

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DEBORAH TRUMBULL,

Plaintiff-Appellant/Cross-Appellee,

v

BATTLE CREEK HEALTH CARE SYSTEMS,  
a/k/a BATTLE CREEK HEALTH CARE,

Defendant-Appellee/Cross-Appellant,

and

BATTLE CREEK COMMUNITY HOSPITAL,

Defendant-Appellee.

UNPUBLISHED

August 13, 1999

No. 212058

WCAC

LC Nos. 91-000826;  
95-000093

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

PER CURIAM.

This case has been remanded by our Supreme Court for consideration as on leave granted. Plaintiff Deborah Trumbull appeals a decision of the Worker's Compensation Appellate Commission (WCAC) modifying the decision of the magistrate and granting defendant Battle Creek Community Hospital's petition to stop benefits. Defendant Battle Creek Health Systems cross-appeals. We reverse in part, vacate in part, and remand for further proceedings.

On June 15, 1987, plaintiff, a registered nurse, sustained a work-related back injury during the course of her employment as a surgical nurse for Battle Creek Community Hospital (BCCH). Between January and December 19, 1988, plaintiff missed no time from work, although her workload increased. During this period, BCCH became known as Battle Creek Health Systems, or Battle Creek Health Care Systems (BCHCS). Plaintiff was off work between December 19, 1988 and January 9, 1989. She attempted to return to work, but was unable to do so.

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

In a decision mailed on July 18, 1991, the magistrate granted plaintiff an open award of worker's compensation benefits based on a January 10, 1989, date of injury. The magistrate relied on the testimony given by Dr. Amos, plaintiff's treating physician, who opined that it was a fair assumption that plaintiff's activities at work after June 15, 1987, aggravated her condition. BCHCS, plaintiff's employer on January 10, 1989, was held liable for payment of benefits.

BCHCS appealed, and in a decision entered on July 9, 1992 the WCAC reversed the decision of the magistrate. The WCAC reversed the magistrate's finding of a January 10, 1989, date of injury, concluding that the attribution of aggravation to plaintiff's work after June 15, 1987, was speculation. The WCAC held that while the finding that plaintiff was disabled from working as a surgical or psychiatric nurse was supported by the requisite evidence, the evidence did not show that she was disabled within the broad field of nursing. MCL 418.301(4); MSA 17.237(301)(4). The WCAC remanded for additional fact-finding on the issue of what, if any, wage-earning capacity plaintiff retained, and for a new determination of liability for BCCH.

In a decision on remand entered on November 29, 1994, the magistrate denied a petition to stop benefits filed by BCCH, finding that the evidence regarding plaintiff's back complaints was largely unchanged from the first hearing. Noting that the issue of residual wage-earning capacity had been addressed in *Sobotka v Chrysler Corp (After Remand)*, 447 Mich 1; 523 NW2d 454 (1994), and *McKissack v Comprehensive Health Services of Detroit*, 447 Mich 57; 523 NW2d 444 (1994), the magistrate concluded that plaintiff was entitled to full benefits because the evidence did not show that she had refused an actual job within her qualifications and training.

BCCH appealed, and in a decision entered on September 23, 1996, the WCAC modified the magistrate's decision to provide benefits for a closed period, and granted the petition to stop. Exercising its authority to make findings of fact, the WCAC found that as of May 8, 1991, the date of the first hearing, plaintiff had a wage-earning capacity exceeding her average weekly wage as of the date of her injury. Evidence presented by Marcia Cox, a rehabilitation specialist, showed that jobs for which plaintiff was qualified were available in the Battle Creek and Kalamazoo areas. Plaintiff chose to not pursue those jobs. The WCAC granted the petition to stop as of May 8, 1991, finding that the evidence, particularly the opinion rendered by Dr. Kelley, showed that plaintiff's condition had changed and that she was able to return to work without restrictions.

Findings of fact made by a magistrate are conclusive on the WCAC if they are supported by competent, material, and substantial evidence on the whole record. MCL 418.861a(3); MSA 17.237(861a)(3). If a magistrate's decision is supported by the requisite evidence, the WCAC need go no further in its review. If the WCAC finds that the magistrate did not rely on competent evidence, it must detail its findings and the reasons for the findings grounded in the record. The WCAC may then make its own findings. *Goff v Bil-Mar Foods, Inc (After Remand)*, 454 Mich 507, 538; 563 NW2d 214 (1997). However, the WCAC exceeds its authority when it makes impermissible findings of fact in the absence of findings of fact made by the magistrate. If a factual finding needs to be made but has not been rendered by the magistrate, the case should be remanded to the magistrate. *Layman v Newkirk Electric Associates, Inc*, 458 Mich 494, 506-509; 581 NW2d 244 (1998).

