STATE OF MICHIGAN

COURT OF APPEALS

MICHELLE RICHARDSON,

Plaintiff-Appellee,

v

WOODBRIDGE CORPORATION and ZURICH INSURANCE COMPANY,

Defendants-Appellants.

UNPUBLISHED
July 13, 2001

No. 225264
WCAC
LC No. 98-000362

MICHELLE RICHARDSON,

Plaintiff-Appellant,

v

WOODBRIDGE CORPORATION and ZURICH INSURANCE COMPANY,

Defendants-Appellees.

No. 225306
WCAC
LC No. 98-000362

Before: Sawyer, P.J., and Griffin and O'Connell, JJ.

PER CURIAM.

In these consolidated appeals, the parties appeal by leave granted from a decision of the Worker's Compensation Appellate Commission (WCAC) affirming the magistrate's open award of weekly wage loss benefits to plaintiff. We affirm in both cases.

Plaintiff began working for defendant in June 1993. According to plaintiff's testimony during trial, when she was first hired she worked on defendant's production line. The nature of plaintiff's work on the production line involved repetitive hand and arm movements. When plaintiff began to experience pain in her arms and hands in 1994 she was treated by a physician who prescribed medication and recommended that plaintiff wear hand splints. After plaintiff continued to experience pain and numbness she was treated by a specialist who set forth medical restrictions for plaintiff's work activities. For example, plaintiff was not permitted to perform

repetitive work with her arms and hands or lift anything over five pounds. Defendant honored these restrictions by assigning plaintiff alternate activities.

During her employment with defendant, plaintiff was laid off from work frequently. Specifically, plaintiff testified that these layoffs could last anywhere from two weeks to two months and occurred sporadically. At trial the parties agreed that plaintiff's last day of work with defendant was September 4, 1997. Defendant's human resource manager indicated during trial that plaintiff was laid off in September 1997 because defendant reduced its shift rotations and plaintiff had the lowest seniority in the entire plant.

Plaintiff filed a petition seeking worker's compensation benefits in October 1996, alleging work-related injuries to her upper extremities. At trial, defendant argued that plaintiff was not entitled to worker's compensation benefits because her lost wages were attributed to her layoff, and were not the result of her work-related injury. The magistrate concluded that plaintiff suffered from a work-related disability and granted plaintiff an open award of worker's compensation benefits. The magistrate also found that plaintiff worked under medical restrictions while employed by defendant, "and [ ] defendant complied with those restrictions right up to plaintiff's last day worked." The magistrate thus rejected defendant's argument that plaintiff being laid off from work precluded recovery of benefits, observing that defendant "misconstrued or overextended the 'causal link' factor in the benefit entitlement equation."

Both parties appealed the decision to the WCAC. As relevant to the appeal in Docket No. 225624, defendant once again contended that plaintiff was precluded from recovering worker's compensation benefits because her wage loss was attributable to being laid off, rather than her disability. The WCAC rejected defendant's argument, concluding that "the legal argument's underlying premise was at odds with the magistrate's factual determinations."

In a worker's compensation claim, our review begins with the WCAC's decision as opposed to the magistrate's. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 709; 614 NW2d 607 (2000). "If there is any evidence supporting the WCAC's factual findings, and if the WCAC did not misapprehend its administrative appellate role in reviewing decisions of the magistrate, then the courts must treat the WCAC's factual findings as conclusive." *Id.* at 909-910 (footnote omitted). However, we review any questions of law in a final order of the WCAC under a de novo standard. *Perez v Keeler Brass Co*, 461 Mich 602, 608; 608 NW2d 45 (2000). *Sullens v Ford Motor Co*, 245 Mich App 162, 165; ___ NW2d ____ (2001). The WCAC's decision may be reversed if its decision was "based on erroneous legal reasoning or the wrong legal framework." *DiBenedetto v West Shore Hospital*, 461 Mich 394, 401-402; 605 NW2d 300 (2000) (citations omitted).

