

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM E. CHLOPAN,

Plaintiff-Appellee,

v

CITY OF CHEBOYGAN, MICHIGAN
MUNICIPAL WORKER'S COMPENSATION
FUND, and SECOND INJURY FUND,

Defendant-Appellants.

UNPUBLISHED

July 23, 1999

Nos. 213451; 213452

WCAC

LC No. 95-000464

Before: Neff, P.J., and Hood and Murphy, JJ.

PER CURIAM.

This is a workers compensation case in which the magistrate denied benefits, but the WCAC reversed and ordered an open award of total and permanent disability benefits. After this Court denied defendants' application for leave to appeal, they sought leave to appeal to the Supreme Court. In lieu of granting leave to appeal, the Supreme Court remanded it to this Court for consideration as on leave granted. 458 Mich 867 (1998). We affirm and remand for further proceedings.

I

Plaintiff is an attorney and an engineer. He was employed as the city manager for the City of Cheboygan for more than ten years, but his job encompassed a wide range of duties: city manager, city engineer, superintendent of public works, director of downtown development district and chief financial officer. He testified that he was on call all the time and that he worked sixty to eighty hours per week. As superintendent of public works, plaintiff was provided with a radio-equipped car to inspect roads and perform other duties.

On Sunday morning, February 23, 1992, approximately two inches of snow had fallen. Plaintiff drove the city car to church, with the intention to check the roads and to have the radio available. He and his wife attended church services, stayed for coffee afterwards and went out for brunch with members of the congregation. He drove to the east side of town "looking at the roads on the way" checking for snow removal and stopped briefly for groceries. Plaintiff then drove towards home where

he intended to drop off his wife and the groceries; he had not decided if he would then continue on his road inspection tour, go to his office to work on a continuing project or stay at home. However, before reaching home, another car struck plaintiff's car and plaintiff was injured. As a result of his injuries, plaintiff was no longer able to perform the multiple functions of the city manager position.

After the accident, plaintiff received no-fault benefits from the city's auto insurance carrier, sickness and accident benefits and pension benefits. He settled a personal injury claim against the at-fault driver for \$100,000. Plaintiff also filed this worker's compensation claim.

II

After a trial the magistrate denied benefits. There was no serious dispute that plaintiff was disabled within the meaning of the WDCA, but defendants vigorously contended that plaintiff was not acting within the scope of his employment when the accident occurred. In denying benefits, the magistrate concluded that plaintiff was in the scope of his employment when the accident occurred, but nevertheless could not qualify for benefits.¹ The magistrate's reasoning was that because plaintiff, an attorney, twice indicated in written claim forms for other benefits, that his injuries were not work-related, he had made a legally binding admission which "foreclosed" his claim for worker's compensation benefits. On appeal the WCAC determined that "...there is no doubt that the magistrate committed *legal error* when he denied benefits." [emphasis added]. The question for us on appeal is whether the WCAC's reversal of the magistrate's decision to deny benefits was based on legal or factual considerations.

III

In denying benefits the magistrate relied on the interrelationship of two facts: that plaintiff is a lawyer and that he twice filed claims for benefits which indicated that his injuries were not work-related. His decision to deny benefits was based on the application of two erroneous legal standards to the facts; first, that the claim form indicating that plaintiff's injuries were not work-related constituted a binding "admission" that his injuries did not arise out of and in the course of his employment; and second, that plaintiff's status as a lawyer itself contributed to the binding nature of the "admissions" and detracted from his credibility.

The WCAC held that "the magistrate applied a standard to plaintiff which has no basis in either the statute or the case law." First, it is not fatal to a workers compensation claim for a plaintiff to sign an application for other benefits indicating that the injury for which benefits is claimed is not work-related. This is so because the statute provides for setoff where other benefits are received. *Paschke v Retool Industries, Inc*, 445 Mich 502, 513-515; 519 NW2d 441 (1994); *Stepp v General Motors Corp*, 1994 WCAC 58. Second, the WCAC could find no authority or legal basis for treating plaintiff differently or holding him to a higher standard because he is an attorney.

This is not a situation where the WCAC substituted its own judgment for those of the magistrate; indeed, this would be impermissible. *Layman v Newkirk Electric Ass'n, Inc*, 458 Mich 494, 503-509; 581 NW2d 244 (1998); *Goff v Bil-Mar Foods Inc (After Remand)*, 454 Mich 507,

513; 563 NW2d 214 (1997). Rather, the WCAC examined the legal basis for the magistrate's denial of benefits and determined, correctly, that a wrong legal standard was applied. The magistrate applied a different standard to plaintiff simply because he is an attorney: the magistrate first determined that plaintiff was on duty 24 hours a day, but then held that plaintiff did not qualify for worker's compensation benefits because *as a lawyer* his claims for other benefits containing inconsistent language about whether the injuries arose out of and in the course of employment were binding.²

On judicial review, this Court will inquire whether the WCAC acted in a manner consistent with the concept of administrative appellate review. *Goff, supra* at 511. A decision of the WCAC is subject to reversal if the WCAC operated within the wrong legal framework, or if the decision was based on erroneous legal reasoning. *Bates v Mercier*, 224 Mich App 122, 124; 568 NW2d 362 (1997). We are not persuaded that the WCAC committed error under either test. To the contrary, the WCAC properly interpreted the magistrate's opinion as holding that plaintiff would have been awarded benefits but for the magistrate's improper interpretation of the law.

IV

We note that the question of whether a third-party set-off is appropriate has not been properly addressed. Accordingly, we remand to the WCAC. On remand, the WCAC shall remand the case to the magistrate to fully address this issue. In all other respects, we affirm the decision of the WCAC.

Affirmed and remanded. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Harold Hood
/s/ William B. Murphy

¹ The magistrate's Opinion/Order includes the following pertinent language:

While Defendant presented many lucid arguments to test any conclusion of work relatedness of injury this Magistrate was, frankly, inclined to believe that Plaintiff's injury arose out of and in the course of his employment for the city of Cheboygan.

There are some jobs out there that put you on duty 24 hours a day. I was leaning toward the conclusion that Plaintiff was probably on duty his entire waking day given the array of responsibilities he held for the public good. Had he ignored a civic duty to repair or plow a road (for example) and a citizen was injured as a result of this omission - what result?

He was given a radio equipped city vehicle and the obvious authority to direct the work force at any time on any day - all legitimate vestiges of power and authority which was reflected in his title, salary and benefits, etc.

² This is evidenced in the magistrate's opinion where he notes that a licensed attorney such as plaintiff surely realizes the significance of the "admission" and further states: "The issue is one of professional integrity and honesty in the legal profession and in the eyes of the public."