

STATE OF MICHIGAN
COURT OF APPEALS

CATHY ROGERS,

Plaintiff-Appellant,

v

DELPHI AUTOMOTIVE SYSTEMS,

Defendant-Appellee.

UNPUBLISHED

October 21, 2008

No. 278822

WCAC

LC No. 05-000075

Before: Servitto, P.J., and Donofrio and Fort Hood, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted the decision of the Worker's Compensation Appellate Commission (WCAC) reversing the magistrate's open award of benefits. We vacate the WCAC's decision and remand this matter to the magistrate for a new hearing.

Plaintiff asserted that she was disabled by injuries to her right shoulder and upper extremities sustained while working for defendant. The magistrate granted plaintiff an open award of benefits, finding that plaintiff established a disability under the standard set out in *Sington v Chrysler Corp*, 467 Mich 144; 648 NW2d 624 (2002). The WCAC reversed the magistrate's decision, and this Court granted plaintiff's application for leave to appeal.

In *Stokes v Chrysler LLC*, 481 Mich 266; 750 NW2d 129 (2008), our Supreme Court revisited the proofs required to prove a disability under *Sington*. An employee seeking benefits must prove that a work-related injury caused a reduction of her maximum wage earning capacity in work suitable for the employee's qualifications and training. To establish this element, the employee must: fully disclose her qualifications and training, consider other jobs that pay her maximum pre-injury wage, show that the work-related injury prevents her from performing some or all of the jobs within her qualifications and training that pay the maximum wage, and if the employee is capable of performing some or all of the jobs identified, show that she cannot obtain any of those jobs. *Id.* at 281-283. A claimant sustains her burden of proof by showing that there are no reasonable employment options available for avoiding a decline in wages. *Id.* at 282. Once a claimant has made a prima facie showing of disability, the burden of production shifts to the employer to come forward with evidence to refute the claimant's showing. *Id.* at 283.

In disposing of the case, the *Stokes* Court stated that given the inconsistent application of the *Sington* standard in the past, it would be equitable to allow claimant the opportunity to present his proofs with the guidance provided by the Court's opinion. *Id.* at 299. The *Stokes*

Court remanded the matter to the magistrate for a new hearing consistent with the procedures set forth in the opinion. *Id.*

A similar action is warranted in this case. Given the inconsistent interpretations of *Sington*, plaintiff should be allowed to present her proofs with the guidance of our Supreme Court's decision in *Stokes*. We vacate the WCAC's decision and remand this matter to the magistrate for a new hearing.

Vacated and remanded. We do not retain jurisdiction.

/s/ Deborah A. Servitto

/s/ Pat M. Donofrio

/s/ Karen M. Fort Hood