

STATE OF MICHIGAN  
WORKERS' DISABILITY COMPENSATION APPEALS COMMISSION

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JONATHAN A. MURPHEY,  
PLAINTIFF,

V

DOCKET #23-0015

TRION SOLUTIONS III, INCORPORATED AND  
TRAVELERS INDEMNITY COMPANY,  
DEFENDANTS.

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APPEAL FROM MAGISTRATE CASTORA.

DOUGLAS S. DOVITZ FOR PLAINTIFF,  
DANIELLE M. KLOTZEK FOR DEFENDANTS.

OPINION

ROYAL, CHAIRPERSON

This matter came before the Workers' Disability Compensation Appeals Commission ("WDCAC")<sup>1</sup> on a timely claim for review from an order of Magistrate Keith Castora mailed April 4, 2023, filed by plaintiff Jonathan A. Murphey after the magistrate denied his claim for benefits from defendants Trion Solutions III, Incorporated, and Travelers Indemnity Company.<sup>2</sup> Both plaintiff and defendants have filed briefs in support of their positions on appeal, which we have reviewed.

Procedural History

Plaintiff initially filed an application for mediation or hearing on June 15, 2018, seeking benefits from C&J Parking Lot Sweeping, Incorporated, based upon an alleged injury date of November 20, 2017. He subsequently amended that application to clarify that the correct employer was Trion and to add a claim of "PTSD" (post-traumatic stress disorder). (Trial transcript at 8.) In addition, an Application Form 104-C was filed on behalf of the Michigan Crime Victim Services

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<sup>1</sup> This matter is being decided by a two-member panel pursuant to Paragraph 4(b) of Executive Order 2019-13, which states that "[t]he Workers' Disability Compensation Appeals Commission shall act by the vote of two or more members."

<sup>2</sup> The two defendants shall be collectively referred to as "defendants," or individually referred to as "Trion" and "Travelers," respectively.

Commission, seeking to recoup \$25,000 it paid plaintiff, and various liens were also submitted. (Plaintiff's exhibits #8-10.)

This matter is procedurally unusual in that all testimony was taken via deposition, including that of plaintiff himself. The magistrate's opinion explains as follows:

There was no in-person testimony taken in this case. All lay testimony was done by deposition in accordance with Rule 18, R418.98(5). This was again done for the safety and security of the participants involved in this matter. (Magistrate's opinion at 3.)

The magistrate alluded to credible "outside" threats to plaintiff, which could also have endangered participants in this litigation and others at the hearing site, leading him to prohibit plaintiff's appearance there. (Transcript, motion to recuse, at 5-6.) (Suffice it to say, plaintiff had a somewhat "colorful" past life.)

Plaintiff's testimony was taken, by deposition, on November 17, 2022. No objection to the above-noted procedure was made at the deposition. (Plaintiff's deposition at 4-5.) However, on or about December 15, 2022, plaintiff filed a motion to recuse the magistrate, claiming that the magistrate was biased and had abridged his due process rights by refusing to permit him to testify "live." At a hearing on the motion on December 22, 2022, the magistrate denied plaintiff's motion<sup>3</sup>, and reiterated his ruling that all witnesses would be deposed by Zoom, that plaintiff could be "present" via Zoom for testimony by defense witnesses, and that plaintiff could subsequently present rebuttal evidence if he so desired. (Transcript, motion to recuse, at 10.) A "trial" was then to be held by Zoom, involving only the taking of stipulations and the admission of exhibits. (*Id.* at 11.)

### Factual Background

Plaintiff began work with defendant Trion in March or April of 2016, driving a parking lot sweeper truck. (Plaintiff's deposition at 9-14.) He stated that Trion employed only two black drivers, and that various racial epithets were directed at them, including by Ali Mulaj, one of Trion's owners. (*Id.* at 16-18.)

