

STATE OF MICHIGAN
COURT OF APPEALS

JOYCE C. WOODINGTON,

Plaintiff-Appellant,

v

COUNTY OF WAYNE,

Defendant-Appellee.

UNPUBLISHED

July 17, 2001

No. 221736

WCAC

LC No. 95-000180

Before: Smolenski, P.J., and McDonald and Jansen, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from a decision of the Worker's Compensation Appellate Commission (WCAC) affirming the decision of the magistrate and granting defendant's petition to stop benefits. We reverse and remand for reinstatement of benefits.

Plaintiff began working for defendant in 1963, first in the Department of Social Welfare and later in the Board of Auditors. In 1968, while in defendant's employ, plaintiff was diagnosed with a genetic condition known as porphyria, a metabolic disease that can result in systemic paralysis. She was hospitalized fourteen times between the date of her diagnosis and March 24, 1978, her last day of work for defendant.

Plaintiff sought worker's compensation benefits in 1978, alleging that the onset of symptoms of porphyria resulted from work-related stress. A hearing officer granted plaintiff an open award, but did not provide a written opinion setting forth his reasoning. The Worker's Compensation Appeal Board denied defendant's delayed application for leave to appeal the decision.

In 1994, defendant filed a petition to stop benefits, alleging that plaintiff's condition had changed, and that she no longer suffered from a work-related disability. The magistrate granted defendant's petition. The magistrate found that the hearing officer's original finding that plaintiff's symptomatology was aggravated to the point of disability by her employment was res judicata, but concluded that he could determine whether plaintiff's condition continued to be work related. The magistrate relied on medical evidence that symptoms of porphyria could appear and disappear without warning or cause, as well as on evidence that plaintiff had not been in a work environment for seventeen years, as support for the finding that any disability from which plaintiff suffered was no longer work related.

On July 31, 1997, the WCAC reversed the magistrate's decision. This Court, however, in an unpublished order entered on January 6, 1998 (Docket No. 205670), vacated the decision of the WCAC and remanded for reconsideration. This Court noted that if plaintiff was granted an open award of benefits because her employment aggravated the symptoms of a nonwork-related condition to the point of disability, defendant could prevail by showing that the symptoms had abated or were no longer work related. See *McDonald v Meijer, Inc*, 188 Mich App 210, 216; 469 NW2d 27 (1991).

On remand, in a decision mailed on May 12, 1999, the magistrate granted defendant's petition to stop benefits, finding that the original aggravation of plaintiff's symptoms caused by her employment had abated because plaintiff had not been in a work environment since 1978. In addition, the magistrate found that the symptoms that plaintiff was experiencing at the time of the hearing on the petition resulted from some cause other than her employment, such as emotional stress or the use of estrogen. The WCAC affirmed the magistrate's decision on July 22, 1999. We granted plaintiff's application for leave to appeal the WCAC's decision in an unpublished order entered on April 5, 2000.

The WCAC does not review a magistrate's decision de novo; nevertheless, it must undertake both a qualitative and quantitative analysis of the evidence to ensure a full, thorough, and fair review. MCL 418.861a(13); *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 701; 614 NW2d 607 (2000). The WCAC is required to determine whether the magistrate's findings were supported by competent, material, and substantial evidence on the whole record. MCL 418.861a(3); *Michales v Morton Salt Co*, 450 Mich 479, 484; 538 NW2d 11 (1995). If the WCAC finds that the magistrate did not rely on competent evidence, it may then make its own findings. *Mudel, supra*, pp 699-700. Judicial review is limited to the findings made by the WCAC, and those findings are conclusive if there is any competent evidence to support them. *Id.*, p 703. If it appears that the WCAC carefully examined the record, was duly cognizant of the deference to be given to the magistrate's decision, and did not misapprehend or grossly misapply the substantial evidence standard, the judicial tendency should be to affirm the WCAC's decision. *Id.*, pp 709-710. We review de novo any question of law raised by a final order of the WCAC. *Oxley v Dep't of Military Affairs*, 460 Mich 536, 540-541; 597 NW2d 89 (1999).

"Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical." *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). A second action is barred by res judicata when: (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first action, and (3) both actions involve the same parties or their privies. *Id.* The question whether res judicata bars a subsequent action is a question of law that is reviewed de novo. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999).

Initially, plaintiff argues that the WCAC erred by affirming the magistrate's decision because the magistrate's finding that her condition was not caused or aggravated by her employment was barred by res judicata. In the magistrate's decision of May 12, 1999, the magistrate determined that plaintiff's symptoms, originally found to have been work related, had abated, or, in the alternative, that plaintiff's current symptoms were no longer work related.

Neither finding was barred by res judicata since these issues arose as a result of the petition to stop benefits. *Hlady v Wolverine Bolt Co*, 393 Mich 368, 376; 224 NW2d 856 (1975).

Next, plaintiff argues that the WCAC erred by affirming the magistrate's decision granting defendant's petition to stop benefits. We agree, reverse the WCAC's decision, and remand for reinstatement of plaintiff's benefits. The magistrate seemed to conclude that plaintiff was no longer entitled to benefits because the symptoms originally found to have been work related had abated simply due to the passage of time. The magistrate did not specify the point at which plaintiff's symptoms were no longer work related. The WCAC's conclusion that the magistrate's decision was supported by the requisite evidence was not supported by any evidence. The medical evidence demonstrated that the occurrence of symptoms of porphyria had no discernible pattern, but did not establish that symptoms of the disease would necessarily abate after the passage of some amount of time. Furthermore, the WCAC's finding that the magistrate's alternative ground for granting the petition to stop benefits, that plaintiff's current symptoms were attributable to nonwork-related emotional stress or the use of estrogen, was supported by the requisite evidence, was also not supported by any evidence. The medical evidence established that while it was thought that stress could affect porphyria or make the condition symptomatic, it was impossible to determine with any certainty what factors, if any, played a part in the development of the disease or its symptoms. While medical opinion need not be stated with absolute certainty in order to sustain a burden of proof, *Kostamo v Marquette Iron Mining Co*, 405 Mich 105, 136-137; 274 NW2d 411 (1979), medical opinion that states only that a link between an employee's work and his disabling condition is "conceivable" or "possible" is insufficient to sustain the preponderance of the evidence. *Mansfield v Enterprise Brass Works Corp*, 97 Mich App 736, 742; 295 NW2d 851 (1980).

The WCAC's conclusion that the magistrate's findings were supported by competent, material, and substantial evidence on the whole record was not supported by any evidence. Reversal of the WCAC's decision is warranted under the circumstances. *Mudel, supra*, pp 709-710.

The WCAC's decision affirming the magistrate's grant of defendant's petition to stop benefits is reversed, and this matter is remanded for reinstatement of plaintiff's benefits. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Gary R. McDonald

/s/ Kathleen Jansen