

STATE OF MICHIGAN
COURT OF APPEALS

EVELYN R. THORNTON,

Plaintiff-Appellant,

v

A & P STORES,

Defendant-Appellee.

UNPUBLISHED
September 7, 1999

No. 208469
WCAC
LC No. 94-000257

Before: Kelly, P.J., and Jansen and White, JJ.

WHITE, J. (concurring in part and dissenting in part).

I agree with the majority that the WCAC exceeded its reviewing authority when it modified the magistrate's award to a closed benefit and reduced the amount of the weekly benefit.

I conclude, however, that the WCAC did not exceed its reviewing authority when it determined that the magistrate had not clearly determined whether the aggravation was of the underlying condition, or only the pain associated with it, and whether the aggravation, as opposed to the disability, was temporary. Nevertheless, the WCAC having so concluded, it was obliged to remand the matter to the magistrate for further fact-finding; the WCAC exceeded its authority by making its own findings on these issues in the absence of findings by the magistrate. *Layman v Newkirk Electric Assoc, Inc*, 458, 494, 507-509; 581 NW2d 244 (1998); *Woody v Cello-Foil Products (After Remand)*, 450 Mich 588, 597; 546 NW2d 229 (1996). Similarly, if it is unclear whether the magistrate included the holiday and vacation pay in her computation of plaintiff's gross weekly wage, the WCAC was obliged to remand on this issue as well, since it cannot on this record be determined that the benefit was, in fact, counted twice.

I would vacate the WCAC's decision and remand to the WCAC with instructions to remand the matter to the magistrate.

/s/ Helene N. White