STATE OF MICHIGAN

COURT OF APPEALS

CATHY M. SCHWARTZ,

Plaintiff-Appellee,

v

ST. MARY'S HOSPITAL,

Defendant-Appellant.

UNPUBLISHED
May 19, 2000

No. 222361
WCAC
LC No. 95-000330

Before: Bandstra, C.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

In this worker's compensation case, defendant St. Mary's Hospital appeals from a decision of the Worker's Compensation Appellate Commission (WCAC) reversing the decision of the magistrate and thereby granting benefits to plaintiff Cathy M. Schwartz. We reverse.

I. Basic Facts And Procedural History

A. Schwartz's Injury

Schwartz worked in St. Mary's Hospital's housekeeping department on the 5:00 p.m. to 1:30 a.m. shift. Because Schwartz did not have a driver's license, her husband drove her to work and, due to her husband's work schedule, Schwartz regularly arrived at the hospital two hours before her shift began. Her practice was to spend that time in the hospital's public canteen socializing with friends.

On November 26, 1993, Schwartz arrived at the hospital at 3:00 p.m. as usual. She collected and cashed her paycheck, and then went to the canteen at approximately 3:30 p.m. Schwartz purchased a soda and popcorn, and talked with friends. At approximately 4:00 p.m. she volunteered to give a co-worker a neck rub. As she sat down after positioning her chair, the chair tipped and Schwartz fell down two stairs. Schwartz's injury was originally diagnosed as a left hip fracture. That diagnosis was later changed to arthritis, which the fall aggravated.

B. The Magistrate's Decision

Schwartz's petition for worker's compensation benefits alleged disability due to aggravation of arthritis. In a decision mailed on March 30, 1995, the magistrate denied benefits. The magistrate relied on MCL 418.301(3); MSA 17.237(301)(3), which provides:

> An employee going to or from his or her work, while on the premises where the employee's work is to be performed, and within a reasonable time before and after his or her working hours, is presumed to be in the course of his or her employment. Notwithstanding this presumption, an injury incurred in the pursuit of an activity the major purpose of which is social or recreational is not covered under this Act. Any cause of action brought for such an injury is not subject to section 131.

The magistrate found that Schwartz's injury did not occur within a reasonable time before her working hours. The magistrate stated that the "reasonable time" provision contemplated the period of time an employee needed to arrive on the premises and to prepare for the start of work. According to the magistrate Schwartz had no business purpose in arriving two hours before the start of her shift and she did so to accommodate her personal transportation needs. In addition, the magistrate found that Schwartz's purpose in going to the canteen was to socialize with friends. The magistrate concluded that Schwartz's injury did not arise out of the course of her employment.

C. The WCAC's Reversal

Schwartz appealed, and in a 2-1 decision entered on December 4, 1997, the WCAC reversed the decision of the magistrate and granted Schwartz an open award of benefits. The majority noted that the issue on appeal was whether Schwartz was in the course of her employment at the time of her injury within the meaning of §301(3). The majority accepted Schwartz's argument that her injury occurred within a reasonable time before the beginning of her shift. The majority noted that Schwartz did not arrive at the workplace early by choice; her arrival was necessitated by transportation needs. Moreover, on the date of the injury, Schwartz used some of the time before her shift began to collect her paycheck, which is a work-related activity. *Dunlap v Clinton Valley Center*, 169 Mich App 354, 357; 425 NW2d 553 (1988).

The WCAC majority distinguished the instant case from *Zarka v Burger King*, 206 Mich App 409; 522 NW2d 650 (1994), on which St. Mary's Hospital relied. In *Zarka* this Court reversed an award of benefits to the plaintiff, who had gone into his place of employment to collect his paycheck, and then went to the public dining area to eat a meal purchased at retail prices before he slipped and fell on water or snow that had accumulated near the door. *Id*. at 410-411. This Court found that after the plaintiff collected his check, the nexus between his employment and the injury was terminated. *Id*. at 414. In the instant case, the WCAC majority noted that Schwartz remained on the premises after collecting her paycheck because she was scheduled to work a full shift that day. The majority found that Schwartz's injury occurred within the "path" and "flow" of her employment. *MacDonald v Michigan Bell Telephone Co*, 132 Mich App 688, 692; 348 NW2d 12 (1984). In addition, the majority found that Schwartz's activity was not primarily recreational or social in nature. The majority

relied on Larson, *Workmen's Compensation Law*, § 22.11, in which Professor Larson noted that in the majority of cases, injuries that have occurred during a recreational activity at the noon hour on the employer's premises have been found to be compensable.

The dissent, however, stated that the magistrate's finding that Schwartz's injury did not occur within the course of her employment was supported by the evidence and should be affirmed. The dissent emphasized that Schwartz's injury did not occur during a lunch hour or authorized recreation period, and that St. Mary's Hospital did not require Schwartz to sit in the canteen and socialize before her shift. Moreover, according to the dissent, St. Mary's Hospital derived no benefit from Schwartz's activity in the canteen.

D. The Appeal

This Court originally denied St. Mary's Hospital's application for leave to appeal the WCAC's decision for lack of merit in the grounds presented. In lieu of granting leave to appeal, the Michigan Supreme Court remanded the case for consideration as on leave granted.

II. Standard Of Review

As we said in *Connaway v Welded Construction*, 233 Mich App 150, 419; 592 NW2d 414 (1999), there are two levels of review in worker's compensation case, administrative review and judicial review, and these levels are distinctively, and understandably, different. With respect to administrative review, we stated:

> The WCAC's administrative review of a decision by a magistrate is no longer de novo but is still more searching than review under an "any evidence standard." There must be competent, material, and substantial evidence on the whole record to support a magistrate's decision; such evidence is that which a reasonable mind would accept as adequate and, while such evidence must be more than a scintilla, it may be less than a preponderance. [*Id.* at 169.]

