STATE OF MICHIGAN

COURT OF APPEALS

DARRYL SCHINDLER,

Plaintiff-Appellee,

v

ASPLUNDH TREE EXPERT COMPANY and LUMBERMENS MUTUAL CASUALTY COMPANY,

Defendants-Appellants,

and

RELIANCE NATIONAL INDEMNITY COMPANY and MICHIGAN PROPERTY & CASUALTY,

Defendants.

UNPUBLISHED
June 9, 2009

No. 279295
WCAC
LC No. 06-000084

Before: Fort Hood, P.J., and Cavanagh and K. F. Kelly, JJ.

PER CURIAM.

This workers' compensation case is before us on remand from the Supreme Court for consideration as on leave granted, *Schindler v Asplundh Tree Expert Co*, 482 Mich 882; 752 NW2d 463 (2008). The Supreme Court directed this Court to consider "whether the Michigan Bureau of Worker's Compensation has jurisdiction over the controversy arising out of plaintiff's injury, MCL 418.845." This Court is to address the remaining issues "only if it determines that jurisdiction in Michigan is proper." *Id.* We decide that Michigan has jurisdiction over plaintiff's claims and we affirm the decision of the Workers' Compensation Appellate Commission (WCAC).

I. BACKGROUND FACTS AND PROCEDURAL HISTORY

Plaintiff, a Michigan resident, was injured on October 12, 1999, while working for defendant Asplundh in Wisconsin as a tree trimmer. Plaintiff had notched a tree to knock it down, but instead of falling to one side, the trunk swung out and hit plaintiff's groin, pinning him to the ground. Plaintiff sustained multiple injuries to his back, a fractured knee, and a fractured pelvis, along with nerve problems in his urethra and scrotum.

Plaintiff had begun working for Asplundh in June of 1993, in Iron River, Michigan, as a tree trimmer. His job included brushing under power lines, climbing trees, using a chainsaw, using ropes to pull down cuttings, stacking wood, and running a chipper. He worked at the sides of roads and in the woods, where the terrain could be rough. Plaintiff was assigned to Division 62, which encompasses Michigan's Upper Peninsula and Wisconsin. He worked at various locations, including Michigan (both the Upper and Lower Peninsulas), Wisconsin, and California. He belonged to a union that covered both Michigan and Wisconsin.

After the accident, plaintiff remained hospitalized for over three weeks. He had a fractured pelvis and a torn urethra. He also complained of injury to his right knee, left hip, and needed a hernia repair. He has had at least six surgeries since the accident. Plaintiff had surgery in June of 2000 to repair a urethral disruption, April of 2001 for an arterial reconstruction, and in June of 2001 for his right knee. Also, plaintiff underwent instruction for intracavernosal injection due to his difficulties with erectile function.

After the surgeries, plaintiff continued to complain of urinary incontinence, dribbling after urination, and continued lack of sensation in the penile area. His doctors discussed possible reinnervation surgery, which was designed to restore nerve control, but plaintiff was denied coverage for that surgery.

Dr. Joseph Babiarz, M.D., plaintiff's treating urologist, opined that plaintiff's medical condition was the result of the work injury. Dr. Babiarz stated that plaintiff's urethral disruption was permanent and plaintiff would be at risk for complications from the injury for the rest of his life. Dr. Babiarz believed that all of the treatment that he had provided to plaintiff was reasonable and necessary. He also believed that the reinnervation surgery would be reasonable and necessary.

Physiatrist, Dr. Laurie Wolf, M.D., a physical medicine and rehab specialist, treated plaintiff after the accident and through at least 2004. Dr. Wolf opined that plaintiff had sustained the following injuries due to his work:

> [Plaintiff] sustained massive soft tissue injuries to the perineum and hip regions, with associated urethral disruption and associated erectile dysfunction, right superior inferior pubic rami fractures, left posterior iliac wing fracture extending into the joint. Worsening of the avascular necrosis for the femoral head, significant retroperitoneal hemorrhage, urinary retention, secondary to the urethral disruption requiring suprapubic catheter placement. Anemia requiring transfusions, exacerbation of mechanical low back pain and associate sciatica and bilateral meralgia paresthetica.
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> He had significant right knee trauma, including evulsion fracture about the knee and ACL disruption, which was surgically amenable and exacerbation of his inguinal hernia during his rehabilitation, which also requires surgical intervention.

