is nonetheless supplied by the Act, but not by anything that is stated in MCL 418.301(5). [*Johnson v General Motors Corporation*, 2007 Mich ACO 9, pp 11-12.]

We disagree with the WCAC's analysis. In *Perez v Keeler Brass Co*, 461 Mich 602, 610; 608 NW2d 45 (2000), our Supreme Court held that the language of MCL 418.301 is clear, and that if a disability is established pursuant to subsection (4), then entitlement to weekly wage loss benefits "shall" be determined pursuant to subsection (5). In other words, the statute is

comprehensive, and only the statute may be examined to determine entitlement to benefits. *Id.* at 610-611. Therefore, the WCAC's decision, which advocates an interpretation of MCL 418.301 requiring looking outside the statute to determine plaintiff's entitlement to benefits, is improper. *Perez, supra.* Defendant is correct that this matter must be resolved solely within the confines of MCL 418.301(5).

The WCAC's order is vacated, and this case is remanded to the WCAC for further proceedings consistent with this opinion. The WCAC shall, among other things, determine plaintiff's entitlement to benefits and in particular determine whether a termination of employment, through the fault of the employee here, results in the permanent forfeiture of benefits pursuant to MCL 418.301(5)(d). If necessary, the WCAC may remand this case to the magistrate for further fact finding. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio

/s/ Deborah A. Servitto