

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

KIMBERLY B. FINLEY,

Plaintiff-Appellee,

v

SAM'S CLUB and AMERICAN HOME  
ASSURANCE COMPANY,

Defendants-Appellants.

---

UNPUBLISHED

May 18, 2010

No. 289437

WCAC

LC No. 08-000069

Before: MURPHY, C.J., and K. F. KELLY and STEPHENS, JJ.

PER CURIAM.

Defendants appeal an order of the Workers' Compensation Appellate Commission (WCAC) affirming a magistrate's decision to grant plaintiff an open award of wage loss benefits for alleged work-related carpal tunnel syndrome. We reverse and remand.

**I. BASIC FACTS**

Plaintiff, a licensed optician, began working for Sam's Club in 1994. Plaintiff claims that in 2003 or 2004 she developed numbness, weakness, and pain in her hands. She attributes those symptoms to the repetitive use of her hands at work.

In 2005, plaintiff was terminated from her employment at Sam's Club. The stated basis for the termination was plaintiff filling an expired prescription in violation of the law and company policy. About a year after her termination, plaintiff filed an application for workers' compensation benefits. Following trial, a magistrate granted plaintiff an open award of wage loss benefits.

Defendants appealed the magistrate's decision to the WCAC. Defendants claimed that plaintiff was not credible and that even if plaintiff had suffered a work-related disability, the disability did not result in any wage loss. The WCAC found defendants' claims to be unworthy of relief. It reasoned that the magistrate's finding that plaintiff was credible to be reasonable and

that plaintiff's work-related carpal tunnel syndrome resulted in a loss of wage earning capacity. This Court granted defendants' application for leave to appeal.<sup>1</sup>

## II. STANDARD OF REVIEW

The WCAC reviews the magistrate's decision under the "substantial evidence" standard, while this Court reviews the WCAC's decision under the "any evidence" standard. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 702-703; 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 the magistrate's decision and in the absence of fraud, then we treat the WCAC's factual findings as conclusive. *Id.* at 701, 703-704. However, we review questions of law in any WCAC order de novo. *DiBenedetto v West Shore Hosp*, 461 Mich 394, 401; 605 NW2d 300 (2000). "[A] decision of the WCAC is subject to reversal if it is based on erroneous legal reasoning or the wrong legal framework." *Id.* at 401-402.

## III. ANALYSIS

Defendants argue that plaintiff failed to establish that her "disability" resulted in an actual wage loss and that the WCAC therefore erred in affirming the magistrate's award of benefits to plaintiff. Under the Worker's Disability Compensation Act, a limitation in wage earning capacity due to a work-related injury or disease is, by definition, a "disability." MCL 418.301(4). However, "[t]he establishment of disability does not create a presumption of wage loss." *Sington v Chrysler Corp*, 461 Mich 144, 155; 648 NW2d 624 (2002). Instead, to be entitled to benefits, "an employee must establish a work-related disability under MCL 418.301(4) and demonstrate that the disability resulted in wage loss." *Romero v Burt Moeke Hardwoods, Inc*, 280 Mich App 1, 8; 760 NW2d 586 (2008) (citation omitted and emphasis added). In *Romero*, this Court stated that even if an employee showed a disability, the employee must further prove wage loss. *Id.* "Additionally, the employee's unemployment or reduced wages must be causally linked to the work-related disability." *Id.* at 8-9 (citations omitted). The panel in *Romero* made clear that there must be a linkage or causal connection between the injury or disability and the wage loss in order to establish a loss that gives rise to a right to benefits. *Id.* at 9. In *Romero*, the plaintiff left the defendant Hardwoods' employ when his visa expired and after a forklift had crushed his leg during the plaintiff's term of employment with Hardwoods. *Id.* at 3. The Court held:

In this case, plaintiff was 21 years old when he was injured and was training for a future job as a millwright. Hardwoods was training plaintiff with the intent to employ him as a millwright in Mexico. But, because of his injury, plaintiff is now unable to work as a millwright in the United States or Mexico. While defendants are correct that plaintiff cannot legally work in the United States without a valid visa, plaintiff could have earned wages as a millwright in Mexico had the injury not occurred. Therefore, contrary to defendants' assertion,

---

<sup>1</sup> *Finley v Sam's Club*, unpublished order of the Court of Appeals, entered April 9, 2009 (Docket No. 289437).

there is a causal connection between plaintiff's work-related injury and wage loss.  
[*Id.* at 9-10.]

In this case, by focusing only on plaintiff's wage earning capacity, i.e., her "disability," and never specifically addressing whether that "disability" resulted in actual wage loss, the WCAC's analysis was incomplete. Thus, the WCAC's analysis was legally improper as it pertained to defendants' claim that plaintiff failed to establish wage loss. Accordingly, we remand to the WCAC for consideration of the wage loss issue consistent with *Romero*.<sup>2</sup>

We vacate the WCAC's order and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy  
/s/ Kirsten Frank Kelly  
/s/ Cynthia Diane Stephens

---

<sup>2</sup> We find defendants' remaining claim regarding the credibility of the evidence to be without merit.