

STATE OF MICHIGAN
COURT OF APPEALS

CAROL WAITE MATILE,

Plaintiff-Appellee,

v

L & S PRODUCTS, INC. and MICHIGAN
MUTUAL INSURANCE COMPANY,

Defendants-Appellants,

and

AMERICAN FIRE & CASUALTY COMPANY and
CITIZENS INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
March 30, 1999

No. 213200
WCAC
LC No. 95-000470

Before: Markey, P.J., and Saad and Collins, JJ.

PER CURIAM.

Defendants L & S Products, Inc. and Michigan Mutual Insurance Company (collectively, Michigan Mutual) appeal an opinion and order of the Worker's Compensation Appellate Commission (WCAC) affirming a magistrate's award of disability benefits. Initially, this Court denied defendants' application for leave to appeal. *Matile v L & S Products, Inc.*, unpublished order of the Court of Appeals, entered August 12, 1997 (Docket No. 203109). However, the Supreme Court, in lieu of granting leave to appeal, remanded the case to this Court for consideration as on leave granted. 458 Mich 865 (1998). We vacate, in part, the orders of the magistrate and the WCAC and remand to the magistrate for further findings.

This case involves a coverage dispute among insurers who provided worker's compensation insurance for defendant L & S Products, Inc. (L & S) for different time periods. Michigan Mutual insured L & S prior to September 1, 1990. Thereafter, American Fire and Casualty Company

(American Fire) insured L & S until October 18, 1992 and Citizens Insurance Company (Citizens) provided insurance after October 18, 1992.

Plaintiff testified that she began working for L & S in 1989 as a packer, which required hammering and heavy lifting. On March 23, 1990, she reported arm and elbow pain to her family physician. He prescribed an arm brace, and plaintiff returned to work, where she was assigned light duty. However, her problems persisted and she stopped working in October 1990. After having elbow surgery in January and June 1991, plaintiff returned to restricted work in January 1992. However, by February 1992, she was experiencing severe neck pain and eventually was diagnosed as having a herniated cervical disc. Plaintiff stopped working on November 6, 1992.

In his opinion, under the heading "Findings and Analysis," the magistrate concluded that plaintiff had proved her case by a preponderance of the evidence. He identified the medical testimony that he found credible, and stated that he found plaintiff and her sister, one of plaintiff's witnesses, to be credible. He then stated:

I am thoroughly convinced that plaintiff's arm, neck and back difficulties resulted from the activities of the workplace. I am also convinced that Citizen's Insurance, the last carrier on the risk, is free from any responsibility in this matter. It is apparent to me that plaintiff's complaints began in the early part of 1990 while Michigan Mutual was on the risk. Plaintiff indicated her neck **and back** complaints began in early 1992 when she returned to favored work. This was during the coverage of American Fire and Casualty. The last carrier was only on the risk for about two weeks or so and all that happened on its watch is that a test apparently came back in which a herniated disc was demonstrated.

On the basis of the evidence offered, plaintiff is found entitled to workers' compensation benefits, both wage loss and medical, at the expense of Michigan Mutual Insurance Company as of March 23, 1990. . . Defendant American Fire is responsible for all benefits related to the neck **and back** and for differential benefits as of October 18, 1992, its last day of coverage. . . . [Emphasis in original.]

On appeal to the WCAC, Michigan Mutual argued that the magistrate's finding that Michigan Mutual was responsible for plaintiff's disability benefits as of March 23, 1990, was not based upon the proper legal standard and was not supported by competent, material and substantial evidence on the whole record. Michigan Mutual also argued that the magistrate committed legal error in granting plaintiff an open award of benefits where there was a written offer to return to work and medical testimony suggesting only partial disability. The WCAC adopted the opinion of the magistrate in its entirety, concluding that the magistrate's finding that Michigan Mutual was liable for benefits was supported by competent, material and substantial evidence. However, the WCAC did not address the standard used by the magistrate in establishing plaintiff's injury date or allocating liability for her worker's compensation benefits. With regard to Michigan Mutual's second issue on appeal, the WCAC concluded that the magistrate did not commit legal error.

