STATE OF MICHIGAN

COURT OF APPEALS

HELEN B. TURNER, Plaintiff-Appellant,	UNPUBLISHED March 20, 2001
v	No. 223082 WCAC
FORD MOTOR COMPANY, Defendant-Appellee.	No. 94-000324

Before: Whitbeck, P.J., and Murphy and Cooper, JJ.

PER CURIAM.

I.

Plaintiff appeals, by leave granted, an October 14, 1999 decision of the Worker's Compensation Appellate Commission (WCAC). The WCAC reversed a magistrate's decision. The magistrate found that, pursuant to MCL 418.354(19); MSA 17.237(354)(19), defendant was required to reimburse plaintiff benefits previously unpaid because of coordination under § 354, and that defendant was not entitled to apply MCL 418.821; MSA 17.237(821) to obtain an adjustment. Neither plaintiff's disability nor its connection to her employment with defendant are at issue. Rather, the issue is whether defendant can adjust, under §821, the benefits it must pay plaintiff based on the group disability benefits defendant allegedly paid plaintiff, and whether defendant can do so almost ten years after a hearing referee granted plaintiff an open award of benefits on October 29, 1981. In allowing the adjustment, the WCAC applied equitable principles in order to avoid permitting plaintiff to receive what the WCAC saw as a "double recovery." The WCAC decided this case *en banc*, MCL 418.274(9); MSA 17.237(274)(9), with one dissent.

Plaintiff injured her back when she slipped and fell at work on September 26, 1977. Plaintiff further injured herself at work on January 12, 1981. The Worker's Compensation Appeal Board (WCAB) affirmed an open award of benefits on October 20, 1986. Plaintiff was entitled to benefits at the rate of $181 per week, commencing January 13, 1981.

Before, as well as after, the hearing referee's decision, plaintiff received benefits from John Hancock Insurance Company. Plaintiff briefly testified that she received benefits from John Hancock before her last day of work, and at another point in her testimony mentioned that her benefits included benefits from Blue Cross and John Hancock, in addition to vacation pay. In a

brief filed with the magistrate, plaintiff acknowledged that she was paid "group benefits" by John Hancock, not defendant, and that she had agreed to repay John Hancock, not defendant, in the event she received worker's compensation benefits for the same time periods covered by the John Hancock benefits. Plaintiff also acknowledged in a brief filed with the WCAC that she had received "John Hancock group benefits."

In 1986, when the WCAB affirmed the hearing referee's open award, "coordination" provisions had been added to the compensation act in 1981 PA 203, MCL 418.354; MSA 17.237(354). The coordination provision was added after plaintiff's dates of injury. Between March 31, 1982 and May 13, 1987, defendant paid plaintiff less than $181 per week because defendant coordinated plaintiff's worker's compensation benefits with the benefits she received from John Hancock.

Defendant's action in coordinating plaintiff's benefits was consistent with the prevailing law at the time. *Franks v White Pine Copper Division*, 422 Mich 636, 664; 375 NW2d 715 (1985), held that § 354 could be applied retroactively to employees with injury dates which preceded the effective date of § 354. However, our Legislature indicated its intent was to the contrary when it passed 1987 PA 28, effective May 14, 1987, which amended § 354 by adding subsections (17)-(20). Subsection 354(17) declared the *Franks* decision erroneous and stated that § 354 was not intended to apply to injuries occurring before March 31, 1982. Moreover, § 354(19) directed that amounts not paid, because of coordination, to employees with injury dates before March 31, 1982, were to be repaid within sixty days, with interest. The legislation adding subsections (17)-(20) was sustained in *Romein v General Motors Corp*, 436 Mich 515; 462 NW2d 555 (1990), aff'd 503 US 181; 112 S Ct 1105; 117 L Ed 2d 328 (1992). Thus, by 1992 it was clear that defendant could not coordinate benefits in plaintiff's case.

