Is an Employee Injured before December 19, 2011 Obligated to look for Work?

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The Supreme Court of Michigan recently issued a decision addressing a plaintiff's obligation to make a good faith job search where the injury arose prior to the 2011 amendments to the Worker's Disability Compensation Act. *Bell v. City of Saginaw*.

Plaintiff Bell was injured in the course of his employment on October 16, 2011. Benefits were voluntarily paid from the date of injury until his return to work. He subsequently went back off when he failed his fitness for duty physical. Workers' compensation benefits were not reinstated and plaintiff filed suit.

The workers' compensation magistrate determined plaintiff failed to prove a good faith effort to look for work in 2012 and 2014 and was therefore not entitled to wage loss benefits during those years. She further determined plaintiff was ineligible to receive ongoing wage loss benefits until he established a good faith effort to seek employment. She determined the issue of wage earning capacity was moot because the plaintiff did not show he attempted a good faith job search.

Plaintiff appealed and the Michigan Compensation Appellate Commission (MCAC) affirmed the magistrate's decision. Plaintiff then appealed the MCAC decision. The Court of Appeals of Michigan affirmed in an unpublished decision dated May 21, 2019. Plaintiff then sought leave to appeal with the Supreme Court of Michigan.

On November 20, 2019, the Supreme Court denied Plaintiff's request for leave and instead remanded the case to the Workers' Compensation Board of Magistrates for further consideration. The Supreme Court determined the magistrate failed to address whether there were any jobs the plaintiff was qualified and trained to perform within the same salary range as his maximum wage earning capacity at the time of the injury. The Supreme Court cited *Stokes v Chrysler, LLC,* which indicates the plaintiff, must make a good faith attempt to procure post-injury employment **if** there are jobs at the same salary or higher that he is qualified and trained to perform and the plaintiff's work-related injury

does not preclude performance. The Supreme Court ordered, on remand, the magistrate to make a determination on what jobs the plaintiff was qualified and trained to perform **which pay his maximum pre-injury wage**, whether the plaintiff proved he was prevented from performing those jobs as a result of the work injury, and **if** he was capable of performing some of the jobs identified whether he proved that he could not obtain any of those jobs.

Defendant, City of Saginaw, filed a motion for reconsideration with the Supreme Court in December of 2019. The motion is yet to be decided.

The Supreme Court's November 20, 2019, decision supports a plaintiff, injured before December 19, 2011, is not obligated to look for work if there are no jobs available paying his or her maximum pre-injury wage within his or her qualifications, training, and restrictions related to the injury.

If you have more in-depth questions surrounding this case or about workers' compensation in general, contact a member of Foster Swift's Workers' Compensation practice group.