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Court of Appeals of Michigan.

Agnes N. CRAMER, Plaintiff-Appellant,
v.
TRANSITIONAL HEALTH SERVICES OF WAYNE and American Zurich Insurance Company, Defendants-Appellees.

No. 347806
|
August 26, 2021, 9:25 a.m.

MCAC, LC No. 14-000086

Before: Shapiro, P.J., and Jansen and Beckering, JJ.

Opinion

Jansen, J.

***1** Plaintiff appeals as on leave granted the opinion and order of the Michigan Compensation Appellate Commission (MCAC) affirming in part and reversing in part the order of the Workers' Compensation Board of Magistrates. The MCAC reversed the magistrates order denying disability benefits to plaintiff predicated on a shoulder injury, but affimed, in pertinent part, the magistrate's determination that plaintiff failed to demonstrate that her mental health issues were significantly contributed to by plaintiff's workplace accident.

Plaintiff previously filed an application for leave to appeal in this Court. See *Cramer v. Transitional Health Services of Wayne*, unpublished order of the Court of Appeals, entered August 16, 2019 (Docket No. 347806), where this Court ordered:

> Pursuant to MCR 7.205(E)(2), in lieu of granting the application for leave to appeal, the Court REMANDS this matter to the Board of Magistrates for the limited purpose of allowing the magistrate to determine whether plaintiff is entitled to a discretionary award of attorney fees on unpaid medical benefits. MCL 418.315(1); *Harvlie v. Jack Post Corp.*, 280 Mich.App. 439, 444-446, 760 N.W.2d 277 (2008). The conclusion of the Commission that the magistrate exercised her discretion to deny a requested award is unsupported by the record where the magistrate's opinion makes no reference to attorney fees. The Court does not retain jurisdiction. In all other regards, the application for leave to appeal is DENIED for lack of merit in the grounds presented.

Plaintiff filed an application for leave to appeal that order in our Supreme Court, which in turn ordered:

> On order of the Court, the application for leave to appeal the August 16, 2019 order of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for consideration, as on leave granted, of whether: (1) the Michigan Compensation Appellate Commission correctly concluded that the magistrate properly applied the four-factor test in *Martin v. Pontiac Sch. Dist.*, 2001 Mich. ACO 118, lv. den. 466 Mich. 873, 645 N.W.2d 665 (2002), and the standard in *Yost v. Detroit Board of Education*, 2000 Mich. ACO 347, lv. den. 465 Mich. 907, 635 N.W.2d 309 (2001); (2) the *Martin* test is at odds with the principle that a preexisting condition is not a bar to eligibility for workers' compensation benefits and conflicts with the plain meaning of MCL 418.301(2); and (3) the Michigan Compensation Appellate Commission correctly concluded that the magistrate's lack of causation conclusion was supported by the requisite competent, substantial, and material evidence utilizing the proper standard of law. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining question presented should be reviewed by this Court. [*Cramer v. Transitional Health Services of Wayne*, 505 Mich. 1022, 941 N.W.2d 370 (2020).]

We now affirm.

I. BACKGROUND

On February 8, 2012, plaintiff was working at defendant Transitional Health Services as a dietary manager at a nursing home. She wiped a light fixture with a wet rag, received an electric shock, fell off a ladder, and hit her shoulder and head. She was taken to a hospital, assessed, and, showing no indications of injury, released. Plaintiff began experiencing seizures at the end of March 2012. It was later determined that these were non-epileptic seizures, meaning that they were brought on not by any physical brain abnormality but by stress. Plaintiff was diagnosed with PTSD, and she also claimed to be experiencing severe headaches. It is not

disputed that plaintiff had an extremely traumatic history, including 19 years of horrific abuse at the hands of her ex-husband. The defense posture was that plaintiff's mental issues stemmed primarily from this history and that plaintiff was also exaggerating her claims of disability.

***2** Testimony was presented from the following providers who treated plaintiff: Manfred Greiffenstein, Ph.D., a licensed psychologist; Dr. Wilbur J. Boike, M.D., a neurologist; John Stokes, a vocational rehabilitation consultant; Dr. Mariana V. Spanaki-Varalas, M.D., who monitored plaintiff in an epilepsy-monitoring unit; Andrea J. Thomas, a psychologist; Dr. Gregory Barkley, M.D., who along with Thomas, worked with treating a small group of women, including plaintiff, who had a history of traumatic experiences; and James Fuller, a certified rehabilitation counselor.

Greiffenstein met with plaintiff and conducted a neuropsychological evaluation of plaintiff. Greiffenstein spoke with plaintiff, and reviewed several imaging scans. Specifically, Greiffenstein reviewed an MRI of plaintiff's brain that was normal, and an EEG that showed no epileptiform activity. Greiffenstein concluded that on the basis of plaintiff's medical history, her apparent symptoms "waxed and waned in dramatic fashion," with diagnoses added and dropped accordingly. Plaintiff was having "psychogenic non-epileptic seizures" (PNES). Greiffenstein stated that PNES "are usually caused by the intersection of an underlying personality disorder and unusually stressful circumstances." He said that the causes could be in the distant past or "in the here and now." He added, "[T]he theory is that [PNES] act to control the environment in persons who otherwise have inadequate coping skills." PNES are "a complex behavior triggered by stress that mimics seizures." Plaintiff had been in a physically and sexually abusive marriage, was still in contact with her ex-husband, was estranged from some of her children, and maintained a contentious relationship with her mother. Accordingly, Greiffenstein found that "the stressors in [plaintiff's] life are not at one time or at [sic] one off event. They are recurrent features of her daily existence."

Greiffenstein reported that plaintiff "used exaggerated language to describe the symptoms and their functional impact on her life." After administering several tests, Greiffenstein concluded that plaintiff's results were consistent with someone "grossly overstating" disability-related complaints. He noted that plaintiff "did not make the types of errors associated with focal or diffuse brain disease" and stated that, "[b]ased on negative brain scans and a chart history of waxing and waning complaints, the evidence favors histrionic personality" or "Undifferentiated Somatoform Disorder" (USD). He said, "This is a form of mental illness characterized by prolific but medically unexplained symptoms, where personality and situational factors are the root cause." Greiffenstein stated that it is difficult to distinguish this illness from "malingering," or faking, and that this difficulty was present in plaintiff's case, because she had presented elements of such faking. Greiffenstein also gave a diagnosis of "conversion disorder." When asked to define this, he stated:

> Conversion disorder is the modern term for what used to be called chronic hysteria, meaning a psychologically disturbed patient whose mental illness takes the form of medically unexplained symptoms. In the case of conversion disorder, the medically unexplained symptoms refer to the central nervous system, meaning they might mimic disorders of the central nervous system but on further medical testing there is no lesion of the central nervous system found. These are typically persons who are histrionic and give colorful and dramatic medical histories that ultimately don't add up or make sense.

***3** Greiffenstein concluded that plaintiff was able to work. He stated, "Mental health services are presently indicated for interpersonal conflict. These are personal problems that pre-date the accident." Greiffenstein said that plaintiff's "symptom claims are best understood as an interaction between a disturbed personality and psychosocial stressor." This personality issue would have been present before plaintiff even began working at Transitional Health Services.

Dr. Boike also conducted an independent neurological examination of plaintiff. In his first report, Dr. Boike concluded that plaintiff's "neurological examination is absolutely normal." Indeed, plaintiff had had normal EEG findings even when claiming that seizures had occurred. He agreed with the diagnosis of "pseudoseizures" and said that plaintiff "demonstrates no apparent cognitive difficulties to suggest that she has any significant cognitive problems at this time." Dr. Boike did recommend that plaintiff be seen for psychiatric treatment to determine if she had psychiatric difficulties as a result of the work incident.

In his second report, Dr. Boike indicated that plaintiff was now complaining of frequent migraine headaches and associated slurred speech and reported to him that the severe headaches began in October 2013. Dr. Boike opined that

plaintiff "appears to have largely substituted one diagnosis for another." He stated:

> It remains my strong opinion that [plaintiff] has no neurological impairment or disability. So long as her subjective complaints provoke yet evermore evaluation and treatment by medical care providers, it is likely that [plaintiff's] complaints will escalate over time. Given her complaints regarding comments reportedly made to her concerning the possibility of future "Parkinson's" disease, I would not be at all surprised if this will be the next "presentation" of her "illness."
>
> I strongly recommend that medical care providers discontinue the current practice of reacting to every new symptom as a manifestation of some serious underlying illness. I actually believe [plaintiff's] long-term prognosis is excellent. I believe it is likely that she will completely resolve all of her current "difficulties" [ ] once there is resolution of whatever legal proceedings are underway at this time. I do not believe [plaintiff] requires any additional evaluation or treatment of her ongoing complaints.

I strongly doubt that she is actually experiencing headaches at this time Dr. Boike concluded that plaintiff could work.

Stokes testified that he met with plaintiff in June of 2014. On the basis of the opinions of doctors who said that plaintiff could work, Stokes looked for jobs for which plaintiff would be qualified. He noted that plaintiff had actually completed a final course for her Bachelor's degree in May 2013, after the workplace incident. Stokes identified jobs, such as receptionist, accounting clerk, bookkeeper, and fast-food-service manager, that plaintiff could perform. Apparently, plaintiff had been offered a job as a food-court manager that paid $120,000 a year, but the offer was rescinded when she mentioned her seizures. Stokes opined that plaintiff was exhibiting "work avoidance" by bringing up the seizures to prospective employers. He opined that, in light of certain medical opinions and her job skills, plaintiff had not "sustained the loss of her wage earning capacity."

Dr. Spanaki-Varalas testified that she saw plaintiff on May 16, 2012, and formulated a treatment plan for her. Dr. Spanaki-Varalas admitted plaintiff into an epilepsy-monitoring unit at the end of June 2012 where plaintiff remained for 14 days. Dr. Spanaki-Varalas stated that with medication and without medication, "We didn't see any brainwaves that are specific and indicate epilepsy." Plaintiff did not have a "100 percent normal EEG" because there were "some slow waves," but these were not "specific or diagnostic," and the doctor could not opine about what caused them. Dr. Spanaki-Varalas concluded that plaintiff's accident at work "led to anxiety" and that she therefore "developed [PTSD]." The doctor testified, "The patient had none of those episodes before the insult, and then she progressively developed those up to the point that she had convulsive episodes." Dr. Spanaki-Varalas stated that the workplace incident "was the starting point of [plaintiff's] symptoms" and was a significant factor that led to PTSD and related non-epileptic seizures (NES). Dr. Spanaki-Varalas admitted that she was not in the best position to determine the "cause or etiology of what ultimately was [the] diagnosis of PTSD leading to" NES and that this was best left to other professionals.

