

STATE OF MICHIGAN
COURT OF APPEALS

TRAVIS C. REECE,

Plaintiff-Appellee/Cross-Appellant,

v

EVENT STAFFING and ACCIDENT FUND
INSURANCE COMPANY OF AMERICA,

Defendants-Appellants/Cross-
Appellees.

UNPUBLISHED

July 30, 2009

No. 284451

WCAC

LC No. 07-000020

Before: Wilder, P.J., and Meter and Servitto, JJ.

PER CURIAM.

Defendant employer and its insurer appeal by leave granted from an order of the Worker's Compensation Appellate Commission (WCAC), which affirmed, with a modification, a decision of the magistrate granting plaintiff an open award of disability benefits for a work-related shoulder condition. We affirm in part, reverse in part, and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

While playing professional football for the Grand Rapids Rampage of the Arena Football League, plaintiff sustained repeated injuries to his right shoulder during tackles. The magistrate found the combined effect of these shoulder injuries to be disabling under MCL 418.301(4) and *Sington v Chrysler Corp*, 467 Mich 144; 648 NW2d 624 (2002). The magistrate then calculated plaintiff's average weekly wage (AWW) by employing the formula found in MCL 418.371(3). The magistrate did not include within his AWW calculations the compensation plaintiff received while attending pre-season training camp or the weeks that plaintiff attended training camp. Further, the magistrate found that plaintiff was entitled to wage-loss benefits during the off-season, even though plaintiff would not otherwise be earning wages playing professional football or engaged in other wage-earning employment. The WCAC affirmed the magistrate's decision, with the modification that plaintiff's AWW must include the three weeks of training camp plaintiff attended in January 2005.

Defendants argue that the magistrate and the WCAC erred, as a matter of law, when they concluded that plaintiff, a professional football player, was entitled to wage-loss benefits during the off-season even though he would not have been otherwise earning wages during that time. We exercise de novo review of questions of law implicated in any final order of the WCAC. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 697 n 3; 614 NW2d 607 (2000).

MCL 418.301(4) provides:

As used in this chapter, “disability” means a limitation of an employee’s wage earning capacity in work suitable to his or her qualifications and training resulting from a personal injury or work related disease. *The establishment of disability does not create a presumption of wage loss.* [Emphasis added.]

Pursuant to the last sentence of subsection (4), in order to be entitled to wage-loss benefits, a claimant must demonstrate a clear connection between wage loss and work-related injury. *Romero v Burt Moeke Hardwoods, Inc*, 280 Mich App 1, 8-9; 760 NW2d 586 (2008). This requisite connection is not shown when plaintiff’s lost wages are attributable to the end of the football season, rather than his shoulder injury. Accordingly, the WCAC erred as a matter of law when it awarded wage loss benefits for time in the off-season when plaintiff would not otherwise be earning wages. We reverse the decision of the WCAC in this regard and remand the matter to the magistrate for a determination of what portion of plaintiff’s lost wages are because of the end of the football-playing season rather than his disability; the WCAC shall adjust the award accordingly.

Our resolution of this question renders our discussion of defendants’ remaining issue unnecessary.

Finally, with regard to plaintiff’s issue on cross-appeal, the WCAC’s inclusion in the AWW calculation the wages earned by plaintiff during pre-season training camp, and the weeks he spent participating in the camp, was supported by the record evidence. *Mudel, supra*, 462 Mich at 703-704.

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

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Deborah A. Servitto