STATE OF MICHIGAN

COURT OF APPEALS

GEZO HAUK,

Plaintiff-Appellant,

v

JOHNSON CONTROLS, INC.,

Defendant-Appellee.

UNPUBLISHED
January 21, 1997

No. 191346
WCAC
LC No. 91 00372

Before: McDonald, P.J., and Murphy and M. F. Sapala*, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the November 30, 1995 order of the Worker's Compensation Appellate Commission (WCAC), which after a second remand from this Court once again denied plaintiff benefits. We reverse.

I

Plaintiff began working at a battery assembly plant in 1968. The plant has been owned by a variety of entities, most recently defendant. In 1972 plaintiff was promoted to production supervisor.

Plaintiff testified that he worked under a variety of plant managers, and had no difficulty working with any of them, until George Russell became his boss in the fall of 1987. He testified that Russell often ridiculed and belittled employees who disagreed with him. Plaintiff testified that he could not express his opinions to Russell for this reason. He testified that Russell managed the plant through harassment, intimidation, threats and fear. He described the work environment as extremely stressful. Plaintiff complained that Russell routinely yelled at supervisors in front of employees, thus undermining their authority. He testified that he found this belittling.

In late March or early April 1989 plaintiff and two other supervisors were called into Russell's office. All were questioned with regard to a practice of allowing employees whose quotas had been met to leave the plant early and be credited with a paid lunch. All three acknowledged that they had

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* Recorder's Court judge, sitting on the Court of Appeals by assignment.

done this in the past and did not realize that this was a problem. Russell informed them that this was not to occur in the future.

A week or two later, plaintiff testified that he was approached by one of the other supervisors who had been at the meeting, warning him that Russell "is on it today." He told plaintiff that Russell had threatened to fire three supervisors, "You know who they are."

Plaintiff testified that he completed the workday and may have worked a day or two thereafter, but was not able to go to work the following Monday. Although he got up that day intending to go to work, he testified that he became physically ill and vomited as the time approached to leave for work. Plaintiff testified that he thought he had the flu and called in sick. He awoke the next morning feeling fine, and so planned to go to work. However, once again he became nauseous and vomited as the time approached to leave for work. When he awoke on the third day, he testified that he was sweaty and shaking when he started to think about work. Plaintiff never returned to work after April 22, 1989.

Dr. Lauver, a psychiatric social worker certified in marriage counseling, first saw plaintiff in August 1988 on referral either in connection with a drunk driving offense or in connection with plaintiff's divorce, which became final in 1987. He also saw plaintiff in December 1988 and May 1989. Dr. Lauver testified that plaintiff described a stressful work environment, which was causing him to lose time from work and to suffer physically. In his opinion plaintiff suffered from an adjustment disorder with depressed mood. Dr. Lauver believed that plaintiff was disabled from returning to his employment with defendant. On cross examination, Dr. Lauver admitted that plaintiff has an avoidance personality with passive-aggressive features. He stated that plaintiff had described an event in Viet Nam involving a possible court marshal for what the magistrate described as "a potentially extreme act of violence" Dr. Lauver described plaintiff as someone who keeps his problems to himself.

Plaintiff was seen by Dr. Freedman, a board certified psychiatrist, at defendant's request in December 1989. Dr. Freedman found plaintiff to be pleasant, but harboring resentment regarding his previous employment. In Dr. Freedman's opinion plaintiff was not disabled from further employment, although he admitted that the episodes described by plaintiff were consistent with a depressive reaction.

By order mailed April 15, 1991, the magistrate found plaintiff partially disabled as a result of his employment. He found plaintiff to be a credible witness and adopted his testimony, as well as the testimony of Dr. Lauver.

Defendant appealed, and in an opinion and order dated November 18, 1992, the WCAC reversed. The WCAC held that the magistrate committed two legal errors requiring reversal. First, the magistrate failed to determine whether plaintiff's workplace was objectively stressful and placed too much reliance on plaintiff's subjective impressions of his workplace. Second, the magistrate failed to determine whether plaintiff's work played a significant role in any mental disability as required by §301(2) of the Worker's Disability Compensation Act, MCL 418.301(2); MSA 17.237(301)(2), which provides:

> 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.

Plaintiff applied for leave to appeal. By order entered on May 26, 1993, this Court peremptorily vacated and remanded for further proceedings, because the failure of the magistrate to apply the correct legal standard does not necessarily imply that benefits were improperly awarded. The WCAC was instructed to determine whether the record supports an award under the appropriate legal standard.

