

STATE OF MICHIGAN
COURT OF APPEALS

MATTIE L. McCOMBS,

Plaintiff-Appellee,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellee,

and

SILICOSIS, DUST DISEASE, AND LOGGING
INDUSTRY COMPENSATION FUND,

Defendant-Appellant.

UNPUBLISHED

January 7, 2000

No. 213438

WCAC

LC No. 94-000126

Before: Wilder, P.J. and Bandstra and Cavanagh, JJ,

PER CURIAM.

Defendant Silicosis, Dust Disease, and Logging Industry Compensation Fund appeals as on leave granted, after remand from the Supreme Court, the decision of the Worker's Compensation Appellate Commission affirming the magistrate's award of disability benefits against the fund. We remand to the magistrate for additional proceedings.

Plaintiff sought worker's compensation benefits alleging that she sustained occupational injury to her lungs as a result of exposure to dust, smoke, fumes, and chemicals during her employment at the General Motors foundry. Based on plaintiff's testimony and the medical evidence presented, the magistrate found that plaintiff had developed bronchial asthma secondary to isocyanate exposure that was a result of her work in the foundry. After concluding that there was competent, persuasive, and probative evidence to establish that plaintiff sustained an occupational injury arising out of and in the course of her employment, the magistrate found that the Silicosis, Dust Disease, and Logging Industry Fund would be responsible for benefits pursuant to MCL 418.531(1); MSA 17.237(531)(1). The magistrate made no findings as to the basis of liability of the fund.

On appeal, the Worker's Compensation Appellate Commission affirmed the magistrate's imposition of liability on the fund. In the absence of findings on the part of the magistrate, the commission engaged in its own fact finding to reach this conclusion. Reviewing the evidence presented, the commission found that plaintiff's condition was "the most common type of pulmonary disability found in individuals who work in foundries." Where exposure to isocyanates is inherent in the mold process of a foundry, and that anyone who works in a foundry is at risk for development of occupational asthma, the commission concluded that there was competent evidence to support a finding that the disease affecting the claimant is so common and widespread as to constitute a threat to the industry. The commission affirmed the imposition of liability on the fund, and found that the cross-appeal was moot.

The Silicosis, Dust Disease, and Logging Industry Fund was established "to protect certain industries from the financial jeopardy posed by the possibility of numerous worker's compensation claims based on dust diseases that are inherent to the nature of the industry." *Faulkner Construction Co v Silicosis, Dust Disease, and Logging Industry Compensation Fund*, 226 Mich App 503, 507; 574 NW2d 685 (1997). The coverage of the fund is limited to dust diseases that pose a general threat to the industry. *Felcoskie v Lakey Foundry Corp*, 382 Mich 438, 446; 170 NW2d 129 (1969). The burden of proving that a disease is so common and widespread as to present such a threat remains with the employer. *Stottlemeyer v General Motors Corp*, 399 Mich 605, 612; 250 NW2d 486 (1977); *Felcoskie, supra*.

While the appellate commission found competent evidence to establish the fund's coverage, the magistrate made no findings as to the factors necessary for such a conclusion. The commission exceeded its authority in conducting its own fact finding under these circumstances. *Layman v Newkirk Electric Associates, Inc*, 458 Mich 494, 507; 581 NW2d 244 (1988). When the magistrate has failed to make necessary fact findings, the case should be remanded for that purpose. *Id.* at 509. The commission is not empowered to make its own factual findings in this situation. To hold otherwise would deprive parties of any meaningful review of factual findings by the commission. *Id.*

We remand to the magistrate for a factual determination whether plaintiff's condition is a disease that constitutes a threat to the industry, and whether liability properly attaches to the fund under MCL 418.531(1); MSA 17.237(531)(1). We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Richard A. Bandstra
/s/ Mark J. Cavanagh