STATE OF MICHIGAN

COURT OF APPEALS

FRANCIS CHINCHAK,

Plaintiff-Appellant,

v

BULK TRANSIT CORPORATION and TIG INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
June 22, 1999

No. 210834
WCAC
LC No. 96-000839

Before: Neff, P.J., and Hood and Murphy, JJ.

PER CURIAM.

The Worker's Compensation Appellate Commission (WCAC) affirmed the decision of the Worker's Compensation magistrate denying plaintiff benefits. The magistrate had concluded that, although the record supported an award, there was no jurisdiction for such an award in Michigan. Plaintiff appeals by leave granted, and we reverse.

Prior to trial, the parties stipulated "[t]hat both the employer and the employee were subject to the [Michigan] compensation law on the date of the injury alleged." The trial took place on July 30, 1996. On October 24, 1996, the magistrate took additional testimony, specifically asking plaintiff questions pertaining to jurisdictional issues. In spite of the parties stipulation, the magistrate denied benefits on the basis of jurisdiction, relying on his findings of facts from the October 24, 1996 hearing.

Plaintiff appealed to the WCAC, which affirmed in a two to one decision. The majority indicated that the case concerned a "very narrow issue of law" and concluded that jurisdiction is a matter of law that cannot be stipulated to by the parties. The majority further found that the magistrate's act of taking testimony on the issue indicated that he did not trust the stipulation. The majority finally concluded that the record supported the magistrate's finding that the contract of employment was made in Ohio.

MCL 418.845; MSA 17.237(845) provides that the Worker's Compensation Bureau has jurisdiction over cases involving injuries suffered outside the state if the injured employee is a Michigan resident at the time of the injury and if the "contract of hire" was made in Michigan. We agree with the

dissent in the WCAC opinion that in order to reach the legal conclusion that jurisdiction lies under the aforementioned statute, factual determinations regarding the claimant's residency and the making of the contract must be made. This is not simply a narrow question of law. By making their stipulation that jurisdiction was proper in Michigan, the parties implicitly stipulated to the facts that plaintiff was a Michigan resident at the time of the injury and that the contract of hire was made in Michigan.

While we agree that a court or tribunal is not bound by parties' stipulations of applicable law, *In re Finlay Estate,* 430 Mich 590, 595; 424 NW2d 272 (1988), or by parties' erroneous interpretations of law, *Wilson v Gauck,* 167 Mich App 90, 95; 421 NW2d 582 (1988), parties can stipulate to the facts, and stipulations of fact that are presented by the parties and approved by a hearing officer or judge are sacrosanct and cannot subsequently be deviated therefrom. *Dana Corp v Employment Security Comm,* 371 Mich 107, 110; 123 NW2d 277 (1963). A hearing officer or judge can reject an offered stipulation as incomplete or erroneous, but cannot do so after accepting the stipulation. *Wilson, supra* at 96-97. In this case, the stipulation at issue was made prior to the beginning of trial. The magistrate did not reject it or question it at that time, and the parties proceeded with their case, operating under the assumption that the stipulation had been accepted. The magistrate's later attempt to open the jurisdiction issue, after the case had proceeded and the parties had concluded their proofs, resulted in a denial of due process. *Dana Corp, supra.; Wilson, supra* at 96. We find that under the circumstances, the magistrate was bound by the parties' stipulation.

In making our ruling, we note that we disagree with defendants' claims that plaintiff should have known that jurisdiction was an issue when the magistrate ordered a further hearing in October 1996. There is no indication that the magistrate ever informed the parties that it was an issue, and we further note that both parties had rested prior to the October 1996 hearing. Moreover, we find disingenuous defendants' argument that it obviously made an error when it stipulated to jurisdiction. At no time prior to magistrate's decision did defendants argue that jurisdiction was improper, and defendants never asserted this as an affirmative defense.

Reversed and remanded. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Harold Hood
/s/ William B. Murphy