

STATE OF MICHIGAN
COURT OF APPEALS

TERESA PACE,

Plaintiff-Appellee,

v

ART VAN FURNITURE, INC.,

Defendant-Appellant.

UNPUBLISHED

January 23, 2001

No. 224388

WCAC

LC No. 99-000430

Before: Neff, P.J., and Holbrook, Jr., and Jansen, JJ.

MEMORANDUM.

Defendant appeals by leave granted an order of the Worker's Compensation Appellate Commission (WCAC), which dismissed defendant's appeal and summarily affirmed the magistrate's decision. We reverse that order and remand the case to the WCAC for consideration of defendant's appeal on the merits.

Although defense counsel missed the deadline for filing the transcript with the WCAC and did not timely request an extension of time in which to file that transcript, the ultimate reason that the transcript was unavailable was because the court reporter failed to provide it. Because the transcript was not filed with the WCAC for reasons beyond the control of defense counsel, it was an abuse of the Commission's discretion to dismiss defendant's appeal for failing to timely file the transcript. *Brooks v Engine Power Components Inc*, 241 Mich App 56, 62-63; 613 NW2d 733 (2000).

Reversed and remanded for consideration of defendant's appeal on the merits. We do not retain jurisdiction.

/s/ Janet T. Neff

/s/ Donald E. Holbrook, Jr.

/s/ Kathleen Jansen