

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JAMES A. BECKES,

Plaintiff-Appellee,

v

DETROIT DIESEL CORPORATION and  
NATIONAL UNION FIRE INS COMPANY,

Defendants-Appellants.

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UNPUBLISHED

November 27, 2007

No. 270791

WCAC

LC No. 03-000210

Before: Owens, P.J., and White and Murray, JJ.

PER CURIAM.

Defendants appeal by leave granted from the Worker's Compensation Appellate Commission's [WCAC's] opinion and order that reversed the magistrate's finding that plaintiff had not proven an ongoing mental disability and reinstated an earlier order granting plaintiff an open award of benefits. We affirm.

This case has a long history. Plaintiff began working for defendant Detroit Diesel Corporation [hereinafter defendant] in October of 1966. Throughout his employment, plaintiff suffered from mental health problems. He was initially diagnosed as suffering from schizophrenia. His condition was later diagnosed as bipolar disorder. Plaintiff was hospitalized several times. In October of 1988, plaintiff injured his back on the job while moving boxes. He was treated in the plant medical department and assigned an outdoor sweeping job. Exposure to cold compounded plaintiff's health problems so he ceased working.

Defendants voluntarily paid plaintiff workers compensation benefits based on his back injury, but subsequently determined that plaintiff had physically recovered from that injury and stopped paying benefits. Plaintiff applied for benefits, and the matter proceeded to a hearing in August of 1991. The medical experts who testified by deposition agreed that there was no measurable objective organic basis for plaintiff's continued complaints of disabling pain. Plaintiff's treating psychiatrist, Dr. Heinz Schroeder, testified that as a result of the back injury plaintiff has become neurotically obsessed with pain. Dr. Schroeder testified that plaintiff had a long history of bipolar disorder and was not a malingerer. After the back injury, plaintiff suffered from neurotic obsession, which was not typical of manic disease. Manic disease is mainly controlled by biochemical factors, while neurosis is determined by social, cultural or personal factors. Dr. Schroeder concluded that plaintiff was disabled by his neurotic obsession with his pain. Dr. J. Barry Rubin, another psychiatrist, testified that plaintiff's work had a

significant impact on his psychiatric disability. He observed clear evidence of paranoid thinking and preoccupation with back pain. Dr. Rubin diagnosed a bipolar disorder and paranoid personality traits, and opined that plaintiff was totally disabled. In contrast, psychiatrist Michael Freedman testified that although plaintiff exhibited some underlying discontent, he did not appear to be depressed. Dr. Freedman concluded that plaintiff's employment did not aggravate his underlying disorder, and that he could return to his former employment without psychiatric restrictions.

Following that first hearing, the magistrate found that plaintiff established that he suffered a work-related injury on October 28, 1988, during a lifting episode. Giving credence to Dr. Schroeder's testimony, the magistrate concluded that plaintiff was disabled because of his neurotic pre-occupation with his back pain. The magistrate found plaintiff totally disabled and granted him an open award of benefits. Defendants appealed. The Commission reversed the magistrate's decision, finding that the magistrate had improperly applied the objective causation standard of MCL 418.301(2). The WCAC found that there was no evidence that plaintiff's back injury was significant, or that work was a significant factor in plaintiff's psychiatric history. Since an objective person would not find that plaintiff's back injury was significant, the Commission reversed the award of the magistrate. Plaintiff appealed. This Court peremptorily reversed the WCAC's decision and remanded the matter to the Commission for application of the standard set forth in *Gardner v Van Buren Public Schools*, 445 Mich 23; 517 NW2d 1 (1994). (Docket No. 174034).

