STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA D. BRACKETT, Plaintiff-Appellee,	UNPUBLISHED October 23, 2007
v	No. 274078 WCAC
FOCUS HOPE and ACCIDENT FUND INSURANCE COMPANY OF AMERICA, Defendants-Appellants.	LC No. 04-000165

Before: Kelly, P.J., and Meter and Gleicher, JJ.

PER CURIAM.

Defendants appeal from an order of the Worker's Compensation Appellate Commission (WCAC) affirming the magistrate's order granting plaintiff an open award of benefits for a work-related mental disability. We affirm.

The magistrate awarded plaintiff benefits for her work-related mental disability, and the WCAC affirmed the magistrate's decision "in its entirety." This Court denied defendants' application for leave to appeal for "lack of merit in the grounds presented."[1] However, the Michigan Supreme Court, in lieu of granting leave to appeal, remanded the case to this Court "for consideration as on leave granted, in light of *Daniel v Dep't of Corrections*, 468 Mich 34[; 658 NW2d 144] (2003)."[2]

Daniel concerns the application of MCL 418.305, a provision of the Worker's Disability Compensation Act, MCL 418.101, *et seq.* MCL 418.305 provides that "[i]f the employee is injured by reason of his intentional and wilful misconduct, he shall not receive compensation under the provisions of this act."

In *Daniel*, *supra* at 42-44, the Supreme Court held that § 305 precluded the plaintiff from receiving benefits for his mental injury because the injury arose by reason of his misconduct in sexually harassing female attorneys, i.e., his misconduct was the "starting point" for the resultant

[1] Unpublished order of the Court of Appeals, entered April 28, 2006 (Docket No. 266018).
[2] 477 Mich 922; 722 NW2d 892 (2006).

disciplinary proceedings that ultimately caused his mental injury. In deciding *Daniel*, the Court emphasized that "[w]hether [the] plaintiff's injury arose by reason of intentional and willful misconduct as contemplated by MCL 418.305 is a question of fact." *Daniel, supra* at 40.

The administrative entities found that a starting point of a similar character to that in *Daniel* did not exist in the case at bar. The magistrate found that plaintiff's decision to not attend the Martin Luther King celebration in Dearborn – a decision that resulted in her being reprimanded and subsequently suffering from mental and emotional problems – was "a far cry" from the probation officer's sexual harassment in *Daniels*. The WCAC agreed, opining that for defendants to claim that plaintiff was guilty of "misconduct" under the circumstances of this case was "clearly unreasonable."

Although both *Daniel* and this case involve discipline-related disabilities, there is ample record support for the magistrate's and WCAC's mutual finding that plaintiff's pre-arranged non-attendance at the holiday event did not constitute "intentional and wilful misconduct" as contemplated by MCL 418.305. Accordingly, this Court is not permitted to reject this finding to substitute its own fact-finding on the issue. *Daniel, supra* at 46; see also *Mudel v Great Atlantic & Pacific Tea Co,* 462 Mich 691, 701; 614 NW2d 607 (2000). We agree that, unlike the repeated acts of sexual harassment in *Daniel*, acts the Supreme Court opined were "well beyond the realm of mere negligence or gross negligence," *id*. at 45, plaintiff's conduct instead fell within the realm of those cases in which a claimant perhaps violates a workplace rule or expectation but is not precluded by § 305 from recovering benefits for a resulting injury. See, e.g., *Andrews v General Motors Corp,* 98 Mich App 556, 557-561; 296 NW2d 309 (1980).

Moreover, there is no merit to defendants' argument that the WCAC's analysis of the misconduct issue fell short of satisfying its statutory duty to thoroughly and independently review the record. See MCL 418.861a(13). The WCAC is required to consider a magistrate's findings of fact conclusive if they are supported by competent, material, and substantial evidence on the entire record. MCL 418.861a(3). Moreover, the WCAC is statutorily permitted to adopt, in whole or in part, the order and opinion of the worker's compensation magistrate as its own. See MCL 418.861a(10). Further, the WCAC is not required to revisit those issues that are thoroughly and correctly decided by the magistrate. See *Abbey v Campbell, Wyant & Cannon Factory (On Remand),* 194 Mich App 341, 351; 486 NW2d 131 (1992) ("[t]he WCAC need not revisit issues involving questions of law already thoroughly and correctly decided by the magistrate, but need correct or clarify the magistrate's decision only as may be necessary"), and *Jones-Jennings v Hutzel Hosp,* 223 Mich App 94, 103; 565 NW2d 680 (1997) ("[e]ven if the WCAC fails to develop its analysis, there is no error if the WCAC applies the correct legal test"). The WCAC's analysis was adequate and does not warrant a remand for further findings.

Although plaintiff asserts that defendants' remaining issues presented are not within the scope of the Supreme Court's remand instructions, we offer an analysis of both issues. When it so chooses, the Supreme Court is fully aware of how to limit the scope of a remand to one issue. See, e.g., *Blanzy v Brigadier General Contractors, Inc,* 459 Mich 929; 615 NW2d 732 (1998). The Court did not so limit the scope of the remand here.

Defendants argue that the WCAC failed to properly analyze whether plaintiff's perception of her discipline was grounded in fact or reality. See *Robertson v DaimlerChrysler Corp,* 465 Mich 732, 752-753; 641 NW2d 567 (2002). Defendants opine that the WCAC should

have found that plaintiff's perception of the employment events as "harassment" was objectively unreasonable. We disagree. The WCAC properly affirmed the magistrate's analysis because the magistrate objectively reviewed the factual circumstances to determine how a reasonable person would have viewed them. Indeed, the magistrate's analysis reveals a full understanding of the distinction between an objective perception of employment events and plaintiff's individual reaction to those events. There was no reasonable basis for the WCAC to reverse the magistrate's conclusions.

Lastly, defendants argue that the WCAC erred in affirming the magistrate's decision under MCL 418.315(1) to award plaintiff attorney fees she incurred in obtaining reimbursement from defendants for her unpaid medical bills. According to defendants, the WCAC failed to decide whether the medical bills were sufficiently related to the workplace events such that defendants' failure to pay the bills constituted neglect or a breach of duty by the employer. We again disagree. The WCAC determined that the magistrate did not abuse his discretion in awarding attorney fees where defendants' human resource director referred plaintiff to her psychologist, the psychologist "sent periodic reports to defendants regarding plaintiff's treatment and disability," and defendants' own expert agreed that plaintiff may have required psychological treatment after the employment events in this case.[3]

The remainder of defendants' argument on this topic consists of their invitation to this Court to reverse the WCAC's statutory construction of the last sentence of MCL 418.315(1)[4] and instead charge the *medical provider* with the payment of plaintiff's attorney's fees. However, defendants' argument fails to reveal that the WCAC's interpretation of the statute was "clearly wrong," and we therefore accord "great weight to the administrative interpretation of the statute." See *Tyler v Livonia Public Schools*, 459 Mich 382, 388; 590 NW2d 560 (1999). An error requiring reversal is not apparent.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Patrick M. Meter
/s/ Elizabeth L. Gleicher

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[3] Although defendants appear to merely be arguing that the WCAC *failed to address* whether the medical bills were sufficiently related to the workplace events such that attorney fees were warranted, we hold not only that the WCAC did address the issue but also that the WCAC's conclusion with regard to the issue was proper and does not warrant reversal.

[4] This sentence reads: "The worker's compensation magistrate may prorate attorney fees at the contingent fee rate paid by the employee."