

STATE OF MICHIGAN
COURT OF APPEALS

JERELEAN C. GOINS,

Plaintiff-Appellant,

v

SAGINAW SCHOOL DISTRICT,

Defendant-Appellee.

UNPUBLISHED
October 30, 1998

No. 201157
WCAC
LC No. 94-001000

Before: Griffin, P.J., and Gage and R J. Danhof*, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted a decision on remand by the worker's compensation appellate commission (WCAC) dismissing her appeal for failure to file the transcript within sixty days of the filing of the claim of review, MCL 418.861a(5); MSA 17.237(861a)(5). Plaintiff notes that this nonjurisdictional statutory provision grants the WCAC discretion to allow the late filing of a transcript "for a sufficient cause shown." Plaintiff claims that under the circumstances of the case, the WCAC abused its discretion in failing to allow the filing of her eight-day late transcript.

In its original decision, the WCAC majority applied its strict enforcement policy to the statutory time limit for the filing of the transcript. See, generally, *Marshall v D J Jacobetti Veterans Facility (After Remand)*, 447 Mich 544, 550, n 9; 526 NW2d 585 (1994). Following the initial denial of plaintiff's application for leave to appeal by this Court, plaintiff's motion for rehearing was granted and the case remanded to the WCAC for reconsideration in light of *Laudenslager v Pendell Printing, Inc*, 215 Mich App 167; 544 NW2d 721 (1996).¹ On remand, the WCAC majority exercised its discretion and again denied plaintiff's motion for an extension of time to file the transcript and dismissed plaintiff's appeal. The majority found dispositive plaintiff's counsel's failure to explain why he did not monitor the preparation of the transcript. Commissioner James J. Kent dissented arguing that the majority abused its discretion under the circumstances of the case in failing to allow the eight-day late filing of the transcript.

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

Laudenslager is a precedentially binding opinion of this Court which we find to be controlling. For the reasons stated in the dissenting opinion by Commissioner Kent, we hold that the WCAC abused its discretion in failing to allow the late filing of the transcript.

Reversed and remanded with instructions to reinstate plaintiff's appeal. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Hilda R. Gage

/s/ Robert J. Danhof

¹ In *Laudenslager*, this Court held that the WCAC's decision to dismiss an appeal is reviewed for an abuse of discretion. This Court held that the doctrine of substantial compliance applied to "briefing and other procedural deadlines in worker's compensation cases." *Id.* at 171. The *Laudenslager* Court held that while the number of days by which a deadline was missed is not necessarily controlling, "the length of the delay is a consideration to be taken into account together with other relevant factors, such as the reason for the delay and the existence of any resulting prejudice." *Id.* at 171.