***4** Thomas, who began seeing plaintiff in October 2012, testified that the difference between NES and epileptic seizures is that epileptic seizures begin in the brain and NES are triggered by stress. Plaintiff told Thomas that her first seizure was on March 28, 2012. Thomas stated that plaintiff had moderate depression, PTSD, and conversion disorder with NES. She explained conversion disorder as a disorder whereby "the body converts ... stress into a physical symptom." Thomas did not think that plaintiff was malingering. Thomas stated that she determined that plaintiff had NES because they were "diagnosed during her stay in the [epilepsy] unit," and she determined that plaintiff had PTSD on the basis of "t[aking] [plaintiff's] history." Thomas said that plaintiff had stressors earlier in her life, but the workplace incident made "the situation that much worse" and contributed to or caused her NES and PTSD. Thomas did not think that plaintiff was employable at the moment because of her NES and the PTSD symptoms. Plaintiff was taking clonazepam for anxiety and Lamictal to stabilize her moods.

Similarly, Dr. Barkley testified that he did not think plaintiff was a malingerer and that she was trying to get better. Dr. Barkley said that plaintiff had a number of physical and psychological symptoms, such as headaches, that did not exist before the workplace incident, and that, therefore, the incident was causally related to them. Dr. Barkley admitted that plaintiff did not present to him with severe headache symptoms until August 19, 2013, although she complained of other headaches before then. In connection with her complaint of a severe headache, plaintiff reported having had an emotionally stressful week seeing her children. Dr. Barkley opined that plaintiff was disabled because of severe PTSD and NES. He was hopeful that she could rejoin the workforce in one or two years. Dr. Barkley stated that plaintiff had been

able to cope with "the other things that had happened to her," but the workplace incident "became the straw that broke the camel's back." He admitted that he was relying on plaintiff's provided information in making his conclusions.

Finally, Fuller testified that he met with plaintiff at the request of plaintiff's counsel and found her unemployable. He stated that there was an "either/or conundrum" in this case, because some professionals had concluded that plaintiff was able to work and some had concluded that she was not able to work. His opinion was formed from records provided by plaintiff's counsel, i.e., records indicating that plaintiff could not work. In addition, plaintiff reported to Fuller that she suffered from migraine headaches and NES and that she was lying down for 70 percent of waking hours. According to Fuller, plaintiff told him she turned down the $120,000-a-year job because she "felt incapable of performing the work."

Plaintiff also offered testimony. Regarding the February 8, 2012, work incident, plaintiff recalled that she was thrown off the ladder and then hit her head on a sink and on the floor. She claimed that hospital records from that day that omitted a history of head injury were wrong, because she mentioned a head injury and head problems, and not just an arm injury, when taken to the hospital. She claimed that she lost consciousness, but said, "When I hit my head the second time I came to." She acknowledged that the summary of the hospital visit stated that "the patient has escaped from any major injury or trauma to herself" and "will be going home." She also admitted that her various tests were normal.

Plaintiff claimed that in March 2012, she began experiencing tremors and was dizzy and had headaches. She claimed that she did not have any NES during her stay in the hospital epilepsy unit because "it was a very calm environment." When asked what stressors in her life precipitated the seizures, she mentioned the trial and the denial of workers' compensation benefits. She said that she had gotten black eyes and broken ribs and had experienced incontinence as a result of her seizures. Plaintiff claimed that she was experiencing migraines with "stroke-like symptoms" and that they had been getting worse. She stated, "[T]here's something with the protons and ions that collide in my brain that pushes my brain out to my cranium." She claimed to have problems reading because of "blurriness."

***5** Plaintiff stated that her emotional state and tearfulness were getting worse and that she did not want to live. She admitted that she attempted to commit suicide on July 4, 2014, and "died three times" from overdosing on pills. When asked about what she worked on with Thomas, plaintiff mentioned her "previous family issues." Plaintiff testified, "[W]hat happens when you have a severe trauma in your life, there are things that come flooding back into your head. And it's hard for you to push them away because it's like a dam being burst."

The magistrate issued a 42-page opinion. She stated that *Martin v. Pontiac Sch. Dist.*, 2001 Mich. ACO 118, provided a four-factor test for determining whether a workplace incident was a significant element in a plaintiff's allegedly disabling condition.[1] She said that "the factors to be considered are 1) the number of occupational and non-occupational contributors, 2) the relative amount of contribution of each contributor, 3) the duration of each contributor, and 4) the extent of permanent effect that resulted from each contributor." She stated that the test "compares qualitatively the occupational contributors to the non-occupational contributors." The magistrate detailed plaintiff's history of trauma and the testimony that plaintiff's PTSD and conversion disorder were influenced by the workplace incident. The magistrate stated that nonoccupational contributors were plaintiff's repetitive abuse in her prior marriage, the loss of her relationship with her mother, the loss of her relationship with some of her children, and her loss of her church community. The magistrate described the occupational contributor as "the electric shock and fall from the ladder." She stated that the nonoccupational triggers outnumbered the occupational triggers.

With regard to the second *Martin* factor, the magistrate merely stated that Thomas, Dr. Barkley, and Dr. Spanaki-Varalas did not quantify the effect of plaintiff's earlier stressors and the workplace incident but merely said that the incident caused the PTSD and conversion disorder. Concerning the third *Martin* factor, the magistrate stated that plaintiff's nonoccupational stressors are "continuing," that plaintiff's mother had "disowned" her, that plaintiff's own children did not believe that she was having seizures from a work injury, and that plaintiff attempted suicide in July 2014 "when her children chose to spend the holiday with their grandmother rather than with her." The magistrate said that the work incident "was a one-time incident with no ongoing objective residuals." As for the fourth *Martin* factor, the magistrate concluded that "there is no objective evidence that there are permanent effects from" the workplace incident and no "objective medical evidence" of a closed head injury or seizures. She also mentioned that

plaintiff's PTSD and NES might improve and added that "it appears plaintiff's nonoccupational stressors are long term and possibly permanent."

The magistrate noted the testimony that the workplace incident was " 'the straw that broke the camel's back,' " but stated that such a "straw" was insufficient to meet the necessary statutory standard for entitlement to benefits in connection with a mental illness. She explicitly rejected the causation testimony of Thomas, Dr. Barkley, and Dr. Spanaki-Varalas and stated that they did not "establish[ ] a hierarchy of plaintiff's nonoccupational stressors versus her occupational stressors" and merely "made the assumption that because plaintiff was working she was not having stress from the nonoccupational stressors." She said, "All of plaintiff's nonoccupational stressors were the more substantial contributors and clearly outweighed her occupational stressors."

***6** The magistrate explicitly accepted the testimony of Greiffenstein and Dr. Boike. She said that plaintiff's "non-occupational stressors had advanced the [PTSD] and conversion disorder so close to disability that a significant contribution from the electric shock and fall was virtually impossible." The magistrate concluded that plaintiff did become disabled for a time because of a shoulder injury resulting from the workplace incident. However, she then denied benefits regardless, stating that plaintiff had failed to present evidence establishing that she made a good-faith effort to find employment during this period and, therefore, had failed to establish a limitation in her wage-earning capacity in work suitable to her qualifications and training.

Plaintiff filed claim for review with the MCAC. On January 25, 2019, the MCAC issued an opinion and order in which the commission clarified the magistrate's opinion, affirmed the opinion in part, and reversed the opinion in part. The commission overturned the magistrate's determination that plaintiff was not entitled to full wage-loss benefits as a result of her shoulder injury. In so doing, the MCAC rejected the magistrate's finding that plaintiff presented no evidence that she made a good-faith effort to find employment during her period of disability resulting from the shoulder injury. The commission found that plaintiff was entitled to full wage-loss benefits for the period from February 8, 2012, to April 12, 2013.

The MCAC rejected, however, plaintiff's claim that the magistrate incorrectly "lumped together" plaintiff's emotional difficulties with physical neurological problems and, thereafter, employed an incorrect standard to assess whether those combined problems were related to the workplace accident. The commission elaborated:

> Plaintiff argues that, separate from her emotional difficulties, she also has organic neurologic problems that are not properly analyzed under MCL 418.301(2) but should be analyzed under the lower standard of causation found in MCL 418.301(1). We disagree....
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> We affirm the magistrate's conclusion that plaintiff does not have organic neurologic problems as that conclusion is supported by competent, material, and substantial evidence.

As for plaintiff's "non-organic" (or non-physically-based) mental issues, the commission rejected plaintiff's challenges to the application of *Martin*. The MCAC stated:

> The magistrate found that plaintiff has emotional problems. She writes, "Every treating or expert neurophysiology, neurologist, neuropsychologist, psychiatric [sic], or examiner agreed plaintiff has emotional problems. The area of disagreement is causation and whether plaintiff's psychiatric problems prevent her from returning to employment ..." Thereafter, the magistrate uses the language in MCL 418.301(2) and the four-factor test outlined in *Martin* ... to analyze whether plaintiff's emotional/mental problems were significantly contributed to by occupational events and circumstances. This analysis by the magistrate was proper considering the finding that plaintiff had emotional problems. MCL 418.301(2), *Martin*, supra [sic]. The analysis resulted in the magistrate finding the occupational incident on February 8, 2012, did not significantly contribute to the plaintiff's emotional difficulties. Consequently, the magistrate concluded that plaintiff failed to meet her burden of proof to establish that the emotional problems (mental disability) were work related.
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> * * *
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> Plaintiff argues that *Martin* ... does not faithfully implement the standards constructed by the Legislature in MCL 418.301(2). We disagree. *Martin* is an en banc decision of this Commission that provides, contrary to plaintiff's assertion, a framework for consistent analysis of whether work factors played a significant causative role in a worker's mental disability.

***7** Plaintiff next argues that the magistrate erred in the application of the four-factor test in *Martin* to the facts of this case. We disagree.

