

STATE OF MICHIGAN
COURT OF APPEALS

THERESA HARRELL,

Plaintiff- Appellant,

v

NATIONAL BANK OF DETROIT, a/k/a NBD
BANCORP,

Defendant- Appellee.

UNPUBLISHED
February 28, 1997

No. 191272
WCAC
LC No. 92-000847

Before: Fitzgerald, P.J., and Cavanagh and N.J. Lambros,* JJ.

PER CURIAM.

Plaintiff Theresa Harrell appeals by leave granted a decision of the Worker's Compensation Appellate Commission (WCAC) reversing the decision of the magistrate and denying her benefits. We affirm.

Plaintiff began working for defendant National Bank of Detroit in 1973. Throughout her employment plaintiff worked on computers, operated adding machines, and did other hand intensive tasks. In 1981 plaintiff noted pain and numbness in her hands.

Plaintiff sustained a nonwork-related back injury in 1982, and was off work for three months due to surgery. She had further surgery in 1985, and was off work for seven months.

Plaintiff stopped working in March, 1988 due to pain and numbness in her hands. She continued to experience pain in her back, and received long-term disability benefits for that condition.

Plaintiff's amended petition for worker's compensation benefits, filed on September 24, 1991, listed an injury date of March, 1988, and claimed disability due to carpal tunnel syndrome and back problems. The magistrate found that plaintiff was entitled to benefits. Initially, the magistrate determined that plaintiff's claim for benefits for disabling carpal tunnel syndrome was timely. Her initial petition, filed

* Circuit judge, sitting on the Court of Appeals by assignment.

in June, 1990, listed a last date of employment in August, 1988. The magistrate found that plaintiff's claim for benefits for a back disability was not timely because it was filed in September, 1991. The fact that plaintiff filed an application for long-term disability benefits in December, 1988, demonstrated that she was aware of her back problems at that time. The magistrate granted plaintiff an open award for disabling carpal tunnel syndrome.

The WCAC reversed the magistrate's decision. The WCAC found that while the magistrate's finding of a work-related disability caused by carpal tunnel syndrome was supported by the requisite evidence, plaintiff was not entitled to benefits because she had not asserted a timely claim for that injury. The WCAC relied on MCL 418.381(1); MSA 17.237(381)(1). That section reads:

A proceeding for compensation for an injury under this act shall not be maintained unless a claim for compensation for the injury, which claim may be either oral or in writing, has been made to the employer or a written claim has been made to the bureau on forms prescribed by the director, within 2 years after the occurrence of the injury. In case of the death of the employee, the claim shall be made within 2 years after death. The employee shall provide a notice of injury to the employer within 90 days after the happening of the injury, or within 90 days after the employee knew, or should have known, of the injury. Failure to give such notice to the employer shall be excused unless the employer can prove that he or she was prejudiced by the failure to provide such notice. In the event of physical or mental incapacity of the employee, the notice and claim shall be made within 2 years from the time the injured employee is not physically or mentally incapacitated from making the claim. A claim shall not be valid or effectual for any purpose under this chapter unless made within 2 years after the later of the date of injury, the date disability manifests itself, or the last day of employment with the employer against whom the claim is being made. If an employee claims benefits for a work injury and is thereafter compensated for the disability by worker's compensation or benefits other than worker's compensation, or is provided favored work by the employer because of the disability, the period of time within which a claim shall be made for benefits under this act shall be extended by the time during which the benefits are paid or the favored work is provided.

The WCAC rejected plaintiff's argument that she was entitled to benefits because defendant knew of her hand problems and because she had received long-term disability benefits for her back condition. Although plaintiff stopped working in March, 1988, she did not file her initial claim until June, 1990. Rejecting the assertion that the receipt of long-term disability benefits tolled the claim period in § 381(1), the WCAC concluded that because plaintiff's claim was not made within two years, she was not entitled to benefits for disabling carpal tunnel syndrome.

Findings of fact made by a magistrate are conclusive on the WCAC if they are supported by competent, material, and substantial evidence on the whole record. MCL 418.861a(3); MSA 17.237(861a)(3). Judicial review is of the findings of fact made by the WCAC, not those made by the magistrate. The findings of fact made by the WCAC are conclusive if there is any competent evidence

in the record to support them. *Holden v Ford Motor Co*, 439 Mich 257, 263; 484 NW2d 227 (1992).