It is helpful to begin our analysis in Docket No. 225264 by noting what issues are not in dispute. Specifically, in its brief on appeal defendant concedes that on her final day of work "plaintiff was performing restricted work due to a work related upper extremity condition."[1]

[1] In its brief on appeal, defendant also states "[p]laintiff established disability. Plaintiff established wage loss." Moreover, defendant concedes "[d]efendants don't dispute plaintiff's (continued…)

However, defendant argues on appeal that under *Haske v Transport Leasing, Inc, Indiana*, 455 Mich 628; 566 NW2d 896 (1997), plaintiff is not entitled to receive worker's compensation benefits because her wage loss was not a direct consequence of her work-related disability. We disagree.

In *Haske, supra*, our Supreme Court held that to recover worker's compensation benefits, an employee is required to demonstrate (1) that a work-related disability exists and, (2) that the work-related disability resulted in a wage loss. *Id.* at 642-643. Seizing on this language, defendant argues that the absence of a direct causal link between plaintiff's wage loss and her work-related injury precludes recovery of worker's compensation benefits. In our view, this Court's decision in *Sington v Chrysler Corp*, ___ Mich App ___; ___ NW2d ___ (Docket No. 225847, issued 5/1/01), lv pending, compels a contrary conclusion.

In *Sington, supra*, the plaintiff, employed by the defendant for thirty-six years, suffered from a work-related shoulder injury that manifested itself during the final three years of plaintiff's employment. *Id.*, slip op at 1. After undergoing two surgeries, the plaintiff continued to work under medical restrictions imposed by his physician. However, while on vacation, plaintiff suffered a disabling stroke that left him unable to work. As relevant to this appeal, the *Sington* Court concluded that the Supreme Court's decision in *Haske, supra* was not applicable to the plaintiff's claim for wage loss benefits because the plaintiff, working under medical restrictions, was performing "reasonable employment" as set forth in MCL 418.301(9). Reasonable employment is defined in that section as:

> work that is within the employee's capacity to perform that poses no clear and proximate threat to that employee's health and safety, and that is within a reasonable distance from the employee's residence. The employee's capacity to perform shall not be limited to jobs in work suitable to his or her qualifications and training. [MCL 418.301(9).]

Specifically, the *Sington* Court concluded that application of the *Haske* doctrine was inappropriate where the plaintiff was performing restricted work before he suffered a stroke "because [the *Haske*] analysis ignores the WDCA's 'reasonable employment' provisions." *Id.*, slip op at 10. The *Sington* Court went on to observe:

> When an injured employee accepts an offer of "reasonable employment," WDCA § 301(5) requires that "entitlement to weekly wage loss benefits shall be determined pursuant to this section." MCL 418.301(5). . . . Application of the *Haske* compensable disability doctrine to injured employees who were engaged in "reasonable employment" would render WDCA § 301(5) meaningless. The statute provides that injured workers engaged in "reasonable employment" shall receive benefits even if they cease working either "through no fault of the employee" or "for whatever reason." MCL 418.301(5)(d), (e). *An injured worker*

(…continued)

work related physical limitations! Defendants don't dispute disability!"

> *engaged in "reasonable employment" need not prove that he lost his job for reasons directly related to his injury. Therefore, once an employee accepts and begins to perform "reasonable employment," the specific provisions found in § 301(5)(e) take precedence over Haske's general requirement that the wage loss must be causally linked to the work-related injury.* [*Id.*, slip op at 10 (emphasis supplied).]

As mentioned above, defendant concedes that plaintiff was working under medical restrictions when she was laid off in September 1997. During trial, plaintiff testified that defendant accommodated her restrictions by having her perform alternate tasks. For instance, rather than working directly on the production line and performing repetitive tasks, plaintiff was asked to perform other jobs, such as sorting through materials used to assemble car seats. In its order the magistrate found that plaintiff was engaged in "favored work" when she was laid off in 1997.[2] Consequently, the *Haske* doctrine is not applicable in the present case.

