STATE OF MICHIGAN

COURT OF APPEALS

RICHARD A. BAILEY,

Plaintiff-Appellant,

v

ANR FREIGHT SYSTEMS, INC.,

Defendant-Appellee.

UNPUBLISHED
December 21, 1999

No. 205606
WCAC
LC No. 95 000087

Before: O'Connell, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from a July 31, 1997 opinion and order of the Worker's Compensation Appellate Commission (WCAC), which affirmed a decision of the worker's compensation magistrate determining how much credit defendant is entitled to receive for coordination of plaintiff's pension benefits. We affirm.

Plaintiff worked for defendant from 1963 until he became disabled from his employment in October 1991. Plaintiff began receiving worker's compensation benefits at that time. By October 1991, plaintiff had accumulated 28.5 years of employer-funded service credit to his pension. The pension is a defined benefit plan which does not keep track of the amounts paid on behalf of each individual, but instead uses years, whether partial or whole, to keep track of pension eligibility.

If plaintiff had retired in October 1991 with only 28.5 years of accumulated service credit, he would have received pension payments of $583.10 per month. However, plaintiff waited to retire until May 1993 when he was able to purchase an additional 1.5 years of service credit by paying $4,734.00 of his own money to the pension fund. By adding the 1.5 years of additional credit to the 28.5 years of employer-funded credits, plaintiff became eligible to receive monthly pension payments of $1,700.00.

The dispute in this case concerns the amount of coordination credit defendant is entitled to receive for plaintiff's pension benefits pursuant to § 354(1) of the Worker's Disability Compensation Act, MCL 418.354(1); MSA 17.237(354)(1), which provides in pertinent part:

> (1) . . . Except as otherwise provided in this section, the employer's obligation to pay or cause to be paid weekly benefits other than specific loss benefits under section 361(2) and (3) shall be reduced by these amounts:
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> * * *
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> (e) The proportional amount, based on the ratio of the employer's contributions to the total contributions to the plan or program, of the after-tax amount of the pension or retirement payments received or being received by the employee pursuant to a plan or program established or maintained by the same employer from whom benefits under section 351, 361, or 835 are received, if the employee did contribute directly to the pension or retirement plan or program. Subsequent increases in a pension or retirement program shall not affect the coordination of these benefits.

Defendant argued, and the worker's compensation magistrate and the WCAC agreed, that defendant was entitled to coordinate 95% of plaintiff's $1,700.00 monthly pension benefits, based upon a ratio of the 28.5 years of credit accumulated from employer contributions to the total 30 years of service credit upon which plaintiff's pension is based. Plaintiff argues on appeal that the statute should be interpreted so that defendant would only be entitled to coordinate $583.10 per month, the monthly pension amount that plaintiff would have received if his pension were based solely upon the 28.5 years of employer-funded service credit.

This case requires us to interpret the statute which is a question of law that we review de novo. *Alcona County v Wolverine Environmental Prod Inc*, 233 Mich App 238, 246; 590 NW2d 586 (1998). Normally, if the plain and ordinary meaning of a statute's language is clear, judicial construction is neither necessary or permitted. *Lorencz v Ford Motor Co*, 439 Mich 370, 376; 483 NW2d 844 (1992); *Thrifty Rent-A-Car v Dep't of Transportation*, 236 Mich App 674, 678; ____ NW2d ____ (1999). However, if a literal construction of the statute results in an unreasonable or unjust result inconsistent with the purpose of the statute, then we may depart from that literal construction. *McAuley v General Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998). If judicial interpretation is necessary, the statutory language is to be given the reasonable construction that best accomplishes the purpose and intent of the statute. *Beznos v Dep't of Treasury*, 224 Mich App 717, 720; 569 NW2d 908 (1997).

The plain language of § 354(1)(e) calls for coordination of benefits based upon the ratio of the employer's contributions to the total contributions to the pension plan. However, the statute does not contemplate situations as in this case where it is not possible to determine how much the employer contributed to the pension plan on behalf of individual employees. Because the statute does not address this situation, we must look to the intent of the legislature to determine the proper application of § 354(1)(e).

