

STATE OF MICHIGAN  
WORKERS' DISABILITY COMPENSATION APPEALS COMMISSION

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FRED HAGES,  
PLAINTIFF,

V

DOCKET #19-0030

SANDVIK INCORPORATED AND  
SENTRY INSURANCE A MUTUAL COMPANY,  
DEFENDANTS.

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AFTER REMAND TO MAGISTRATE SMITH.

DEBRA A. FREID FOR PLAINTIFF,  
RANDALL L. MACARTHUR FOR DEFENDANTS.

OPINION

MCMILLAN, COMMISSIONER

This cause initially came before the Workers' Disability Compensation Appeals Commission ("WDCAC") on claims for review timely filed by plaintiff-appellant, Fred Hages ("plaintiff"), and defendants-appellants, Sandvik, Incorporated ("Sandvik") and its insurer, Sentry Insurance A Mutual Company ("Sentry")<sup>1</sup>, from an opinion and order, mailed October 14, 2019, of Magistrate E. Louis Ognisanti. In an opinion and order mailed May 30, 2024, *Hages v Sandvik, Incorporated*, 2024 Mich ACO #4, the WDCAC affirmed in part and remanded this matter for further findings concerning issues highlighted in that opinion. The WDCAC retained jurisdiction. Subsequently, on April 30, 2025, the Workers' Disability Compensation Agency ("Agency") mailed the "Supplemental Opinion on Remand" of Magistrate James M. Smith. The matter returned to the WDCAC and the parties submitted supplemental briefs, which we have reviewed.

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<sup>1</sup> An identity of interest exists between defendant-employer Sandvik, Incorporated and defendant-insurer Sentry Insurance A Mutual Company, and, accordingly, we refer to them as defendants. Where a distinction between employer and carrier is necessary, they are referred to by name.

## Procedural History

On February 21, 2017, the Agency received plaintiff's Application for Mediation or Hearing - Form 104-A. Plaintiff alleged that on June 4, 2012, he injured his left hand at work "while chipping hard water build up off a machine." He further alleged he has "[c]arpal tunnel in both hands from repetitive use at work" and after surgery he "developed reflex sympathetic dystrophy/chronic pain in left hand, anxiety/depression and sleep difficulty." On March 24, 2017, defendants filed their own Application for Mediation or Hearing - Form C, that alleged "[d]efendant . . . (is) seeking a determination of liability." (Magistrate Ognisanti's opinion at 1.)

Following hearings on July 25, 2019 ("trial transcript 1"), and August 16, 2019 ("trial transcript 2"), Magistrate Ognisanti found plaintiff sustained work-related "injuries to his left hand by reason of carpal tunnel syndrome [CTS] and complex regional pain syndrome [CRPS] as well as a psychological injury due to his employment duties with Defendant [Sandvik] as of June 4, 2012." (Magistrate Ognisanti's opinion at 72.) He held defendants liable for wage loss benefits of \$775.00 per week from February 21, 2016, through May 27, 2017. Magistrate Ognisanti held plaintiff was not eligible to receive wage loss benefits after May 27, 2017, after finding "that Plaintiff's failure to perform the job offered by Defendant was without good and reasonable cause . . . ." (Magistrate Ognisanti's opinion at 70-71.) Defendant Sandvik had offered plaintiff a part-time job as a security guard. (Plaintiff's exhibit 16; testimony of Jamie Green, the EHS manager for Sandvik; trial transcript 2 at 219.)

Magistrate Ognisanti held defendants liable for plaintiff's medical treatment related to his work injuries, but found treatment rendered by Samuel George Sarns, M.A., limited license psychologist, "was not reasonable and therefore not reimbursable." (Magistrate Ognisanti's opinion at 72.)

On appeal the WDCAC affirmed Magistrate Ognisanti's findings that plaintiff proved he suffered work related injuries in the form of CTS, CRPS, and a mental/emotional condition, resulting in disability.

However, the WDCAC found Magistrate Ognisanti did not make findings necessary to determine whether plaintiff's found disabilities were total or partial, whether the security guard job Sandvik offered to plaintiff constituted reasonable employment, whether plaintiff had good and reasonable cause to refuse the job offer, and whether treatment plaintiff received from Samuel Sarns was reasonable and reimbursable, and if so, the extent of treatment. The WDCAC remanded the matter to the Board of Magistrates to make the necessary findings. The WDCAC allowed for the reopening of the record on remand *only* to explore with the individual who made the offer whether plaintiff would have been allowed to perform the security guard job given his mental/emotional issues. (*Hages*, 2024 Mich ACO #4 at 20.)

## Standard of Review

The WDCAC reviews a magistrate's fact findings under a competent, material, and substantial evidence standard. 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); *Blanzly v Brigadier General Contractors, Incorporated*, 240 Mich App 632, 637; 613 NW2d 392 (2000). If we determine a reasonable person would find the evidence is adequate to support the magistrate's findings, we defer to the magistrate's judgment. *Mudel v Great Atlantic & Pacific Tea Company*, 462 Mich 691, 699-700; 614 NW2d 607 (2000); *Isaac v Masco Corporation*, 2004 Mich ACO #81 at 4.

We examine the entire record, MCL 418.861a(4). 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."

