

STATE OF MICHIGAN  
WORKERS' COMPENSATION APPELLATE COMMISSION

RAJ SUNDERS,  
PLAINTIFF,

V

DOCKET #95-0852

DETROIT BOARD OF EDUCATION,  
SELF INSURED,  
DEFENDANT.

APPEAL FROM MAGISTRATE SHARON L. SMITH.

BENJAMIN WHITFIELD, JR. FOR PLAINTIFF,  
NICOLE LUSSOS FOR DEFENDANT.

OPINION

GARN, COMMISSIONER

This case comes before the Appellate Commission on defendant's appeal from the decision of Magistrate Sharon L. Smith, mailed October 4, 1995, granting plaintiff a closed award of benefits. On appeal, defendant argues that plaintiff failed to establish a work-related psychiatric disability by preponderance of the evidence and, further, that the magistrate's findings of injury dates and disability are not supported by competent, material and substantial evidence.

This Commission is to determine whether there is competent, material, and substantial evidence on the whole record to support the magistrate's findings of fact. MCL 418.861a(3). In the instant case, the requisite evidence is present and we affirm.

Plaintiff alleges a psychiatric injury based upon events allegedly occurring on or about March 22, 1994, October 3, 1994 and February 10, 1995. The first event involved a fellow school teacher entering plaintiff's classroom and, in front of her students, accusing her of hitting his car in the parking lot. Plaintiff testified she was frightened and humiliated by his tirade. On or about October 3, 1994, the same teacher, Mr. Mitchell, returned to plaintiff's classroom, allegedly called her a bitch, and told her she owed him \$1,000.00. In February 1995, plaintiff received an unsatisfactory rating from her supervisors. She testified that she believed this rating was received in retaliation for an EEOC complaint she had filed earlier. As of August 28, 1995, plaintiff returned to work in a different school.

No medical testimony was submitted. Defendant produced one witness, Jesse Sangster, the assistant principal in rebuttal. Defendant sought to produce Mr. Mitchell as a witness, but he did not show up for the hearing. Defendant requested an adjournment for the purpose of presenting Mr. Mitchell's testimony but the request was denied.

Magistrate Smith explicitly found plaintiff credible. She concluded:

I find the incidents with Mr. Mitchell to be the traumatizing events and that the actions by the area supervisor aggravated an already fragile psyche.

She then awarded benefits for the periods of March 23, 1994 through May 24, 1994; October 4, 1994 through December 6, 1994; and February 11, 1995 through August 27, 1995.

Defendant's argument on appeal, when boiled down to its essence, is that the magistrate erred in finding plaintiff credible as to disability and dates of injury and that she should have granted an adjournment to enable the testimony of Mr. Mitchell to be taken. We do not find these arguments to be persuasive.

Plaintiff appeared in person before this magistrate. Mr. Sangster did as well. The latter witness clearly testified that plaintiff, at various times, had lied to him and to the principal as well. He testified he was aware of the allegation regarding the parking lot incident, but he did not witness it. As for his relationship with plaintiff, Mr. Sangster testified that he interacted with her only when necessary.

As we have so often stated, a magistrate's credibility determinations have historically been given a great deal of deference as the magistrate has the opportunity to view and judge witnesses. *Tompkins v Social Services Dep't*, 97 Mich App 218 (1979). In the instant case, it is a matter of the word of Mr. Sangster against that of plaintiff. The magistrate, after personally observing both individuals chose to believe plaintiff. In the absence of fraud or other egregious circumstance, we will not disturb that finding.

We further hold that the magistrate did not err in refusing to grant an adjournment. The parties clearly were aware of the date of hearing and defendant acknowledges that Mr. Mitchell was also aware. It is the province of the parties to ensure that their respective witnesses appear for trial. Under exigent circumstances, magistrates have exercised their discretion in various ways including allowing depositions of lay witnesses. In the instant case, however, the magistrate rightfully noted:

Where[as] I understand your [dilemma], the time is now 11:05. This is the second day of trial, not the first. So, that all of your witnesses should have been available, yesterday, and therefore, would have

known that [their] responsibility was to be back here for a continuation. Therefore, your motion, as I'm entertaining this as a motion, for a continuance, is hereby denied.

We find the magistrate committed no error in so ruling.

Defendant appealed no other questions, including the legal standards applied by the magistrate in a mental disability case. In our examination of the record, we find there to be competent, material and substantial evidence for the decision of the magistrate. We therefore affirm.

Commissioners Witte and Kent concur.

Marten N. Garn

Joy L. Witte

James J. Kent

Commissioners

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This cause came before the Appellate Commission on appeal by defendant from the decision of Magistrate Sharon L. Smith, mailed October 4, 1995, granting plaintiff a closed award of benefits. The Commission has considered the record and the briefs of counsel, and believes that the magistrate's decision should be affirmed. Therefore,

IT IS ORDERED that the decision of the magistrate is affirmed.

Marten N. Garn

Joy L. Witte

James J. Kent

Commissioners