> Analysis of the four factors in *Martin* is fact finding and if supported by competent, material, and substantial evidence the analysis must be affirmed. This magistrate separately analyzed each of the four factors in light of the evidence. Thereafter the magistrate concluded that the work incident was not a significant contributor to the acknowledged mental conditions. The number, duration, and impact/effect of plaintiff's non-work stressors outweighed those aspects of the stress associated with the work event. Additionally, the magistrate rejected the opinions of Ms. Thomas, Dr. Barkley and Dr. Spanaki-Varalas, and relied upon the testimony of Dr. Boike and Dr. Greiffenstein. Plaintiff, once again, provides a detailed argument that there is evidence that supports another conclusion. As previously noted we are not permitted to alter a magistrate[']s conclusion simply because there is evidence supporting that altered conclusion.... The lack of causation conclusion reached by the magistrate is supported by the requisite competent, material, and substantial evidence and therefore must be affirmed. Plaintiff's argument to the contrary fails.

As noted, plaintiff sought leave to appeal in this Court, but this Court denied the application. *Cramer*, unpub order. Plaintiff sought leave to appeal in the Supreme Court, which remanded this matter back to this Court for consideration of the three questions noted *supra.*

II. STANDARD OF REVIEW

This Court exercises de novo review of questions of law involved in any final order of the MCAC. *Mudel v. Great Atlantic & Pacific Tea Co.*, 462 Mich. 691, 697 n 3, 614 N.W.2d 607 (2000). "A decision of the MCAC is subject to reversal if it is predicated on erroneous legal reasoning or the wrong legal framework." *Ross v. Modern Mirror & Glass Co.*, 268 Mich.App. 558, 561, 710 N.W.2d 59 (2005). "The judiciary reviews the [MCAC's] decision, not the magistrate's decision." *Mudel*, 462 Mich. at 732, 614 N.W.2d 607. "The judiciary treats the [MCAC's] findings of fact, made within the [MCAC's] powers, as conclusive absent fraud. If there is *any* evidence supporting the [MCAC's] factual findings, the judiciary must treat those findings as conclusive." *Id.*

III. ANALYSIS

We first answer our Supreme Court's directive to determine whether "the Michigan Compensation Appellate Commission correctly concluded that the magistrate's lack of causation conclusion was supported by the requisite competent, substantial, and material evidence utilizing the proper standard of law." *Cramer*, 505 Mich. 1022, 941 N.W.2d 370. As stated in *Mudel*, 462 Mich. at 732, 614 N.W.2d 607:

> The [MCAC] treats the magistrate's findings of fact as conclusive if supported by competent, material, and substantial evidence on the whole record.
>
> [S]ubstantial evidence means such evidence, considering the whole record, as a reasonable mind will accept as adequate to justify the conclusion.
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> The whole record means the entire record of the hearing including all of the evidence in favor and all the evidence against a certain determination.
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> The [MCAC's] review shall include both a qualitative and quantitative analysis of that evidence in order to ensure a full, thorough, and fair review.
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> ***8** The [MCAC] has authority to make independent findings of fact, and is not required to remand a case to the magistrate where factual findings necessary to the decision are lacking, as long as the record is sufficient for administrative appellate review and the [MCAC] is not forced to speculate. [Quotation marks and citations omitted; see also MCL 418.861a.]

We conclude that the MCAC employed a proper standard of law when analyzing the magistrate's decision regarding causation. Indeed, the MCAC set forth the proper standards toward the beginning of its opinion. It noted that although it had some fact-finding powers, it could not simply substitute its judgment for that of the magistrate if competent, material, and substantial evidence supported the magistrate's findings. See *id.* at 699-700, 614 N.W.2d 607.

MCL 418.301 states, in part:

> (1) An employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act. A personal injury under this act is compensable if work causes, contributes

> to, or aggravates pathology in a manner so as to create a pathology that is medically distinguishable from any pathology that existed prior to the injury. In the case of death resulting from the personal injury to the employee, compensation shall be paid to the employee's dependents as provided in this act. Time of injury or date of injury as used in this act in the case of a disease or in the case of an injury not attributable to a single event is the last day of work in the employment in which the employee was last subjected to the conditions that resulted in the employee's disability or death.
>
> (2) Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions and degenerative arthritis, are compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities are compensable if arising out of actual events of employment, not unfounded perceptions thereof, and if the employee's perception of the actual events is reasonably grounded in fact or reality.

On appeal, plaintiff no longer argues about a physical or "organic" condition, but focuses on her mental problems; she accedes that subsection MCL 418.301(2) is the applicable paragraph. As noted, "findings of fact made by a worker's compensation magistrate shall be considered conclusive by the commission if supported by competent, material, and substantial evidence on the whole record." MCL 418.861a(3). MCL 418.861a(3) also states that " 'substantial evidence' means such evidence, considering the whole record, as a reasonable mind will accept as adequate to justify the conclusion." There was no allegation of fundamentally incompetent or immaterial evidence in the present case, and plaintiff agrees that the question for the MCAC was whether the evidence was such that a reasonable mind would accept it as adequate to justify the causation conclusion reached by the magistrate.

Plaintiff contends that no reasonable mind could accept that the workplace incident did not contribute to or aggravate plaintiff's mental illness in a significant manner. She contends that Dr. Boike's causation testimony should not be credited because he stated that he would defer to a mental health professional for a resolution of that question and because he worked primarily with spinal conditions. Plaintiff also contends that Greiffenstein's opinion on causation could not be accepted by a reasonable mind because he was focusing on whether a traumatic brain injury occurred, because he wrongly focused on whether the workplace incident was life-threatening, because the shock *was* in fact life-threatening, and because he simply (and wrongly) assumed that the shock was minor.

***9** We conclude that plaintiff's arguments are not persuasive. Although Dr. Boike stated that he mostly saw spinal patients, he also stated that he "never quit being a general neurologist." And while he agreed that plaintiff needed a psychiatric consult to explore psychiatric issues, he also stated that plaintiff claimed to experience only one day a week without headaches, but had also reported that her seizures had improved to the point that she was only having "one episode every two to three weeks" as opposed to 14 in one month. As a result, Dr. Boike opined that plaintiff "appears to have largely substituted one diagnosis for another." He stated:

> So long as [plaintiff's] subjective complaints provoke yet evermore evaluation and treatment by medical care providers, it is likely that [plaintiff's] complaints will escalate over time. Given her complaints regarding comments reportedly made to her concerning the possibility of future "Parkinson's" disease, I would not be at all surprised if this will be the next "presentation" of her "illness."
>
> I strongly recommend that medical care providers discontinue the current practice of reacting to every new symptom as a manifestation of some serious underlying illness. I actually believe [plaintiff's] long-term prognosis is excellent. I believe it is likely that she will completely resolve all of her current "difficulties" [ ] once there is resolution of whatever legal proceedings are underway at this time. I do not believe [plaintiff] requires any additional evaluation or treatment of her ongoing complaints.
>
> I strongly doubt that she is actually experiencing headaches at this time.

Dr. Boike stated, "When [plaintiff] was told, frankly, that these events that she represented as seizures were not really seizures, they seemed to have largely gone away." He also thought that plaintiff was consciously controlling her intermittent slurred speech. He did not believe the headaches, if they were real, had anything to do with the work incident. He questioned plaintiff's diagnosis of conversion disorder because he suspected malingering. He thought that once the potential secondary gain from legal proceedings was eliminated, plaintiff would improve. Dr. Boike concluded that plaintiff could work.

As for Greiffenstein, he stated that the "core" of what he did in the present case was to evaluate whether plaintiff had residual effects from a traumatic brain injury, but the whole of his testimony, as delineated in the statement of facts, reveals that he also evaluated many other aspects of plaintiff's case, such as, for example, her failed relationships. As for plaintiff's complaint that Greiffenstein characterized the shock she incurred as minor, Greiffenstein, in doing so, referred to the "earliest description of the injury facts" - and plaintiff herself acknowledged that the summary of the hospital visit from the day of the incident stated that "the patient has escaped from any major injury or trauma to herself" and "will be going home." It is not disputed that Greiffenstein had access to plaintiff's medical records. The gist of his testimony was that this shock was an insignificant factor when compared globally to plaintiff's situation; this was not improper in light of available records.

Greiffenstein reported that plaintiff "used exaggerated language to describe the symptoms and their functional impact on her life." After administering several tests, Greiffenstein concluded that plaintiff's results were consistent with someone "grossly overstating" disability-related complaints. He testified that, based on a comparison to other cases, "[t]here was no doubt that [plaintiff] is engaging in extreme over-report of symptoms and problems." He stated, "[S]he's a person who puts a lot of energy into looking as neurologically, and memory, and medically, and psychologically impaired as she possibly can." He went on to opine, "Mental health services are presently indicated for interpersonal conflict. These are personal problems that pre-date the accident."

***10** Greiffenstein testified that plaintiff's "symptom claims are best understood as an interaction between a disturbed personality and psychosocial stressor." This personality issue would have been present before plaintiff even began working at the nursing home. He was asked if the work incident played a role "in any of the various impressions that you g[a]ve in this case." He replied, "Well, it's certainly a factor in her mind. You know, this work incident has become the convenient focus for everything that's wrong in her life and relationships." Greiffenstein stated that he did not believe that plaintiff had a psychological disability and that she "puts a lot of energy into having her many symptoms believed." He said, "Ultimately, it's her underlying personality that creates problems for her."

The MCAC explicitly noted that the magistrate relied on the testimony of Greiffenstein and Dr. Boike and found that the magistrate's causation conclusion was supported by "the requisite competent, material and substantial evidence." Plaintiff's arguments go to the weight to be afforded the testimony of Greiffenstein and Dr. Boike, but their testimony certainly had *some* weight in favor of defendants' position. There was evidence in support of the MCAC's decision, *Mudel*, 462 Mich. at 732, 614 N.W.2d 607, and no indication that the MCAC somehow misapplied the governing legal standards.

Next, we consider whether "the Michigan Compensation Appellate Commission correctly concluded that the magistrate properly applied the four-factor test in *Martin v. Pontiac Sch. Dist.*, 2001 Mich. ACO 118, lv. den. 466 Mich. 873, 645 N.W.2d 665 (2002), and the standard in *Yost v. Detroit Board of Education*, 2000 Mich. ACO 347, lv. den. 465 Mich. 907, 635 N.W.2d 309 (2001)[.]" *Cramer*, 505 Mich. 1022, 941 N.W.2d 370.