On remand, the WCAC accepted the magistrate's findings of fact, but found the magistrate committed legal error in applying the statute to the facts. Based on the facts, the WCAC determined that the injury was not significant. The Commission reversed the magistrate's award of benefits a second time. Plaintiff applied for leave to appeal the WCAC's decision; this Court denied plaintiff's application. (Docket No. 190845). Plaintiff appealed to our Supreme Court, and the matter was remanded to the magistrate to determine whether actual events of employment contributed to, aggravated, or accelerated a mental disability in a significant manner. 474 Mich 891 (1998). On remand, the matter was assigned to a second magistrate,<sup>1</sup> who framed the question as whether actual events of employment contributed to, or aggravated or accelerated, plaintiff's pre-existing mental disability in a significant manner. He noted that the Supreme Court accepted that plaintiff had a pre-existing, non-work-related mental disability. Applying the test from *Gardner, supra*, the magistrate found that there were no non-vocational factors at work, and the proofs dealt only with vocational factors. Relying on the testimony of plaintiff, Dr. Schroeder, and Dr. Rubin, the magistrate found that plaintiff's October 28, 1988 injury significantly aggravated his underlying mental condition to a state of disability. The injury was an actual event of employment. The fact that the injury had a greater subjective effect on plaintiff than it would have had on another worker is irrelevant under *Gardner*. Based on these findings, the magistrate granted an open award of benefits.

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<sup>1</sup> Magistrate Stephen C. Oldstrom.

Defendants appealed the magistrate's opinion and order to the WCAC. The WCAC reversed the magistrate's award of benefits, holding that, given plaintiff's history of mental problems, the magistrate erred as a matter of law in finding that there were no nonoccupational factors present. Plaintiff appealed the WCAC's opinion and order. This Court initially granted plaintiff leave to appeal, then issued an order peremptorily vacating the WCAC's order and remanding the matter to the magistrate "for analysis under the proper statutory framework as discussed in *Robertson v Daimler-Chrysler Corp*, 465 Mich 732 [641 NW2d 567] (2002)." (Docket No. 230147).

On remand, the matter was assigned to a third magistrate<sup>2</sup>, who ultimately concluded that plaintiff had not shown a mental disability under the standard set by *Robertson, supra*:

In *Robertson*, the majority opinion stated that the double negative in the phrase "not unfounded perceptions" means that the perception must be "founded." Citing dictionary definitions, it was held that "a worker's compensation claimant's perception must be based or grounded in fact" (465 Mich at 750). The majority then stated that a claimant must establish "that such perception or apprehension was grounded in fact or reality, not in the delusion or the imagination of an impaired mind" (465 Mich at 752). The same language is repeated on 465 Mich at 763. The following appears in footnote 9 on page 753: "One must be mindful that, while an incorrect perception of an actual event would not be sufficient to satisfy this portion of the statute (the second sentence of Section 418.301(2)), a correct perception of a relatively innocuous event could potentially be enough to satisfy it."

*Robertson* further declared: "Moreover, in determining whether there has been an actual employment event leading to a mental disability, and a perception of that event that is not unfounded, the inquiry must be conducted under an objective standard" (465 Mich at 754). ... In sum, a claimant's perception is evaluated objectively under the second sentence of § 301(2), while his subsequent reaction is evaluated subjectively under the first sentence of this provision" (465 Mich at 754). This statement thus mandates an objective inquiry with reference to both clauses of the second sentence of 418.301(2).

In determining whether a claimant's perceptions were "founded" the factfinder "must assess the factual circumstances in terms of how a reasonable person would have viewed them ... the factfinder must apply an objective review by examining all the facts and circumstances surrounding the actual employment events in question to determine whether the claimant's perception of such events was reasonably grounded in fact or reality." In footnote 12 on page 755 the majority opinion stated that the perceptions at issue need not be "well-founded."

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<sup>2</sup> Magistrate John P. Baril.

Instead “all that is required is that the claimant’s perception of the actual employment events be reasonably founded.”

Plaintiff’s claim is that the “Heavy lifting” on October 28, 1988, has resulted in neurotic pre-occupation or obsession with back and lower extremity pain without a physical basis for such symptomatology. The objective standard of how a reasonable person under like circumstances would have viewed the lifting injury militates against an award of benefits in this case. After the physical or organic consequences of that lifting had ended, a “reasonable” person would not continue to experience the symptoms complained of in this case.

