

STATE OF MICHIGAN
COURT OF APPEALS

WANDA BOZMAN,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

UNPUBLISHED

June 11, 1999

No. 208247

WCAC

LC No. 93-001028

Before: Smolenski, P.J., and Saad and Gage, JJ.

PER CURIAM.

Plaintiff appeals an opinion and order of the Worker's Compensation Appellate Commission (WCAC) affirming the magistrate's denial of worker's compensation disability benefits. Initially, this Court denied plaintiff's application for leave to appeal; however, our Supreme Court, in lieu of granting leave to appeal, remanded the case to this Court for consideration as on leave granted. *Wanda Bozman v General Motors Corp*, unpublished order of the Court of Appeals, entered August 12, 1997 (Docket No. 196124), remanded 456 Mich 893; 572 NW2d 1 (1997). We affirm.

Plaintiff sought disability benefits based on a renal disorder which she claims was caused or aggravated by her exposure to welding fumes and solvents in the course of her employment as a welder for defendant. After a hearing, the magistrate found plaintiff to be credible and determined that she was exposed to smoke and fumes at work that caused her to go to first aid. Although the magistrate found that plaintiff's expert had impressive credentials, because there was no evidence as to the type or degree of plaintiff's exposure, the magistrate concluded that it would be speculative to award benefits.

On appeal to the WCAC, plaintiff argued that the magistrate erred in failing to consider plaintiff's prior exposure at one of defendant's plants in Illinois, and also erred in excluding Material Safety Data Sheets from evidence. Finding that plaintiff failed to establish that her exposures in Illinois and Michigan were the same, the WCAC affirmed the magistrate's decision. The WCAC observed that if the Material Safety Data Sheets had been admitted, there was nonetheless insufficient evidence to establish her exposure, and, accordingly, any error was harmless. The WCAC concluded that although

plaintiff made an impressive case, she failed to clearly identify the duration of her exposure to specific chemicals and to question her expert regarding those known materials.

Magistrates determine the facts pertaining to a worker's compensation claim. MCL 418.851; MSA 17.237(851). The magistrate's findings are conclusive if they are supported by competent, material, and substantial evidence on the whole record. MCL 418.861a(3); MSA 17.237(861a)(3).

On judicial review, this Court will inquire whether the WCAC acted in a manner consistent with the concept of administrative appellate review. *Goff v Bil-Mar Foods, Inc (After Remand)*, 454 Mich 507, 516-517; 563 NW2d 214 (1997); *Holden v Ford Motor Co*, 439 Mich 257, 267-269; 484 NW2d 227 (1992). "If the magistrate's decision is reasonably supported in the record by any competent, material, and substantial evidence, then it is conclusive and the WCAC must affirm." *Goff, supra* at 538. This Court should defer to the judgment of the WCAC unless it is manifest that the WCAC exceeded its reviewing power. *Holden, supra*, at 269. Although this Court may not substitute its judgment for that of the WCAC with regard to whether there is competent, material, and substantial evidence on the whole record supporting the findings of the magistrate, *York v Wayne Co Sheriff's Dept (On Remand)*, 227 Mich 514, 519; 576 NW2d 436 (1998), a decision of the WCAC is subject to reversal if the WCAC operated within the wrong legal framework or if the decision was based on erroneous legal reasoning. *Matney v Southfield Bowl*, 218 Mich App 475, 484; 554 NW2d 356 (1996), rev'd on other grounds 458 Mich 851; 587 NW2d 631 (1998).

First, plaintiff contends that both the WCAC and the magistrate erred in excluding plaintiff's testimony as to her fourteen-year history of exposure as speculative.¹ We disagree. There is competent evidence to support the finding that plaintiff failed to present sufficient evidence as to the duration and nature of her exposure to chemicals. Therefore, a finding of causation would have been speculative. The magistrate and WCAC acknowledged the credibility of plaintiff, and the credentials of her expert. However, neither plaintiff nor her expert identified the specific chemicals to which she was exposed or the duration of her exposure sufficient to take the cause of her condition outside the realm of speculation.²

Second, plaintiff contends that the magistrate erred by failing to admit the Material Data Safety Sheets into evidence. We disagree. The WCAC properly concluded that any possible error by the magistrate was harmless. Had the sheets established that defendant's Michigan plant contained chemical agents which were known to cause plaintiff's condition, plaintiff nonetheless failed to establish her exposure to any particular agent during the course of her employment.

Affirmed.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Hilda R. Gage

¹ The magistrate did not consider plaintiff's exposure to various industrial pollutants which plaintiff experienced while employed in defendant's Willow Springs, Illinois plant from 1978 to 1989, because

neither the Michigan Bureau of Workers' Disability Compensation nor the Board of Magistrates had jurisdiction over plaintiff's injuries which occurred outside of Michigan. See MCL 418.845; MSA 17.237(845). Although plaintiff contends that the magistrate and the WCAC should have considered her eleven years of exposure in Illinois, she failed to address this jurisdictional issue.

² The WCAC noted that, "While plaintiff's allegations, coupled with her treater's testimony do make an impressive case against defendant, even for the Michigan exposure alone, plaintiff failed to clearly identify the duration of her exposure to specific chemicals and to question her expert regarding those known materials."