### Plaintiff's Appeal

Initially, we find that in its first decision, entered on July 9, 1992, the WCAC did not err by reversing the finding of a January 10, 1989, date of injury. The only work-related injury plaintiff sustained occurred on June 15, 1987. While Dr. Amos stated that it was a fair assumption that the work plaintiff performed after this date had aggravated her pain or contributed to her symptoms, he did not opine that the work had aggravated her underlying pathology. He testified that her condition remained essentially the same after her injury, notwithstanding the fact that her pain waxed and waned. No evidence supported a finding that plaintiff's underlying pathology worsened after June 15, 1987; therefore, liability could not be placed on BCHCS, plaintiff's employer on January 10, 1989. *Mullins v Dura Corp*, 46 Mich App 52, 55-56; 207 NW2d 404 (1973). Liability, if any, must rest with BCCH. The WCAC did not exceed its authority by reversing the magistrate on this issue, *Goff, supra*, and did not engage in improper factfinding. *Layman, supra*.

We reverse the WCAC's September 23, 1996, decision in part, vacate the remainder, and remand for further proceedings. The WCAC erred by reversing the magistrate's denial of BCCH's petition to stop benefits. A party filing a petition to stop benefits has the burden of proving that a change in the claimant's condition has occurred and that the claimant is no longer entitled to benefits. *Askew v Ann Arbor Public Schools*, 431 Mich 714, 724; 433 NW2d 800 (1988). Dr. Amos opined that plaintiff could not perform the work she did prior to her injury. While Dr. Kelley opined that plaintiff could return to work without restrictions, similar evidence was rejected in the initial decision finding that plaintiff suffered a disabling work-related injury. The magistrate's finding that plaintiff's condition remained essentially unchanged since the time of the first hearing was supported by the requisite evidence, and thus was binding on the WCAC. MCL 418.861a(3); MSA 17.237(861a)(3). The WCAC exceeded its authority by reversing the denial of the petition to stop benefits. *Goff, supra*. We reverse that portion of the September 23, 1996, decision.

We vacate the remainder of the September 23, 1996, decision. To establish a compensable disability, a claimant must show: (1) a work-related injury; (2) a subsequent loss in actual wages; and (3) that the work-related injury caused the wage loss. *Haske v Transport Leasing, Inc*, 455 Mich 628, 662; 566 NW2d 896 (1997). Residual wage-earning capacity is not a relevant factor in determining whether a claimant is compensably disabled. An employer may refute evidence of a causal link between a claimant's work-related injury and subsequent wage loss by establishing that the wage loss is due to factors other than the injury. *Id.*, 661 n 38. After holding that the magistrate's application of *Sobotka, supra*, was erroneous, the WCAC found as fact that as of May 8, 1991, plaintiff had a residual wage-earning capacity exceeding her average weekly wage on the date of injury, and that she chose to not pursue real jobs that were available to her and were within her capacity to perform. The WCAC erred in relying on plaintiff's hypothetical wage-earning capacity as support for its finding that plaintiff was not entitled to benefits, and exceeded its authority by making findings of fact regarding the availability of nursing positions within plaintiff's ability to perform. The magistrate made no such findings in the November 29, 1994, decision on appeal to the WCAC. The WCAC exceeded its authority by making needed findings of fact rather than remanding the case to the magistrate. The magistrate must

make the initial decision as to whether the evidence supported a finding that plaintiff's subsequent loss of wages was due to something other than her work-related injury. *Layman, supra*.

#### BCHCS's Cross-Appeal

Given our resolution of the issues in plaintiff's principal appeal and our conclusion that the WCAC did not err by reversing the magistrate's finding of a 1989 date of injury, and thereby relieving BCHCS of liability for payment of benefits, the issues raised in BCHCS's cross-appeal are rendered moot.

The WCAC's September 23, 1996, decision is reversed in part as indicated above, the remainder is vacated, and this cause is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

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