Although he could have driven any truck on the lot, plaintiff typically drove "Truck 66." (Plaintiff's deposition at 19-20.) Prior to November 19, 2017, that truck had been in for repairs for a week. (*Id.* at 20-21.) When plaintiff resumed use of Truck 66, ". . . the brakes went completely out." (*Id.* at 22.) He called in and was told to finish the day however he could. (*Id.* at 26-27.) On the following day, November 20, plaintiff drove a different truck. (*Id.* at 29.) After returning to the

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<sup>3</sup> Plaintiff has not challenged the magistrate's refusal to recuse himself on appeal, and that issue is therefore not before us. MCL 418.861a(11); *Cane v Michigan Beverage Company*, 240 Mich App 76, 80-81; 610 NW2d 269 (2000).

yard once he had completed work for the day, plaintiff went to speak to the dispatcher about why the brakes failed on Truck 66 after it had been in repairs for seven days. (*Id.* at 29, 32-33.)

During this conversation, Ali Mulaj came in and told plaintiff that, since he had already punched out, he should leave because “. . . don’t nobody want to hear your sh\*t.” (Plaintiff’s deposition at 33.) Plaintiff testified, “And I’m like, man, you can’t talk to me like that” after which Mr. Mulaj started roughly pushing him to the door and an altercation ensued. (*Id.*; Defendant’s Exhibit A.) A video of the altercation (from two angles, without sound) was admitted as Defendant’s Exhibit A. The police were called, and Mr. Mulaj was arrested. (Plaintiff’s deposition at 38-39; Officer Kulhanek deposition at 13.) Plaintiff stated that he was “distracted” and not “in my right mind” after this incident and sat in his car in the parking lot for two hours before driving home. (Plaintiff’s deposition at 40.)

Plaintiff reported for work on the following day but started to experience back symptoms and left to go to the hospital after a half-day. (Plaintiff’s deposition at 41-42.) He has since treated for physical and psychiatric issues (see Plaintiff’s exhibits #13 and #14), and has not worked. (Plaintiff’s deposition at 48.) Plaintiff testified that he had nightmares about this incident and, even five years later, it felt “like yesterday.” (*Id.*) He further testified that “. . . it affects my sleep, it affects my eating, it affects my interaction with my son. . .” (*Id.* at 58-59.)

Both parties presented deposition testimony from Board-certified psychiatrists who examined plaintiff in contemplation of litigation.

Dr. Gerald Shiener saw plaintiff on two occasions, in November 2018 and again in January 2022. (Dr. Shiener’s June 6, 2022, deposition at 6.) Dr. Shiener diagnosed PTSD, which he reported was “a psychiatric illness that arises out of a trauma or an emotionally upsetting event.” (*Id.*; Dr. Shiener medical report, deposition exhibit #2 at 6-7.) The doctor related his diagnosis to the events of November 20, 2017, testifying that plaintiff’s history revealed no other current, active factor capable of causing the sort of decompensation he suffered following those events. (Dr. Shiener’s June 6, 2022, deposition at 17.) Dr. Shiener added that none of the remote factors stressed by defendants had impaired plaintiff’s ability to maintain employment with Trion. (Dr. Shiener’s August 26, 2022, deposition at 11-12, 18.)

Dr. Jeffrey Kezlarian examined plaintiff on August 19, 2021. (Dr. Kezlarian deposition at 8.) The doctor found no evidence of a mood or anxiety disorder, including PTSD, which he testified “is actually an anxiety disorder. It is when a person is exposed to a life-threatening or near life-threatening experience where their integrity is in jeopardy.” (*Id.* at 10 and Attached Report at 6.) He stated that the altercation was not a sufficiently life-threatening event, nor did he believe that plaintiff had sufficient symptoms to support a diagnosis of PTSD. (*Id.* at 19.)

#### Magistrate’s Decision

In an order mailed on April 4, 2023, the magistrate found that plaintiff had failed to meet his burden of proving that a personal injury, either from a back injury or a mental injury, arose out

of and in the course of his employment with Trion.<sup>4</sup> The magistrate denied all benefits accordingly. The petition to recoup filed by the Michigan Crime Victim Services Commission was denied as a result. The fate of the other liens was not addressed.

Plaintiff appeals.

### Standard of Review

Findings of fact made by the magistrate shall be deemed conclusive if supported by competent, material, and substantial evidence on the whole record. MCL 418.861a(3). “Substantial evidence” is defined as “such evidence, considering the whole record, as a reasonable mind will accept as adequate to justify the conclusion.” *Id.* “While it consists of more than a scintilla of evidence, it may be substantially less than a preponderance.” *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994). See also *City of Romulus v Department of Environmental Quality*, 260 Mich App 54, 63; 678 NW2d 444 (2003); *Blanz v Brigadier General Contractors, Incorporated*, 240 Mich App 632, 637; 613 NW2d 392 (2000).