On April 29, 1994 the WCAC issued its opinion on remand, once again reversing the magistrate and denying plaintiff's claim for benefits. In doing so, the WCAC placed some emphasis on the fact that plaintiff's supervisor did not treat him differently than any other similarly situated employee, relying on cases decided by this Court which had been reversed or discredited as a result of the Supreme Court's decision in *Gardner v Van Buren Public Schools*, 445 Mich 23; 517 NW2d 1 (1994). In lieu of granting plaintiff's application for leave to appeal this Court remand for reconsideration in light of *Gardner*.

In its most recent decision, the WCAC once again reversed the magistrate:

> Our review of the record reveals a number of nonwork-related factors. Beginning in 1984, plaintiff experienced the deaths of his mother, his father, and a brother. Simultaneously, he was undergoing severe marital difficulties which eventually culminated in the end of his 17-year marriage. According to the testimony of his former supervisor, Lloyd Stuliff, plaintiff also appeared to have a drinking problem. Plaintiff confirmed this with his testimony concerning drunk driving incidents.
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> When we apply the significant manner [test] to these facts, we cannot conclude that plaintiff's employment contributed to, aggravated or accelerated his mental disability in a significant manner. There is no dispute that plant manager George Russell was a gruff, insensitive manager, given to childish displays of temper and ethnic slurs. Yet when the totality of these occupational factors are laid down alongside the nonoccupational factors, the occupational factors do not rise to the significant manner test.
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> We therefore again reverse the decision of Magistrate Gerald T. Richardson, mailed April 15, 1991, granting an open award of benefits.

II

In *Gardner*, the Supreme Court disagreed with numerous cases issued by this Court, which held that the test for a mental disability requires that the claimant demonstrate not only that actual events

of employment occurred, but that they would be considered injurious to a reasonable or ordinary employee, and not just to a hypersensitive or idiosyncratic employee. Instead, the Supreme Court held that a claimant need only demonstrate that the actual events of employment relied upon really occurred and were not imaginary or hallucinatory. 445 Mich at 49-50. The Court reiterated the venerable principle that employers take employees as they find them with all preexisting mental and physical frailties. *Id.* at 48. The Supreme Court also held, however, that the statutory test for mental disabilities includes an objective component. The factfinder must determine whether the specific events of employment relied upon contributed to, aggravated or accelerated a mental disability in a significant manner, where the significance of the causal factors must be determined by viewing both the occupational and nonoccupational circumstances. *Id.* at 47.

In the instant case the WCAC held that plaintiff's workplace could not be considered a significant contributor to his condition in light of nonwork-related factors. Specifically, the WCAC noted that beginning in 1984 plaintiff experienced the death of his mother, his father and a brother. He was simultaneously undergoing severe marital difficulties which eventually culminated in the end of a 17-year marriage. He also had a drinking problem

Plaintiff argues that the WCAC erred in its evaluation of the relative contribution of workplace and nonworkplace factors. In particular, plaintiff contends that his relatives all died before 1984 and so the WCAC erroneously believed that plaintiff was suffering from grief beginning in 1984. Although plaintiff admits that his divorce was an unpleasant one, he contends that he or his wife filed for divorce in 1986 and the divorce became final in 1987. Although plaintiff was convicted of a drunk driving offense in 1987 or 1988, he contends that the drinking was not a cause of the stress, but rather was itself caused by his work-related stress.

The record is not as clear as plaintiff would like. Indeed, it does not appear that plaintiff testified regarding any of these nonwork-related factors, but rather such testimony was supplied by his former supervisor. It does appear, however, that his former supervisor testified that in 1984 his performance review of plaintiff noted that plaintiff had been experiencing certain personal problems, including the deaths of his mother, father and brother. This supports plaintiff's contention that all these deaths occurred prior to 1984. There is also testimony to the effect that the divorce complaint was filed in 1986, and that the divorce became final in 1987.

We agree with plaintiff that the WCAC erred in holding that the stresses in plaintiff's workplace cannot be considered significant because of nonwork-related stresses. Although this Court is required to affirm the WCAC as long as any evidence supports its factual findings, this Court is not obliged to affirm the WCAC when it misunderstands or misconstrues the evidence. Because all of the deaths of relatives upon which the WCAC relied occurred before 1984, and because plaintiff's marriage ended almost two years before his last day of work, these factors can hardly be called significant, especially in light of the lack of any medical testimony linking plaintiff's condition to them. The only other factors bearing on plaintiff's condition are his workplace and his drinking problem. Because there is no evidence to support the conclusion that the drinking problem itself was the cause of stress, as opposed to a symptom of stress, we hold that the only reasonable inference supported by the record is that

workplace factors were the most significant contributors to the condition that led to plaintiff's inability to work.

We therefore reverse and remand for entry of an order granting plaintiff weekly wage-loss benefits. We do not retain jurisdiction. Costs to plaintiff.

/s/ Gary R. McDonald
/s/ William B. Murphy
/s/ Michael F. Sapala