[This conclusion] appears in harmony with the decision of the Michigan Supreme Court in that case to conclude that a “reasonable person, under like circumstances” (that is, no longer manifesting a physical or organic basis for symptomatology) would not manifest the pain asserted by plaintiff and described by Dr. Schroeder as a neurotic pre-occupation or obsession.

Therefore, it is concluded that plaintiff has not sustained his burden of proving by a preponderance of the evidence that he exhibits a mental disability arising out of actual events of employment and not unfounded perceptions thereof.

Plaintiff appealed to the WCAC, arguing that the magistrate erred in his application of *Robertson*. Defendants cross-appealed, arguing that there were alternative reasons for denying benefits. Defendants asked the Commission to remand the matter to the magistrate to address two additional issues: (1) whether plaintiff was disabled under *Sington v Chrysler Corp*, 467 Mich 144; 648 NW2d 624 (2002); and (2) whether plaintiff had shown a distinct work-related injury under *Rakestraw v General Dynamics Land Systems*, 469 Mich 220; 666 NW2d 199 (2003).

The WCAC reversed the magistrate’s last decision. The majority of the Commission panel concluded that the magistrate erred in his application of *Robertson*, explaining:

[D]efendants state, “There is no dispute that the physical or organic reason for plaintiff’s back pain, while once legitimate, ended,” defendants thereby admitted that plaintiff’s long-held perception of the actual event of his employment (i.e., the back injury leading to back pain) was reasonably founded on an objective basis, which is tantamount to an admission of compensability. The change from reasonably founded to not reasonably founded is the reaction to the injury and not the perception thereof which never changed regarding back pain from heavy lifting.

This scenario is compensable under *Robertson*. Thus we must reverse the magistrate pertaining to this issue.

The Commission cited the testimony of Dr. Schroeder in support of its conclusion, explaining:

The testimony of plaintiff's treating psychiatrist, Dr. Schroeder, included the following that establishes that plaintiff's current disability is a reaction to reasonably perceived work-related back pain:

A. I do have an opinion on this matter, and it is my opinion that this man apparently suffered a back injury that may or may not have healed. He developed a neurotic attitude of an obsessive character about this back pain which made his back pain chronic, and that, in essence, disabled him.

Q. Why do you say that, Doctor? What is the basis of your opinion?

A. Because I have known Mr. Beckes since 1975, and in the last three years since the injury, the manic problem has not been the issue here. It has been stable on the Lithium, and the issue is that of back pain and his neurotic adjustment about it and his struggle to gain recognition and obtain treatment and to deal with the legal aspects of this case.

Q. In terms of your statement regarding, he is disabled, within a reasonable degree of medical certainty, why do you have such an opinion?

A. At this point, I have not seen signs of improvement and as it is now, I do not feel that he is able to perform work of a physical nature.

The Commission declined to remand the case to the magistrate, finding it more efficient to address the issues raised by defendants' cross-appeal on its own. The Commission rejected defendants' argument that plaintiff failed to show that his work for defendant contributed to his mental disability in a significant manner, explaining:

In terms of the significant manner provision of MCL 418.301(2), unlike earlier panels of the Commission, we do not see the injury as a "last straw" giving rise to disability. Testimony from plaintiff's psychiatrist quoted earlier in this opinion pertaining to the Robertson standards on compensability also establishes that plaintiff's condition is related to his injury in a significant manner. See pages 47 and 48 of Dr. Schroeder's deposition, as well as pages 34 and 35. Dr. J. Barry Rubin, D.O., offered the following analysis:

Mr. Beckes, first of all, had a history of having suffered from mental disorder over the course of many years. I think it was back in the mid 1970's when he first began receiving psychiatric treatment and yet despite the fact he has required psychiatric treatment all of these years, he had remained functional for the most part. He would have significant episodes in which he would be disabled for brief periods, but ultimately, would stabilize and be able to continue functioning.

Since the injury that he described having occurred to his back, he has become extremely preoccupied with back pain, with his inability to function. He has remained, from what he described and from what I saw in

him, significantly emotionally unstable and incapable of functioning, as he had been able to do prior to that time.

In the instant case any balancing of occupational and nonoccupational factors according to the testimony of Drs. Schroeder and Rubin quoted above shows plaintiff's disability to be related to plaintiff's injury in a significant manner.

With regard to whether plaintiff was disabled under *Sington, supra*, the WCAC concluded "both Dr. Schroeder and Dr. Rubin testified that plaintiff is totally disabled, thus rendering inapplicable the *Sington* standard." The WCAC also rejected defendants' argument that plaintiff failed to show a distinct new condition as required by *Rakestraw*, citing testimony from Dr. Schroeder:

A. Mr. Beckes has become neurotically preoccupied and obsessed with pain, which is not typical or characteristic for manic disease, which seems to be sort of a process all by itself.

Q. Can you distinguish for the court the differences between his manic disease process and the neurotic process that you have identified?

A. The manic disease is mainly controlled by biochemical factors of imbalances within the human brain totally, let's say, independent of events outside the person, controlled by inside factors.

A neurotic process is a process that is determined by social, cultural and personal factors which has to do with the response to certain key events in a person's life. We call neurotic behavior also maladaptive behavior, which if it can be understood, and in most cases it can be, does make some sense.

In other words, in a neurotic process, the patient expresses a certain goal or a certain wish or a certain tendency in a hidden, disguised form.

The WCAC concluded that plaintiff had established that he has a psychiatric disability related in a significant manner to his work-related injury and that his current condition is medically distinguishable from his preexisting condition. The Commission held that plaintiff was entitled to ongoing wage loss benefits together with reasonable and necessary medical care for his injury of October 1988 and affirmed the first magistrate's decision granting plaintiff an open award of benefits.

Defendants raise five arguments on appeal: (1) that this Court erred by remanding the matter to the magistrate for consideration of *Robertson v Daimler-Chrysler Corp*, 465 Mich 732; 641 NW2d 567 (2002), since that decision had no effect on the disposition of the case; (2) that the WCAC erred in its application of *Robertson* since plaintiff's psychological perception of back pain where there is no organic reason for the pain is objectively unreasonable; (3) that the WCAC's finding that plaintiff's employment contributed to his disability in a significant manner was contrary to the evidence, its three prior decisions in this matter, and precedent previously followed by the WCAC; (4) that the WCAC erred by holding that *Sington* did not apply to

plaintiff's disability; and (5) that the WCAC erred by deciding the issues raised in defendant's cross-appeal rather than remanding the matter to the magistrate for further findings.

In *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 703; 614 NW2d 607 (2000) our Supreme Court explained that judicial review of WCAC decisions should be very limited:

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 .... [quoting *Holden v Ford Motor Co*, 439 Mich 257, 269; 484 NW2d 227 (1992)].

While the WCAC must review the magistrate's findings under the "substantial evidence" standard under MCL 418.861a(3), this Court's review of the WCAC findings is limited and designed to ensure the integrity of the administrative process. *Id.*, at 701-703. The *Mudel* opinion explains:

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. [462 Mich 709-710].

Issues of law involved in a final order of the WCAC are reviewed de novo for legal error. *Mudel*, 462 Mich 697 n 3.

## I.

We reject defendant's argument that this Court erred by remanding the matter to the magistrate for consideration of *Robertson v Daimler-Chrysler Corp*, 465 Mich 732; 641 NW2d 567 (2002). Assuming *arguendo* that this Court should address the propriety of an order issued by another panel of this Court in 2002, we note that the remand was ordered in response to defendants' supplemental brief<sup>3</sup> citing *Robertson* as an alternate basis supporting the WCAC's decision. "Error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence." *Phinney v Perlmutter*, 222 Mich App 513, 558; 564 NW2d 532 (1997). Since defendants' actions effectively caused the remand, defendants cannot claim that this Court erred by remanding the matter.

## II.

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<sup>3</sup> This brief was filed in plaintiff's appeal in docket number 230147, from the WCAC's September 6, 2000 decision.

Defendants argue that the WCAC committed an error of law in its application of *Robertson, supra*. We find no error.

