

STATE OF MICHIGAN
COURT OF APPEALS

JEANNETTE GORDON,

Plaintiff-Appellant,

v

HENRY FORD HEALTH SYSTEM,

Defendant-Appellee.

UNPUBLISHED

November 18, 2003

No. 244596

WCAC

LC No. 00-121533

Before: Gage, P.J., and White and Cooper, JJ.

PER CURIAM.

This case is remanded to us from the Supreme Court on leave granted, *Gordon v Henry Ford Health Sys*, 467 Mich 889; 654 NW2d 326 (2002). Plaintiff Jeannette Gordon appeals a decision of the Worker's Compensation Appellate Commission (WCAC) to the extent it reversed the magistrate's decision denying defendant Henry Ford Health System's petition to recoup wage loss benefits. We affirm.

The issue before this Court is whether the profits plaintiff received as the owner/operator of two group homes can be set off from her wage loss benefits for a previous work-related injury with defendant. Because plaintiff actively participates in the operation of her business, we agree with the WCAC that MCL 418.371(1) entitles defendant to credit for the portion of plaintiff's profits stemming from her efforts.

I. Facts and Procedural History

Plaintiff began receiving wage loss benefits from defendant in June 1992. In September 1998, defendant petitioned to stop these benefits and recoup benefits overpaid, given plaintiff's earnings as the owner/operator of two group homes. Plaintiff established these homes after her work-related injury with defendant. She explained that her operating license requires her to actively participate in the operation of the homes. To this end, plaintiff visits the homes frequently to ensure that the staff is treating residents properly and to address any complaints. Plaintiff also hires and fires the group home employees, sets staff wages, and exercises control over the employees. On occasion, plaintiff will transport patients and deliver supplies and food to the homes. Plaintiff receives profits each year from these homes.

Defendant argued that plaintiff's income from the group home enterprise constitutes earned income and that it should be permitted to prorate plaintiff's yearly income to a weekly basis and set it off against weekly wage benefits, pursuant to subsection 371(1). This provision of the Worker's Disability Compensation Act (WDCA) provides:

The weekly loss in wages referred to in this act shall consist of the percentage of the average weekly earnings of the injured employee computed according to this section as fairly represents the proportionate extent of the impairment of the employee's earning capacity in the employments covered by this act in which the employee was working at the time of the personal injury. The weekly loss in wages shall be fixed as of the time of the personal injury, and determined considering the nature and extent of the personal injury. The compensation payable, when added to the employee's wage earning capacity after the personal injury in the same or other employments, shall not exceed the employee's average weekly earnings at the time of the injury.

Noting that subsection 371(1) refers to post-injury wage-earning capacity and that defendant failed to claim that plaintiff's "post-injury income established a post-injury wage-earning capacity or that the income affected the existence of plaintiff's disability," the magistrate concluded that the provision does not apply in this case. He further found that plaintiff's income from her group homes does not represent wages, but rather investment or ownership income. Thus, he concluded that defendant may not setoff plaintiff's group home income against her weekly wage loss benefits and denied defendant's petition to recoup.

Defendant appealed to the WCAC, which reversed this decision. While the WCAC found the magistrate's factual findings supported by competent, material, and substantial evidence on the record, it found that he erred in analyzing whether plaintiff's earnings can be set off against benefits owed to plaintiff. The WCAC concluded:

We believe the correct rule is that an employer may receive credit for the net earnings of an individual who is able to operate an independent business after injury without regard to whether those earnings are denominated wages or profits. To refuse to permit credit in such a situation would enrich the employee at the employer's expense simply because the employee chose to operate her own business rather than return to service with another employer. We recognize that an employee who receives only income from passive investment in a business enterprise, without engaging in any substantial work in furtherance of the business enterprise, may not be charged with creditable earnings to offset compensation.

* * *

In the case before us, the facts found by the magistrate demonstrate that plaintiff is not merely a passive investor in her business. Although she is not able to perform the physical labor she did prior to her injury, the record shows an individual very active in the day-to-day operation of her business. . . .

* * *

As a result, it cannot be said that plaintiff's income from the group homes business reflects mere passive ownership. As a result, the employer is entitled to offset the net profit from plaintiff's business.

II. Legal Analysis

Plaintiff initially alleges that the WCAC improperly utilized a de novo standard of review in this case and substituted its findings of fact for those of the magistrate. We disagree.

This Court reviews the WCAC's decision under the any evidence standard.¹ If any evidence supports the WCAC's factual findings and the WCAC did not misapprehend its administrative appellate role in reviewing the magistrate's decisions, this Court must treat the WCAC's factual findings as conclusive.² Providing "the WCAC carefully examined the record, was duly cognizant of the deference to be given to the decision of the magistrate, did not 'misapprehend or grossly misapply' the substantial evidence standard, and gave an adequate reason grounded in the record for reversing the magistrate," leave to appeal should be denied or the WCAC's decision should be affirmed.³ But this Court may review questions of law involved with any final order of the WCAC.⁴ The WCAC's decision may be reversed if it operated within the wrong legal framework or based its decision on erroneous legal reasoning.⁵

