

STATE OF MICHIGAN  
WORKERS' DISABILITY COMPENSATION APPEALS COMMISSION

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LINDA K. ROACH, (DECEASED),  
PLAINTIFF,

AND

BRONSON METHODIST HOSPITAL,  
INTERVENING PLAINTIFF,

V

DOCKET #23-0025

BATTLE CREEK AERIE 299 FRATERNAL ORDER  
OF EAGLES AND  
CONIFER INSURANCE COMPANY,  
DEFENDANTS.

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APPEAL FROM MAGISTRATE WOONS.

MARCUS W. CAMPBELL FOR INTERVENING PLAINTIFF,  
MARK D. WILLIAMS FOR DEFENDANTS.

OPINION

ROYAL, CHAIRPERSON

This matter came before the Workers' Disability Compensation Appeals Commission ("WDCAC")<sup>1</sup> on appeal by defendants Battle Creek Aerie 299 Fraternal Order of Eagles and Conifer Insurance Company ("defendants") from Magistrate Lisa L. Woons' order dated July 17, 2023. That order directed defendants to reimburse intervening plaintiff Bronson Methodist Hospital ("Bronson"), subject to cost containment, for certain medical services related to Linda Roach's June 14, 2017, work injury.

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<sup>1</sup> This matter is being decided by a two-member panel pursuant to Paragraph 4(b) of Executive Order 2019-13, which states that "[t]he Workers' Disability Compensation Appeals Commission shall act by the vote of two or more members."

## Factual Background

Linda Roach began working as a bartender for the Eagles' Battle Creek Aerie in 2014. (Trial transcript at 27, 36.) She was paid \$7.50 per hour in 2017. (*Id.* at 35.) In April 2017, due to financial difficulties, the Aerie transitioned its bartenders to what it called "volunteer" status, retaining only one "paid" bartender. (*Id.* at 46-47, 61.) According to Eagles Trustee Joseph Kushak, the other bartenders no longer received paychecks after April 29, 2017, even though their duties remained unchanged. The bartenders kept their tips. (*Id.* at 47-48, 106.)

Testimony diverges regarding subsequent compensation. Dale Crum, a former bartender, testified that he and the others received weekly cash payments in envelopes left behind the bar, which he personally distributed — including to Linda Roach. (Dale Crum deposition at 8-10, 17, 22-24.) Trustee Patricia Richard corroborated this, describing the payments as "stipends" and confirming she personally placed cash in envelopes for the bartenders, including Ms. Roach. (Trial transcript at 106-107, 112.) June Ashley, a bartender in late 2018, testified that at that time bartenders received \$35 per shift in cash, left in envelopes in the office. (*Id.* at 75.) However, Trustee Kushak denied any such payments, although he acknowledged that other trustees may have made them. (*Id.* at 48-49.)<sup>2</sup>

Trustees Kushak and Richard testified that they each received phone calls on June 14, 2017, informing them that Linda Roach had fallen at work. (Trial transcript at 51-54, 113.) Ms. Roach was subsequently taken to Oaklawn Hospital, where she provided a history that she "was heading from the bar area to the kitchen area when she tripped over a box of liquor bottles which she did not see." (Intervening Plaintiff's Exhibit #13.) She was diagnosed with a displaced left femoral neck fracture, which was surgically repaired. (*Id.*)

Linda Roach filed an Application for Mediation or Hearing – Form A on March 14, 2018, later amended to include a death benefits claim after her passing on July 30, 2018. Bronson filed Form B applications on July 8, 2018, seeking reimbursement for medical bills incurred by Ms. Roach. Following the death of Ms. Roach's husband and an inability to locate her children, her attorney withdrew and the application on her behalf was ultimately dismissed.

The magistrate found that Linda Roach was an employee of the Aerie, and that she sustained a work-related injury on June 14, 2017. The magistrate described the medical

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<sup>2</sup> Additional testimony came from Linda Keeler, a bartender who testified during a prior civil action relating to the same injury. Ms. Keeler's testimony on these occasions was somewhat contradictory and the magistrate indicated that she did not rely on it. (Magistrate's opinion at 39.)

conditions she found related, and not related, to the work-related injury. (Magistrate opinion at 41.) She found Conifer, the Aerie's workers' compensation carrier, "responsible for reimbursing Bronson for the medical bills related to the initial hospitalization and hip treatment, as well as" for certain other hospital bills. (*Id.*) She ordered that "Conifer *must* pay Bronson Hospital, pursuant to cost containment, all bills in accordance with this Opinion." (*Id.*; emphasis added.) The magistrate's green sheet order, the Form WC-200, expressly referenced "the attached Opinion/Order" and wrote that the document "is incorporated by reference herein." Defendants appeal.

