

STATE OF MICHIGAN
COURT OF APPEALS

NIKA JUNCAJ,

Plaintiff-Appellant,

v

UNITED LEASING, INC. and NORTH RIVER
INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
February 8, 2000

No. 209132
WCAC
LC No. 97-000594

Before: Jansen, P.J., and Saad and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from the Worker's Compensation Appellate Commission (WCAC)'s dismissal of plaintiff's claim for review on the basis that plaintiff failed to timely file transcripts of his hearing before the magistrate. We reverse and remand.

On December 7, 1996, plaintiff suffered injuries in an employment-related truck accident, and subsequently sought worker's compensation benefits. On August 14, 1997, the magistrate's opinion denying plaintiff's claim with respect to wage loss benefits was mailed to plaintiff. The magistrate found that United Leasing had offered plaintiff a light duty job that plaintiff had the capability to perform, but that plaintiff inexcusably refused to accept this employment.

On August 20, 1997, plaintiff prepared a claim for review of the magistrate's decision, which claim the WCAC received on August 22, 1997. Thus, pursuant to MCL 418.861a(5); MSA 17.237(861a)(5) plaintiff had sixty days, or until October 21, 1997, to file with the WCAC the transcript of plaintiff's hearing before the magistrate. The record reveals that on September 25, 1997 plaintiff requested the transcript from the court reporter, which indicated that it would submit the transcript by November 10, 1997. On October 21, 1997, plaintiff mailed to the WCAC a request for an extension of the transcript filing deadline. The WCAC apparently received this request on October 27, 1997. The WCAC on November 7, 1997 dismissed plaintiff's claim for review because plaintiff failed to timely file the transcript and failed to timely request an extension of the filing deadline. Plaintiff moved for reconsideration, which the WCAC denied on December 19, 1997. The WCAC received plaintiff's transcript on December 8, 1997, approximately seven weeks beyond the filing deadline.

Plaintiff now challenges the WCAC's denial of his request for an extension of the transcript filing deadline, alleging that he substantially complied with the filing requirements. While the WCAC has announced that as a matter of policy it will strictly adhere to worker's compensation filing requirements, *Marshall v D J Jacobetti Veterans Facility (After Remand)*, 447 Mich 544, 548-550; 526 NW2d 585 (1994), this Court has recognized that "[t]he doctrine of substantial compliance applies to the briefing and other procedural deadlines in worker's compensation cases." *Laudenslager v Pendell Printing, Inc.*, 215 Mich App 167, 171; 544 NW2d 721 (1996). In determining whether a party has substantially complied with a worker's compensation procedural deadline, a court should consider the length of the party's delay, the reason for the party's delay, the existence of any resulting prejudice, and any other relevant factors. *Id.* This Court reviews for an abuse of discretion the WCAC's decision to dismiss a plaintiff's appeal. *Id.* at 170.

Regarding plaintiff's failure to timely file the hearing transcript, the record shows that plaintiff requested the transcript approximately one month prior to the filing deadline, but that the court reporter indicated it would be unable to submit the transcript in a timely fashion. While plaintiff may have enhanced his chances for timely filing the transcript by ordering it at the same time that he filed his claim for review of the magistrate's decision (on August 20, 1997),¹ no indication exists that plaintiff simply ignored his responsibility to obtain the hearing transcript. The fact that the court reporter could not timely prepare the transcript was otherwise outside plaintiff's control.

With respect to plaintiff's failure to timely file his request for extension of the filing deadline, plaintiff explained that on the filing deadline date of October 21, 1997 he attempted to send his request to the WCAC by facsimile, but encountered a busy telephone line. Plaintiff resorted to mailing the request on that date. The request for extension was filed with the WCAC within days of the filing deadline. We observe that had the WCAC considered the request for extension, which requests it indicated in a September 15, 1997 letter to the parties "will normally be granted on good cause shown," it appears that the court reporter's inability to timely provide the transcript would have constituted good cause supporting an extension.² See *Marshall, supra* at 550, n 9 (The Supreme Court recognized that "[w]hile the policy reasons for enforcing a deadline on the filing of transcripts may be at least as strong as those for enforcing a briefing deadline, there are circumstances in which an attorney cannot prevent the tardy filing of a timely ordered transcript."). Furthermore, plaintiff's December 8, 1997 filing of the transcript would have fallen within a sixty day extension of the filing deadline. See *id.* at 549 (noting the WCAC's policy to automatically grant 60-day extensions of the filing deadline when timely requested). Importantly, defendants acknowledge in their brief on appeal that they suffered "no specific prejudice" arising from plaintiff's failure to strictly comply with the transcript filing requirement.

Given these circumstances, we find that plaintiff substantially complied with the transcript filing deadline. In light of the brief, several-day delay in the WCAC's receipt of plaintiff's request for extension and the complete absence of any prejudice to defendants arising from the delay, we conclude that the harsh sanction of dismissal is wholly disproportionate to the relatively small procedural infraction involved in this case, and that therefore the WCAC abused its discretion in dismissing plaintiff's claim of appeal. *Laudenslager, supra* at 170, 172-173.³

Reversed and remanded to the WCAC for the filing of any necessary briefs and the WCAC's plenary consideration of the merits of plaintiff's appeal. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Henry William Saad

/s/ Hilda R. Gage

¹ We note for the record that a substitution of plaintiff's counsel occurred on September 8, 1997.

² MCL 418.861a(5); MSA 17.237(861a)(5) specifically provides that "[f]or sufficient cause shown, the commission may grant further time in which to file a transcript."

³ While defendants suggest that "here it might be a violation of defendants' due process rights to not follow the [WCAC] policy" of strict adherence to the filing requirements, see *Marshall, supra*, defendants fail to recognize the Supreme Court's implicit applications of the doctrine of substantial compliance within the context of the WCAC's strict enforcement policy. On several occasions the Supreme Court has overturned WCAC dismissals that were based on its strict enforcement of the filing deadlines. See *Tomblin v MNP Corp*, 456 Mich 871; 569 NW2d 167 (1997) (When the appealing party ordered transcripts at the time he filed his claim for review, the court reporter mailed a letter to the appealing party and the WCAC after the filing deadline indicating the transcripts would not be timely prepared, and the appealing party subsequently moved for an extension of the filing deadline over two weeks after the deadline had passed, the Supreme Court reversed the WCAC's dismissal of the appealing party's claim for review: "The WCAC abused its discretion in dismissing this case. Counsel for appellant timely filed a claim for review and timely ordered a transcript. The transcript was not timely prepared, but that was for reasons beyond the control of appellant's counsel."); *Horvath v Pegasus Tavern*, 454 Mich 912; 564 NW2d 894 (1997) (The WCAC dismissed the appealing party's claim for review when the appealing party filed a request for extension of the transcript filing deadline five days beyond the filing deadline, and the Supreme Court reversed, concluding that "[c]onsidering all the circumstances, the WCAC abused its discretion by dismissing the appeal."); *Wimbush v Noecker Vinyl & Plastics*, 453 Mich 963; 557 NW2d 314 (1996) (When the appealing party requested transcripts within the filing deadline and the court reporter apparently sent the WCAC a letter indicating that the transcripts would be filed outside the filing deadline, but the appealing party failed to request any extension until approximately six weeks after the filing deadline, the Supreme Court reversed the WCAC's dismissal of the appealing party's claim for review: "The WCAC abused its discretion in dismissing this case. Counsel for appellant timely filed a claim for review and timely ordered a transcript. The transcript was not timely prepared, but that was for reasons beyond the control of appellant's counsel.").