With respect to judicial review, we stated:

> Judicial review of the WCAC's decisions is, by contrast, considerably narrower. The tendency will be to affirm if the WCAC (1) carefully examined the record, (2) was duly cognizant of the deference to be given to the decision of the magistrate, (3) did not misapprehend or grossly misapply the substantial evidence standard and (4) gave an adequate reason grounded in the record for reversing the magistrate. While we will not automatically affirm an appeal from a WCAC decision if there was any competent evidence in the record to support the WCAC's findings, we should examine (1) the reasoning and analysis of the decisions of the magistrate and the WCAC, (2) the evidence considered or ignored in those decisions and (3) the care taken, and the nature of the issues involved, in order to determine whether the WCAC

> acted in a manner consistent with the concept of administrative appellate review. [*Id.* at 169-170.]

With respect to questions of law raised by any final order of the WCAC, however, our review is de novo. *Oxley v Dep't of Military Affairs*, 460 Mich 536, 540-541; 597 NW2d 89 (1999). Here, we are faced primarily with questions of fact.

III. Injuries Within A Reasonable Time Before Or After Working Hours.

An injury that occurs on the employer's premises and within a reasonable time before or after the employee's working hours is presumed to be within the course of employment. MCL 418.301(3); MSA 17.237(301). Whether an injury occurs within a reasonable time before or after working hours is necessarily a question of fact. In this case, it was undisputed that Schwartz's injury took place one hour before she was scheduled to begin work. This case is therefore distinguishable from *Pollard v Barker-Fowler Electric Co*, 121 Mich App 407-408; 328 NW2d 422 (1982), in which the plaintiff's injury one hour before normal business hours was compensable because the employee had entered the premises to perform work in a quiet environment. Here, Schwartz did not enter the canteen in order to perform work.

This case is also distinguishable from *Freiborg v Chrysler Corp*, 350 Mich 104, 105; 85 NW2d 145 (1957), in which an accident that occurred in the employer's parking lot forty-five minutes before the plaintiff's shift was compensable. In *Freiborg*, the employer required the employee to arrive forty-five minutes early in order to find a parking spot and walk 200 yards to the plant. St. Mary's Hospital did not require Schwartz to arrive at work one hour early in order to be prepared to start her shift on time. She did so for her personal convenience. Schwartz's act of collecting her paycheck was a work-related activity; however, after she completed that act, the usual principles applied. *Zarka, supra* at 412. Unlike the plaintiff in *Zarka*, Schwartz was scheduled to work on the day she was injured. Even so, to be compensable, any injury had to have occurred within a reasonable time before her shift began. MCL 418.301(3); MSA 17.237(301)(3).

We therefore conclude that the magistrate's finding that Schwartz's injury did not occur within a reasonable time before the beginning of her shift was supported by competent, material, and substantial evidence. When a finding of fact is supported by the requisite evidence, it is conclusive on the WCAC. MCL 418.861a(3); MSA 17.237(861a)(3). Because the evidence supported the magistrate's findings on this issue, we conclude that the WCAC exceeded its authority by substituting its judgment for that of the magistrate. *Goff v Bil-Mar Foods, Inc (After Remand)*, 454 Mich 507, 513; 563 NW2d 214 (1997). In our view, the WCAC misapprehended the record, was not duly cognizant of the deference to be given to the magistrate's decision, misapprehended the substantial evidence standard, and did not give an adequate reason grounded in the record for reversing the magistrate.

IV. Social Or Recreational Activities

Regardless of whether an injury occurs within a reasonable time before or after an employee's working hours, an injury that results from a primarily social or recreational activity is not compensable.

MCL 418.301(3); MSA 17.237(301)(3). Whether an employee was engaged in a primarily social or recreational activity is again necessarily a factual issue. *Angel v Jahm, Inc*, 232 Mich App 340, 344; 591 NW2d 64 (1998). The evidence showed that Schwartz sat in a public facility, consumed snacks, and spoke with friends. This activity did not occur during working hours, was not mandated or sponsored by St. Mary's Hospital, and did not benefit St. Mary's Hospital. The evidence supported the magistrate's finding that the primary purpose of Schwartz's visit to the canteen prior to beginning work was to socialize, and thus was binding on the WCAC. MCL 418.861a(3); MSA 17.237(861a)(3). We conclude that the WCAC exceeded its authority by substituting its judgment for that of the magistrate. *Goff, supra*.

Schwartz, however, asserts that when analyzing whether she was injured during the course of her employment we should focus on the fact that she was at her place of employment because of her employment relationship with St. Mary's Hospital. We reject this proposition. To focus exclusively on the existence of an employer-employee relationship would render nugatory the requirement in MCL 418.301(3); MSA 17.237(301)(3) that an injury occur within a reasonable time before or after an employee's working hours, which we cannot do. See *Hoste v Shanty Creek Management, Inc*, 459 Mich 561, 574; 592 NW2d 360 (1999). In our view, the WCAC once again misapprehended the record, was not duly cognizant of the deference to be given the decision of the magistrate, misapprehended the substantial evidence standard, and did not give an adequate reason grounded in the record for reversing the magistrate. Accordingly, we reverse the WCAC's decision and reinstate the decision of the magistrate.

Reversed.

/s/ Richard A. Bandstra
/s/ Kathleen Jansen
/s/ William C. Whitbeck