The legislative history of MCL 418.354; MSA 17.237(354) provides:

> Coordination of benefits has been a major concern of employers for years. Public Act 357 coordinated workers' compensation with unemployment compensation (effective January 1, 1982) but failed to address coordination with Social Security and other insurance and pension plans. By coordinating workers' compensation benefits with Social Security and other benefits, Senate Bill 595 would provide a major savings to employers in the cost of workers' compensation while maintaining adequate benefit levels for disabled workers.
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> From its creation in 1912, workers' compensation in Michigan has been intended as a means of protecting an employee's ability to earn wages by replacing wages lost because of a disability resulting from an on-the-job injury. Since 1912, other public and private wage replacement insurance programs have appeared with the result that many employees now receive wage-loss benefits from two, three, or four different programs providing a total wage "replacement" greater than the wages the employee earned while on the job, while employers who must contribute to these programs find themselves paying more than once to replace the wages of a single employee. Such a situation is contrary to the basic philosophy of Michigan's wage-loss system and discourages some disabled employees from returning to work. Coordination of benefits, as proposed in Senate Bill 595, would reduce the overlap between the various public and private wage replacement programs while ensuring adequate wage-loss benefits to injured employees. Senate Legislative Analysis, S.B. 595, adopted as 1981 P.A. 203, Coordination of Benefits, Supporting Arguments (January 7, 1982). [*Drouillard v.Stroh Brewery Co,* 449 Mich 293, 305 n 1; 536 NW2d 530 (1995).]

This legislative history suggests that §354 was intended to reduce or eliminate situations in which an employer finds himself paying more than once for employee wage replacement. Consistent with the legislative history, the plain language of § 354(1)(e) prohibits the employer from coordinating any portion of pension benefits that the employer did not fund, but were in fact funded by the employee.

Plaintiff argues that calculating the ratio according to years of service credit creates a windfall for defendant because defendant would only have been able to coordinate $583.10 if plaintiff had not contributed his own money to increase his pension benefit to $1,700.00. We disagree with plaintiff's characterization that the finding of the magistrate and the WCAC creates a windfall to defendant. We also find plaintiff's interpretation of the statute to be inequitable and inconsistent with the purpose and intent § 354. If this Court were to apply plaintiff's interpretation of the statute, defendant would only be allowed to coordinate approximately 34% ($583.10 / $1,700) of plaintiff's pension benefits. Calculation of the coordination of benefits ratio in this manner creates a substantial windfall for plaintiff. It is not possible that plaintiff's contribution of $4,734.00 constitutes 66% of the total contributions to plaintiff's pension plan. Logic dictates that defendant's contributions to plaintiff's pension fund were substantially greater than plaintiff's contributions in order for plaintiff to be eligible for $1,700.00 per month in pension benefits.

Since it is not possible to calculate the exact amount defendant contributed to plaintiff's pension fund, and because plaintiff's proposed calculation would be inequitable and is contrary to the express

legislative intent to reduce duplicate recovery from employers, we find that the calculation based on years of employer-funded service credit utilized by the magistrate and affirmed by the WCAC best satisfies the intent of § 354 and is the most equitable method to determine defendant's coordination of benefits.

We also find no merit in plaintiff's contention that the last sentence of § 354(1)(e) prohibits defendant from coordinating benefits for the increase in his pension benefit from $583.10 to $1,7000.00. The language plaintiff relies upon states that "[s]ubsequent increases in a pension or retirement program shall not affect the coordination of these benefits." The term "subsequent" is defined in the *Random House Webster's College Dictionary* (1997) as "occurring or coming later or after." Under the plain language of this statute, in order for there to be a subsequent increase, plaintiff must first be receiving a pension. In this case, plaintiff did not receive an increase in pension benefits after he retired. Instead, plaintiff utilized his option to purchase an additional 1.5 years of service credit in order to substantially increase the monthly pension benefit he would be eligible to receive upon retirement. The increase in this case is not a subsequent increase in post-retirement pension benefits. Therefore, we find that the last sentence of § 354(1)(e) does not prohibit defendant from coordinating 95% of plaintiff's $1,700.00 monthly pension benefit.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael J. Talbot
/s/ Brian K. Zahra