STATE OF MICHIGAN

COURT OF APPEALS

RICHARD C. SPENCER,

Plaintiff-Appellant,

v

GREDE VASSAR, INC and EMPLOYERS INSURANCE OF WASAU,

Defendants-Appellees

and

EATON CORPORATION,

Defendant.

UNPUBLISHED
March 2, 2001

No. 219068
WCAC
LC No. 97-000144

Before: Bandstra, P.J., and Saad and Meter, JJ.

PER CURIAM.

I. Nature of the Case

In this appeal from an order of the Workers' Compensation Appellate Commission (WCAC), we again address the application of the "retiree presumption" of the Workers' Disability Compensation Act (WDCA). MCL 418.373; MSA 17.237(373). On September 1, 1996, plaintiff retired on a non-disability pension and receives continuing medical benefits for an injury he sustained in 1992. However, pursuant to the retiree presumption of Section 373, he was denied wage loss benefits after his retirement date.

Section 373 presumes that an employee who retires from active employment does not "have a loss of earnings or earning capacity as the result of a compensable injury or disease." The following quotation underscores the Legislature's policy reasons for enacting provisions in the WDCA to prohibit employees from collecting both retirement and wage loss benefits:

> For many years the most hotly discussed topic concerning the Michigan workers' compensation system was the so-called 'retiree problem.' It was almost unique to this State. Its legal underpinning was the notion developed by the Workers'

> Compensation Appeal Board, with some support from the judiciary, that a retired worker, even one who had voluntarily retired and gone on a company-funded pension, could still be suffering from a loss of wage earning capacity. If the retiree could demonstrate that he or she had incurred a disability caused by pre-retirement job activity or working environment (a bad back from 30 years on the assembly line or a dust disease from 30 years in a foundry), the retiree was entitled to workers' compensation. It should be emphasized that in many of these cases the disability was undoubtedly genuine, at least in the physical impairment sense, and such an employee would unquestionably be eligible for medical benefits. The fighting issue was whether he was also entitled to recover for wage loss. ... [F]or [targeted employers], it was plainly provoking, not to mention costly, to see workers take early retirement and walk out of a plant one day and then proceed to file their workers' compensation claims the next.
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> The principle of avoiding duplicative payments under workers' compensation and other income maintenance programs, such as private pensions and Social Security, was endorsed by the National Commission on State Workmen's Compensation Laws. … [T]he coordination arrangements have also served to check, if not eradicate, one of the most criticized aspects of Michigan's workers' compensation system, namely, the payment of disability benefits to retired workers who almost by definition are suffering no wage loss. [*Franks v White Pine Copper Div*, 422 Mich 636, 656-658; 375 NW2d 715 (1985)[1], quoting Theodore J. St. Antoine, *Report on Workers' Compensation in Michigan: Costs, Benefits, and Fairness* (1984).]

II. Facts and Proceedings

Plaintiff worked as a general laborer at Eaton Corporation, later purchased by Grede Vassar, Inc., from 1966 until he sustained a back injury in April 1992. On March 9, 1993, plaintiff returned to work at Grede Vassar as an inspector, working four hours per day, two or three days per week. Plaintiff's inspection job required minimal lifting and allowed him the option to sit or stand. Plaintiff continued working as a part-time inspector until he retired with a non-disability pension on September 1, 1996.

Plaintiff filed a petition for worker's compensation benefits and the magistrate granted partial benefits through his last day of work and continuing medical benefits. However, the magistrate denied plaintiff wage loss benefits after his retirement date because he retired from active employment and failed to rebut the retiree presumption of MCL 418.373(1); MSA 17.237(373)(1) which provides:

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[1] We recognize that 1987 PA 28 superseded the ruling in *Franks* concerning the retroactivity of MCL 418.354; MSA 17.237(354), an issue not raised in this case.

> An employee who terminates active employment and is receiving non-disability pension or retirement benefits under either a private or governmental pension or retirement program, including old-age benefits under the social security act [sic], 42 U.S.C. 301 to 1397f, that was paid by or on behalf of an employer from whom weekly benefits under this act are sought shall be presumed not to have a loss of earnings or earning capacity as the result of a compensable injury or disease under either this chapter or chapter 4. This presumption may be rebutted only by a preponderance of the evidence that the employee is unable, because of a work related disability, to perform work suitable to the employee's qualifications, including training or experience. This standard of disability supersedes other applicable standards used to determine disability under either this chapter or chapter 4.

Plaintiff filed an appeal with the WCAC, arguing that defendant should be equitably estopped from asserting Section 373 as a defense because plaintiff did not retire "voluntarily." Plaintiff claimed that Grede Vassar agreed to continue paying him weekly wage loss benefits to induce him to retire, but then repudiated that promise. The WCAC ruled that the reason plaintiff retired is irrelevant to a Section 373 inquiry and that plaintiff's claim of inducement would be properly raised in a circuit court claim for fraud or breach of contract.

Plaintiff also claimed that he was not engaged in "active employment" when he retired because Grede Vassar failed to show that the job he held remained available after his retirement. The WCAC ruled that defendant was not required to show that plaintiff's job "remained available" after he retired but only that plaintiff performed work suitable to his qualifications. Plaintiff appeals by leave granted.

