STATE OF MICHIGAN

COURT OF APPEALS

CHRISTOPHER WHITE, Plaintiff-Appellant,	UNPUBLISHED October 20, 2000
v	No. 221912 WCAC
DEPARTMENT OF AGRICULTURE, Defendant-Appellee.	LC No. 97-000759

Before: Owens, P.J., and Jansen and R.B. Burns*, JJ.

PER CURIAM.

Plaintiff appeals by leave granted a decision of the Worker's Compensation Appellate Commission (WCAC), which reversed the magistrate and denied plaintiff's claim for weekly wage loss benefits on the basis of a mental disability. We reverse.

I

Plaintiff began working for defendant in 1980. At the time in question he was assigned to assist veterinarians collecting urine and blood samples at race tracks. Plaintiff testified that about six people worked in his department and that he was the only African-American until 1989. Plaintiff claimed that he was subjected to additional supervision and criticism based on his race, and that his problems worsened when veterinarian Rhonda Gowell became his supervisor in April 1993. He testified that when he told Dr. Gowell about the alleged harassment, she asked him why he didn't quit. He testified that he filed grievances many times, but nothing ever came of them.

Plaintiff based his disability claim in large part on an event which allegedly occurred in the television room of the Hazel Park Race Track, where he was supposed to be observing a horse race. He had nodded off, allegedly because a newborn baby was preventing him from getting much sleep at home. He testified that Dr. Gowell came into the room and kicked him in the leg to wake him up. He

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

testified that he began to have "demonic thoughts" about the veterinarian and wanted to kill her. However, he continued to work for some months after the kicking incident.

A coworker, Paula Weaver, recounted the same incident. However, according to Weaver Dr. Gowell kicked the sole of plaintiff's shoe. Dr. Gowell testified that she never told plaintiff that he should quit if he didn't like the way things were run, and denied that she had ever kicked him.

Plaintiff's last day of work was December 3, 1993. He testified that he had become increasingly irritable, depressed, and upset about the situation at work, and was obsessing about the kicking incident. He was seen by a psychiatrist and hospitalized on December 13, 1993 suffering from severe depression, obsession over the kicking incident, and violent thoughts toward the veterinarian.

Dr. Jorge Zuniga testified that he began treating plaintiff in December 1993. He diagnosed plaintiff as suffering from recurrent major depression with paranoid features and a personality disorder with explosive features. In his opinion plaintiff could not return to work for defendant or perform any other meaningful employment.

Plaintiff was examined by Dr. Barry Rubin on July 1, 1996. He diagnosed major depression with psychotic features. He opined that plaintiff could not return to work for defendant, but thought it probable that he could work elsewhere.

Defendant's expert, Dr. Michael Freedman, examined plaintiff on December 6, 1996 and concluded that he was not mentally disabled.

The magistrate found plaintiff mentally disabled and entitled to an open award of benefits. The magistrate noted that there was some dispute about when the kicking occurred. Although Dr. Zuniga, Dr. Rubin, and others mistakenly thought that the kicking incident took place only a few days before plaintiff sought treatment from Dr. Zuniga, the magistrate noted that the race season at the Hazel Park Raceway lasted from April to October 1993, and so the kicking incident could not have occurred any later than October 1993. In addition, the magistrate noted medical testimony to the effect that plaintiff's personality disorder has a biological origin which predates his employment, and that he is prone to paranoia and depression as a result of nonwork-related conditions. Nevertheless the magistrate found plaintiff entitled to benefits for the following reasons:

> Although the time frame concerning the incident is unclear, I find Dr. Zuniga's testimony that plaintiff talked continuously about Dr. Gowell kicking him in the shin establishes the major significance of that incident to plaintiff. The Michigan Supreme Court has held that psychiatric cases must be judged subjectively by focusing on the individual worker, rather than the average worker, but objectively in assessing significance. In other words: "Given actual events and a particular claimant, with all the claimant's pre-existing frailties, can the actual events objectively be said to have contributed to, aggravated or accelerated the claimant's disability in a significant manner?" *Gardner v Van Buren Public Schools*, 445 Mich 23, 50[; 517 NW2d 1] (1994). There is no

> real dispute among the experts that Mr. White suffers from a recurrent depression that has a biological basis and also from a personality disorder with main [sic] explosive and borderline features. According to Dr. Zuniga, it does not take too much of a stimulus to trigger a response in a patient with borderline personality. There is no question that plaintiff reacted very strongly to the kicking incident by feeling that he wanted to kill his supervisor. That reaction is consistent with the agitated, tense, impulsive and paranoid demeanor he initially presented to Dr. Zuniga.

Defendant appealed and the WCAC reversed. Although the WCAC held that the magistrate had framed the issue properly, it also held that the magistrate erred as a matter of law by awarding benefits on the basis of an objectively insignificant work-related incident.