Review of the “whole record” means that we consider “all of the evidence in favor and all of the evidence against a certain determination,” MCL 418.861a(4), and our consideration must entail “both a qualitative and quantitative analysis of that evidence in order to ensure a full, thorough, and fair review.” MCL 418.861a(13). The Michigan Supreme Court has held that this language permits the WDCAC to “in some circumstances substitute its own findings of fact for those of the magistrate, if the [WDCAC] accords different weight to the quality or quantity of evidence presented.” *Mudel v Great Atlantic & Pacific Tea Company*, 462 Mich 691, 699-700; 614 NW2d 607 (2000). The *Mudel* Court reaffirmed the Court’s prior opinion in *Holden v Ford Motor Company*, 439 Mich 257, 268; 484 NW2d 227 (1992), recognizing that “some latitude must be given the [appellate administrative tribunal], should it find that the magistrate’s findings of fact are not supported by ‘competent, material, and substantial evidence on the whole record,’ if there is to be any effective appellate review, administrative or judicial, at all.”

Magistrates are given broad discretion in the conducting of hearings. *Alibasic v Commercial Steel Treating Corporation*, 2008 Mich ACO #103 at 2; *Risner v Kent-Moore Corporation*, 1998 Mich ACO #759 at 3. A magistrate abuses that discretion when failing to reach a reasonable and principled outcome. *Maldonado v Ford Motor Company*, 476 Mich 372, 388; 719 NW2d 809 (2006).

We review the magistrate’s conclusions of law de novo. *Abbey v Campbell, Wyant & Cannon Foundry (On Remand)*, 194 Mich App 341, 351; 486 NW2d 131 (1992); *Jewell v Chrysler Group, LLC*, 2014 Mich ACO #37 at 2. We consider “only those specific findings of fact and

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<sup>4</sup> Plaintiff has not appealed the denial of his claim of a work-related back injury and that claim is not therefore before us either. MCL 418.861a(11); *Cane*, 240 Mich App at 80-81.

conclusions of law that the parties have requested be reviewed.” MCL 418.861a(11); *Cane v Michigan Beverage Company*, 240 Mich App 76, 80-81; 610 NW2d 269 (2000).

### Due Process/Magistrate’s Discretion

Plaintiff objects to the magistrate’s ruling that this case was to be tried by deposition. We are reluctant to second-guess the magistrate with respect to concerns for the safety of the parties and anyone else at the hearing site. The mere fact that plaintiff was “not concerned” about those matters does not require that the magistrate be equally nonchalant. The “vanishingly low probability of an incident occurring” (Plaintiff’s brief at 14) is not the equivalent of *zero* probability. Given his misgivings, the magistrate’s refusal to permit plaintiff to testify “live” at the hearing site constituted a reasonable and principled outcome and therefore was no abuse of discretion. *Maldonado*, 476 Mich at 388.

Nor is it the case, as plaintiff argues, that the magistrate acted “to exclude plaintiff from his own trial. . .” (Plaintiff’s brief at 13.) “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v Eldridge*, 424 US 319, 333; 96 S Ct 893; 47 L Ed 2d 18 (1976). Plaintiff was given that right. He was allowed to testify and to present other witnesses and evidence in support of his claim, he was additionally allowed to be present (virtually) during the testimony of defense witnesses, and he was further permitted to rebut any witnesses or evidence presented by defendants.

Plaintiff contends that the magistrate should have at the least scheduled and attended a “Zoom” hearing at which he would have testified, so that an appropriate assessment of his credibility could have been made. The magistrate cited to Board of Magistrates Administrative Rule 18, R 418.98, as support for his approach. While subsection (4) of that rule, R 418.98(4), states that the testimony of medical experts and vocational experts may be taken via deposition, subsection (5), R 418.98(5), further states that, “[a]t the discretion of the magistrate, *other witnesses may testify by deposition before trial.*” (Emphasis added.)

