

STATE OF MICHIGAN  
COURT OF APPEALS

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DELBERT SCHEUNEMAN,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

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UNPUBLISHED

January 8, 1999

No. 199831

WCAC

LC No. 92-000060

Before: Sawyer, P.J., and Kelly and Doctoroff, JJ.

PER CURIAM.

This case has been remanded by our Supreme Court for consideration as on leave granted. Plaintiff Delbert Scheuneman appeals a decision entered on August 16, 1995 by the Worker's Compensation Appellate Commission (WCAC) affirming a decision of the magistrate and holding that defendant General Motors Corporation was allowed to coordinate benefits. We reverse and remand for further proceedings.

Plaintiff was granted an open award of worker's compensation benefits in the amount of \$177.22 per week. Defendant raised the defense of coordination of benefits in its answer to plaintiff's petition; however, the parties did not litigate the issue at trial, and the magistrate's decision did not address the issue of coordination of benefits. That decision was not appealed.

When calculating the accrued compensation owed to plaintiff, defendant coordinated plaintiff's worker's compensation benefits against the mutual pension that he received. The coordination resulted in no worker's compensation benefits being paid to plaintiff. Plaintiff sought a hearing, alleging that defendant was not paying benefits in accordance with the magistrate's decision. The matter was submitted to a different magistrate. That magistrate rejected plaintiff's argument. The magistrate concluded that because plaintiff received an employer-funded "mutual" pension, i.e., a pension agreed to by the parties when the employee is not eligible for a regular retirement pension, and is deemed to be ineligible for a disability pension, defendant was permitted to coordinate benefits pursuant to MCL 418.354(1)(d); MSA 17.237(354)(1)(d). The magistrate cited *Franks v White Pine Copper Div*,

422 Mich 636; 375 NW2d 715 (1985), for the proposition that defendant was not required to prevail at a hearing before it could coordinate benefits.

The WCAC affirmed the decision of the magistrate. The WCAC rejected plaintiff's argument that the doctrine of *res judicata* precluded application of the coordination provisions of §354 because the original magistrate's decision failed to address the issue. Relying on *Franks, supra*, and *Rotondi v Chrysler Corp*, 200 Mich App 368, 374; 504 NW2d 901 (1993), in which this Court stated that no hearing was necessary for application of the provisions of §354, the WCAC held that recognition by a magistrate is not required before the provisions of §354 can be utilized because coordination is a statutory entitlement. The burden is on the claimant to request a hearing if the claimant disagrees with coordination. Thereafter, the burden of justifying coordination is on the employer. The WCAC rejected plaintiff's reliance on *Baughman v Grand Trunk W R Co*, 277 Mich 70, 71-72; 268 NW 815 (1936), in which our Supreme Court held that the taking of a credit for mistaken payment was an inappropriate modification of a prior order, on the grounds that that case did not involve an issue of coordination. Finally, the WCAC rejected plaintiff's argument that his pension was exempted from coordination on the grounds that because he had not met his burden of proving that the pension was a disability pension in the proceedings before the magistrate, he was precluded by the doctrine of *res judicata* from pursuing the issue further.

Findings of fact made by a magistrate are conclusive on the WCAC if they are supported by competent, material, and substantial evidence on the whole record. MCL 418.861a(3); MSA 17.237(861a)(3). If a magistrate's decision is supported by the requisite evidence, the WCAC need go no further in its review. If the WCAC finds that the magistrate did not rely on competent evidence, it must detail its findings and the reasons therefore as grounded in the record. The WCAC may then make its own findings. Those findings are conclusive if the WCAC was acting within its powers. Appellate review is limited to a determination of whether the WCAC exceeded its authority. *Goff v Bil-Mar Foods, Inc (After Remand)*, 454 Mich 507; 563 NW2d 214 (1997).

On appeal, plaintiff argues that because defendant did not litigate the issue of its entitlement to coordinate benefits in the initial proceeding, the doctrine of *res judicata* precludes application of the provisions of §354 to allow coordination after the magistrate's decision has become final. Defendant, in the exercise of due diligence, could have asserted its right to coordinate benefits in the first hearing. Its failure to do so precludes litigation of the issue in this subsequent proceeding. *Gose v Monroe Auto Equip Co*, 409 Mich 147, 160; 294 NW2d 165 (1980).

We agree, and reverse the WCAC's decision on this basis. The broad rule of *res judicata* applies in worker's compensation proceedings and operates to preclude further litigation of an issue that was raised or that with the exercise of due diligence could have been raised in the initial proceeding. *Gose, supra*; *Sprague v Buhagiar*, 213 Mich App 310, 313; 539 NW2d 587 (1995). Further litigation of an issue is barred when: (1) the initial action was decided on the merits; (2) the issue contested in the latter action was or could have been decided in the initial action; and (3) both actions involve the same parties or their privies. *Eaton Co Bd of Rd Comm'rs v Schultz*, 205 Mich App 371, 375-376; 521 NW2d 847 (1994). Here, the prerequisites for application of the doctrine of *res judicata* are met. The initial action between plaintiff and defendant determined the amount of worker's

compensation benefits to which plaintiff was entitled. Defendant's right to coordinate benefits could have been litigated in that proceeding.

Our Supreme Court has held that an employer is not required to prevail at an evidentiary hearing before it is entitled to coordinate benefits under §354. *Franks, supra*, 422 Mich at 664. Section 354 is said to be "self-executing." *Rotondi, supra*. In *Franks, supra*, the employer could not have raised the issue of its entitlement to coordination at the initial hearing because §354, enacted via 1981 PA 203, was not yet in effect at that time. Because the issue could not have been litigated at that time, the doctrine of *res judicata* could not be applied to preclude subsequent adjudication. However, in the instant case, §354 was fully operational at the time the initial hearing was held. Although defendant pleaded the applicability of §354 in its answer to plaintiff's petition for worker's compensation benefits, at the initial hearing it did not establish that it was entitled to coordinate any worker's compensation benefits to which plaintiff would be entitled with plaintiff's mutual pension. As the party claiming the benefit of §354, defendant had the burden of proving that the statute was applicable in the instant case. *Brown v Beckwith Evans Co*, 192 Mich App 158, 168-169; 480 NW2d 311 (1991). MCL 418.354(10); MSA 17.237(354)(10) requires an employer to furnish to the Bureau proof of the basis for a reduction of a claimant's worker's compensation benefits via coordination. Defendant provided no such proof, notwithstanding the fact that in the exercise of due diligence it could have done so at the initial hearing. To allow defendant to reduce plaintiff's award by coordinating benefits at this point would constitute an improper relitigation of the amount of benefits to which plaintiff was entitled. *Baughman, supra*.

Based on the foregoing, we reverse the WCAC's order of August 16, 1995 and remand this case for further proceedings in accordance with this decision. Our resolution of this case on this basis renders plaintiff's remaining issues moot.

Reversed and Remanded.

/s/ Michael J. Kelly

/s/ Martin M. Doctoroff