The WDCAC reviews the magistrate's application of law under a *de novo* standard. *Abbey v Campbell, Wyant & Cannon Foundry (On Remand)*, 194 Mich App 341, 351; 486 NW2d 131 (1992). A magistrate's conclusion of law is "subject to reversal if it is based on erroneous legal reasoning or the wrong legal framework." *DiBenedetto v West Shore Hospital*, 461 Mich 394, 401-402; 605 NW2d 300 (2000). MCL 418.861a(11) limits the WDCAC's review authority to "only those specific findings of fact or conclusions of law that the parties have requested be reviewed." *Cane v Michigan Beverage Company*, 240 Mich App 76, 80-81; 610 NW2d 269 (2000).

## Factual Background

We adopt and reproduce (for the benefit of the reader) the following summary from the WDCAC's Opinion in *Hages*, 2024 Mich ACO #4 at 2-5:

Plaintiff began work for Sandvik's corporate predecessor, Valenite, in 1995, and continued in that employment when Sandvik acquired Valenite. (Trial transcript 2 at 16-17.) At the time of his alleged injury in 2012, plaintiff was working as a maintenance leader, a job he characterized as a "working supervisor." (*Id.* at 18, 23.) He claimed an injury on June 4, 2012, and the magistrate summarized his testimony in that regard as follows:

Plaintiff . . . was inside a machine he described as an evapco chiller. This is a machine which cools the water temperature of the plant. Plaintiff crawled inside the machine and could stand. He was using a putty knife tool chipping [a]way at the calcium deposits trying to peel them off the wall of the machine. Plaintiff used his right hand as well as his left hand. He continued performing this function for seven straight hours. By the end of the day, his left hand was "enormously swollen." (Magistrate's opinion at 4.)

Plaintiff sought treatment on the following day and was subsequently given restrictions and lighter work in various jobs before he stopped due to an inability to continue in the same type of work. (Plaintiff's Exhibit #6; trial transcript 2 at 30-33.)

Plaintiff subsequently came under the care of Dr. Patrick Morse in August 2012. (*Id.* at 30, 37; Dr. Morse deposition at 13.) Dr. Morse diagnosed carpal tunnel syndrome ("CTS"), performing left CTS surgery in September 2012 and again in May 2013. (Dr. Morse deposition at 7-8, 13-14; deposition exhibit 2, operative reports.) A diagnosis of complex regional pain syndrome ("CRPS") was added in April 2013, which the doctor explained is nerve hypersensitivity thought to be due to "an increase[d] . . . sympathetic nerve system overdrive," making the patient hypersensitive to "touch, a breeze, clothing, temperature change" causing significant discomfort. (*Id.* at 8.)<sup>[2]</sup> In August 2013, the doctor issued restriction slips that recommended plaintiff not use his left hand and not repetitively use his right hand. (Dr. Morse deposition at 18; deposition exhibit 2.)

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<sup>2</sup> See also plaintiff's testimony at trial transcript 2 at 39-42.

Plaintiff subsequently treated at the Munson Pain Center and also received desensitization treatment at Wright Rehab until the treatments began to make things worse. (Trial transcript 2 at 43-45.) In the course of treatment he was seen by a psychologist, Dr. Anthony Hockin, in July 2014. The doctor reported that “. . . [t]he patient demonstrated symptoms of an unspecified depressive disorder. He appears to have a lifetime history of subclinical anxiety and this is likely being triggered by the emergence of an endogenous depressive condition.” (Plaintiff’s Exhibit 13, p 01340.)

In addition, plaintiff was seen by defense examiner Mary Kneiser, M.D., on five occasions between November 2013 and March 2017. (Dr. Kneiser deposition at 5-10.) She diagnosed CRPS on her first examination. (*Id.* at 15; deposition exhibit 2 - report of 11/21/13.) She ultimately opined that plaintiff “has left hand causalgia, complex regional pain syndrome type II, which developed after left carpal tunnel release for work related carpal tunnel syndrome.” (*Id.* deposition exhibit 2 - report of 3/30/17.) The doctor recommended restrictions precluding any use of plaintiff’s left arm and significantly limiting use of the right arm. (*Id.*) (*Hages*, 2024 Mich ACO #4 at 2-3.)

The WDCAC’s continuing fact summary described examinations conducted of plaintiff’s mental/emotional condition, a job offer from Sandvik, and a follow-up letter from Dr. Morse as follows:

On May 19, 2016, upon a referral from Pam Weatherholt, associated with defendant Sentry Insurance, plaintiff first met with Samuel Sarns, M.A., a limited license psychologist. (Samuel Sarns deposition at 7 and exhibit 1: report dated 5/19/16.) Mr. Sarns is a limited license psychologist. He is not a physician, does not diagnose physical conditions, and never physically examined plaintiff. (Sarns deposition at 36; trial transcript 2 at 199-200.) At the hearing, plaintiff testified that he had been seeing Mr. Sarns almost every week for over two years. (Trial transcript 2 at 63, 70, 142, 197-199; Mr. Sarns deposition at 4-8, 14, 36-37, 42-43, 60-61.) Mr. Sarns’ extensive session notes between May 19, 2016, and January 31, 2019, describe plaintiff reporting pain emanating from his left upper extremity, primarily in his palm, anxiety, depression, and sleep difficulty leading to increased fatigue. (Samuel Sarns deposition exhibit 1.) Mr. Sarns diagnosed anxiety and depression, which he stated could be an emotional response to chronic and atypical pain such as reflex sympathetic dystrophy (“RSD”) or CRPS. (*Id.* at 13.)

