

STATE OF MICHIGAN
COURT OF APPEALS

MARY M. JOHNSON,

Plaintiff-Appellee,

v

SHELLER GLOBE CORPORATION and
NATIONAL UNION FIRE INSURANCE
COMPANY,

Defendants-Appellants.

UNPUBLISHED

February 2, 1999

No. 198166

WCAC

LC Nos. 91-000353 & 91-
000597

Before: McDonald, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Defendants appeal by leave granted the August 29, 1996 opinion and order of the Worker's Compensation Appellate Commission affirming the magistrate's open award of disability benefits. We affirm.

Plaintiff sought worker's compensation benefits based on bilateral carpal tunnel syndrome incurred after a short period of employment with defendant Sheller Globe Corporation. She had reported no prior problems with her arms and wrists, although she had a history of obesity and hypertension, which resulted in swelling of her extremities. The magistrate awarded benefits, finding that plaintiff came to her employment with a predisposition toward development of carpal tunnel syndrome. He found that plaintiff suffered an impairment of wage earning capacity in work suitable to her qualifications and training, and was partially disabled.

In defendants' first appeal, the Worker's Compensation Appellate Commission affirmed the finding of partial disability, and remanded the matter to the magistrate for additional findings as to plaintiff's residual wage earning capacity. On remand, the magistrate took additional testimony and found that defendants identified available jobs that were within plaintiff's capacity to perform. Plaintiff made a timely, good faith effort to find employment within these areas without success. The magistrate stated that he could not find that plaintiff deliberately sabotaged her interviews or otherwise acted in bad faith, and that she had no residual wage earning capacity. Defendants also filed a petition to stop benefits, which was denied by the magistrate.

Defendants again appealed to the WCAC, which affirmed the decisions of the magistrate. The WCAC concluded that the magistrate conducted a proper analysis of wage-earning capacity under *Sobotka v Chrysler Corp (After Remand)*, 447 Mich 1; 523 NW2d 454 (1994), based on real or actual employment. The commission concluded that the jobs introduced by defendants were not available to plaintiff where she was not offered any position.

This Court's 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. *Layman v Newkirk Electric Associates, Inc*, 458 Mich 494, 498; 581 NW2d 244 (1998). A decision of the WCAC is subject to reversal if the commission operated within the wrong legal framework or if the decision was based on erroneous legal reasoning. *Bates v Mercier*, 224 Mich App 122, 124; 568 NW2d 362 (1997).

On appeal, defendants argue that the WCAC erred as a matter of law in requiring defendants to show an actual refusal of a job offer to establish that a plaintiff is avoiding work. In *Haske v Transport Leasing, Inc, Indiana*, 455 Mich 628; 566 NW2d 896 (1997), the Supreme Court revisited the question of loss of wage earning capacity in construing the statutory definition of disability. The Court affirmed its rejection of the principle that the employer of a partially disabled employee should be credited with a wage-earning capacity in the absence of postinjury employment. *Id*, 661. If the magistrate credits testimony that there is a direct link between wages lost and a work-related injury, plaintiff need not prove anything in addition. *Id*. However, a plaintiff may not reject actual wages reasonably offered or avoid or refuse actual wages. *Id*, 658-659.

The WCAC affirmed the magistrate's finding of fact that plaintiff met the physical and mental requirements for certain jobs. It also affirmed the finding that plaintiff made a timely, good faith effort to find employment without success, and that she did not deliberately sabotage her interviews or otherwise act in bad faith. Where these factual findings are supported by competent evidence, there is no basis for finding that plaintiff avoided actual wages. *Id*, 659; *Layman, supra*. The legal analysis of the WCAC is not inconsistent with *Haske, supra*, and the WCAC did not err as a matter of law.

Affirmed.

/s/ Gary R. McDonald

/s/ Kathleen Jansen

/s/ Michael J. Talbot