STATE OF MICHIGAN

COURT OF APPEALS

BOBBIE JEAN WHITE,

Plaintiff-Appellant,

v

CAPITOL AREA COMMUNITY SERVICES and ACCIDENT FUND COMPANY,

Defendants-Appellees.

UNPUBLISHED
May 15, 1998

No. 198153
WCAC
LC No. 92-000469

Before: Markey, P.J., and Bandstra and Markman, JJ.

PER CURIAM.

Plaintiff appeals by leave granted a decision of the Worker's Compensation Appellate Commission (WCAC) that reversed a magistrate's open award of benefits. The magistrate found that plaintiff had a right shoulder condition that became disabling at least by March 28, 1990, and awarded benefits from that day forward. The WCAC reversed because it found that plaintiff's "very limited" physical restriction, which limits the type of work she can perform, did not limit plaintiff's ability to earn wages within her qualifications and training. The WCAC therefore concluded that plaintiff was not disabled. We reverse.

The WCAC did not reverse the magistrate's factual finding that plaintiff was no longer physically capable of performing her job as a bus driver as of March 28, 1990 in the manner she had for seventeen years previously. Further, this finding was supported by competent, material, and substantial evidence on the whole record. MCL 418.861a(3); MSA 17.237(861a)(3). Instead, the WCAC reversed the magistrate because it viewed the evidence as showing that plaintiff could still drive a bus that did not require manually operating a door with her right arm. It was the WCAC's view that plaintiff could not be deemed disabled merely because she could not perform some particular job within her qualifications and training, and because plaintiff had not shown that her limited physical restriction limited her ability to earn wages within her qualifications and training.

Since the WCAC decided this case, the dispositive question has been answered by our Supreme Court in *Haske v Transport Leasing, Inc*, 455 Mich 628; 566 NW2d 896 (1997). The

Court in *Haske* held that an employee is disabled within the meaning of MCL 418.301(4); MSA 17.237(301)(4) if a personal injury or work-related disease prevents the employee from performing any work, "even a single job," within the employee's qualifications and training. *Haske*, *supra* at 634. Under *Haske*, the reasoning of the WCAC in the present case was erroneous. The dispositive facts under *Haske*, as determined by the magistrate, based upon sufficient evidence in the record, are that plaintiff cannot perform the job that she performed for defendant Capitol Area Community Services (hereinafter "defendant") for seventeen years because of an injury or disease that was caused or aggravated by her employment.

Defendant argues that plaintiff is nevertheless not entitled to benefits because plaintiff did not establish a causal link between her work-related shoulder injury and her loss of wages. The legal basis for defendant's argument is *Haske's* recognition that an employee must prove that his or her loss of wages was caused by the work-related injury. *Id.* at 661-662. *Haske* recognized that an employer can refute the causal connection with evidence that factors other than the injury are the cause of an employee's unemployment, such as an ailment which is unrelated to employment or malingering. *Id.* at 661 n 38.

Defendant argues that plaintiff's unemployment is due to a kidney condition that is unrelated to plaintiff's employment. It is clear that the kidney condition was unrelated to plaintiff's employment and that it caused plaintiff to stop working. The magistrate well recognized these circumstances. However, the magistrate also recognized that the evidence showed that plaintiff's kidney problem eventually did not prevent her from returning to work. More significantly, the magistrate found that plaintiff was experiencing shoulder difficulties when she last worked and that those difficulties increased to the point of disability by the time Dr. Fuksa examined plaintiff on March 28, 1990. Thus, the magistrate found that plaintiff was unemployed because of her shoulder condition and not because of her kidney condition. The evidence amply supported the magistrate's findings. Moreover, as noted earlier, the WCAC did not reverse the magistrate on the basis that plaintiff was not working because of her kidney condition.[1]

There is no factual determination remaining regarding a compensable disability. The WCAC reversed because it used an incorrect standard for disability. The WCAC did not find fault with the magistrate's findings. The magistrate's decision is consistent with *Haske*. The decision of the WCAC is reversed, and the magistrate's decision is reinstated.

/s/ Jane E. Markey
/s/ Richard A. Bandstra
/s/ Stephen J. Markman

[1] Nor does the record support the suggestion that plaintiff was malingering or that plaintiff retired and then filed a worker's compensation claim as an afterthought.