### Issues on Appeal

Defendants raise two issues on appeal:

- (1) Did Bronson prove with admissible evidence that Linda Roach sustained an injury arising out of and in the course of her employment with the Eagles?
- (2) Is the magistrate's conclusion that Linda Roach was an employee and not a volunteer with the Eagles supported by competent, material, and substantial evidence on the whole record?

### Standard of Review

The WDCAC must affirm a magistrate's factual findings if supported by competent, material, and substantial evidence on the whole record. Substantial evidence is that which, considering the whole record, a reasonable mind would accept as adequate to justify the conclusion. MCL 418.861a(3) and (4). Where the magistrate is asked, but has failed to make a necessary finding of fact, the WDCAC may step into the breach: "As long as the [WDCAC] is presented with a record that allows it to intelligently make its own factual findings, the Legislature has declared that the [WDCAC] is free to do so." *Mudel v Great Atlantic & Pacific Tea Company*, 462 Mich 691, 711; 614 NW2d 607 (2000).<sup>3</sup> Legal conclusions are reviewed de novo. *Abbey v Campbell, Wyant & Cannon Foundry (On Remand)*, 194 Mich App 341, 351; 486 NW2d 131 (1992). We review preserved rulings as to the admissibility of evidence solely for abuse of discretion. *Thompson v Pollard Banknote, LTD*, 2011 Mich ACO #101 at 4; *Department of Transportation v Haggerty Corridor Partners Limited Partnership*, 473 Mich 124, 133-134; 700 NW2d 380 (2005). The WDCAC may consider "only those specific findings of fact or conclusions of law that

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<sup>3</sup> *Mudel* actually makes reference to our predecessor, the Worker's Compensation Appellate Commission, but the same review standard that applied to that Commission applies as well to this one. Executive Order 2019-13, paragraph 4(a).

the parties have requested be reviewed." MCL 418.861a(11); *Cane v Michigan Beverage Company*, 240 Mich App 76, 80-81; 610 NW2d 269 (2000).

Arising Out of and in the Course of Employment

In finding that Linda Roach tripped and fell at work, the magistrate relied upon the history Ms. Roach provided at Oaklawn Hospital, where she was taken after her injury, indicating that "[s]he was heading from the bar area to the kitchen area when she tripped over a box of liquor bottles which she did not see." (Intervening Plaintiff's Exhibit #13.) The magistrate wrote:

This history was admitted into evidence and was uncontroverted by any of the witnesses testifying at trial. I make that finding without relying on any other witness testimony. . . The history provided to Oaklawn Hospital was the Plaintiff's initial history provided to her treating physician at the hospital. I find it highly credible. This history establishes a work-related injury. Therefore, I find that Plaintiff was injured in the course and scope of her employment. (Magistrate's opinion at 38-39.)

Defendants contend that "it is clear legal error to use the history in a medical record for the purposes of determining how Ms. Roach may have been injured, and whether she was injured at work." (Defendants-Appellants' Brief at 17.) More specifically, defendants argue that this statement constitutes inadmissible hearsay.

The admissibility of evidence in a workers' compensation case is governed by R 418.97(1) (Board of Magistrates Administrative Rule 17(1)), which reads:

Except as provided in these rules, the Michigan rules of evidence, as applied in a civil case in circuit court, must be followed in all proceedings as far as practicable, but a magistrate may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

As a result, the rule against hearsay may be asserted to preclude the admission of certain evidence. However, while defendants could have asserted the applicability of that rule, they did not.

During the admission of various records at the commencement of the hearing below, defendants' counsel specifically stated that he had no objection to the admission of the Oaklawn records:

THE COURT: And Exhibit 13 was the Oaklawn Hospital records. Do you have any objection to those?

MR. WIEBER: I do not.

THE COURT: Okay. So Exhibits 1, 2, 5, 8, 9, 10, 11, 12, and 13 were admitted. (Trial transcript at 20.)

