STATE OF MICHIGAN

COURT OF APPEALS

CORALIE J. ARGUE, Plaintiff-Appellant,	UNPUBLISHED July 2, 1999
v	No. 212545 WCAC
CUSTOM PACKAGING CORP and INSURANCE MANAGEMENT SERVICES, Defendants-Appellees.	LC No. 96-00630

Before: Hoekstra, P. J., and Saad and R. B. Burns*, JJ.

PER CURIAM.

This case has been remanded from the Supreme Court for consideration as on leave granted. Plaintiff appeals a decision entered on November 5, 1996, by the Worker's Compensation Appellate Commission (WCAC) affirming the decision of the magistrate terminating benefits based on her unreasonable refusal of reasonable employment. We reverse and remand for plenary consideration.

This case has a complex procedural history. In a decision mailed on December 29, 1992, the magistrate granted plaintiff a closed award of benefits. The evidence showed that plaintiff sustained a work-related injury to her hands and wrists on October 9, 1990. The medical evidence showed that due to the injury, plaintiff could not engage in activities that required repetitive gripping, twisting or manipulating with her hands. The magistrate found that plaintiff was partially disabled.

In June, 1991, defendant offered plaintiff favored work, now known as reasonable employment. MCL 418.301(9); MSA 17.237(301)(9). The position required plaintiff to do light work activities such as using a marking pen and sewing small pieces of material for ten hours per day. Plaintiff worked one full day and part of another day, but was unable to continue due to pain and swelling in her hands. The magistrate impliedly found that plaintiff's refusal to continue performing the favored work job was reasonable.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

The magistrate found that on January 10, 1992, defendant made a valid offer of favored work. The proffered job was in the janitorial department and would have required plaintiff to do light cleaning, vacuuming, and folding of material. The job was said to involve no repetitive gripping or twisting. At trial, plaintiff testified that she thought that, while she might be able to do the cleaning and folding, she could not do the vacuuming. Plaintiff, who had moved to Florida, did not attempt the job.

The magistrate found that plaintiff unreasonably refused to try the job. The magistrate noted that plaintiff had been out of the state when the offer was made, and did not contact defendant then or when she returned to Michigan. The magistrate closed plaintiff's award as of January 20, 1992, due to her unreasonable refusal to attempt the favored work.

The parties appealed, and in a decision entered on February 28, 1995, the WCAC affirmed the magistrate's finding of partial disability and the finding that plaintiff was not entitled to benefits after January 20, 1992, because she did not have good and reasonable cause to reject defendant's January 1992, offer of favored work. However, the WCAC remanded the case for a determination of plaintiff's residual wage earning capacity. *Sobotka v Chrysler Corp*, 447 Mich 1; 523 NW2d 454 (1994). In a supplementary opinion mailed on January 8, 1996, the magistrate found that plaintiff had no residual wage-earning capacity for the period October 10, 1990, through January 20, 1992. Following this Court's dismissal of plaintiff's application for leave to appeal, for lack of jurisdiction, and plaintiff's delayed appeal to the WCAC, on November 5, 1996, the WCAC again affirmed the magistrate's December 29, 1992 decision. This Court then granted leave to appeal.

Findings of fact in worker's compensation proceedings, if supported by any competent, material and substantial evidence on the whole record, are conclusive in the absence of fraud or unless otherwise provided by law. This Court may review questions of law involved with the WCAC's final orders on timely application. MCL 418.861a(3)(14); MSA 17.237(861a)(3)(14). Judicial review is limited to the question "whether the WCAC acted in a manner consistent with the concept of administrative appellate review that is less than de novo review in finding that the magistrate's decision was or was not supported by competent, material, and substantial evidence on the whole record." *Goff v Bil-Mar Foods (After Remand)*, 454 Mich 507, 511; 563 NW2d 214 (1997), quoting from *Holden v Ford Motor Co*, 439 Mich 257, 267-268; 484 NW2d 227 (1992). The findings of fact made by the WCAC are conclusive if there is any competent evidence to support them. *Holden, supra* at 263.

