

STATE OF MICHIGAN
COURT OF APPEALS

BONNIE J. MILLER,

Plaintiff-Appellant,

v

ST. MARY'S MEDICAL CENTER OF
SAGINAW, INCORPORATED,

Defendant-Appellee.

UNPUBLISHED

September 14, 2001

No. 226478

WCAC

LC No. 98-000468

Before: K.F. Kelly, P.J., and White and Talbot, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the Worker's Compensation Appellate Commission's (WCAC) opinion and order affirming the magistrate's decision denying plaintiff benefits. We affirm in part, vacate in part and remand for further proceedings.

Plaintiff worked for defendant as a certified emergency assistant. She claims she was injured on May 17, 1990 while lifting a patient. Despite treatment, she continued to suffer problems with her ribs and left shoulder. Although she returned to work with defendant, she left on July 16, 1997 because of severe pain. She did not return to work with defendant. She continues to have problems with her shoulder and rib, although she has been employed in other capacities since leaving defendant. On September 25, 1997, plaintiff sought worker's compensation benefits for her injuries.

Plaintiff's application for mediation or hearing alleges that she was injured on May 17, 1990 while lifting a patient, she was laid off from restricted work on July 16, 1997 and her injuries were continuing. During the hearing, plaintiff made a motion to amend her application to add an additional injury date, which the magistrate denied. She further sought to introduce an exhibit, which was likewise denied. After the hearing was concluded, the magistrate found that plaintiff was in fact injured on May 17, 1990, but determined that plaintiff had recovered from that injury and had failed to establish an ongoing injury. Accordingly, the magistrate denied plaintiff benefits.

Plaintiff appealed the denial of benefits. The WCAC affirmed the magistrate, stating that its review is not de novo.

Plaintiff first argues that the magistrate abused her discretion in denying plaintiff's request to amend her petition to add an injury date of July 2, 1997. We disagree. At the hearing, Defendant objected to any amendment since it had no notice of an injury on that date. A review of the record discloses that plaintiff failed to tell the physicians who examined her after July 1997 that she suffered an injury on July 2, 1997. Further, the testimony of these physicians contains no reference to a July 2, 1997 injury. Under the circumstances, we find that the magistrate properly denied plaintiff's motion to amend.

Plaintiff also argues that the magistrate abused its discretion in refusing to admit an exhibit. However, this exhibit is not contained in the administrative record, and plaintiff has failed to clearly indicate the content of that exhibit¹. An appellant bears the burden of presenting an adequate record upon which this Court can review the issues raised. *Petraszewsky v Keeth (On Remand)*, 201 Mich App 535, 540; 506 NW2d 890 (1993). Because we are unable to evaluate the document plaintiff asserts should have been admitted, we decline to review the issue.

Next, plaintiff argues that the WCAC erred in affirming the magistrate because the magistrate's factual findings are not based on competent, material and substantial evidence on the record as a whole. Because we find that the WCAC failed to conduct the appropriate review of the issue, we remand this matter for further consideration.

Our Supreme Court recently clarified the standards of review applied in worker's compensation cases:

The WCAC must review the magistrate's decision under the "substantial evidence" standard, while the courts must review the WCAC's decision under the "any evidence" standard. 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. [*Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 709-710; 614 NW2d 607 (2000).]

Further, as expressed in *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 or, if it is granted, to affirm, in recognition that the Legislature provided for

¹ Apparently, this exhibit was a report written by the plaintiff. No offer of proof was made as to its content.

administrative appellate review by the seven-member WCAC of decisions of thirty magistrates, and bestowed on the WCAC final fact-finding responsibility subject to constitutionally limited judicial review.

In this case, the WCAC failed to properly consider the record and apply the correct standard of review. The WCAC must review “the whole record, analyzing all the evidence presented, and determin[e] whether the magistrate’s decision is supported by competent, material and substantial evidence.” *Mudel, supra* at 699. The WCAC must conduct a qualitative and quantitative analysis of the whole record. MCL 418.861a(13). This provision, together with that providing that the WCAC’s factual findings, in the absence of fraud, shall be considered conclusive, “grants the WCAC certain fact-finding powers and permits it in some circumstances to substitute its own findings of fact for those of the magistrate, if the WCAC accords different weight to the quality or quantity of the evidence presented.” *Mudel, supra* at 700.

The WCAC misapprehended its role in reviewing the magistrate’s decision. While plaintiff’s argument requested the WCAC to give certain testimony different weight than did the magistrate, the WCAC may be permitted to do so and must provide plaintiff with a qualitative and quantitative review of the whole record. This matter is remanded to the WCAC to conduct the appropriate review of plaintiff’s evidentiary argument.

Affirmed in part, vacated in part and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Helene N. White
/s/ Michael J. Talbot