

STATE OF MICHIGAN
COURT OF APPEALS

JUDITH ADAIR,

Plaintiff-Appellee,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellant.

UNPUBLISHED
May 15, 2012

No. 299978
WCAC
LC No. 09-000035

Before: OWENS, P.J., and TALBOT and METER, JJ.

PER CURIAM.

General Motors Corporation (“GM”) appeals by leave granted an order of the Workers’ Compensation Appellate Commission (“WCAC”) affirming the magistrate’s award of benefits to Judith Adair. We affirm.

Adair was hired by GM in 1995. Adair was one of many long-time employees offered a special attrition package (“SAP”), which Adair accepted on June 22, 2006. The SAP provided that Adair would retire from GM no later than January 1, 2007. On August 31, 2006, Adair went on sick leave attributable to hand injuries sustained on the job. Thereafter, Adair did not return to work for GM.

Adair filed an application for workers’ compensation benefits on January 16, 2007. On January 26, 2009, the magistrate found for Adair and awarded open, ongoing benefits. GM appealed to the WCAC, which affirmed the magistrate on some points, remanded the case on others, and retained jurisdiction. On remand, the magistrate again found for Adair. The case automatically reverted to the WCAC, which again affirmed the magistrate. These rulings all found that MCL 418.373(1) did not apply to Adair. GM’s application to this Court for leave to appeal was denied.¹ In lieu of granting leave to appeal, our Supreme Court remanded this case to

¹ *Adair v Gen Motors Corp*, unpublished order of the Court of Appeals, entered March 18, 2011 (Docket No. 299978).

this Court “for consideration as on leave granted of the issue . . . [of] whether MCL 418.373(1) applies to the plaintiff in this case.”²

GM contends that the WCAC erred when it failed to apply the presumption of MCL 418.373(1). We disagree. “Findings of fact made by the WCAC are conclusive in the absence of fraud.”³ This Court reviews “de novo questions of law in final orders of the WCAC.”⁴ “[T]he WCAC’s interpretation and application of a provision of the [Worker’s Disability Compensation Act (WDCA)]⁵ are entitled to considerable deference from this Court where that interpretation is not clearly incorrect.”⁶ “A decision is subject to reversal if it is based on erroneous legal reasoning or the wrong legal framework.”⁷

The “retiree presumption” provides as follows:

An employee who terminates active employment and is receiving nondisability pension or retirement benefits under either a private or governmental pension or retirement program, including old-age benefits under the social security act⁸ . . . that was paid by or on behalf of an employer from whom weekly benefits under this act are sought shall be presumed not to have a loss of earnings or earning capacity as the result of a compensable injury or disease under either this chapter or chapter 4. This presumption may be rebutted only by a preponderance of the evidence that the employee is unable, because of a work related disability, to perform work suitable to the employee’s qualifications, including training or experience. This standard of disability supersedes other applicable standards used to determine disability under either this chapter or chapter 4.⁹

“The legislative intent behind [MCL 418.373] was to reform the statute and limit the number of retired workers who were eligible to collect compensation along with a nondisability retirement.”¹⁰ “[A]n employer must first prove that [MCL 418.373] is applicable before an employee is required to rebut the retiree presumption by a preponderance of the evidence.”¹¹

² *Adair v Gen Motors Corp*, 490 Mich 876; 803 NW2d 692 (2011).

³ *Stokes v Chrysler LLC*, 481 Mich 266, 274; 750 NW2d 129 (2008).

⁴ *Id.*

⁵ MCL 418.101 *et seq.*

⁶ *Cain v Waste Mgt, Inc*, 259 Mich App 350, 366; 674 NW2d 383 (2003).

⁷ *Campbell v Gen Motors Corp*, 268 Mich App 468, 470; 708 NW2d 733 (2005).

⁸ 42 USC 301 to 1397f.

⁹ MCL 418.373(1).

¹⁰ *Frasier v Model Coverall Serv, Inc*, 182 Mich App 741, 744; 453 NW2d 301 (1990).

¹¹ *Holbrook v Gen Motors Corp*, 204 Mich App 637, 645; 516 NW2d 135 (1994).

Thus, it must be demonstrated by the employer “that the employee is receiving nondisability pension or retirement benefits that were paid by or on behalf of the employer[.]” and “that the employee terminated active employment.”¹²

In *Frasier*, this Court affirmed the WCAC’s ruling affirming the magistrate’s finding that the retiree presumption “did not apply because plaintiff retired while he was disabled and receiving workers’ compensation benefits and did not retire from active employment.”¹³ We held that:

[I]n determining what the Legislature meant by “active employment” we must define “active” in its ordinary sense and meaning. Placing the “active” before employment must have been for the purpose of adding some further meaning-distinguishing between employees who were actually engaged in performing work for an employer at the time of retirement and those who were not. It follows, therefore, that “active employment” means one who is actively on the job and performing the customary work of his job, as opposed to one who terminates inactive employment.¹⁴

“The sequence of events is not determinative.”¹⁵ To determine whether an employee “terminates active employment” for the purposes of MCL 418.373, “the question is not whether an employee files his workers’ compensation claim before or after he retires, but whether the employee was actively employed when he left.”¹⁶

GM urges this Court to find that Adair terminated her employment within the meaning of MCL 418.373(1) on June 29, 2006, at the time her commitment to accept the SAP became irrevocable. GM, however, cites no case law in support of this position. Additionally, GM’s assertion regarding the termination of Adair’s active employment with GM is contrary to this Court’s discussion of “active employment” in *Frasier*.¹⁷ Thus, this argument must fail.

Adair accepted the SAP in June 2006 with the intent to retire no later than January 1, 2007. Adair thereafter continued to work. On August 31, 2006, Adair stopped working and began sick leave. GM then designated Adair’s retirement date as October 1, 2006. When Adair retired from GM, she had not returned to work and thus, was not “actively on the job and performing the customary work of [her] job” at the time of her retirement.¹⁸ Because Adair was

¹² *Id.*

¹³ *Frasier*, 182 Mich App at 742-743.

¹⁴ *Id.* at 744.

¹⁵ *Id.* at 746.

¹⁶ *Id.*

¹⁷ *Id.* at 744.

¹⁸ *Id.*

not “actively employed” when she retired from GM, as she retired from inactive employment, MCL 418.373(1) does not apply and reversal is not warranted.¹⁹

Affirmed.

/s/ Donald S. Owens

/s/ Michael J. Talbot

/s/ Patrick M. Meter

¹⁹ *Id.*