In Dr. Wolf's opinion, the injuries listed above were related to plaintiff's work injury. Two and one-half years after the tree incident, Dr. Wolf recommended a return to work with a permanent 50-pound lifting restriction and a restriction against frequently carrying more than 25 pounds.

Defense expert Dr. Michael Borkowski, board-certified in occupational medicine, disagreed with Dr. Wolf's restrictions. He opined that plaintiff could return to work without restriction.

Defendants' expert Dr. Michael Small, a board-certified urologist, opined as follows regarding the reinnervation surgery:

> *Q.* Have all treatments for [plaintiff's] urological/reproductive system rendered to date been a direct result of the work injury?
>
> *A.* All treatments for [plaintiff's] urologic/reproductive system rendered to date have been a direct result of his work injury.
>
> *Q.* What, if any, further treatments, medications or surgeries do you feel are necessary in regard to [plaintiff's] work injury? Please specifically address the potential microneurosurgery.
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> *A.* Further treatments, medications or surgery: He will need long-term Caverject or Trimax or similar medications, so that the patient can have satisfactory sexual relations. I did discuss the micro nerve surgery for reinnervation of the perineum and penis to see if this will help with his sexual function. I left this decision up to Dr. Terzis, the neurosurgeon, and the patient. I encouraged the patient as well as Ms. Stanbrook [the case manager] to be sure that the patient talks specifically to the neurosurgeon and see what she anticipates the success rate for this surgery. It is my feeling that the sensation to the perineal area and the penis may return; however, I'm not sure that the results are going to be as high as Dr. Jordan stated – 75 percent.
>
> I would think that because of the length of time and the scar tissue and difficulty in finding these nerves, it may be much more difficult than anticipated and the results may not be as good. I'm also not convinced that this is going to improve plaintiff's erectile dysfunction because of the extent of damage that he has had to the proximal corpora on each side. Even though the blood flow is improved, there is still a portion of his penile bodies which are not functioning. As Dr. Jordan described, this is the reason why the patient would not be able to undergo penile implant surgery.

Plaintiff received workers' compensation benefits under Wisconsin law. After those benefits terminated, plaintiff sought benefits under Michigan law. Defendants objected, so plaintiff filed the instant claim for benefits.

In an opinion mailed March 8, 2006, Magistrate Thomas G. Moher ruled that Michigan had jurisdiction over plaintiff's case because plaintiff was a Michigan resident who worked out of Michigan:

> Plaintiff in the instant case was hired by Defendant to work in the State of Michigan. On the date of hire, Plaintiff was a resident of Alpha, Michigan and continues to reside in that locale. The contract of hire was made in Michigan.

> The Asplundh Tree Expert Co. continues to be a nationwide company that does business in the State of Michigan. The Plaintiff has worked at various locales including Wisconsin for the Defendant. The Plaintiff has received certain benefits pursuant to Wisconsin Workers' Compensation Law. Plaintiff continued to work for the Defendant until his injury on October 12, 1999.

Based on those facts, the magistrate concluded that Michigan had jurisdiction pursuant to MCL 418.845.

The magistrate rejected defendants' argument that plaintiff had not shown an injury arising out of employment given his preexisting health problems. The magistrate opined that plaintiff was a credible witness. The magistrate acknowledged that plaintiff had preexisting degenerative conditions in his lower back and a hernia, but noted that the diagnostic tests did not show a significant degenerative process. The magistrate then detailed testimony from plaintiff's treating physicians and observed:

