

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

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JOHN A. ALES,

Plaintiff-Appellant,

v

SNOWDEN, INCORPORATED and  
NORTHBROOK PROPERTY & CASUALTY  
COMPANY,

Defendants-Appellees.

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UNPUBLISHED  
September 8, 2000

No. 222240  
WCAC  
LC No. 97-000638

Before: Fitzgerald, P.J., and McDonald and Zahra, JJ.

ZAHRA, J. (*dissenting*)

I dissent from the majority's conclusion that the WCAC erred as a matter of law when it found that plaintiff was partially disabled. I conclude that the issue of whether plaintiff is partially or totally disabled presents a mixed question of law and fact rather than a pure question of law. This Court must give great deference to the factual findings of the WCAC. If there is any competent evidence to support the factual findings of the WCAC, our review is limited to the question of whether the WCAC misapplied the law. In this case, the WCAC relied on the "record" to conclude that plaintiff was partially rather than totally disabled. Because the WCAC did not specify the facts in the record on which it relied, I conclude that we cannot properly review the legal and factual findings of the WCAC. I would therefore remand this matter to the WCAC for clarification of its specific factual findings and legal conclusions.

I disagree with the majority's conclusion that the WCAC's adoption of the magistrate's opinion precludes the WCAC from finding that plaintiff is partially rather than totally disabled. The magistrate never addressed the issue of whether plaintiff was partially or totally disabled. Thus, when the WCAC adopted the magistrate's opinion as its own, it did not adopt any factual findings or legal conclusions which addressed the extent of plaintiff's disability. More significantly, the WCAC did not base its conclusion of partial disability on the factual findings of the magistrate. After indicating that it adopted the opinion of the magistrate, the WCAC made additional findings:

We now address the issue raised by [plaintiff] in his cross-appeal, namely, that his disability is total. We believe that under the *Haske* disability standard, [plaintiff] is not correct. The *Haske* Court held that when an employee proves that he is unable to perform all work suitable to his qualifications and training, the disability is total. Partial disability is proven by the inability to perform a single position within the claimant's qualifications and training.

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*This record* supports a finding that [plaintiff] cannot perform his job for [his employer]. As such, he is partially disabled. (Emphasis added.)

The WCAC made an independent finding that plaintiff is not totally disabled. This finding was based on the record; not the factual findings of the magistrate.

As recognized by the majority, in *Mudel v Great Atlantic & Pacific Tea Co*, \_\_ Mich \_\_; \_\_ NW2d \_\_ (Docket Nos. 111702, 113799, decided 7/25/00), the Supreme Court clearly defined the standard of review applicable to worker's compensation appeals. "The judiciary is directed, by constitutional and statutory provisions, to treat the WCAC's findings of fact as *conclusive*, in the absence of fraud." *Id.* at slip op p 9 (emphasis in original). If there exists any competent evidence to support the factual findings of the WCAC, this Court must affirm the decision of the WCAC. *Id.* This "any evidence" standard "provides for a less searching review – one that is deferential to the skill and experience of the WCAC in this highly technical area of the law." *Id.* at slip op p 11. If there exists competent evidence to support the findings of the WCAC, then judicial review is limited to determining whether the WCAC misapprehended its administrative appellate role, e.g., applied an incorrect legal standard or rule of law. *Id.* at slip op p 12. A reviewing court may not reject the findings of the WCAC merely because it concludes that the record better supports the findings of the magistrate:

That the [judges] of this Court may have come to a different conclusion than the WCAC if we were evaluating a matter de novo, or that we may find the magistrate's conclusion to be better supported than the WCAC's conclusion, is irrelevant. Given the limited scope of judicial review in worker's compensation cases, we may not substitute our own judgment for that of the WCAC by independently reviewing each magistrate's decision to determine whether there is competent, material, and substantial evidence on the whole record supporting the magistrate's findings of fact. [*Id.* at slip op pp 15-16.]

Applying this highly deferential standard of review, I conclude that remand to the WCAC is appropriate for clarification of its factual findings and legal conclusions. The crucial finding by the WCAC in this matter – that plaintiff cannot perform his job for his employer and, therefore, he is

partially disabled – is both a factual finding and a legal conclusion. While we could review the whole record (as opposed to the magistrate’s opinion) to determine whether there exists any competent evidence to support the legal conclusion that plaintiff is partially disabled, such a review would apparently be inconsistent with the scope of judicial review defined in *Mudel, supra*, which found that, while the “WCAC’s review is a highly fact-intensive examination, judicial review is not.” *Id.* at slip op p 9. *Mudel* supports the proposition that where there exists deficiencies in factual findings made by the WCAC, this Court should defer to the expertise of the WCAC and remand the matter for clarification.

This Court also cannot meaningfully review whether the WCAC misapplied the law without first knowing on which specific facts the WCAC relied in reaching its conclusion that plaintiff is partially disabled. While it is entirely possible that the facts on which the WCAC base its determination lead to a single conclusion that plaintiff is wholly unemployable and, therefore, totally disabled as a matter of law, it is equally plausible that the facts on which the WCAC based its determination support the conclusion that plaintiff proved only that he is unable to work for defendant. Under these circumstances, the WCAC could not be found to have committed a legal error. Without knowing the facts supporting the conclusion of the WCAC, it is impossible to determine whether it committed an error of law. Only the WCAC can provide us with the facts supporting its decision and, therefore, remand is appropriate.

For these reasons, I would remand this matter to the WCAC for clarification of its factual findings and legal conclusions.

/s/ Brian K. Zahra