In *Martin v City of Pontiac Sch Dist*, 2001 Mich. ACO 118 at 16, the commission, in an en banc decision, adopted a four-factor guide for determining whether a claimant's employment contributed to his or her mental disability in a significant manner. The four factors identified in *Martin* are "1) the number of occupational and non-occupational contributors, 2) the relative amount of contribution of each contributor, 3) the duration of each contributor, and 4) the extent of permanent effect that resulted from each contributor." *Id.* The *Martin* panel rejected the use of the so-called "last event" or "straw that broke the camel's back" analysis. *Id.* It stated, "As the analogy indicates, otherwise harmless events can precipitate drastic consequences when accompanied by more substantial circumstances. As we have explained, the law requires plaintiffs to prove significance independent from the nonoccupational events." *Id.*

In *Yost v. Detroit Bd of Ed*, 2000 Mich. ACO 347 at 6, the commission, evaluating a knee injury, stated:

> As already noted, structural change of the knee resulting from an injury does not ipso facto render the injury a significant contribution to the resulting condition. Evidence of structural change or a mere shift form [sic] asymptomatic status to symptomatic status is never enough, standing alone, to demonstrate significant contribution, because a pre-existing condition might be so severe that a minor, insignificant workplace event pushes the employee over the edge into a symptomatic condition,

> providing merely the "last straw breaking the camel's back."

The Supreme Court has asked this Court to determine if the MCAC correctly concluded that the magistrate properly applied *Martin* and *Yost*. As noted, the MCAC stated the following with regard to *Martin*:

> Analysis of the four factors in *Martin* is fact finding and if supported by competent, material, and substantial evidence the analysis must be affirmed. This magistrate separately analyzed each of the four factors in light of the evidence. Thereafter the magistrate concluded that the work incident was not a significant contributor to the acknowledged mental conditions. The number, duration, and impact/effect of plaintiff's non-work stressors outweighed those aspects of the stress associated with the work event. Additionally, the magistrate rejected the opinions of Ms. Thomas, Dr. Barkley and Dr. Spanaki-Varalas, and relied upon the testimony of Dr. Boike and Dr. Greiffenstein. Plaintiff, once again, provides a detailed argument that there is evidence that supports another conclusion. As previously noted we are not permitted to alter a magistrate[']s conclusion simply because there is evidence supporting that altered conclusion.... The lack of causation conclusion reached by the magistrate is supported by the requisite competent, material, and substantial evidence and therefore must be affirmed. Plaintiff's argument to the contrary fails.

***11** Plaintiff contends that the MCAC's decision was insufficient because the MCAC did not engage in a discussion of the nonoccupational stressors as compared to the occupational stressors. This argument is not persuasive because the above excerpt from the MCAC's opinion, read as a whole, makes clear that the commission was accepting—because of their basis in competent, material, and substantial evidence—the conclusions of the magistrate with regard to the factors. Plaintiff also contends that the MCAC's decision was deficient because the MCAC failed to assess the magistrate's rejection of the testimony by Thomas, Dr. Barkley, and Dr. Spanaki-Varalas. But once again, the above excerpt makes clear that the MCAC was accepting—because of its basis in competent, material, and substantial evidence—the decision of the magistrate to reject plaintiff's causation evidence and accept defendants'. The MCAC set forth the competing evidence in its opinion, and implicit in its ruling was that Greiffenstein and Dr. Boike provided competent, material, and substantial evidence for the magistrate's causation decision. Plaintiff appears to be arguing that there is some sort of facial deficiency in the MCAC's opinion, but the opinion is detailed enough for appellate review.

Plaintiff cites *Lombardi v. William Beaumont Hosp.*, 199 Mich.App. 428, 502 N.W.2d 736 (1993). In *Lombardi, id.* at 435-436, 502 N.W.2d 736, this Court stated:

> We are troubled, however, by the WCAB's rather conclusory determination that plaintiff's employment contributed to, aggravated, or accelerated his mental disability in a significant manner.
>
> * * *
>
> In this case, the controlling and concurring opinions of the WCAB contain no mention of the various non-occupational factors that might have contributed to plaintiff's disability, much less an analysis of the relative effect of occupational and nonoccupational factors on plaintiff's mental condition. Indeed, the controlling opinion contains but a single fleeting reference to the "significant standard," and the concurring opinion offers little more than a conclusory finding of significant contribution, aggravation, or acceleration in the form of the statutory language. Such conclusory treatment of the significant manner issue is insufficient to facilitate meaningful judicial review. Therefore, we remand this case to the WCAB for a determination whether plaintiff's employment was a significant contributing, aggravating, or accelerating factor in the overall scheme of his mental disability, taking into consideration both nonoccupational and occupational factors.

In that case, "[t]he hearing referee denied benefits, finding that plaintiff's disability was not caused by work-related conditions. Plaintiff appealed to the WCAB, which reversed the decision of the hearing referee ...." *Id.* at 432, 502 N.W.2d 736. The present case is different because the magistrate gave a very detailed analysis of the various factors in issue, and it is clear from the MCAC's opinion that it was *accepting* this analysis.

As for the application of the *Martin* and *Yost*[2] factors, the magistrate set forth plaintiff's history of trauma and the testimony that plaintiff's PTSD and conversion disorder were influenced by the workplace incident. The magistrate said that nonoccupational contributors were plaintiff's repetitive abuse in her prior marriage, the loss of her relationship with her mother, the loss of her relationship with some of her children, and the loss of her church community. The magistrate described the occupational contributor as "the electric shock

and fall from the ladder," and that the nonoccupational triggers outnumbered the occupational triggers. Concerning the second *Martin* factor, the magistrate stated that Thomas, Dr. Barkley, and Dr. Spanaki-Varalas did not quantify the effect of plaintiff's earlier stressors and the workplace incident but merely said that the incident caused the PTSD and conversion disorder. With regard to the third *Martin* factor, the magistrate said that plaintiff's nonoccupational stressors are "continuing," that plaintiff's mother had "disowned" her, that plaintiff's own children did not believe that she was having seizures from a work injury, and that plaintiff attempted suicide in July 2014 "when her children chose to spend the holiday with their grandmother rather than with her." The magistrate said that the work incident "was a one-time incident with no ongoing objective residuals." As for the fourth *Martin* factor, the magistrate said that "there is no objective evidence that there are permanent effects from" the workplace incident and no "objective medical evidence" of a closed head injury or seizures. The magistrate stated that "it appears plaintiff's nonoccupational stressors are long term and possibly permanent." The magistrate noted the testimony that the workplace incident was " 'the straw that broke the camel's back,' " but that such a "straw" was insufficient to meet the statutory standard. Ultimately, the magistrate found that, "All of plaintiff's nonoccupational stressors were the more substantial contributors and clearly outweighed her occupational stressors."

***12** On the basis of the foregoing, as well as the record before this Court, we conclude that the MCAC did not err by concluding that the magistrate's conclusions regarding the *Martin* and *Yost* factors were supported by competent, material, and substantial evidence. When asked about what she worked on with Thomas, plaintiff mentioned her "previous family issues." She said, "[W]hat happens when you have a severe trauma in your life, there are things that come flooding back into your head. And it's hard for you to push them away because it's like a dam being burst." Plaintiff described the abuse in her first marriage as lasting the entire marriage and as being mostly mental and sexual abuse, although her ex-husband had pulled her hair and thrown her against walls. She stated that the ex-husband also physically abused the couple's children. Plaintiff stated that her mother told her "that whatever happens in the bedroom between a man and a woman is not rape no matter what" and told plaintiff to "put up with it." Plaintiff would try to go back to live with her mother to escape the abuse, but her mother would "force[ ] [plaintiff] to go back." Plaintiff's mother blamed plaintiff for getting a divorce, and their relationship suffered. Plaintiff had no other family to rely on, and her ex-husband ended up getting custody of three of the couple's children. Plaintiff said that the entire situation "did not sit well with [her] for a long time."

Plaintiff admitted that she attempted to commit suicide on July 4, 2014. She said that she was in a bad place that day because she had had a migraine the night prior, because her "kids couldn't come home for the holiday," and because the "fireworks were like lightening [sic]." Later, she admitted that two of the children had chosen to spend the weekend with plaintiff's mother and did not answer plaintiff's telephone calls. Plaintiff felt "lonely and isolated" as a result.

Greiffenstein stated that "the stressors in [plaintiff's] life are not at one time or at [sic] one off event. These are recurrent features of her daily existence." He opined that plaintiff had "repeated psychological trauma" from "coping with failed relationships." He stated, "Mental health services are presently indicated for interpersonal conflict. These are personal problems that pre-date the accident." Similarly, Dr. Spanaki-Varalas testified that the workplace incident "brought up or maximized [plaintiff's] previous stressors" and caused plaintiff to stop being able to "cop[e]." Moreover, Thomas testified that NES can result from a singular incident or from physical or sexual abuse that occurred in the distant past. She said that physical or sexual abuse was "probably the most common" risk factor. When asked about the relevance of plaintiff's history, Thomas said, "Things can happen over time, then there will be that one straw that breaks the camel's back and initiates stronger symptoms." Thomas thought plaintiff's workplace incident "tipped the balance" and caused the seizures to start occurring. Dr. Barkley also stated that plaintiff had been able to cope with "the other things that had happened to her," but the workplace incident "became the straw that broke the camel's back." Implicit in this phrasing is a recognition that the workplace incident was not a "major" event but was a "straw" that tipped the balance against plaintiff.

In light of all this testimony, the MCAC's acceptance of the magistrate's analysis of the various factors was proper. There was testimony about the workplace incident being "the straw that broke the camel's back," testimony about multiple nonoccupational stressors that started long in the past and continued to this day (as evidenced, in part, by plaintiff's distress over her children), and testimony that these stressors had fundamentally impacted plaintiff and become a fixture of her daily life. In *Martin*, 2001 Mich. ACO

118 at 16, the commission noted that a doctor had "fail[ed] to establish a hierarchy of contributors." The magistrate in this case also noted that such a hierarchy was not definitively established, but still, the ultimate conclusion that the occupational stressors were not significant had adequate support in the evidence. Certainly the "any evidence" test has been met. *Mudel*, 462 Mich. at 732, 614 N.W.2d 607 (italics removed).

