

STATE OF MICHIGAN
COURT OF APPEALS

VINCENT CYTACKI,

Plaintiff-Appellant,

v

WAYNE STATE UNIVERSITY,

Defendant-Appellee.

UNPUBLISHED

March 3, 1998

No. 204212

WCAC

LC No. 940426

Before: O’Connell, P.J., and Gribbs and Smolenski, JJ.

PER CURIAM.

In this worker’s disability compensation case, plaintiff appeals the February 7, 1996 decision of the Worker’s Compensation Appellate Commission (WCAC), which affirmed an earlier magistrate’s decision denying plaintiff’s claim for benefits. A panel of this Court previously denied plaintiff’s application for leave to appeal. Unpublished order of the Court of Appeals, entered September 4, 1996 (Docket No. 193239). Plaintiff then filed an application for leave to appeal in the Supreme Court. On June 24, 1997, the Supreme Court, in lieu of granting leave to appeal, remanded the matter to this Court for consideration as on leave granted, but limited the appeal to plaintiff’s psychiatric disability claim. *Cytacki v Wayne State University*, 455 Mich 851; 567 NW2d 241 (1997). We vacate the decisions of the magistrate and the WCAC and remand to the magistrate for further consideration.

Plaintiff worked for defendant Wayne State University as a “health physicist” from December 1979 until September 30, 1986, when the employment contract between plaintiff and defendant expired. Plaintiff’s job involved, among other things, performing laboratory surveys regarding radioactive contamination, checking equipment, performing quality assurance tests on x-ray and fluoroscopy units, and providing consulting services relating to chemicals and radioactive material. Plaintiff testified that he did laboratory surveys once or twice a week and that he had no radiation proof garments or gloves. Plaintiff contends that he left work because he believed he was exposing himself to far too many carcinogenic chemicals and toxic substances, including radioactive wastes. Defendant argues that plaintiff could not have continued in his position without obtaining tenure and that plaintiff did

not pursue tenure. After he ceased working with defendant, plaintiff worked on at least a few occasions as a consultant doing the same type of work that he did for defendant.

Plaintiff testified that he began experiencing health problems, including weakness, nausea, hematuria, dizziness and blood in his urine, as early as 1984. He did not regularly visit a doctor because he did not want to be exposed to further potential radiation in the form of a fluor exam or intravenous pyelogram. Plaintiff claims that these conditions worsened with time. In June 1987, plaintiff had a kidney removed because of cancer. Plaintiff filed a petition for benefits on October 13, 1988. The petitioner claimed “radiation induced cancer and related sequaelae.”

In 1991, during discovery, plaintiff was examined by J. Barry Rubin, a board-certified psychiatrist. Rubin diagnosed “atypical anxiety disorder” and a possible organic anxiety syndrome. Rubin testified that plaintiff was so concerned about his cancer and its potential effects that he could not make rational decisions regarding diagnostic tests and treatment.¹ Rubin also testified that plaintiff believed that his work exposures contributed significantly to his anxiety disorder. The defense psychiatrist, Raymond Mercier, testified that plaintiff might have a mild anxiety condition but that plaintiff was not disabled from working or constricted in his daily life. Mercier also testified that he did not think that plaintiff’s anxiety disorder was work-related.

The magistrate found that plaintiff had not established that his cancer was related to his employment. The magistrate thus disposed of plaintiff’s mental disability claim on the basis that the claim could not logically stand in face of the finding that plaintiff’s cancer was not related to his employment. The magistrate expressly stated that it made “no findings” as to whether plaintiff had a mental disability. On appeal, the WCAC affirmed the magistrate’s decision, finding that plaintiff’s alleged mental disability was based upon an unfounded perception since his cancer was not actually work-related. The WCAC reasoned that plaintiff’s fears did not result from his exposure to chemicals and radioactive wastes, but rather from his concerns that those materials were disabling him. The WCAC thus held that “plaintiff’s derivative claim of anxiety concerning the cancer cannot stand.”

Plaintiff now contends that the magistrate and the WCAC erred in concluding that plaintiff did not preponderate a psychiatric disability which was caused, aggravated or accelerated by his exposures to toluene, xylene and radioactive wastes during the course of employment. Plaintiff specifically contends that the magistrate’s findings are not based on “competent, material, and substantial evidence” on the record as a whole and the law relating to psychiatric disability. MCL 418.861(a). He argues that the evidence in the record established that he is disabled, that there were actual events of employment which were the basis for his disability, and that he established the necessary causation between the events and the disability. Defendant argues that the WCAC’s decision was supported by sufficient evidence, that plaintiff did not establish any of the requirements for a mental disability claim, and that plaintiff did not show actual events of employment because he relied upon his own unfounded perception.

A compensable mental disability claim requires proof of: (1) a mental disability, (2) arising out of actual events of employment, not unfounded perceptions thereof, and (3) that those events contributed to, aggravated or accelerated the plaintiff’s mental condition in a significant manner. *Gardner v Van*

Buren Public Schools, 445 Mich 23, 52; 517 NW2d 1 (1994); MCL 418.301(2), MSA 17.237(301)(2). As the Supreme Court explained in *Gardner*:

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?

While this standard contains some objective elements, it does not require a purely objective standard. *Gardner, supra* at 49. Rather, the "significant manner" and "actual events" requirements have substantial subjective elements. *Gardner, supra* at 49-50.

We must first determine whether the actual events of employment alleged by plaintiff did, in fact, occur. *Gardner, supra* at 50. A successful claim may be based upon unfounded perceptions of actual events. *Zgnilec v General Motors Corp (On Remand)*, 224 Mich App 392, 396; 568 NW2d 690 (1997); *Gardner, supra* at 43-50. This is largely because unfounded perceptions of reality are often what characterize a mentally disabled person. See *Zgnilec, supra*.

The magistrate erred in finding that plaintiff's claim was legally inadequate because it was based upon an unfounded perception (of either events or causation). As indicated in *Gardner, supra*, the appropriate inquiry is not whether plaintiff's perceptions are unfounded, but whether the "actual events" of employment occurred. In this case, plaintiff provided evidence of the "actual events" of multiple exposures to various substances, including toluene, xylene and radioactive waste. Whether those exposures caused plaintiff's cancer is irrelevant to our analysis; we must only determine whether the exposures happened. There has been no finding as to this issue and there is no indication that the events did not occur. Because the WCAC's affirmance was based upon the belief that the magistrate correctly applied the law, it must be vacated, and this matter must be remanded for further consideration of whether plaintiff has a mental disability, and whether his employment contributed to, aggravated, or accelerated his disability in a significant manner.

This Court's holding is limited; there has not yet been any factual determination regarding any of the three requirements plaintiff had to establish. There has been no finding that plaintiff has a mental disability, that it arose from "actual events" of employment, or that the events had a significant relationship to his disability. On remand, the magistrate should conduct further fact-finding with regard to plaintiff's psychiatric disability claim.²

Vacated and remanded to the magistrate. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Roman S. Gibbs

/s/ Michael R. Smolenski

¹ According to Rubin, plaintiff has decided that he does not want to have any more surgical procedures or cancer treatments (including radiation therapy and chemotherapy) because he would be exposed to substances that he associates with cancer.

² Our decision to remand this case to the magistrate for factual findings, rather than the WCAC, is based on the Supreme Court's recent decision in *Woody v Cello-Foil Products*, 450 Mich 588; 546 NW2d 226 (1996) (remand to magistrate appropriate where factual findings are inadequate).