

STATE OF MICHIGAN
COURT OF APPEALS

BONNIE M. PATTERSON,

Plaintiff-Appellee,

v

DELPHI CORPORATION,

Defendant-Appellant.

UNPUBLISHED

January 27, 2009

No. 278823

WCAC

LC No. 06-000093

Before: Talbot, P.J., and Bandstra and Gleicher, JJ.

PER CURIAM.

This case returns on remand from our Supreme Court. Defendant Delphi Corporation appeals an order of the Worker's Compensation Appellate Commission ("WCAC") that reversed a magistrate's grant of a closed award of benefits to plaintiff. The WCAC's order granted plaintiff an open award of benefits. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's work for defendant involved various degrees of lifting and utilizing her hands and arms. In 2001, at which time plaintiff's work included lifting baskets weighing 35 pounds, plaintiff began to suffer neck pain. On August 17, 2001, plaintiff left work and did not return.

Plaintiff sought workers' compensation benefits. The magistrate found that plaintiff established a work-related, disabling neck condition as of August 17, 2001. However, the magistrate went on to find that, as of November 2004, plaintiff's inability to work was not due to her neck condition, but to a nonwork related neurological condition. The magistrate granted plaintiff a closed award of benefits for the period August 18, 2001 to November 28, 2004.

In a 2-1 decision, the WCAC reversed the magistrate's decision to the extent the magistrate granted only a closed award of benefits. In separate opinions, Commissioner Will and Commissioner Glaser each, essentially, found that the record did not support the magistrate's finding that plaintiff's neck condition had resolved as of November 2004.¹

¹ Dissenting Commissioner Grit opined that the magistrate's conclusion was supported by competent evidence and therefore, must be affirmed.

Defendant sought leave to appeal in this Court, which was denied. Defendant sought leave to appeal in our Supreme Court. In lieu of granting the application, our Supreme Court remanded the case for consideration as on leave granted. The remand order states:

On remand, the Court of Appeals shall consider whether the Worker's Compensation Appellate Commission (WCAC) majority committed legal error by applying the wrong standard of proof and, if so, whether this error was nonetheless harmless. MCL 418.851 provides that "[a] claimant shall prove his or her entitlement to compensation and benefits under this act by a preponderance of the evidence." The Court of Appeals shall determine whether the WCAC evaluated the evidence from the perspective that, once a magistrate has determined that a claimant is suffering from a work-related disability for any period, the claimant remains entitled to workers' compensation benefits absent direct proof of recovery from that disability; if so, this would not describe the correct standard of proof. Simply because a claimant meets the burden of proof for one period does not mean that he or she necessarily meets that burden for all periods until proven otherwise. Rather, the claimant has the burden at all times of proving his or her entitlement to benefits by a preponderance of the evidence. [*Patterson v Delphi Corp*, 480 Mich 1168; 747 NW2d 223 (2008).]

Based on our interpretation of the WCAC majority opinions, we are not convinced that the WCAC evaluated this case from an improper legal perspective.

On one hand, Commissioners Will and Glaser did, at one point, focus their analyses on whether there was evidence of recovery on plaintiff's part sufficient to support closing the award in November 2004. Such focus, at least arguably, implies an improper legal perspective since, as indicated in the Supreme Court's remand order, in evaluating if a claimant is entitled to an open award of benefits, the issue is not whether there is direct evidence of recovery on the claimant's part, but whether the claimant established continued entitlement to benefits. Here, determining whether there was evidence to support closing the award in November 2004 does not necessarily answer the question whether plaintiff established entitlement to an open award of benefits.

On the other hand, Commissioners Will and Glaser each engaged in further analysis after determining that the evidence did not support a closed award. In particular, the Commissioners went on to discuss record evidence of a continuing, or ongoing, work-related disability. These further analyses clearly imply a proper perspective, as the focus was on whether the evidence established that plaintiff remained disabled. When the opinions of Commissioners Will and Glaser are considered in their entirety, the WCAC majority did not apply an incorrect legal standard in concluding that plaintiff was entitled to an open award of benefits.²

² Defendant argues in its Brief on Appeal (as it did in its prior application for leave to appeal in this Court) that the WCAC exceeded its authority by engaging in a de novo review and reinterpreting the evidence. In our opinion, such an argument is outside the scope of our Supreme Court's remand order, and thus need not be addressed. See generally, *K & K*
(continued...)

We affirm. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Michael J. Talbot
/s/ Richard A. Bandstra
/s/ Elizabeth L. Gleicher

(...continued)

Construction Inc v Dep't of Environmental Quality, 267 Mich App 523, 544; 705 NW2d 365 (2005). However, in the event we misread the scope of the remand order, we find defendant's argument to be without merit. In our opinion, the WCAC majority carefully examined the record, was duly cognizant of the deference to be given to the decision of the magistrate, did not misapprehend the WCAC's administrative appellate role, and gave adequate reasons grounded in the record for reversing the magistrate. See *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 703-704; 614 NW2d 607 (2000).