The magistrate's statement that "[a]ll of plaintiff's nonoccupational stressors were the more substantial contributors and clearly outweighed her occupational stressors" was, arguably, an improper legal analysis, because the purpose of the *Martin* test is not to determine which contributors—nonoccupational or occupational—come out "on top." As stated in *Martin*, 2001 Mich. ACO 118 at 12, " '[S]ignificant' does not require a preponderance standard where work contributors in combination with any natural progression of the condition accelerate the condition more than the non-work contributors." The question, as set forth in MCL 418.301(2), is whether occupational factors contributed to the mental condition "in a significant manner." However, the magistrate went on to state that "a significant contribution from the electric shock and fall was virtually impossible." The imperfect wording of the magistrate's opinion was not consequential. Importantly, as will be discussed *infra*, the *Martin* factors are only a guide for determining whether the significant-manner standard has been satisfied, and the MCAC's decision to uphold the magistrate's ultimate conclusion that the significant-manner standard had not been satisfied had adequate support in the evidence. While the evidence produced could *also* have led to the contrary conclusion, it is not the role of this Court to overturn a decision supported by the evidence in a workers' compensation case.

***13** Finally, our Supreme Court directed this Court to determine whether "the *Martin* test is at odds with the principle that a preexisting condition is not a bar to eligibility for workers' compensation benefits and conflicts with the plain meaning of MCL 418.301(2)[.]" *Cramer*, 505 Mich. 1022, 941 N.W.2d 370. We conclude that it is not.

Once again, MCL 418.301(2) states:

> Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions and degenerative arthritis, are compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities are compensable if arising out of actual events of employment, not unfounded perceptions thereof, and if the employee's perception of the actual events is reasonably grounded in fact or reality.

And again, the four factors identified in *Martin* are "1) the number of occupational and non-occupational contributors, 2) the relative amount of contribution of each contributor, 3) the duration of each contributor, and 4) the extent of permanent effect that resulted from each contributor." *Martin*, 2001 Mich. ACO 118 at 16.

In *Gardner v. Van Buren Pub. Schs.*, 445 Mich. 23, 48, 517 N.W.2d 1 (1994), overruled on other grounds by *Robertson v. DaimlerChrysler Corp.*, 465 Mich. 732, 641 N.W.2d 567 (2002), our Supreme Court opined: "[I]t is well established that employers take employees as they find them, with all preexisting mental and physical frailties. A claimant's preexisting condition does not bar recovery." The Court also stated that "[t]he significant manner requirement now forces a claimant to actually prove a significant factual causal connection between the actual events of employment and the mental disability" and added that "[t]he significant manner requirement also imposes on claimants a higher standard of proof." *Gardner*, 445 Mich. at 46-47, 517 N.W.2d 1. The Court concluded that "the causal connection must be objectively established given a particular claimant's preexisting mental frailties." *Id.* at 49, 517 N.W.2d 1. The Court stated:

> The relevant inquiry, and the only inquiry presently required by workers' compensation law in this state, is: Did the actual events of employment occur, and do these bear a significant relationship to the mental disabilities? Reduced to its simplest form, the analysis is this: Given actual events and a particular claimant, with all the claimant's preexisting mental frailties, can the actual events objectively be said to have contributed to, aggravated, or accelerated the claimant's mental disability in a significant manner?
>
> This type of inquiry places the focus where it should be: on the authenticity of the underlying event and the significance of its relationship to the resulting disability. [*Id.* at 50, 517 N.W.2d 1.]

The Court set forth the following guidance regarding the application of MCL 418.301(2):

> In determining whether specific events of employment contribute to, aggravate, or accelerate a mental disability

> in a significant manner, the factfinder must consider the totality of the occupational circumstances along with the totality of a claimant's mental health in general.
>
> ***14** The analysis must focus on whether actual events of employment affected the mental health of the claimant in a significant manner. *This analysis will, by necessity, require a comparison of nonemployment and employment factors. Once actual employment events have been shown to have occurred, the significance of those events to the particular claimant must be judged against all the circumstances to determine whether the resulting mental disability is compensable.* [*Id.* at 47, 517 N.W.2d 1 (emphasis added).]

In *Farrington v. Total Petroleum Inc*, 442 Mich. 201, 221-222, 501 N.W.2d 76 (1993), the Court stated that the "significant manner" requirement requires that "occupational factors ... be considered together with the totality of [a] claimant's health circumstances to analyze whether the ... injury was significantly caused by work-related events."

We cannot conclude that the *Martin* test conflicts with the plain language of MCL 418.301(2) when it essentially conforms with the Supreme Court's own guidance regarding how to apply that statute—i.e., it provides for a comparison of nonemployment and employment factors. Indeed, analyzing the number of stressors, the relative amount they contribute to a condition, the various stressors' duration, and the extent of the stressors' permanent effect essentially implements the language from *Gardner* and *Farrington*. A worker with a preexisting illness can obtain benefits as long as an analysis of pertinent factors shows that a work stressor contributed to, aggravated, or accelerated the illness in a significant manner.

Plaintiff argues that the *Martin* test allows the trier of fact to presume the existence of a causal relationship between a non-employment factor and an employee's illness and that this is improper because the statutory language does not create any such presumption. Plaintiff spends considerable time in her brief contending that the MCAC cannot create a presumption not authorized by statute. However, the test does not authorize any such presumption. The test refers to "contributors," and clearly this term refers to *contributors to the disability at issue.* Anyone applying the test would, by necessity, have to first *determine* that a non-employment factor contributed to the disability in order to count it as a "contributor."

Plaintiff also argues that the test's directive to count contributors will almost always result in a finding of non-compensability because "(1) the amount of time an employee spends away from work will always exceed the amount of time spent working, and (2) the number of nonoccupational contributors will likely exceed the number of occupational contributors." We find this argument to be entirely speculative. A person with a particularly stressful job and a peaceful home life may well have many more contributors toward a mental condition at work than at home. Plaintiff argues that the assessment of duration is "likewise biased towards a finding of non-compensability because an employee has lived his or her life both before and after the work experience." Again, however, a person with a particularly stressful job and a peaceful home life may well have longer-lasting contributors toward a mental condition at work than those at home.

***15** Plaintiff takes issue with this statement from *Martin*:

> Fourth, the magistrate must examine whether any permanent effect resulted from any contributor. Stated differently, the magistrate must evaluate the ability of medical treatment, including rest and abstaining from work, to reverse the effect of the contributor. In those instances where the contributors can be separated, the more lasting effect produces greater significance. [*Martin*, 2001 Mich. ACO 118 at 13.]

Plaintiff contends that MCL 418.301(2) "lacks language authorizing the fact-finder to consider whether a contributor's causal relationship to disability can be decreased in any way." But, the commission tied its reference to the possibility of treatment to the concept of "significance," which is obviously a concept encompassed by the statute.

Finally, plaintiff argues that the *Martin* test transforms the statute's requirement to assess whether a condition was contributed to in "a significant manner" into a requirement to assess whether a condition was contributed to in "the most significant manner." However, the *Martin* panel explicitly stated:

> The essence of the process is as follows: as a basic principle, significant contribution requires more than minimal contribution. *However, "significant" does not require a preponderance standard where work contributors in combination with any natural progression of the condition accelerate the condition more than the non-work contributors.* Between these two parameters, we require the occupational contributors to constitute a vital component or to contribute a considerable amount to the progression of the condition. [*Id.* at 12.]

In other words, the *Martin* panel recognized that the purpose of the test was not to determine whether work contributors

were "the" most significant factors. The panel later reiterated that "[c]ontribution is significant when it constitutes a vital component or when it contributes a considerable amount toward the progression of the condition." *Id.* at 16. Recall the language from *Gardner*, 445 Mich. at 47, 517 N.W.2d 1, that "[t]he analysis must focus on whether actual events of employment affected the mental health of the claimant in a significant manner. This analysis will, by necessity, require a comparison of nonemployment and employment factors." The *Martin* panel was attempting to undertake such a comparison. It is important to remember that "[c]ourts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *State Farm Fire & Cas. Co. v. Old Republic Ins. Co.*, 466 Mich. 142, 146, 644 N.W.2d 715 (2002). It is not enough that a workplace event contributes to a mental disability—it must have done so *in a significant manner.* The *Martin* panel was attempting to come up with a framework for implementing this language, in accordance with *Gardner*. In *Mudel*, 462 Mich. at 702 n 5, 614 N.W.2d 607, the Court stated:

> This distinction between the administrative and judicial standards of review flows from the long-recognized principle that administrative agencies possess expertise in particular areas of specialization. Because the judiciary has neither the expertise nor the resources to engage in a fact intensive review of the entire administrative record, that type of detailed review is generally delegated to the administrative body. In the particular context of worker's compensation cases, a highly technical area of law, the judiciary lacks the expertise necessary to reach well-grounded factual conclusions. Worker's compensation cases typically involve lengthy records replete with specialized medical testimony. These cases require application of extremely technical and interrelated statutory provisions that determine an employee's eligibility for disability benefits. The judiciary is not more qualified to reach well-grounded factual conclusions in this arena than the administrative specialists. Therefore, the Legislature has decided that factual determinations are properly made at the administrative level, as opposed to the judicial level.

***16** In addition, while an agency cannot interpret a statute in a way that changes its meaning, an agency's interpretation of a statute it is charged with implementing is entitled to respectful consideration and should not be overturned without cogent reasons. *Grass Lake Imp. Bd. v. Dep't Of Environmental Quality*, 316 Mich.App. 356, 362-363, 366, 891 N.W.2d 884 (2016). The *Martin* panel was attempting to come up with a workable manner for applying the "significant manner" test in the course of agency fact-finding, and there does not appear to be cogent reasons for overturning the test it concluded would be appropriate. Of particular import is the *Martin* panel's statement that the "test" is not a definitive checklist. The panel stated:

> Importantly, we avoid creating a bright-line test or a checklist. Instead, we propose factors which concentrate the analysis on the fundamental evidence regarding increased contribution. We prefer factors because factors differ from elements. Each element requires a preponderance of proof. Factors do not require such proof. Rather, overwhelming proofs regarding one factor can overcome the absence of proof regarding another factor.... The magistrate's evaluation defies mathematic calculation. It simply requires a conclusion, using specified criteria, that the evidence presented satisfies a legal standard. [*Martin*, 2001 Mich. ACO 118 at 11-12.]