Plaintiff asserts that, because Rule 18 uses the words “witnesses” but not the word “parties,” it should be read to exclude the latter. Where a statute (or a rule<sup>5</sup>) does not define a term, a dictionary definition is appropriately used to construe statutory language according to common and approved usage. *Hottmann v Hottmann*, 226 Mich App 171, 178; 572 NW2d 259 (1997). A reference to the most commonly-referenced legal dictionary demonstrates that the definition of “witness” is quite broad:

The term “witness,” in its strict legal sense, means one who gives evidence in a cause before a court; and in its general sense includes all persons from whose lips

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<sup>5</sup> Principles of statutory interpretation are also applied to the construction of administrative rules. *City of Romulus v Michigan Department of Environmental Quality*, 260 Mich App 54, 65; 678 NW2d 444 (2003); *Jordan v Jarvis*, 200 Mich App 445, 451; 505 NW2d 279 (1993).

testimony is extracted to be used in any judicial proceeding, and so includes deponents and affiants as well as persons delivering oral testimony before a court or jury. (Black's Law Dictionary (12th ed), quoting 97 CJS, Witnesses, § 1, p 50.)

Furthermore, Black's includes the following definition:

party witness (1857) A witness who is a plaintiff or defendant in the proceeding. (Black's Law Dictionary (12th ed.))

Quite obviously, the term "witness" includes a testifying party.

Plaintiff further argues that the magistrate did not have the benefit of personally observing him as he testified before passing on his credibility and may have come to a different conclusion had he done so. However, as defendants correctly note, workers' compensation magistrates (and their predecessors) have rendered credibility determinations based upon deposition testimony from medical and other experts for decades, and it has consistently been held that their findings are controlling if reasonable. See, e.g., *Isaac v Masco Corporation*, 2004 Mich ACO #81 at 4. As a result, it is apparent that live testimony is not required to assess a witness's credibility.

Accordingly, we find no error in the magistrate's handling of the hearing below. We find that the hearing that took place was consistent with the Board of Magistrate's administrative rules and did not abridge plaintiff's due process rights.

#### Psychiatric Claim

Claims of mental disability are compensable "if contributed to or aggravated or accelerated by the employment in a significant manner," MCL 418.301(2), "considering the totality of all the occupational factors and the claimant's health circumstances and nonoccupational factors." *Cramer v Transitional Health Services of Wayne*, 512 Mich 23, 49; 1 NW 3d 9 (2023). Additionally, compensable mental disabilities must "arise out of actual events of employment, not unfounded perceptions thereof. . ." MCL 418.301(2). The claimant's perceptions must be "grounded in fact or reality, not in the delusion or the imagination of an impaired mind." *Robertson v DaimlerChrysler Corporation*, 2003 Mich ACO #215 at 3. "Absolute accuracy is not required." *Id.* Once actual and properly perceived events of employment are *objectively* established, the employee's reaction to those events is to be evaluated *subjectively*. *Robertson v DaimlerChrysler Corporation*, 465 Mich 732, 754, n 10; 641 NW2d 567 (2002).

Plaintiff contends that the magistrate's analysis of his psychiatric claim and the weighing of the competing medical opinions were not supported by competent, material, and substantial evidence as required by MCL 418.861a(3). We agree. We find that there are serious issues with that analysis, and it does not stand up even to our limited factual review.

The magistrate placed great emphasis upon the fact that Dr. Kezlarian testified that he was relying upon a definition of PTSD from DSM-5, while Dr. Shiener did not expressly so testify:

In regard to his mental/PTSD claim, I found Dr. Kezlarian more persuasive and gave him the greatest weight. I did not find Dr. Shiener credible. Dr. Kezlarian utilized the DSM 5 for his impression. He did not feel plaintiff met the criteria for PTSD under that definition. I found Dr. Shiener's definition lacking and incomplete based on Dr. Kezlarian and DSM 5 definition. Dr. Shiener opined PTSD comes from an unexpected event, which may be true but not complete. Dr. Shiener did not consider prior history, he dismissed it. (Magistrate's opinion at 59.)

