

STATE OF MICHIGAN  
WORKER'S COMPENSATION APPELLATE COMMISSION

LARRY CHARLTON,  
PLAINTIFF,

V

DOCKET #03-0184

DELPHI AUTOMOTIVE SYSTEMS CORPORATION,  
SELF INSURED,  
DEFENDANT.

APPEAL FROM MAGISTRATE DAY.

TIMOTHY J. SIMON AND DARYL ROYAL FOR PLAINTIFF,  
BRIAN S. GALIN FOR DEFENDANT.

OPINION

LESLIE, COMMISSIONER

Defendant appeals the decision of Magistrate Nancy J. Day, mailed April 23, 2003, granting plaintiff an open award of benefits for back disability. Defendant claims the magistrate erred in finding plaintiff has a compensable disability because plaintiff left employment due to an altercation with his supervisor, not any medical impairment, citing *Sington v Chrysler Corp*, 467 Mich 144 (2002). Plaintiff denies error because the altercation grew out of a request to be seen at the company medical facility because of back pain related to work. Further, the magistrate found as fact that plaintiff is unable to return to work any work within his qualifications and training because of his work-related back disability. We affirm.

The magistrate accurately and adequately summarized the lay and medical testimony in this case. We adopt this summary as our own pursuant to MCL 418.861a(10). In granting plaintiff an open award of benefits, she wrote:

At deposition, Dr. Benedict testified that, in addition the MRI studies demonstrating degenerative changes and the development of a disc protrusion between L1 and L2, x-rays done in August 2001 demonstrated degenerative disc disease, or wear and tear arthritis, of the lumbar spine. He offered the following diagnoses:

He has, I would say, a severe form of degenerative disc disease of both the cervical and lumbar spine at different levels. He has degenerative joint disease between the vertebrae of the spine. In addition to that, he has symptomatic spasms, pain created by inflammation of the nerve roots in the spine.

So the diagnosis is severe disc disease with radiculopathy symptoms, pinched nerves, and other diagnosis that would make it difficult for him to handle stress at work, like anxiety and depression. But the main conditions related to his work are the ones I just mentioned for his spine.

Dr. Benedict explained that he related the condition of his patient's back to his former employment with defendant because degenerative joint disease, or wear-and-tear osteoarthritis, is not often seen in someone as young as plaintiff. He, therefore, believed that plaintiff's degenerative disc disease was due, at least in part, to his former employment activities. Dr. Benedict also, I find, substantiated his opinion of a causal relationship between the heavy work his patient did for defendant and the nerve root inflammation in his spine:

Now, the other aspect causing pain, bulging discs and encroachment or pressure on the nerve exits on the spine, is something that we, in my opinion, see almost exclusively in patients that have to lift, push, pull, bend frequently, handle heavy loads at work, especially in younger people like himself. It would be very hard for me to explain on the basis of he has something that - - a family history or something that the patient, you know, has been doing normal course of his life without putting in this heavy work load that he was handling.

It was Dr. Benedict's opinion that, although his patient has realized some relief because he no longer has to perform the heavy work he did for defendant, he remains on medication and experiences flare ups of pain. Despite continuing treatment, Dr. Benedict did not believe that plaintiff's back condition has improved all that much since his last day worked. He denied that his patient would be able to perform any of the heavy work he once did for defendant, and testified that he would limit him to no lifting over 15 pounds, no pushing, no pulling, no working overhead, and no repetitive bending at the waist or neck. Although Dr. Benedict suggested that plaintiff might be able to work at a somewhat sedentary job, he realized that his patient's qualifications and training were limited to the jobs he had performed for defendant.

Michael Holda, M.D., Board-certified orthopedic surgeon, examined plaintiff on September 11, 2002, and testified on behalf of defendant. Dr. Holda denied that his clinical examination of plaintiff yielded any objective findings, and testified that the reported findings on the MRIs performed on plaintiff in December 2000 and August 2001 were simply evidence of age-related arthritic changes. (Plaintiff was 49 when examined by Dr. Holda). Dr. Holda also denied that the radiculopathy demonstrated by the August 5, 2002 EMG nerve conduction study was evident on clinical examination. This examiner denied that plaintiff's former job duties, accurately described to him at pages 17 to 19 of his deposition, had elicited anything more than transient symptoms of back pain. Because of his arthritic cervical and lumbosacral changes, Dr. Holda recommended a 50-pound weight restriction. On cross-

examination, Dr. Holda agreed that plaintiff was straightforward and cooperative and presented no bizarre or inconsistent responses on examination. He also acknowledged that, at the time of examination, plaintiff was on pain and anti-inflammatory medications as well as a muscle relaxer.