In reviewing the magistrate's decision, the WCAC must consider the whole record and conduct a qualitative and quantitative analysis.⁶ The WCAC has some fact-finding powers and, if it gives different weight to quality or quantity of the evidence presented, may substitute its own findings of fact for those of the magistrate.⁷

To the extent plaintiff claims that the WCAC erroneously overturned the magistrate's factual findings after stating that it found them to be supported by competent, material, and substantial evidence, we disagree. The record shows that the WCAC clearly considered the facts as found by the magistrate and made a legal conclusion based on those facts. But contrary to the magistrate's holding, the WCAC determined that these facts indicated that plaintiff was more than a passive investor in her business and that her activities with respect to the group homes elevated her income from a simple return on an investment to compensation for work performed or services provided. The WCAC did not apply a de novo standard of review to the magistrate's

¹ *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 709; 614 NW2d 607 (2000).

² *Id.* at 709-710.

³ *Holden v Ford Motor Co*, 439 Mich 257, 269; 484 NW2d 227 (1992).

⁴ MCL 418.861a(14); *DiBenedetto v West Shore Hosp*, 461 Mich 394, 401; 605 NW2d 300 (2000).

⁵ *DiBenedetto, supra* at 401-402.

⁶ MCL 418.861a(4), (13); *Mudel, supra* at 699.

⁷ *Mudel, supra* at 699-700.

factual findings, but properly reviewed them to determine if they were supported by the requisite evidentiary standard and made a legal conclusion based on those facts.⁸

Regardless, plaintiff argues that the WCAC should have made a determination regarding the amount of income attributable to her efforts with respect to the business rather than using her entire income from the group homes to offset her worker's compensation benefits. After reviewing the record, we find that plaintiff has failed to demonstrate that the WCAC's determination regarding the amount of the setoff is erroneous.

Any limitation on an employer's entitlement to set off income received by an employee against worker's compensation benefits payable to that employee is a question of statutory construction, which is reviewed de novo.⁹ The primary purpose in interpreting a statute is to determine and give effect to the Legislature's intent.¹⁰ The first step is to consider the language of the statute.¹¹ "The Legislature is presumed to have intended the meaning it has plainly expressed, and if the expressed language is clear, judicial construction is not permitted and the statute must be enforced as written."¹² Only where the language of a statute is ambiguous may this Court look beyond the statute to determine the Legislature's intent.¹³

When interpreting the worker's disability compensation act (WDCA), courts must take into consideration the fact that "the WDCA is a remedial statute that should be 'liberally construed to grant rather than deny benefits.'"¹⁴ As a general rule, deference is given to the agency's construction of statutory provisions, providing that interpretation is not clearly incorrect.¹⁵

The WDCA exists to "compensate a claimant for lost earning capacity caused by a work-related injury, under a comprehensive scheme that balances the employer's and the employee's interests."¹⁶ Subsection 371(1) instructs, with regard to an employer's responsibility to pay worker's compensation benefits: "[t]he compensation payable, when added to the employee's wage earning capacity after the personal injury in the same or other employments, shall not exceed the employee's average weekly earnings at the time of the injury." In *Powell v Casco Nelmor Corp*, our Supreme Court held that under subsection 371(1), an employer may set off a

⁸ See *Hoste v Shanty Creek Management, Inc*, 459 Mich 561, 570 n 7; 592 NW2d 360 (1999) (noting that error may be committed by failing to properly apply the law to the factual findings).

⁹ *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 739; 641 NW2d 567 (2002).

¹⁰ *Id.* at 748.

¹¹ *Id.*

¹² *Id.*

¹³ *DiBenedetto, supra* at 402.

¹⁴ *Id.* at 402; quoting *Goff v Bil-Mar Foods, Inc (After Remand)*, 454 Mich 507, 511; 563 NW2d 214 (1997).

¹⁵ *Jones-Jennings v Hutzler Hosp (On Remand)*, 223 Mich App 94, 105; 565 NW2d 680 (1997).

¹⁶ *Sweatt v Dep't of Corrections*, 247 Mich App 555, 566; 637 NW2d 811 (2001); rev on other grounds 468 Mich 172 (2003).

disabled employee's wages or wage-earning capacity after the injury.¹⁷ Thus, defendant may deduct from the amount of compensation it must pay to plaintiff any *wages* earned by plaintiff after her disabling injury.

The WCAC considered the definition of “wage” and the characterization of “wages” set forth by our Supreme Court in *Hoste*, and distinguished an employee's passive investment in a business enterprise from an employee's active participation in developing, running and maintaining a business for profit.¹⁸ It then concluded that because plaintiff's income reflects more than simple passive ownership of the group homes, defendant could offset the net profit from plaintiff's business from the compensation it owed to her. Plaintiff has not demonstrated that the WCAC's interpretation of subsection 371(1) is clearly incorrect. Thus, we defer to the WCAC's decision.

Affirmed.

/s/ Hilda R. Gage
/s/ Jessica R. Cooper

¹⁷ 406 Mich 332, 348; 279 NW2d 769 (1979); see also *Bower v Whitehall Leather Co*, 412 Mich 172, 192; 312 NW2d 640 (1981).

¹⁸ *Hoste, supra* at 576 (describing wages as “real, palpable and substantial consideration . . .”).