STATE OF MICHIGAN

COURT OF APPEALS

SHIRLEY LEWIS,

Plaintiff-Appellant,

v

AMSTAFF EMPLOYER RESOURCES, INC., CONTINENTAL CASUALTY COMPANY, FX COUGHLIN COMPANY, and ST. PAUL FIRE & MARINE INSURANCE COMPANY,

Defendant-Appellees.

UNPUBLISHED
March 16, 2001

No. 224764
WCAC
No. 99-0090

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

PER CURIAM.

Leave was granted in this worker's compensation case to review a decision of the Worker's Compensation Appellate Commission (WCAC) which reversed a magistrate's open award of benefits for a mental disability. We reverse because the reasoning of the WCAC is inconsistent with the recent decision of *Calovecchi v Michigan*, 461 Mich 616; 611 NW2d 300 (2000), aff'g *Calovecchi v Michigan*, 223 Mich App 349; 566 NW2d 40 (1997).

Plaintiff was an employee of defendant Amstaff. Amstaff "leased" plaintiff's services to Express Enterprises. Plaintiff worked for Express Enterprises, from April 1989 until April 1, 1996, performing bookkeeping duties with banking and payroll responsibilities. Express Enterprises grew rapidly, and in March 1996 it was decided that a more qualified accountant should be hired to handle the company's accounting functions. Plaintiff was advised at a meeting on March 22, 1996, a Friday, that she would become the assistant of a new accountant and would receive only half her previous pay. Plaintiff was surprised by the change and described herself as "devastated" and "humiliated."

Plaintiff returned to work the following Monday, March 25, 1996, and was upset to find that all her personal belongings had been placed in a box.[1] Plaintiff was unable to continue

[1] The magistrate found that the box was placed outside of plaintiff's previous office, although the defense explained that plaintiff's belongings had been moved so her large office could be divided
(continued…)

working and left, saying she needed a week off. Plaintiff saw a doctor who prescribed medication for her nerves.

Plaintiff tried to return to work on April 1, 1996, but felt employees were joking about her situation and left work that day. Plaintiff has not worked for defendant since. Plaintiff did work on a part-time basis for defendant Coughlin in 1997. However, the magistrate found that plaintiff's employment with Coughlin did not contribute to plaintiff's mental disability. That finding was not appealed.

Under the Worker's Disability Compensation Act, plaintiff had to establish a personal injury "arising out of and in the course of employment. . . ." MCL 418.301(1); MSA 17.237(301)(1); *Haske v Transport Leasing, Inc*, 455 Mich 628, 641; 566 NW2d 896 (1997). The phrase "arising out of and in the course of" describes the necessary connection between personal injury and employment. *Calovecchi, supra*, 461 Mich at 622. For a compensable mental disability, plaintiff had to prove: (1) a mental disability, (2) arising out of actual events of employment, not unfounded perceptions thereof, and (3) that those events contributed to, aggravated, or accelerated plaintiff's mental disability in a significant manner. MCL 418.301(2); MSA 17.237(301)(2); *Gardner v Van Buren Public Schools*, 445 Mich 23, 27-28, 52; 517 NW2d 1 (1994).

There is no dispute that plaintiff established a mental disability or satisfied the "significant manner" requirement. The magistrate found three employment events which he believed contributed to or aggravated plaintiff's mental disability in a significant manner: (1) plaintiff was in a growing business which outgrew her capabilities and her work load became ever heavier, (2) plaintiff was demoted and given half her salary and asked to train her new supervisor, and (3) plaintiff's personal belongings were packed and moved. Since the magistrate found that plaintiff had a disabling mental condition, which was significantly contributed to or aggravated by actual events of employment, the magistrate entered an open award of benefits.

The WCAC reversed because it believed the events found by the magistrate all involved "termination of employment – a loss of a job." The WCAC, relying heavily on *Robinson v Chrysler Corp*, 139 Mich App 449; 363 NW2d 4 (1984), concluded that a disability arising out of an employee's reaction to losing a job is not compensable under Michigan law. Since plaintiff was "terminated" from her bookkeeping job the WCAC found that she could not have a compensable disability. The WCAC recognized that Express Enterprises "did not entirely terminate plaintiff from its employment" and that all the events found by the magistrate "occurred in the course of plaintiff's employment." However, the WCAC also found that the "distress plaintiff suffered in this case was prompted by the loss of her existing position. . . ." Since all of these events involved the loss of her job (including "concerns about losing her job, being informed of the loss of her job, having the loss of her job manifested shortly thereafter"), the WCAC concluded that plaintiff did not have a compensable disability.

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to make room for both plaintiff and the new accountant.

Appellate courts have the power to review questions of law involved in final orders of the WCAC. MCL 418.861a(14); MSA 17.237(861a)(14). We review such questions of law de novo. *Calovecchi, supra*, 461 Mich at 621-622. Here, the WCAC erred as a matter of law in determining that the nature of the events found by the magistrate precluded a compensable mental disability.

This issue was clearly addressed by our Supreme Court in *Calovecchi*. *Id*. at 616. The plaintiff in *Calovecchi* was a state trooper who felt disgraced when he was placed on paid administrative leave and was relieved of his badge and gun.[2] *Id*. at 619. *Calovecchi* held that a compensable injury under those circumstances was possible because, unlike *Robinson, supra*, 139 Mich App 445, the case did not involve the loss or termination of employment. *Calovecchi* noted that the employee remained in the defendant's employ after being sanctioned and that the employee continued to receive wages and could return to active employment after he received counseling. *Calovecchi, supra*, 461 Mich at 623-624. The case further noted that the events of employment "did not sever the employment relationship" and that all events occurred "during the course of plaintiff's employment. . . ." *Id*. at 624, emphasis in opinion.[3]

In the case at bar, plaintiff's employment situation is similar to *Calovecchi*. Like the plaintiff in *Calovecchi*, the injurious events of employment found by the magistrate occurred during the course of employment. Plaintiff's employment was never severed or terminated. Plaintiff was demoted, but her relationship continued with the same employer. Even the WCAC recognized that all the relevant events occurred in the course of plaintiff's employment.

We conclude that the WCAC erred as a matter of law. We reverse and remand the WCAC's decision for entry of judgment consistent with *Calovecchi* and this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Harold Hood
/s/ Jessica R. Cooper

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[2] The fact that *Calovecchi* dealt with a mental disability allegedly caused by an investigation and disciplinary action is an immaterial factual distinction.

[3] *Calovecchi* cast doubt on the continuing vitality of *Robinson, supra*, 139 Mich App 445, but *Calovecchi* stopped short of reversing *Robinson*. *Calovecchi* recognized that the claim to mental injury in *Robinson* arose "solely from the cessation of employment" and "arose out of the termination of his [the plaintiff's] employment rather than due to his employment." *Calovecchi, supra*, 461 Mich at 623. *Robinson* reasoned that a mental injury which arises from the loss of employment cannot logically arise out of and in the course of employment. *Id*. at 622.