

STATE OF MICHIGAN
COURT OF APPEALS

EUGENE J. KRYWKO,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION
SAGINAW STEERING GEAR,

Defendant-Appellee.

UNPUBLISHED
May 21, 1999

No. 211978
WCAC
LC No. 00000185

Before: Jansen, P.J., and Sawyer and Markman, JJ.

PER CURIAM.

This is a worker's compensation case in which plaintiff claims a mental disability. After this Court previously denied leave, *Krywko v General Motors Corp*, unpublished order of the Court of Appeals, issued June 10, 1997 (Docket No. 193062), the Supreme Court remanded this matter to this Court "for consideration as on leave granted." *Krywko v General Motors Corp*, 457 Mich 873; 586 NW2d 919 (1998).

This case has a protracted procedural history. It commenced when plaintiff filed a petition for benefits in September 1982, alleging a work-related nervous condition causing total disability. In a decision mailed October 18, 1984, an administrative law judge (ALJ) found plaintiff totally disabled as a result of injuries that occurred at work on July 2, 1976, December 4, 1981, and March 18, 1982 (which was also plaintiff's last day of work). The Worker's Compensation Appeal Board (WCAB) affirmed in a decision dated September 26, 1989. In doing so, the WCAB in part relied upon the testimony of plaintiff's expert witness, psychiatrist Teck Lian. This Court vacated the WCAB's decision and remanded for further consideration in light of MCL 418.301(2); MSA 17.237(301)(2), which was in effect in March 1982 when plaintiff was found by the WCAB to have suffered his last work injury. *Krywko v General Motors Corp*, unpublished order of the Court of Appeals, issued February 27, 1990 (Docket No. 121978). The ALJ and the WCAB had erroneously applied the standards set forth in *Deziel v Difco Laboratories, Inc (After Rem)*, 403 Mich 1; 268 NW2d 1 (1978), for mental disability cases. See *Hurd v Ford Motor Co*, 423 Mich 531, 534-35; 377 NW2d 300 (1985).

On remand, the WCAB again entered an open award of benefits. The WCAB concluded that plaintiff had proven that his employment significantly aggravated his underlying psychiatric condition. The WCAB's analysis was contained in two sentences explaining that the WCAB relied upon plaintiff's testimony, the testimony of Dr. Lian, and upon the WCAB's factual findings that plaintiff was constantly harassed by his foreman, threatened by a co-worker, and harassed by other workers "who played games on him."

This Court reversed in an unpublished opinion. *Krywko v General Motors Corp*, unpublished opinion per curiam of the Court of Appeals, issued August 13, 1992 (Docket No. 131084). Applying the objective standard enunciated in *Sobh v Frederick & Herrud, Inc*, 189 Mich App 24; 472 NW2d 8 (1991), this Court concluded that plaintiff did not show unusual or highly stressful events at work that "significantly" contributed to his mental condition.

Plaintiff sought leave in the Supreme Court which initially held plaintiff's application in abeyance. *Krywko v General Motors Corp*, __ Mich __; 511 NW2d 679 (1993). On August 29, 1994, the Court vacated this Court's decision and remanded to the WCAC for reconsideration in light of *Gardner v Van Buren Public Schools*, 445 Mich 23; 517 NW2d 1 (1994). *Krywko v General Motors Corp*, 446 Mich 874; 522 NW2d 634 (1994). *Gardner* was a significant decision which largely overruled this Court's adoption of an objective standard in mental disability cases.

On remand, the WCAC conducted a de novo review since it was acting as the successor of the WCAB. The WCAC concluded that plaintiff had not established a causal basis between his employment and his mental disability, let alone established that such employment "significantly" aggravated his mental disability. The WCAC noted that plaintiff suffered from hallucinations and misperceptions regarding other people both inside and outside his workplace, that plaintiff subsequently acknowledged that people he previously imagined were out to get him were not out to get him, that both psychiatric experts found plaintiff to be schizophrenic, and that plaintiff actually admired the foreman under whom he was working as of his last day of employment. The WCAC agreed with the explanation of the defense psychiatrist, Graydon Forrer, that plaintiff's underlying mental illness had no basis in anything other than genetics and biochemical imbalances. This Court initially denied plaintiff's application from the WCAC's decision, but the matter is now before us for review based upon the Supreme Court's second remand in this case.

