STATE OF MICHIGAN

COURT OF APPEALS

DONALD MCCROREY, Plaintiff-Appellee,	UNPUBLISHED November 19, 2009
v GENERAL MOTORS CORPORATION, Defendant-Appellant.	No. 286022 WCAC LC No. 07-000193

Before: Gleicher, P.J., and Fitzgerald and Wilder, JJ.

PER CURIAM.

Defendant appeals by leave granted an order of the Workers' Compensation Appellate Commission (WCAC) that affirmed the magistrate's award of benefits. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sought wage loss workers compensation benefits stemming from a work-related back injury. In April 2006, plaintiff was off work and recuperating from back surgery when he accepted a Special Attrition Plan (SAP) in exchange for $35,000 and voluntarily retirement from defendant. Defendant argued below that plaintiff was not entitled to worker's compensation benefits because he voluntarily removed himself from the workforce by accepting the SAP, and his wage loss after April 2006 was not attributable to his back injury.

The magistrate awarded plaintiff weekly wage loss benefits. The magistrate concluded that plaintiff's acceptance of the Special Attrition plan did not preclude an award of benefits. The WCAC agreed and affirmed the award.

This Court reviews decisions of the WCAC to ensure that the WCAC did not misapprehend its administrative appellate role in reviewing the magistrate's decision. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 703; 614 NW2d 607 (2000). If the WCAC did not misapprehend its administrative appellate role and as long as there exists any evidence in the record supporting the WCAC's decision, then this Court must treat the WCAC's factual decision as conclusive. *Id*. at 703-704.

Defendant first argues that, by accepting the Special Attrition package, plaintiff is no longer eligible to accept reasonable employment from defendant, and therefore plaintiff should be deemed to have voluntarily removed himself from the workforce under MCL 418.301(5)(a). Section 301(5)(a), which pertains to a claimant's refusal of reasonable employment, provides:

> If an employee receives a bona fide offer of reasonable employment from the previous employer, another employer, or through the Michigan employment 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. [MCL 418.301(5)(a).]

The terms of the SAP made plaintiff ineligible for reemployment by defendant. Although plaintiff has voluntarily removed himself from defendant's workforce, he may accept employment elsewhere. The statute contemplates offers of reasonable employment not only from the previous employer, but also from "another employer, or through the Michigan employment security commission." MCL 418.301(5)(a). There was no evidence that plaintiff was offered and refused any offer of reasonable employment. Although plaintiff's retirement precludes offers of reasonable employment from defendant, plaintiff may receive and accept such offers from other sources. Accordingly, § 301(5)(a) does not preclude an award of benefits.

Defendant also argues that plaintiff was not entitled to wage loss benefits because he failed to establish that his wage loss after April 2006 was attributable to his injury. MCL 418.301(4) provides that "[t]he establishment of disability does not create a presumption of wage loss." Our appellate courts have interpreted this provision to require the employee to prove that his disability resulted in wage loss. A claimant must demonstrate a linkage between a wage loss and a work-related injury to be entitled to wage loss benefits. *Romero v Burt Moeke Hardwoods, Inc*, 280 Mich App 1, 8-9; 760 NW2d 586 (2008).

Defendant relies on *Sington v Chrysler Corp*, 467 Mich 144; 648 NW2d 624 (2002), in which our Supreme Court used a hypothetical example to illustrate the requirement under § 301(4) that ongoing wage loss must be attributable to a work-related injury rather than a decision by the plaintiff to remove himself irrevocably from the workforce. The Court explained:

> [T]here may be circumstances in which an employee, despite suffering a work-related injury that reduces wage earning capacity, does not suffer wage loss. For example, an employee might suffer a serious work-related injury on the last day before the employee was scheduled to retire with a firm intention to never work again. In such a circumstance, the employee would have suffered a disability, i.e., a reduction in wage earning capacity, but no wage loss because, even if the injury had not occurred, the employee would not have earned any further wages. [*Sington, supra* at 160-161.]

In *Sington*, *supra*, there was no question that the plaintiff's injury was unrelated to his wage loss, because he "was scheduled to retire with a firm intention to never work again" before he was injured. *Sington, supra* at 160. In the present case, when plaintiff signed the SAP, he was not able to work because of his previous injury. Regardless of his acceptance of the agreement, plaintiff had suffered and continued to suffer wage loss as a result of his back injury. In the absence of evidence that plaintiff intended never to work again as a result of his retirement from defendant, the WCAC's findings and conclusions were adequately supported by the record under the "any evidence" standard. *Mudel, supra* at 703-704.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder