

STATE OF MICHIGAN
WORKER'S COMPENSATION APPELLATE COMMISSION

JOSEPH MARCINAK,
PLAINTIFF,

V

DOCKET #03-0394

NORCOTE, INCORPORATED,
SELF INSURED,
DEFENDANT.

APPEAL FROM MAGISTRATE SLOSS.

STEPHEN I. KAUFMAN FOR PLAINTIFF,
STEPHEN C. BOUWKAMP FOR DEFENDANT.

OPINION

LESLIE, COMMISSIONER

Defendant appeals the decision of Magistrate Andrew G. Sloss finding plaintiff's work-related injury was occasioned by willful misconduct, but granting plaintiff a continuing award of medical benefits. Defendant claims the magistrate erred as a matter of law, because MCL 418.305 requires denial of all worker's compensation benefits. Plaintiff denies error. We reverse the award of medical benefits.

Plaintiff sustained a significant pinching injury to his right index finger when a piece of steel fell as he was moving it. He continues to be limited in his ability to grip. As a result of the injury, plaintiff was required by company policy to undergo a drug test. He tested positive for marijuana use. This was his first offense. Based on plaintiff's failure to cooperate with drug rehabilitation required by the company, he was terminated. He has returned to work for another employer, performing similar duties, although he is unable to perform all aspects of his former job.

The magistrate found plaintiff to be compensably disabled, but also found his injury resulted from willful misconduct, violating an enforced safety rule. He found defendant had a strictly enforced policy against drug use. This policy, by plaintiff's own admission was to prevent injuries. Both plaintiff and defendant's lay witness agreed this policy was strictly enforced. Based on the toxicologist's testimony, the magistrate concluded plaintiff was under the influence of the drug at the time of his injury. He further found that plaintiff's injury was the type of injury the drug policy was designed to prevent, and plaintiff's mishandling of the steel was related to his intoxication. Based on these findings and conclusions, the magistrate denied weekly benefits, but found plaintiff entitled to continuing medical care for his finger injury. He wrote:

I find as fact that Plaintiff was under the influence of marijuana at the time of his injury on May 22, 2001, and that his intoxication contributed to his injury. Mr. Rutter testified that Plaintiff's urine sample tested 30 to 40 times the threshold for use. I find

that this high concentration indicates recent and substantial use of marijuana on the date of the injury. Plaintiff testified that he was injured when he mishandled a piece of steel and part of it fell off a table, pinching his finger. This is exactly the type of accident the work rule in question was designed to prevent. Plaintiff is therefore excluded from receiving compensation under the Act.

Nonetheless, Defendant remains responsible for the reasonable and necessary medical expenses related to Plaintiff's injury. Section 305 prohibits the receipt of "compensation," rather than "benefits." The term "compensation" as it is used in the other sections of this chapter, e.g., §301 and 321, clearly refers to wage loss benefits. (MCL 418.301; MSA 17.237(301), MCL 418.321; MSA 17.237(321).) The requirement to reimburse medical expenses uses terms other than "compensation." MCL 418.315; MSA 17.237(315). Reimbursement of Plaintiff's medical expenses shall include, but not be limited to, the corrective surgery recommended by Dr. Mehta.¹

The only issue on appeal is the magistrate's award of medical benefits. Defendant contends that §305 bars receipt of all benefits, not just weekly wage loss benefits. Defendant first states:

The magistrate claimed that §418.305 used the term "compensation" rather than "benefits." Without any supporting authority the magistrate claimed that compensation refers only to wage loss benefits.²

Defendant primarily relies on the Supreme Court decision in *Daniel v Dep't of Corrections*, 468 Mich 34 (2003) and the language of the holding:

By awarding medical benefits the magistrate was clearly wrong. Recently, the Supreme Court held that when an employee suffers an injury arising out of his willful and intentional misconduct benefits are denied in their entirety. In *Daniel v Department of Corrections*, 468 Mich 34, 658; NW2d 144 (2003) the court found that a prison guard who suffered a psychiatric disability arising out of discipline related to a sexual harassment of female attorneys was precluded from receiving benefits. His claim was denied in its entirety not simply the wage loss aspect.