On appeal, plaintiff argues that the WCAC's decision is supported both by the language of § 381(1) and by this Court's decision in *Bieber v Keeler Brass Co*, 209 Mich App 597; 531 NW2d 803 (1995). Noting that the last sentence of § 381(1) states that the time for making a claim is tolled if the employee claims benefits for "a" work injury and thereafter receives worker's compensation or other benefits for "the" disability, plaintiff emphasizes that she claimed worker's compensation benefits for a back injury. Section §381(1) does not require that the claim be successful. Notwithstanding the failure of the workers' compensation claim, she received long-term disability benefits for her back injury. Section 381(1) does not require that any other benefits paid to the employee must be paid for the same condition for which worker's compensation benefits are claimed. In *Bieber* this Court addressed the issue of the operation of the tolling provision in § 381(1), and held that "if any employee makes a claim for *any benefits*, the last sentence of §381(1) extends the time to claim worker's compensation benefits, *unless* the employee has already made a claim for worker's compensation benefits." 209 Mich App at 602.

We disagree. The timeliness of plaintiff's claim for benefits for carpal tunnel syndrome is at issue in this case. Neither the language of §381(1) nor *Bieber* supports plaintiff's position that her claim for long-term disability benefits for her back problem tolled the two-year period for claiming worker's compensation benefits for her hand problem. The language of § 381(1) does not support the assertion that a claim for benefits for one alleged work-related injury constitutes a claim for any and all work-related injuries. Under plaintiff's interpretation of this statute, a timely claim for benefits for one injury would allow a claim for another, different injury many years later. This would be the case in spite of the fact that the first claim was found to be without merit, as was plaintiff's claim for benefits for a back disability, and in spite of the fact that the employer might not have had any knowledge of the other injury. To adopt plaintiff's interpretation of § 381(1) would be to frustrate the purpose of the statute, which is to prevent stale claims. Just as the giving of notice of one injury does not constitute the giving of notice of another injury, *Bentley v Associated Spring Co*, 133 Mich App 15; 347 NW2d 784 (1984), a claim for one injury should not be found to constitute a claim for a totally different injury.

Bieber, supra, is distinguishable from this case. In *Bieber* and its companion case, *Barnard v ACCO Babcock, Inc*, the plaintiffs were injured during the course of their employment and received worker's compensation benefits. Due to a nonwork-related injury, plaintiff Bieber never returned to work. Plaintiff Barnard was laid off when his plant closed. Both plaintiffs filed applications for worker's compensation benefits more than two years after their last day of work. In *Bieber* the WCAC held that the plaintiff's claim was barred under §381(1) because it was filed more than two years after his last day of work. In *Barnard* the WCAC reached the opposite conclusion. We reversed in *Bieber* and affirmed in *Barnard*. We held that if an injured employee made a timely claim for worker's compensation benefits that were voluntarily paid, the employee's claim is preserved, and no further claim need be filed. The two-year tolling provision in §381(1) applies only if the employee seeks benefits other than worker's compensation benefits, or when worker's compensation benefits are paid

voluntarily with no claim having been filed. We held that because the plaintiffs had made timely claims for worker's compensation benefits, their claims were preserved. 209 Mich App at 601-604.

Bieber does not address the circumstances of the instant case. In this case, plaintiff did not make a claim for worker's compensation benefits for carpal tunnel syndrome before she stopped working. She was not paid worker's compensation benefits for that condition. Although plaintiff made claim for and received long-term disability benefits for her back problem, she did not claim worker's compensation benefits for carpal tunnel syndrome for more than two years after she stopped working.

We hold that under § 381(1), a claim for worker's compensation benefits is timely if a claim for the same injury was made previously and benefits were paid, or if benefits other than worker's compensation benefits were paid for the same injury. A claim for benefits for one work-related injury does not preserve a claim for an entirely different work-related injury.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Mark J. Cavanagh

/s/ Nicholas J. Lambros