> I am persuaded that Dr. Babiarz and Dr. Wolf as the treating physicians provide the appropriate opinions concerning causation and that they are in the best position having seen, evaluated and treated the Plaintiff shortly after his acute incident and having follow[ed] this gentleman for over a substantial period of time are in the best position to diagnose his problems and complaints. I do not disbelieve either the testimony of Dr. Small or Dr. Borkowski. Most of the testimony of Dr. Small concurs with the testimony of Dr. Babiarz and most of the testimony of Dr. Borkowski concurs with the testimony of Dr. Wolf. Both of these defense doctors have made several observations that are valuable to this process. I simply believe that Dr. Wolf's opinion and the opinion of Dr. Babiarz in regard to disability and future surgeries are more reasonable than that of Dr. Small or Dr. Borkowski.
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> Thus, I find that the Plaintiff through his believable testimony and by the testimony records of Drs. Babiarz and Wolf meets his burden of proof under the *Aquilina* [*v General Motors Corp*, 403 Mich 206; 267 NW2d 923 (1978)] and survives any possible *Rakestraw* [*v General Dynamics Land Systems, Inc*, 469 Mich 220; 666 NW2d 199 (2003)] analysis. Plaintiff has persuaded me that he has met with a personal injury arising out of and in the course of his employment on October 12, 1999 and that his present disability was caused by the injury of that date. Clearly, the symptoms and changes that have occurred in his nerves at that site and cause him problems up to the present time with urination and loss of sensation in that area of body are attributable to the injuries that he suffered on that date. Had he not suffered these injuries that Plaintiff would likely be working normally today without necessity of any future medical treatment. It is difficult to picture based on the medical that has been presented that the Plaintiff is capable of returning to his former employment that he was performing with Asplundh Tree Expert Co. where he was working out in the field and working up on trees and working on pieces of equipment up in the air.

The magistrate also ruled that plaintiff had suffered a disability under *Sington v Chrysler Corp*, 467 Mich 144; 648 NW2d 624 (2002):

> [I]n summary, I find that the Plaintiff has suffered severe extensive disabling injuries to the various areas of his anatomy that have been noted by the different physicians and that he has suffered severe nerve damage to these areas. I further find that based on the medical testimony I find that Plaintiff has negotiated the maze of Michigan Workers' Compensation Law and is currently unable due to this back, knee, pelvis and nerve problems in his urethra area and scrotal area to perform the regular duties of his current employment or any other employment that he has held or is qualified to hold based on his limited education, training and experience.

The magistrate awarded plaintiff an open award of benefits. The magistrate also ruled that plaintiff was entitled to payment for all his medical treatment, as well as further treatment for his erectile dysfunction condition in the future.

Defendants appealed to the WCAC, which agreed with the magistrate regarding jurisdiction in Michigan:

> We agree with plaintiff that it is irrelevant which union local collected his dues; the record reflects that he was employed at all relevant times by Asplundh, performing duties in Michigan as well as Wisconsin and even California. Plaintiff has established that his contract of hire was made with Asplundh in Michigan, in 1993. There is no substantial evidence presented by defendants to convince us that the initial contract was ever terminated. Nor is there any evidence that a subsequent contract of hire was entered into in Wisconsin.
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> The fact that Wisconsin's workers' compensation system may also have jurisdiction bears no consequence here. Our Act allows, and specifically provides for a credit in the event of, receipt of benefits for work injuries under two or more separate jurisdictions. MCL 418.846.
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> We affirm the magistrate's conclusion that the Michigan Workers' Compensation Agency had proper jurisdiction of this case.

Contrary to defendants' arguments under *Rakestraw v Gen Dynamics Land Sys, Inc*, 469 Mich 220; 666 NW2d 199 (2003), the WCAC held that the magistrate was free to accept Dr. Wolf's testimony as most persuasive, and found reasonable the magistrate's reliance on Dr. Wolf's opinions. The WCAC declined to reweigh the medical evidence and substitute defendants' interpretation of the medical evidence for that of the magistrate. Instead, the WCAC noted that Dr. Wolf's testimony established that plaintiff's symptoms supported a finding that his work-related injuries were medically distinguishable from his preexisting condition and were not a result of the aging process.

The WCAC also ruled that plaintiff had a disability under *Sington*:

> Plaintiff testified that he could no longer perform the tree climbing that was required in his job. He stated: "I was climbing trees every day for them. I can't do it no more. I've got a clunking in there. My leg goes numb on that side." This testimony in and of itself, without more, is sufficient to support the magistrate's finding of disability if plaintiff is found to be credible. *Sanford v Ryerson & Haynes, Inc*, 396 Mich 630 [; 242 NW2d 393] (1976). The magistrate made a specific finding that this plaintiff was credible. Dr. Babiarz testified that plaintiff should avoid activities such as ". . . a lot of squatting, bending and also anything that put him at risk for a straddle type of injury." These are all necessary part of climbing trees.

Thus, the WCAC found competent, material, and substantial evidence on the record to support the magistrate's findings.