The panel stated, "We also accept the notion that fact-finding discretion must prevail over an absolute definition." *Id.* at 10. As stated in *Dortch v Yellow Transp, Inc*, 2007 Mich. ACO 21 at 4:

> We repeat our previous caution that the factors enumerated in *Martin* should act as merely guides, aiding the fact finder in their often difficult task of weighing the evidence before them, and not as a Bright-Line test. In the final analysis, we must keep in mind the Legislature placed the responsibility and power to determine what is significant in the hands of the magistrate. If the Legislature had wanted a more detailed definition of "significant," we believe they would have included it within the language of the statute.

While we do not conclude that there are grounds to overturn *Martin*, we acknowledge that magistrates and the MCAC should always remain cognizant that there can be more than one contributor or group of contributors affecting a mental disability "in a significant manner" and that the *Martin* test is only a guide to aid in the fact-finding process.

Affirmed.

Shapiro, P.J. (dissenting).

I respectfully dissent. I would vacate the magistrate's opinion and remand for a redetermination based on the standard set forth in MCL 418.301(2) that "[m]ental disabilities ... *are compensable if contributed to or aggravated or accelerated*

by the employment in a significant manner." (Emphasis added).

I. INTRODUCTION

In the course of her work on February 20, 2012, plaintiff was on a ladder cleaning a light fixture with a wet rag when she suffered a nonfatal electrocution. Plaintiff's testimony indicates a sustained electric shock; she explained that she physically could not "let go" from the light fixture until she was thrown from the ladder. Not long after the workplace accident, she began suffering seizures. After epilepsy was ruled out by neurological testing,[1] plaintiff was diagnosed with post-traumatic stress disorder (PTSD) and conversion disorder, in which a person—due to a psychiatric rather than physical disorder—manifests and suffers from symptoms of physical illness or disorder. When conversion disorder manifests in seizures, the seizures are referred to as nonepileptic seizures. Conversion disorder, though challenging to understand, is nevertheless a well-recognized and real mental illness as acknowledged by all the physicians in this case.[2] And pursuant to the statute, if plaintiff's mental disability was "contributed to or aggravated or accelerated by the employment in a significant manner," MCL 418.301(2), she is entitled to workers' compensation benefits.

***17** In ruling that plaintiff's mental disability was not compensable, the magistrate did not apply MCL 418.301(2) as written, but instead applied a standard adopted by the workers' compensation appellate commission in *Martin v City of Pontiac Sch Dist*, 2001 ACO 118. In my view, that test is inconsistent with both the text and purpose of MCL 418.301(2) and should be rejected.

Before turning to the *Martin* test, certain facts should be reviewed. First, there is no record evidence that prior to February 20, 2012, plaintiff was diagnosed with, treated for, or suffered from PTSD, conversion syndrome or nonepileptic seizures. Second, there is no record evidence that before the workplace accident plaintiff ever suffered a seizure or displayed other symptoms of conversion disorder. Thus, by definition, these were not preexisting conditions. Third, there is no evidence that prior to her injury plaintiff ever took anytime off work due to mental illness, let alone that she was disabled. As recounted in the magistrate's opinion, plaintiff suffered through an abusive marriage and upon remarriage became estranged from several family members. However, the first marriage ended in 2006 and her conversion syndrome did not appear until after the workplace accident in 2012. There was no evidence that during that six-year period plaintiff suffered from some other disabling mental condition, displayed symptoms of some other mental illness or required time off due to mental illness. Following her 2006 divorce, plaintiff participated in counseling that ended in 2008, and the record does not indicate any other preinjury therapy or counseling. In other words, while plaintiff suffered through painful life experiences, she was never diagnosed with any serious or disabling mental illness.

Defendants did not offer the testimony of a psychiatrist, clinical psychologist or a specialist in seizure disorders. They instead presented testimony from a neurologist, whose practice focuses almost exclusively on spinal disease, and a neuropsychologist. Nearly all of their testimony concerned their conclusions that plaintiff's condition lacked an organic physical basis, i.e., her seizures were not caused by epilepsy or other physical condition, a conclusion of little, if any, consequence since conversion syndrome is the result of mental, rather than physical, pathology.

Plaintiff's treating psychologist and neurologists[3] diagnosed her with nonepileptic seizures. They further testified that plaintiff's seizures are disabling and that the primary cause of her illness was her electrocution injury at work and its accompanying trauma.

With that factual background, I turn to the *Martin* test.

II. MCL 418.301(2) AND THE *MARTIN* TEST

***18** The *Martin* test, which the magistrate concluded was controlling, was adopted by the commission in 2001. It has never been adopted in a published decision, and it is plainly inconsistent with the language of the Worker's Disability Compensation Act of 1969 (WDCA), MCL 418.101 *et seq.* MCL 418.301(2) provides:

> (2) *Mental disabilities* and conditions of the aging process, including but not limited to heart and cardiovascular conditions and degenerative arthritis, *are compensable if contributed to or aggravated or accelerated by the employment in a significant manner.* Mental disabilities are compensable if arising out of actual events of employment, not unfounded perceptions thereof, and if the employee's perception of the actual events is reasonably grounded in fact or reality. [Emphasis added.]

The only portion of the statute at issue in this case is the requirement set forth in the emphasized language that when the claimed disability concerns mental disability, the workplace injury must have "contributed to or aggravated or accelerated [that disability] in a *significant* manner." MCL 418.301(2) (emphasis added).

Whether one agrees with the *Martin* test or not as a matter of policy, it is clear that the test is not derived from the text of the statute. To the contrary, the *Martin* test is wholly a creation of the commission, and it was adopted without formal rulemaking under delegated authority pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.* See *Fisher v. Kalamazoo Regional Psychiatric Hosp.*, 329 Mich.App. 555, 561, 942 N.W.2d 706 (2019) (holding that the commission exceeded its authority by creating a requirement not authorized by the WDCA or a promulgated rule). And much as in *Fisher*, the commission adopted the *Martin* test with minimal analysis and no authority directly supporting it.

Martin's discussion of the meaning of the word "significant" as used in MCL 418.301(2) is minimal despite the fact that it was the central issue in that case. The entire analysis is provided in a single paragraph. See *Martin*, 2001 ACO 118 at 10-11. More problematic is the commission's conclusion that when the Legislature used the word "significant," it really meant to say "substantial." The commission failed to adequately explain how interpreting "significant" to mean "substantial" "provides the essential framework for meeting the legislative requirement of increased contribution while maintaining flexibility and discretion," *id.* at 11, or how this approach effectuated legislative intent when the Legislature could have easily used "substantial" rather than "significant" in the statute. And, *Martin* failed to reference a single Michigan case in which the word "significant" when used in a statute was understood to have the same meaning as "substantial." Indeed, the commission cited only caselaw and statutes from sister states even though those states workers' compensation statutes are not substantially similar to MCL 418.301(2).[4] *Id.* at 8-10 & n 9-12.

***19** The fact that the commission could not find a single case anywhere in the country that defined "significant" as equivalent to "substantial" in the context of workers' compensation claims did not dissuade *Martin* from concluding exactly that. In doing so, *Martin* ignored the Supreme Court's cautionary statement that "this Court need not hone the analytical knife sharper than the statutory language requires." *Gardner v. Van Buren Pub. Schs*, 445 Mich. 23, 48, 517 N.W.2d 1 (1994), overruled on other grounds by *Robertson v. DaimlerChrysler Corp.*, 465 Mich. 732, 641 N.W.2d 567 (2002).

As noted by a different panel of the commission in *Taig v. General Motors,* 480 Mich. 883, 738 N.W.2d 226 (2007), 2006 Mich. ACO 134 at 13, the *Martin* test effectively requires that the claimant provide that the workplace was the "most significant" cause of the disability. This inserts the word "most" into the statute despite the Legislature's choice not to do so. This essentially raised the causation requirement to one more demanding than the proximate cause standard used in tort cases. But there is nothing in the statute that indicates that contributing "in a significant manner" means that the contributor must be the sole or most significant cause. Not only does *Martin* require a twisting of the meaning of the word "significant," it also requires that we ignore the statute's use of the terms "contribute to" or "aggravated or accelerated by the employment." MCL 418.301(2). As *Taig* explained:

> [*Martin*] creates a legal standard far a field [sic] from the one envisioned by MCL 418.301(2). *Martin* fails to recognize that there can be more than one significant contributing factor in a compensable condition....
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> * * *
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> ... [I]f the work-related conditions are found not to have aggravated the condition "in a significant manner" because some other condition is more significant, this is legal error because it alters the legislative scheme of "in a significant manner" into requiring the employment conditions be "the most significant" cause of the injury before it will be found to be compensable. This is precisely the kind of shift in policy that is not the role of the administrative agency to make.
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> ... [T]he obligation here is to interpret MCL 418.301(2) according to its plain language. Any issues relating to the soundness of the policy underlying the statute or its practical ramifications are properly directed to the Legislature. To follow *Martin* is to "rewrite the plain statutory language and substitute our own policy decisions for those already made by the Legislature." [*Taig*, 2006 Mich. ACO 134 at 11-13 (citations omitted).]

Having concocted the "substantial" causation standard, *Martin* went on to define a faulty test, limited to four factors, none of which are set forth in the statute: "1) the number of occupational and nonoccupational contributors, 2) the relative

amount of contribution of each contributor, 3) the duration of each contribution, and 4) the extent of permanent effect that resulted from each contributor." *Martin*, 2011 ACO 118 at 16.

The first and third factors are inherently biased toward a finding of noncompensability. A single incident at work can never constitute more than one "contributor," and therefore will never outnumber nonoccupational contributors where there is a preexisting condition or vulnerability. Similarly, a single-event work injury, no matter how serious, can never compare in "duration" to one that is deemed to have preexisted. The other two factors, degree of contribution and degree of permanent effect, are relevant. But, as noted, in this case there is no evidence of a preexisting mental illness or a disability, let alone a permanent one. Thus, the magistrate's approach was plainly inconsistent with the statutory language providing that a mental health condition is compensable if it has been "contributed to or aggravated or accelerated by the employment." MCL 418.301(2).

***20** In sum, the *Martin* test, at least as applied here, effectively requires that the work event be the primary or even sole cause of a disabling condition, an approach that cannot be squared with the statute. And the Martin *test* excludes consideration of other relevant factors, e.g., the temporal proximity of the disability to the workplace event, the natural history of any underlying condition, the degree to which the workplace event aggravated the preexisting mental condition and whether that condition would have necessarily worsened without the aggravation as well as other factors that may be relevant in a particular case. Counting the different contributors and their duration, especially in a case involving mental illness, is simply a game of numbers that degenerates into speculation and invites the type of conclusory opinions like those presented by defendants' medical consultants in this case.

