

STATE OF MICHIGAN
COURT OF APPEALS

CASSANDRA R. ROBINSON,

Plaintiff-Appellant,

v

HICKS PLASTICS COMPANY, INC., and
TRANSCONTINENTAL INSURANCE
COMPANY,

Defendants-Appellees.

UNPUBLISHED

May 7, 1999

No. 205837

WCAC

LC No. 97-000212

Before: Murphy, P.J., and Gage and Zahra, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the dismissal of her claim for review by the Worker's Compensation Appellate Commission (WCAC).¹ We reverse and remand.

Plaintiff sought worker's compensation benefits for an ankle injury and psychiatric disability, and was granted partial relief by the magistrate on February 27, 1997. Plaintiff timely filed a claim for review with the WCAC, which it received on March 14, 1997. Although plaintiff on March 12, 1997 had requested that the court reporter prepare a transcript of the hearing before the magistrate, the court reporter sent an April 18, 1997 letter to plaintiff's counsel and the WCAC indicating that the transcript would not be ready until some time around June 12, 1997, approximately one month beyond the statutory transcript filing deadline. MCL 418.861a(5); MSA 17.237(861a)(5). Plaintiff did not request an extension for filing the transcript, and filed the transcript with the WCAC on May 22, 1997, nine days beyond the filing deadline. On June 3, 1997, the WCAC entered its order dismissing plaintiff's claim for review on the basis that plaintiff failed to timely file the transcript. On June 4, 1997, plaintiff filed a motion to accept the late transcript or for an extension of time in which to file the transcript. Subsequently, on July 3, 1997, plaintiff filed a motion for reconsideration of the WCAC's order of dismissal, which the WCAC denied on July 30, 1997.

Plaintiff claims that the WCAC improperly dismissed her claim for review when she substantially complied with the transcript filing requirement and when neither party experienced any prejudice resulting from plaintiff's failure to timely file the transcript. We review for an abuse of discretion the

WCAC's decision to dismiss plaintiff's appeal. *Laudenslager v Pendell Printing, Inc*, 215 Mich App 167, 170; 544 NW2d 721 (1996).

The Legislature has prescribed various filing requirements for appeals to the WCAC, including the following relevant provision:

A party filing a claim for review under section 859a shall file a copy of the transcript of the hearing within 60 days of the filing of the claim for review and shall file its brief with the commission and provide any opposing party with a copy of the transcript and its brief not more than 30 days after filing the transcript. For sufficient cause shown, the commission may grant further time in which to file a transcript. [MCL 418.861a(5); MSA 17.237(861a)(5).]

The WCAC has adopted a policy of strictly enforcing these statutory filing requirements. *Marshall v D J Jacobetti Veterans Facility (After Remand)*, 447 Mich 544, 548-550; 526 NW2d 585 (1994). The doctrine of substantial compliance applies, however, to the briefing and other procedural deadlines in worker's compensation cases. *Laudenslager, supra* at 171. In considering whether dismissal is appropriate, relevant considerations include the length of the delay, the reason for the delay, the existence of any resulting prejudice, as well as any other relevant factors. *Id.*

Plaintiff clearly failed to comply with the statutory requirement when she failed to file the hearing transcript until May 22, 1997, nine days beyond the statutory sixty day period. Plaintiff also failed to request an extension of the transcript filing deadline until several weeks beyond this deadline, even though a March 27, 1997 acknowledgment letter from the WCAC had reminded the parties that untimely extension requests would not be considered,² but that timely requests for extensions were routinely granted on a showing of good cause.

We find, however, that plaintiff substantially complied with the transcript filing requirement. We first note that the delay in producing the hearing transcript was not attributable to plaintiff; the court reporter indicated in its April 18, 1997 letter to the WCAC that it could not have the transcript ready until approximately June 12, 1997. See *Marshall, supra* at 550 n 9 (recognizing that sometimes an attorney cannot prevent the tardy filing of a timely ordered transcript).³ Regarding the length of the delay, although plaintiff's counsel did not request an extension of the transcript filing deadline until three weeks after the May 13, 1997 due date, he apparently succeeded in urging the court reporter to expedite plaintiff's transcript order, successfully filing the transcript only nine days beyond the deadline instead of the one-month delay anticipated by the court reporter. Furthermore, defendants have not alleged that they suffered any prejudice caused by plaintiff's tardy transcript filing. Nor do we detect any prejudice arising from plaintiff's nine-day delay in filing the transcript, especially where plaintiff, had she made a timely request for extension citing the court reporter's delay, could have likely obtained an extension from the WCAC. Given these circumstances, and in light of the Supreme Court's orders in *Tomblin v MNP Corp*, 456 Mich 871; 569 NW2d 167 (1997), and *Wimbush v Noecker Vinyl & Plastics*, 453 Mich 963; 557 NW2d 314 (1996), we find the harsh sanction of dismissal wholly disproportionate to the relatively small procedural infraction involved in this case. *Laudenslager, supra* at 172-173. We thus conclude that the WCAC abused its discretion in dismissing plaintiff's claim for

review without even considering plaintiff's request that it accept the late transcripts or grant an extension. *Id.* at 170.

We vacate the WCAC's order of dismissal and remand for plenary consideration by the WCAC of the merits of plaintiff's appeal. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Hilda R. Gage

/s/ Brian K. Zahra

¹ Defendants claim in their brief on appeal that we are without jurisdiction to review the WCAC's June 3, 1997 order dismissing plaintiff's claim for review because plaintiff did not apply for leave to appeal to this Court within the thirty days provided by MCL 418.861a(14); MSA 17.237(861a)(14). Defendants suggest that because plaintiff applied for leave to this Court within thirty days of the WCAC's denial of plaintiff's motion for reconsideration we may only review the WCAC's decision regarding reconsideration. We see no meaningful distinction between the WCAC's two orders, however, when plaintiff's motion for reconsideration argued substantial compliance and a lack of prejudice to defendants, presumably the same concerns the WCAC considered in initially dismissing plaintiff's claim for review. Moreover, an appeal as of right is generally considered timely if it is filed timely after resolution of a timely motion for postjudgment relief, such as a motion for rehearing or reconsideration. MCR 7.204(A)(1)(b). Plaintiff's July 3, 1997 motion for reconsideration came within thirty days of the WCAC's June 3, 1997 order of dismissal. Although plaintiff's motion for reconsideration was not filed within the twenty-one days [of the WCAC's initial order of dismissal] mentioned by MCR 7.204(A)(1), that twenty-one day period relates to the general twenty-one day period for filing an appeal as of right after entry of a judgment or order. In worker's compensation cases, however, an appealing party has thirty days to file an application with this Court. Therefore, plaintiff filed a timely application that brings both orders of the WCAC within our jurisdiction.

² No statutory language mandates that a request for extension must be filed within a specific time frame; the statute simply provides that, "[f]or sufficient cause shown, the commission may grant further time in which to file a transcript." MCL 418.861a(5); MSA 17.237(861a)(5).

³ See also *Tomblin v MNP Corp*, 456 Mich 871; 569 NW2d 167 (1997), and *Wimbush v Noecker Vinyl & Plastics*, 453 Mich 963; 557 NW2d 314 (1996), in which the Supreme Court concluded that the WCAC had abused its discretion in dismissing these cases when the appellants' counsel had timely filed a claim for review and timely ordered a transcript, but the transcript had not been timely prepared for reasons beyond the appellants' counsels' control.