

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

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SUE A. PORTER,

Plaintiff-Appellant,

v

DEPARTMENT OF EDUCATION  
and MICHIGAN ACCIDENT FUND,

Defendants-Appellees.

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UNPUBLISHED  
March 2, 1999

No. 206721  
WCAC  
LC No. 00000203

Before: Markman, P.J., and Jansen and J. B. Sullivan\*, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from a decision of the Worker's Compensation Appellate Commission (WCAC), which, after remand from this Court, reversed the decision of its predecessor, the Worker's Compensation Appeal Board (WCAB), which had in turned affirmed a hearing referee's decision granting plaintiff benefits for a mental disability. We reverse because, under the facts as found by the WCAC, plaintiff suffers from a compensable disability.

Plaintiff began working for the department of education in December 1980. She testified that in late 1982 she received memos suggesting that her work was not satisfactory. Plaintiff testified that after receiving these memos, she made an effort to improve and took work home with her every night. She made significant progress because she later received memos noting her improvements and stating that her work was now satisfactory.

In the fall of 1983, plaintiff was supervised for the first time by Sandra Thomas. She had previously received a memo from Ms. Thomas accusing her of using loud and profane language outside of the office. Although plaintiff admitted to complaining loudly when a coworker put her purse on plaintiff's newly painted car, she denied using profane language. Plaintiff testified that things did not work out well between Ms. Thomas and her. Moreover, at about this time, plaintiff's nephew was accused of killing five people, and it was plaintiff's perception that his arrest and subsequent trial attracted much notoriety and made people withdraw from her at work.

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

Plaintiff took a leave of absence because of the pressures at work and at home. After her return, she was advised again that her work was unsatisfactory. She began receiving memos from Ms. Thomas critical of her work production. In the spring of 1984, Ms. Thomas began reviewing one hundred percent of plaintiff's files. Plaintiff complained that this procedure disrupted her ability to perform her work. In February 1984, plaintiff received a written reprimand for overdue cases. She characterized as an "outright lie" a review memo that she received in May 1984. Plaintiff testified that on May 24, 1984 she attempted suicide because she had reached the point where she was completely unable to cope. Plaintiff began to treat with a psychiatrist and never returned to work.

Plaintiff filed a petition for hearing claiming psychiatric disability caused by work-related events culminating on her last day of work. In a decision mailed on May 13, 1986, a hearing referee denied plaintiff's claim, finding that she had failed to demonstrate that any psychiatric disability from which she might suffer was work-related. Plaintiff appealed and in a decision and order dated October 24, 1990 the WCAB reversed. Noting that all three doctors who testified in their depositions agreed that plaintiff suffered from bipolar disorder, the WCAB chose to credit the testimony of Drs. Shiner and Burnstein over that of Dr. Rubin in finding plaintiff disabled from further employment. The WCAB held that plaintiff satisfied the test for mental disabilities set out in *Diezel v Difco Laboratories, Inc (After Remand)*, 403 Mich 1; 268 NW2d 1 (1978). Additionally, the WCAB held in a conclusory manner that plaintiff had satisfied the significant manner test for mental disabilities contained in § 301(2) of the Worker's Disability Compensation Act, MCL 418.301(2); MSA 17.237(301)(2), which was enacted to replace the *Diezel* test.

This Court granted defendants' application for leave to appeal and reversed in an unpublished decision dated December 2, 1992, holding that the WCAB had applied the wrong legal standard and that under the correct standard plaintiff was not entitled to benefits in light of the facts as found by the WCAB. By order dated August 24, 1994, the Supreme Court vacated that judgment and remanded to this Court for reconsideration in light of its recent decision in *Gardner v Van Buren Public Schools*, 445 Mich 23; 517 NW2d 1 (1994). This Court in turn reversed and remanded to the WCAB's successor for reconsideration in light of *Gardner*.

The WCAC issued its opinion and order on remand, finding that plaintiff's mental disability was not significantly affected by her work for the following reasons:

All the medical experts testifying in this matter have opined that plaintiff suffers from a bipolar disorder. All of them also agree that this disorder is based in biochemical problems in the brain and is generally considered to have genetic origins. They disagreed on whether plaintiff's employment aggravated the disease.

The record has established beyond any doubt that plaintiff has a long history of psychiatric difficulties and traumatic events which preceded her employment with defendant. These events must be considered in combination with those events plaintiff complains of at work. Among other things, she has experienced two rapes with subsequent abortions, a nephew convicted of murder, several hospitalizations for

psychiatric problems, some amount of drug and alcohol abuse, and concern for a brother who was shooting heroin.

In order to decide whether plaintiff's employment *significantly* affected her mental illness, we must compare nonemployment factors, including plaintiff's overall mental health, and employment factors.

When we examine plaintiff's employment, we find problems between her and Ms. Sandra Thomas. The latter was a supervisor who found it necessary to issue memorandums to plaintiff about the latter's proclivity for getting behind in her work. A previous supervisor documented the same type of problems with plaintiff. A review of the memos of both supervisors indicates that neither did anything but call plaintiff's attention to the fact that she had too many aged files. She was warned in some memos that her work performance had to be improved or she would be subject to disciplinary procedures.