"We hold that MCL 418.305 precludes **benefits** in this case and, therefore, we reverse the judgment of the Court of Appeals and reinstate the Worker's Compensation Appellate Commission's (WCAC) order denying **benefits**." *Id.* at 469 Mich 35, emphasis added.³

Defendant also cites similar language from a Commission decision, *Watts v Muskegon Temporary Facility*, 2003 ACO #149. Plaintiff in a letter to the Commission urges affirmance:

¹ Magistrate's opinion at 6.

² Defendant's brief at 8.

³ *Id.* at 8-9.

In response to defendant's appeal brief, plaintiff submits that the decision of Magistrate Sloss which ordered payment of medical expenses in this matter should be affirmed based on the fact that Section 305 prohibits the receipt of "compensation," rather than "benefits" as explained by Magistrate Sloss.

The term "compensation" as it is used in the other sections of this chapter refers to wage loss benefits. Therefore, there is a distinction between medical benefits and compensation. For this reason, the decision of Magistrate Sloss requiring payment of medical expenses should be affirmed.

MCL 418.305 reads in its entirety:

If the employee is injured by reason of his intentional and willful misconduct, he shall not receive compensation under the provisions of this act.

The issue before us has not been directly considered, so far as we have been able to determine, either by the Commission or the appellate courts. The scope of the word "compensation" as used in the worker's disability compensation act, however, is not a new question. In *Munson v Christie*, 270 Mich 94 (1935) the court was called upon to determine whether the term compensation included medical expenses. The court said:

These provisions for his care during the first 90 days and for the expense of last sickness and burial are clearly compensation to the employee and his dependents, in that they are thereby saved from and compensated for the burden and expense to which they or some of them presumably would otherwise be subjected. While it is true that in some instances in the Workmen's Compensation Act the expression "compensation" is not used in this broad sense and that the respective phases of compensation are specifically referred to in other terms, still consideration of the act as a whole leads to the conclusion that in order to carry out the legislative intent and to properly construe the act, "compensation" recoverable by the employee and his dependents must usually be understood in its broader sense.⁴

A third party defendant sought to restrict the meaning of "compensation" to weekly benefits in *Michigan Boiler Works v Dressler*, 286 Mich 502 (1938). It challenged an award to the employer for funeral expenses, under the then existing subrogation provisions, on the ground these benefits were not "compensation". The court rejected this argument, stating:

Defendant finally contends that funeral expenses are not compensation and that therefore they cannot be recovered in this action. Under statutes in effect in other jurisdictions, hospital, medical and surgical bills have been held to be "compensation", recoverable in a suit by an employer against a negligent third party who has injured an employee. *Klotz v. Pfister & Vogel Leather Co.*, 220 Wis. 57, 264 N.W. 495; *Bruso's Case*, Mass., 4 N.E.2d 308. We believe it to have been the legislative intent

⁴ Munson at 99. *Kurtz v Shawley Motor Freight Co*, 270 Mich 112 (1935).

that funeral expenses should be recoverable as “compensation” in this particular instance.

The Supreme Court considered the same issue in a different context 15 years after *Munson* in *Dornbos v Bloch & Guggenheimer*, 326 Mich 626 (1950). In that case the question was whether the then governing claim provisions precluded plaintiff’s application for benefits for medical expenses or whether they only precluded an application for weekly benefits. The court held that the term “compensation” included both medical and weekly benefits. The pertinent portions of the claim provision interpreted in *Dornbos* read as follows:

No proceedings for compensation for an injury under this act shall be maintained, unless a notice of the injury shall have been given to the employer within 3 months after the happening thereof, and unless the claim for compensation with respect to such injury shall have been made within 6 months after the occurrence of the same . . . but no such claim shall be valid or effectual for any purpose unless made within 2 years from the date the personal injury was sustained.⁵

Relying on *Dressler* and *Munson*, the court held a claim for reimbursement of medical expenses was a claim for compensation within the meaning of the statutory provision under consideration. The court said:

