

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL EATON,

Plaintiff-Appellant,

v

ITW B & L PLASTICS, INC., and AMERICAN
MANUFACTURING MUTUAL INSURANCE
COMPANY,

Defendants-Appellees.

UNPUBLISHED

March 29, 2002

No. 231495

WCAC

LC No. 98-000426

Before: Gage, P.J., and Hoekstra and Meter, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order of the Worker's Compensation Appellate Commission (WCAC) that reversed a decision of the magistrate and denied plaintiff benefits for an elbow condition. We reverse the WCAC's order and remand for further findings.

An employee is entitled to receive worker's compensation benefits for a personal injury arising out of and in the course of employment by an employer who is subject to the Worker's Disability Compensation Act, MCL 418.101 *et seq.* MCL 418.301(1). To establish an entitlement to benefits, an employee must establish a work-related injury that caused wage loss. *Haske v Transportation Leasing, Inc v Indiana*, 455 Mich 628, 634; 566 NW2d 896 (1997). Additionally, "conditions of the aging process . . . shall be compensable if contributed to or aggravated or accelerated by the employment in a significant manner." MCL 418.301(2).

Plaintiff suffers from osteoarthritis in his right elbow that predates his September 8, 1994 work-related injury to that elbow. The magistrate found that plaintiff's elbow condition was not age-related. Alternatively, the magistrate found that if the condition was the result of aging, then plaintiff's work-related injury and subsequent work duties significantly aggravated, accelerated, and contributed to the condition. The WCAC rejected the findings of the magistrate and, instead, found that plaintiff's arthritis was a condition of the aging process, based on the fact that plaintiff suffered from osteoarthritis for a number of years and on the understanding that osteoarthritis is "an age-related form of degenerative arthritis." The WCAC then concluded that plaintiff had failed to demonstrate that his work was a significant causation factor in his resulting disability and wage loss. Plaintiff contends that the WCAC erred in its findings.

Our review in worker's compensation cases is limited to questions of law. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 706; 614 NW2d 607 (2000). Findings of fact made or adopted by the WCAC are conclusive on appeal, absent fraud, if there is any competent evidence in the record to support them. *Id.* at 709-710; *Bates v Mercier*, 224 Mich App 122, 124; 568 NW2d 362 (1997). We do not weigh or balance the evidence but instead merely determine whether "any evidence" exists to support the WCAC's decision. *Mudel, supra* at 727. The WCAC's decision is subject to reversal if the commission operated within the wrong legal framework or if the decision was based on erroneous legal reasoning. *Bates, supra* at 124.

We conclude that at least part of the WCAC's decision was not supported by any competent evidence in the record and that legal errors occurred. Accordingly, we reverse and remand.

None of the parties offered medical evidence that expressly identified plaintiff's arthritis as a product of the aging process. Indeed, both orthopedic surgeons who testified admitted that they could not identify the etiology of the arthritis. Although osteoarthritis is generally considered a product of the aging process, see *The American Medical Association Family Medical Guide* (Random House, 1982), p 550, it is not always aging-related. "Arthritis is often caused by repetitive stress on a certain part of a person's body, and can occur at any time in a person's lifetime." *Layman v Newkirk Electric Associates, Inc*, 458 Mich 494, 498; 581 NW2d 244 (1998), overruled in part on other grounds by *Mudel, supra* at 697, 713-714. It may be primary or secondary to trauma or other conditions. *Stedman's Medical Dictionary* (26th ed), p 1267. Because osteoarthritis may be caused by a variety of triggering events, in the absence of medical testimony attributing plaintiff's arthritis to the aging process, the WCAC's finding of an aging relationship is based on speculation and, therefore, is not supportable under the "any evidence" standard.

In the absence of a condition resulting from the aging process, the WCAC operated within the wrong legal framework by engaging in a determination of whether plaintiff's employment contributed to, aggravated, or accelerated the condition in a *significant* way. See MCL 418.301(2). The standard is lower for conditions not resulting from the aging process. See *Mattison v Pontiac Osteopathic Hospital*, 242 Mich App 664, 673; 620 NW2d 313 (2000).

After reciting the MCL 418.301(2) standard for age-related conditions, the WCAC stated that "[p]laintiff not only failed to meet that burden [i.e., the burden of showing a *significant* causation factor], given the . . . expert medical testimony, he also failed to show with any degree of reasonable medical certainty that work was even a causation factor. . . ." Accordingly, it could be argued that the WCAC, despite its initial erroneous application of MCL 418.301(2), nonetheless made sufficient findings to sustain its reversal of the magistrate's decision. However, it is unclear from the WCAC's opinion whether the WCAC recognized the principle that if work events increase the pain experienced as a consequence of a pre-existing condition, the claimant is entitled to benefits as long as the increased symptoms exist. See *Mattison, supra* at 671, and *McDonald v Meijer, Inc*, 188 Mich App 210, 214-215; 469 NW2d 902 (1991). Accordingly, we must remand for further findings by the WCAC. On remand, the WCAC shall also keep in mind the principle that if an award of benefits is based on increased symptoms and

not an acceleration or aggravation of the underlying condition, a closed award of benefits is appropriate.¹ See *Anderson v Chrysler Corp*, 189 Mich App 325, 329; 471 NW2d 623 (1991).

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Joel P. Hoekstra
/s/ Patrick M. Meter

¹ The magistrate here apparently awarded an open award of benefits.