

STATE OF MICHIGAN
COURT OF APPEALS

VIVIAN L. CONLEY,

Plaintiff-Appellant,

v

SUBURBAN MOBILITY AUTHORITY FOR
REGIONAL TRANSPORTATION,

Defendant-Appellee,

and

BLUE CROSS BLUE SHIELD,

Defendant.

UNPUBLISHED
December 21, 2004

No. 249590
WCAC
LC No. 02-000330

Before: Meter, PJ, and Wilder and Schuette, JJ

PER CURIAM.

Plaintiff appeals, by leave granted, the Worker's Compensation Appellate Commission's (WCAC) June 18, 2003 order reversing a magistrate's award of benefits for a back injury. We affirm in part, reverse in part, and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

On August 3, 1999, in the course of her employment with defendant Suburban Mobility Authority for Regional Transportation (SMART), plaintiff was driving a bus. At one point, when plaintiff stopped the bus to allow a passenger to board, the bus was "rear-ended" by a car. Plaintiff complained of pain in her neck, back, and left shoulder, was taken from the scene of the accident and given medical attention.

Following the accident, plaintiff was off of work until August 27, 1999, at which point she returned to her job as a bus driver. However, according to plaintiff, the pain in her lower back, and both legs, became so bothersome that she had to stop working. After two months off of work, plaintiff attempted another return. However, she soon began to experience pain in her back, buttocks, hips, left shoulder, and neck. According to plaintiff, the pain got worse every day she worked, and was aggravated by the fact that driving the bus required her to endure

constant bouncing. Plaintiff stopped working for SMART on April 3, 2000, and has not worked since.

Plaintiff was examined, at the request of her attorney, on October 30, 2000, by Dr. Jacquelyn G. Lockhart. Lockhart diagnosed plaintiff as suffering from: left sciatica, left piriformis syndrome, disc herniation and spondylosis, and left acromioclavicular joint arthropathy. Lockhart attributed the sciatica to the disc herniation. The disc herniation, in turn, was attributed to the traffic accident, as well as the significant jarring endured by plaintiff while working after she returned from the accident. Lockhart based the disc herniation and spondylosis diagnoses on the results of a MRI performed on plaintiff in January 2000.¹ Lockhart went on to testify that the piriformis syndrome was the result of compression of the left piriformis muscle, which was caused by trauma induced by the traffic accident. Lockhart also attributed plaintiff's shoulder condition to the accident, as the timing of the accident corresponded to the onset of the symptoms. Lockhart went on to testify that the chronic nature of the conditions rendered plaintiff unable to return to work as a bus driver, or to engage in any other activity that required plaintiff to endure significant spinal jarring. Lockhart characterized plaintiff's prognosis as "guarded."

Dr. H.J. Kim examined plaintiff, at the request of SMART, on April 12, 2000. Kim stated that x-rays revealed some degenerative changes in plaintiff's cervical spine, but he attributed the degeneration to the aging process. Essentially, Kim concluded that, despite plaintiff's subjective complaints of pain, his examination revealed no objective abnormalities. Kim stated that he was unable to find any physical or neurological reason why plaintiff could not return to work without restrictions.

After considering the testimony and evidence presented at the hearing, the magistrate concluded that plaintiff was entitled to an open award of benefits. The magistrate found that plaintiff failed to establish the existence of neck or left shoulder pathology of any significant degree, and that Lockhart's testimony regarding the existence, and cause, of left piriformis syndrome was unpersuasive. However, the magistrate went on to find that there was no rebuttal of Lockhart's testimony concerning the presence of disc herniation, and that plaintiff was entitled to benefits for that injury, which, according to Lockhart, was attributable to the August 3, 1999 accident.²

¹ The January 2000 MRI was not performed at Lockhart's request, and was not admitted into evidence. In fact, no medical records were admitted at the hearing.

² At the hearing before the magistrate, SMART claimed that plaintiff failed to provide all of her medical records. However, the magistrate found that there was no evidence that plaintiff willfully failed to provide SMART with all the relevant records, and offered SMART the opportunity to seek any such records and then move to reopen the proofs. SMART declined the opportunity. Also, defendant Blue Cross Blue Shield (BCBS) requested reimbursement for payment of medical services rendered to plaintiff as a result of the accident. The magistrate denied the request, noting that BCBS failed to provide evidence that the expenses paid were reasonable and necessary.

SMART appealed the award of benefits to the WCAC. SMART claimed that the finding that plaintiff suffered a back injury was based on hearsay evidence, and therefore was not supported by competent, material and substantial evidence on the whole record. SMART argued that the MRI report, which formed the basis of Lockhart's diagnosis of disc herniation, was hearsay evidence and therefore inadmissible, and that the results of the MRI should not be allowed into evidence through Lockhart's testimony.³

Plaintiff responded to defendant's appeal by arguing that, even though the MRI report was hearsay, the contents of the report were admissible under MRE 803(4), which allows into evidence statements made for purposes of medical treatment.

The WCAC found that, although the MRI report may be a statement providing medical history, plaintiff failed to lay a proper foundation for admission of the report under MRE 803(4). In particular, the WCAC noted that the MRI was not admitted into the record, and it was unclear whether the MRI was prepared in connection with plaintiff's medical treatment, or whether it was prepared for another purpose, such as an insurance claim. The WCAC went on to conclude that because plaintiff failed to introduce evidence demonstrating the existence of the herniated disc, which the magistrate determined disabled plaintiff, the magistrate's award must be reversed.⁴

This Court granted plaintiff's application for leave to appeal the WCAC's decision.II.

