

STATE OF MICHIGAN
COURT OF APPEALS

BERT HILL,

Plaintiff-Appellant,

v

EMPLOYEE SOLUTIONS, INCORPORATED,
f/k/a LOGISTICS PERSONNEL
CORPORATION, and LEGION INSURANCE
COMPANY,

Defendants-Appellees.

UNPUBLISHED

December 28, 2001

No. 231431

WCAC

LC No. 98-000382

Before: Saad, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals by leave granted a decision by the Worker's Compensation Appellate Commission (WCAC) reversing a magistrate's decision awarding plaintiff benefits. We vacate and remand.

Plaintiff worked for defendant as a semi-trailer truck driver. In April 1997, plaintiff pivoted on his left leg while getting out of the cab of a tractor. He slid to the ground, falling on his feet and striking his left hip and buttock on a dumpster. He experienced numbness in his left leg and knife-like pain in his left hip and groin. He continued to suffer pain, but its intensity increased and decreased, depending on his activity level. He was unable to work because of the pain.

Dr. John R. Schurman examined plaintiff in June 1997 and diagnosed plaintiff with arthrosis of the left hip and loss of joint space and joint cartilage. Schurman testified these degenerative changes indicated that the process had existed for a long time. He found no objective evidence to establish that the April 1997 injury aggravated the pathology of plaintiff's left hip. He believed that the work incident could have been an aggravating factor that did not resolve with the passage of time, noting that plaintiff's preexisting aches and pains worsened after the injury and became persistent by June 1997.

Dr. Ahman M. Hadied examined plaintiff in July 1997. He diagnosed plaintiff with degenerative arthritis of both hips, noting the left hip was worse than the right. Hadied thought the work incident might have exacerbated the symptoms associated with the pre-existing

pathology in plaintiff's hip and thought the incident may have advanced the date of his need for total hip replacement surgery.

Plaintiff underwent hip replacement surgery in September 1997. The surgery alleviated plaintiff's pain and he has had no further treatment for his left hip problem. He is restricted in his work. He works for another employer.

The magistrate found that plaintiff suffered a preexisting degenerative left hip condition. He concluded that the April 1997 work incident constituted a personal injury arising out of and in the course of plaintiff's employment. He found that the fall at least aggravated plaintiff's preexisting left hip arthrosis and produced plaintiff's disability. The magistrate awarded plaintiff benefits.

Defendants appealed to the WCAC, arguing that the magistrate should have considered and applied the significant manner analysis presented in MCL 418.301(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.

The WCAC agreed with defendants, noting that the evidence established that plaintiff suffered preexisting degenerative arthritis. It reasoned that the evidence should have motivated the magistrate to consider whether the work incident pathologically changed plaintiff's condition. Because the magistrate did not make a determination whether plaintiff suffered a condition of the aging process, the WCAC reversed the magistrate's decision and remanded the matter to the magistrate to make the determination.

On remand, the magistrate explained that in his previous decision he found that plaintiff suffered a specific event hip injury arising out of his employment. Thus, section 301(2) did not apply. He failed to make a finding regarding whether plaintiff's arthritis is a condition of the aging process.

After remand, the WCAC indicated that the magistrate misunderstood application of section 301(2). The WCAC wrote: "[S]ince no condition other than the arthritis produced plaintiff's disability, the significant manner test must be applied." It remanded the matter again, with instructions to the magistrate to determine if plaintiff's pre-existing arthritis is a condition of the aging process and if so, to apply the significant manner test and determine if plaintiff has met his burden of proof.

On second remand, the magistrate simply applied the significant manner test without making a determination whether plaintiff's arthritis is a condition of the aging process. He concluded that plaintiff's April 1997 injury contributed to, aggravated or accelerated his left hip condition and found no nonoccupational factors involved in plaintiff's injury and need for surgery.

After the second remand, the WCAC found that the magistrate inappropriately applied the facts when he weighed the significance of occupational and nonoccupational factors. The

WCAC stated that the magistrate failed to recognize that the condition of the aging process is a nonoccupational factor to be considered when applying the significant manner test of section 301(2). The WCAC found that the physicians' testimony supported a finding of some immeasurable contribution from work, but that this did not amount to a significant contribution as required by section 301(2). The WCAC reversed the magistrate's decision and denied plaintiff's claim for benefits.