#### ADDITIONAL FINDINGS & CONCLUSIONS OF LAW

Plaintiff was a very credible (and talkative) witness. I accept his testimony that, because he had 29.7 years of service in and only had a few months to go for a full pension, he wanted to continue working after May 26, 2001. His testimony, along with that provided by supervisor Gilbert, credibly establishes the heavy nature of the work plaintiff performed for defendant up through his last day worked. Plaintiff's testimony, that provided by his treating physician and the exhibits admitted at hearing, with the exception of Dr. Kovan's report that I have already rejected, demonstrate that plaintiff's work for defendant caused a back injury and disability as of his last day worked of May 26, 2001. Plaintiff has preponderated a limitation in his wage-earning capacity in work suitable to his qualifications and training as a result of his work injury. MCL 418.301(4). Because of his work-related back condition, I find him unable to perform any jobs within his qualifications and training. *Sington v Chrysler Corp*, 467 Mich 144 (2002).<sup>1</sup>

In addition, the magistrate made the following, critical assessment of the proofs regarding plaintiff's last day of work:

Because defendant's medical department was not staffed on plaintiff's shift, employees seeking medical attention were sent to the nearest hospital. It was plaintiff's un rebutted testimony that, on May 26, 2001, his back was hurting so much that he asked his supervisor, Lacey, for a pass to the hospital. When Lacey laughed at him, plaintiff admitted he became angry. An argument ensued, and plaintiff called Lacey names, although he denied having used any racial slurs. Plaintiff completed his shift, and then went immediately to McLaren Regional Medical Center. On that day, he provided the emergency room personnel with a history of chronic back pain for which he was taking Vicodin. Plaintiff was given an injection and medication for his pain and released. (Plaintiff's exhibit #4). Dr. Benedict thereafter signed a sickness and accident form, wherein he indicated that his patient had been disabled from work beginning May 26, 2001, because of his back pain.

Supervisor Crump testified that plaintiff was discharged because he was found to have threatened and intimidated a member of management. Plaintiff filed a grievance and was subsequently reinstated once he successfully completed attendance at an anger management class. I accept plaintiff's credible testimony, however, that his excruciating back pain prevented his return to work for defendant.<sup>2</sup>

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<sup>1</sup> Magistrate's opinion at 5-7.

<sup>2</sup> *Id.* at 4.

Defendant contends the reason for plaintiff's loss of wages is the altercation with his supervisor, and implies that it is also related to his lack of driver's license and failure to complete his anger management classes. As plaintiff points out, and the above quoted excerpt of the magistrate's opinion demonstrates, the magistrate explicitly determined that plaintiff was seeking medical attention for his back condition at the time the altercation with his supervisor erupted. She also explicitly determined that it is plaintiff's back condition which prevents him from returning to work.

The magistrate expressly accepted plaintiff's testimony as credible and was persuaded by plaintiff's medical proofs. On this record, her choices are perfectly reasonable and we defer to them. This choice of persuasive testimony vitiates defendant's contention plaintiff's has not proven a compensable disability under *Sington*.

We affirm the magistrate's decision in its entirety.

Chairperson Reamon and Commissioner Glaser concur.

Richard B. Leslie

William G. Reamon, Jr.

Martha M. Glaser

Chairperson

Commissioners

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This cause came before the Appellate Commission on defendant's appeal from Magistrate Nancy J. Day's decision, mailed April 23, 2003, granting an open award of benefits. The Commission has considered the record and counsel's briefs, and believes that the magistrate's decision should be affirmed. Therefore,

IT IS ORDERED that the magistrate's decision is affirmed.

Richard B. Leslie

William G. Reamon, Jr.

Martha M. Glaser

Chairperson

Commissioners