Plaintiff received a letter from Sandvik dated May 3, 2017, offering him part-time work as a security guard. The letter, signed by Jamie Green,

directed plaintiff to report on May 22, 2017, for training. (Plaintiff's Exhibit 16.) Mr. Green was the EHS manager for Sandvik who's responsibilities included overseeing workers' compensation claims. (Trial transcript 2 at 210.) He testified that security guards at Sandvik are only expected to use their eyes and ears (trial transcript 2 at 232-234) and were only to call someone, at 9-1-1 or from the emergency call list, if they observe something wrong. (*Id.* at 237-238.) Mr. Green testified that he made the offer after receiving a report from Dr. Kneiser. (*Id.* at 231-232.) He was not aware that plaintiff had any emotional, anxiety, or depression issues at the time of the job offer. (*Id.* at 268.)

Plaintiff discussed the job offer with Mr. Sarns, who indicated that plaintiff reported increased levels of insomnia, diarrhea, headaches, and pain that he attributed to his anticipation of returning to work. (Samuel Sarns deposition exhibit 1 - note dated 5/25/17.) Mr. Sarns opined that plaintiff was not able to safely perform the job "due to sleep deprivation" and "inability to focus on his surroundings and maintain his own personal safety with the high level of pain he's experiencing in his left hand." (Samuel Sarns deposition at 29; deposition exhibit 2.)

Plaintiff briefly met with Mr. Green on May 22, 2017. (Trial transcript 2 at 101-102.) Plaintiff thereafter reported for work on May 26, but testified that he experienced a severe emotional reaction, a panic attack he characterized as "one of the worst attacks I've ever had to this day." (*Id.* at 105.) He explained, "I was sweating terribly, my heartbeat was just, it was racing. I was sweating terrible. Kinda gagging. I vomited." (*Id.*) Plaintiff testified that he felt that he had to "get myself out of this situation," and left. (*Id.* at 106.) Plaintiff came to the plant again on the following night, but stated, "It was an exact repeat of the night before . . ." (*Id.* at 108.) As a result, he again left. (*Id.*)

On January 24, 2018, at the request of defendants' attorney, Dr. Jennifer LaBuda, Ph.D, a fully licensed psychologist and clinical rehabilitation neuropsychologist, interviewed plaintiff and administered psychological tests. (Dr. LaBuda deposition at 9-10.) The doctor diagnosed "(s)omatic symptom disorder – predominant pain, panic disorder, and insomnia disorder." (*Id.* at 37.) She described somatic symptom disorder as "a psychological condition where excessive thoughts, feelings and behaviors" exist "in relationship to a physical or medical complaint." (*Id.* at 41-42.) The doctor further indicated that plaintiff had no documented history of somatic symptoms or panic disorder, suggesting that these conditions were due to his workplace injury. (*Id.* at 35, 37-38.)

In March 2018, plaintiff asked Dr. Morse to write a letter concerning his condition. (Dr. Morse deposition at 21.) The doctor opined that plaintiff's CTS was "caused by his work activities and therefore his CRPS that developed from his surgery for that condition was secondarily caused because of surgery needed due to his work related condition." He added that pain from the CRPS causes significant disability and loss of function. (Dr. Morse deposition exhibit 2 - report dated 3/8/18.) (*Hages*, 2024 Mich ACO #4 at 3-4.)

Following this summary, the WDCAC presented its analysis of Magistrate Ognisanti's decision and the issues preserved for appeal. Magistrate Smith's findings on remand will be addressed as they are relevant below.

## ANALYSIS

### I

In *Hages*, 2024 Mich ACO #4 at 5-6, 10, the WDCAC agreed with and affirmed Magistrate Ognisanti's finding that as a result of his work activity with his upper extremities on June 4, 2012, plaintiff sustained work-related physical and mental injuries.

### A

The WDCAC initially noted that defendants had not challenged Magistrate Ognisanti's finding that plaintiff's CTS and CRPS arose out of and in the course of his employment. As a result, these findings were conclusive on appeal. MCL 418.861a(11); *Cane*, 240 Mich App at 80-81.

### B

Defendants did contest Magistrate Ognisanti's finding that plaintiff suffered from a mental/emotional condition that was sufficiently causally related to his work activity with Sandvik to satisfy the requirements of MCL 418.301(2). This statute provides the following:

(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.

On appeal the WDCAC made an extensive analysis of this statute and law applicable to mental injuries. *Hages*, 2024 Mich ACO #4 at 7-10. This analysis included case law cited by defendants, such as *Gardner v Van Buren Public Schools*, 445 Mich 23, 47; 517 NW2d 1

(1994), and *Martin v City of Pontiac School District*, 2001 Mich ACO #118, and a recent decision from the Michigan Supreme Court, *Cramer v Transitional Health Services of Wayne*, 512 Mich 23, 49; 1 NW3d 9 (2023). The WDCAC then wrote the following:

The *Cramer* majority held that the proper standard to apply for assessing the "significant manner" standard of MCL 418.301(2) is a standard adopted from *Farrington v Total Petroleum, Inc*, 442 Mich 201; 501 NW2d 76 (1991), a case which applied the significant manner analysis to a heart injury condition. *Cramer*, 512 Mich at 56. That standard requires that a claimant demonstrate that a claimant's medical or mental conditions were "significantly caused or aggravated by employment considering the totality of all the occupational factors and the claimant's health circumstances and nonoccupational factors." *Id.* The Court majority concluded that the factors described in *Martin* may be relevant to an analysis under the "totality of the circumstances" standard, "but they are only part of the inquiry, not the whole inquiry." *Id.*, at 58. Further, the court in *Cramer* added that, "where mental injuries are concerned, we agree with the observation in *Lombardi [v William Beaumont Hospital]*, 199 Mich App 428; 502 NW2d 736 (1993)] that the 'significant manner' analysis must consider whether 'the events occurring at work had more than a minor contributing, aggravating, or accelerating effect in the overall psychiatric scheme.' *Lombardi*, 199 Mich App at 435 (emphasis added [by the Court])." *Cramer*, 512 Mich at 56. (*Hages*, 2024 Mich ACO #4 at 8.)