The WCAC then addressed defendants' argument that the magistrate should not have ordered them to pay for future surgery regarding plaintiff's erectile dysfunction. The WCAC carefully examined the pertinent statutes and their history and concluded:

> There is nothing in the language of section 315(1) that places an obligation on the injured employee to obtain an order from the magistrate for medical treatment as there was prior to 1965. If the Legislature intended such an obligation, it would have so stated as it had prior to 1965. In fact, the statute clearly places the obligation on the employer to establish why medical treatment should not be paid for by the employer.

The WCAC went on to conclude that the record supported the magistrate's finding that the surgery was reasonable:

> Dr. Small does not rule out the innervation surgery as unnecessary or unreasonable. Even if the surgery was for the sole purpose of restoring plaintiff's ability to have an erection, this would not relieve defendants of their obligation pursuant to section 315(1). Whether a medical treatment is necessary and reasonable is a finding of fact for the magistrate to determine. *Weakland v Toledo Engineering Co, Inc*, 467 Mich 344 [; 656 NW2d 175] (2003). Our function as an appellate body is to perform a qualitative and quantitative evaluation of the evidence to determine whether a magistrate's fact finding is supported by competent, material and substantial evidence on the whole record. . . . Based on Dr. Small's testimony cited above, we are convinced that the magistrate's finding that the innervation surgery is necessary to alleviate the effects of plaintiff's injury is supported by competent, material and substantial evidence. We affirm.

> Therefore, the employer is obligated to pay for all medical treatment for the employee's work related injures until such time as it can establish good cause why it should be relieved of its obligation.

Defendants sought leave to appeal the WCAC order. This Court initially denied leave to appeal for lack of merit in the grounds presented (see Unpublished Order of the Court of Appeals entered January 31, 2008, Docket No. 279295). Defendants appealed to our Supreme Court, which remanded as on leave granted.[1]

II. STANDARD OF REVIEW

Review under the Workers' Compensation Disability Act (WDCA) is limited. *Rakestraw*, *supra* at 224. In the absence of fraud, the appellate courts consider the WCAC's findings of fact conclusive if any competent evidence in the record exists in support. MCL 418.861a(14); *id*. Where substantial evidence on the whole record does not exist to support the magistrate's factual finding, the WCAC may substitute its own finding of fact for that of the magistrate. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 698-699; 614 NW2d 607 (2000). In contrast, in the absence of fraud, this Court must treat findings of fact made by the WCAC acting within its powers as conclusive. MCL 418.861a(14).

This Court, however, does not independently review whether substantial evidence supports the magistrate's findings of fact. *Mudel*, *supra* at 698-699. Rather, this Court's review is complete once it is satisfied that the WCAC has understood and properly applied its own standard of review. *Id*. Provided the WCAC did not misconstrue the substantial evidence standard test and the record reflects evidence supporting the WCAC's decision, this Court treats the WCAC's factual decisions as conclusive. *Id*. at 703.

Further, questions requiring statutory interpretation are questions of law that courts review de novo. *Brackett v Focus Hope, Inc*, 482 Mich 269, 275; 753 NW2d 207 (2008).

III. JURISDICTION IN MICHIGAN

Defendants argue that the magistrate and the WCAC erred in ruling that Michigan has jurisdiction in this case. We cannot agree.

MCL 418.845 governs jurisdiction in worker's compensation matters and provided at the time of plaintiff's injury:

> The bureau shall have jurisdiction over all controversies arising out of injuries suffered outside this state where the injured employee is a resident of this state at the time of injury and the contract of hire was made in this state. Such

[1] We presume that the Supreme Court's order had the effect of vacating our prior orders so that we are not bound by the law of the case doctrine.

employee or his dependents shall be entitled to the compensation and other benefits provided by this act.[2]

When this case was tried, the leading case on section 845 was *Boyd v WG Wade Shows*, 443 Mich 515; 505 NW2d 544 (1993), overruled by *Karaczewski v Farbman Stein & Co*, 478 Mich 28; 732 NW2d 56 (2007). *Boyd* held that if the contract of hire was entered into in Michigan, even if the worker was not a resident of Michigan, the Michigan Workers' Compensation Board of Magistrates would have jurisdiction to resolve controversies for any out-of-state injuries arising from that employment. Our Supreme Court overruled *Boyd* and held that for a workers' compensation claim to come under the jurisdiction of this state, where the injury itself occurs in another state, the injured employee must be a resident of Michigan at the time of the injury and the contract of hire must have occurred in Michigan. *Karaczewski*, *supra* at 33. The Court thus now interprets section 845 to mandate both requirements. *Id*.

