

STATE OF MICHIGAN
COURT OF APPEALS

LUCILLE JOHNSON,

Plaintiff-Appellant,

v

FARATHANE CORPORATION and TWIN CITY
FIRE INSURANCE COMPANY, a/k/a
HARTFORD INSURANCE GROUP,

Defendants-Appellees.

UNPUBLISHED

November 14, 1997

No. 195853

WCAC

LC No. 92-000664

Before: MacKenzie, P.J., and Neff and Markey, JJ.

PER CURIAM.

This case has been remanded by our Supreme Court for consideration as on leave granted. Plaintiff Lucille Farathane appeals a decision by the Worker's Compensation Appellate Commission (WCAC) denying her benefits. We reverse and remand for entry of an award of benefits.

Plaintiff worked the midnight shift for defendant Farathane Corporation. At 7:10 a.m. on August 20, 1990, plaintiff was standing outside the plant waiting for a ride. Tim Bailey, plaintiff's co-employee on the midnight shift, and his brother John drove up and stopped near plaintiff. Tim exited the car and began calling plaintiff profane names. Tim reached into the car and retrieved a gun. John grabbed the gun and struck plaintiff twice in the head with the gun. As he did so, Tim urged John to kill plaintiff. As plaintiff attempted to flee from her assailants and reenter the plant, the gun discharged. Plaintiff was not shot, however. Subsequently, plaintiff was taken to a hospital and received treatment for her head wounds as a result of the beating. She did not return to work for defendant.

Plaintiff sought benefits for both a physical disability caused by migraine headaches resulting from the attack and for a psychiatric disability resulting from post-traumatic stress syndrome. The evidence produced at the hearing established that Tim had directed obscenities at plaintiff and other women during working hours. On August 16, 1990, four days prior to the assault, Tim had been suspended from his employment. On that same day, plaintiff emerged from the plant to find that someone had broken the windows of her car. When she reported the incident to the police she opined,

without proof, that Tim had damaged her car. Plaintiff testified that she could not return to work for defendant or any other employer due to headaches and anxiety.

The magistrate found that while plaintiff had shown that she was disabled due to post-traumatic stress disorder, she had not demonstrated that the disabling assault was work-related. The evidence did not show why the assault occurred. Plaintiff did not have a history of disputes with Tim, and the evidence did not establish that plaintiff played a role in Tim's suspension. In reaching his decision, the magistrate relied on cases such as *DeVault v General Motors Corp, Pontiac Motors Div*, 149 Mich App 765; 386 NW2d 671 (1986), and *Morris v Solway*, 170 Mich App 312; 428 NW2d 43 (1989). In *DeVault, supra*, the plaintiff was assaulted at work by the husband of his ex-wife. The assault was provoked by the plaintiff's refusal to pay some expenses for his daughter. *Id.* at 768. This Court affirmed the finding of the Worker's Compensation Appeal Board (WCAB) that the plaintiff's injury arose from a purely personal dispute, and that the plaintiff's employment did not contribute to the incident. *Id.* at 771-774. In *Morris, supra*, the plaintiff was shot by a co-employee on the employer's premises. The women worked different shifts, and had known each other before they began working for the defendant. *Id.* at 313-314. The WCAB found no evidence that the incident was work-related. This Court affirmed the WCAB's finding that the incident was motivated by a personal dispute. *Id.* at 314-316.

On plaintiff's appeal, the WCAC affirmed the magistrate's decision and adopted the magistrate's opinion. MCL 418.861a(10); MSA 17.237(861a)(10). The WCAC concluded that the magistrate's finding that plaintiff was assaulted for personal reasons was supported by the requisite evidence, as no evidence suggested otherwise.

Findings of fact made by a magistrate are conclusive on the WCAC if they are supported by competent, material, and substantial evidence on the whole record. MCL 418.861a(3); MSA 17.237(861a)(3). If a magistrate's decision is supported by the requisite evidence, the WCAC need go no further in its review. If the WCAC finds that the magistrate did not rely on competent evidence, it must detail its findings and the reasons therefore as grounded in the record. The WCAC may then make its own findings. Those findings are conclusive if the WCAC was acting within its powers. Appellate review is limited to a determination of whether the WCAC exceeded its authority. *Goff v Bil-Mar Foods, Inc (After Remand)*, 454 Mich 507, 511-517; 563 NW2d 214 (1997).

On appeal, plaintiff argues that the WCAC erred by affirming the magistrate's decision. Plaintiff contends that the general rule that an injury is not compensable if it results from an assault unconnected to employment and motivated by personal reasons was misapplied in this case. An injury is compensable if it arises from the work itself or from "the stresses, the tensions, [or] the associations, of the working environments." *Crilly v Ballou*, 353 Mich 303, 326; 91 NW2d 493 (1958). As plaintiff argues, we agree that the evidence established that she and Tim had not known one another prior to working for defendant and had no relationship outside the workplace. Any hostility between herself and Tim could have developed only from the stresses of the working environment. *Crilly, supra*.

We therefore reverse the WCAC's decision and remand for entry of an award of benefits consistent with the magistrate's finding of disability. The analysis of this matter cannot end with the

finding that Tim directed his attack specifically at plaintiff. The instant case is distinguishable from *DeVault, supra*, and *Morris, supra*, in that here, the evidence did not show either that plaintiff and Tim had any sort of connection outside of the workplace, or that they had been acquainted before becoming co-employees. Moreover, no evidence suggested that plaintiff and Tim were engaged in a work-related dispute. Under *Crilly, supra*, if the subject of the dispute is not work-related but is caused by the tensions and strains of proximity imposed by the workplace environment, a resulting injury is deemed to be work-related. See also *Calovecchi v State of Michigan*, 223 Mich App 349, 352; 566 NW2d 40 (1997) (“[a]n injury arises out of the course of employment when it occurs as a circumstance of or incident to the employment relationship”). The seeds of the dispute between plaintiff and Tim were planted by the proximity imposed by the workplace. Thus, the connection is sufficient to render plaintiff’s disability compensable under *Crilly, supra*.

Reversed and remanded. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie

/s/ Janet T. Neff

/s/ Jane E. Markey