The WDCAC concluded Magistrate Ognisanti's conclusion was consistent with the applicable legal standard, even though *Cramer* had yet to be released at the time of the magistrate's opinion:

We have considered the statutory language in MCL 418.301(2), the "totality of the circumstances" standard the Supreme Court adopted in *Cramer*, the standard in *Gardner* requiring the factfinder to compare relevant occupational and non-occupational factors, and the factors the magistrate found relevant to his conclusion that plaintiff met those standards. Here, the magistrate's conclusion satisfies the legal standard set forth or adopted by these authorities. (*Id.* at 8.)

The WDCAC further wrote . . .

These findings refute defendants' argument that "the record did not identify any occupational factors as significant as required by MCL 418.301(2)" and that the magistrate's decision is based on "mere conclusory statements." (Defendants-Appellants' brief at 6.) The magistrate considered the opinion of

Dr. Hockin that plaintiff had pre-existing, non-occupational, subclinical anxiety, but now “demonstrated symptoms of an unspecified depressive disorder” following the events of his employment and work injuries. (Magistrate’s opinion at 67.) The magistrate further adopted testimony from Dr. LaBuda that the somatic symptom disorder and panic disorder she diagnosed did not exist until plaintiff’s work activity on June 4, 2012, caused his CTS and the treatment of that condition that ultimately caused CRPS. (Magistrate’s opinion at 66.) [Footnote 2 omitted.] As a result, we find that the magistrate properly applied the significant manner standard of MCL 418.301(2), as interpreted by the authorities noted above.

We further find that competent, material, and substantial evidence on the whole record supports the magistrate’s finding that plaintiff suffers from a work-related mental condition and under that “significant manner” standard. MCL 418.861a(3); *Isaac*, 2004 Mich ACO #81 at 4. We defer to those findings accordingly. Indeed, we rely upon them, as must the magistrate on remand.

Therefore, we affirm the magistrate’s order that held defendants liable for plaintiff’s mental condition. . . . (*Hages*, 2024 Mich ACO #4 at 9-10.)

Thus, the issues of whether plaintiff proved he had work-related physical and mental injuries/conditions have already been decided in plaintiff’s favor prior to the remand, and we will not (and cannot) reconsider after remand. The law of the case prevents it:

The law of the case doctrine provides that if an appellate court has decided a legal issue and remanded the case for further proceedings, the legal issue determined by the appellate court will not be differently decided on a subsequent appeal in the same case where the facts remain materially the same. *Grievance Administrator v. Lopatin*, 462 Mich. 235, 259; 612 N.W.2d 120 (2000). Therefore, generally, an appellate court’s determination of an issue in a case binds lower tribunals on remand *and the appellate court in subsequent appeals*. *Id.* at 260, 612 N.W.2d 120. The rationale behind the doctrine includes the need for finality of judgments and the lack of jurisdiction of an appellate court to modify its judgments except on rehearing. *South Macomb Disposal Authority v. American Ins. Co.*, 243 Mich.App. 647, 654–655, 625 N.W.2d 40 (2000). (*Grace v Grace*, 253 Mich App 357, 362–363; 655 NW2d 595 (2002); emphasis added.)

The law of the case doctrine serves to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit. *Rott v Rott*, 508 Mich 274, 286-287; 972 NW2d 789 (2021).

As a result, we will not revisit the findings we affirmed in our prior opinion.<sup>3</sup>

## II

Magistrate Ognisanti also found that plaintiff proved he suffered work-related disability:

Based upon the above discussion and analysis, I find that Plaintiff's injuries do prevent him from performing his previous job with Defendant which paid him his maximum wages thus satisfying the requirements of Section 301(5)(c). (Magistrate Ognisanti's opinion at 68-69.) (*Hages*, 2024 Mich ACO #4 at 10.)

This finding was not challenged in prior proceedings before the WDCAC, as we noted in our prior opinion:

This analysis represents a conclusion that plaintiff made "an initial showing of disability," in accordance with MCL 418.301(5). Defendants do not contest that conclusion. As a result, we may not disturb it on appeal. MCL 418.861a(11); *Cane*, 240 Mich App at 80-81. (*Hages*, 2024 Mich ACO #4 at 10.)

As a result, the magistrate's finding that plaintiff demonstrated an initial showing of disability was not before us previously and became final as a result.

Thus, the issues of whether plaintiff established work-related disability caused by the found work-related physical and mental conditions was also conclusively determined in our prior opinion, and those findings were also not subject to alteration by the magistrate on remand or by us after remand. The doctrine of law of the case precludes it. *Grace; Rott*.