MCL 418.301(9); MSA 17.237(301)(9), provides:

> "Reasonable employment", as used in this section, means work that is within the employee's capacity to perform that poses no clear and proximate threat to that employee's health and safety, and that is within a reasonable distance from that employee's residence. The employee's capacity to perform shall not be limited to jobs in work suitable to his or her qualifications and training.

The Legislature mandated that a refusal of reasonable employment must be for good and reasonable cause. MCL 418.301(5)(a); MSA 17.237(301)(5)(a). This requirement calls for case-by-case analysis. *Pulver v Dundee Cement Co*, 445 Mich 68, 80-81; 515 NW2d 728 (1994). In

Pulver, our Supreme Court held that whether an employee's refusal of a bona fide offer of favored work was for good and reasonable cause was a question of fact. Factors to be considered in determining good and reasonable cause include: (1) the timing of the offer, (2) if the employee has moved, the reasons for doing so, (3) the employee's diligence in attempting to return to work, (4) whether the employee had returned to work with another employers, and (5) whether the effort, risk, sacrifice, or expense involved was such that a reasonable person would not accept the offer of favored work. What constitutes good and reasonable cause is left to the sound discretion of the factfinder. *Id*, at 81-82.

On appeal, plaintiff claims the magistrate, as affirmed by the WCAC, erred in determing that the job offered by defendant was "reasonable employment" as defined by § 301(9), and erred in finding that plaintiff unreasonably refused an offer of reasonable employment. Although the magistrate found the January 10, 1992, offer of favored work was "within her restrictions and involved no repetitive twisting or gripping," plaintiff contends the proffered work was beyond her physical capabilities. She alleges that it was hand intensive and that she could not perform the vacuuming or folding required by the job. Plaintiff points out that the medical evidence indicated that she could not engage in activities requiring repetitive gripping and twisting with her upper extremities.

Moreover, plaintiff contends that she had good and reasonable cause to refuse the proffered employment. She had been found entitled to social security disability benefits. She had moved to Florida early in January 1992. The offer of favored janitorial work was made just after she relocated. The January 1992 offer was the first offer made since the June 1991 offer, when she had been unable to perform the repetitive tasks assigned.

In its decision of February 28, 1995, the WCAC determined that the magistrate's analysis complied with the *Pulver* standard. This finding was not supported by competent evidence. *Holden, supra* at 263. Neither the magistrate, in his decision of December 29, 1992, nor the WCAC, in its decision of February 28, 1995, determined whether the favored work offered in January 1992 constituted reasonable employment, as defined in § 301(9). Neither the magistrate nor the WCAC explained at any length the finding that plaintiff did not have good and reasonable cause to refuse the favored work offered in January 1992. The WCAC simply quoted the *Pulver* factors and the magistrate's decision. No analysis of the factors was undertaken by the magistrate or the WCAC.

We hold that plaintiff's contention that the proffered position was not "reasonable employment" and that she had good and reasonable cause for refusing the job deserves plenary consideration. While the factfinder in a worker's compensation proceedings has considerable discretion, the reasonableness analysis must still be undertaken when examining an employee's refusal of favored work. *Pulver, supra* at 80, 83. This requires an analysis of all the facts and circumstances surrounding the offer and plaintiff's refusal. *Id*. at 81-82. Upon our review, *Goff, supra* at 516, we find that the magistrate, as affirmed by the WCAC, did not employ the required analysis set forth in *Pulver, supra*.

Accordingly, we remand to the magistrate for further proceedings and detailed findings of fact regarding whether the work offered by defendant was "reasonable employment" as defined by § 301(9), and whether, based on the *Pulver* factors, plaintiff unreasonably refused an offer of

reasonable employment. *Layman v Newkirk Electric*, 458 Mich 494, 496, 505; 581 NW2d 244 (1998).

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Henry William Saad
/s/ Robert B. Burns