STATE OF MICHIGAN

COURT OF APPEALS

RICHARD FRAZIER,

Plaintiff-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellant.

FOR PUBLICATION
August 14, 1998
9:05 a.m.

No. 196101
Wayne Circuit Court
LC No. 94-424848 CK

Before: Saad, P.J., and Wahls and Gage, JJ.

SAAD, P.J.

I

NATURE OF THE CASE

In this no-fault insurance claim, defendant appeals[1] from the trial court's denial of its motion for judgment notwithstanding the verdict, and from the wage loss and related portions of the judgment for plaintiff. The issue we decide is whether plaintiff, who had been unemployed for nearly four years, was nonetheless eligible for work loss benefits under MCL 500.3107a; MSA 24.13107(1), as one who is "temporarily unemployed." Because we hold that plaintiff was not "temporarily unemployed," we reverse and remand.

II

FACTS

Although the injury which forms the basis for this case did not occur until July of 1992, plaintiff's work and injury history forms an important background to our analysis. While employed as a machinist in August of 1988, plaintiff suffered a work-related injury to his right knee. Due to this injury he received worker's compensation and, when he was unable to return to his machinist job due to the severity of his injury, plaintiff was ultimately terminated. As part of his rehabilitation program, in September of 1990, plaintiff enrolled in a Focus Hope computer aided design (CAD) program, and he completed the program in May, 1991. Although plaintiff sent out resumes during the following five to six months, and met regularly with vocational counselor Lawrence Gamby, plaintiff never obtained a job.

On July 18, 1992, plaintiff was injured in the automobile accident at issue here. On the date of injury, he had been unemployed almost four full years (from August 15, 1988 through July 18, 1992). Approximately two months after this accident, plaintiff redeemed his worker's compensation award from the first accident, for a lump sum of $67,000.

At the time of the second accident, plaintiff was insured with defendant under a policy in his wife's name. Plaintiff filed suit alleging that defendant failed to pay plaintiff's personal protection insurance benefits, including lost wages. At trial, defendant moved for a directed verdict on the wage loss claim, contending that plaintiff had presented insufficient proof of actual wage loss. The trial court denied defendant's motion, and the jury ultimately awarded plaintiff $53,040 which represents three full years of wage loss benefits, at the rate of $400 per week (which had been plaintiff's wage as a machinist). After entry of judgment, defendant moved for judgment notwithstanding the verdict on plaintiff's claim for lost wages, and alternatively for remittitur or new trial, contending the award for lost wages was unsupportable. The trial judge denied the motion, incorrectly holding that the evidence established that plaintiff was "temporarily unemployed" within the meaning of the no-fault act.

Defendant appeals from the wage loss and related portions of the judgment.

III

ANALYSIS

Defendant contends that it was entitled to judgment as a matter of law because plaintiff did not qualify for wage loss benefits under the no-fault insurance act. Defendant is correct as a matter of law.

The statute at issue, MCL 500. 3107a; MSA 24.13107(1) says:

> Subject to the provisions of section 3107(1)(b), work loss for an injured person who is *temporarily unemployed* at the time of the accident or during the period of disability shall be based on earned income for the last month employed full time preceding the accident. (Emphasis added.)

Sections 3107(1)(b)[2] and 3107a of the no-fault act, taken together, provide that an insured who is temporarily unemployed at the time of the accident is entitled to work-loss benefits for a maximum period of three years following the accident. *Clute v General Accident Co*, 179 Mich App 527, 536; 446 NW2d 839 (1989). However, here, defendant contends that plaintiff was not "temporarily unemployed" on July 18, 1992 when he was injured in the automobile accident because he had no previous employment from which to be "temporarily unemployed." We agree.

Although unemployed at the time of the accident, an insured may be found to be "temporarily unemployed" where he is, or would have been but for the accident, actively seeking employment, and there is evidence showing the unemployed status would not have been permanent if the injury had not occurred. *Id.*, p 537. However, a bare assertion of intent to secure employment without any corroboration of such intent or actions taken to obtain employment during the period of unemployment is insufficient to render an injured party

"temporarily unemployed." *Id.*; *Oikarinen v Farm Bureau Mutual Ins Co of Michigan*, 101 Mich App 436, 439; 300 NW2d 589 (1980). As the Court stated in *Clute*:

> Were we to hold otherwise, the floodgates of liability for work-loss benefits would be thrown wide open. Unemployed insureds, although having no real intention of seeking employment, could collect work-loss benefits upon their own after-the-fact, self-serving statements of intention. *Clute*, 179 Mich App at 538.

Here, the record shows that plaintiff sought employment several months *prior* to the accident, but plaintiff failed to produce any evidence that he was actively seeking employment at the time of the accident in July, 1992. Further, plaintiff had not worked since August, 1988. Plaintiff's statement of intention to begin a new career as a CAD operator is insufficient to establish that he was temporarily unemployed. *Id.*, p 528; see *Szabo v DAIIE*, 136 Mich App 9, 13; 355 NW2d 619 (1983). Gamby's testimony that plaintiff would have been employed at some later date is undercut by plaintiff's failure to actually do something to seek employment. Not having been employed for four years and not having sought employment for eight months, it defies logic and is contrary to the statutory language to conclude that plaintiff was *temporarily* unemployed.

In light of our disposition on the merits, we need not reach defendant's remaining issue.

Reversed and remanded for entry of judgment consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Myron H. Wahls
/s/ Hilda R. Gage

[1] He appeals as of right.

[2] MCL 500.3107(1)(b); MSA 24.13107(1)(b), provides, in relevant part, as follows:

> (1) Except as provided in subsection (2), personal protection insurance benefits are payable for the following:
>
> * * *
>
> (b) Work loss consisting of loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he or she had not been injured.