

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTINE RICHARD,

Plaintiff-Appellant,

v

STATE OF MICHIGAN, MICHIGAN
DEPARTMENT OF AGRICULTURE and
THE ACCIDENT FUND OF MICHIGAN,

Defendants-Appellees.

UNPUBLISHED
May 16, 1997

No. 188917
LC No. 91 000578
WCAC

Before: Michael J. Kelly, P.J., and Saad and H.A. Beach,* JJ.

PER CURIAM.

Plaintiff appeals by leave granted the August 16, 1995 order of the Worker's Compensation Appellate Commission (WCAC), which after remand from the Supreme Court once again reversed the magistrate's decision granting plaintiff a closed award of benefits. We reverse.

I

Plaintiff claimed that job stress caused, aggravated or accelerated an underlying psychiatric condition to the point of disability. She testified that she suffered from anxiety and panic attacks as a result of having to work on the fourth floor of a large state office building in a small cubicle. She testified that she had worked for the state for many years without incident, but that six months to a year after moving to the new office location, she began to suffer anxiety attacks. Plaintiff testified that she would be unable to return to her job because the very layout and structure of the building would cause her to panic.

The depositions of three psychiatrists were submitted. All agreed that plaintiff suffered from agoraphobia, which involves fear of crowds, confined places, heights and elevators. They all agreed that the agoraphobia was associated with panic attacks, and in addition that plaintiff first began experiencing panic attacks in 1977 as a result of stress she experienced during a divorce, bankruptcy and loss of her mother. All agreed that plaintiff gave a history of suffering panic attacks in a variety of

situations, including going to church, driving, shopping in mall stores, and riding elevators, in addition to sitting in her cubicle at work.

Drs. Trebilcock and Lo opined that plaintiff was not psychologically disabled. In addition, Dr. Lo opined that there was no causal relationship between plaintiff's work environment and her agoraphobia. In contrast, Dr. Farquahar testified that plaintiff could not return to work without some limitations. Although he refused to express an opinion on whether plaintiff's condition was caused by work, he testified that he believed that her disability was aggravated by her conditions at work.

The magistrate found that plaintiff suffered a symptomatic aggravation of her agoraphobia, which ended by the time of her examination by Dr. Lo. The magistrate entered an award of benefits for the closed period from plaintiff's last day of work through the date of her examination by Dr. Lo, June 24 through November 23, 1987.

Plaintiff filed a claim of review with the WCAC, arguing that the magistrate erred in closing the award. Defendant cross appealed, claiming that the magistrate erred in finding that plaintiff suffered any compensable disability. In an opinion and order dated November 24, 1993 the WCAC agreed with defendant and reversed, holding that plaintiff was not entitled even to a closed award of benefits. After this Court denied plaintiff's application for leave to appeal, the Supreme Court, in lieu of granting leave, remanded to the WCAC for reconsideration in light of the recent decision in *Gardner v Van Buren Public Schools*, 445 Mich 23; 517 NW2d 1 (1994).

On remand, the WCAC once again reversed in an opinion and order dated August 16, 1995. The WCAC noted that all three medical experts agreed that plaintiff's panic attacks began in 1977 as a result of nonwork-related events. The WCAC further noted that plaintiff has the burden of proving that her condition was significantly aggravated or accelerated by her employment, and that under *Gardner*, this requires an objective inquiry:

Under the statutory standard, causation is determined by the factfinder. It is not determined by the honest, even if unfounded, perceptions of the claimant. In determining whether specific events of employment contribute to, aggravate, or accelerate a mental disability in a significant manner, the factfinder must consider the totality of the occupational circumstances, along with the totality of a claimant's mental health in general.

The analysis must focus on whether actual events of employment affected the mental health of the claimant in a significant manner. This analysis will, by necessity, require a comparison of nonemployment and employment factors. Once actual employment events have been shown to have occurred, the significance of those events to the particular claimant must be judged against all the circumstances to determine whether the resulting mental disability is compensable. 445 Mich at 47.

