

STATE OF MICHIGAN  
COURT OF APPEALS

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KEVIN D. COLEMAN,

Plaintiff-Appellee,

v

MICHIGAN PAVING & MATERIALS  
COMPANY,

Defendant-Appellant.

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UNPUBLISHED

December 14, 2010

No. 294737

WCAC

LC No. 09-000042

Before: WHITBECK, P.J., and ZAHRA and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals by leave granted the decision of the Workers' Compensation Appellate Commission that affirmed the magistrate's open award of wage loss benefits. We affirm in part, reverse in part, and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff began working for defendant in 1993 performing various road construction operations. The work was seasonal, generally lasting from mid-April to mid-November each year. Plaintiff did not work during the seasonal layoff periods or "off seasons."

On July 14, 2000, plaintiff injured his back at work and was off work for three weeks. When he returned, plaintiff was unable to perform the full range of his duties. He was limited to driving the rollers. Defendant terminated plaintiff's employment on November 18, 2006, citing economic reasons.

The magistrate awarded plaintiff year-round wage loss benefits for his back injury. The WCAC affirmed. This Court granted leave to appeal.

When this Court reviews a decision of the WCAC, it does not begin by considering the magistrate's decision, but looks first to the WCAC's decision. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 701, 703; 614 NW2d 607 (2000). If the WCAC did not misapprehend its administrative appellate role and as long as there exists any evidence in the record supporting the WCAC's decision, then this Court must treat the WCAC's factual decision as conclusive. *Id.* at 703-704, 709-710. This Court reviews questions of law in any WCAC order de novo. *DiBenedetto v West Shore Hosp*, 461 Mich 394, 401; 605 NW2d 300 (2000). "[A] decision of

the WCAC is subject to reversal if it is based on erroneous legal reasoning or the wrong legal framework.” *Id.* at 401-402.

Defendant argues that plaintiff failed to offer evidence of other jobs in the economy that he might be able to perform, or that he could not obtain any jobs for which he was qualified and capable of performing. Defendant also argues that the WCAC improperly substituted its judgment for that of the magistrate and found that plaintiff was totally disabled. We disagree.

To establish a disability, an employee must prove that a work-related injury caused a reduction in his maximum wage earning capacity in work suitable for the employee’s qualifications and training. *Stokes v Chrysler LLC*, 481 Mich 266, 282; 750 NW2d 129 (2008); *Sington v Chrysler Corp*, 467 Mich 144, 155; 648 NW2d 624 (2002). Once a disability has been established, the claimant must then show a wage loss that is attributable to that disability. *Id.*

The WCAC’s conclusion that plaintiff established a total disability under *Stokes* was supported by the evidence. In addition to plaintiff’s testimony that he is no longer able to perform road construction work, which is the job that paid him maximum wages, his doctor opined that plaintiff was totally unable to engage in regular employment. *Stokes* imposes no absolute requirements for the form of proof that a claimant must present. Rather, the *Stokes* decision requires some modicum of proof as a means to assess employment opportunities to which plaintiff’s qualifications and training might translate, and to establish that “there are no reasonable employment options available for avoiding a decline in wages.” *Stokes*, 481 Mich at 282. Because the record supported the WCAC’s determination that plaintiff carried his burden of proof, and there is no evidence of fraud, the WCAC’s determination is conclusive. *Mudel*, 462 Mich at 701.

With respect to defendant’s second argument, the WCAC did not improperly substitute its judgment for the magistrate’s judgment. MCL 418.861a(14) authorizes the WCAC to “make independent findings of fact, regarding issues that have been addressed or overlooked by the magistrate, as long as the record is sufficient for administrative review and does not prevent the WCAC from reasonably exercising its reviewing function without resort to speculation.” *Mudel*, 462 Mich at 730. The WCAC relied on medical reports, plaintiff’s doctor’s testimony, and plaintiff’s own testimony, in support of its finding that plaintiff is totally disabled. Accordingly, the WCAC’s disability determination is conclusive. *Mudel*, 462 Mich at 701.

Defendant also argues that plaintiff was not entitled to year-round benefits because any wage loss in the seasonal layoff months was not causally linked to his disability. We agree.

An employee seeking worker’s compensation benefits “must establish a work-related disability under MCL 418.301(4) and demonstrate that the disability resulted in wage loss.” *Romero v Burt Moeke Hardwoods, Inc*, 280 Mich App 1, 8-9; 760 NW2d 586 (2008) (emphasis added; citation omitted). A reduction in wage earning capacity due to a work-related injury is, by definition, a “disability,” but “[t]he establishment of disability does not create a presumption of wage loss.” MCL 418.301(4). The employee’s unemployment or reduced wages must be causally linked to the work-related disability. *Romero*, 280 Mich App at 8-9.

The WCAC determined that plaintiff's status as a seasonal employee did not disentitle him from benefits during the seasonal layoff months. Although this statement is true, plaintiff still must show that he suffered wage loss that was causally linked to his work-related injury. *Romero*, 280 Mich App at 8-9. The WCAC failed to consider the causation element under *Romero*.

Plaintiff cites no record evidence to suggest that his wage loss in the "off season" was attributable to any factor other than the seasonal layoff. Regardless of his injury, plaintiff would not have been working for defendant in the months when defendant does not perform road construction operations. Plaintiff offered no evidence that he would have been working elsewhere during that time. Plaintiff had a history of not working during the seasonal layoff months. Because plaintiff had the burden of proving his entitlement to benefits under MCL 418.304(1), and he offered no evidence of a causal link between his work-related injury and wage loss in the seasonal layoff months as required by *Romero*, defendant was entitled to a reduction in its liability for wage loss benefits during that period.

We affirm the WCAC's decision with respect to its disability analysis, reverse with respect to its wage loss analysis, and remand to the magistrate for a determination of plaintiff's wage loss benefits that does not include the seasonal layoff period.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck  
/s/ Brian K. Zahra  
/s/ Karen M. Fort Hood