

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT M. TALBOT,

Plaintiff-Appellant/Cross-Appellee,

v

DETROIT NEWSPAPER AGENCY,

Defendant-Appellee/Cross-
Appellant,

and

TRAVELERS INSURANCE CO., LIBERTY
MUTUAL INSURANCE CO., and SECOND
INJURY FUND

Defendants-Appellees.

UNPUBLISHED

July 24, 2001

No. 224172

WCAC

LC No. 98-000643

Before: Markey, P.J., and Jansen and Zahra, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the Worker's Compensation Appellate Commission's (WCAC) opinion and order reversing the magistrate's decision granting plaintiff an open award of benefits based on a knee injury. We affirm.

Plaintiff began working for defendant Detroit Newspaper Agency in 1974. Plaintiff's duties included driving a truck and delivering bundles of newspapers to distributors. Between 1983 and 1994, plaintiff injured his knees numerous times while working. Plaintiff underwent several surgeries as a result of those injuries and received worker's compensation benefits during the periods of recovery. On May 31, 1995, plaintiff tripped and fell into a news rack, spraining his left ankle and injuring his shoulder and back. Plaintiff missed work for a short period as a result of those injuries and was paid worker's compensation benefits. On July 12, 1995, plaintiff consulted his physician regarding continued pain in his ankle. Upon the recommendation of his physician, plaintiff immediately ceased working. Plaintiff received worker's compensation benefits for approximately eight months thereafter. Defendants terminated those benefits after an independent medical examination revealed plaintiff no longer suffered pain in his ankle and the

degeneration of plaintiff's knees was attributable to his age and obesity, not prior injuries or job-related stress.

On April 28, 1997, plaintiff filed his application for hearing with the Michigan Department of Labor, alleging injury dates of September 5, 1992, January 31, 1994, and May 31, 1995. With respect to the September 5, 1992 injury, plaintiff stated: "Fell in truck - turning [left] knee - surgery - now need knee replacement," and specified the duration of disability related to that injury as September 8, 1992 to May 19, 1993. Plaintiff claimed with respect to his January 31, 1994 injury: "Right knee needs replacement, feel [sic] out of truck turned knee," and specified the duration of disability as March 2, 1994 to September 17, 1994. With respect to his May 31, 1995 injury, plaintiff stated "L[eft] foot - L[eft] shoulder and back. Tripped sprained ankle and feel [sic] hit shoulder on newspaper racks," and specified the duration of disability as July 12, 1995 to present. Beneath the injury dates, plaintiff's application states: "Last day off [sic] work 7-12-95."

During the trial before the magistrate, the parties contested whether plaintiff's application alleged a last day of work injury date. See MCL 418.301(1).¹ The magistrate ruled that the application could be interpreted so as to allege a last day of work injury date. The magistrate found that plaintiff did not have a disability associated with his back, ankle or shoulder. However, the magistrate determined that plaintiff suffered a workplace injury associated with his knees and plaintiff's work for defendant contributed to, aggravated, or accelerated the degeneration of plaintiff's knees. See MCL 418.301(2). The magistrate granted an open award of benefits based on a work-related knee injury.

Defendants appealed to the WCAC. The WCAC determined that the magistrate's decision to grant plaintiff an open award for a knee-related injury was without support and was legal error. The WCAC concluded that no injury related to plaintiff's knees was claimed for the May 31, 1995 date of injury and plaintiff failed to make a claim of ongoing disability due to a knee condition. Consequently, the WCAC reversed the magistrate's ruling.

¹ MCL 418.301 provides, in part:

(1) An employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act. In the case of death resulting from the personal injury to the employee, compensation shall be paid to the employee's dependents as provided in this act. Time of injury or date of injury as used in this act in the case of a disease or in the case of an injury not attributable to a single event shall be the last day of work in the employment in which the employee was last subjected to the conditions that resulted in the employee's disability or death.

(2) Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions, shall be compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities shall be compensable when arising out of actual events of employment, not unfounded perceptions thereof.

On this appeal, plaintiff argues that the WCAC erred in reversing the magistrate's grant of benefits. We disagree.

Our review of decisions of the WCAC is limited. The WCAC's findings are conclusive if supported by any competent evidence. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 703-704; 614 NW2d 607 (2000). If it appears that the WCAC carefully examined the record, was duly cognizant of the deference to be given to the decision of the magistrate, did not misapprehend or grossly misapply the substantial evidence standard, and gave an adequate reason grounded in the record for reversing the magistrate, the judicial tendency should be to deny leave to appeal, or if it is granted, to affirm. *Id.* at 703, quoting *Holden v Ford Motor Co*, 439 Mich 257, 269; 484 NW2d 227 (1992). However, we review questions of law involved in any final order of the WCAC under a de novo standard. *DiBenedetto v West Shore Hospital*, 461 Mich 394, 401; 605 NW2d 300 (2000). A decision of the WCAC may be reversed if the commission operated within the wrong legal framework, its decision was based on erroneous legal reasoning, it based a finding of fact upon a misconception of law, or it failed to correctly apply the law. *Id.* at 401-402.

In the present case, the WCAC concluded that despite plaintiff's assertion at trial that he was alleging injury based on "the accumulation of his work life at the Detroit Newspaper Agency," plaintiff did not properly claim a last day of work injury date. We cannot say that determination was erroneous. A review of the record establishes that plaintiff did not plead an ongoing knee injury. Plaintiff's application for hearing states three specific injury dates. According to plaintiff's application, the two knee injuries that occurred on September 5, 1992 and January 31, 1992 were of limited duration. Plaintiff only alleged injury to his foot, back and shoulder arising out of the May 31, 1995 incident. Plaintiff testified at trial that he was working without restriction on May 31, 1995. He specified that the May 31, 1995 incident caused injury to his ankle, not his knees. Plaintiff returned to work without restriction subsequent to that ankle injury. Plaintiff's application does not state that his knee injuries were the result of the aging process and were contributed to or aggravated or accelerated by his employment in a significant manner. See MCL 418.301(2). Plaintiff's statement within his application, "Last day off [sic] work 7-12-95," does not include a corresponding description of any disabling injury. Under these circumstances, we cannot say that the WCAC erred in determining that plaintiff is not entitled to benefits for a knee-related injury based on a May 31, 1995 injury date or in reversing the magistrate's ruling on that basis. *Mudel, supra; DiBenedetto, supra.*

Given our determination that the WCAC did not err in reversing the magistrate's ruling, we need not address the issues on cross-appeal.

Affirmed.

/s/ Jane E. Markey
/s/ Brian K. Zahra