However, Dr. Sheiner was not asked what definition he was using, nor did he state that he used any other definition. The doctor had impressive credentials, including over 30 years as departmental psychiatrist for the Detroit Police and Fire Departments and over 45 years as an emergency room physician, and he testified that he had seen "countless trauma victims" over those years. (Dr. Shiener's August 26, 2022, deposition at 22-23.) We do not find it reasonable for the magistrate to simply assume that an individual with Dr. Shiener's experience and qualifications would not be familiar with the definition from the leading psychiatric diagnostic manual, particularly when he was not asked. We therefore reverse one of the primary bases for the magistrate's opinion as unsupported by competent, material, and substantial evidence. MCL 418.861a(3).

Furthermore, the magistrate discounted Dr. Shiener's opinion as "true but not complete," an apparent reference to his further statement that "Dr. Shiener did not consider prior history, he dismissed it." (Magistrate's opinion at 59.) In reality, the doctor did not dismiss plaintiff's history. Instead, he was well aware of it, but explained that he did not believe that it was the cause of plaintiff's current issues:

Well, he told me that he had been hospitalized for a gunshot wound in 2006 and that he'd be [sic] incarcerated. But he didn't have the same kind of behavioral representation of anxiety, and those experiences did not occupy or manifest in the content of any of his flashbacks or nightmares." (Dr. Shiener's June 6, 2022, deposition at 12-13.)

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". . . none of those remote factors are pertinent to the development of his current illness in that they didn't interfere with his ability to secure employment with Defendant employer." (Dr. Sheiner's August 26, 2022, deposition at 18.)

If the magistrate was aware of this testimony, he has mischaracterized it. Plaintiff's history was fully considered by Dr. Shiener, who credibly explained why he did not feel that it was the cause of plaintiff's current problems. Again, the magistrate's analysis lacks the requisite evidentiary support. MCL 418.861a(3).

The magistrate further indicated that he was discounting plaintiff's testimony because, "as stated previously, his histories were inconsistent." (Magistrate's opinion at 59.) However, the magistrate failed to explain what histories were inconsistent and how:

Plaintiff was less than fully credible. There were inconsistencies in his histories and testimony. Those inconsistencies touched numerous facts. This included personal and social histories. There were also issues in his presentations at medical facilities/exams. As illustrated by the parties' briefs, fights/altercations are very factually dependent. Having inconsistencies made it difficult for the finder of fact. (Magistrate's opinion at 58.)

Before we can affirm (or reverse) a magistrate's factual findings, we must first understand the reasoning behind them. As a result, ". . . conclusory findings are inadequate because we need to know the path it has taken through the conflicting evidence, the testimony it has adopted, the standards followed and the reasoning used to reach its conclusion." *Woody v Cello-Foil Products (After Remand)*, 450 Mich 588, 594–595; 546 NW2d 226 (1996). See also *Mudel v Great Atlantic & Pacific Tea Company*, 462 Mich 691, 711-712; 614 NW2d 607 (2000). The magistrate's generalized and unexplained conclusory statements do not permit this sort of review.

The magistrate also found that plaintiff's return to work on November 21, 2017, the day after his altercation with Mr. Mulaj, "was inconsistent with PTSD," writing:

He, according to his testimony, went into work that day as if [it] was normal. He did his usual routine. There was no indication he had fear, apprehension or was afraid. He did encounter Mr. Mulaj on that day, and nothing transpired. He was able to complete a half day and then left, not due to any mental or psychological issue, but his back. He did seek treatment at St. John's for his back only. (Magistrate's opinion at 59.)

However, plaintiff never testified that he saw Mr. Mulaj on November 21, and the magistrate's erroneous statement to the contrary must be removed from the analysis. In addition, the magistrate ignored Dr. Kezlarian's testimony that a delayed reaction to events could be part of the process:

*Q.* Would we call it – is there such a thing as a delayed reaction?

*A.* *That can be in the criterion.* (Dr. Kezlarian deposition at 31; emphasis added.)

This admission certainly could explain why plaintiff was able to return to work in the short run, and in fact plaintiff actually testified that his problems "came over time":

As long as I was able to physically work and he wasn't there. At this time on the 21<sup>st</sup> all of this – all of these things didn't – this doesn't just come overnight, this came over

time, all of this – all of this stuff it came over time. It came, just sitting and thinking and – came over time. (Plaintiff’s deposition at 109.)

