STATE OF MICHIGAN

COURT OF APPEALS

FLOYD EDWARDS,

Plaintiff-Appellant,

v

CITIZENS INSURANCE COMPANY OF AMERICA, a corporation,

Defendant-Appellee.

UNPUBLISHED

November 29, 1994

No. 160095
LC No. 91-008479-CK

Before: Connor, P.J., and Sawyer and G.R. Corsiglia,* JJ.

PER CURIAM.

Plaintiff appeals from an order of the circuit court granting summary disposition in favor of defendant on plaintiff's claim for no-fault wage-loss benefits. We reverse.

Plaintiff was involved in an automobile accident during a period of unemployment. He alleges that, even had work been available, he would have been unable to work as the result of injuries sustained in the accident for a period of up to ten weeks after the accident occurred. Although unemployed at the time of the accident, plaintiff argues that he comes within the "temporarily unemployed" provisions of the no-fault act and, therefore, is entitled to wage-loss benefits. The trial court disagreed, granting summary disposition in favor of defendant.

Plaintiff, who was thirty-seven years old at the time of the accident, has been fairly consistently employed during his adult life, though with periodic times of unemployment because some of his employment involved seasonal work. However, approximately ten months before this accident, plaintiff voluntarily quit his employment and remained unemployed until after the time of the accident. Some months after the accident, plaintiff did again become reemployed.

Under § 3107a of the no-fault act, MCL 500.3107a; MSA 24.13107(1), a person is entitled to work-loss benefits if disabled due to a motor vehicle accident even if temporarily unemployed at the time of the accident. The question then in this case is whether there exists a genuine issue of material fact concerning whether defendant was temporarily unemployed at the time of the accident in light of the fact that he had voluntarily quit his employment, was not going to return to his previous employment, and had not yet secured new employment.

We have not been able to find any case directly on point. The cases in which the claimant has been denied benefits generally have the feature that the claimant has made no effort to become reemployed. For example, in Oikarinen v Farm Bureau Mutual Ins Co of Michigan, 101 Mich App 436; 300 NW2d 589 (1980), work-loss benefits were denied to the plaintiff who had been unemployed for four years prior to the accident. Furthermore, there was no indication that the plaintiff had sought employment during that time period. This Court stated that the mere assertion of an intent to return to

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

gainful employment not supported by any actions during the period of unemployment does not raise a genuine issue of material fact. Id. at 439.

On the other hand, in Szabo v DAIIE, 136 Mich App 9; 355 NW2d 619 (1984), the plaintiff had been discharged for cause from his employment approximately two months before becoming involved in an automobile accident. During those two months, he had applied for employment with four or five potential employers, though he had not received any employment offers at the time of the accident. The trial court had granted summary disposition in favor of the plaintiff, which this Court upheld, concluding that the plaintiff was, in fact, temporarily unemployed on the basis of the stipulated facts of the parties. Id. at 13-14.

The facts of the case at bar do not neatly fit into either of these scenarios. In Szabo, the plaintiff had been unemployed for less than two months while in the case at bar plaintiff was unemployed for approximately ten months, but which is nevertheless significantly less than the four years' unemployment in Oikarinen. Similarly, while plaintiff in the instant case does not appear to have been quite as diligent as the plaintiff in Szabo in seeking other employment, he did testify in his deposition that he did apply for other employment, unlike the plaintiff in Oikarinen. Furthermore, we note that plaintiff in the case at bar did eventually become employed after the automobile accident, which would support his contention that he intended to return to active employment. Accordingly, we conclude that, at a minimum, plaintiff has at least raised a genuine issue of material fact concerning his employment status and, therefore, summary disposition in favor of defendant was inappropriate.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiff may tax costs.

/s/ Michael J. Connor
/s/ David H. Sawyer
/s/ George R. Corsiglia