STATE OF MICHIGAN

COURT OF APPEALS

DARRYL A. STEWART, Plaintiff-Appellant,	UNPUBLISHED October 5, 2001
V	No. 228085 WCAC
GREAT LAKES BEVERAGE COMPANY, Defendant-Appellee.	LC No. 99-000152

Before: O'Connell, P.J., and White and Smolenski, JJ.

PER CURIAM.

Plaintiff Darryl A. Stewart appeals by leave granted from the April 3, 2000 opinion and order of the Worker's Compensation Appellate Commission (WCAC) reversing the magistrate's open award of benefits. We reverse and remand.

The essential facts in this case are undisputed. Following an injury plaintiff underwent a knee operation in 1974 and appeared to make a full recovery. He began working for defendant Great Lakes Beverage Company in 1984 as a semi-tractor trailer truck driver delivering beer. The work included climbing into the trailer, removing cases of beer, loading them on a dolly, and moving the beer into the customers' businesses. He would return with empty cases and load those onto the truck. Plaintiff worked ten hours each day, four days a week.

On May 8, 1991, plaintiff twisted his knee while delivering beer. The injury eventually required arthroscopic surgery. Plaintiff returned to work performing sedentary jobs before resuming his regular delivery work in October 1991. However, because his surgeon imposed restrictions on lifting and bending, defendant supplied plaintiff with a helper who loaded and unloaded the cases. Unlike other uninjured drivers who used helpers and who were required to pay the helpers out of their own wages, defendant paid for plaintiff's helper. Plaintiff obtained further treatment for his knee, with which he continued to have problems. When plaintiff's knee deteriorated further, his physician informed his supervisor in October 1996 that surgical intervention would again be necessary.

Following the surgery, plaintiff returned to driving and delivering beer in March 1997, still using a helper. However, defendant withdrew the helper on June 22, 1998. After that time, plaintiff was not able to complete his assigned deliveries on time, and defendant's vice president

warned him that he was not performing as expected. Defendant terminated plaintiff's employment as of September 2, 1998.

Plaintiff subsequently petitioned for worker's compensation benefits. Following trial, the magistrate rejected defendant's argument that plaintiff was precluded from recovering benefits because he had established a new wage-earning capacity pursuant to MCL 418.301(5)(d)(i). According to the magistrate, MCL 418.301(5)(d)(i) was not applicable because plaintiff established a new date of injury as of August 1998. In any event, the magistrate concluded that plaintiff rebutted the presumption of a new wage-earning capacity. The magistrate awarded benefits based on plaintiff's average weekly wage, and applied the one-year-back rule to limit plaintiff's recovery. See MCL 418.833(1).

Defendant appealed to the WCAC. In a two-to-one decision, the WCAC reversed the magistrate's award of benefits. The majority of the WCAC denied benefits on the theory that MCL 418.301(5)(d)(i) conclusively established a new wage-earning capacity. Commissioner Kent dissented, expressing disagreement with the majority's conclusion that the presumption of wage-earning capacity under § 301(5)(d)(i) was conclusive.

On appeal to this Court, plaintiff maintains that the WCAC erred in concluding that the presumption of wage-earning capacity found in MCL 418.301(5)(d)(i) is conclusive. For the reasons set forth in our opinion in *Maier v General Telephone Co of Michigan*, ___ Mich App ___; ___ NW2d ___ (Docket No. 227825, issued 9/28/01), we agree.

Plaintiff raises additional arguments on appeal regarding the applicability of MCL 418.301(5)(d)(i) on the basis of the facts of this case. The crux of plaintiff's argument is that § 301(5)(d)(i) is not applicable because the record evidence does not indicate that he performed reasonable employment for over 250 weeks.[1] In its May 25, 2000 order denying reconsideration, the WCAC rejected this argument, concluding that the subsection applied because plaintiff engaged in reasonable employment for over 250 weeks.[2] We are required to treat the WCAC's factual finding in this regard as conclusive, in the absence of fraud. MCL 418.861a(14); *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 700-701; 614 NW2d 607 (2000). Thus, plaintiff's argument is without merit.[3]

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[1] To the extent that plaintiff contends that the period of reasonable employment was restarted following his second surgery in 1996, this argument is deemed abandoned on appeal given plaintiff's failure to cite any supporting authority. "[A] party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim." *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). Further, this Court need not address an issue given only cursory consideration by a party on appeal. *Id.*

[2] During trial, Howard Wolpin, defendant's vice president, testified that plaintiff engaged in reasonable employment for approximately 364 weeks.

[3] On appeal, plaintiff also argues that the work he performed following his 1991 injury was not "reasonable employment" as contemplated by MCL 418.301(9). We will not address this issue given plaintiff's failure to raise it in his application for leave and supporting brief. MCR 7.205(D)(4); *Ireland v Smith*, 214 Mich App 235, 251; 542 NW2d 344 (1995), aff'd on other

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

/s/ Peter D. O'Connell
/s/ Helene N. White
/s/ Michael R. Smolenski

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grounds as modified 451 Mich 457 (1996).