Once waived at the hearing, an objection is not preserved for review on appeal: "Generally, for an issue to be preserved for appellate review, it must be raised in or decided by the trial court." *Ayotte v Department of Health & Human Services*, 337 Mich App 29, 39; 972 NW2d 282 (2021). See, also, *Mills v D M Burr Facilities Management, Incorporated*, 2023 Mich ACO #7 at 4 n 2. This rule is particularly relevant to evidentiary questions: "To preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection that it asserts on appeal." *People v Thorpe*, 504 Mich 230, 252; 934 NW2d 693 (2019). After all, one "purpose of appellate preservation requirements is to induce litigants to do everything they can in the trial court to prevent error, eliminate its prejudice, or at least create a record of the error and its prejudice." *People v Taylor*, 195 Mich App 57, 60; 489 NW2d 99 (1992).

Nothing in the record suggests that defendants ever objected to the admission of the Oaklawn Hospital records. As a result, the magistrate never ruled on the question of their admissibility and, as a result, we have no ruling to review. She could not have erred in failing to decide an issue never presented to her.<sup>4</sup> More significantly defendants' failure to object means Bronson was never given an opportunity to respond at the hearing, either with argument or with evidence that would provide a foundation for a more robust argument in response to defendants' argument as it has evolved on appeal.

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<sup>4</sup> We note that there is a November, 2022, order from the magistrate admitting the Oaklawn Hospital records as intervening plaintiff's Exhibit 13 from which no appeal was filed. This is consistent with our conclusion that defendants have failed to preserve the issue for appeal, but we do not rely upon the November, 2022, order because defendant has not. MCL 418.861a(11); *Cane*. We do note that the magistrate relied on this order (Magistrate opinion at 3) and neither party suggests that she erred in this regard.

Defendants contend that they were not obliged to object to the hospital records, because they were admissible for *some* purposes pursuant to MRE 803(4). As a result, defendants write, "Defendant does not argue that the record is inadmissible hearsay." (Defendant-Appellants' Reply Brief at 4.) However, defendants certainly could have objected to the records use for inadmissible purposes. The magistrate expressly asked if there were "any objection to those [records]." (Trial transcript at 20; emphasis added.) That the records might have been admissible for some reasons does not excuse a lack of objection to their use for alleged inadmissible purposes.

However, defendants nevertheless insist that ". . . it was an error of law for the magistrate to use the history in a medical record for the purpose of determining the mechanism of injury and whether it occurred at work." (Defendant-Appellants' Reply Brief at 4.) In other words, defendants had a nuanced objection to the Oaklawn Hospital records, which they could have presented to the magistrate, but did not. What defendants have done is attempt to invite an error, to be deployed later on appeal if they lost at the hearing. However, a party "may not harbor error as an appellate parachute." *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000). "The rule that issues for appeal must be preserved in the record by notation of objection is a sound one," *id.*, and that rule is totally eviscerated in situations, such as this, where defendants never address appealable issues with the trial court." *People v Pipes*, 475 Mich 267, 278, n 39; 715 NW2d 290 (2006). In order to preserve the issue, the objection must be posed at a time when the magistrate has the opportunity to correct it, *id.*, at 277, and the opposing party has the opportunity to avoid prejudice and address the argument with argument and evidence.

Nor is it enough, as defendants argue, "to rely upon the magistrate's knowledge of the law and the limits on the use of the admissible evidence." (Defendant-Appellants' Reply Brief at 4.) Stripped to its core, this is simply an argument that defendants were not obliged to object, because the magistrate should have known the disputed evidence constituted inadmissible hearsay. However, it was still incumbent upon defendants to raise the issue. The magistrate was not obliged to employ her knowledge of the law to make the objection for them.

Where, as here, a party does not register a hearsay objection at the hearing before the magistrate, that party has waived the objection. *Bohanan v Ford Motor Company*, 2004 Mich ACO #225 at 7. Even if defendants belated objection had merit, it comes too late when first raised on appeal, when we have no ruling from the magistrate to address.

Even if MRE 803(4) did not permit the use of the history in the record to establish the place of Ms. Roach's injury, Rule 17(1) recognizes an overriding maxim, originally derived from *Rentz v General Motors Corporation*, 70 Mich App 249, 253; 245 NW2d 705 (1976). The rule states that, while the rules of evidence must be followed as far as

practicable, “. . . a magistrate may admit and give probative effect to evidence of a type commonly relied upon by a reasonably prudent person in the conduct of their affairs.” R 418.97(1). As a result, evidence that would otherwise be excluded by the rule against hearsay may still be considered if it meets the above criteria.