STANDARD OF REVIEW

This Court reviews the WCAC's decision under the "any evidence" standard. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 701; 614 NW2d 607 (2000). Review by this Court begins with the WCAC's decision, not the magistrate's *Id.* If there is any evidence supporting the WCAC's factual findings, and if the WCAC did not misapprehend its administrative appellate role in reviewing the magistrate's decision, then this Court should treat the WCAC's factual findings as conclusive. *Id.* at 709-710. This Court reviews questions of law in any WCAC order under a de novo standard. *DiBenedetto v West Shore Hosp*, 461 Mich 394, 401; 605 NW2d 300 (2000). A decision of the WCAC is subject to reversal if it is based on erroneous legal reasoning or the wrong legal framework. *Id.* at 401-402.

III. ANALYSIS

³ SMART also claimed that the magistrate erred in finding that plaintiff did not willfully fail to provide SMART with all relevant medical records. In addition, BCBS filed a cross appeal, arguing that there was sufficient evidence that the expenses paid on behalf of plaintiff were reasonable and necessary, and that reimbursement was therefore proper.

⁴ The WCAC further stated that the balance of SMART's appeal and BCBS's cross appeal were rendered moot by the reversal of the magistrate's decision.

In this case, the WCAC found that the MRI report was hearsay that could not be considered as evidence that plaintiff suffered from a herniated disk. The WCAC then concluded that, when the MRI report is disregarded, there was no evidentiary support for the magistrate's finding of a disabling back condition. Although we agree that the MRI was inadmissible hearsay, we disagree that there was no other evidentiary support for the magistrate's finding of injury.

In *Yakowich v Dep't of Consumer & Industry Services*, 239 Mich App 506, 509; 608 NW2d 110 (2000), this Court stated:

The law is well established that worker's compensation hearings "are generally not required to follow the same technical evidentiary rules that apply to jury trials." *Carlisle v General Motors Corp*, 126 Mich App 127, 129; 337 NW2d 4 (1983). The one exception to this rule is that hearsay evidence is generally inadmissible, as provided in the rules of evidence. *Id.*

Therefore, the WCAC was correct to the extent it concluded that hearsay evidence is generally inadmissible.

Further, we do not question the WCAC's finding that the MRI report was not admissible under the medical records exception to the hearsay rule, MRE 803(4). MRE 803(4) allows the admission of:

[s]tatements made for purposes of medical treatment or medical diagnosis in connection with treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably necessary to such diagnosis and treatment.

The rationale for this exception is that a patient seeking medical treatment has a motivation to speak the truth to receive proper medical care. See *Merrow v Bofferding*, 458 Mich 617, 629; 581 NW2d 696 (1998). In this case, the evidence at issue were not statements made by plaintiff while seeking medical care, but a document containing the results of a MRI examination. Although the MRI report is arguably a part of plaintiff's medical history, MRE 803(4) applies to statements made by a patient seeking a medical diagnosis and treatment, not a report detailing the results of a diagnostic test. MRE 803(4) is simply inapplicable, and does not allow for the admission of the MRI report.⁵

⁵ Possibly, the MRI report was admissible under MRE 803(6) which allows the admission of reports kept in the regular course of business, and applies to medical records. See *Merrow, supra* at 626-627. However, even if the MRI report as a whole is admissible under MRE 803(6), to the extent the report contains hearsay statements, those statements must also fall within a hearsay exception to be admissible. *Merrow, supra* at 627-628. In this case, because the MRI report was not admitted at the hearing, and the applicability of MRE 803(6) was not raised or addressed below, we can not determine how much, if any, of the MRI report is admissible under
(continued...)

However, even assuming the MRI report was hearsay, the WCAC's reversal was improper. Lockhart diagnosed plaintiff as suffering from a herniated disc. The WCAC apparently did not consider Lockhart's opinion in this regard because the diagnosis was based on hearsay evidence, i.e., the MRI report. However, "an expert may base an opinion on hearsay information or on findings and opinions of other experts." *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 73; 577 NW2d 150 (1998). Any hearsay basis for Lockhart's opinion affects the opinion's weight, not admissibility. *Id.* Therefore, even assuming the MRI report itself was inadmissible and could not have been used to support a finding of disability, Lockhart's opinion/diagnosis was admissible—regardless of the fact that it was based on inadmissible hearsay evidence. Consequently, the WCAC's finding that plaintiff failed to introduce evidence demonstrating the existence of the herniated disc is not supported by the record, and is therefore improper.

The WCAC's July 18, 2003 opinion is reversed to the extent that it found there was no evidence to support the magistrate's finding that plaintiff suffered from a herniated disc. This matter is to be remanded to the WCAC for consideration of the balance of defendant SMART's appeal, and BCBS's cross appeal, which the WCAC determined to be moot in light of its decision to reverse the magistrate.

Affirmed in part, reversed in part, and remanded to the WCAC for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter

/s/ Kurtis T. Wilder

/s/ Bill Schuette

(...continued)

this exception.