

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL J. BOUSQUETTE,

Plaintiff-Appellant,

v

MEEDER DIMENSION & LUMBER
COMPANY and MICHIGAN ASSOCIATION OF
TIMBERMEN SELF INSURERS' FUND,

Defendants-Appellees.

UNPUBLISHED

April 8, 2008

No. 274373

WCAC

LC No. 05-000227

Before: Zahra, P.J, and White and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order of the Worker's Compensation Appellate Commission (WCAC), unanimously reversing a magistrate's open award of benefits. The WCAC determined that the magistrate had erred in failing to apply *Rakestraw v General Dynamics Land Systems, Inc*, 469 Mich 220; 666 NW2d 199 (2003), to plaintiff's claim based on an alleged April 2003 back injury. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Subsection 301(1) of the Worker's Disability Compensation Act (WDCA) provides that "[a]n employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act." MCL 418.301(1). In *Rakestraw*, *supra* at 231, our Supreme Court held that "[w]here a claimant experiences symptoms that are consistent with the progression of a preexisting condition, the burden rests on the claimant to differentiate between the preexisting condition, which is *not* compensable, and the work-related injury, which *is* compensable." [Emphasis in original.] "[W]here the symptoms complained of are *equally* attributable to the progression of a preexisting condition or a work-related injury, a plaintiff will fail to meet his burden of proving by a preponderance of the evidence that the injury arose 'out of and in the course of employment;' stated otherwise, plaintiff will have failed to establish causation." *Id.* (emphasis in original). Therefore, "as a practical consideration, a claimant must prove that the injury claimed is distinct from the preexisting condition in order to establish 'a personal injury arising out of and in the course of employment' under § 301(1)." *Id.* at 231-232.

The WCAC is required to consider a magistrate's findings of fact conclusive if they are supported by competent, material, and substantial evidence on the entire record. MCL

418.861a(3); *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 698-699; 614 NW2d 607 (2000). A magistrate's conclusions of law are not similarly conclusive on the Commission. See, e.g., *Michales v Morton Salt Co*, 450 Mich 479, 489-490; 538 NW2d 11 (1995); *Fraley v General Motors Corp*, 199 Mich App 280, 282-283; 500 NW2d 767 (1993). Further, "[t]he WCAC enjoys statutory authority to make independent findings of fact, regarding issues that have been addressed or overlooked by the magistrate, as long as the record is sufficient for administrative review and does not prevent the WCAC from reasonably exercising its reviewing function without resort to speculation." *Mudel, supra* at 730. "As long as the WCAC is presented with a record that allows it to intelligently make its own factual findings, the Legislature has declared that the WCAC is free to do so." *Id.* at 711.

The magistrate's causation analysis was limited to his finding that the testimony of plaintiff's co-workers established that it was "more probable than not that Plaintiff suffered the injury that he testified to on April 24, 2003." Although the magistrate summarized the medical opinions in his statement of facts, he failed to harmonize these conflicting opinions, observing only that "[w]e have differences in the opinions between Dr. Helle and Dr. Hyatt over the etiology of Plaintiff's injury and disability."

The WCAC adopted the magistrate's statement of facts, but reversed the award of benefits on the basis that the magistrate legally erred in failing to apply *Rakestraw's* "medically distinguishable" standard. The WCAC accepted that the testimony of plaintiff's co-workers established that plaintiff complained that his back hurt after he lifted some bags at work, but concluded that this testimony was insufficient to establish that plaintiff suffered an injury to his back medically distinguishable from his pre-existing disc abnormalities. The crucial issue whether plaintiff suffered such an injury was addressed by the medical testimony, and there was, in fact testimony to support either position. The magistrate, however, failed to choose between the medical opinions, and, consequently, the WCAC exercised its statutory authority to assess the medical evidence. After reviewing the evidence, the WCAC concluded that plaintiff had not satisfied his burden of proof.

"As long as there exists in the record any evidence supporting the WCAC's decision, and as long as the WCAC did not misapprehend its administrative appellate role (e.g., engage in de novo review; apply the wrong rule of law), then the judiciary must treat the WCAC's factual decisions as conclusive." *Id.* at 703-704. This Court continues to review questions of law involved in any final order of the WCAC under a de novo standard of review. *Mudel, supra* at 697 n 3, citing *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. *DiBenedetto, supra* at 401-402.

There was no error by the WCAC in exercising its administrative appellate role that requires correction by this Court. The WCAC correctly applied the rule of law from *Rakestraw* to the facts at bar. The factual premise for applying *Rakestraw's* "medically distinguishable" requirement is present because the record contains testimony both in support of and against the conclusion that plaintiff suffered a work injury, as distinguished from an exacerbation of symptoms consistent with the progression of his pre-existing back condition. Specifically, Dr. Hyatt testified that plaintiff's condition was caused by the failed October 2002 L4-5 fusion and that the April 2003 lifting incident, while it may have resulted in exacerbation of plaintiff's back

pain, did not result in any new condition. In contrast, Dr. Helle testified that plaintiff re-injured his back both symptomatically and pathologically during the April 2003 lifting incident at work.

The co-workers' testimony did not shed light on this question. It established only that plaintiff experienced pain that he attributed to his employment, rather than yard work. Contrary to plaintiff's argument, the co-workers' testimony and Dr. Helle's causation opinion does not render *Rakestraw* inapplicable. The magistrate was still required to determine whether plaintiff suffered an injury that was medically distinguishable from his preexisting condition.

Further, the WCAC committed no legal error in examining the medical opinions to apply the "medically distinguishable" rule to the facts at bar. The lay testimony in the record neither addressed nor satisfied plaintiff's burden under *Rakestraw* to prove that he suffered an injury to his back medically distinguishable from his pre-existing disc abnormalities. Because the magistrate declined to choose between the medical opinions, the WCAC had statutory authority to make independent findings of fact on the medical evidence the magistrate failed to address. See *Mudel, supra* at 718, 730.

Affirmed.

/s/ Brian K. Zahra
/s/ Helene N. White
/s/ Peter D. O'Connell