

STATE OF MICHIGAN
COURT OF APPEALS

ROBERTO S. SAENZ,

Plaintiff-Appellant,

v

CITY OF SAGINAW,

Defendant-Appellee.

UNPUBLISHED

April 28, 2000

No. 215611

WCAC

LC No. 96-000373

Before: Wilder, P.J. and Bandstra and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the decision of the Worker's Compensation Appellate Commission (WCAC) affirming the magistrate's denial of disability benefits. We reverse and remand.

Plaintiff suffered an injury to his shoulder in the course of his employment with defendant. Although he was partially disabled from his former position, defendant offered him a position as a water meter reader. Plaintiff maintained that there were certain duties of that position that required heavy lifting, and he refused that employment. After this refusal, plaintiff submitted resignation papers on May 5, 1995.

Plaintiff changed his mind and sought to accept the water meter reader position. On May 12, 1995, he met with defendant's personnel director, who told him that the job was filled and that he would have to reapply as a new employee for city employment.

Plaintiff sought worker's compensation benefits. After a hearing, the magistrate found that plaintiff was disabled from his previous employment, the meter reader position was a reasonable job offer within plaintiff's restrictions, and plaintiff unreasonably refused that employment. The magistrate additionally found that plaintiff's resignation terminated his employment and he was not entitled to any further benefits.

On appeal, the WCAC affirmed the magistrate's decision, finding that plaintiff's voluntary withdrawal from the workforce severed all ties with his employer and barred the receipt of disability benefits.

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 WCAC 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).

The common law favored work doctrine was codified in the Worker's Disability Compensation Act (WDCA) at MCL 418.301(5)(a); MSA 17.237(301)(5)(a):

If an employee receives a bona fide offer of reasonable employment from the previous employer, another employer, or through the Michigan employment security commission, and the employee refuses that employment without good and reasonable cause, the employee shall be considered to have voluntarily removed himself or herself from the work force and is no longer entitled to any wage loss benefits under this act during the period of such refusal.

Generally, forfeiture of worker's compensation benefits continues only for the duration of the employee's unreasonable refusal of favored work. When an employee ends the unjustified refusal to accept reasonable employment, the clear and unambiguous language of § 301(5)(a) requires reinstatement of disability benefits. *McJunkin v Cellasto Plastic Corp.*, ___ Mich ___; ___ NW2d ___ (rel'd March 29, 2000), slip op, p 11; *Perez v Keeler Brass Co.*, ___ Mich ___; ___ NW2d ___ (rel'd March 29, 2000), slip op, p 13.¹ The elapsed time before an employee attempts to end a period of refusal and the employer's withdrawal of the offer of employment are irrelevant to the renewal of benefits under the statute. *McJunkin*, *supra* at slip op, pp 10-11; *Perez*, *supra* at slip op, pp 14-15. Rather, the proper point for benefit renewal is the employee's revocation of the unjustified refusal to accept reasonable employment.

In this case, plaintiff began his period of unreasonable refusal on May 5, 1995, when he refused the position as a water meter reader and submitted resignation papers. The period of unreasonable refusal of employment ended on May 12, 1995, when plaintiff changed his mind and sought to accept the water meter reader position. Under *McJunkin* and *Perez*, that the water meter reader position had already been filled and was no longer available for plaintiff (i.e., that the offer for employment had been withdrawn) was irrelevant for purposes of determining when benefits were to be reinstated under § 301(5)(a). Contrary to WCAC's position, there is no provision in the WDCA that would allow for an employee's permanent forfeiture of benefits as a result of unreasonably refusing an offer of reasonable employment. *McJunkin*, *supra* at slip op, p 8; *Perez*, *supra* at slip op, p 11.

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

/s/ Kurtis T. Wilder
/s/ Richard A. Bandstra
/s/ Mark J. Cavanagh

¹ *McJunkin v Cellasto Plastic Corp*, ___ Mich ___; ___ NW2d ___ (2000), *Perez v Keeler Brass Co*, ___ Mich ___; ___ NW2d ___ (2000), and *Russell v Whirlpool Financial Corp*, ___ Mich ___; ___ NW2d ___ (2000), which all address issues involving the application of §301(5), were consolidated and argued together before the Supreme Court.