STATE OF MICHIGAN

COURT OF APPEALS

HAROLD F. WINTERS,

Plaintiff-Appellant,

v

KURDZIEL IRON OF ROTHBURY, and CITIZENS MANAGEMENT, INC.,

Defendant-Appellee.

UNPUBLISHED
June 5, 2003

No. 242943
WCAC
LC No. 01-000396

Before: Bandstra, P.J., and Gage and Schuette, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order and opinion of the Worker's Compensation Appellate Commission affirming the magistrate's determination that a recreational vehicle commonly known as a quad runner is not an appliance necessary to alleviate the effects of a work-related injury and, therefore, that defendants were not obligated to provide one to plaintiff under MCL 418.315(1). We affirm.

I. FACTS

Plaintiff sustained a crushing injury to both legs when his legs became pinned between two counterweights in a work-related incident. As a consequence of his injuries, plaintiff underwent an amputation of both legs approximately three inches above the knees. Plaintiff receives weekly worker's compensation benefits from the Second Injury Fund and permanent disability supplemental benefits and medical benefits.

Plaintiff commenced this action in order to compel defendants to "pay for a quad runner with snow removal and mower attachments as this is an appliance 'necessary to cure, so far as is reasonably possible, and relieve from the effects of the injury.'" Plaintiff estimated the cost of the quad runner and accessories at $12,000.

Plaintiff testified at a hearing before the magistrate that as a result of his amputations and ill-fitting prostheses that are prone to fall off or cause instability in soft soil, he is no longer able to mow his lawn, remove snow from his walk and drive, roto-till his garden, hunt small and large game with gun or bow, fish or hunt mushrooms in the woods. He further testified that a quad runner equipped with various attachments, and a trailer to tow the quad runner, would allow him to perform his outdoor chores and to hunt and fish.

The magistrate refused to require defendants to provide the quad runner on the ground that the quad runner was not an "appliance" within the meaning of MCL 418.315(1). The appellate commission agreed. The commission opined that the quad runner was not an appliance within the meaning of § 315(1) because it was for recreational use and was not medically necessary to "cure, so far as reasonably possible, and relieve the effects of the injury." We granted plaintiff's application for leave to appeal to determine whether the commission properly construed and applied §315(1).

II. STANDARD OF REVIEW

Our review in worker's compensation cases is limited to questions of law. Findings of fact made or adopted by the WCAC are conclusive on appeal, absent fraud, if there is any competent evidence in the record to support them. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 706, 709-710, 726; 614 NW2d 607 (2000). We do not weigh or balance the evidence, but instead merely determine whether "any evidence" exists to support the WCAC's decision. *Id*., 727. A decision of the WCAC is subject to reversal if the commission operated within the wrong legal framework, if the decision was based on erroneous legal reasoning, if the commission based a finding of fact upon a misconception of law or if the commission failed to correctly apply the law. *Bates v Mercier*, 224 Mich App 122, 124; 568 NW2d 362 (1997); *Jones-Jennings v Hutsel Hosp (On Remand),* 223 Mich App 94, 105; 568 NW2d 680 (1997).

III. ANALYSIS

The essential question presented in this case is whether the quad runner constitutes an "other appliance" within the meaning of MCL 418.315(1), which provides in pertinent part:

> * * * The employer shall also supply to the injured employee dental service, crutches, artificial limbs, eyes, teeth, eyeglasses, hearing apparatus, and other appliances necessary to cure, so far as reasonably possible, and relieve from the effects of the injury. * * *.

