

STATE OF MICHIGAN  
COURT OF APPEALS

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ELLA SUE PARKER,

Plaintiff-Appellant,

v

CONSUMERS POWER COMPANY,

Defendant-Appellee.

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UNPUBLISHED

February 5, 1999

No. 206221

WCAC

LC No. 93-000271

Before: Jansen, P.J., and MacKenzie and Markman, JJ.

PER CURIAM.

This case is before us as on leave granted pursuant to a remand from the Supreme Court. *Parker v Consumers Power Co*, 456 Mich 854 (1997). Plaintiff appeals from an order of the WCAC reversing a magistrate's decision that she was entitled to an open award of worker's compensation benefits for psychiatric disability. We affirm.

Plaintiff, a black female, was hired as a mail clerk by defendant in 1979 and for several years she received favorable performance reviews and promotions. In May 1987, plaintiff voluntarily transferred to defendant's engineering records center. Earlier the same year, plaintiff experienced a religious conversion which significantly altered her lifestyle. After her religious conversion, she began reading the Bible on work breaks and changed her personal style by avoiding wearing pants or jewelry and makeup. Plaintiff's employment was terminated in November 1990, due to poor job performance. It was plaintiff's contention that, for the last three years of her employment, she was continually harassed and ostracized by her coworkers because of her race and religion. She claimed that this harassment made her feel pressured and anxious and caused her to experience chest pains, leaving her unable to perform the tasks her supervisor required her to perform.

All of the expert medical witnesses indicated that, in addition to her alleged work "stressors", plaintiff had a history of personal problems from 1987 to 1990, as well as signs of pre-existing psychological weaknesses. Plaintiff's witness, psychologist Jay B. Ponzer, testified by deposition that plaintiff's work-related difficulties would have significantly aggravated her mental health problems if her claims of harassment at work were accurate. Defendant's witness, psychiatrist Harvey G. Ager, testified by deposition that plaintiff's psychological problems resulted from a combination of her

preexisting personality traits and non-occupational stresses in her life without any actual, significant contribution from events at the workplace. The magistrate, relying on the deposition testimony of Dr. Ponzer, opined that, while personal problems in 1989 contributed to plaintiff's overall stress, her work-related stress was the major contributing factor to her inability to work by the time she was fired in 1990.

On appeal, the WCAC reversed the magistrate's award of benefits, finding that under *Gardner v Van Buren Public Schools*, 445 Mich 23; 517 NW2d 1 (1994), which was decided after the magistrate's decision was issued, there was not competent, material, and substantial evidence on the whole record to support a finding that the events of employment affected plaintiff's mental health in a significant manner. The WCAC noted that under *Gardner*, to establish a compensable mental disability claim pursuant to MCL 418.301(2); MSA 17.237(301)(2), a claimant must prove (1) that the disability arose out of the actual events of employment and (2) that those events contributed to, aggravated, or accelerated the mental disability in a significant manner. See *Gardner, supra*, pp 27-28. Focusing on the "significant manner" prong and considering both occupational and non-occupational factors, the WCAC concluded that plaintiff's pre-existing personality traits, combined with various non-work-related stressors in her life, were primarily responsible for her psychiatric complaints and that the actual events experienced by plaintiff at work did not contribute significantly to those complaints.

On appeal, plaintiff contends that the WCAC acted outside its authority when it reversed the magistrate's decision on the ground that it was not supported by competent, material, and substantial evidence because, in fact, the magistrate's findings were so supported. This argument is beyond the scope of this Court's review since it calls for a determination whether there was substantial evidence to support the magistrate's findings. Our review does not include an independent review of the magistrate's decision or a substantial evidence review of the facts. *York v Wayne Co Sheriff's Dep't*, 219 Mich App 370, 375; 556 NW2d 882 (1996); *Holden v Ford Motor Co*, 439 Mich 257; 484 NW2d 227 (1992). Whether there is competent, material, and substantial evidence on the whole record to support the magistrate's findings of fact is a question to be decided in the first instance by the WCAC, not the reviewing courts. *York, supra*, p 375. See also *Connaway v Welded Construction Co*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (Docket No. 201559, issued 12/15/98), slip op pp 5-10.

Plaintiff next contends that the WCAC failed to give the proper deference to the magistrate on issues of credibility and misapplied the substantial evidence standard in reviewing the magistrate's decision. The WCAC reviews a magistrate's findings to determine if they are supported by competent, material, and substantial evidence on the whole record. *Connaway, supra*, slip op p 10. When the WCAC's application of the substantial evidence test is challenged on appeal, reviewing courts should examine the reasoning of the decisions of the magistrate and WCAC, the evidence considered or ignored, the care taken, and the nature of the issues involved. *York, supra*, p 379.

We find nothing in the reasoning and analysis of the WCAC to indicate that it misapprehended or grossly misapplied the substantial evidence standard in this case, or that it was not duly cognizant of the deference to be accorded to the magistrate's decision. While it is true that the WCAC should ordinarily accord deference to the magistrate's determinations of credibility, the WCAC does not lack all ability to assess the credibility of witnesses. *Connaway, supra*, slip op p 8; *York, supra*, p 381 n 4.

Indeed, it is well recognized that the WCAC has latitude to consider and reject the magistrate's choices between conflicting testimony, particularly with regard to the testimony of medical experts testifying by deposition. See, e.g., *Holden, supra*, pp 285-287. As in *York, supra*, the WCAC did not simply substitute its judgment for that of the magistrate. Rather, the WCAC deferred to a number of the magistrate's findings, including the magistrate's determination of plaintiff's credibility. With the guidance supplied by the *Gardner* decision, the WCAC then examined and compared occupational and non-occupational factors affecting plaintiff's mental health and then weighed the significance of work events against all the circumstances. In so doing, the WCAC identified reasons, grounded in the record, for relying on the deposition testimony of Dr. Ager when considering the "significant manner" prong of § 301(2) and *Gardner*. Moreover, plaintiff has failed to identify anything specific in the WCAC's decision that is inconsistent with the "significant manner" analysis set forth in *Gardner*. Since the WCAC's analysis is grounded in the record and supported by competent evidence, its findings are conclusive on appeal. *Holden, supra*, p 263.

Finally, plaintiff raises a generic argument that the WCAC is biased against employees. The claim has not been preserved for review and, accordingly, we decline to address it. See *Illes v Jones Transfer Co (On Remand)*, 213 Mich App 44, 56 n 2; 539 NW2d 382 (1995).

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Stephen J. Markman