In May 1992, plaintiff requested payment of the previously coordinated benefits, pursuant to subsection 354(19). Defendant responded in a letter dated July 31, 1992, which acknowledged that, in light of *Romein*, defendant should not have coordinated plaintiff's benefits. Relying on MCL 418.821(3); MSA 17.237(821)(3), the letter further advised plaintiff that defendant would adjust its records to show that plaintiff had received worker's compensation benefits which were assignable to defendant under the group benefit plan administered by John Hancock. Defendant explained that the group plan was a self-insured plan which defendant and plaintiff's union had negotiated and that John Hancock merely served as a claims processor for the plan and had no financial responsibility for the plan.

Plaintiff filed an application to recover the unpaid, coordinated benefits based on subsection 354(19). The matter was considered by a magistrate on briefs. The magistrate ruled that plaintiff was owed the previously coordinated benefits pursuant to subsection 354(19) and that defendant was not entitled to a credit or an adjustment under MCL 418.821; MSA 17.237(821) because defendant had never introduced evidence of a reimbursement or assignment agreement executed by plaintiff. The magistrate further found that the instant case was almost identical to *Maner v Ford Motor Co*, 196 Mich App 470; 493 NW2d 909 (1992), aff'd 442 Mich 620; 505 NW2d 197 (1993).

The WCAC reversed because it found it inequitable to allow plaintiff to recover her worker's compensation benefits in addition to the disability benefits she had already received.

The WCAC acknowledged that it did not have equitable power, but in the same sentence the WCAC said that it could apply "concepts or principles of equity in carrying out the legislative dictates that we apply the compensation law to particular fact situations." The WCAC found support for applying equitable principles in *Lulgjuraj v Chrysler Corp*, 185 Mich App 539, 544-545; 463 NW2d 152 (1990). The dissenting commissioner thought it a "legal absurdity to apply equitable principles if the tribunal does not possess equitable powers…."

II.

Defendant was not entitled to coordinate plaintiff's workers' compensation benefits under § 354. *Romein, supra*, 436 Mich at 515. The fact that plaintiff's injuries predated the adoption of § 354 precluded coordination. MCL 418.354(17); MSA 17.237(354)(17). Moreover, MCL 418.354(19); MSA 17.237(354)(19) required defendant to pay plaintiff benefits that defendant had previously coordinated.

Defendant avoided paying plaintiff the previously coordinated benefits by making its own "adjustment" to take advantage of MCL 418.821; MSA 17.237(821). MCL 418.821(1); MSA 17.237(821)(1) states the general proposition that worker's compensation benefits may not be assigned, attached or garnished. However, MCL 418.821(2); MSA 17.237(821)(2) allows an exception in cases where employees are entitled to certain types of insurance benefits:

> This section shall not apply to or affect the validity of an assignment made to an insurance company . . . making an advance or payment to an employee under a group disability or group hospitalization insurance policy which provides that benefits shall not be payable under the policy for a period of disability or hospitalization resulting from accidental bodily injury or sickness arising out of or in the course of employment.

The purpose of § 821(1) is to encourage insurance companies to pay sickness and accident benefits to insured employees, with the understanding that if the injury is later found to be covered by worker's compensation then the insurer can be repaid. See *Aetna Life Ins Co v Roose*, 413 Mich 85, 94-95; 318 NW2d 468 (1982); *Maner, supra*, 196 Mich App at 484-485. Self-insuring employers with disability plans may take advantage of § 821(2). MCL 418.821(3); MSA 17.237(821)(3).

Defendant might have been entitled to an assignment under § 821. However, evidence regarding such an entitlement is sorely lacking. That is what the magistrate found. The most that can be said is that plaintiff acknowledged receiving some sort of benefits from John Hancock. Plaintiff did not concede that the benefits were from a self-insured plan or that John Hancock was merely a plan administrator. Defendant's July 31, 1992 letter is a self-serving document that was never introduced into evidence. Plaintiff's brief to the magistrate conceded that plaintiff might have an obligation to repay John Hancock, but not defendant.