> Weighing the significance of an event is not to be done according to a plaintiff's subjective point of view. The significance of an event must be determined objectively by the magistrate. *Gardner*, 49-50. The magistrate weighed the event when she noted it could easily be insignificant in light of plaintiff's pre-existing mental frailty. She found that " . . . it does not take too much of a stimulus to trigger a response in a patient with a borderline personality." Critically, she noted the event was significant in the plaintiff's eyes: "plaintiff talked continuously about Dr. Gowell kicking him in the shin establish[ing] the major significance of that incident to *plaintiff*." (Emphasis ours.) Further, the magistrate found plaintiff's over-reaction to the event consistent with his personality disorder, implying that it was not consistent with the event itself: "That reaction [wanting to kill the veterinarian] is consistent with the agitated, tense, impulsive and paranoid demeanor he initially presented to Dr. Zuniga." The magistrate also found "plausible Dr. Freedman's testimony that underlying passive/aggressive aspects to plaintiff's personality developed early in life and underlying paranoia could make plaintiff feel picked on, being treated unfairly and given more work even if those things were not really happening." Again, this shows that the magistrate recognized that it was the pre-existing, nonwork-related personality disorder causing plaintiff to find an insignificant event significant.
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> There is record support for the magistrate's conclusion that the only work-related event is the waking kick. There is reversible error in the decision, however, because the magistrate analyzed the event as significant to plaintiff while simultaneously finding it to be objectively insignificant. Therefore, her decision must be reversed.

II

The WCAC must consider the magistrate's findings of fact conclusive if they are supported by competent, material, and substantial evidence on the whole record. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 699; 614 NW2d 607 (2000). Substantial evidence is evidence that a reasonable person would accept as adequate to justify a conclusion. MCL 418.861a(3); MSA 17.237(861a)(3). This Court's review of a decision by the WCAC is limited. In the absence of fraud, findings of fact made by the WCAC acting within its powers are conclusive. *Mudel*, *supra* at 700,

quoting MCL 418.861a(14); MSA 17.237(861a)(14). However, this Court may review de novo questions of law involved with any final order of the WCAC. MCL 418.861a(3) and (14); MSA 17.237(861a)(3) and (14), *Tyler v Livonia Public Schools*, 459 Mich 382, 388; 590 NW2d 560 (1999).

As noted by the magistrate and WCAC, mental disabilities are compensable only if they arise out of actual events of employment, not unfounded perceptions thereof, and only if those events contributed to or aggravated the disability in a significant manner. *Gardner v Van Buren Public Schools*, 445 Mich 23, 27-28; 517 NW2d 1 (1994). However, it remains black letter law that employers take employees as they find them, with all preexisting mental and physical frailties. *Id.* at 48. An employee's preexisting condition does not bar recovery; a compensable injury can result from even the most trivial injury. *Id.* "The issue is not whether a person of 'reasonable' or 'average' health would have been injured. It is whether a specific individual, regardless of preexisting conditions, sustained an injury that arose out of, and in the course of employment." *Id*.

In determining whether actual events of employment occurred, the employee's interpretation of them is not relevant. As long as the events are found to have occurred, it does not matter whether the factfinder would characterize them in the same manner as would the employee, e.g., as harassment or discrimination. *Zgnilec v General Motors Corp (On Remand)*, 224 Mich App 392, 397; 568 NW2d 690 (1997). In determining the significance of workplace events, it is error to confuse an employee's preexisting conditions with nonwork-related causal factors. The fact that an employee has an underlying personality type which makes him more susceptible to injury in a workplace is a preexisting mental or physical frailty, not a nonwork-related factor to be weighed in determining the significance of work-related factors. *Id.*

In this case, the magistrate found that plaintiff had established that he suffered from a mental disability, that the mental disability (although based on a preexisting condition) was triggered by an actual event of employment (i.e., the kicking incident), and that the event aggravated or accelerated the mental disability in a significant manner. The WCAC concluded that the magistrate erred by simultaneously finding the kicking incident to be significant to plaintiff "subjectively" but "objectively" insignificant. We disagree. The magistrate did not err in taking into account plaintiff's preexisting personality type and propensity for psychiatric injury in finding that the kicking incident "contributed to, aggravated, or accelerated the mental disability in a significant manner." Although the magistrate would have erred by finding the incident significant *only* because plaintiff believes it to be significant, she did not err in finding it significant in light of all the facts and circumstances, including plaintiff's preexisting mental frailty.

Moreover, the WCAC's statement that the magistrate must have found the kicking incident to be insignificant "objectively" betrays a misunderstanding of the test for mental disability. Even if the WCAC would judge the kicking incident to be insignificant if it happened to most people, this does not mean that the incident was an insignificant causal factor in the development of this person's mental disability, given his preexisting mental conditions and frailties. As our Supreme Court emphasized in *Gardner, supra* at 28: "All that is statutorily required are 'actual events of employment,' *even if*

objectively unimportant, that contribute to, aggravate, or accelerate a mental disability in a significant manner." (Emphasis supplied.)

Thus, contrary to the WCAC's reading of the magistrate's legal conclusion, the "objective insignificance" of the kicking incident was irrelevant as long as it was significant in elevating the preexisting mental condition to a disability that precluded plaintiff from continuing his employment. We therefore conclude that the magistrate properly applied the *Gardner* formulation of the statutory test by determining that, although the kicking incident might appear "objectively insignificant" to the average person, there was substantial evidence[1] from Dr. Zuniga that established that, because "it does not take too much of a stimulus to trigger a response in a patient with [a] borderline personality," the kicking incident "contributed to, aggravated, or accelerated [plaintiff's] mental disability in a significant manner."

Reversed and remanded for reinstatement of the magistrate's award. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Robert B. Burns

[1] We emphasize, for the sake of clarity, that the WCAC did not dispute the magistrate's factual findings, but rather her legal conclusions. Therefore, our review does not implicate our Supreme Court's recent clarification in *Mudel*, *supra*, of the appellate standards of review to be applied to factual determinations by the magistrate and the WCAC.