This is not to say that the *Martin* factors should never be considered among the totality of the circumstances. In some cases, they may be relevant, but in other cases they may not be and there may be other more important factors that were not discussed in *Martin*. As noted in *Taig*:

> Even if the non-occupational contributors exceed the occupational contributors, even if a non-work-related contributor provides a greater contribution than a work-related contribution, even if the non-work contributor is of greater duration than the work-related contributor, and even if the permanent effect of a non-work related contributor exceeds the effect of the work-related contributor, it is still possible that the work-related conditions contribute to the injury "in a significant manner" since nothing in Section 301(2) militates against the conclusion that because one contributing element to the injury is significant, some other element cannot also be significant.
>
> ... [I]f the work-related conditions are found not to have aggravated the condition "in a significant manner" because some other condition is more significant, this is legal error .... [*Taig*, 2006 Mich. ACO 134 at 13.]

Martin paid lip service to the actual text of the statute, noting the commission's prior statement that "[a] pre-existing condition which makes a claimant more susceptible to mental injury does not act as a bar to benefit entitlement if workplace injury cause the claimant to become disabled," *Martin*, 2011 ACO 118 at 14 n 15 (quotation marks and citation omitted), but the four-factor test virtually ensures that preexisting conditions will be viewed as the most significant factor. And of course, the *Martin* approach wholly ignores the history and purpose of the worker's compensation act, which make clear that a preexisting condition is not a bar to eligibility for benefits and that mere susceptibility to injury is not grounds to deny benefits. As noted in *Samels v. Goodyear Tire & Rubber Co*, 317 Mich. 149, 156, 26 N.W.2d 742 (1947) (Reid, J., plurality opinion): "Defendants claim unusual susceptibility of plaintiff.... Such defense is of no avail. Mere susceptibility is nowhere mentioned in the Michigan act as a matter defeating compensability."

The *Martin* test is poorly constructed, fails to consider all relevant factors and heightens consideration of factors that bias the test against compensability. Most significantly, it dramatically departs from the statute. We should reject it.

III. CAUSATION RULING

Because I conclude that the *Martin* test is an erroneous interpretation of MCL 418.301(2) and should not be followed by this Court, I would reverse and remand for a redetermination of plaintiff's claim based on the statute as written. Alternatively, I would conclude that reversal is warranted for the magistrate's erroneous application of *Martin* and *Yost v. Detroit Board of Education*, 2000 ACO 347, and that the commission erred by concluding that the magistrate's lack-of-causation conclusion was supported by competent, substantial, and material evidence.

***21** "A claimant in a workers' compensation matter must establish a work-related disability and entitlement to benefits by a preponderance of the evidence." *Romero v. Burt Moeke Hardwoods, Inc*, 280 Mich.App. 1, 5, 760 N.W.2d 586 (2008). "To establish a compensable mental disability under MCL 418.301(2), a claimant must prove: (1) a mental disability; (2) which arises out of actual events of employment, not unfounded perceptions thereof, and (3) that those events contributed to or aggravated the mental disability in a significant manner." *Zgnilec v. Gen. Motors Corp*, 224 Mich.App. 392, 396, 568 N.W.2d 690 (1997). Plaintiff set forth prima facie proof of causation through her treating physicians who testified that the work incident contributed in a significant manner to her PTSD, conversion disorder and seizures. However, the magistrate discredited this testimony for two reasons: (1) the treating physicians "did not compare the non-occupational stressors to the occupational stressors in plaintiff's life to determine which stressors were the more substantive contributors" per the second *Martin* factor; and (2) they relied on the "straw that broke the camel's back" concept.

The second *Martin* factor requires a "relative comparison" of nonoccupational and occupational contributors to "find which contributors contribute the most." *Martin*, 2001 ACO 118 at 12. *Martin* provided that medical opinions are "critical" to "assist the magistrate's attempt to establish a hierarchy of contributors." *Id.* The commission explained that "[t]he magistrate may adopt a medical assessment that any contributor minimally, moderately or maximally influenced the progression of the condition." *Id.* The commission cautioned against "mere conclusory" medical opinions that a contributor is or is not significant, adding that "[f]or a medical opinion to be supportive of the magistrate's legal conclusion that contribution is significant, it must clearly express relative contribution in light of all the contributors. Thus, it is imperative for the expert to be accurately informed of all applicable factors." *Id.* at 12, 760 N.W.2d 586, n 14.

In this case, plaintiff's treating physicians were aware of the prior abuse she suffered from her ex-husband and the family stress stemming from her divorce. But given that plaintiff was functioning well at the time of the accident, they reasonably concluded that the workplace accident significantly contributed to the disorders plaintiff subsequently developed. These were not "mere conclusory" opinions, and the physicians were aware of the relevant circumstances. Plaintiff's treating psychologist, Andrea Thomas, explained that "everybody has issues, and certainly Mrs. Cramer has some issues earlier in her life, but my opinion is that she was dealing fairly well with everything prior to this incident." Thomas acknowledged that plaintiff had discussed her prior abuse and family estrangement, but she reiterated "that prior to [the workplace] incident [plaintiff] was not having seizures, she was not having any other major issues regardless of past incidents." To the contrary, plaintiff "was doing well, she liked her job, [and] she was happily married." Thomas's causation opinion was also based on the fact that plaintiff has "always been focused on the work incident" during therapy. That is, plaintiff reported dreams and flashbacks related to the electrocution, panic when she saw someone on a ladder adjusting a light, and she had never reported panic or stress related to the emotional and sexual abuse she suffered from her ex-husband.

Nonetheless, the magistrate concluded that plaintiff's treating physicians failed to comply with *Martin* because they did not "establish[ ] a hierarchy of plaintiff's non-occupational stressors versus her occupational stressors." This misconstrues *Martin*'s directive that it is the *magistrate*'s duty to establish a hierarchy of contributors and that medical opinions are relied on for that purpose. Setting that aside, if the *Martin* test is only a "guide," as the majority assures us, then the lack of strict compliance with *Martin* should not automatically invalidate a physician's opinion. But it is clear that the magistrate used what she perceived to be a lack of compliance with *Martin*'s standards as grounds to reject the treating physicians' causation opinions.

***22** The other flaw the magistrate found in the treating physicians' testimony was their reference (either in name or substance) to the "last-straw" concept, first discussed by the commission in *Yost*, 2000 ACO 347:

> A workplace contribution to an individual's disability is not "significant", merely because it caused a dramatic change in the claimant's status. Just because a condition changes from asymptomatic to symptomatic, or there was a specific injury which contributed to a change, does not equate with significant contribution. Just because a claimant was functional before the workplace event and then becomes disabled after the event does not make the event significant. *The weight of the event must be compared with the severity of the claimant's pre-existing condition in order to determine significance.* If an individual has a very severe pre-existing problem, such as an advanced degenerative condition, or serious heart disease, or an extremely distraught mental persona, the workplace event must have substantial weight in order to be deemed a

> significant contributor. If a claimant is a walking invitation to an arthritic disability or a heart attack or a mental breakdown, due to his or her pre-existing condition, and the event at work merely pushes that individual into the disabling condition, such event is not significant. Such event is merely the last event, or "the straw that broke the camel's back." Such event is not compensable under the significant manner standard, because if it were, the standard would in essence be identical to the regular "any contribution" standard otherwise applicable in Chapter 3. *Magistrates must look beyond the fact that an employee's status may have been changed by a workplace event (which is merely evidence of workplace contribution), and look as well at the weight of the workplace event in comparison with the claimant's pre-existing health in order to make the finding concerning significant contribution.* [*Id.* at 2, 760 N.W.2d 586 n 2 (emphasis added).]

I do not believe that the mere utterance or reference to the last-straw concept provides grounds to wholly reject a physician's opinion. *Yost* explained that the onus is on the *magistrate* to consider the claimant's preexisting health and the weight of the workplace event. In this case, the magistrate overlooked that while plaintiff had prior life stressors, she was happily married and had a job she enjoyed.[5] She was not in counseling and there is nothing to suggest that she had any ongoing mental health issues. Accordingly, there is no evidentiary basis for the magistrate's extraordinary finding that plaintiff was "so close to disability that a significant contribution from the electrical shock and fall was virtually impossible." As to the weight of the workplace event, plaintiff described a sustained electrical shock before being thrown from a ladder and hitting her head and shoulder. It is recognized that electrical injuries and the related trauma may lead to PTSD and conversion order,[6] and plaintiff's physicians believed that this occurred here. If the workplace accident was indeed a last event—rather than the sole cause of plaintiff's disorders—it carried significant weight.[7]

***23** After the magistrate relied on *Martin* and *Yost* to discard the medical opinions of plaintiff's treating physicians, she accepted the causation opinions of defendants' consultants, which the commission determined provided substantial evidence for the magistrate's causation ruling. This was error.

Neither of defendants' two consultants had significant experience diagnosing or treating conversion syndrome. Dr. William Boike is a neurologist whose career has focused almost entirely on spinal injury and disease. His testimony that there was not a physical neurological basis for plaintiff's condition is of little, if any, relevance as that fact is wholly consistent, indeed essential, to the diagnosis of conversion syndrome and nonepileptic seizures. Moreover, he declined to offer an opinion about much of anything relevant to the case, conceding that he would "defer as to whether or not any psychological or psychiatric difficulties plaintiff has may or may not be related to the February injury." The majority relies on testimony from Dr. Boike suggesting that plaintiff is a conscious malinger. However, defendants' consultants did not conclude as a matter of medical opinion that plaintiff was malingering, and they agreed that conversion syndrome is an appropriate diagnosis. And while the magistrate concluded that plaintiff's conversion syndrome was not caused by occupational stressors, she did not find that plaintiff was malingering. Accordingly, it is unclear how the testimony suggesting malingering—which the majority heavily relies on—constitutes substantial evidence for the magistrate's decision.

The other defense consultant was a neuropsychologist, Dr. Manfred Greiffenstein, who, like Dr. Boike, did not request or review any of plaintiff's medical records predating her injury. His testing confirmed that plaintiff suffers from conversion disorder and psychological nonepileptic seizures. He opined, without any reference to preincident diagnosis, treatment or disability, that plaintiff had "weaknesses in her personality"[8] that had likely been there since adolescence. And, again without reference to any medical or employment records predating the incident, he vaguely concluded that the causes of her disorder are due to "the interaction between a disturbed personality and psychological stressors." In any event, he agreed that mental health treatment was in order.

