

STATE OF MICHIGAN
COURT OF APPEALS

PHYLLIS E. WATTS,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED

October 4, 2002

No. 230264

WCAC

LC No. 00-000028

Before: Holbrook, Jr., P.J., and Zahra and Owens, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order of the Workers Compensation Appellate Commission (WCAC) affirming the magistrate's denial of disability benefits. We reverse and remand.

Plaintiff sought to recover workers' compensation benefits alleging in pertinent part "emotionally stressful work circumstances, giving rise to reactive depression and disability." The magistrate found that plaintiff was mentally disabled, and that the disability prevented her from returning to work in her previous position. The magistrate also found that defendant's disciplining of plaintiff "played a significant role in the development of Ms. Watts' emotional condition." However, the magistrate concluded that plaintiff's entitlement to benefits ended on December 29, 1996, when plaintiff's final violation of defendant's policies resulted in her "just cause" termination.

Plaintiff appealed this ruling to the WCAC. The WCAC noted that MCL 418.305 precludes an employee from recovering workers' compensation benefits where the employee is injured by his or her intentional and willful misconduct. The WCAC found that it was plaintiff's intentional and willful misconduct that led to the discipline, which purportedly caused her mental illness. Thus, the WCAC ruled that MCL 418.305 barred plaintiff from recovering workers' compensation benefits. Therefore, the WCAC affirmed the magistrate's denial of benefits, albeit on different grounds.

On appeal, plaintiff challenges the WCAC's decision, as well as the magistrate's denial of benefits. "[I]n the absence of fraud, we must accept the WCAC's findings of fact as conclusive if there is any competent evidence in the record to support them." *Woodman v Meijer*, 250 Mich App 598, 603-604; ___ NW2d ___ (2002). However, we review de novo questions of law, and may reverse the WCAC's decision if it is based on a legal error. *Id.* at 604.

In *Calovecchi v Michigan*, 461 Mich 616, 622; 611 NW2d 300 (2001), our Supreme Court recognized that a person may recover under the Workers' Compensation Disability Act for personal injuries "arising out of and in the course of employment." The Court noted that MCL 418.401(2)(b) provides in pertinent part:

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. [See *Calovecchi*, *supra* at 622 n 3.]

Our Supreme Court also noted the following commentary: "[A]n injury is 'compensable' if it 'results from the work itself, or from the stresses, the tensions, the associations, of the working environments, human as well as material . . .'" *Id.* at 625, quoting *Crilly v Ballou*, 353 Mich 303, 326; 91 NW2d 493 (1958). The *Calovecchi* Court further noted that "acts of employer-imposed discipline are a predictable part of the working environment." *Calovecchi*, *supra* at 625. Accordingly, the Court opined that a mental illness arising out of disciplinary proceedings may be compensable. *Id.* at 623-625.

The *Calovecchi* Court was not asked, however, to consider whether MCL 418.305 would bar a claim for mental illness arising out of disciplinary proceedings. But a panel of this Court recently considered the issue. *Daniel v Dep't of Corrections*, 248 Mich App 95, 101-103; 638 NW2d 175 (2001), lv gtd 466 Mich 889 (2002). The panel opined that the "voluntary" acts resulting in discipline and the subsequent mental illness were too "attenuated" to bar recovery under MCL 418.305. *Id.* at 102. Thus, the *Daniel* panel reversed the WCAC decision denying benefits. *Id.* at 106.

We note that, in the instant matter, the WCAC relied heavily on its now-reversed opinion in *Daniel*. Although we do not agree whether the logic used by the *Daniel* panel was correct, we are nevertheless bound by that decision. MCR 7.215(I)(1). Ultimately, our Supreme Court will resolve that issue for us. In the interim, we believe that it is appropriate to reverse and remand for reconsideration in light of our decision in *Daniel*. Also, to promote judicial efficiency, we recommend that the WCAC hold the matter in abeyance pending our Supreme Court's disposition of the *Daniel* case.

Reversed and remanded. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra

/s/ Donald S. Owens