The parties do not dispute that plaintiff was a Michigan resident when he was injured. Thus, this issue turns on whether the contract of hire was entered into in Michigan. Asplundh hired plaintiff in 1993 via a contract of hire in Michigan. Plaintiff experienced a number of layoffs between 1993 and 1999, when he was injured, including an extended layoff from 1994 through 1997. Defendants contend that plaintiff signed a new contract of hire in 1997. The WCAC, however, indicated that there was no evidence that a subsequent contract of hire was entered into in Wisconsin. In the absence of fraud, the appellate courts consider the WCAC's findings of fact conclusive if any competent evidence in the record exists in support. MCL 418.861a(14). The record contains competent evidence – the 1993 contract and a union letter in 2004 reflecting that plaintiff was a member of the Michigan union -- that plaintiff's contract of hire arose in Michigan. This Court thus declines to disturb the WCAC's finding on this issue. Pursuant to *Karaczewski*, where plaintiff was a resident of Michigan at the time of the injury and where the contract of hire occurred in Michigan, Michigan has jurisdiction over his worker's compensation claim.

IV. PLAINTIFF'S WORK-RELATED INJURIES

Defendants next assert that plaintiff has not shown that his work-related injuries sustained on October 12, 1999, were medically distinguishable from his preexisting injuries. We reject defendants' contention.

In *Rakestraw*, *supra*, our Supreme Court examined the issue of aggravation of the symptoms of a nonwork-related condition, which is pertinent here because plaintiff had a preexisting low back condition and a hernia. The *Rakestraw* Court held that a plaintiff must produce evidence of the injury that is medically distinguishable from the preexisting nonwork-related condition to establish a compensable personal injury. *Rakestraw*, *supra* at 234.

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[2] The statute has been amended, effective January 13, 2009, and now provides: "The worker's compensation agency shall have jurisdiction over all controversies arising out of injuries suffered outside this state if the injured employee is employed by an employer subject to this act and if either the employee is a resident of this state at the time of injury or the contract of hire was made in this state. The employee or his or her dependents shall be entitled to the compensation and other benefits provided by this act."

The magistrate and the WCAC relied on testimony from Dr. Wolf, one of plaintiff's treating physicians, in ruling that plaintiff had produced evidence that his work-related injuries were medically distinguishable from his preexisting back condition and hernia. Defendants complain that Dr. Wolf was not asked about plaintiff's injuries in relation to the proper causal standard, but instead was asked regarding the possibility of a causal relationship. However, Dr. Wolf's testimony clearly established that she believed that plaintiff's work injury caused all of his current medical problems. Where the record contains competent evidence from the doctors who treated plaintiff to support the magistrate's finding that his employment-related injury was medically distinguishable from his preexisting condition, this Court should not disturb that conclusion.

Defendants next argue that the magistrate should not have permitted plaintiff's counsel to ask Dr. Babiarz questions regarding plaintiff's ability to perform manual labor on redirect when that topic was not explored on either direct examination or cross examination. This point is largely immaterial where Dr. Wolf already established plaintiff's restrictions. Nevertheless, a trial court has the discretion to permit an open redirect examination, *People v Stevens*, 230 Mich App 502, 507; 584 NW2d 369 (1998), and magistrates presumably would have that same discretion. Further, a worker's compensation magistrate is not strictly bound by the rules of evidence. MCL 418.841(6). This point thus offers no relief to defendants.

V. PLAINTIFF'S ONGOING DISABILITY

Defendants next contend that plaintiff has not demonstrated an ongoing disability under *Sington*. This issue has no merit.

