

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT LOWERY,

Plaintiff-Appellant,

v

MILL SHEET & COIL COMPANY and
ACCIDENT FUND COMPANY,

Defendants-Appellees.

UNPUBLISHED
February 12, 2002

No. 217880
WCAC
LC No. 97-000669

ON REMAND

Before: White, P.J., and Sawyer and Wilder, JJ.

MEMORANDUM.

This case is before us on remand from the Supreme Court for reconsideration in light of *Mudel v The Great Atlantic & Pacific Tea Co*, 462 Mich 691; 614 NW2d 607 (2000). In our earlier opinion, *Lowery v Mill Sheet & Coil Co*, unpublished opinion per curiam (Docket No. 217880, issued 12/26/00),¹ we reversed the portion of the WCAC's order that granted defendant's petition to stop benefits. We noted that the WCAC did not explain its reasons for finding that the record could not support the magistrate's credibility determination, and that the reasons given by the WCAC for rejecting plaintiff's testimony were largely directed toward the credibility of plaintiff's initial claim for benefits, and not toward the question whether there had been a change in condition so that plaintiff was no longer disabled from employment. We concluded that the WCAC's asserted bases for its credibility determination were largely collateral and stale, and that the WCAC simply substituted its credibility determination for the magistrate's.² *Id.*, slip op at 5.

Upon reconsideration in light of *Mudel, supra*, we conclude that affirmance is required.

¹ Judge Sawyer has been substituted for now retired Judge Michael Kelly, who presided in this case originally.

² Defendant filed a delayed application for leave in the Supreme Court. In lieu of granting leave to appeal, the Supreme Court remanded for reconsideration in light of *Mudel*, by order entered September 18, 2001.

Under *Mudel*, the WCAC has the power to engage in both a “qualitative and quantitative” analysis of the “whole record,” which means that the WCAC need not necessarily defer to all the magistrate’s findings of fact. *Mudel*, 462 Mich at 702-703. The WCAC concluded, based on its review of the medical deposition testimony, that Dr. Gowda was credible, and that Dr. Gowda’s testimony supported that plaintiff was able to return to work. The WCAC also determined that the magistrate’s reliance on plaintiff’s claim that he could not operate a crane was unjustified in light of the many instances in which plaintiff’s credibility was shown to be lacking. Under *Mudel*, the WCAC’s findings of fact are conclusive in the absence of fraud, if there is *any* competent evidence to support them. Such evidence was identified by the WCAC. Plaintiff has not alleged fraud, thus we are not at liberty to disturb the WCAC’s findings of fact.

Affirmed.

/s/ Helene N. White
/s/ David H. Sawyer
/s/ Kurtis T. Wilder