

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

THIEL TAYLOR,
Plaintiff,

v

OPINION
File No. 86-8168-NI

AUTO CLUB INSURANCE
ASSOCIATION,
Defendant.

This matter, presented without a jury, is primarily a dispute over a question of law. The question is whether the defendant automobile insurer of plaintiff, a person who while on temporary duty with the Michigan National Guard sustained an injury in an automobile accident and as a consequence received incapacitation pay benefits from the National Guard because of his inability to perform temporary guard duty, is entitled to setoff the incapacitation pay from the loss of plaintiff's civilian income benefits the insurer would otherwise have to pay.

In July, 1985, plaintiff was employed in quality control at Anderson Bolling, Spring Lake, Michigan. He was also a sergeant in the Michigan National Guard and on July 20, 1985 began attending the 15 day annual guard training. On July 27, 1985, while on a two-day pass, plaintiff became involved in an auto accident in which he suffered a broken leg. Prior to the accident plaintiff was paid by the Michigan National Guard for one weekend each month and the 15 day annual summer camp. Because he was injured while on active duty with the Guard he continued to receive compensation (incapacitation pay) as though he were on active duty until he was medically released in November, 1986 to perform National Guard duties.

Plaintiff had been employed at Anderson Bolling for some time and since June, 1984 until his 1985 Guard duty had worked more than 40 hours per week. He was first released by his doctor to return to civilian work on May 12, 1986 but Anderson Bolling laid him off because of lack of work. Plaintiff believes he would not have been laid off if he had not suffered the injury but this court does not find the evidence supports that claim. Plaintiff next became employed at Hart & Cooley on July 14, 1986 until August 18, 1986 when he had

scheduled surgery on his injured leg. Following an 11 week recuperation period plaintiff was released for work but laid off from Hart & Cooley. His next civilian employment was April, 1987 at Polynesian Pool where he worked for a month and was laid off. In June, 1987 he again became employed at his present employer, Industrial Finishing.

Plaintiff did not have coordinated benefits for loss of wages pursuant to MCL 500.3109 a. The National Guard paid his medical expenses.

It is plaintiff's claim that he is entitled to 85% of his loss of earnings from Anderson Bolling until he returned to fulltime employment. He also seeks mileage reimbursement for trips to and from his treating physician and the evidence indicates eleven such trips at 25 miles each way.

Defendant claims it is entitled to a setoff for the National Guard incapacitating pay received by plaintiff pursuant to MCL 500.3109 (1) as interpreted by Crowley v DAIIE, 428 Mich 270. The court in Crowley, following the test pronounced in LeBlanc v State Farm Mutual Automobile Insurance, 410 Mich 173, and Jarosz v DAIIE, 418 Mich 565, held that a military person injured in an auto covered by No-Fault insurance which neither he nor his family owns, and who neither himself nor his family own an auto, cannot recover No-Fault medical insurance benefits for bills incurred as a result of the accident which have been paid by the military pursuant to military obligations. The court held that the legislative intent was to eliminate duplicative recovery under those circumstances. The Crowley court, page 275 - 276, quoted the test stated in Jarosz, page 577, stating:

"We conclude that the correct test is: state or federal benefits "provided or required to be provided" must be deducted from No-Fault benefits under section 3109 (1) if they:

- (1) serve the same purpose of the No-Fault benefits,
- and
- (2) are provided or are required to be provided as a result of the same accident."

The first part of the test requires determining whether the National Guard incapacitation pay serves the same purpose as the No-Fault benefits. The answer is no. The purpose of the incapacitation pay is to compensate

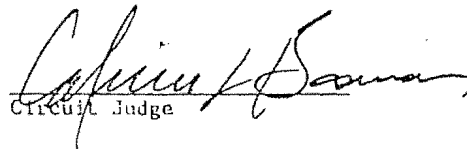
plaintiff for his inability to perform his National Guard duties. He would receive these benefits whether he had civilian employment or not. These benefits extend until he is released to perform military duties independent of whether he is released for civilian employment. No-Fault benefits by contrast are intended to compensate for loss of earnings which result from his injury. In this case, from plaintiff's Anderson Bolling employment which job plaintiff was unable to perform until May 12, 1986 and again for an eleven week period following August 18, 1986 when he had surgery on his injured leg.

This court finds that plaintiff is entitled to benefits at the rate of \$288.28 for the 40 week period from July 27, 1985 until he was released for work on May 12, 1986 and again for the eleven week period from August 18, 1986 until November 3, 1986.

He is also entitled to reimbursement for the eleven trips to his doctor at 50 miles per trip. He is not entitled to penalty interest as he did not previously submit a claim for mileage to the insurer.

Judgment may enter pursuant to the terms of this opinion.

Dated: ~~April~~ May 3, 1988.


Circuit Judge



State of Michigan,

The Circuit Court for the County of Ottawa

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PLAINTIFF,

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AUTO CLUB INSURANCE ASSOCIATION

DEFENDANT.

NOTICE

Please take notice that on the 4th day of May 1988

a n Opinion

filed

(Judgment, Decree, Final Order, Written Opinion or Findings)

was in this cause.

(Filed or Entered)

DANIEL C. KRUEGER, County Clerk

by

Francis M. Sebaste

Dep. Clerk of the Court.

Dated May 4, 1988

TO:

Ralph O. Wilbur

ATTORNEY FOR PLAINTIFF.

Gordon H. Cunningham, Cunningham, Mulder & Breese

ATTORNEY FOR DEFENDANT.

Copies of foregoing notice mailed to attorneys at their addresses as shown in the file this

5th

day of May 1988

DANIEL C. KRUEGER, COUNTY CLERK

by

Francis M. Sebaste

Dep. Clerk of the Court.