The magistrate ignored this testimony from both Dr. Kezlarian and plaintiff. Again, this robs his analysis of the necessary record support. MCL 418.861a(3).

Additionally, even after the magistrate found the altercation between plaintiff and Mr. Mulaj to be work-related, he sowed some doubt in that regard, writing, “There was also some testimony or inference that the initial verbal altercation arose out of an issue with safety glasses. This fact would further confuse the issue.” (Magistrate’s opinion at 60.) In reality, there was no such testimony or inference. Both Mark Schmidt, Trion’s vice president of workers’ compensation (Mark Schmidt deposition at 5) and Timothy Kulhanek, one of the police officers who responded and investigated (Officer Kulhanek deposition at 6-7), were asked whether they were aware of purported statements from Trion employees that the fight was actually over safety glasses, *but both responded in the negative*. (Mark Schmidt deposition at 27; Officer Kulhanek deposition at 12.) No witness statements were presented to the contrary. As a result, the magistrate found “confusion” where none existed. Again, this finding is not supported by competent, material, and substantial evidence. MCL 418.861a(3).

The magistrate’s finding that plaintiff had unfounded perceptions about Mr. Mulaj wanting to kill him also lacked sufficient evidentiary support. The magistrate wrote:

In this case, there is also a question that plaintiff did have unfounded perceptions with regards to Mr. Mulaj wanting to kill him. Again, no weapon was used at the time of the altercation. When plaintiff came in the next day, Mr. Mulaj did not make any overtures to try to hurt or kill plaintiff. Mr. Murphey also claimed that he sabotaged his truck by not repairing it or not repairing it properly. This is inconsistent with his testimony that he had the option of which truck he used on a given day. He actually used a different truck on the 20<sup>th</sup> and 21<sup>st</sup> of November. On the date of the incident, the truck he used (number 42), he described as new and perfect. He was able to do his job without any problems. He did have the option to choose out of 50 to 60 trucks in the yard. According to his testimony, he was an early arriver and would have had access to most of those vehicles. Therefore, this would make sabotaging a single truck difficult, since plaintiff did not have to use a certain vehicle. (Magistrate’s opinion at 59-60.)

While no gun or weapon was used in the incident, Mr. Mulaj had on an earlier occasion made a point of showing plaintiff that he carried a gun and stating that he would use it. (Plaintiff’s deposition at 34-35.) With respect to the ease of sabotaging plaintiff’s truck, he may not have had to use any particular truck, but he typically did drive Truck 66: “Truck 66 was my number.” (*Id.* at 19.) In fact, he was driving that truck when the brakes failed. (*Id.* at 22.) The magistrate clearly should not have tried to make something of the fact that plaintiff was not driving that truck on November 20 and 21, because the brakes on Truck 66 were out at that time. (*Id.* at 31.) *This was*

*the whole reason for the altercation that led to this claim.* Again, the magistrate’s analysis is simply not supported by the requisite evidence. MCL 418.861a(3).

We generally defer to the magistrate’s choice of which medical expert opinions to adopt, *if it is reasonable.* *Isaac v Masco Corporation*, 2004 Mich ACO #81 at 4. However, in this case, the magistrate’s analysis of the record was unduly selective and often erroneous. If after a qualitative and quantitative analysis of the whole record, MCL 418.861a(13), we conclude (as we do here) that a magistrate’s findings are not supported by competent, material, and substantial evidence, we may render our own factual findings where we accord different weight to the quality or quantity of evidence presented. *Mudel v Great Atlantic & Pacific Tea Company*, 462 Mich 691, 699-700; 614 NW2d 607 (2000). After all the erroneous “reasons” the magistrate offered for adopting Dr. Kezlarian’s testimony over that of Dr. Shiener are disregarded, we find that the latter was in fact the more credible witness.

