

STATE OF MICHIGAN
WORKER'S COMPENSATION APPELLATE COMMISSION

DEBORAH GOFF,
PLAINTIFF,

V

DOCKET #02-0529

TENDERCARE GREEN VIEW,
ROYAL INSURANCE COMPANY OF AMERICA,
DEFENDANTS.

APPEAL FROM MAGISTRATE WAGNER.

PATRICK M. CARMODY, JR. FOR PLAINTIFF,
TIMOTHY L. HASS FOR DEFENDANTS.

OPINION

LESLIE, COMMISSIONER

Plaintiff appeals the decision of Magistrate Michael D. Wagner granting plaintiff an open award, but suspending weekly benefits because plaintiff unreasonably refused to perform reasonable employment. The sole issue on appeal is whether the magistrate properly found plaintiff was not justified in refusing to continue to perform work which was within her physical abilities. We affirm.

In suspending plaintiff's benefits the magistrate wrote:

The significant issue is whether or not Plaintiff reasonably refused favored work and is disqualified from receiving wage loss benefits as a result of that refusal. Based upon a review of Plaintiff's testimony as well as various exhibits describing the Bridge job and the testimony of the director of nursing, I find that she has indeed refused light duty work that was within her capacity to perform. Although there was a claim at trial by Plaintiff that the workers' compensation carrier did not pay workers' compensation benefits on timely basis and she was forced to leave Michigan and go to Missouri, I do not find that contention credible. Testimony established that the reason Plaintiff gave to the employer for leaving was because of marital problems and witness Jimila Suszek, director of nursing, stated that Plaintiff made no complaints about doing the Bridge job and Plaintiff herself testified that she in fact could do the Bridge job.

Therefore, I find that Defendant is responsible for the payment of wage loss benefits as the stipulated compensation rate of \$ 167.65 from 9/7/01 to March 4, 2002, the date of Plaintiff's letter resigning her employment for personal reasons. Defendants are to be given credit for worker's compensation paid and wages earned during that period. No further wage loss benefits are owed beyond the date of Plaintiff's resignation from employment. Defendants are still responsible for reasonable medical

treatment related to Plaintiff's back condition and that includes the treatment of Dr. Coombs and Dr. Benson, as well as reasonable medical treatment that Plaintiff continues to receive in Missouri subject to the rules of cost containment.¹

Plaintiff combines a legal argument with a reargument of the facts, asserting her circumstances justify quitting work and moving in with relatives in a different state. Plaintiff states:

In this case, Mrs. Goff testified, without contradiction, that after her initial injury did not receive worker's compensation benefits for over two (2) months. Further, after she returned to work there was another period of time an excess of thirty (30) days that she went without wage loss payments. Finally, Ms. Goff testified that while she received some checks for a while the checks stopped coming again.

It is not the Plaintiff's contention that the violation of the statute, in and of itself, will always constitute good and reasonable cause, as required by MCLA 418.302 (5)(a). However, it is the effect of the non-payment of wage loss benefits that establish in these circumstances good and reasonable cause. The effect of the non-payment of compensation was that the Plaintiff had insufficient monies to pay her bills. One of the bills that could not be paid was her rent. The effect was that she lost her apartment. With nowhere to live the Plaintiff made the only reasonable choice move in with relatives. However, her only relative, her mother, lived in Missouri. That makes the Plaintiff's move out of the State of Michigan good and reasonable cause for refusing the reasonable employment that was offered.²

Defendants respond:

At trial and in her appeal brief, Ms. Goff attempts to argue that the reason she left her employment was not because of personal problems, but because her worker's disability compensation checks for differential benefits were not being paid. However, when pressed on cross-examination, she admitted that no checks were more than 30 days past due and that there were only a couple of times after benefits were initially commenced that her payments were delayed, but not later than thirty (30) days. (T40).

Magistrate Wagner found that Ms. Goff had indeed refused light duty work that was within her capacity to perform. He found her claim that the alleged failure to pay timely benefits forced her to leave Michigan was not credible. In so doing, he found that the claimant was not credible in her testimony. A review of the conflicting testimony that she gave to such things as whether the truck had a bucket seat or a bench seat, how long she was off work before benefits were commenced, 2½ months versus less than a month, differing histories that she supplied to the medical providers, conflicting testimony as to when her benefits checks were paid demonstrate that this witness had a credibility problem. It makes no sense that she would have intended to and actually did

¹ Magistrate's opinion at 9-10.

² Plaintiff's brief at 10.

then resign from Tendercare without stating then that one of the reasons for that was that she was allegedly not receiving timely checks. At no time did she produce specific testimony as to when her checks were received, nor did she produce any documentary evidence to support any such allegation. Magistrate Wagner correctly saw through the facade of this argument. Credibility determinations are for the magistrate and there is nothing here that warrants reconsideration of Magistrate Wagner's determination of the witness' credibility.

Magistrate Wagner found as a matter of fact that the claimant refused work that she clearly could perform by her own admission. He did not find that the testimony of the claimant was credible as to the real reason for leaving employment being she was not being paid her comp benefits. His findings regarding both of these factual matters are supported by competent, material and substantial evidence on the whole record and should be affirmed. In accordance with MCL 418.301(5)(a) Plaintiff's benefits were properly denied for the periods beyond Plaintiff's resignation from employment.³

We agree with defendants.

The magistrate did not deny the legal validity of plaintiff's claim. Rather, he found plaintiff not to be credible in her testimony non-payment of benefits was the motivating factor in her refusal. Nowhere in her brief does plaintiff address this critical factual finding.

The magistrate's credibility determination is entitled to deference because the hearing officer has the opportunity to view and judge witnesses.⁴

Although plaintiff testified on direct examination she was forced to leave reasonable employment because of financial difficulties caused by the non-payment of weekly worker's compensation benefits, on cross-examination she acknowledged she advised the employer she was leaving because of marital problems.⁵ In addition, Jamila Suszek, Tendercare Green View's Director of Nursing testified plaintiff resigned because of marital difficulties. Joint Exhibit #1 Plaintiff's letter of resignation gives "personal reasons" as the reason for quitting employment.

Plaintiff's own testimony on cross-examination as well as the testimony of defense witness together with plaintiff's letter of resignation are competent, material and substantial evidence for the magistrate's factual conclusion. As a result, we are duty bound to affirm.

We affirm the magistrate's decision in its entirety.

³ Defendant's brief at 14-15 (footnote omitted).

⁴ *Wilde v Ann Arbor Public Schools*, 1997 ACO #96.

⁵ Trial transcript at 41-42.

Commissioners Will and Kent concur.

Richard B. Leslie

Rodger G. Will

James J. Kent

Commissioners

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This cause came before the Appellate Commission on plaintiff's appeal from Magistrate Michael D. Wagner's decision, mailed November 12, 2002, granting plaintiff an open award, but suspending weekly benefits because plaintiff unreasonably refused to perform reasonable employment. The Commission has considered the record and counsel's briefs, and believes that the magistrate's decision should be affirmed. Therefore,

IT IS ORDERED that the magistrate's decision is affirmed.

Richard B. Leslie

Rodger G. Will

James J. Kent

Commissioners