

STATE OF MICHIGAN
COURT OF APPEALS

WILLIE CLAYTON,

Plaintiff-Appellant,

v

VICKERS, INC., a/k/a LOF/VICKERS, INC.,

Defendant-Appellee.

UNPUBLISHED

June 20, 1997

No. 191793

WCAC

LC No. 89-000853

Before: Sawyer, P.J., and Neff and A. L. Garbrecht*, JJ.

PER CURIAM.

Plaintiff appeals by leave granted a decision on remand by the Worker's Compensation Appellate Commission (WCAC) reversing the decision of the magistrate and denying him benefits. We reverse and remand for further proceedings.

Plaintiff began working for defendant Vickers, Inc., in 1974. In 1982, plaintiff began working as a janitor under the supervision of David Heinrich. He performed his duties without difficulty until September 5, 1984. At that time he returned from a two-week vacation and was told by his union steward that he would receive a warning from his supervisor. The next day plaintiff was told that he had violated company policy by failing to keep his work area clean, by not being on the job, and by being out of his area. Plaintiff filed a grievance and stated that he felt that the warning was unjustified because no one had cleaned his area while he had been on vacation.

Plaintiff stated that after this incident Heinrich and B.J. Shelton, the personnel manager, often walked through his work area, which was on a major thoroughfare, looking for debris. Heinrich took notes on plaintiff's work habits. Plaintiff felt nervous and apprehensive, and was unable to sleep. In the ensuing months plaintiff was given a warning for violating company policy, a three-day suspension for failing to clean an area, and a two-day suspension for using abusive language to a member of management. Plaintiff grieved the suspensions. On each occasion defendant denied the complaint. Plaintiff sought treatment for emotional problems. On May 31, 1985, his physician took him off work.

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

In August 1985, plaintiff received a letter from defendant indicating that if he did not return to work he would be terminated. He returned to work in August. He stated that Heinrich continued to harass him by walking through his area and criticizing him. On September 11, 1985, Heinrich told him that he was wanted in the office for a conference because he was standing around and not doing his job. Plaintiff asked for union representation, but was told that a steward was not available. Plaintiff was approached by Shelton, who told him that he was suspended for five days. Plaintiff was escorted from the premises. His physician put him on sick leave. Subsequently, plaintiff received a letter from defendant indicating that if he did not return to work he would be terminated. Plaintiff indicated that he was emotionally unable to return to work. On October 17, 1985, defendant terminated plaintiff's employment. Plaintiff filed a grievance and, after arbitration, was reinstated. However, he did not return to work.

Plaintiff filed a petition for worker's compensation benefits. Before the record was closed, the parties entered into a voluntary pay agreement.

After defendant terminated compensation payments, plaintiff filed an amended petition for benefits. He testified that he felt that he had done a good job for defendant and that he had been treated unfairly. He stated that he thought that the company and the union had conspired to force him to leave his employment. Plaintiff acknowledged that he had entertained thoughts of doing physical harm to those persons who, in his opinion, had treated him unfairly. Heinrich testified that on occasion plaintiff had to leave his work area to perform duties and obtain equipment. He acknowledged that he had kept notes on plaintiff's performance. Shelton testified that plaintiff's areas was not as clean as other areas. He conceded that plaintiff's performance was monitored. He denied that the company and the union had conspired to remove plaintiff.

The medical testimony differed. Some experts opined that plaintiff was disabled and that his condition had been aggravated by his employment, while others concluded that he suffered from no disability and could return to work without restrictions.

The magistrate found that the evidence showed that, beginning in September 1984, plaintiff's job performance was criticized, and disciplinary reports were filed. Plaintiff viewed these actions as harassment, and became angry and depressed. The magistrate stated that while plaintiff's perception that defendant harassed him might have been misinterpreted, the proofs indicated that plaintiff's perception was based on actual events of his employment. The medical testimony supported a finding that plaintiff's condition was work-related. The magistrate concluded that plaintiff established that he was psychiatrically disabled as a result of an injury arising out of and in the course of his employment on May 31 and September 11, 1985.

The WCAC reversed the decision of the magistrate. The WCAC found that the magistrate misapplied the law regarding mental disability. The magistrate did not find that the actual events of employment constituted harassment. The WCAC concluded that plaintiff was entitled to compensation only if his disability arose out of actual events of harassment, and not out of an unfounded perception of harassment.

This Court denied plaintiff's application for leave to appeal for lack of merit. Plaintiff sought leave to appeal to our Supreme Court, and after holding the application in abeyance, our Supreme Court remanded the case to the WCAC for reconsideration in light of *Gardner v Van Buren Public Schools*, 445 Mich 23; 517 NW2d 1 (1994).