The magistrate seemed to find that it did. She noted that “[t]he history provided to Oaklawn Hospital was the Plaintiff’s initial history provided to her treating physician at the hospital. I find it highly credible.” (Magistrate’s opinion at 39.) We agree, and conclude that a history provided to a treating physician as to where a fall occurred as part of a general history-taking shortly after the occurrence of the fall, and in the course of treatment for the consequences of that fall, was evidence of a type that would commonly be relied upon by a reasonably prudent person.<sup>5</sup> That being so, the magistrate did not abuse her discretion in admitting this history. *Thompson*, 2011 Mich ACO #101 at 4; *Department of Transportation*, 473 Mich at 133–134.

Additionally, we further note that the two trustees who testified in this matter both stated that they received phone calls shortly after Ms. Roach’s injury, alerting them that she had fallen at work. Joseph Kushak testified that he was out-of-town at the time of the injury, but received a call from Julie Pancost, another “volunteer” bartender, telling him that Ms. Roach had fallen during her shift at the Eagles’ bar. (Trial transcript at 51-52.) Patricia Richard testified that she was also called by Ms. Pancost, who informed her “[t]hat Linda had fell, ambulance picked her up, and there was no bartender.” (*Id.* at 113.) This testimony of trustees Kushak and Richard also support the magistrate’s finding that Ms. Roach was injured at work.<sup>6</sup>

On appeal, defendants also dismiss this testimony as hearsay. However, *there was no objection to this testimony either*. The statements by both trustees as to the substance of the calls they received conveyed only one salient fact, that Ms. Roach had fallen at the bar. As a result, it was clearly incumbent upon defense counsel to object to this testimony if he wished it excluded. Again, there was no objection to this testimony. Even if that were

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<sup>5</sup> We come to this conclusion without relying upon the unpublished opinions cited by Bronson, which were not necessary to our conclusions.

<sup>6</sup> While the magistrate did not rely upon the trustees’ testimony, we must determine whether the magistrate’s conclusion is “supported by competent, material, and substantial evidence on the whole record,” MCL 418.861a(3), meaning “. . . the *entire* record of the hearing including *all* of the evidence in favor and *all* the evidence against a certain determination.” MCL 418.861a(4) (emphasis added). As a result, our review is not limited to consideration of the evidence relied upon by the magistrate to support her result, but instead encompasses consideration of *all* the evidence.

not the case, we believe that the testimony in question was also “. . . evidence of a type commonly relied upon by a reasonably prudent person in the conduct of their affairs.” R 418.97(1).

There are multiple indications in the record describing Linda Roach’s fall at work on June 14, 2017, although perhaps none as succinct as the history she herself gave to the hospital shortly after the incident. Notably, there is no competing explanation for Ms. Roach’s malady. As a result, the magistrate’s finding that she sustained an injury arising out of and in the course of her employment<sup>7</sup> is supported by competent, material, substantial - and admissible -- evidence on the whole record. We must affirm it accordingly. MCL 418.861a(3).

### Employee vs. Volunteer

Defendants contend that no contract of hire existed after the Eagles’ bartenders were asked to “volunteer,” and that any money received thereafter was merely an “accommodation” rather than wages.

Because Michigan does not exclude “volunteers” from the range of “employees” subject to the Worker’s Disability Compensation Act (“Act”), identifying an individual as a “volunteer” does not serve to automatically exclude the person from coverage under the Act. When a “volunteer” is not covered by the Act, it is because they are not an employee.

The statutory definition of an “employee” includes “. . . [e]very person in the service of another, under any contract of hire, express or implied . . .” MCL 418.161(1)(l). In *Hoste v Shanty Creek Management, Incorporated*, 459 Mich 561, 575; 592 NW2d 360 (1999), the Supreme Court defined a contract “of hire” as follows:

These basic precepts of worker's compensation show that in order to receive benefits under the WDCA, it is not enough for an individual to be employed pursuant to a “contract”; rather, the individual must be employed pursuant to a contract “of hire,” where the benefit received by the individual is payment intended as wages. In other words, worker's compensation provides benefits to those who have lost a source of income; it does not provide benefits to those who can no longer take advantage of a gratuity or privilege that serves merely as an accommodation.

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<sup>7</sup> That is, assuming Linda Roach was an employee, an issue we address below.

In *Reed v Yackell*, 473 Mich 520, 532; 703 NW2d 1 (2005), the Court further elaborated, writing:

As we explained in *Hoste, supra* at 576, 592 N.W.2d 360, the linchpin to determining whether a contract is “of hire” is whether the compensation paid for the service rendered was not merely a gratuity but, rather, “intended as wages, i.e., real, palpable and substantial consideration as would be expected to induce a reasonable person to give up the valuable right of a possible claim against the employer in a tort action and as would be expected to be understood as such by the employer.”