Plaintiff suffers from schizophrenia and has experienced at least three schizophrenic episodes at work which resulted in plaintiff missing work. Plaintiff theorized that these episodes were caused by pressures and harassment at work. But plaintiff's testimony also showed non-work problems and experiences, such as the death of several relatives shortly preceding an episode plaintiff had at work in December 1981, a history of talking to farm animals and hearing voices outside his home when he was cutting wood, visions of coffins and skeletons on the ceiling of his hospital room, and paranoid suspicions about a neighbor, the FBI, the Mafia, communists, and Muslims. When he testified, plaintiff acknowledged that most of these previous thoughts were unfounded and were "crazy hallucinations."

In order to be entitled to worker's compensation benefits based upon a mental disability, plaintiff was obligated to satisfy the "significant manner" requirement and the requirement that his

disability arise out of actual events of employment rather than unfounded perceptions found in MCL 418.301(2); MSA 17.237(301)(2):

Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions, 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.

To establish a compensable mental disability plaintiff had to “actually prove a significant factual causal connection between the actual events of employment and the mental disability.” *Gardner v Van Buren Public Schools*, *supra* at 46-7. The analysis must take into account the significance of actual events of employment as well as the significance of non-employment factors. *Id.* at 47. The factfinder must consider the totality of both the occupational circumstances and the claimant’s mental health in general. *Id.*

In this case, the WCAC found that plaintiff failed to satisfy the significant manner requirement and, indeed, failed to establish a causal nexus between his employment and his claimed mental disability. Whether or not a disability is related to a plaintiff’s employment is a question of fact. *Dressler v Grand Rapids Die Casting*, 402 Mich 243, 250; 262 NW2d 629 (1978). Factual determinations of the WCAC, when it acts within the scope of its powers, are conclusive in the absence of fraud. *Goff v Bil-Mar Foods (After Rem)*, 454 Mich 507, 512; 563 NW2d 214 (1997); MCL 418.861a(3); MSA 17.237(861a)(3). In the instant case the WCAC was acting within its power when it conducted its de novo review and made its findings because the Supreme Court directed it to consider the case and because the WCAC was acting in place of the WCAB, which had been eliminated by the time of the Supreme Court’s remand.¹

Findings of fact made by the WCAB are conclusive absent a showing of fraud and are not to be set aside if they are supported by evidence in the record. *Nezdropa v Wayne County*, 152 Mich App 451, 460; 394 NW2d 440 (1986). Whether the WCAC’s decision in this case is reviewed under the standard applied to the WCAB (under the theory that the WCAC was standing in the shoes of the WCAB), or under MCL 418.861a(3); MSA 17.237(861a)(3), the evidence was more than sufficient to sustain the WCAC’s findings. There was considerable evidence indicating plaintiff’s mental disability was related to non-employment factors. Plaintiff had a history of talking to animals and hearing voices in the woods, he was afraid of a neighbor, he was suspicious of hospital staff, and he saw skeletons and coffins on the hospital room ceiling. Defendant’s psychiatric expert was of the opinion that plaintiff’s mental condition was not related to his employment but was related to a genetic problem that was probably caused by a biochemical imbalance. The WCAC relied on Forrer’s views. The WCAC was free to accept the medical testimony it found to be most persuasive. *Miklik v Michigan Special Machine Co*, 415 Mich 364, 367; 329 NW2d 713 (1982). In short, the WCAC’s findings that plaintiff’s mental disability was not related to his employment and that his employment did not significantly aggravate his mental condition was supported by competent, material and substantial evidence on the whole record.

Affirmed.

/s/ David H. Sawyer

/s/ Stephen J. Markman

¹ When the Legislature replaced the WCAB with the WCAC, there were several transitional provisions enacted which have since been repealed. MCL 418.252; MSA 17.237(252), MCL 418.253; MSA 17.237(253), and MCL 418.266; MSA 17.237(266). Section 253(12) provided that any cases remanded to the WCAC after October 1, 1993 were to be decided by the WCAC. That is what occurred in this case.