Dr. Shiener diagnosed PTSD, which he stated “arises out of a trauma or an emotionally upsetting event.” (Dr. Shiener’s June 6, 2022 deposition exhibit #2 at 7.) He added that “[a]n event is traumatic if it catches the victim by surprise and the victim is unprepared and placed in a position of powerlessness.” (*Id.*) The doctor concluded, “This event meets that criteria.” (*Id.*)

The magistrate accepted Dr. Kezlarian’s opinion that the events in question had to be life-threatening but were not. However, we find that the magistrate significantly downplayed the altercation, writing:

The physical altercation commenced with pushing and shoving, and then Mr. Murphey throwing Mr. Mulaj to the floor. This led to Mr. Mulaj getting up and grabbing and pushing Mr. Murphey trying to get him to leave. This went on for a short period of time until co-workers broke up the fight. Therefore, I found this to be a mutual altercation between the parties. (Magistrate’s opinion at 60.)

The description does not match the violent altercation viewed on the video by this panel, nor is it consistent with the description in the police report:

The video, which had no audio, showed Mulaj and Murphy exchanging words inside the garage. Mulaj then walks past Murphy striking Murphy in the right shoulder with his left shoulder. Mulaj then opens the entry door to the garage, and begins ushering Murphy to leave the garage. Murphey waves off Mulaj, and walks towards the business offices. Mulaj gives pursuit of Murphy, and both subjects go off video. Murphy then starts walking back towards the garage entry door, and Mulaj continues his pursuit. At this time Murphy turns to confront Mulaj, and Mulaj and Murphy exchange more words. At this time Mulaj begins violently shoving Murphy towards the entry door. Murphy retaliates, spins around Mulaj and grabs Mulaj in a reverse bear hug. Murphy then picks Mulaj up off the floor and both and Murphy and Mulaj fall to the floor. Mulaj and Murphy get up off the floor and Mulaj retreats with Murphy now in pursuit. Mulaj and Murphy grab each other and

start shoving back and forth. Mulaj then punches Murphy on the left side of his head. After a few moments longer, co-workers are able to separate Mulaj and Murphy. (Officer Kulhanek transcript, Plaintiff's Exhibit 7 attachment, Warren Police Department Case Report, Page 4.)

We did not observe this to be a "mutual altercation," and neither did the police or they would have arrested plaintiff as well as Mr. Mulaj.

Furthermore, the magistrate's discounting of the seriousness of the altercation disregards the significant size discrepancy between Mr. Mulaj and plaintiff, testified to by the latter (Plaintiff's deposition at 37) and obvious on the video of the altercation (Defendant's exhibit A). The magistrate also ignores the fact that at one point in the video, Mr. Mulaj had grabbed the hoodie around plaintiff's neck (*Id.*), which resulted in Mr. Mulaj choking plaintiff with the strings on the hoodie. (Plaintiff's deposition at 38.) This was no minor incident, and the magistrate's intimation to the contrary is not supported by competent, material, and substantial evidence either. MCL 418.861a(3).

We find that Dr. Shiener had a much greater awareness of the circumstances underlying plaintiff's claim, having reviewed various records and viewed the video of the altercation itself. (Dr. Shiener's June 6, 2022, deposition transcript attachment #2 at 1.) Dr. Kezlarian indicated that he did not diagnose PTSD because he did not feel that plaintiff presented with sufficient symptoms to support a diagnosis of PTSD:

With the result of that, there is symptoms such as exaggerated startle reflex, intrusive thoughts of it going back and uh, and associated, uh, anxiety when they're presented with similar circumstances. Things of that sort that seriously impact their day-to-day functioning, whether it be socially or occupationally, there's serious day-to-day impairment in their functioning. (Dr. Kezlarian deposition at 10.)

However, these are precisely the symptoms reported by Dr. Shiener:

Mental Trend and Content of Thought: The patient is preoccupied with the circumstances of his assault. There is also a marked somatic trend to the patient's conversation. He reports phobic reactions, being easily startled and ruminations, nightmares, and flashbacks of his assault. He describes disturbed sleep with difficulty falling asleep, early morning wakening, and nightmares that interfere with sleep. (Dr. Shiener's June 6, 2022, deposition transcript attachment #2 at 6.)

These findings are completely consistent with plaintiff's own description of his difficulties following the altercation. (Plaintiff's deposition at 48, 58-59.) As a result, it would appear that plaintiff had "textbook" symptoms consistent with the criteria set forth by Dr. Kezlarian in accordance with "his" definition of PTSD. Consequently, we adopt the opinion of Dr. Shiener that plaintiff suffered from PTSD.