Dr. Greiffenstein dismissed any trauma from the workplace electrocution on the curious basis that if it had happened to him, he would not have been traumatized.[9] This is not factually relevant for the obvious reason that whether or not someone suffered a trauma is not determined by whether the examining doctor would personally have been traumatized. It is not legally relevant because it amounts to an argument that plaintiff's subjective reaction was out of proportion to the trauma, which runs counter to another provision of MCL 418.301(2). The statute requires that mental disabilities "aris[e] out of actual events of employment, not unfounded perceptions thereof, and [that] the employee's perception of the actual events is reasonably grounded in fact or reality." This means that the workplace event(s) that a claimant alleges caused a mental disability must be an event that

objectively occurred rather than imagined by the claimant's "impaired mind." *Robertson v. DaimlerChrysler Corp*, 465 Mich. 732, 753, 641 N.W.2d 567 (2002). However, the claimant's reaction to the event is viewed subjectively:

> ***24** [T]here is a distinction between a claimant's perception of an event and a claimant's reaction to that event, and it is only the former that is evaluated objectively.... [W]hile a claimant's perception of an event must be objectively based in fact, because a claimant with a psychological disability cannot be expected to react to events in the same manner as a normal, healthy, individual, the claimant's reaction may be atypical, and is therefore viewed subjectively. [*Wolf v. WCAC Gen. Motors Corp*, 262 Mich App 1, 6, 683 N.W.2d 714 (2004), citing *Robertson*, 465 Mich. at 754 n 10, 641 N.W.2d 567.]

In this case, defendants concede that the workplace injury actually occurred and plaintiff's perception that she suffered an electrical shock and a fall from a ladder are accurate and not the delusion of an impaired mind. That the "reaction" to that event is to be judged subjectively appears to have escaped the magistrate and defendants' consultants.

The commission's review of a magistrate's findings is deferential but not toothless:

> The "substantial evidence" standard, governing the [commission's] review of the magistrate's findings of fact, provides for review which is clearly more deferential to the magistrate's decision than the de novo review standard previously employed. Nevertheless, the [commission] has the power to engage in both a "qualitative and quantitative" analysis of the "whole record," which means that the [commission] need not necessarily defer to all the magistrate's findings of fact. [*Mudel v. Great Atlantic & Pacific Tea Co.*, 462 Mich. 691, 702, 614 N.W.2d 607 (2000).]

***25** To be clear, there is not a scintilla of evidence that plaintiff would have developed this syndrome had the electrocution incident not occurred. And whatever her preexisting diagnoses, there is *no* evidence that she suffered from conversion syndrome or some other disabling psychological disorder or was unable to work before that incident. It is difficult to see how plaintiff had been capable of working up until the 2012 injury if, as defendants maintain, the true cause of her condition occurred many years prior.

Defendants' consultants theorized that plaintiff's abusive first marriage that ended in 2006 and subsequent alienation from her family was the cause of her mental disability in 2012 despite the fact that she was never deemed disabled and that she nevertheless worked following her divorce, notwithstanding any residual trauma from that marriage. Defendants' consultants' suggestion that plaintiff's psychological disorders were all due to her abusive marriage amounts to nothing more than speculation in service of a predetermined conclusion. Similarly, the magistrate's opinion engages in speculation about how marital abuse and family disputes that occurred years earlier must have been the primary cause of the disability following the work injury in 2012. Moreover, the magistrate did not seem to fully grasp the nature of conversion syndrome given that much of the opinion is spent observing the lack of a *physical* cause for plaintiff's seizures. It is simply speculation to conclude that the abuse plaintiff suffered years ago is the sole or primary cause of her disability, let alone to conclude that her electrocution and fall did not even significantly contribute to plaintiff's condition and disability.

IV. CONCLUSION

There is no basis in the text of MCL 418.301(2) to require that the causal connection be closer than "contributed to ... in a significant manner." Requiring that the workplace event be the sole cause, the sole contributor, the prime contributor, the vital contributor or other such formulation is simply a departure from the statute. *Martin*'s formulation of the standard is error. And the four-factor test it defined is of little assistance unless the goal is to avoid the payment of compensation due under the statute. Accordingly, I would reverse and remand for a redetermination based on the statutory standard. Alternatively, I would conclude that the commission erred by concluding that the magistrate's lack-of-causation conclusion was supported by substantial, competent and material evidence.

All Citations

--- N.W.2d ----, 2021 WL 3825711

Footnotes

1 MCL 418.301(2) states:

> Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions and degenerative arthritis, are compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities are compensable if arising out of actual events of employment, not unfounded perceptions thereof, and if the employee's perception of the actual events is reasonably grounded in fact or reality.

2 Plaintiff complains that the MCAC failed to mention the *Yost* test. However, the magistrate incorporated *Yost's* straw-that-broke-the-camel's-back test into its discussion of *Martin.* In *Martin*, 2001 Mich. ACO 118 at 16, the commission spoke of this "last-event" issue, and the MCAC in the present case concluded that the magistrate "correctly applied" the "standards" from *Martin.* Plaintiff's apparent complaint of a facial deficiency in the MCAC's opinion in connection with *Yost* is not persuasive. The concept expressed in *Yost* was adequately ruled upon by the MCAC.

1 The testing did reveal some abnormalities in plaintiff's EEG but they did not indicate epilepsy.

2 "Conversion disorder is a disorder in which a person experiences blindness, paralysis, or other symptoms affecting the nervous system that cannot be explained solely by physical illness or injury. Symptoms usually begin *suddenly* after a period of emotional or physical distress or psychological conflict." (http://rarediseases.info.nih.gov/diseases/6191/conversion-disorder, accessed August 23, 2021) (emphasis added).

3 Dr. Gregory Barkley is board certified in both neurology and neurophysiology and was vice-chair of the department of neurology at Henry Ford Hospital for 10 years. Dr. Mariana Spanaki-Varalas is also a board-certified clinical neurophysiologist and the medical director of the Comprehensive Epilepsy Clinic at Henry Ford Hospital which treats both epilepsy and nonepileptic seizures. Andrea Thomas is a psychologist at Henry Ford Hospital who also practices in that clinic. Each testified that the workplace injury was the primary cause of plaintiff's nonepileptic seizures and each stated that they saw no basis to suspect malingering.

4 The commission relied on: an Oregon statute (and caselaw interpreting it) that required the work injury to "be the major contributing cause," Or. Rev. Stat. Ann. § 656.005(b) (1997), which is obviously a very different standard than the one defined in MCL 418.301(2); a New York statute that uses the term "substantially" to define its standard, NY CLS Work Comp. § 15(8)(d) (1999); Pennsylvania caselaw that applies a "substantial contributing factor" test, *McCloskey v. Workmen's Compensation Appeal Bd.*, 501 Pa. 93, 460 A.2d 237 (1983); and a Wyoming statute that bars compensation for preexisting conditions, Wyo State §§ 27-14-102(a)(xi)(F) (Supp 1995), while noting that Wyoming courts have concluded that compensation is due if "work effort contributed to a material degree to the precipitation, aggravation or acceleration of the existing condition." *Lindbloom v. Teton Intern.*, 684 P.2d 1388, 1389-1390 (Wyo, 1984).

5 According to her testimony, plaintiff worked her entire adult life, and defendants have not presented evidence to the contrary. She was hired by defendant Transitional Health as a dietary manager. Previously she had worked as a manager at Arby's and as food service director of a high school. Prior to the electrocution incident, she had not missed anytime from work.

6 "Psychiatric disorders such as ... post-traumatic stress disorder [and] conversion disorder ... have been reported as diseases triggered by electrical injuries." (https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6876808/, accessed August 23, 2021).

7 Sometimes a "last straw" is not a significant contributor but sometimes it is, especially where prior to the workplace accident there was no disability and the last event was significant. In other words, the *weight* of the "last straw" is important, not merely when it occurred. Sometimes the "last straw" is only a straw, but sometime it is a very heavy bale of hay. Further, even assuming that the worker might have had a heart attack, for example, at some undefined time in the future precipitated by nonwork activities, the statute mandates compensation when the disability was *accelerated* by the workplace injury.

8 The vague characterization of a preexisting "weaknesses in [one's] personality" is not a diagnosis but at best a description of a preexisting vulnerability. And it is difficult to say how having weaknesses in her personality distinguishes plaintiff from nearly every other human being.

9 Having reviewed Dr. Greiffenstein's testimony, I have difficulty understanding the magistrate's conclusion that he was credible. And the magistrate's ability to determine credibility is not superior to ours as she did not hear or see his testimony but simply read the transcripts as we have. Notably, despite his testimony that "it's important to have multiple sources of information," Dr. Greiffenstein did not review nor request any of plaintiff's medical records preceding the date of her injury. What is likely a more accurate commentary on Dr. Greiffenstein's testimony was provided by the court in *United States of America v. Shields*, opinion of the United States District Court for the Western District of Tennessee, issued May 11, 2009 (Case No. 04-20254), 2009 WL 10714661, in which the issue was whether the defendant in a murder case was mentally retarded. Federal district Judge Bernice Bouie Donald, who now sits on the Sixth Circuit Court of Appeals, characterized

Dr. Greiffenstein's evaluation as “especially lacking in credibility,” noting that “the problems with Dr. Greiffenstein's work are legion” and that his conduct during the evaluation was “highly inappropriate.” The court further stated that “Dr. Greiffenstein proved to be a very biased witness. One could in fact be forgiven for thinking that Dr. Greiffenstein never even attempted to engage in a truly objective evaluation of Defendant, but instead undertook a results-driven evaluation designed to deliver the [desired] conclusion ....” The court also pointed out that Dr. Greiffenstein misrepresented to the examinee what the purpose of the interview was, and “even more troubling ... Dr. Greiffenstein administered Defendant three tests—none of which is designed to measure IQ.” The court went so far as to say that the doctor's motive for not conducting the proper tests was “readily apparent: Dr. Greiffenstein did not want to run the risk [that the results would] undermine [his client's] position.” The court described Dr. Greiffenstein's conclusions as “woefully unjustified and inaccurate,” and noted that he “seemed incapable of fairly identifying and assessing” the examinee.

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