We affirm the magistrate’s finding that this test was satisfied and Linda Roach was an employee at the time of her injury.

Initially, defendants claim that “[t]here was inconsistent testimony regarding stipends.” (Defendants-Appellants’ Brief at 21.) However, the magistrate found that cash payments *were* made:

In this case, Ms. Roach would be providing services as a bartender for the Eagles Club. In turn, she would receive paychecks, tips and later some cash payments. In reference to the cash payments, I am relying primarily on the testimony of Patricia Richard who testified that she gave Linda Roach a stipend. Also corroborated by June (Underwood) Ashley and Dale Crum. (Magistrate’s opinion at 33.)

The cited testimony does indeed support the magistrate’s finding that the payments were made. (Trial transcript at 75-76, 106-107; Dale Crum deposition at 15, 17.) While defendants criticize reliance upon Mr. Crum’s testimony given some purported memory issues, his testimony on the payments and other critical matters was consistent with the other noted testimony. That evidence exists which would support a different finding is irrelevant, provided the finding that the magistrate made is sufficiently supported. *Morgan v LKQ Corporation*, 2023 Mich ACO #6 at 7. Defendants further argue that “[t]he evidence does not establish that Ms. Roach ever received a stipend” (Defendants-Appellants’ Brief at 21), but Trustee Richard testified that she personally put cash in an envelope and wrote Linda Roach’s name on it. (Trial transcript at 110.) It is certainly reasonable to infer that Ms. Roach received those envelopes, and “[m]agistrates and the MCAC<sup>[8]</sup> may draw reasonable inferences from established facts.” *Reidenbach v Kalamazoo*, 327 Mich App 174, 189; 933 NW2d 335 (2019). As a result, the magistrate’s factual finding that stipends were paid to

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<sup>8</sup> The MCAC, or Michigan Compensation Appellate Commission, is the direct predecessor of the WDCAC.

Ms. Roach is supported by the requisite competent, material, and substantial evidence. We affirm it accordingly. MCL 418.861a(3).

The magistrate further observed that Ms. Roach would have received tips generally equivalent to her prior wage:

Ms. Roach was initially paid \$7.00 per hour which was later raised to \$7.50 per hour plus tips. Defendant then argues that they were switched to "volunteer". However, Intervening Plaintiff Bronson noted, June (Underwood) Ashley testified that the bartenders earned between \$30.00 - 35.00 in tips each shift. With a normal five-hour shift, their tip compensation [is] \$5.00 - \$7.00 per hour. That is essentially equal to the hourly wages that the bartenders earned during their shift. Therefore, even if the "volunteer" bartenders received nothing but tip compensation after the alleged transition, their tip money was not insubstantial. Therefore, I find that the "of hire" element was satisfied. (Magistrate's opinion at 34.)

Defendants contend that there is no admissible evidence that Linda Roach herself received tips. However, testimony was taken from Joseph Kushak (trial transcript at 39), June Ashley (*id.* at 74-75), and Dale Crum (Dale Crum Deposition at 16) that the bartenders kept their tips. There was no evidence specifically stating that Ms. Roach received tips, but it is only reasonable to assume that if the other bartenders did, she did as well. As noted, a magistrate may draw reasonable inferences from established facts. *Reidenbach*, 327 Mich App at 189. It is equally reasonable to assume that the amount of tips received by Ms. Roach were in the same ballpark as those received by other bartenders. In any event, it is the fact that Ms. Roach received tips, not the amount of those tips, that is relevant here. We therefore affirm the magistrate's finding that Ms. Roach's compensation included tips.

The magistrate further pointed out that, "[a]fter the alleged transition to "volunteer" status the bartenders maintained their regular schedule and continued to perform the exact same job. This analysis was supported by the testimony of Dale Crum, who testified that, in his view, the bartenders were not volunteers at all:

*Q.* Who scheduled the shifts?

**A. The trustees.**

*Q.* So since you were a volunteer after that meeting, could you simply come and go when you pleased?

**A. We weren't volunteers. We still had our regular shifts to work.**

*Q.* Could you refuse to wait on customers if you didn't want to?

**A. No.**

*Q.* So even though they said, "We need you to be volunteers," was the job exactly the same?

**A. Yes.**

*Q.* Now, do you know whether or not after that meeting in April of 2017 – whether or not Linda Roach was changed into a volunteer?

