

STATE OF MICHIGAN
COURT OF APPEALS

GERTYSTINE LONG,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS and
IONIA MAXIMUM CORRECTIONAL
FACILITY,

Defendants-Appellees.

UNPUBLISHED
November 30, 2001

No. 231128
WCAC
LC No. 00-0162

Before: O’Connell, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order of the Worker’s Compensation Appellate Commission (WCAC) affirming the decision of the magistrate to deny plaintiff benefits. We reverse and remand.

Plaintiff, an African American woman, began working for the Department of Corrections in 1986 and the Ionia Maximum Correctional Facility in 1993. At “I-Max,” she first worked as a corrections officer before being made a housing officer and was last transferred to work in the gate area of the prison. Her last day worked was March 4, 1997. On February 1, 1999, at the expiration of a disability leave of absence, plaintiff filed for worker’s compensation benefits. Plaintiff claimed an ongoing mental disability because of a psychiatric condition that arose out of and in the course of her employment at the prison. Specifically, plaintiff relied on several allegedly unnecessary disciplinary actions by her supervisors as well as some experiences with her colleagues allegedly involving racial harassment.

The magistrate found that plaintiff had not met her burden of proving a compensable work-related mental disability. The magistrate found that most of plaintiff’s complaints about her problems at the prison focused on issues of control and authority. Further, the magistrate found that plaintiff’s perception of what actually took place in the facility was “colored by her racial hypersensitivity” and was most likely related to what her treating psychologist described as a passive-aggressive personality disorder. The magistrate concluded that the work situation plaintiff described did not cause the personality disorder. “Rather, the underlying personality

disorder created the so-called work situations.” The magistrate therefore denied plaintiff benefits.

Plaintiff appealed to the WCAC, challenging the adequacy of the magistrate’s factual construction and legal analysis. The WCAC affirmed the magistrate’s decision. The WCAC concluded that the magistrate “did not need to go into great specifics” about plaintiff’s mental condition because he was persuaded by the proofs that such condition was not significantly contributed to by the actual events which occurred at work. Further, the WCAC found that the magistrate had compared the nonemployment and employment factors because certain evidence supporting those factors was contained in the magistrate’s statement of facts. The WCAC concluded that it was “able to follow the path taken by the magistrate through the evidence, the testimony adopted, the standards followed, and the reasoning used to reach his conclusion, thereby [sic] fully satisfying the requirements of MCL 418.847(2).”

Plaintiff filed an application for leave to appeal in this Court, which this Court granted. Plaintiff challenges the WCAC’s affirmance of the magistrate’s decision in light of the magistrate’s inadequate factual construction and legal analysis. We find that plaintiff’s arguments have merit.

In *Gardner v Van Buren Public Schools*, 445 Mich 23, 27-28; 517 NW2d 1 (1994), our Supreme Court set forth the following three-step analysis for establishing a compensable mental disability claim pursuant to MCL 418.301(2). A claimant must prove: (1) a mental disability; (2) arising out of the actual events of employment, not unfounded perceptions thereof; and that (3) those events contributed to, aggravated, or accelerated the mental disability in a significant manner.

Regarding her alleged mental disability, step one, plaintiff asserts that in deciding that she did not have a compensable mental disability, the magistrate overlooked her Axis I conditions – the major depression diagnosed by Dr. Mintzes and the dysthymia diagnosed by Dr. Ager. Plaintiff relies on the fact that in his analysis of her case, the magistrate used only the phrase “personality disorder,” which is Axis II terminology. Plaintiff argues that the WCAC therefore erred in affirming the magistrate’s conclusion that she did not have a compensable mental disability as the Axis I condition was never considered.

Not quite conceding that the magistrate completely failed to analyze the Axis I conditions, the WCAC concluded that the magistrate did not need to “go into great specifics in his concluding analysis as to what plaintiff’s mental condition is.” The WCAC reached this conclusion because the magistrate’s conclusion that her disability—whatever it was—was not significantly contributed to by actual events at work.

Defendants attempt to explain away the magistrate’s omission by asserting that the magistrate did not need to address the effect of plaintiff’s employment on her Axis I mental disability because that disability did not develop until over a year after her last day of work. However, this explanation is dissatisfying as it was only plaintiff’s diagnosis, not necessarily her disability, which was issued over a year after her last day of work. Further, plaintiff’s treating

psychologist testified that the instances plaintiff experienced at work resulted in her lowered self-esteem and increased hostility and led to a significant manic depression.

A finding of fact, and not mere speculation, about plaintiff's Axis I diagnosis was required in this case. As it appears that the record was sufficient for administrative review on appeal by the WCAC, the WCAC should have independently made such a finding of fact. See *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691; 614 NW2d 607 (2000); *Woody v Cello-Foil Products*, 450 Mich 588, 597; 546 NW2d 226 (1996).

Regarding step two in the analysis for establishing a compensable mental disability, the *Gardner* Court stated that it recognized that actual events of employment, even if "ordinary," can be injurious to the mental health of a predisposed individual. *Gardner, supra* at 49. Thus, our Supreme Court held that in excluding "unfounded perceptions" of the actual events of employment, the statute only excludes situations in which the claimed events never occurred, i.e., where they are imagined, hallucinatory or delusional. *Id.*

Plaintiff argues that the WCAC erred in affirming the magistrate's decision because the magistrate misapplied the "actual events" requirement. We agree.

There is some objective evidence in the record of the disciplinary actions taken by plaintiff's supervisors and her experiences with her colleagues. Although the WCAC emphasized that the magistrate found plaintiff to be an incredible witness, neither defendants, the magistrate, nor the WCAC claims that plaintiff "imagined" these events happening.

Rather, it appears that in accepting the magistrate's finding that plaintiff proffered only "unfounded perceptions" of events at her employment, the WCAC accepted the magistrate's reasoning that it was instead plaintiff's racially-hypersensitive or passive-aggressive lens through which she viewed these events that was "imagined." However, that type of reasoning is explicitly forbidden. "An unfounded perception of reality is the very characteristic that distinguishes a mentally disabled person from a 'normal' person." *Gardner, supra* at 43. "[M]any, if not all, mental disabilities are based on 'unfounded perceptions' of 'reality' or 'actual events.'" *Id.* Therefore, the WCAC legally erred in determining that the work events upon which plaintiff relied were not "actual events."

Last, in determining whether specific events of employment contribute to, aggravate, or accelerate a mental disability in a significant manner, the third step from *Gardner*, the factfinder must consider the totality of the occupational circumstances along with the totality of a claimant's mental health in general. *Gardner, supra* at 47. Our Supreme Court stated that "[t]his analysis will, by necessity, require a comparison of nonemployment and employment factors." *Id.*

Plaintiff argues that the WCAC erred in affirming the magistrate's decision where the magistrate failed to perform the requisite weighing process. We agree. Although the WCAC concluded that it could follow the path taken by the magistrate, we find that the WCAC instead decided which testimony upon which the magistrate relied for his analysis and inferred the magistrate's reasoning from this testimony. As it appears that the record was sufficient for

administrative review on appeal by the WCAC, the WCAC should have independently made the findings of fact necessary for resolving this issue, too. See *Mudel, supra* at 710-713.

We reverse the decision of the WCAC and remand the case to the WCAC for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ David H. Sawyer

/s/ Michael R. Smolenski