The WCAC held that plaintiff is not entitled to worker's compensation benefits under *Gardner* for the following reasons:

Neither the magistrate's opinion, nor our analysis of the proofs, lends support to a finding that plaintiff came anywhere close to meeting the significant contribution test. Clearly, any comparison of the nonemployment and employment factors concerning plaintiff's condition provide the required competent, material and substantial evidence to support such a finding.

Accordingly, after reconsideration in light of *Gardner*, as directed on remand, we hold that plaintiff is not entitled to compensation, having failed to prove the claimed work events were a significant factor in causing her mental disability.

This Court granted plaintiff's application for leave to appeal the WCAC's decision after remand.

II

As the WCAC noted, *Gardner* requires the factfinder to engage in an objective analysis of the causal connection between a claimant's work and her mental disability. Benefits may be awarded only if the workplace significantly contributed to, aggravated or accelerated the condition, where significance is evaluated in light of all factors, both occupational and nonoccupational. However, in *Gardner*, the Supreme Court also reiterated that an employer takes its employees as they are, with all preexisting mental and physical frailties.

[I]t is well established that employers take employees as they find them, with all preexisting mental and physical frailties. A claimant's preexisting condition does not bar recovery.

* * *

This Court recognizes that actual events of employment, even if "ordinary," can be injurious to the mental health of a predisposed individual. The statute, by excluding "unfounded perceptions" of the actual events of employment, excludes situations in which the claimed events never occurred (i.e., where they are imagined, hallucinatory or delusional).

* * *

It is, therefore, irrelevant how a "reasonable" person would react to the objectively established actual events. The relevant inquiry, and the only inquiry presently required by worker's compensation law in this state, is: Did the actual events of employment occur, and do these bear a significant relationship to the mental disabilities? Reduced to its simplest form, the analysis is this: Given actual events and a particular claimant with all the claimant's preexisting mental frailties, can the actual events objectively be said to have contributed to, aggravated, or accelerated the claimant's disability in a significant manner?

This type of inquiry places the focus where it should be: on the authenticity of the underlying event and the significance of its relationship to the resulting disability. 445 Mich at 48, 49, 50.

The magistrate found, and the WCAC did not disagree, that plaintiff was disabled for a closed period of time, and that the onset of the disability occurred after plaintiff was moved to a new office building with a different layout. Under *Gardner*, the appropriate question is whether the actual events of employment, namely, the move to a new office, objectively contributed to, aggravated or accelerated plaintiff's mental disability in a significant manner, given all of the nonemployment and employment factors, and given this particular claimant's preexisting mental frailties. The WCAC held that plaintiff did not satisfy the significant manner test, but in so doing construed plaintiff's underlying agoraphobia to be a nonemployment factor. This was error. Plaintiff's agoraphobia should be considered a preexisting condition. Because there is no record evidence that any other factors contributed to plaintiff's panic attacks at work, the move to a new office building must have significantly contributed to the panic attacks because it was the only relevant causal factor¹.

Although Dr. Lo opined that there was no causal relationship between plaintiff's work and her condition, Dr. Farquahar disagreed. This Court has held that expert testimony is "substantial" within the meaning of the substantial evidence test if offered by a qualified expert who has a rational basis for his views, even if other experts disagree. *Great Lakes Steel v PSC*, 130 Mich App 470, 481; 344 NW2d 321 (1983). The magistrate's finding that plaintiff suffered a temporary symptomatic aggravation of an underlying condition as a result of her work is supported by substantial evidence, and the WCAC erred in reversing.

Under the heading "Relief Requested" in her brief, plaintiff requests that this Court not only reverse the WCAC, but reverse the magistrate to the extent that he found plaintiff entitled to a closed award only. However, plaintiff has not argued this point in her brief, and so the issue must be considered abandoned. *Knoke v East Jackson Schl Dist*, 201 Mich App 480, 485; 506 NW2d 878 (1993).

Reversed.

/s/ Michael J. Kelly

/s/ Harry A. Beach

¹ Defendant's reliance on *York v Wayne Co Sheriff's Dept*, 219 Mich App 370; ___ NW2d ___ (1996), is misplaced because in *York*, unlike in the present case, there was record evidence to indicate that many other factors contributed to the plaintiff's psychiatric disability.