## III

However, in their appeal to the WDCAC defendants did argue that Magistrate Ognisanti "erred by awarding a full rate of weekly wage loss benefits from February 21, 2016, through May 27, 2017, without additionally 'perform[ing] a requisite partial disability analysis.' (Defendants-Appellants' brief at 6, 19-22.)" (*Hages*, 2024 #4 at 10-11.) The WDCAC agreed and remanded the matter to the Board of Magistrates to make the

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<sup>3</sup> We recognize that defense counsel is likely including arguments regarding Magistrate Ognisanti's original opinion and order in his supplemental brief in order to preserve those issues for a potential further appeal.

appropriate findings concerning partial versus total disability. (*Hages*, 2024 Mich ACO #4 at 11.)

On remand, Magistrate Smith found plaintiff was partially disabled by his work-related physical injuries and totally disabled by his work related mental/emotional conditions. (Magistrate Smith's Opinion on Remand at 3-7.) With regard to plaintiff's claimed *physical* disability, Magistrate Smith concluded as follows:

As mentioned above, Dr. Morse and Dr. Kneiser both testified that Plaintiff could work within restrictions. Therefore, pursuant to MCL 418.301(4)(a), based solely on his physical (upper extremity) complaints, I find that he is partially disabled. (Magistrate Smith's Opinion on Remand at 4.)<sup>[4]</sup>

Magistrate Smith next found plaintiff's work-related *mental* condition caused total disability. He summarized the competing expert testimony as follows:

Samuel Sarns, a limited licensed psychologist, provided testimony at the request of the Plaintiff. Mr. Sarns began treating the Plaintiff in May 2016. He had continued treatment up through the time of his deposition in March 2019. Over the course of those 35 months of treatment, Mr. Sarns would see the Plaintiff on a weekly basis. He was asked his opinion on the Plaintiff's ability to work in his deposition (see, Plaintiff's Exhibit 3).

Q. Do you have an opinion, based on your treatment, to a reasonable degree of certainty whether or not Mr. Hages could work on a reliable basis in any capacity?

A. Yes.

Q. And what is your opinion?

A. No, he cannot.

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<sup>4</sup> This analysis has not been challenged after remand, but it actually represents an incomplete analysis in that plaintiff's ability to work within restrictions is not sufficient to establish a limitation in wage earning capacity unless coupled with jobs reasonably available to that employee within those restrictions. MCL 418.301(4)(b); *Lavrack v General Motors Company*, 2021 Mich ACO #8 at 4-5. Plaintiff had no cause to challenge this finding at this juncture in the proceeding because he was ultimately found to be totally disabled as the result of the added impact of his mental/emotional conditions. However, should those conditions ease or resolve in the future, plaintiff's entitlement pursuant solely to his physical problems may have to be revisited.

(Sarns dep., pg. 31)

Jennifer Labuda, Ph.D., a clinical rehabilitation neuropsychologist, and licensed psychologist evaluated the Plaintiff at the Defendants request. She provided her opinion, via deposition testimony, on the Plaintiff's ability to work from a psychiatric standpoint (see, Defendant's Exhibit B).

Q. Now in your report you recommended a graduated return to work over a period of a few weeks starting at approximately four hours per day and increasing the work shift by one hour per day each week?

A. Uh-huh.

Q. And that is only from a psychological standpoint?

A. Correct. (Magistrate Smith's Opinion on Remand at 4-5.)

Magistrate Smith then explained his resolution of these competing views, taking into account plaintiff's testimony as well:

The mere fact that Mr. Sarns is a treating psychologist does not render his opinion tantamount to that of Dr. Labuda. A review of their individual opinions must be weighed in correlation with the other evidence submitted at trial. Both witnesses believed that the Plaintiff suffered from a psychological condition in some fashion. Dr. Labuda diagnosed a somatic symptom disorder, panic disorder, and insomnia sleep disorder. She testified that the somatic symptom disorder and the panic attack disorder were not disabling but that they can "create difficulty." Mr. Sarns diagnosed anxiety and depression. Based on these diagnoses, Mr. Sarns did not feel that the Plaintiff could work in any capacity (Sarns's deposition page 31).

The Plaintiff testified that when he was asked to attempt to return to work, he immediately developed significant symptoms of a panic attack. He felt severe anxiety, nausea, and a rapid heart rate. Mr. Sarns evaluated the Plaintiff just prior to his attempted return to work and likewise documented similar symptoms in response to the anticipated return to work. Testing done in May 2017, just after the Plaintiff received his return-to-work offer revealed severe anxiety and severe depression (Sarns dep., pg. 29). In this case I believe the existence of the long-term relationship between Mr. Sarns and the Plaintiff is significant. The existence of years of weekly visits with the Plaintiff

cannot be ignored. Mr. Sarns has seen the ebbs and flows of the Plaintiff's conditions. He has seen how changes in pain have affected the Plaintiff. He has seen the Plaintiff's responses to stressful situations such as the return-to-work offer.

Based on the above I find that Dr. Labuda's opinions are not supported by the facts of this case. I believe the opinion of Mr. Sarns is consistent with the evidence presented and adopt it as persuasive. (Magistrate Smith's Opinion on Remand at 5-6.)

Defendants' sole challenge to this reasoning is their argument that the magistrate "committed legal error when he relied on Mr. Sarns as an expert on the plaintiff's ability to work without first determining Mr. Sarns' qualifications to render such opinions." (Defendants' Brief After Remand at 31-32.) However, Mr. Sarns indicated that he was a limited license psychologist (Samuel Sarns deposition at 5), and offered clear testimony regarding his qualifications, as follows:

*Q.* Pursuant to your license, are you able to diagnose, yourself, and provide mental health counseling to patients?