"[T]he plain language of MCL 418.301(4) indicates that a person suffers a disability if an injury covered under the WDCA results in a reduction of that person's maximum reasonable wage earning ability in work suitable to that person's qualifications and training." *Sington v Chrysler Corp*, 467 Mich 144, 155; 648 NW2d 624 (2002). Thus, an employee is not disabled if, because of a work-related injury, he or she can no longer perform a job that pays the maximum salary in light of his or her qualifications and training, but can perform an equally well-paying job suitable to his or her qualifications and training. *Id.*

In determining whether a claimant is disabled, the magistrate and WCAC "should consider whether the [work-related] injury has actually resulted in a loss of wage earning capacity in work suitable to the employee's training and qualifications in the ordinary job market." *Id*. at 158. In making this determination, the magistrate and WCAC consider

> the particular work that an employee is both trained and qualified to perform, whether there continues to be a substantial job market for such work, and the wages typically earned for such employment in comparison to the employee's wage at the time of the work-related injury. If the employee is no longer able to perform any of the jobs that pay the maximum wages, given the employee's training and qualifications, a disability has been established under § 301(4). [*Id.* at 157.]

Consequently, a finding of disability requires a determination of an employee's maximum, wage-earning capacity in all jobs suitable to an injured employee's qualifications and training. *Id*. at 159. Plaintiff is required to sustain his burden of proof by a preponderance of the evidence, MCL 418.851.

Plaintiff has established that universe of jobs for which he is qualified and trained is tree trimming. Plaintiff has established his work-related impairments, including injuries to his pelvis, back, knee, and urethra nerve. Those injuries do not permit him to perform jobs within his qualifications and training and, as such, he has established that he has lost wages. Plaintiff also has established that he could do some sedentary work, but has been unable to obtain a sedentary job. According to *Sington*, if each question is answered by the fact-finder in the affirmative, plaintiff has proven a threshold disability: he is no longer able to perform any of the jobs that pay the maximum wages given his training and qualifications. Competent, material, and substantial evidence on the whole record supports the magistrate's and the WCAC's conclusion that plaintiff sustained a *Sington* disability.

Defendants argue that, where plaintiff never testified as to the amount of weight he was required to lift or carry while tree trimming, the magistrate should not have concluded that plaintiff's restrictions precluded him from tree trimming. Defendants' argument, however, is nothing more than an invitation for this Court to substitute its judgment for that of the magistrate and reach alternate findings of fact. This is particularly true where defendants admit that Dr. Wolf placed weight-lifting restrictions on plaintiff; on appeal, defendants would like this Court to make a finding of fact that plaintiff could perform work as a tree trimmer despite those restrictions, a request we refuse.

That defendants would like this Court to reweigh facts in their favor is amply illustrated by defendants' reference to the surveillance tape submitted to the magistrate and the WCAC. We consider, however, these comments from the magistrate regarding the videotape:

> It also shows that he moves very cautiously when exiting his vehicle. The tape of March 7, 2002 shows him carrying an aluminum stepladder and shoveling some snow and it also shows that he got down from his truck very gingerly. The tape of March 8, 2002 shows him limping by his truck and pushing a snow blower in the truck. The tape of April 9, 2003 shows him picking up the mail and limping. The tape of April 10, 2003 shows him walking gingerly. . . . [Magistrate Opinion, 5.]

We decline defendants' invitation to review the magistrate's factual findings and reach a different conclusion.

VI. FUTURE SURGERY

Defendants finally argue that they should not pay for plaintiff's future surgery as plaintiff has not shown that that surgery is reasonable or necessary. We disagree.

Whether a medical treatment is necessary and reasonable is a question of fact for the magistrate. See *Weakland v Toledo Engineering Co, Inc*, 467 Mich 344, 351; 656 NW2d 175 (2003). This Court does not independently review whether the magistrate's findings of fact are supported by substantial evidence. *Mudel*, *supra* at 698-699. Where the record reflects evidence

supporting the WCAC's decision, this Court treats the WCAC's factual decisions as conclusive. *Id.*

The WCAC relied on testimony from Dr. Small, who indicated that all of the treatments so far rendered to plaintiff's urologic/reproductive system were a direct result of his work injury. Further, when Dr. Small was asked about future treatments that he thought would be necessary in regard to plaintiff's work injury, Dr. Small stated that he discussed micro nerve reinnervation surgery with plaintiff. It is apparent that Dr. Small, defendants' own expert witness, believed that the surgery could be considered necessary as a result of plaintiff's work injury.

Consequently, the record contains evidence supporting the WCAC's decision that the surgery is reasonable and necessary. That factual decision therefore is conclusive.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly