

STATE OF MICHIGAN
COURT OF APPEALS

LOREN D. MOHNEY,

Plaintiff-Appellant,

v

AMERICAN INTERNATIONAL GROUP,
INSURANCE COMPANY OF THE STATE OF
PENNSYLVANIA, and SECOND INJURY
FUND,

Defendants-Appellees.

UNPUBLISHED
October 16, 2012

No. 303797
Workers' Compensation
Appellate Commission
LC No. 06-000101

Before: SHAPIRO, P.J., and GLEICHER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff, Loren D. Mohney, appeals by leave granted¹ the opinion and order of the Workers' Compensation Appellate Commission (WCAC) reversing the magistrate's open award of disability benefits. We reverse and remand.

Plaintiff was employed by defendant, American International Group (AIG), since March 5, 1984. He filed a claim under the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq.*, for a disabling work-related injury following a slip and fall on ice in a parking lot at his work site. A hearing was conducted before Garry Goolsby of the Worker's Compensation Board of Magistrates. In the opinion and order, the magistrate awarded plaintiff an open award of disability benefits, finding plaintiff's recitation of the events credible and further indicating that the medical testimony provided by plaintiff's physician and surgeon was "persuasive." The magistrate opined that plaintiff "has proved his injury, arising out of and in the course of his employment, by a preponderance of evidence" and met his burden of demonstrating a disability.

¹ *Mohney v American Int'l Group*, unpublished order of the Court of Appeals, entered January 19, 2012 (Docket No. 303797), granting the application for leave to appeal and limiting the appeal "to the issues raised in the application and supporting brief."

Defendants filed a claim for review with the WCAC, asserting the magistrate erred in failing to make sufficient findings of fact and that plaintiff failed to demonstrate that his injury arose out of and in the course of his employment. The majority opinion found remand to be necessary because “the magistrate has failed to address a crucial question which includes fact-finding.” The majority took issue with the lack of fact finding regarding whether plaintiff’s injury occurred “on property owned, leased, or maintained by the employer,” pursuant to our Supreme Court’s interpretation of the requirements of the “coming and going provision” of the WDCA, MCL 418.301(3). *Simkins v General Motors Corp*, 453 Mich 703, 723; 556 NW2d 839 (1996).

On remand, the parties submitted a joint statement of facts and additional proofs, which included a copy of the lease agreement and addendums effectuated between Sam Eyde Construction Company and AIG. The magistrate awarded benefits, finding “[p]laintiff’s presence in the parking lot was within the ‘zone, environment and hazards’ of his workplace when he parked his car and left it to enter his workplace.” The case was returned to the WCAC premised on its retention of jurisdiction. The WCAC reversed the magistrate’s award of benefits “as plaintiff failed to prove at the first trial that his injury arose out of and in the course of his employment.” The majority opinion concluded, “The prior remand to reopen the proofs on the issue of arising out of and in the course of the employment was improvidently ordered. Plaintiff failed to sustain his burden of proving this critical element of his prima facie case at trial.”

In *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 703; 614 NW2d 607 (2000) our Supreme Court explained that our review of WCAC decisions should be limited, citing the following language from *Holden v Ford Motor Co*, 439 Mich 257, 269; 484 NW2d 227 (1992):

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 . . .

The Commission reviews the magistrate’s findings for compliance with the substantial evidence standard in accordance with MCL 418.861a(3), but we review the Commission’s findings to ensure the integrity of the administrative process. *Mudel*, 462 Mich at 699, 701. “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.” *Id.* at 709-710. The WCAC’s decision may be reversed if it operated within the wrong legal framework or based its decision on erroneous legal reasoning. MCL 418.861a(14); *DiBenedetto v West Shore Hosp*, 461 Mich 394, 401-402; 605 NW2d 300 (2000). Issues of law are reviewed de novo. *Id.* at 401.

The only real factual issue remaining in this matter is whether there was a relationship between his injury and his employment. Several of plaintiff’s claims pertain to the WCAC’s decision to revisit its earlier decision, which plaintiff asserts was a violation of his right to due process, the law of the case doctrine, and MCL 418.861a(11). These issues are closely related.

Section 861a(11) of the WDCA, MCL 418.861a(11), states:

The commission or a panel of the commission shall review only those specific findings of fact or conclusions of law that the parties have requested be reviewed.

