STATE OF MICHIGAN

COURT OF APPEALS

STEPHEN WINOWISKI,

Plaintiff-Appellant,
Cross-Appellee,

v

H & E BALL MOTOR FREIGHT and MICHIGAN MUTUAL INSURANCE COMPANY,

Defendants-Appellees,
Cross-Appellants,

and

SECOND INJURY FUND,

Defendant-Appellee.

UNPUBLISHED
October 11. 1996

No. 186272
LC No. 91-000857

Before: Cavanagh, P.J., and Murphy and C.W. Simon, Jr.,* JJ.

PER CURIAM.

Plaintiff was found to be totally and permanently disabled by an administrative law judge in a decision mailed May 23, 1983. The disability was related to a back injury that occurred on January 22, 1974. Plaintiff was also found totally and permanently disabled due to the loss of the industrial use of his legs as of April 15, 1975. The Worker's Compensation Appeal Board affirmed the finding of total disability but reversed the finding of total and permanent disability in a decision mailed January 27, 1989. The WCAB's decision was not appealed.

The Second Injury Fund then sought reimbursement from defendant-employer of the more than $33,000 the Fund had paid in 70% benefits, MCL 418.862; MSA 17.237(862), while the appeal to the WCAB was pending. These payments were part of the differential benefits, MCL 418.521(2);

* Circuit judge, sitting on the Court of Appeals by assignment.

MSA 17.237(521)(2), owed due to the ALJ's decision. In a decision mailed July 16, 1991, a magistrate decided that the Fund was entitled to be reimbursed by defendant-employer (plus interest) and that the defendant-employer was entitled to a credit against its obligation to plaintiff for the amount it had to reimburse the Fund. The Worker's Compensation Appellate Commission affirmed on May 6, 1994.

This Court denied an application filed by plaintiff (No. 176123). Our Supreme Court remanded to this Court:

> . . . As on leave granted, to consider, among other issues, whether the magistrate erred by allowing reimbursement beyond what was accrued. 448 Mich 947.

Defendant-employer and the Fund subsequently executed a stipulation in which they agreed that defendant-employer would only reimburse the Fund an amount equal to the accrued weekly compensation benefits (with interest) plus supplemental compensation benefits, MCL 418.352; MSA 17.237(352), owed plaintiff. The Fund explained in its brief that it had agreed to be reimbursed only from "accrued benefits owed. . . ." This stipulation makes moot the one specific issue our Supreme Court directed us to consider; i.e., whether there was error in allowing reimbursement beyond amounts accrued. We decline to further discuss this issue since no party has a continuing interest in it.

The issues which remain have no merit. Plaintiff essentially argues that there is no authority to allow the Fund to be reimbursed for the 70% benefits it paid while the case was on appeal to the WCAB. Plaintiff also contends that even if reimbursement to the Fund is permitted in some circumstances, reimbursement cannot be based upon the amount of supplemental benefits owed to plaintiff.

This Court has rejected plaintiff's arguments on at least two previous occasions. *Kihrotris v Ford Motor Co*, 183 Mich App 367; 454 NW2d 218 (1991), lv den 437 Mich 932, and *Grabowski v General Motors*, 184 Mich App 717; 459 NW2d 36 (1990), lv den 437 Mich 915. These decisions were based upon similar facts. They both involved awards for total and permanent disability which were subsequently reversed. The Fund was found entitled to recover from the employer the 70%-benefits the Fund had paid, and the employer was found entitled to a credit against its obligations owed to the employee.

Nor is this case distinguishable because it involves accrued supplemental benefits. This is a meaningless distinction. Supplemental benefits under MCL 418.352(1); MSA 17.237(352)(1) are special benefits provided by our Legislature to certain employees in order to account for the effects of inflation. *Kincaid v Detroit Mutual Ins Co*, 431 Mich 426, 441; 429 NW2d 595 (1988). Supplemental benefits are not immune from being reduced, since pursuant to MCL 418.352(5); MSA 17.237(352)(5) they are required to be reduced based upon the amount of differential benefits an employee receives. We see no reason to treat supplemental benefits any differently than regular weekly compensation benefits for purposes of the credit defendant-employer is entitled to in light of the reimbursement owed to the Fund.

The decision of the WCAC and the magistrate provide plaintiff with the benefits he is entitled to and avoid the result of plaintiff obtaining a double recovery. *Hiltz v Phil's Quality Market*, 417 Mich 335, 350; 337 NW2d 237 (1983). The Fund is reimbursed for amounts it did not have to pay in light of the WCAB's reversal of the finding that plaintiff was totally and permanently disabled. Both defendant-employer and the Fund are satisfied to reimburse the Fund only to the extent of accrued benefits owing to plaintiff. Interest on the reimbursement is appropriate pursuant to MCL 418.852(2); MSA 17.237(852)(2).

Affirmed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Charles W. Simon, Jr.