In Docket 225306, plaintiff argues that the WCAC erred by failing to recognize that plaintiff is entitled to worker's compensation benefits for the periods she was laid off before her last day of work. Whether plaintiff is entitled to weekly wage loss benefits is a question of law that we review de novo. *Perez, supra* at 608. The date of a plaintiff's injury is a question of fact. *Coleman v General Motors Corp*, 166 Mich App 784, 790; 421 NW2d 295 (1988); *Ostantowski v Pigeon Mfg Co*, 131 Mich App 728, 735; 346 NW2d 867 (1984).

Section 301(1) of the WDCA provides:

> An employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act. . . . *Time of injury or date of injury as used in this act in the case of a disease or in the case of an injury not attributable to a single event shall be the last day of work in the employment in which the employee was last subjected to the conditions that resulted in the employee's disability or death.* [Emphasis supplied.]

Section 371 of the WDCA further provides that "[t]he weekly loss in wages shall be fixed a*s of the time of the personal injury . . .*" (emphasis supplied).

In the instant case, plaintiff's petition for worker's compensation benefits specified eleven different dates of injury ranging from March 20, 1995 to October 9, 1996. At trial, the magistrate inquired whether the parties would be willing to stipulate to a single date of injury for the purpose of assigning benefits. Both parties, through their respective counsel, stipulated that

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[2] "Whether a particular job offer qualifies as 'reasonable employment' is a question of fact." *Sington, supra*, slip op at 8. The term "reasonable employment" is comparable to "favored work." *Id.*, slip op at 9 n 11.

plaintiff's last day of work would be considered the date of injury.[3] In its order, the magistrate thus concluded that plaintiff's date of injury was September 4, 1997 and assessed benefits accordingly. The WCAC subsequently rejected plaintiff's claim for benefits before September 4, 1997. The WCAC based its conclusion on its observation that "a review of the record below, which includes the magistrate's opinion, indicates [plaintiff] was paid worker's compensation benefits for 'various periods of time prior to her last day worked.' " According to plaintiff, reversal is warranted because the WCAC's factual finding was erroneous. Although it appears from the record that the magistrate and the WCAC may have erred in finding that plaintiff received worker's compensation benefits before her last day of work with defendant, we do not believe reversal is warranted on this basis.

The record is clear that the parties stipulated that plaintiff's date of injury was September 4, 1997. The magistrate's order awarding plaintiff benefits was premised on this factual determination, and the WCAC adopted this finding. In the absence of fraud this finding is conclusive on appeal. *DiBenedetto, supra* at 401. Because weekly wage loss benefits accrue

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[3] During the first day of trial, when the magistrate inquired whether the parties were willing to stipulate with regard to the date of plaintiff's injury, the following colloquy occurred:

> *Magistrate*: For purposes of the stipulation I'm looking at a whole bunch of disability dates. Would the parties be willing to consolidate them all into a single disability date as to the last day of injury or do we have specific injuries to deal with?
>
> *Plaintiff's Attorney*: I as Plaintiff's attorney would be willing to go along with that suggestion.
>
> * * *
>
> *Magistrate*: The only claimed injury dates are against Woodbridge, and that's all I'm dealing with. All I'm talking about is [plaintiff's] periods of employment with Woodbridge. I'm assuming all of these were during periods of employment. And unless there's a specific event, let's just go with the last day of work and leave it at as occupational disease cumulative trauma thing. If there are injuries subsequent to that, that's as you indicated, the plaintiff's problem. Okay? What was the last day of work then?
>
> *Defendant's Attorney*: At this point I can't tell you technically the official last day of work; it probably was in June or spring.
>
> *Magistrate*: Okay. We'll take testimony as to her last day of actually working for the company.

from the date of injury, plaintiff is not entitled to benefits for the period before September 4, 1997.

Affirmed in Docket No. 225306 and Docket No. 225264.

/s/ David H. Sawyer
/s/ Richard Allen Griffin
/s/ Peter D. O'Connell