III. Analysis

A. Applicability of Section 373

Findings of fact made or adopted by the WCAC are conclusive on appeal, absent fraud, if any competent evidence in the record supports them. *Sell v Mitchell Corp of Owosso*, 241 Mich App 235, 249; 615 NW2d 748 (2000). This Court has the power to review questions of law involved in any final order of the WCAC. MCL 418.861; MSA 17.237(861); MCL 418.861a(14); MSA 17.237(861a)(14). We review questions of law de novo. *Calovecchi v State*, 461 Mich 616, 621-622; 611 NW2d 300 (2000). This Court will not reverse a WCAC decision unless the commission "operated within the wrong legal framework or based its decision on erroneous legal reasoning." *Blanzy v Brigadier General Contractors, Inc*, 240 Mich App 632, 637; 613 NW2d 391 (2000).

As the WCAC observed, plaintiff's request for relief is narrow: he asks that Grede Vassar be equitably estopped from relying on Section 373 to deny him wage loss benefits because he retired at defendant's inducement. We accord great weight to the WCAC's statutory interpretation "unless such interpretation is clearly wrong." *Hoste v Shanty Creek Management, Inc*, 459 Mich 561, 569; 592 NW2d 360 (1999). The plain language of Section 373 supports the WCAC's conclusion that the statute only requires a showing that plaintiff retired and that he was able to continue working in active employment. Because the statute is unambiguous, no further

judicial construction or interpretation is necessary or permitted. *Darling v Inter City Trucking*, 221 Mich App 521, 525; 561 NW2d 865 (1997). Nothing in the statute limits its application to voluntary retirements or suggests that evidence of inducement to retire impacts its application. Accordingly, we do not find the WCAC's interpretation of Section 373 clearly wrong.

This Court has held that a plaintiff's reason for retiring is irrelevant in determining whether Section 373 applies. *McDonald v Holland Motor*, 201 Mich App 285, 287; 506 NW2d 234 (1993). Moreover, this Court has ruled that the statute does not require that a plaintiff's retirement be voluntary. *Id*. at 288-289. Accordingly, the WCAC did not err in ruling that Grede Vassar's promises prior to plaintiff's retirement are not relevant to the applicability of Section 373.

While the WCAC has no equitable jurisdiction, it may apply equitable principles in appropriate instances to further the purposes of the act. *Lulgjuraj v Chrysler Corp*, 185 Mich App 539, 544-545; 463 NW2d 152 (1990). As discussed above, "[t]he legislative intent behind § 373 was to reform the statute and limit the number of retired workers who were eligible to collect compensation along with a nondisability retirement." *Frasier v Model Coverall Service, Inc*, 182 Mich App 741, 744; 453 NW2d 301 (1990). Plaintiff's attempt to avoid the presumption on a showing of an inducement to retire would not serve the Legislature's intent to preclude double recovery of both disability and nondisability retirement benefits. Accordingly, the WCAC's refusal to prohibit the application of Section 373 on equitable grounds was not based on erroneous legal reasoning.[2] As the WCAC observed, plaintiff could have brought an action in circuit court for breach of contract or fraud to pursue his claim that Grede Vassar did not pay him all the retirement benefits it promised.

B. Retirement from "Active Employment"

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[2] Plaintiff's reliance on *Fuchs v General Motors Corp*, 118 Mich App 547; 325 NW2d 489 (1982), is misplaced. In *Fuchs*, the Court applied the principle of equitable estoppel to prevent the defendant from asserting the two year back rule after intentionally miscalculating his average weekly wage to exclude certain overtime, which resulted in reductions of the plaintiff's differential benefits. *Id*. at 553. The Court found this "contrary to the unambiguous language" of the statute which provides that a worker's average weekly wage includes overtime and premium pay. *Id*., citing, MCL 418.371(2); MSA 17.237(371)(2). We agree with defendant's argument that, unlike here, *Fuchs* involved the intentional miscalculation of benefits to which the plaintiff was clearly entitled under the statute. We also note that this Court specified that its holding is limited to its own facts. *Id*. at 554-555. In contrast to *Fuchs*, plaintiff here would have us apply equitable principles to undermine rather than further the purposes of Section 373. As discussed above, that section was intended to apply to any "employee who terminates active employment" without regard to the reason for the termination. Further, the section specifies that the "only" way its presumption may be rebutted is through proof of inability to work, not proof of an employer's actions such as plaintiff offers here.

Plaintiff claims that Section 373 does not apply because the inspection job from which he retired did not constitute "active employment."

It is well established that, for purposes of Section 373, "active employment" means "being 'actively on the job and performing the customary work of [the] job.'" *Miles v Russell Memorial Hospital*, 202 Mich App 6, 9-10; 463 NW2d 152 (1993), quoting *Frasier, supra*, 182 Mich App 744. Contrary to plaintiff's argument, "active" as used in Section 373 does not mean "labor intensive" employment and does not require that the position be the same as the one plaintiff performed before the injury. *Miles, supra*, 202 Mich App 9-11. Favored work, including plaintiff's inspection job, constitutes "active employment" for purposes of the statute. *Id*. at 10-11.

The WCAC did not base its decision on erroneous legal reasoning when it rejected plaintiff's claim that an employer must show the plaintiff's job at retirement remained "available" afterwards because this assertion has no support in the statute or case law. *Blanzy, supra*, 240 Mich App 637. Moreover, we defer to the WCAC's finding that neither plaintiff nor his doctors considered plaintiff unable to perform the inspection job when he retired. Accordingly, the WCAC did not err in finding that plaintiff retired from "active employment" for purposes of Section 373.

Affirmed.

/s/ Richard A. Bandstra
/s/ Henry William Saad
/s/ Patrick M. Meter