STATE OF MICHIGAN

COURT OF APPEALS

BURT L. VELDMAN,

Plaintiff-Appellant,

v

K-MART CORPORATION, TARGET STORES, DAYTON HUDSON CORPORATION, TRAVELERS INSURANCE COMPANY, QUALITY STORES, INC., MAINTENANCE SERVICE & SUPPLY, and TRUCK INSURANCE EXCHANGE,

Defendants-Appellees,

and

PRECISION TOOL COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA,

Defendants.

UNPUBLISHED
August 17, 2001

No. 225039
WCAC
LC No. 99-000041

Before: K.F. Kelly, P.J., and White and Talbot, JJ.

PER CURIAM.

Plaintiff appeals by leave granted an order of the Worker's Compensation Appellate Commission (WCAC) reversing a magistrate's open award of benefits. The WCAC determined that plaintiff was not entitled to benefits because he voluntarily quit reasonable employment with defendant K-Mart Corporation. We remand for reconsideration.

Judicial review of the WCAC is narrow but questions of law are reviewed de novo. *Mudel v Great Atlantic & Pacific Tea Company*, 462 Mich 691, 732; 614 NW2d 607 (2000). This appeal presents a question of law regarding the interpretation of MCL 418.301(5) and several recent decisions of our Supreme Court.

The magistrate found plaintiff partially disabled due to an injury to his left wrist that occurred while working for K-Mart on August 20, 1990. Plaintiff sought to return to work as a service writer in K-Mart's automotive department (plaintiff was previously an auto technician),

but was not offered such a position. In 1995, K-Mart offered plaintiff a full-time job as a door greeter. Plaintiff could and did perform the job, but after two months he voluntarily quit to take a different job at a new Target store that was closer to his home, and which he hoped would involve some automotive-related responsibilities. Plaintiff claims that he was encouraged to take the job at Target, and that he was assured that his entitlement to benefits would not be affected. Plaintiff worked only a few months for Target before leaving that employer because he was not receiving enough hours. Over the next two or three years, plaintiff worked for a number of employers. He lost those jobs because of medical problems unrelated to any employment.

The magistrate determined that plaintiff was entitled to an open award of benefits due to a partial job-related disability and that the benefits were to commence on August 20, 1990. The magistrate found that plaintiff's disability was a continuing one and that the disability had not been aggravated by employment subsequent to plaintiff's employment with K-Mart.[1]

The WCAC reversed on the basis that plaintiff voluntarily quit reasonable employment when he left the door-greeter job. The WCAC viewed the issue as dispositive and therefore did not address many of the issues raised by K-Mart in its appeal to the WCAC.

Plaintiff now appeals, arguing (1) that the magistrate's finding that plaintiff suffered a work-related disability is supported by the evidence and (2) that plaintiff did not forfeit his entitlement to benefits because he quit the door-greeter job. Plaintiff's first issue anticipates one of the issues raised before but not reached by the WCAC. The issue is not before this Court.

The WCAC erroneously found that plaintiff forfeited his entitlement to benefits because he voluntarily quit the door-greeter job. The WCAC's reasoning and conclusion is undermined by a trio of cases decided by our Supreme Court on March 29, 2000, after the WCAC decided the instant case. *Russell v Whirlpool Financial Corp*, 461 Mich 579; 608 NW2d 52 (2000); *McJunkin v Cellasto Plastics Corp*, 461 Mich 590; 608 NW2d 57 (2000); and *Perez v Keeler Brass Company*, 461 Mich 602; 608 NW2d 45 (2000). These cases make clear that there is no permanent forfeiture of benefits for voluntarily quitting reasonable employment.

Russell, *McJunkin* and *Perez* dealt with the consequences of an employee who leaves or loses what used to be called "favored work" and what is now referred to as "reasonable employment" under MCL 418.301(5). To a large extent, the statute codifies the common-law favored-work doctrine, *McJunkin, supra* at 595, but to the extent the common law is inconsistent with the statute, the statute has changed the law, *Perez, supra* at 606. Thus, the cases relied upon by the WCAC are no longer good law to the extent they are inconsistent with the plain language of MCL 418.301(5).[2]

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[1] The finding of no subsequent aggravation was not appealed to the WCAC and was not addressed by it. The issue is not before this Court and liability of the subsequent employers is no longer at issue.

[2] MCL 418.301(5)(a) states:

> If an employee receives a bona fide offer of reasonable employment from the previous employer, another employer, or through the Michigan employment

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MCL 418.301(5)(a) permits a forfeiture of benefits only if an employee refuses an offer of reasonable employment "without good and reasonable cause," and only for the period of the refusal. An employee who so refuses is considered to have voluntarily removed himself or herself from the work force during that period and is not entitled to benefits.

There is no "reasonable time" after which an employee who refuses reasonable employment can be found to have permanently forfeited benefits. *McJunkin, supra* at 598. A disabled employee who quits or otherwise refuses reasonable employment does not permanently forfeit benefits. *Russell, supra* at 588; *Perez, supra* at 611.

Nor did plaintiff necessarily remove himself from the work force when he resigned to take a different job. While the WCAC found that plaintiff's resignation was *voluntary*, it did not address the question whether it was *reasonable.* The mere fact that plaintiff resigned from the door greeter job is not dispositive. MCL 418.301(5)(a) deems an employee to have removed himself or herself from the work force only when the employee refuses reasonable employment *without good and reasonable cause.*

The decision of the WCAC is vacated, and this matter is remanded to the WCAC for further consideration in light of *Russell, McJunkin* and *Perez.* On remand the WCAC should also consider, to the extent appropriate, the issues previously raised by K-Mart. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Helene N. White
/s/ Michael J. Talbot

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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.