In its decision on remand, the WCAC again reversed the decision of the magistrate and denied benefits. The WCAC reasoned that under *Gardner*, causation is not determined by the honest perception of the employee. Rather, in determining whether actual events of employment caused or aggravated a mental disability in a significant manner, the factfinder must consider the totality of the occupational circumstances along with the claimant's mental health in general, and must compare employment and nonemployment factors. Once actual events of employment are shown to have occurred, the significance of those events to the claimant must be judged against all relevant circumstances to determine if the mental disability is compensable. The WCAC found that the magistrate's finding that plaintiff might have misinterpreted the actual events he described as harassment was insufficient under *Gardner*. The WCAC noted that in *Iloyan v General Motors Corp*, 187 Mich App 595; 468 NW2d 302 (1991), this Court held that an employer's efforts to obtain compliance with standards did not necessarily constitute harassment. *Gardner, supra*, did not expressly or impliedly overrule *Iloyan, supra*; to hold otherwise would be to conclude that an employer could not supervise or evaluate employees. The WCAC concluded that plaintiff's claim failed because he did not establish that any disability was caused by actual events of employment, and not unfounded perceptions thereof. Even if plaintiff had not misinterpreted the events, the magistrate's award would not be supported by the requisite evidence because the magistrate failed to find that the events aggravated plaintiff's condition in a significant manner.

Findings of fact made by a magistrate are conclusive on the WCAC if they are supported by competent, material, and substantial evidence on the whole record. MCL 418.861a(3); MSA 17.237(861a)(3). Judicial review is of the findings of fact made by the WCAC, not those made by the magistrate. The findings of fact made by the WCAC are conclusive if there is any competent evidence in the record to support them. *Holden v Ford Motor Co*, 439 Mich 257, 263; 484 NW2d 227 (1992).

In *Gardner, supra*, our Supreme Court revisited the issue of what is required to show a compensable mental disability. The *Gardner* Court held:

We hold that to establish a compensable mental disability claim, pursuant to MCL 418.301(2); MSA 17.237(301)(2), a claimant must prove: (1) a mental disability; (2) arising out of the actual events of employment, not unfounded perceptions thereof; and that (3) those events contributed to, aggravated, or accelerated the mental disability in a significant manner.

All that is statutorily required are "actual events of employment" even if objectively unimportant, that contribute to, aggravate, or accelerate a mental disability in a significant manner.

Although the statutory test embodied in MCL 418.301(2); MSA 17.237(301)(2), does contain objective elements, it is not a purely objective test. If one concentrates on the individual worker, as opposed to an average worker, the statutory test has substantial subjective elements as well. [445 Mich at 27-28.]

The *Gardner* Court also 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 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.]

On appeal, plaintiff argues that the WCAC erred as a matter of law by reversing the decision of the magistrate. Plaintiff contends that under *Gardner, supra*, the events complained of must have actually occurred and must have contributed to the disability in a significant manner, but need not be of the type that would be significant to the reasonable person. The magistrate's analysis was consistent with the three-prong test announced in *Gardner, supra*. The finding that plaintiff had difficulty with depression and anxiety constituted a finding of disability. The depression and anxiety were based on actual work-related events. The events contributed to the disability in a significant manner because it was not until he was harassed repeatedly that he became disabled. Plaintiff asserts that even assuming *arguendo* that he misinterpreted the actual events complained of, his disability is compensable. The *Gardner* Court stated that to read § 301(2) as barring compensation for claims based on unfounded perceptions of actual events, as opposed to prohibiting compensation based on hallucinations, would lead to an absurd result. 445 Mich at 44. Section 301(2) requires that a claim be based on actual events of employment, no more and no less. The claimant need not show that the actual events were in fact harassment. Similarly, the label placed on the events by the employer does not control the validity of the claim.

We agree with plaintiff, and reverse the WCAC's decision. *Gardner, supra*, does not require that the events which form the basis of a claim for compensation for a mental disability must in fact constitute harassment or must be out of the ordinary. The WCAC reversed the magistrate's decision based on the magistrate's finding that plaintiff may have misinterpreted events designed to be an attempt to have him meet standards. The WCAC found that under *Gardner*, such misinterpretation of actual events precludes an award of compensation. This interpretation of *Gardner* is incorrect. The *Gardner*

Court recognized that actual events of employment, even if ordinary, can injure the mental health of a predisposed individual:

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 mental 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 50.]

The events which formed the basis of plaintiff’s claim actually occurred. The WCAC found that a reasonable person would not have reacted to the events as did plaintiff. Under *Gardner*, a reasonable-person analysis is irrelevant. Because plaintiff’s claim was based on actual events of employment, his articulation of those events to the physicians cannot be discounted as unfounded perceptions because a reasonable person would not have reacted in the same way. The WCAC erred in displacing the magistrate’s reliance on the medical testimony supplied by plaintiff. *Miklik v Michigan Special Machine Co*, 415 Mich 364, 367; 329 NW2d 713 (1982).

We reverse the WCAC and remand for implementation of the magistrate’s decision. We do not retain jurisdiction.

Reversed and remanded.

/s/ David H. Sawyer

/s/ Janet T. Neff

/s/ Allen L. Garbrecht