Our Supreme Court recently addressed what constitutes an "other appliance" for purposes of § 315(1) in *Weakland v Toledo Engineering Co, Inc*., 467 Mich 344; 656 NW2d 175 (2003). In *Weakland*, the Court affirmed a decision of the WCAC and held that "only the modifications to a van constitute appliances" within the meaning of MCL 418.315(1). *Id.* at 345. The *Weakland* Court adopted then Judge Robert P. Young's reasoning in his dissenting opinion in *Wilmers v Gateway Transportation Co (On Remand),* 227 Mich App 339; 575 NW2d 796 (1998). Judge Young concluded that a van did not constitute an applicance within the plain meaning of subsection 315(1). He stated:

> I conclude that the Legislature's selection of the phrase "other appliances," when preceded by specific examples of artificial adaptive aids (such as crutches, hearing aids, dentures, glasses, etc.), creates an unambiguous legislative intent to mandate that an employer is obligated only to supply devices of *like* kind . . . . Consequently, I find it hard to reconcile with my construction of the statute the majority's view that a van is considered to be "like" such adaptive aids as a

> crutch, a hearing aid, false teeth, or a pair of eyeglasses. [*Id*. at 352, 575 NW2d 796.]

Our Supreme Court in *Weakland, supra,* concluded:

> We agree with that dissenting opinion's conclusion regarding the proper understanding of "other appliances." Judge Young was applying the canon of statutory construction described formally as ejusdem generis. This Court has utilized this canon frequently in defining the scope of a broad term following a series of specific items. In discussing this canon in *Huggett v. Dep't of Natural Resources*, 464 Mich 711, 718-719, 629 N.W.2d 915 (2001), we described how meaning is given to the general term in that situation as follows: "[T]he general term is restricted to include only things of the same kind, class, character, or nature as those specifically enumerated"; that is, because the listed items have a commonality, the general term is taken as sharing it.
>
> As Judge Young pointed out, the statutorily listed items, "dental service, crutches, artificial limbs, eyes, teeth, eyeglasses, hearing apparatus" share a commonality in that they are artificial adaptive aids that serve to directly ameliorate the effects of the medical condition. A van is dissimilar to the listed items in M.C.L. § 418.315(1) because it is not an artificial adaptive aid. Rather, a van is imply a means of transportation. The "adaptive aid" ameliorating the effects of the medical condition and permitting the utilization of the van is the vehicular modification. Accordingly, the phrase "other appliances" as used in subsection 315(1) should not be understood to encompass the van *itself*; it encompasses only the necessary modifications made to the van so that it can be operated by someone who is disabled. Therefore, defendants are not obligated to provide plaintiff with a van under the statutory provision at issue. [*Weakland*, 467 Mich at 349-350 (footnote omitted).]

Here, our Supreme Court's analysis of the statutory language of MCL 418.315(1) as presented in *Weakland* is dispositive. In this case, the quad runner, like the van in *Weakland,* is not an appliance within the plain meaning of the statute. We affirm the decision of the WCAC.

Affirmed.

/s/ Richard A. Bandstra
/s/ Bill Schuette

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GAGE, J. (*concurring*).

I concur in the result only. While I agree absolutely with the conclusions reached by my colleagues in this case involving a quad runner, which in this case is primarily an outdoor recreational vehicle, I do not join in the majority's overwhelming approval of the decision in *Weakland v Toledo Engineering Co, Inc.*, 467 Mich 344; 656 NW2d 175 (2003). I believe the Court in *Weakland* interpreted the term "appliance" in a very restrictive manner, and I fear its narrow interpretation could lead to rather harsh results in future interpretations of a statute that was designed to compensate employees in the event of employment-related injuries. It is my understanding of the worker's compensation scheme that employers are protected from the vicissitudes and potentially excessive damage awards of claims, in exchange for providing compensation to cover the reasonable and necessary services and products required as a result of the injury. Restricting the term "appliance" to items common to crutches and artificial limbs suggests that a device such as a motorized cart may not fall within the worker's compensation scheme – this, I believe is erroneous and unconscionable. A motorized cart is simply the next progressive device to assist in mobility. To deny a person who can no longer walk such a device is to sentence that person to a lifetime of dependency and imprisonment at home. Although I acknowledge that the *Weakland* Court did not hold that a motorized cart is not an "appliance" provided for in the statute, its restrictive interpretation of the statute could provide for such a future holding. Therefore, for the reason that the *Weakland* Court interpreted the statute much too narrowly and because it allows for future holdings that more progressive assistant devices may not be "appliances" provided for in the act, I cannot join the majority's opinion fully without distancing myself from the *Weakland* decision.

/s/ Hilda R. Gage