

STATE OF MICHIGAN  
COURT OF APPEALS

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JACKIE E. MACNEIL,

Plaintiff,

v

WORKER'S COMPENSATION APPELLATE  
COMMISSION and GENERAL MOTORS  
CORPORATION,

Defendants.

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UNPUBLISHED

July 9, 1999

No. 211170

WCAC

LC No. 93-000771

Before: Jansen, P.J., and Sawyer and Markman, JJ.

JANSEN, P.J. (dissenting).

As stated by the majority, the question in this appeal is whether the Worker' Compensation Appellate Commission (WCAC) exceeded its authority in vacating the magistrate's opinion. I would hold that the WCAC did exceed its authority and would grant the writ for superintending control.

On the authority of *Gretel v Worker's Compensation Appellate Comm (On Remand)*, 217 Mich App 653; 552 NW2d 532 (1996), I would grant plaintiff's writ for superintending control. Therefore, I disagree with the majority's interpretation and application of *Gretel* to this case. In *Gretel, supra*, p 656, this Court held that the WCAC does not have the authority to vacate a magistrate's decision, nor does it have the power to remand for a new determination. This is precisely what the WCAC did in the present case: it vacated in part the magistrate's decision and remanded to the Board of Magistrates for a new determination. *Gretel* makes clear that the WCAC has no authority to do this.

I reiterate some of the points made in *Gretel* with respect to the WCAC's reviewing authority. "The current system for appeals of decisions of a magistrate was designed to give very limited power to the WCAC, and the decisions of the magistrates are to be final in most cases." *Id.*, p 657, citing *Civil Service Comm v Dep't of Labor*, 424 Mich 571, 621; 384 NW2d 728 (1986). The WCAC has the power and authority to review the orders of the magistrates, MCL 418.274(7); MSA 17.237(274)(7), however, the WCAC shall review only those specific findings of fact or conclusions of law that the parties have requested to be reviewed, MCL 418.861a(11); MSA 17.237(861a)(11). Additionally, findings of fact made by a magistrate shall be considered conclusive by the WCAC if supported by

competent, material, and substantial evidence on the whole record. MCL 418.861a(3); MSA 17.237(861a)(3). A review of the evidence shall include a qualitative and quantitative analysis to ensure a full, thorough, and fair review. MCL 418.861a(13); MSA 17.237(861a)(13). The power and authority of the WCAC was set forth as follows:

In cases where a magistrate's findings are not supported by competent, material, and substantial evidence on the whole record, the WCAC has been given the express power to reverse the magistrate's decision and to substitute its own opinion and order. MCL 418.861a(3); MSA 17.237(861a)(3); *Holden v Ford Motor Co*, 439 Mich 257, 267-268; 484 NW2d 227 (1992). In addition, MCL 418.861a(12); MSA 17.237(861a)(12) grants the WCAC the express authority to remand to the magistrate "for purposes of supplying a complete record if it is determined that the record is insufficient for purposes of review." Thus, if the WCAC feels a magistrate's decision was not supported by competent, material, and substantial evidence on the record, it can reverse the decision and issue its own opinion. If the WCAC does not believe it had enough information to properly review the magistrate's decision, it may remand for completion of the record. These powers enable the WCAC to fully discharge its duties under the statute; thus, there is no need for the WCAC to have the power to vacate and remand for a new determination. [*Gretel, supra*, p 657.]

The Supreme Court made clear in *Layman v Newkirk Electrical Assoc, Inc*, 458 Mich 494, 507; 581 NW2d 244 (1998), that the WCAC exceeded its authority when it made impermissible finding of fact in the absence of such findings by the magistrate. In my view, the Supreme Court's decision in *Layman* supports my position that the WCAC exceeded its authority in vacating the magistrate's decision and remanding for a new determination, and not to the contrary as contended by the WCAC. In the present case, the WCAC did not state in its opinion or order that it was remanding for the magistrate for purposes of supplying a complete record because the fact findings of the magistrate were somehow insufficient for review. Rather, the WCAC went much further and specifically stated that it was vacating the magistrate's decision and remanding for a new determination. This the WCAC cannot do. *Gretel, supra*, p 658.

If the WCAC believed that the fact findings of the magistrate were insufficient for purposes of review, then it should have remanded the matter to the magistrate so that those fact findings could be made, in the first instance, by the magistrate. *Layman, supra*, p 509. This does not require vacating the magistrate's decision and remand for a new determination, nor does the WCAC have the power or authority to do so. Moreover, at no point in its opinion did the WCAC state whether the magistrate's factual findings were supported by competent, material, and substantial evidence on the whole record. Also, the WCAC's opinion is contradictory since it states in one paragraph that the plaintiff's cervical problems are no longer disabling and in the next paragraph that the question to be considered on remand is whether plaintiff continues to be disabled.

Accordingly, I would reverse the WCAC's order that vacated the magistrate's decision in part and ordered a new determination, and remand the case to the WCAC to determine whether the

magistrate's fact findings are supported by competent, material, and substantial evidence on the whole record. I would grant the writ for superintending control.

/s/ Kathleen Jansen