# STATE OF MICHIGAN

# COURT OF APPEALS

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JOANNE K. WILLETT,

Plaintiff-Appellant,

v

FOUR WINNS, INC., and HOME INSURANCE COMPANY,

Defendants-Appellants.

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UNPUBLISHED
August 6, 1996

No. 172800
LC No. 93-000177

Before: Saad, P.J., and Marilyn Kelly and M. J. Matuzak,* JJ.

PER CURIAM.

Plaintiff appeals on leave granted from a January 21, 1994, opinion and order of the Workers' Compensation Appellate Commission (WCAC), which affirmed the decision of the hearing magistrate denying plaintiff's claim for wage loss benefits for an alleged carpal tunnel syndrome disability. We affirm the decision of the WCAC.

Plaintiff performed production work for defendant for several years. In early 1991, she began to experience symptoms of carpal tunnel syndrome, and on March 21, 1991, she was assigned to light-duty-favored work.

Shortly after being assigned to favored work, plaintiff requested some time off work so she could fly to Florida and drive her mother home for the upcoming Easter holiday. Plaintiff would leave on March 27, a Wednesday, which was followed by a three-day weekend due to Good Friday on March 29.[1]

Plaintiff's supervisors repeatedly denied her request for permission for the time off work, as she had no vacation time coming to her. Plaintiff was warned that if she left for Florida instead of reporting for work, she would be considered as having voluntarily quit her job. Plaintiff told her supervisors "You guys are going to have to do what you have to do, and I'm going to have to do what I have to do."

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

At the end of plaintiff's work shift on March 26, the day before her planned trip to Florida, she was asked to turn in her work tools if she intended to go to Florida, so that the cost of the tools would not be deducted from her final paycheck. Plaintiff turned in her tools and left for Florida the following day. She did not report to work for defendant thereafter, although she did apply for unemployment benefits, which application was denied by the MESC on grounds that she had voluntarily quit her job with defendant.[2]

At trial, defendant argued that plaintiff had voluntarily quit her post-injury favored job, and therefore she was disqualified from receiving workers' compensation benefits pursuant to §301(5)(a) of the Workers' Disability Compensation Act. Plaintiff contended that she did not voluntarily quit her job with defendant, but was involuntarily fired by defendant, alleging that had she been given a clear choice between going to Florida or keeping her job, she would have elected to keep her job.

In a decision mailed February 11, 1993, the magistrate denied plaintiff's claim for benefits, agreeing with defendant that plaintiff voluntarily quit her job and therefore her entitlement to compensation was barred under §301(5)(a):

> This case is reminiscent of the old what came first, the chicken or the egg. Defendant contends that Plaintiff was a voluntary quit and Plaintiff contends that Defendant fired her. In applying the law to the facts of this case, it is important that we keep in mind the purposes of the Workers' Disability Compensation Act, one of which is to promote the use of favored work whenever possible and encourage employees to return to favored work, thereby benefiting both parties.
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> Nevertheless, the statutory provisions dealing with favored work were not designed to be abused by either employers or employees. Based upon a review of the testimony, it appears that Defendant made every effort to keep Plaintiff working in accordance with the general principles of favored work. However, Plaintiff apparently chose to go to Florida and as a result, her job was terminated.
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> I find that Plaintiff was a "voluntary quit" and as a result, MCLA 418.301(5)(a) is applicable and Plaintiff's entitlement to further compensation is barred.

Additionally, the magistrate reasoned that even if plaintiff did not voluntarily quit her job, but was involuntarily terminated by defendant, her claim for benefits should still be denied because the termination was due to her own "fault." In this regard, the magistrate reasoned that the provisions of §401(3)(e) would be controlling, not the provisions of §301(5)(a), because plaintiff suffered from an occupational disease covered by Chapter 4 rather than Chapter 3 of the WDCA:

> I further find that even if Plaintiff was not considered to be a "voluntary quit" and the employer terminated because of her decision to go to Florida, even though she had no accrued vacation time built up and no permission to leave her job, MCLA 418.301(5)(e) . . . would not be applicable.

* * *

Despite Plaintiff's arguments to the contrary, the above statutory provision is inapplicable because I find that the carpal tunnel syndrome Plaintiff suffers from is an occupational disease. I so find in the absence of any specific event injury and also based upon the fact that the causes of the carpal tunnel condition, i.e. using repetitive hand movements to stretch upholstery, stuff cushions and staple vinyl, are characteristic and peculiar to the business of the employer. (See MCLA 418.401(b)).

I find MCLA 418.401(3)(e) applicable, which states as follows:

> "If the employee, after having been employed pursuant to this subsection for less than 100 weeks, loses his or her job through no fault of the employee, the employee shall receive compensation based upon his or her wage at the original date of injury."