Defendant is in the same situation that it found itself in *Maner, supra*, 196 Mich App at 470. The plaintiff in *Maner* was injured in 1979 and received sickness and accident benefits from John Hancock Insurance Company. *Id.* at 473-474. The evidence was inconsistent regarding whether John Hancock was the payor or merely an administrator of the benefit plan.

Id. at 481, n 3. In *Maner* defendant argued, in part, that John Hancock was at least entitled to an assignment under § 821. *Id*. at 481. That argument failed because "no reimbursement agreement or assignment had ever been introduced into evidence, which would seem to be a prerequisite for reimbursement under § 821." *Id*. In its memorandum opinion in *Maner*, our Supreme Court emphasized the need for evidence to support defendant's claimed credit:

> We emphasize, as did the Court of Appeals, that when a dispute of this sort is being litigated, the parties should present clear proof regarding the nature, source, and amount of the payments, as well as any individual or collective agreements regarding the terms of payments. [442 Mich at 623].

In this case there was no evidence to support the WCAC's assumption that plaintiff received benefits from defendant through a self-insured plan. While this Court's review of the WCAC is limited, there must be some evidence in the record to support the findings of the WCAC. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 703, 709-710; 614 NW2d 607 (2000). Here, evidence was not introduced to establish that defendant was a self-insurer. Nor was there any evidence showing that plaintiff executed an assignment in favor of defendant.

The provisions of MCL 418.354(17) and (19); MSA 17.237(354)(17) and (19) and the *Maner* decision support plaintiff's application to be paid the previously mistakenly coordinated benefits. However, the WCAC reached the opposite result and reversed the magistrate. The role of the judiciary in an appeal from the WCAC "is to ensure the integrity of the administrative process." *Mudel, supra*, 462 Mich at 701. By exercising equitable power it did not have, the WCAC misapprehended its administrative appellate role and incorrectly applied the law. The WCAC reversibly erred. *Id.* at 703-704, 709-710.

As an administrative agency the WCAC does not possess general equitable and legal powers. *Michigan Mutual Liability Co v Baker*, 295 Mich 237, 242-243; 294 NW 168 (1940); *Delke v Scheuren*, 185 Mich App 326, 332; 460 NW2d 324 (1990). Although the WCAC professed to be merely applying "equitable principles" when it allowed defendant a credit against plaintiff's benefits, in reality the WCAC created what it believed was an equitable result by allowing defendant a credit without any legal basis.

The WCAC found support for applying "concepts or principles of equity" in *Lulgjuraj, supra*, 185 Mich App at 544-545. At one point *Lulgjuraj* states that: "While the WCAB has no equitable jurisdiction, it is well established that it may apply equitable principles in appropriate instances to further the purposes of the act." *Id*. However, *Lulgjuraj* involved a claim by an insurer and not the employer, as in the instant case. In that case, this Court viewed the insurance company as bringing an "action for money received" which did not require "a form of equitable relief." *Lulgjuraj, supra*, 185 Mich App at 545-546.

The instant case is plaintiff's claim for money she never received. Defendant failed to factually establish its right to an assignment of benefits under MCL 418.821; MSA 17.237(821). While the WCAC, in its acknowledgment of *Maner*, a factually identical case, reaffirmed the belief that double recoveries were "repugnant to the very principles of workers' compensation," *Maner, supra*, 196 Mich App at 479, (quoting *Hiltz v Phil's Quality Market*, 417 Mich 335, 350; 337 NW2d 237 (1983)), it failed to note that our Supreme Court did in fact allow such a double

recovery in that very case. *Maner, supra*, 442 Mich at 622. The WCAC has not only sought to exercise power it has not been given, but it seeks to use those "equitable principles" to disagree with the Michigan Supreme Court.

The decision of the WCAC is reversed and the decision of the magistrate is reinstated.

/s/ William C. Whitbeck
/s/ William B. Murphy
/s/ Jessica R. Cooper