

STATE OF MICHIGAN
COURT OF APPEALS

EUGENE E. BUNT,

Plaintiff-Appellant,

v

TOTAL PETROLEUM, INC and HARTFORD
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

June 10, 1997

No. 185743

Worker's Compensation

Appellate Commission

LC No. 93-0313

Before: Young, P.J., and Taylor and R. C. Livo*, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the opinion and order of the Worker's Compensation Appellate Commission modifying the magistrate's award of disability benefits and entering a closed award. We remand.

Plaintiff was employed as a semi-truck driver by defendant Total Petroleum. On February 13, 1990, defendant was involved in an accident when a drunken driver crossed into plaintiff's lane and struck him. The other driver was killed, and plaintiff sustained injuries to his hand, wrist, elbow, ankle and back. Plaintiff received worker's compensation benefits, and defendant requested that he return to work in December 1990.

Plaintiff attempted to drive a truck for three weeks, but reported continuing problems with his wrist and back. After vocational evaluation, defendant offered him a position as a gas station manager. Plaintiff received four hours training, and stated that he could not handle the job. Plaintiff did not report back for work, and filed a claim for worker's compensation benefits.

At the hearing, conflicting testimony was admitted as to the scope of plaintiff's injury, and his physical and psychological ability to perform the station manager's job. Plaintiff presented testimony that he would not be able to perform the manager's job because of the prolonged standing and

* Circuit judge, sitting on the Court of Appeals by assignment.

repetitive motions involved. Plaintiff's vocational expert testified that plaintiff could not perform the job because of the stress level. Defendant's training manager testified that the training program involved 192 to 196 hours of training over a four week period. He extended the training program for plaintiff to ease him back into a full day of work. He described the manger's job as light duty, and stated that plaintiff would be accommodated by limiting any repetitive bending and lifting, and allowing plaintiff the option to sit or stand.

The magistrate concluded that plaintiff was disabled by a psychiatric condition, and that defendant failed to establish that plaintiff was offered the necessary accommodations to perform the station manager job. Defendants appealed to the Worker's Compensation Appellate Commission, which modified the magistrate's decision to close the award. The WCAC concluded that the station manager job was a bona fide offer of reasonable employment, which plaintiff rejected without reasonable cause. The job did not pose a clear and proximate threat to plaintiff's health and safety. This Court granted plaintiff's application for leave to appeal the decision of the WCAC.

This Court's review in worker's compensation cases is limited to questions of law. Findings of fact made by the WCAC are conclusive on appeal, absent fraud, if there is any competent evidence in the record to support them. A decision of the WCAC is subject to reversal if the WCAC operated within the wrong legal framework or its decision was based on erroneous legal reasoning. *Matney v Southfield Bowl*, 218 Mich App 475, 484; 554 NW2d 356 (1996).

MCLA 418.301(5)(a); MSA 17.237(301)(5)(a) provides:

If an employee receives a bona fide offer of reasonable employment from the previous employer, another employer, or through the Michigan employment security commission and the employee refuses that employment without good and reasonable cause, the employee shall be considered to have voluntarily removed himself or herself from the workforce and is no longer entitled to any wage loss benefits under this act during the period of refusal.

In *Pulver v Dundee Cement Co*, 445 Mich 68, 71; 515 NW2d 728 (1994), the Supreme Court held that whether an employee's refusal of a bona fide offer of reasonable employment is for good and reasonable cause is a question of fact committed to the discretion of the WCAC. The burden is on defendant to show that it offered plaintiff work that he could perform. Both parties' actions are to be judged against standards of good faith and reasonableness. *Id*, 77.

There is competent evidence to support the conclusion of the commission that plaintiff unreasonably rejected defendant's offer of employment. There is no showing that the offer was not made in good faith or that it was unreasonable. Rehabilitation specialist Merrie Busch testified that plaintiff would not be required to do repetitive bending or heavy lifting, and that he would be given the option to sit or stand on the job. Plaintiff was to be gradually phased into full employment, but he quit the training program after completing only 4 hours of the 196 hour program. The commission's conclusion that plaintiff rejected a bona fide offer of reasonable employment without reasonable cause is supported by competent evidence. The decision was proper.

However, plaintiff contends that he should not be subject to a permanent forfeiture of benefits for an unreasonable refusal of defendant's employment offer. Plaintiff argues that defendant withdrew the offer of employment when it notified plaintiff that it considered him a voluntary quit, and thus plaintiff's entitlement to benefits was reinstated when the offer was withdrawn. See *Derr v Murphy Motors Freight Lines*, 452 Mich 375, 387, 392; 550 NW2d 759 (91996); cf. *Hartsell v Richmond Lumber Co*, 154 Mich App 523, 533-534; 398 NW2d 456 (1986) (an injured employee's entitlement to benefits is reinstated if an employer withdraws its offer of favored work). Although plaintiff is correct that the Act does not impose a permanent forfeiture of benefits, the WCAC did not resolve whether defendant withdrew the offer or whether plaintiff's entitlement to benefits should have been reinstated. We therefore remand to the WCAC for the limited purpose of resolving this question.

Remanded. We do not retain jurisdiction.

/s/ Robert P. Young, Jr.
/s/ Clifford W. Taylor
/s/ Robert C. Livo