

STATE OF MICHIGAN
COURT OF APPEALS

LARRY HERRICK,

Plaintiff-Appellee,

v

FARMER JACK/BORMAN'S, INC.,

Defendant-Appellant.

UNPUBLISHED

June 13, 1997

No. 191271

WCAC

LC No. 90-0894

ON REMAND

Before: Smolenski, P.J., and Michael J. Kelly and J. R. Weber*, JJ.

PER CURIAM.

Defendant appeals on leave granted after remand from the Supreme Court the decision of the Worker's Compensation Appellate Commission affirming the magistrate's open award of disability benefits. We affirm.

Plaintiff was hired by defendant in 1969 to work as a packer. Due to a combination of physical and mental problems, he sought worker's compensation disability benefits. Plaintiff testified that he had no problems performing his work until December 7, 1985, when he fell through some bushel baskets while trying to throw a box up in a balcony. He received a bruise on his left hip and lower back and was off work until February 1986, receiving worker's compensation benefits. Plaintiff returned to work, but continued to complain of pain in his shoulders and neck.

After his return to work, plaintiff experienced additional injuries when he was struck in the face by an automatic door, and when a pallet fell on his foot. He was on and off work periodically throughout 1986 and 1987. On February 26, 1987, plaintiff was given written notice that he was not performing his job in an acceptable manner. On May 1, 1987, he was issued a second written notice that his job performance was unsatisfactory.

On December 9, 1987, plaintiff was given a third written notice that he had taken an excess number of days off between February and December 1987. Plaintiff received a reprimand, and the loss of eight hours of pay. Plaintiff testified that he was treated differently after the disciplinary memos. He

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

was given the heaviest assignments, and his work schedule was changed. He was given tasks that he was not trained to perform, and his co-workers and managers threatened him.

On May 20, 1988, plaintiff experienced shooting pains in his shoulders and spine while unloading merchandise at work. He left work to go to Oakwood Hospital and did not return. He filed an application for worker's compensation benefits, based on back, neck, shoulder, arm and leg pains and mental disability.

Ample evidence was presented regarding plaintiff's physical and psychological condition. There was limited objective evidence supporting plaintiff's continued complaints of pain. The psychiatric testimony disputed whether plaintiff had a condition of genetic or work-related origin. The magistrate concluded that plaintiff was disabled by both his physical and mental conditions. Although there was little objective evidence to corroborate plaintiff's complaints of pain, the magistrate found that the pain was real to plaintiff and disabled him. Plaintiff's testimony was consistent with the psychiatric testimony that plaintiff had delusional thoughts mixed with a sense of paranoia. The magistrate found that plaintiff's mental disability was based on injuries he received at work, and the attempts of management to discipline him.

Initially, the Worker's Compensation Appellate Commission reversed the magistrate's award of benefits because the magistrate erroneously focused on plaintiff's subjective perception of harassment, rather than the objective test required by the statute. The commission also found that the evidence did not support a finding that plaintiff suffered from a physical disability. Plaintiff appealed, and this Court remanded for reconsideration in light of *Gardner v Van Buren Public Schools*, 445 Mich 23; 517 NW2d 1 (1994). On remand, the commission adopted the opinion of the magistrate, finding that it fully satisfied the *Gardner* standard and was supported by the evidence on the record.

After remand, this Court denied defendant's application for leave to appeal. The case was remanded by the Supreme Court for consideration as on leave granted. Defendant asserts that the commission failed to undertake the consideration required by this Court's remand order, and that the magistrate's decision did not comport with the requirements of *Gardner*.

The commission complied with this Court's remand order. This Court merely directed the commission to reconsider its opinion in light of the recently released opinion in *Gardner*. The commission fulfilled its duty by reconsidering the magistrate's opinion under the *Gardner* standard. The commission did not contravene this Court's order, and it did not exceed its mandate. *Couch v Saginaw Malleable Iron Plant, Central Foundry Div of General Motors Corp*, 51 Mich App 317, 319; 214 NW2d 885 (1974).

MCL 418.301(2); MSA 17.237(301)(2) provides:

Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions, shall be compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities shall be

compensable when arising out of actual events of employment, not unfounded perceptions thereof.

In *Gardner, supra*, the Supreme Court analyzed the significant contribution standard as it applies to mental illness. The Court stated:

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 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 47].

The commission found that the magistrate's analysis complied with the *Gardner* requirements, and that the opinion was supported by competent, material, and substantial evidence on the record. This Court must affirm the fact findings of the commission if they are supported by any competent evidence. *Matney v Southfield Bowl*, 218 Mich App 475, 484; 554 NW2d 356 (1996). A decision of the commission is subject to reversal if the commission operated within the wrong legal framework, or its decision was based on erroneous legal reasoning. *Id.*

The commission found that the magistrate's analysis fully satisfied the *Gardner* standard. The commission stated:

The magistrate carefully analyzed the totality of the occupational circumstances, along with the history of plaintiff's mental health, as well as the role of nonemployment factors. Supportive evidence is recited in the magistrate's extensive and detailed opinion. In particular, the magistrate analyzed the lay testimony and concluded as a matter of fact, within the context of the whole record and after choosing between sometimes conflicting and less than credible testimony, that plaintiff's work place experiences did contribute in a significant manner to his physical and mental disability.

There is competent evidence to support the commission's findings. There was documentary support for the finding that plaintiff did suffer physical injuries in the course of his employment. The magistrate noted that plaintiff had worked for defendant for 17 years without apparent physical or emotional difficulties prior to his December 1985 injury. The three experts who testified as to plaintiff's mental condition agreed that he was disabled. The testimony of plaintiff's experts persuaded the magistrate that the disability was work-related. The testimony of Dr. Rubin that work was responsible

for the development of the disabling disorder was competent evidence to support the decision of the commission. There is no basis for this Court to overturn that finding.

Affirmed.

/s/ Michael R. Smolenski

/s/ Michael J. Kelly

/s/ John R. Weber