Significantly to all three of these issues, neither party challenged the validity of the WCAC's remand order to the magistrate. The WCAC sua sponte decided to reverse its prior decision rather than, as both parties would reasonably have expected, considered the matter on the basis of the supplemented record. However, the issue before the WCAC was whether there existed the requisite competent, material and substantial evidence to support the magistrate's determination of a compensable disability claim. Arguably, the WCAC did not deviate from merely reviewing the issue of work-injury relationship and causation, and therefore did not exceed its authority. See *Cane v Mich Beverage Co*, 240 Mich App 76, 80-81; 610 NW2d 269 (2000). Furthermore, the WCAC is permitted to correct its own technical or procedural errors. *McLean v Eaton Mfg Co*, 286 Mich 285, 294-295; 282 NW 150 (1938).

The WCAC may not, however, redetermine the substantive merits of a matter. *McLean*, 286 Mich at 295; see also *Dean v Great Lakes Casting Co*, 78 Mich App 664, 667; 261 NW2d 34 (1977) and *Wemmer v Nat'l Broach & Machine Co*, 199 Mich App 376, 382-383; 503 NW2d 77 (1993). The WCAC's remand was made pursuant to MCL 418.861a(12), under which it "may remand a matter to a worker's compensation magistrate for purposes of supplying a complete record if it is determined that the record is insufficient for purposes of review." Consequently, the WCAC could not have ordered the remand without at least making the specific finding of fact that the record it had at the time was insufficient to permit its review; a finding that the WCAC necessarily revisited after remand. Because the WCAC did so without being asked to do so, we agree that it violated MCL 418.861a(11).

Additionally, the "law of the case doctrine" binds an appellate court and all lower courts or tribunals after a remand in the same case and on materially the same facts to any decision the appellate court previously made. See *New Properties, Inc v George D Newpower, Jr, Inc*, 282 Mich App 120, 132; 762 NW2d 178 (2009). The law of the case doctrine applies to any decisions made either explicitly or implicitly, so long as they were "actually decided." *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000). "This doctrine is sufficiently important that it applies without regard to whether the decision was actually correct, but it is a matter of practice and discretion rather than an absolute limit on the courts' authority." *Hill v City of Warren*, 276 Mich App 299, 308; 740 NW2d 706 (2007).

This Court has determined that when an appellate tribunal "reverses a case and remands it . . . because a material issue of fact exists, the law of the case doctrine does not apply because the first appeal was not decided on the merits." *Brown v Drake-Willock Int'l, Ltd*, 209 Mich App 136, 144; 530 NW2d 510 (1995), citing *Borkus v Mich Nat'l Bank*, 117 Mich App 662, 666; 324 NW2d 123 (1982). However, this is merely an obvious extension of the fact that, after additional findings of fact, the material facts would likely not be the same on a subsequent appeal. Clearly, an appellate court could not make a factual determination on the basis of facts that do not exist. But here, the WCAC made its second determination on the basis of the *prior* record, or, in other words, on the basis of the *same* facts that it had previously determined to be insufficient. While

not a disposition of the case itself on the merits, the WCAC did make an actual decision as to the facts that could be drawn from the then-existing record on the merits thereof. The law of the case doctrine would preclude the WCAC from revisiting that decision.

We again recognize that the law of the case doctrine is discretionary, and therefore the WCAC was not absolutely bound to follow it. However, the WCAC went too far in calling the doctrine “elective.” The doctrine may not be applied or ignored at whim. Indeed, a conclusion that a prior decision was merely erroneous is not enough to warrant ignoring the doctrine. *Bennett v Bennett*, 197 Mich App 497, 504; 496 NW2d 353 (1992). The WCAC was not necessarily prohibited from concluding, on the basis of the supplemented record available to it after remand, that the magistrate had erred in awarding plaintiff benefits. We express no opinion as to whether the WCAC should have done so. However, the WCAC based its decision on fundamentally erroneous legal reasoning and, in so doing, violated the integrity of the administrative appellate process. The WCAC should have reviewed the supplemented record and second opinion from the magistrate, and on remand we direct that it do so.

Reversed and remanded to the WCAC for further proceedings consistent with this opinion. We retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ Elizabeth L. Gleicher
/s/ Amy Ronayne Krause

Court of Appeals, State of Michigan

ORDER

Loren D Mohney v American International Group

Docket No. 303797

LC No. 06-000101

Douglas B. Shapiro
Presiding Judge

Elizabeth L. Gleicher

Amy Ronayne Krause
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 56 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, the WCAC should have reviewed the supplemented record and second opinion from the magistrate, and on remand we direct that it do so. The proceedings on remand are limited to this issue.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

OCT 16 2012

Date

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line. Below the line, the text "Chief Clerk" is printed.

Chief Clerk