

Court of Appeals, State of Michigan

ORDER

Tammy L Gombar v Complete Carpet Company

Docket No. 316908

LC No. 13-000898-AE

Jane M. Beckering
Presiding Judge

David H. Sawyer

Joel P. Hoekstra
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting the application for leave to appeal, the Court VACATES the June 3, 2013 order of the Kent Circuit Court, which affirmed the decision of the Michigan Compensation Appellate Commission. The circuit court grossly misapplied the substantial evidence standard of review in two dispositive regards. *Motycka v General Motors Corp*, 257 Mich App 578; 669 NW2d 292 (2003). First, whether claimant provided documentation from her doctor showing that she suffered from IBS and that this medical condition was caused by work-related stress has no logical connection to the issue of whether claimant was sufficiently mistreated by her employers to justify her resignation. Thus, claimant's medical condition was immaterial to a resolution of the question before the MCAC and the circuit court clearly erred when it failed to acknowledge that the MCAC supported its decision, in significant part, with immaterial evidence. Second, the circuit court clearly erred when it failed to recognize that the MCAC's finding that claimant had not complained to members of management about the verbal abuse to which she was subjected was not supported by substantial evidence. A review of the record reveals that claimant testified that she complained at least 20 times to members of management about the abuse inflicted upon her by the manager of the employers' business and that one of the employers acknowledged that claimant had complained to her about the manager's conduct. For these reasons, the decision of the MCAC was not supported by competent, material and substantial evidence on the whole record, MCL 421.38(1), and the circuit court clearly erred in reaching a contrary conclusion. We remand for REINSTATEMENT of the decision of the hearing referee. This order has immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.

Sawyer, J., would deny the application for leave to appeal.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on



JAN 22 2014

Date

Jerome W. Zimmer Jr.
Chief Clerk