We granted plaintiff's application for leave to appeal the final order of the WCAC. Our Supreme Court has clearly set forth the standards of review applied in worker's compensation cases:

The WCAC must review the magistrate's decision under the "substantial evidence" standard, while the courts must review the WCAC's decision under the "any evidence" standard. Review by the Court of Appeals and this Court begins with the WCAC's decision, not the magistrate's. If there is any evidence supporting the WCAC's factual findings, and if the WCAC did not misapprehend its administrative appellate role in reviewing decisions of the magistrate, then the courts must treat the WCAC's factual findings as conclusive. [*Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 709-710; 614 NW2d 607 (2000).]

Our review is further described in *Holden v Ford Motor Co*, 439 Mich 257, 269; 484 NW2d 227 (1992):

If it appears on judicial appellate review that the WCAC carefully examined the record, was duly cognizant of the deference to be given to the decision of the magistrate, did not "misapprehend or grossly misapply" the substantial evidence standard, and gave an adequate reason grounded in the record for reversing the magistrate, the judicial tendency should be to deny leave to appeal or, if it is granted, to affirm, in recognition that the Legislature provided for administrative appellate review by the seven-member WCAC of decisions of thirty magistrates, and bestowed on the WCAC final fact-finding responsibility subject to constitutionally limited judicial review.

In the absence of fraud, the WCAC's findings of fact, where it was acting within its powers, must be considered conclusive. MCL 418.861a(14). In addition, this Court may review questions of law involved with any final order of the WCAC. MCL 418.861a(14); *Holden, supra*, 439 Mich 263. The WCAC's decision may be reversed if it operated within the wrong legal framework or based its decision on erroneous legal reasoning. MCL 418.861a(14); *DiBenedetto v West Shore Hosp*, 461 Mich 394, 401-402; 605 NW2d 300 (2000).

Plaintiff first argues that the WCAC erred in failing to consider whether plaintiff's symptoms had been aggravated by his fall. He argues that he presented sufficient evidence to show that his work injury aggravated the pain in his hip that he had experienced as a result of his preexisting degenerative arthritis. We agree.

“[A] symptomatic aggravation of a condition of the aging process” is compensable under the Worker’s Disability Compensation Act (WDCA), MCL 718.101 *et seq.* *Mattison v Pontiac Osteopathic Hosp*, 242 Mich App 664, 670; 620 NW2d 313 (2000). An employee is entitled to benefits if he is unable to work because work-related events aggravated the symptoms of a preexisting condition to the point of disability. *Id.* at 672. Benefits are recoverable until the symptoms subside to their preexisting level. *Id.*

The WCAC noted that Schurman refused to quantify the contribution of work to plaintiff’s condition. It stated that Schurman “testified that his direct observations did not support plaintiff’s contention that the incident produced the increased pain.” This finding is not supported by the record. Schurman testified at his deposition that, while the event may not necessarily have been causal, it could have been an aggravating factor that did not resolve before surgery. While Schurman had no objective evidence of an actual pathological aggravation to plaintiff’s left hip that was related to the April 1997 incident, he had no reason to doubt the history that plaintiff had given him. In June 1997, plaintiff suffered symptoms associated with his hip. Plaintiff told Schurman that his hip was more painful after the incident, although he had experienced some discomfort before the fall. Schurman testified that when he examined plaintiff, plaintiff’s symptoms were persistent and persisted long enough to lead him to have surgery. “So that’s one aggravating factor that became something that didn’t go away,” Schurman concluded.

Contrary to the WCAC’s conclusion, Schurman did not testify that his observations did not substantiate plaintiff’s position that the incident produced increased pain. There is no evidence to support this finding. Thus, the finding is erroneous and the WCAC erred by concluding that plaintiff did not establish that his hip pain increased as a result of his fall.

Next, plaintiff argues that the WCAC erred by failing to address and decide the question whether plaintiff’s arthritis is a condition of the aging process. We agree.

To apply the significant manner test of MCL 718.301(2), it must be determined that the employee suffers a condition of the aging process. In this case, neither the magistrate nor the WCAC made a specific finding that plaintiff’s arthritis is a condition of the aging process. After remanding the matter two times to the magistrate for consideration of the issue, the WCAC, in its final decision, appears to have assumed that his arthritis was a condition of the aging process. However, no specific finding on this factor was ever made.

In the absence of a finding on whether plaintiff’s arthritis was a condition of the aging process, the magistrate and WCAC should not have considered whether the injury aggravated plaintiff’s condition or symptoms in a significant manner. This issue is remanded to the WCAC for reconsideration.

Vacated and remanded for proceedings consistent with this opinion. We retain no further jurisdiction.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Peter D. O’Connell