Clearly, despite her testimony to the contrary, I do not find that Plaintiff lost her job with Four Winns through no fault of her own. For this reason also, benefits must be denied.

Plaintiff appealed to the WCAC, arguing that the magistrate's application of §301(5)(a) was not supported by the requisite substantial record evidence. Specifically, plaintiff argued that she never refused any bona fide offer of reasonable employment because defendant effectively revoked its offer by preemptively terminating her employment on March 26, 1991, that any refusal of employment she may have made was with good and reasonable cause, and that even if §301(5)(a) applies, plaintiff's entitlement to benefits should be forfeited only for the two days she intended to miss work, March 27 and March 28. Additionally, plaintiff argued that carpal tunnel syndrome was a Chapter 3 injury, not an occupational disease, and therefore the magistrate committed legal error in applying the wrong statute in this case.

The WCAC found competent, material and substantial evidence on the whole record to support the magistrate's findings that plaintiff's carpal tunnel syndrome was an occupational disease under Chapter 4 of the act, rather than a personal injury governed by Chapter 3 of the act. The appellate commission also found the requisite record support for the magistrate's factual determination that plaintiff voluntarily quit her job and lost her job due to her own fault. Accordingly, the WCAC upheld the magistrate's denial of benefits under both 401(3)(a) and 401(3)(e):

> When a plaintiff undertakes actions which he or she knows will result in the loss of a favored job, such actions and subsequent loss must be deemed a constructive voluntary quit. This is a question of fact, and the facts in this case clearly show that plaintiff knew she would lose her job if she took the time off to go to Florida. We believe that the doctrine established in *Porter v Ford Motor Co*, 109 Mich App 728

(1991) still has applicability for purposes of applying Sections 301(5)(a) and 401(3)(a), when the court stated:

> A disabled employee who can perform the favored work, yet violates company rules to the extent that discharge is justified, in actuality is refusing to perform favored work and thus creating a bar to compensation.
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> * * *
>
> Since plaintiff lost her job due to her own fault, the magistrate was correct to deny benefits using Section 401(3)(e).

The WCAC did note that the magistrate erroneously cited §301(5)(a) instead of §401(3)(a), given the fact that this is a Chapter 4 occupational disease case rather than a Chapter 3 personal injury case, but found the error to be harmless, since both statutes are virtually identical.

On appeal, plaintiff argues that the WCAC erred when it determined that she did not have "good and reasonable cause" to miss work under §401(3)(a).[3] We disagree.

While we recognize the importance of plaintiff's relationship with her mother, and plaintiff's desire to bring her mother to Michigan for the Easter holiday, we do not believe that the Legislature intended the payment of benefits when the reasons for refusing favored work are of such a personal nature. In order to qualify for benefits, the employee's reasons for refusing the work must be consistent with the policies which underlie the favored work doctrine; and, not every personal consideration will constitute good cause. *Pulver v Dundee Cement Co*, 445 Mich 68, 81; 515 NW2d 728 (1994).

In this case, plaintiff was aware that her actions would be construed as a voluntary termination. Defendant met its responsibility of providing plaintiff with favored work which she was capable of performing, and plaintiff chose to ignore company rules and take an unauthorized vacation, knowing the consequences of her actions. Plaintiff's insubordination effectively removed her from the class of employees entitled to benefits under the act. Compare *Porter v Ford Motor Co*, 109 Mich App 728, 732; 311 NW2d 458 (1981); *Calvert v General Motors Corp*, 120 Mich App 635, 643; 327 NW2d 542 (1982). We would only further note that this is *not* a case where plaintiff's reasons for refusing work were related to the job environment or her ability to perform the work. Contrast *Nederhood v Cadillac Malleable Iron Co*, 445 Mich 234, 518 NW2d 390 (1994). Accordingly, we cannot say that the WCAC abused its discretion when it

affirmed the decision of the hearing magistrate on the basis that plaintiff's refusal of favored work was without good and reasonable cause. *Pulver*, *supra* at 82.

Affirmed.

/s/ Henry William Saad
/s/ Marilyn Kelly
/s/ Michael J. Matuzak

[1] There is some dispute as to whether plaintiff requested a full week off work or only the two last scheduled work days that week, March 27 and 28. However, that factual issue does not affect the analysis or result in this case.

[2] Plaintiff subsequently obtained a part-time cleaning job in July of 1991 which she continued to hold as of the time of trial in December of 1992.

[3] Plaintiff does not dispute the finding by the WCAC that her condition constituted an occupational disease under §401 of the act.