*A.* Yes.

*Q.* How many years have you been in private practice counseling patients?

*A.* Nine years.

*Q.* And what is the nature of your private practice, generally?

*A.* Generally?

*Q.* Yes.

*A.* Counseling focusing on chronic pain, traumatic brain injuries, accident recovery.

*Q.* So have you counseled patients who are suffering with mental and emotional effects after physical injuries as a part of that practice?

*A.* Yes. (Id. at 6)

This testimony fully supports the magistrate's reliance upon Mr. Sarns' testimony, and we find it sufficient pursuant to the competent, material, and substantial evidence standard of MCL 418.861a(3).

Even if that were not the case, defendants have not sufficiently preserved any objection in that regard. No objection was posed to Mr. Sarns' testimony regarding his

qualifications, his diagnoses, or his opinions as to plaintiff's ability to return to work from a mental health standpoint during his deposition testimony. Instead, the only objection during the deposition from defense counsel with regard to Mr. Sarns' qualifications came when he was asked to opine with regard to plaintiff's physical issues. (Samuel Sarns deposition at 7.)

When Mr. Sarns' deposition was submitted to the magistrate for admission into evidence, defense counsel offered only the following vague objection: "I would just reiterate here and perhaps this is new, as well, object to his testimony going well beyond that which he's qualified to do as a limited license psychologist." (Trial transcript 1 at 10.) However, counsel did not elaborate as to what particular portions of Mr. Sarns' testimony exceeded his qualifications and made no argument at all with respect to those qualifications in the brief filed before the WDCAC during the original appeal of this matter. As a result, it is too late to make that argument at this late date. If a case is remanded, as here, and then returns to the Commission, the appellant may not assert questions after remand that were not included in the appellant's brief filed before the remand. *Warren v Plymouth Township Fire Department*, 2008 Mich ACO #267. As a result, any argument as to Mr. Sarns' qualifications was not preserved during the first time this case came before the WDCAC, and it is too late for it to be raised now.

Furthermore, defendants do not explain what qualifications they feel Mr. Sarns lacks. In point of fact, the Public Health Code places only two limitations on a limited license psychologist: ". . . the board shall place 2 limitations on a license granted to an individual under this subsection. The limitations must require supervision by a psychologist who has a license other than a limited license and must prohibit advertising or other representation to the public that will lead the public to believe the individual is engaging in the practice of psychology." MCL 333.18223(2). In other words, Mr. Sarns was fully authorized to engage in the practice of psychology, and his testimony in this matter fell squarely within that practice, as did that of defendants' own expert witness, Dr. LaBuda, also a psychologist although a fully licensed one.

Defendants suggest that allowing plaintiff to present testimony from a psychologist was somehow a due process violation because MCL 418.385 permits an employer or carrier to compel a claimant to undergo an examination solely from a "physician" and not a psychologist, citing *Schweininger v Advanced Technology Solutions*, 2021 Mich ACO #12.<sup>5</sup> Section 385 is a limitation on an employer or carrier's authority, and defendants argue that

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<sup>5</sup> The relevant language reads as follows: "After the employee has given notice of injury and from time to time thereafter during the continuance of his or her disability, if so requested by the employer or the carrier, he or she shall submit himself or herself to an examination by a physician or surgeon authorized to practice medicine under the laws of the state, furnished and paid for by the employer or the carrier." MCL 418.385.

"[d]ue process requires that Section 385's expert qualifications apply to both plaintiffs' and defendants' experts." (Defendants' Brief after Remand at 33.) Because it does not, defendants' contend that it is unfair that they must defend against testimony that they themselves are not entitled to pursue.

In the case at bar, however, defendants have not shown they were denied any opportunity to have plaintiff examined by a psychologist of defendants' choosing. On the contrary, defendants had and exercised the opportunity to introduce testimony and opinions of psychologists of *defendants'* choice. Dr. LaBuda, a fully licensed psychologist, met with, examined and assessed plaintiff's mental condition and ability to work from a mental/emotional standpoint. Plaintiff submitted to examination by Dr. LaBuda without objection; in fact, plaintiff also submitted to the initial examination by Mr. Sarns *at the request of a representative of defendant Sentry*. (Sarns deposition at 7-8, 60, and Sarns deposition exhibit 1: report dated 5/19/16 and reports subsequent to 5/19/16.) Also, the first psychologist plaintiff saw was Anthony Hockin at Munson Medical Center in July 2014. Munson records indicate that Sentry guaranteed payment for this treatment. (Trial transcript 2 at 61-62; plaintiff's trial exhibit 13, see notes of July 16, 2014, through October 9, 2014.) The magistrates did not deny due process by allowing both parties to introduce competing testimony of psychologists of their choosing. Additionally, records of Mr. Hockin, Dr. LaBuda's testimony, and Mr. Sarns' testimony were introduced into the record *without objection to their admissibility*, and assessed by both magistrates. Consideration of Mr. Sarns' testimony in these circumstances hardly deprived defendants of due process.

It should further be noted that defendants did not make this argument during the deposition nor in briefing during the initial appeal. It is too late to do so after a remand for new findings, followed by a return to the WDCAC. *Warren*. As a result, defendants have not preserved an objection to Mr. Sarns' deposition testimony. Even if they had, that objection would go to the weight to be accorded that testimony, and not its admissibility.