Construing the provisions of the statute here in issue in the light of the general purpose of the entire act, and in conjunction with other pertinent provisions indicating the legislative intent, we think a claim for medical and hospital expenses must be regarded as one for compensation and subject accordingly to the prescribed requirements as to the time within which such claim shall be made. Under the holding of the compensation commission an employer who may not be required to pay compensation based on loss of earnings of an injured employee, because of the failure of the latter to make claim within the prescribed time, may, nevertheless, be subjected to an award after the expiration of such period because of the incurring of expenses for hospital or medical attention, or the desirability of such services. Such holding rests on the theory that it was the intention of the legislature in the enactment of the workmen’s compensation act to place no limit on the time for the making of such a claim. In view of the fact that the provision with reference to the payment of medical expenses is included in part 2 with other provisions relating to compensation, any intent to exempt a claim therefor from the operation of the statute of limitations as set forth in section 15 of part 2 would, we think, have been expressly stated. From the fact that this was not done the inference follows that such exemption was not intended.⁶

Nine years later, however, the Michigan Supreme Court rejected the notion that the word “compensation” always includes medical benefits. In *Lahti v Fosterling*, 357 Mich 578 (1959) the court retroactively applied a statutory amendment making entitlement to medical benefits life long. In doing so the court, without further elaboration stated:

⁵ *Dornbos* at 629-630.

⁶ *Id.* at 637-638.

Defendants cite the case of *Dornbos v. Bloch & Guggenheimer, Inc.*, 326 Mich. 626, 40 N.W.2d 749, as authority for the position that medical and hospital bills are compensation. They also cite *Munson v. Christie*, 270 Mich. 94, 258 N.W. 415, and *Kurtz v. Shawley Motor Freight Co.*, 270 Mich. 112, 258 N.W. 421, which cover sick benefits and death benefits.

In the *Dornbos* case Justice Carr ruled that hospital and medical services are within the term compensation as the term is used in the statute of limitations in part 2, § 15, of the act.

It is to be noted that in all of these cases this Court has emphasized that such benefits are a form of compensation for some purposes but not necessarily for all.⁷

Even a cursory survey of the various references to “compensation” in the act, reveals the correctness of Justice Smith’s comment in *Lahti*. As a result, the context of each provision must be carefully considered prior to pronouncing a broad or narrow meaning for the use of the word “compensation”.

Currently, the short title of the act is “the worker’s disability compensation act of 1969”.⁸ The original title of the compensation law was:

AN ACT to promote the welfare of the people of this State, relating to the liability of employers for injuries or death sustained by their employees, providing compensation for the accidental injury to or death of employees and methods for the payment of the same, establishing an industrial accident board, defining its powers, providing for a review of its awards, making an appropriation to carry out the provisions of this act, and restricting the right to compensation or damages in such cases to such as are provided by this act.⁹

Certainly, no one would understand the word compensation as used in the title of the act, then or now, to be limited to weekly indemnity benefits.¹⁰ Thus, from its inception, the word “compensation” has been imbued with a very broad scope, particularly when used in association with the phrase “as provided in this act”. The question becomes, then, whether the reference to “compensation” in §305 is broad or narrow.

We begin by emphasizing that the word “compensation” in §305 is not used in isolation. The precise phrase, which the magistrate did not recite, is “compensation under the provisions of this act.”

⁷ Lahti at 584.

⁸ MCL 418.101.

⁹ 1912 (1st Ex Sess) PA 10.

¹⁰ Likewise, the legislature has created various administrative positions preceded by the appellation “worker’s compensation”, a broad and all encompassing use of the term “compensation”. See, e.g., MCL 418.201; MCL 418.212; MCL 418.274.

The Commission has held this language encompasses all of the compensation act.¹¹ Indeed, the broad language of §305 is equally as broad as the language used in MCL 418.301(1) which defines entitlement to benefits under the act. It reads in pertinent part:

An employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act.

Thus, once the employee establishes the basic elements of entitlement, the entire scope of benefits provided by the “worker’s disability compensation act of 1969” is embodied in the phrase “compensation as provided in this act.” It cannot be understood to limit “compensation” to weekly indemnity payments. This use of corresponding language together with the prohibition “shall not” is especially significant because the prohibition follows immediately after the provision creating entitlement to benefits. §301(1) grants entitlement to benefits with the phrase “shall be paid compensation as provided in this act” and §305 denies entitlement with the phrase “shall not receive compensation under the provisions of this act”. As a result, the magistrate’s reliance on §301(1) to support his distinction between “compensation” and “benefits” is misplaced.