Upon comparing nonemployment and employment factors, we find that plaintiff's personal problems were far more significant in the development of her mental disability than were any employment factors. In applying *Gardner, supra*, we find that the supervisor's disciplinary measures were not significant in the least when compared with the nonemployment factors. It is on the basis of that decision that we deny benefits in this case.

Plaintiff applied for leave to appeal. Although this Court initially denied the application, the application was granted on November 3, 1997 after being remanded by the Supreme Court for reconsideration in light of *Corbett v Plymouth Twp*, 453 Mich 532; 556 NW2d 478 (1996).

As her first claim of error, plaintiff argues that the WCAC erred as a matter of law in classifying her overall mental health as a nonemployment factor in its causation analysis. We agree. We find that the WCAC erroneously applied legal principles set forth in *Gardner* and *Corbett* and, therefore, its administrative decision was based on the wrong legal framework. MCL 418.861a(14); MSA 17.237(861a)(14); *Zgnilec v General Motors Corp (On Remand)*, 224 Mich App 392, 394; 568 NW2d 690 (1997).

In *Gardner*, the Supreme Court reaffirmed the long-standing principle of worker's compensation law that employers take employees as they find them with all preexisting mental and physical frailties. A preexisting condition does not bar recovery. *Gardner, supra* at 48. This holding was affirmed in *Corbett, supra* at 550. In *Corbett* one of the plaintiffs was found to have a preexisting personality type which made him unable to cope with ordinary changes in his work environment. The Supreme Court nevertheless affirmed an award of mental disability benefits, rejecting the employer's argument that the preexisting mental condition should be considered a nonoccupational factor which rendered the alleged workplace events comparatively insignificant causes of his disability. *Id.* at 548-549, 552-553, 554.

In the present case, the WCAC found that all medical experts agree that plaintiff's bipolar disorder is biochemical in nature and has genetic components. Nevertheless, plaintiff may be entitled to benefits if she can show that her condition was aggravated to the point of disability by her work in a significant manner. The WCAC found that the nonemployment factors were more significant. However, most of the factors identified by the WCAC occurred several years before plaintiff's last day of work on May 24, 1984. Plaintiff's previous hospitalization for psychiatric problems occurred in 1977. Although plaintiff admitted to using marijuana and alcohol, she testified that this occurred between the ages of eight and twenty-five, that is, between 1970 and 1977. The pregnancies resulting in abortions following date rapes occurred in 1970 and 1977. Because of their remoteness in time, these events cannot be considered on a par with the workplace events upon which plaintiff relies. Alternatively, because these events occurred before plaintiff began working for defendant in December 1980, they should be considered only insofar as they shed light on the nature of plaintiff's preexisting condition, the bipolar disorder that she brought with her to the workplace.

The only other nonoccupational factors identified by the WCAC were plaintiff's nephew being charged with murder in April 1982 and plaintiff's discovery that her brother was using heroin in 1985.<sup>1</sup> The fact that plaintiff may have been upset to learn that her brother was using heroin in 1985 is irrelevant to the significance of workplace and nonworkplace factors in 1984. Although plaintiff's concerns regarding her nephew are contemporaneous with workplace stresses upon which plaintiff relies, this factor alone cannot diminish the significance of plaintiff's work as a cause for her disability. Although the event undoubtedly caused plaintiff stress out of the workplace, plaintiff testified that she suffered at work when her coworkers learned about her nephew. Therefore, plaintiff's concern regarding her nephew had both workplace and nonworkplace effects.

We hold for the above reasons that the WCAC erred in concluding that nonemployment factors predominated over employment factors, and that plaintiff failed to show that her work significantly aggravated her condition. This does not, however, end the analysis. The WCAC also found that the memos from supervisors about which plaintiff complained amounted to nothing more than calling plaintiff's attention to the fact that she had too many old files and that she must improve or be subject to disciplinary procedures. Plaintiff argues that the WCAC erred because under *Gardner* and *Corbett*, it does not matter whether plaintiff's response to the workplace events was reasonable or not, or whether her characterization of those events was accurate. We once again agree. In *Zgnilec, supra* at 397, this Court held that under *Gardner* and *Corbett*, it does not matter whether plaintiff's perception that she was ridiculed or harassed by fellow employees was accurate. "The question is whether the events or incidents that formed the basis for plaintiff's sense of harassment and ridicule actually occurred." *Zgnilec, supra* at 397. Similarly, it does not matter whether plaintiff's response to Ms. Thomas or her coworkers was reasonable, or whether she accurately interpreted and characterized their actions and statements. The only relevant question is whether the events upon which plaintiff relies occurred, and whether those events played a significant role in the development of her disability. Under the facts as found by the WCAC, both questions must be answered in the affirmative. Plaintiff is therefore entitled to benefits for a mental disability.

Reversed and remanded for entry of an order awarding worker's compensation benefits.

/s/ Kathleen Jansen

/s/ Joseph B. Sullivan

<sup>1</sup> Although defendants contend that plaintiff first reported concerns regarding her brother to a doctor in early 1984, the WCAC accepted plaintiff's contrary testimony at the hearing, stating as a fact that plaintiff learned about her brother's problem in 1985.