STATE OF MICHIGAN

COURT OF APPEALS

JOE LEE THORNTON,

Plaintiff-Appellee,

v

DINVERNO, INC., and HASTINGS MUTUAL INSRUANCE COMPANY,

Defendant-Appellants,

v

MICHIGAN MUTUAL INSURANCE COMPANY and SECOND INJURY FUND.

Defendants-Appellee,

UNPUBLISHED
June 3, 1997

No. 179839
LC No. 88-0225

Before: Reilly, P.J., and White and P. D. Schaefer*, JJ.

PER CURIAM.

Defendants appeal on leave granted by the Supreme Court a June 22, 1993 opinion and order of the Worker's Compensation Appellate Commission affirming a specific-loss-benefits award to plaintiff. We affirm.

I

On February 25, 1988, a magistrate awarded plaintiff 162 weeks of worker's disability compensation benefits for the specific loss of his left eye. MCL 418.361(2); MSA 17.237(361)(2). The magistrate also awarded general disability benefits. On appeal, the WCAC majority affirmed the specific loss award, but reversed the general disability award concluding it was premature.[1]

Defendants sought leave to appeal to this Court. (*Thornton v Dinvero*, Docket No. 129515.) In their application, defendants contended that plaintiff failed to prove that his loss of vision was work-

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* Circuit judge, sitting on the Court of Appeals by assignment.

related, and that the magistrate's opinion was inadequate. We held the application in abeyance pending the Supreme Court's decision in *Holden v Ford Motor Co*, 439 Mich 257; 484 NW2d 227 (1992), and, after that case was decided, denied the application for lack of merit in the grounds presented. Defendants sought leave to appeal to the Supreme Court. On January 12, 1993, the Supreme Court ordered:

> In lieu of granting leave to appeal, the case is remanded to the Workers' Compensation Appellate Commission for the issuance of a more expansive opinion with respect to the defendant's contention that the magistrate's decision to award specific loss benefits is not based on competent, material, and substantial evidence on the whole record. MCL 418.861a(3); MSA 17.237(861a)(3). MCR 7.302(F)(1). Jurisdiction is not retained. [*Thornton v Dinverno, Inc.*, 441 Mich 911; 496 NW2d 294 (1993)].

On remand, the WCAC prepared a new opinion affirming the specific loss award. After quoting the Supreme Court's order, the WCAC held:

> In his opinion, the magistrate reviewed the evidence before him and concluded, based upon the testimony of plaintiff and that of Mark Blumenkranz, M.D., the plaintiff "suffered a head trauma precipitating a loss of more than 80% of the vision in his left eye." The loss of sight is not an issue, as even Edward A. Hollenberg, M.D., agreed that plaintiff suffered the loss of his left eye.
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> Plaintiff testified to an injury on February 8, 1985, wherein he struck the left side of his head against a truck. Dr. Blumenkranz testified that plaintiff suffered legal blindness and that the head trauma may have been contributed to the development of vitreous hemorrhage by traumatizing the abnormal fragile and new retinal blood vessels. While Dr. Hollenberg stated that the trauma did not affect plaintiff's eye, it is apparent from the magistrate's decision that he rejected that testimony. The magistrate is free to accept the more persuasive medical evidence, and will not disturb such finding when, as here, it is supported by competent, material and substantial evidence on the whole record. *Miklik v Michigan Special Machine*, 415 Mich 364 (1982). MCL 418.861a(3).

Defendants again sought leave to appeal to this Court. (*Thornton v Dinverno*, Docket No. 166605.) This Court denied the application for lack of merit in the grounds presented by order entered January 28, 1994. Defendant again sought leave to appeal to the Supreme Court. On October 25, 1994, the Supreme Court "remanded to the Court of Appeals for consideration as on leave granted." 447 Mich at 893.

II

Defendants first complain that the WCAC's opinion on remand is not the "more expansive" opinion the Supreme Court ordered. The initial opinions of the WCAC members deciding the first appeal to the WCAC did not address the issue of causation. On remand, the WCAC expressly

addressed this issue. We find the WCAC opinion on remand provides a more expansive opinion on the issue, as directed by the Supreme Court. Brevity alone does not render the opinion inadequate. Further, defendant presented this argument to the Supreme Court in its application for leave. Rather than remand to the WCAC for an opinion further expanding on the subject, which the Court would likely have done if it concluded its own order was not honored, the Court remanded to this Court.

Defendants next argue that the opinion is inadequate as a matter of law because it does not clearly explain the testimony that the WCAC adopted and the rationale it used. We disagree. The opinion on remand first notes that there is no dispute that plaintiff lost the vision in his left eye. The WCAC then affirms the magistrate's finding that the loss was attributable to plaintiff's employment injury. The WCAC accepts the magistrate's finding to that effect because it is based on the testimony of plaintiff and Mark Blumenkranz, an opthamologist. The opinion also notes that the magistrate apparently rejected contrary medical testimony, as the magistrate was permitted to do. Finally, the opinion notes that the WCAC will not interfere with the magistrate's assessment of expert medical testimony when the testimony accepted constitutes substantial evidence. We conclude the opinion is minimally sufficient to satisfy the opinion requirements of the Worker's Compensation Act, case law and the Supreme Court's remand order.

Defendants next argue that the underlying magistrate's opinion was inadequate and that the WCAC had an obligation to remand for a fuller opinion. This issue has been raised previously. An appeal to this Court after remand is limited to the issue for which the Supreme Court remanded for a supplemental opinion. *Wemmer v Nat'l Broach & Machine Co*, 199 Mich App 376, 384; 503 NW2d 77 (1993). The Supreme Court's remand did not reopen the initial WCAC opinion for review on other grounds.

Lastly, defendants argue that there was not substantial evidence in the record to support the finding that plaintiff sustained the specific loss of vision in his left eye as a result of a work-related injury. Plaintiff maintains that the WCAC's findings of fact are conclusive on this Court in the absence of fraud, if there is any competent evidence in the record to support them.

Plaintiff is correct in stating that this Court reviews under the "any competent evidence" standard, not the "substantial evidence" standard. *Holden, supra*, 263. The testimony of Dr. Blumenkranz, plaintiff's treating physician, which was specifically relied upon by the magistrate, is some competent evidence in support of the finding of a causal relationship because he testified that the trauma "may have contributed" to the loss of vision. Further, plaintiff's testimony that he had no problems with his left eye before the February 8, 1995 incident; that he noticed a dark line in the vision in his left eye the next day; that the line continued; that by February 11, his vision was worsening; that by February 12, he felt something was "really wrong" and his employer referred him to Maybury Clinic; that Maybury Clinic referred him to Beaumont Hospital; that from his first visit to Beaumont on February 13 to his second visit two weeks later, this left eye problem went from lines in his vision to a complete blackout except for far left-side peripheral vision; and that although he continued working, the vision in his eye did not change from the end of February, 1985, to February, 1986, was relevant to the issue of causation.

In addition, the Supreme Court stated in *Kostamo v Marquette Iron Mining Co*, 405 Mich 105; 136-138; 274 NW2d 411 (1979), that it was error for the Worker's Compensation Appeal Board to place "critical importance on the comparative certainty with which the doctors expressed themselves."

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Helene N. White
/s/ Philip D. Schaefer

[1] The dissenting commissioner would have affirmed the general disability award.