

STATE OF MICHIGAN
COURT OF APPEALS

WALTER E. RIEPEN,

Plaintiff-Appellant,

v

KELSEY HAYES COMPANY - MILFORD,

Defendant-Appellee.

UNPUBLISHED

April 21, 2000

No. 216955

WCAC

L.C. No. 95-000907

Before: Cavanagh, P.J., and White and Talbot, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the opinion of the Worker's Compensation Appellate Commission (WCAC) reversing the magistrate's decision that plaintiff's refusal of defendant's offer of employment was reasonable. We reverse and remand to the WCAC for proceedings consistent with this opinion.

In 1989, plaintiff suffered an injury at work. Plaintiff subsequently worked part-time until work within his restrictions was no longer available. Plaintiff received worker's compensation benefits until 1993, when he refused an offer of employment from defendant. Plaintiff challenged the resulting cessation of his worker's compensation benefits.

In its initial opinion, the magistrate found that plaintiff had a limitation in wage-earning capacity (in other words, a "disability") because of the injury and the necessary physical restrictions placed on his activity. The magistrate also found that plaintiff was "psychiatrically" disabled and this disability was also work related. On appeal, the WCAC affirmed the magistrate's findings as to plaintiff's physical condition, but reversed the magistrate's finding of a compensable work-related mental disability. The WCAC determined that the magistrate had not applied the correct legal standard in ascertaining whether plaintiff's mental disability was work related and remanded the matter to the magistrate for a proper analysis.

On remand, the magistrate found that plaintiff suffers from a continuing partial physical disability relating to the work injury and that defendant had made a bona fide offer of reasonable employment. The magistrate further found that, while plaintiff's mental condition was not work related, it constituted

good and reasonable cause for plaintiff to refuse defendant's offer of employment. As a result, the magistrate ordered defendant to pay benefits.

Subsequently, a majority of the WCAC concluded that, as a matter of law, that plaintiff was not entitled to benefits. The WCAC majority reasoned that, because plaintiff's mental condition was the sole reason plaintiff could not perform the offered employment and plaintiff's mental problems were not work-related, plaintiff was not justified in refusing the offered employment. The dissenting member of the commission opined that the magistrate appropriately resolved the case under current law.

The issue which we granted leave to decide can be summarized as whether plaintiff, who was partially disabled from a work-related injury, was justified in refusing defendant's offer of employment because of a disabling, non-work-related, mental condition. Plaintiff argues that under cases such as *Powell v Casco Nelmor Corp*, 406 Mich 332; 279 NW2d 769 (1979), his mental condition qualifies as an independent intervening event that does not operate as a bar to the receipt of benefits.

The WCAC must consider a magistrate's findings of fact conclusive if they are supported by competent, material, and substantial evidence on the whole record. Substantial evidence is defined as "such evidence, considering the whole record, as a reasonable mind will accept as adequate to justify the conclusion." MCL 418.861a(3); MSA 17.237(861a)(3). Appellate review by this Court is limited to whether the WCAC exceeded its authority or committed an error of law. MCL 418.861a(14); MSA 17.237(861a)(14).

Pursuant to the worker's compensation act, if a disabled employee receives a bona fide offer of reasonable employment and refuses that employment without good and reasonable cause, the employee is not entitled to any wage loss benefits during the period of this refusal. See MCL 418.301(5)(a); MSA 17.237(301)(5)(a). However, in *Powell*, our Supreme Court held that where an inability to continue favored work (now referred to as "reasonable employment") arises from a supervening event for which the worker is not responsible, that inability to work does not create a legal bar to the right to compensation. See *Powell, supra* at 351-352.

In the case at bar, the commission majority stated that the *Powell* holding was no longer valid law because of amendments to the statute. However, this Court specifically rejected the idea that *Powell* had been abrogated by these amendments in *Lee v Koegel Meats*, 199 Mich App 696, 702-703; 502 NW2d 711 (1993). The *Lee* Court stated that "the amendments are consistent with *Powell*, albeit adding certain glosses appropriate to the legislative process." *Id.* Consequently, we conclude that the WCAC majority committed an error of law in finding that *Powell* had been rendered nugatory.¹

In sum, if plaintiff's psychiatric condition qualifies as a supervening event under *Powell*, then, contrary to the conclusion of the commission majority, that condition alone could not bar plaintiff from receiving compensation. See *Lee, supra* at 703. The magistrate found plaintiff's psychiatric condition to represent good and reasonable cause to refuse the employment offered to him. Because the WCAC majority was under the mistaken impression that *Powell* had been abrogated, the magistrate's findings were not properly reviewed. Accordingly, we remand to the WCAC for reevaluation of the magistrate's decision.

Reversed and remanded to the WCAC for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Helene N. White

/s/ Michael J. Talbot

¹ Defendant argues that *Haske v Transport Leasing, Inc, Indiana*, 455 Mich 628; 566 NW2d 896 (1997), should control because, unlike *Powell*, *Haske* interprets the current statutory scheme. However, *Haske* did not specifically overrule *Powell*, and our Supreme Court does not favor abandonment of its prior decisions by implication. *Jaschuk v Manistee Co Rd Comm*, 205 Mich App 322, 325, n 2; 517 NW2d 318 (1994). Moreover, we believe that *Haske* and the case at bar present two different situations. *Haske* deals with whether an employee is disabled under § 301(4) of the act. In the present case, plaintiff was determined to be partially physically disabled and that determination is not at issue. Instead, the pertinent question is whether, under § 301(5) of the act, plaintiff reasonably refused employment because of his non-work-related mental disability. We further note that the *Lee* Court stated that the statutory scheme in effect at that time did not abrogate *Powell*, and we find no intervening amendments to the statutory scheme that would alter our analysis.