Accordingly, we agree with Magistrate Smith's finding that plaintiff was totally disabled as the result of his work-related mental disability. This finding triggers MCL 418.301(7), which provides:

(7) If a personal injury arising out of the course of employment causes total disability and wage loss and the employee is entitled to wage loss benefits, the employer shall pay or cause to be paid to the injured employee as provided in this section weekly compensation equal to 80% of the employee's after-tax average weekly wage, but not more than the maximum weekly rate determined under section 355. Compensation shall be paid for the duration of the disability.

See also MCL 418.351(1). In this case, the parties stipulated that the appropriate full weekly wage loss benefit rate was \$775.00 as entered in Magistrate Ognisanti's order. (See Magistrate Ognisanti's opinion at 2.)<sup>6</sup> Benefits are therefore ordered paid at that rate.

#### IV

The first three arguments in plaintiff-appellant's original post-trial brief assert Magistrate Ognisanti erred when he held plaintiff had refused a bona fide offer of reasonable employment without good and reasonable cause and therefore was no longer eligible to receive weekly wage loss benefits after May 27, 2017. (Magistrate Ognisanti's opinion at 69-70.) The WDCAC agreed, noting that Magistrate Ognisanti "did not identify or utilize correct legal standards and, indeed, applied a legal standard that clearly is not applicable. As a result, what the magistrate wrote cannot stand." (*Hages*, 2024 Mich ACO #4 at 13.) The WDCAC remanded the matter to the Board of Magistrates to assess "whether the job offered to plaintiff as a part-time security guard constituted reasonable employment taking into account the mental/emotional condition, and whether he had good and reasonable cause to refuse it, . . ." (*Hages*, 2024 Mich ACO #4, Order.)

In their post-remand brief, defendants purport to challenge our prior finding that remand was required to address various reasonable employment issues. However, as previously noted, the doctrine of law of the case precludes our reconsideration of those matters after the remand: "The law of the case doctrine provides that if an appellate court has decided a legal issue and remanded the case for further proceedings, the legal issue determined by the appellate court will not be differently decided on a subsequent appeal in the same case where the facts remain materially the same." *Grace*, 253 Mich App at 362–363. That doctrine seeks "to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit," *Rott*, 508 Mich at 286-287, an objection scarcely furthered by our revisiting of matters previously decided. As a result, at this juncture in the proceedings, we will move on to consideration of defendants' arguments relative to the findings of Magistrate Smith on remand.

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<sup>6</sup> By finding plaintiff proved total disability Magistrate Smith obviated the need at this time or stage of this litigation to analyze and calculate the appropriate partial benefit rate due if plaintiff had proved *only* partial disability, MCL 418.301(4) and (8) and MCL 418.371(1), see *Hages*, 2024 Mich ACO #4 at 12, 22, or to assess whether or not plaintiff's unsuccessful job searches (see trial exhibit 17, job search log, and trial exhibit 18, communications from some prospective employers) were made in "good-faith". MCL 418.301(4) (b) and (c). (*Hages*, 2024 Mich ACO #4 at 12, 22; see plaintiff's testimony at trial transcript 2 at 206-222, and Magistrate Ognisanti's opinion at 9, 13, 33 and 61 discussing plaintiff's job search activities.)

A

We initially note that in *Hages*, 2024 Mich ACO #4 at 14, the WDCAC affirmed Magistrate Ognisanti's finding that the job offer was bona fide. No party has challenged that finding following the remand. As a result, the issue is not before us at this time. MCL 418.861a(11); *Cane*. Furthermore, we decline to reconsider our pre-remand findings, by virtue of the doctrine of law of the case. *Grace*, 253 Mich App at 362–363; *Rott*, 508 Mich at 286-287.

B

The WDCAC remanded the matter to have the magistrate address “whether the security guard job constituted ‘reasonable employment.’ The initial inquiry is obviously whether the position tendered is ‘work that is within the employee’s capacity to perform . . .’ MCL 418.301(11).” *Hages*, 2024 Mich ACO #4 at 16. The WDCAC held that Magistrate Ognisanti’s opinion and order contained errors that required a remand and additional findings, particularly concerning the effects of plaintiff’s mental condition.

The WDCAC noted that Magistrate Ognisanti had found the part-time security job offered did represent “reasonable employment,” but that his analysis ignored plaintiff’s “mental/emotional condition,” which he found to be work-related. *Hages*, 2024 Mich ACO #4 at 16. We additionally held that Magistrate Ognisanti had erroneously sustained an objection to a question put to Jamie Green, the individual who signed the letter offering plaintiff the security guard position, as to whether he would have offered plaintiff the position had he been aware of those mental/emotional problems. (Mr. Green had testified that he was not so aware.) As a result, we held that the parties could seek further testimony from Mr. Green on that subject. *Id.*, at 19-20.

Unfortunately, on remand, Mr. Green was not available to testify. Therefore, Magistrate Smith made findings and applied the applicable law based on the available record.

Magistrate Smith noted that Mr. Green had testified that he made the offer of the security guard position based upon restrictions imposed by Dr. Kneiser, and that Mr. Green was not aware that plaintiff had mental or emotional issues. Magistrate Smith wrote, “Mr. Green’s testimony indicated that he prepared the job offer based only on the physical restrictions of Dr. Mary Kneiser” having no awareness of plaintiff’s emotional injury:

Q. Again, in this context, are you characterizing what you believe the restrictions were that you saw somewhere, when you write down working

four hours a day, right-handed, light work? Is that your interpretation of what Dr. Kneiser's restrictions were?