Review of several other provisions of the act reinforces the need for caution in selecting a single provision as a guideline for the meaning of “compensation” in comparison to §305. For example, Chapter 8 contains two provisions which refer to “compensation”. MCL 481.815 states:

No agreement by an employee to waive his rights to compensation under this act shall be valid except that employees or their dependents as defined in section 161, after injury only, may elect as provided in section 161.

MCL 418.831 reads:

Neither the payment of compensation or the accepting of the same by the employee or his dependents shall be considered as a determination of the rights of the parties under this act.

Certainly, these provisions could not reasonably be interpreted to preclude only the waiver of weekly benefits. The critical phrase, again, being “under this act”.

¹¹ See, *Charles Lee, Sr. v Detroit Board of Education*, 2000 ACO #176. *Lee* was an en banc decision analyzing the scope of the penalty under MCL 418.222 once a party is found in willful violation of the record production requirements. A majority held that the penalty precluded consideration of the merits of defendant’s appeal once it was determined the finding of willful violation of §222 was legally and factually well grounded. In doing so, the majority held that “...the legislature uses the phrase ‘under this act’ or similar language when it designates the entire compensation law, and uses more specific language when a more limited reference is intended.”

In contrast, there are provisions of the act where the reference to “compensation” can only be understood to refer to weekly indemnity payments. The context of these provisions is quite different from that of §305, however.¹² Nor is the word “benefits” always susceptible of the broad meaning attributed to it in the magistrate’s decision.¹³

The critical point for our analysis is that the context of the word “compensation” as used in §305 is the broadest usage contained in the act. Upon a finding of willful misconduct, an employee “shall not receive compensation under the provisions of this act.” This phrase includes all benefits payable under the worker’s compensation law. As a result, having found plaintiff’s injury was caused by his intentional and willful misconduct, the magistrate erred as a matter of law in awarding medical benefits.

The decision of the magistrate awarding medical benefits is reversed. In all other aspects the magistrate’s decision is affirmed.

Chairperson Reamon and Commissioner Glaser concur.

Richard B. Leslie Commissioner

William G. Reamon, Jr. Chairperson

Martha M. Glaser Commissioner

¹² One such provision is §321 selected by the magistrate as an analogy for the meaning of the word “compensation” in contrast to the word “benefits”. §321 first discusses weekly payments and then refers to “rates of compensation” and then refers to “weekly compensation”. The term “weekly compensation” is limited to indemnity payments. See, *Kincaid v Detroit Mutual Ins Co*, 431 Mich 426 (1988). The contrast to “compensation provided under this act” as used in §305 is immediately apparent. Another provision, MCL 418.841, vests the worker’s compensation agency and the Board of Magistrates with jurisdiction over disputes concerning “compensation and other benefits”, thereby using compensation in the more narrow meaning of weekly indemnity payments.

¹³ A case in point is MCL 418.354, which is entitled “Coordination of benefits”. This section governs only offsets against weekly indemnity payments.

STATE OF MICHIGAN
WORKER'S COMPENSATION APPELLATE COMMISSION

JOSEPH MARCINAK,
PLAINTIFF,

V

DOCKET #03-0394

NORCOTE, INCORPORATED,
SELF INSURED,
DEFENDANT.

This cause came before the Appellate Commission on defendant's appeal from Magistrate Andrew G. Sloss' decision, mailed June 26, 2003, finding plaintiff's work-related injury was occasioned by willful misconduct, but granting plaintiff a continuing award of medical benefits. The Commission has considered the record and counsel's briefs, and believes that the magistrate's decision awarding medical benefits should be reversed but in all other aspects be affirmed. Therefore,

IT IS ORDERED that the magistrate's decision awarding medical benefits is reversed. In all other aspects the magistrate's decision is affirmed.

Richard B. Leslie Commissioner

William G. Reamon, Jr. Chairperson

Martha M. Glaser Commissioner