

STATE OF MICHIGAN  
COURT OF APPEALS

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MARY L. TAYLOR,

Plaintiff-Appellant,

v

SCHOOLCRAFT COLLEGE,

Defendant-Appellee.

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UNPUBLISHED

January 3, 2003

No. 239048

WCAC

LC No. 01-000273

Before: Kelly, P.J., and Jansen and Donofrio, JJ.

Kelly, P.J. (*dissenting*).

I respectfully dissent. I disagree with the majority's opinion that defendant's second letter dated May 20, 2000 did not constitute a "bono fide offer of reasonable employment" pursuant to MCL 428.301(5).

In its opinion modifying the magistrate's open award of benefits, the WCAC reasoned:

The law requires a defendant to provide sufficiently specific information such that the employee has a reasonably clear understanding of the work duties being proposed. Such information was provided in this case. Plaintiff was explicitly told what she would be doing in the proposed employment: Taking money at the cash register with the ability to sit. Plaintiff had full knowledge as to whether the proposed job constituted reasonable employment . . . .

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. . . [T]here was a precise description of the proposed work duties. Since the actual work that was to be performed was detailed in the second employment offer, there was no need to identify the restrictions of the doctor. The letter simply informed plaintiff that the explicitly described proposed work duties were within the doctor's restrictions, a matter of surplusage to the key information already provided. Defendant's second letter provided all of the information necessary for plaintiff to understand her obligations and proposed job duties.

The WCAC addressed plaintiff's additional argument that there existed a question whether she could perform the offered work because the second letter referenced only sitting. The WCAC determined:

[B]y the very nature of the job, the second letter proposed a sit option. The plaintiff knew the setting in which the job was to be performed and cannot reasonably argue that the indicated job would have required her to stay seated at all times. The great weight of the medical evidence indicates that plaintiff was capable of performing the job offered on May 26 . . . .

If there is any evidence supporting the WCAC's factual findings and if it did not misapprehend its administrative appellate role in reviewing the decision of the magistrate, then this Court must treat the WCAC's factual findings as conclusive. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 709-710; 614 NW2d 607 (2000). In this case, the evidence supports the WCAC's factual findings. Moreover, the record is devoid of any indication that the WCAC misapprehended its administrative appellate role. Thus, the WCAC's decision should be affirmed.

The second letter to plaintiff informed her that she would be performing a food service worker job, specifically as a cashier. This is precisely the job plaintiff performed before her disability. It indicated that the job would involve sitting and would be "within Dr. Fritz's restrictions." As noted by the majority, "Dr. Fritz instructed the plaintiff that she alternate sitting and standing in any work that she performed and that she not lift more than twenty pounds." Clearly, this information complies with the requirement that defendant inform plaintiff of the kind of work she will perform and the nature of the position. *Price v City of Westland*, 451 Mich 329, 337; 547 NW2d 24 (1996). Thus, the WCAC correctly determined that defendant made a sufficient bona fide offer of reasonable employment to plaintiff.

Furthermore, although plaintiff argues that the job could not be performed in a seated position and that she could not sit all day long, the WCAC correctly determined that, in light of plaintiff's knowledge of the position, defendant offered the option to alternate between sitting and standing. Although plaintiff asserts that this implication is improper, I believe that this implication is reasonable and is supported by the record.

Plaintiff also challenges the reasonableness of the offer on the grounds that even if it complied with Dr. Fritz's restrictions, Dr. Fritz considered only plaintiff's knee problems, not her back problems. However, plaintiff fails to present a discussion comparing Dr. Fritz's restrictions with those of any other physician to demonstrate that there is a difference in those restrictions and compliance with Dr. Fritz's restrictions is not sufficient. Moreover, Dr. Fritz, Dr. Grant Hyatt, and Dr. Michael Geoghegan all concluded that plaintiff should alternate between sitting and standing. Dr. Fritz additionally restricted plaintiff from lifting no more than twenty pounds. Dr. Hyatt indicated that plaintiff should perform sedentary work, with the capacity to sit, stand or change position at will. Dr. Geoghegan imposed restrictions precluding plaintiff from climbing stairs or ladders, squatting and kneeling, as well as requiring intermittent sitting and standing. Plaintiff has failed to discuss the fact that these doctors' restrictions were all similar, and the offered job clearly fits within those restrictions.

Finally, I disagree that Dr. Fritz's restrictions must be specifically set forth in the offer of employment. Plaintiff has provided no authority for the proposition that the physician's restrictions must be specifically stated, because no such authority exists. The determination of whether an offer of employment is reasonable is a factual issue. *Price, supra* at 336. The offer must be independently examined to determine if it meets the criteria of a bona fide offer. The

mere fact that the doctor's restrictions were not stated on the offer should not, and in this case does not, affect the reasonableness of that offer.

Because plaintiff fails to persuasively demonstrate that the WCAC erroneously concluded that that defendant made a bona fide offer of reasonable employment to plaintiff, I would affirm the decision of the WCAC.

/s/ Kirsten Frank Kelly