MCL 418.301(2) provides in relevant part:

Mental disabilities ... shall be compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities shall be compensable *when arising out of actual events of employment, not unfounded perceptions thereof*. [Emphasis added.]

In *Robertson*, our Supreme Court explained the second sentence of §301(2) as follows:

[T]o satisfy the mental disability requirements of the second sentence of § 301(2), a claimant must demonstrate: (a) that there has been an actual employment event leading to his disability, that is, that the event in question occurred in connection with employment and actually took place; and (b) that the claimant's perception of such actual employment event was not unfounded, that is, that such perception or apprehension was grounded in fact or reality, not in the delusion or the imagination of an impaired mind.

\* \* \*

[I]n applying the proper statutory test, the factfinder must first determine whether actual events of employment indeed occurred. Then, in analyzing whether a claimant's perception of the actual events of employment had a basis in fact or reality, i.e., the claimant's perception was "founded", the factfinder must apply an objective review by examining all the facts and circumstances surrounding the actual employment events in question to determine whether the claimant's perception of such events was reasonably grounded in fact or reality. [465 Mich 752-753, 755].

While a claimant's perception of events must be objectively reasonable, the claimant's reaction to such events must be reviewed under a subjective standard, since a mentally ill person cannot be expected to react to events in the same manner as a mentally healthy person. *Robertson*, 465 Mich 754 n 10; *Wolf v GMC*, 262 Mich App 1, 6; 683 NW2d 714 (2004). Contrary to the instructions in *Robertson*, the magistrate reviewed plaintiff's reaction under an objective standard of how a reasonable person would behave under similar circumstances. As noted by the WCAC, this "change from reasonably founded to not reasonably founded is the reaction to the injury and not the perception thereof ...." There is no dispute that plaintiff sustained a work-related back injury and resulting pain in October of 1988. There is no dispute that the back injury occurred in 1988 and no assertion that plaintiff misinterpreted or misperceived the back injury or resulting pain at that time. The fact that plaintiff continued to feel back pain long after the injury healed is his reaction to the actual events, rather than an unfounded perception of events under *Robertson*.

### III.

We reject defendants' argument that the WCAC's findings were unsupported by the evidence and contrary to precedent. The WCAC's finding that plaintiff's employment contributed to his disabling mental condition in a significant manner was supported by the expert testimony of Drs. Schroeder and Rubin. These findings are supported by evidence on the record and so must be affirmed. *Mudel, supra*, 462 Mich 709-710. As explained above, the WCAC did not err in its application of MCL 418.301(2) and *Robertson, supra*. The fact that the WCAC's decision reached a contrary conclusion than its prior opinions is simply irrelevant.

### IV.

Defendants correctly point out that there appears to be no support for finding that *Sington, supra*, did not apply to plaintiff because he was totally disabled. However, review of the WCAC's opinion leads us to conclude that defendants misinterpret the WCAC's somewhat inartfully-worded finding. Rather than meaning that the testimony from Drs. Schroeder and Rubin show that plaintiff was "totally disabled" under the now-overruled standard set by *Haske v Transport Leasing*, 455 Mich 628; 566 NW2d 896 (1997), it appears that the WCAC intended to state that the psychiatrists' testimony established that plaintiff's mental illness renders him incapable of performing any work at all. This finding is supported by evidence on the record; Drs. Rubin and Schroeder testified that plaintiff's current mental problems leave him "significantly emotionally unstable and incapable of functioning." Remanding the matter for a more detailed analysis of the facts under *Sington* will not change the result.

### V.

Finally, we disagree with defendants' argument that the WCAC erred by deciding the issues raised in defendants' cross-appeal, rather than remanding the case to the magistrate for further findings. The WCAC may make independent findings of fact on matters before it so long as the record is sufficient for administrative review and the WCAC is not forced to speculate. *Mudel, supra*, 462 Mich 730. The record in this case was extremely well-developed and the Commission's findings were based on the record evidence before it.

Affirmed.

/s/ Donald S. Owens  
/s/ Helene N. White  
/s/ Christopher M. Murray