

Order

Michigan Supreme Court
Lansing, Michigan

October 1, 2008

Clifford W. Taylor,
Chief Justice

136029

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

SEVELTA W. LOFTON,
Plaintiff-Appellee,

v

SC: 136029
COA: 277845
WCAC: 01-000331

AUTOZONE, INC., and EMPLOYERS
INSURANCE COMPANY OF WAUSAU,
Defendants-Appellants,

and

SECOND INJURY FUND (DUAL
EMPLOYMENT PROVISIONS),
Defendant-Appellee.

On order of the Court, the application for leave to appeal the February 4, 2008 order of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we VACATE the decision of the Workers' Compensation Appellate Commission mailed April 4, 2007, and we REMAND this case to the Board of Magistrates for reconsideration in light of *Stokes v Chrysler LLC*, 481 Mich 266 (2008). If it is found that the plaintiff is disabled under MCL 418.301(4), but that the limitation of wage earning capacity is only partial, the magistrate shall compute wage loss benefits under MCL 418.361(1), based upon what the plaintiff remains capable of earning. The magistrate assigned to this case may take additional proofs upon request of either party. We DIRECT the magistrate to issue a decision and file that decision with the Clerk of this Court within 126 days of the date of this order.

We retain jurisdiction.

CAVANAGH, J., would deny leave to appeal.

WEAVER, J. (*dissenting*).

I dissent from the order vacating the decision of the Workers' Compensation Appellate Commission and remanding this case to the Board of Magistrates for reconsideration in light of *Stokes v Chrysler LLC*, 481 Mich 266 (2008).

Because I dissented from the majority opinion in *Stokes v Chrysler LLC*, 481 Mich at 320 (Weaver, J., *dissenting*), I vote to grant leave to appeal in this case to consider whether a majority of this Court reached the correct decision in *Stokes*.

KELLY, J., would grant leave to appeal to reconsider *Stokes v Chrysler LLC*, 481 Mich 266 (2008).



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 1, 2008

A handwritten signature in cursive script that reads "Corbin R. Davis".

Clerk