

STATE OF MICHIGAN
COURT OF APPEALS

WINIFRED M. BROCK,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

UNPUBLISHED
October 13, 2011

No. 292938
WCAC
LC No. 04-000346

Before: FORT HOOD, P.J., and HOEKSTRA and METER, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from a decision of the Workers' Compensation Appellate Commission (WCAC), affirming a magistrate's decision denying plaintiff's claim for wage loss benefits. This Court originally denied plaintiff's application "for lack of merit in the grounds presented." *Brock v Gen Motors Corp*, unpublished order of the Court of Appeals, entered September 17, 2009 (Docket No. 292938). On reconsideration, however, this Court granted the application "limited to whether the WCAC's decision must be vacated because it does not reflect a true majority opinion." *Brock v Gen Motors Corp*, unpublished order of the Court of Appeals, entered October 22, 2009 (Docket No. 292938). We affirm.

Whether the WCAC issued a reviewable "final decision" pursuant to MCL 418.274(8) is a question of law, which we review de novo. *Brackett v Focus Hope, Inc*, 482 Mich 269, 275; 753 NW2d 207 (2008).

In *Findley v DaimlerChrysler Corp*, 289 Mich App 483, 494; 797 NW2d 175 (2010), lv pending 488 Mich 1034 (2011), this Court, citing MCL 418.274(8) and relying on *Aquilina v Gen Motors Corp*, 403 Mich 206; 267 NW2d 923 (1978), determined that a decision of the WCAC is not a "final decision" reviewable by this Court unless it is a "true majority decision." "[A] true majority decision is one in which at least a majority of the commissioners agree regarding the material facts and the ultimate outcome." *Findley*, 289 Mich App at 495.

In the present case, the WCAC issued a lead opinion authored by one commissioner in which a second commissioner concurred in the result. The third commissioner issued a separate opinion "concurring in result in part and dissenting in part." The lead opinion and the separate concurrence/dissent indicate a point of agreement concerning the critical facts, the legal reasoning, and the ultimate outcome. The magistrate found that plaintiff failed to make a prima facie showing of disability under *Stokes v DaimlerChrysler, LLC*, 481 Mich 266, 297-298; 750

NW2d 129 (2008), which identified four steps that the claimant must follow. The magistrate found that plaintiff failed to present evidence regarding the first two—specifically, she “failed to demonstrate that she disclosed all of her qualifications and training” and she “failed to consider other jobs that pay her maximum pre-injury wage to which her qualifications and training translate.” The lead commissioner agreed, stating:

The magistrate correctly determined that plaintiff failed to prove a disability under *Stokes*. The magistrate noted the glaring deficiencies in plaintiff’s evidence. . . . Without that evidence, plaintiff cannot prove a disability.

The concurring/dissenting commissioner agreed that plaintiff “failed to define the field of work that pays plaintiff’s maximum wage earning capacity that is suitable to her qualifications and training[.]” “On that basis alone,” the concurring/dissenting commissioner “concur[red] in the result of the lead opinion to enter an order modifying the order entered by the Board of Magistrates[] . . . to delete the award of wage loss benefits.” Thus, both of these commissioners agreed that plaintiff failed to satisfy one of the necessary steps required under *Stokes*, 481 Mich at 297-298. Although their opinions diverged concerning the correctness of the magistrate’s analysis of causation, with respect to the failure to satisfy *Stokes*, they agreed regarding “the material facts and the ultimate outcome.” *Findley*, 289 Mich App at 495.

Although the concurring/dissenting commissioner did not sign the order that denied plaintiff’s claim for wage loss benefits, he expressly agreed with the lead opinion’s denial of wage loss benefits. The signatures on the order do not control our determination whether a majority of the commissioners agreed regarding the material facts and the ultimate outcome.

In summary, the WCAC reached a true majority decision to deny wage loss benefits for the reason that plaintiff failed to satisfy one of the steps necessary to establish a prima facie case of disability under *Stokes*, 481 Mich at 297-298. Accordingly, plaintiff is not entitled to relief on this issue.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Joel P. Hoekstra
/s/ Patrick M. Meter