

STATE OF MICHIGAN
COURT OF APPEALS

PAMELA SUNDHOLM

Plaintiff-Appellant,

v

MITCHELL CORPORATION,

Defendant-Appellee.

UNPUBLISHED
October 11, 1996

No. 186562
LC No. 92-000933

Before: Doctoroff, C.J., and Hood and Bandstra, JJ.

PER CURIAM.

This case involves a claim by plaintiff that she suffered a disability based on carpal tunnel syndrome during her employment with defendant. The magistrate denied her benefits, finding that she had not met her burden of proof. The WCAC affirmed the magistrate's decision. Plaintiff filed an application for leave to appeal, which was granted by this Court. We affirm.

Defendant, Mitchell Corporation, which manufactured automobile upholstery and seat covers, had employed plaintiff since 1973. Plaintiff had performed several jobs for defendant, including work on the bucket line, work in the warehouse, and operating a press. Her various jobs included a great deal of hand-intensive work, and she wore wrist bands when she worked. In 1986, while working on the bucket line, plaintiff informed her supervisor that she was experiencing pain in her wrists and forearms. After defendant provided plaintiff with a topical creme which she applied to her wrists, she continued her work. The evidence did not show that she sought any further treatment, nor did she request or receive favored work. In 1988, the bucket line closed and plaintiff was transferred to the warehouse, where she remained until January of 1989. At that time, defendant's plant closed and plaintiff was laid off.

In January of 1991, plaintiff filed a petition claiming a disability due to bilateral carpal tunnel syndrome. At the hearing before the worker's compensation magistrate, plaintiff stated that her condition continued to worsen after she stopped working. She testified that she had constant pain and had difficulty doing housework. Three physicians who had examined plaintiff testified at the hearing by way of deposition. Each acknowledged that plaintiff's symptoms were suspicious of carpal tunnel

syndrome. However, the physicians disagreed as to whether plaintiff's symptoms were work-related and whether her subjective complaints constituted a disability. Plaintiff's treating physician opined that plaintiff suffered a work-related injury that prevented her from returning to work. However, another examining physician found that plaintiff had full range of motion in all joints of the upper extremities, and a third physician concluded that plaintiff's condition was not related to her employment with defendant.

At the conclusion of the hearing, the magistrate stated that plaintiff had not sustained her burden of proving the existence of a work-related injury. The magistrate asked the defense counsel to prepare a proposed opinion. In October of 1992, the magistrate issued an opinion denying workers compensation benefits to plaintiff. The first portion of the opinion, containing a recitation of the facts of the case, was taken virtually verbatim from the proposed opinion drafted by defendant's attorney. However, the analysis section of the opinion was written by the magistrate. The opinion relied largely on the testimony of the physician who found that plaintiff's condition was not related to her employment with defendant. The magistrate also found that plaintiff's testimony was less than credible and was contradictory as to the "onset, nature and extent of her claimed disability."

Plaintiff appealed the magistrate's decision to the WCAC, arguing that the magistrate erred in having defendant's attorney prepare the proposed opinion. Plaintiff also contended that the magistrate's decision was not supported by competent, material and substantial evidence on the record. The WCAC affirmed, finding that the opinion properly set forth the magistrate's own reasons for the decision and that the findings were supported by the requisite evidence. The WCAC noted that it would not displace the magistrate's choice between conflicting views when a reasonable basis existed for the decision. Further, the WCAC deferred to the magistrate's determination regarding credibility because it found that the determination had support in the record.

Review by this Court consists of a review of the findings of fact made by the WCAC, not those made by the magistrate. The findings made by the WCAC are conclusive if there is any competent evidence in the record to support them. *Holden v Ford Motor Company*, 439 Mich 257, 263; 484 NW2d 227 (1992). With regard to the requirements of a magistrate's opinion, MCL 418.847(2); MSA 17.237(2) provides as follows:

For cases in which an application for a hearing under this section is filed after March 31, 1986, the worker's compensation magistrate, in addition to a written order, shall file a concise written opinion stating his or her reasoning for the order including any findings of fact and conclusions of law. The order and opinion shall be part of the record of the hearing.

The statute does not prohibit the adoption of an opinion by a proposed party. MCL 418.847(2); MSA 17.237(2) merely requires that the magistrate's opinion state reasons for the decision and findings of fact and conclusions of law. The magistrate's opinion in this case, which was partially drafted by defendant's attorney, complied with the statutory requirements. The opinion indicated that the decision to deny benefits was based on the deposition testimony of one of the physicians who examined plaintiff and on the lack of credible testimony from plaintiff. Although we do not wish to

encourage magistrates to solicit proposed opinions from the attorneys, the opinion in this case satisfied the statute. Accordingly, we affirm the WCAC's finding that the magistrate's opinion complied with MCL 418.847(2); MSA 17.237(2).

Plaintiff next contends that the WCAC erred in finding that the magistrate's decision regarding plaintiff's credibility was supported by competent, material and substantial evidence on the record. We disagree. Plaintiff originally stated that she was given wristbands in response to her complaints of wrists pain. However, she later admitted that she began wearing wrist bands well before she began complaining of pain in her wrists. At one point, plaintiff testified that she would not have been able to work much longer, even if the plant had remained open. However, she also testified that, had the plant remained open, she would have continued to work. The WCAC correctly deferred issues of credibility to the magistrate, who was in a better position to make such determinations. *Palmer v IIT Hancock*, 189 Mich App 509, 517; 474 NW2d 136 (1991). In this case, there was competent evidence to support the WCAC's opinion affirming the magistrate's finding that plaintiff's testimony lacked credibility.

In addition, the WCAC correctly noted that it could not disturb the magistrate's choice of one medical opinion over another conflicting opinion, where a rational basis existed for the choice. Plaintiff did not argue that the magistrate should not have relied on the medical testimony, but merely disagreed with the physician's conclusions. The testimony of a single expert can be sufficient to constitute "substantial" evidence. *Palmer, supra*. Thus, there was a rational basis to support the magistrate's decision, and this Court must affirm the WCAC's finding that the magistrate's opinion was supported by the requisite evidence. *Holden, supra*.

In this case, it is clear that there was competent evidence supporting the WCAC's finding that the conclusions of the magistrate were supported by competent, material and substantial evidence. Accordingly, we affirm.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Harold Hood
/s/ Richard A. Bandstra