

STATE OF MICHIGAN
COURT OF APPEALS

LINZIEBETH DARTY,

Plaintiff-Appellant,

v

DRAW TITE, INC.,

Defendant-Appellee.

UNPUBLISHED

June 26, 1998

No. 197026

WCAC

LC No. 94-000421

Before: Hood, P.J., and MacKenzie and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the opinion and order of the Worker's Compensation Appellate Commission (WCAC) affirming a decision of a worker's compensation magistrate, which granted an open award of partial disability benefits but reduced the rate of plaintiff's weekly benefits by an amount the magistrate determined to be plaintiff's residual wage-earning capacity. We reverse the decision of the WCAC, and remand the case for entry of an order granting plaintiff benefits at the maximum applicable benefit rate based on the 1990 injury date found by the magistrate.

Plaintiff began working for defendant as a full-time janitor in April, 1984. In October, 1990, she sustained an injury to her right arm and her neck as a result of overuse in an overhead position during a special clean-up project at defendant's plant. Plaintiff lost time from work as a result of her injury, but continued performing her janitor duties until that job was eliminated on October 24, 1991. Plaintiff continued working for defendant in various assembly line jobs. The magistrate found that plaintiff's last day of work was November 8, 1991.

The magistrate found that plaintiff had proven a work-related partial disability from right thoracic outlet syndrome. The magistrate found that plaintiff was unable to perform all of the duties of a janitor, but she could perform her former job duties as an assembler. Moreover, the magistrate reduced the rate of plaintiff's weekly partial disability benefits from \$329.60 per week to \$194.58 per week, based on the testimony of defendant's vocation rehabilitation expert indicating that plaintiff had a residual wage-earning capacity based on certain minimum wage jobs available in her area.

Plaintiff argues that the holding of *Sobotka v Chrysler Corp*, 447 Mich 1; 523 NW2d 454 (1994), on which the magistrate and the WCAC based their reduction of plaintiff's benefits, should apply only to workers' compensation cases that arise after January 1, 1982. However, in light of the Michigan Supreme Court's recent opinion in *Haske v Transport Leasing, Inc*, 455 Mich 628; 566 NW2d 896 (1997), we need not address this issue. In *Haske, supra* at 659, the Supreme Court clarified its position in *Sobotka*, stating that it never intended that residual wage-earning capacity was relevant to proof of wage loss.

In proving wage loss, plaintiff must establish to the factfinder's satisfaction (1) a work related injury, (2) an actual loss in wages, and (3) that the injury caused the loss in wages. *Haske, supra* at 663. An employee has proven a disability when she proves she can no longer perform a job suitable to her qualifications and training as a result of her injury. *Id.* at 664. An employee's disability is compensable only where she proves wage loss by showing a reduction in earning capacity. *Id.* An employee establishes a reduction in earning capacity where she establishes to the factfinder's satisfaction that a reduction or elimination of her wages, subsequent to the work-related injury, is causally related to the work-related injury. *Id.*

In the present case, the magistrate and the WCAC found plaintiff to be partially disabled, and found at least some degree of compensable wage loss based upon a causal link between plaintiff's unemployment and her work-related injury. Then, relying on the same kind of interpretation of *Sobotka* that was specifically rejected in *Haske*, both the magistrate and the WCAC reduced plaintiff's benefits on the basis of her residual wage-earning capacity. In light of *Haske, supra*, the magistrate and the WCAC obviously relied on an incorrect interpretation of *Sobotka* in reducing plaintiff's benefits. Therefore, we reverse the decision of the WCAC, and remand this case to the WCAC for entry of an order awarding plaintiff benefits at the maximum applicable benefit rate based upon the injury date found by the magistrate.

Reversed and remanded. We do not retain jurisdiction.

/s/ Harold Hood
/s/ Barbara B. MacKenzie
/s/ Martin M. Doctoroff