Dr. Shiener testified that plaintiff suffered from PTSD as the result of the events of November 20, 2017: “It’s my opinion that the relationship exists between his employment and the condition I diagnosed, that relationship is causal. His symptoms are consistent with that formulation.” (Dr. Sheiner’s June 6, 2022, deposition at 17.) As noted above, the doctor reviewed plaintiff’s prior history, which admittedly includes several potentially traumatic events, and explained his belief that these events were not the cause of plaintiff’s current difficulties because these prior events had not caused him to decompensate, nor had they prevented his employment up to and including his work with Trion. (*Id.* at 12-13; Dr. Sheiner’s June 6, 2022, deposition transcript, attachment #2 at 8; Dr. Shiener’s August 26, 2022, deposition at 12-13, 18.) This conclusion is consistent with the record below. Despite a lifetime of traumatic situations, plaintiff remained capable of working until the events of November 2017. Furthermore, those prior events do not represent the substance of his nightmares and flashbacks, which instead center around the events of November 2017. (Plaintiff’s deposition at 48.)

Dr. Shiener’s testimony is the most compelling, and we adopt it. We reverse the magistrate’s finding that plaintiff did not suffer PTSD arising out of and in the course of his employment as unsupported by competent, material, and substantial evidence. MCL 418.861a(3).

### Conclusion

For the reasons noted above, we reverse in part the magistrate and find that plaintiff suffers from PTSD as the result of a work-related injury. Because he found to the contrary, the magistrate did not determine whether plaintiff’s PTSD was disabling. The magistrate’s opinion is a part of the record, MCL 418.847(2), and a remand is appropriate when the record is not complete: “The commission or a panel of the commission may remand a matter to a worker’s compensation magistrate for purposes of supplying a complete record if it is determined that the record is insufficient for purposes of review.” MCL 418.861a(12). See also *Garner v General Motors Company*, 2019 Mich ACO #32 at 5; *Razo v G M & Sons, Incorporated*, 2020 Mich ACO #8 at 12. Finding such insufficiency in this case, we remand this case to the Board of Magistrates.

On remand, the assigned magistrate must determine whether and to what extent plaintiff is disabled as the result of his work-related PTSD, and if disability is found, the date it became manifest. If plaintiff is further found to have demonstrated disability as the result of his PTSD, the magistrate on remand shall determine plaintiff’s entitlement (both weekly benefits and medical expenses), and shall further resolve the claims submitted by the Crime Victims Compensation Fund, Blue Cross Complete, and the other lienholders.

The parties having had an opportunity to present proofs on all extant issues during the original hearing, the record may not be re-opened, with a single exception – the taking of proofs as to any after-acquired dependents pursuant to MCL 418.353(3).

Commissioner McMillan concurs.

Daryl Royal

Chairperson

Duncan McMillan

Commissioner

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DEFENDANTS.

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This matter came before the Workers' Disability Compensation Appeals Commission ("WDCAC")<sup>1</sup> on a timely claim for review from an order of Magistrate Keith Castora mailed April 4, 2023, filed by plaintiff Jonathan Murphey after the magistrate denied his claim for benefits from defendants Trion Solutions III, Incorporated, and Travelers Indemnity Company. The WDCAC has considered the record and counsels' briefs and concludes that the magistrate's order should be reversed in part and the matter remanded to the Board of Magistrates to complete the required analysis in accordance with the attached opinion. Therefore,

IT IS ORDERED that Magistrate Castora's order, mailed April 4, 2023, is REVERSED IN PART regarding plaintiff's claim of post-traumatic stress disorder, the remainder of the magistrate's order is AFFIRMED, and this matter is REMANDED to the Board of Magistrates to complete the required analysis in accordance with the attached opinion. On remand, no further proofs shall be permitted except proofs pertaining to MCL 418.353(3), but the magistrate may hear the parties and receive further briefs and arguments.

We do not retain jurisdiction. No appeals pend.

Daryl Royal

Chairperson

Duncan McMillan

Commissioner

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<sup>1</sup> This matter is being decided by a two-member panel pursuant to Paragraph 4(b) of Executive Order 2019-13, which states that "[t]he Workers' Disability Compensation Appeals Commission shall act by the vote of two or more members."