**A. There was none of us that – none of us changed into volunteer.** (Dale Crum deposition at 20-21.)

Clearly, the bartenders could not simply show up when they had time to volunteer. They had specific duties that they were to perform, on a schedule set by Eagles trustees.

Mr. Crum further testified that he expected to be compensated for his work as a bartender:

*Q.* Did you expect to be compensated in some way for your bartending services?

**A. Yes.**

*Q.* You weren't simply doing this out of the goodness of your own heart?

**A. No.** (Dale Crum deposition at 25-26.)

This was not only the view of the bartenders, but also the way the trustees looked at it, according to Trustee Patricia Richards<sup>9</sup>:

*Q.* Okay. So your testimony is after the switch over to volunteer status, some cash was paid to the bartenders, correct, the volunteer bartenders, correct?

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<sup>9</sup> Again, Mr. Crum's testimony was consistent with that of other witnesses, leaving no basis for our rejection thereof.

A. Yes.

Q. Okay. Was that cash intended to compensate them for their services?

A. Yes. (Trial transcript at 112.)

This testimony, and the other testimony reprinted above, satisfies the requirement of *Hoste*, 459 Mich at 576. Both employee and employer intended the wages to be wages, and those wages were “real, palpable and substantial consideration.”

Defendants, however, argue that the cash payments and tips were merely an “accommodation,” citing *Hoste*. However, this case is nothing like *Hoste*. In that case, the claimant patrolled a ski resort in exchange for free lift tickets for his family, free beverages, and meal discounts. The Court held that these benefits were “a ‘gratuity’ -- of nominal cost to the resort and nominal value to plaintiff, and in no sense represented a ‘regular income source’ . . . to plaintiff that would be replaced by worker’s compensation benefits.” (*Hoste*, 459 Mich at 577.)

In this case, Ms. Roach was paid cash, both from the Eagles in the form of a weekly payout and from Eagles customers in the form of tips. She worked a regular schedule in exchange for the cash, which both bartenders (as testified to by June Ashley) and the Eagles (as testified to by Trustee Patricia Richard) considered compensation for services rendered. Trustee Richard, upon whom the magistrate primarily relied (Magistrate opinion at 33), explained that the bartenders were provided a “stipend” because otherwise “they were -- couldn’t make it on their own.” (Trial transcript at 107.) This represents “a regular income source” Ms. Roach could use to provide herself with her necessities. *Hoste*, 459 Mich at 577. It was not a mere gratuity that she could only use where the work activity was performed, as in *Hoste*. What Ms. Roach received was considerably more than an accommodation, for use where and when the work activity was being performed.

We note that the magistrate did not make an express finding in this regard. However, the WDCAC is permitted to make that finding in such an instance, as long as it is “. . . presented with a record that allows it to intelligently make its own factual findings . . . .” *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 711; 607 NW2d 711 (2000). As demonstrated above, the record in this matter is such a record. As a result, we find that Linda Roach was not a volunteer, and we affirm the magistrate’s finding that she was the Eagles’ employee.<sup>10</sup>

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<sup>10</sup> Because we decide this matter based on Michigan law, we do not need to address intervening plaintiff’s argument based upon federal law.

Conclusion

We conclude that the magistrate's findings that Linda Roach sustained a personal injury arising out of and in the course of her employment, and that she was in fact an employee of the Eagles when she suffered that injury, are factually supported and legally appropriate. The magistrate's order is affirmed accordingly.

Commissioner Ries concurs.

Daryl Royal

Chairperson

Granner Ries

Commissioner

STATE OF MICHIGAN  
WORKERS' DISABILITY COMPENSATION APPEALS COMMISSION

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LINDA K. ROACH, (DECEASED),  
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This matter is before the Workers' Disability Compensation Appeals Commission ("WDCAC")<sup>1</sup> on appeal by defendants Battle Creek Aerie 299 Fraternal Order of Eagles and Conifer Insurance Company from Magistrate Lisa L. Woons' order dated July 17, 2023. The WDCAC has reviewed the record and read the briefs of the parties and concludes that the magistrate's order should be affirmed. Therefore,

IT IS ORDERED that the magistrate's order is AFFIRMED. No appeals pend.

Daryl Royal

Chairperson

Granner Ries

Commissioner

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<sup>1</sup> This matter is being decided by a two-member panel pursuant to Paragraph 4(b) of Executive Order 2019-13, which states that "[t]he Workers' Disability Compensation Appeals Commission shall act by the vote of two or more members."