

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT TURNER,

Plaintiff-Appellant,

v

MONDAY STAFFING and GREAT AMERICAN
ALLIANCE INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
February 24, 2004

No. 245469
WCAC
LC No. 02-000189

Before: Sawyer, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order of the Worker's Compensation Appellate Commission (WCAC) that reversed a magistrate's decision to grant plaintiff a closed award of general disability benefits. We affirm the WCAC.

Plaintiff worked for Monday Staffing, a company that provided temporary employees to clients. At the time of the injury, plaintiff was assigned to Eaton Corporation. Plaintiff injured himself during his lunch break on July 27, 2001. The magistrate awarded plaintiff a closed award of benefits and found that plaintiff's injury arose out of and in the course of his employment. The magistrate held that plaintiff's injury did not occur while plaintiff was playing basketball, but when he "turned to check the clock to confirm the time."

Defendant appealed to the WCAC and argued that the magistrate misapprehended the law and urged the WCAC to reverse the magistrate's decision because plaintiff injured himself while playing basketball during lunch. A majority of the WCAC agreed with defendant and thus reversed the magistrate's decision, holding that the magistrate misapplied WDCA section 301(3) as interpreted by the Michigan Supreme Court in *Eversman v Concrete Cutting*, 463 Mich 86; 614 NW2d 862 (2000). Plaintiff applied for leave to appeal to this Court, which this Court granted.

It is well settled that an employee who seeks worker's compensation benefits must prove that the injury occurred in connection with his employment, that the injury arose out of and in the course of that employment. *Eversman, supra* at 92. On occasion, as here, the question arises whether an employee, who engages in recreational activity at the workplace and suffers an

injury, has suffered a compensable injury. In this regard, our Legislature addressed the question of employees who may suffer injury during a social or recreational activity:

An employee going to or from his or her work, while on the premises where the employee's work is to be performed, and within a reasonable time before and after his or her working hours, is presumed to be in the course of his or her employment. Notwithstanding this presumption, an injury incurred in the pursuit of an activity the major purpose of which is social or recreational is not covered under this act. Any cause of action brought for such an injury is not subject to section 131. [MCL 418.301(3).]

Our Supreme Court in *Eversman*, held that “[i]n applying the social or recreational test of subsection 301(3), the Court does not need to examine the purpose of the special mission, the work-day's activities, or the out-of-town trip, but rather must consider the major purpose of the activity in which the plaintiff was engaged at the time of the injury.” *Id.* at 95. The Court acknowledged that “[d]etermining the ‘major purpose’ of an activity can often be a difficult exercise.” *Id.* at 96.

The WCAC properly concluded that the major purpose of the basketball game, plaintiff's activity at the moment of injury, was social or recreational and therefore, plaintiff was not covered under MCL 418.301(3). According to the WCAC, plaintiff looked back at the clock to see if he could continue to play basketball before returning to work.

The WCAC did not misapprehend its administrative appellate role in this case. See *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691; 614 NW2d 607 (2000). The WCAC did not contradict the magistrate's factual findings but concluded that the magistrate incorrectly applied the law to those facts. The WCAC applied a reasonable construction of section 301(3) and did not misapprehend or grossly misapply the “substantial evidence” standard. Accordingly, in keeping with our limited review of and deference we afford to an administrative agency's appellate review of a magistrate's legal conclusions, we affirm the WCAC reversal of the magistrate's decision.

Affirmed.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Richard A. Bandstra