On appeal to this Court, Michigan Mutual does not challenge the finding that plaintiff was entitled to benefits, but only challenges the “injury date” established by the magistrate and the allocation of liability for plaintiff’s benefits based on that date. Michigan Mutual argues that the WCAC erred in affirming the magistrate’s finding that March 23, 1990, was plaintiff’s injury date with regard to her arm and elbow injury, when that decision did not identify or properly apply the legal standard set forth in MCL 418.301(1); MSA 17.237(301)(1):

An employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act. In the case of death resulting from the personal injury to the employee, compensation shall be paid to the employee’s dependents as provided in this act. *Time of injury or date of injury as used in this act in the case of a disease or in the case of an injury not attributable to a single event shall be the last day of work in the employment in which the employee was last subjected to the conditions that resulted in the employee’s disability or death.* [Emphasis added.]

Michigan Mutual contends that because plaintiff’s arm injury was not attributable to a single event, but was the result of “cumulative trauma” from repetitive use, the magistrate erred as a matter of law in finding that plaintiff’s injury date was March 23, 1990, without specifically finding that plaintiff’s injury was not aggravated by any of the work she performed when she returned to employment after being treated for the arm and elbow injury. Furthermore, argues Michigan Mutual, the record does not support a finding that March 23, 1990, was the last day of work during which plaintiff was subjected to the conditions that resulted in her disability. Michigan Mutual contends that the record shows that plaintiff’s condition was aggravated by her work conditions at least until October 22, 1990, the last day she worked before having elbow surgery, and most likely until November 6, 1992, her final day of work at L & S. Because Michigan Mutual’s coverage ended on September 1, 1990, it argues that it should not be liable for any of plaintiff’s benefits.

Worker’s compensation magistrates are required to make findings of fact and conclusions of law. MCL 418.847(2); MSA 17.237(847)(2); *Woody v Cello-Foil Products (After Remand)*, 450 Mich 588, 594; 546 NW2d 226 (1996). Those findings must be sufficiently detailed to permit the reviewing body to separate the facts found from the law applied, to recognize the path taken through conflicting evidence, and to understand the testimony that was adopted, the standards that were followed, and the reasoning used by the magistrate in arriving at his or her decision. *Id.* at 594-595. The WCAC reviews the magistrate’s decision to determine if it is supported by competent, material and substantial evidence on the whole record. *Connaway v Welded Construction Co*, ___ Mich App ___, ___ NW2d ___ (Docket No. 201559, issued 12/15/98), slip op at 10. When reviewing a WCAC decision on appeal, this Court considers (1) the reasoning and analysis of the decisions of the magistrate and the WCAC, (2) the evidence considered or ignored in those decisions and (3) the care taken, and the nature of the issues involved, to determine whether the WCAC acted in a manner consistent with the concept of administrative appellate review. *Id.*

As the trier of fact, the magistrate in this case was required to make a clear and unequivocal finding concerning the date of a plaintiff's injury and resultant disability. *Jones v Auto Specialties Mfg Co*, 177 Mich App 59, 67; 441 NW2d 1 (1988). Under § 301(1), where an injury is not attributable to a single event, the date of injury is the last date that an employee performed work that contributed to or aggravated his or her injury. *Id.* at 66-67. It appears from the magistrate's opinion in this case that he established March 23, 1990, as plaintiff's initial "injury date." However, he did not articulate the legal standard he applied in arriving at that date, stating only that was the date that plaintiff's complaints began. American Fire and Citizens argue that the decision of the WCAC must be affirmed because there is competent, material and substantial evidence in the record to support a finding that March 23, 1990, was the last day during which plaintiff performed work that contributed to or aggravated her injury. However, although the magistrate summarized and commented on the testimony provided, it is not clear from his decision whether he made a finding with regard to the last date that plaintiff performed work that contributed to or aggravated her injury. In short, the magistrate's conclusory finding with regard to plaintiff's injury date does not reveal the path taken through conflicting evidence, the standards followed, or the reasoning used to reach his conclusion. See *Woody, supra* at 594-595. Such analysis is critical to review of the magistrate's decision, especially given his statement that he found plaintiff to be a very credible witness and given her testimony that she continued to perform tasks, such as the deburring of metal piping, that may have aggravated her arm and elbow injury after March 23, 1990.

Where a magistrate's findings are insufficient for appellate review, remand to the magistrate for the necessary findings is appropriate. *Layman v Newkirk Electric Associates, Inc*, 458 Mich 494, 508-509; 581 NW2d 244 (1998). Therefore, we vacate, in part, the orders of the magistrate and the WCAC and remand to the magistrate for clarification of plaintiff's date of injury, consistent with the legal standard set forth in § 301(1), and allocation of liability among the insurers based upon that date.

Vacated, in part, and remanded for further findings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Jeffrey G. Collins