A. Yes, that's my interpretation.

Q. Okay, what did you mean by light work, by the way?

A. Light work is typically 35 pounds or less.

Q. Okay. And that's just something –that's how you define light work?

A. Yes.

Q. Did you see the restrictions or any information from MR. Hage's treating doctors?

A. I have not.

Q. And you hadn't at the time you –you created this job offer, is that correct?

A. Not that I am aware of.

Q. So I take it you also had not had any input or contact with Mr. Hage's therapist, Mr. Sarns, is that correct?

A. Correct.

Q. Do you know whether or not Mr. Hages had emotional –had anxiety or depression as a result of his physical injuries, that would have affected his ability to perform any job? Do you know?

A. I do not know.

(Trial transcript Vol II, pgs. 267,268)

Mr. Green's testimony reveals that he did not consider the Plaintiff's emotional injury and/or restrictions when offering the job. (Magistrate Smith's Opinion on Remand at 8-9.)

Magistrate Smith further acknowledged testimony from plaintiff's treating psychologist, Mr. Sarns, regarding his diagnoses and their impact upon plaintiff's ability to work as a security guard:

In addition to the above, Mr. Sarns provided testimony as to why he felt the Plaintiff was unable to work due to his anxiety and depression. Mr. Sarns evaluated the Plaintiff in [sic] May 2017, shortly after he had received the return to work offer from the Defendant. He performed the BD I-II and the Hamilton anxiety inventory tests, which he described as standardized tests to analyze and assess anxiety and depression. At that time, he found the Plaintiff to be suffering from severe anxiety and depression (See, Sarns dep., pg. 29).

Q. Do you have an opinion about whether or not he was able to perform that work as a part-time security guard in May 2017 or at any time since?

A. Yes.

Q. What is your opinion?

A. I do not believe—I do not believe he was able to safely perform that due to sleep deprivation, which has been a significant problem, as well as the inability to focus on his surroundings and maintain his own personal safety with the high level of pain he's experiencing in his left hand.

(Sarns dep., pg. 29)

(Magistrate Smith's Opinion on Remand at 8-9.)

The magistrate also observed that vocational consultant Michele Robb had considered plaintiff to be incapable of working as a security guard, including the following reasons for her conclusion in that regard:

A. The most blaring reason is it's difficult to protect or respond to any type of emergency one handed. I mean that's the bottom line. There are, you know, security positions where they're not expected to be what we would classify as a first responder, they're not necessarily expected to put that fire out or apprehend that criminal or perform CPR on that person that's gone down; they're expected to pick up a phone and dial 911. But you're not always going to be in a position to pick up and phone and dial 911. I mean your initial duty is to protect, is to provide aid, and if you're not in a position to

pick up the phone and dial 911, if someone is coming at you with a knife or a gun and you have no means of protecting yourself because you have only one arm that's working, that's a very unsafe and in my opinion scary situation to be in.

(Robb dep., pgs. 20-22)

(Magistrate Smith's Opinion on Remand at 10.)

Magistrate Smith also recounted plaintiff's testimony concerning his attempt to work at the security guard job:

The Plaintiff also testified regarding his attempt to return to work as a security guard.

Q. And did you show up on May 22<sup>nd</sup> at 8 am for training?

A. Yes, I did.

(trial transcript, pg. 97)

Q. Okay then what happened?

A. I probably had one of the worse attacks I've ever had to this day. I had a panic attack, so they tell me. I was sweating terribly, my heartbeat was just, it was racing. I was sweating terrible. Kinda gagging. I vomited. I never got out of my car other than maybe to stretch my legs, cause that's the best I can do. I don't know what happened to me. I went to pieces.

Q. So how long were you there before this happened if you can tell us?

A. I don't recall exactly. I know, if I had to take a guess, I was there a couple hours.

Q. Okay. What were you doing during that period of time, before you began to experience these kinds of symptoms?

A. There again, I started to experience—started—this started pretty much right away. I—I just sat in my car with the

windows down. I didn't feel that I wanted to in the buildings. I didn't feel that I wanted to walk around the facility.

Q. When you say I didn't feel that I wanted to do these things, what does that mean? To me that just means you chose not to.

A. No. I was—I was not in my right state of mind. I was, literally I thought I was gonna have a heart attack or a stroke. I've never experienced anything like this before, never.

Q. So, what did you end up doing, once you're in this position?

A. I sat there as long as I could, and I just thought I gotta get—I—I didn't feel safe. I – gotta get myself out of this situation. So, I left.

(trial transcript, pgs. 105-106)

Q. And then the next day would've been another day to report, correct?

A. Yes.

Q. And did you report again?

A. Yeah, I wanted to give it a try again.

Q. Okay, so over night though, like you get back home and then, the morning comes of, I guess what would be a Saturday, what are you thinking? Like what are you thinking about what had happened to you.

A. I just thought man this – first of all I – I didn't know what happened to me, because I'd never experienced anything like this before. I never slept. My anxiety and depression, I think, was probably the worse [sic] it's ever been.

Q. Okay, but you decided to try it again.

A. Yes.

Q. How – how come?

A. I just thought I owed it to myself.

Q. Okay. So, did you go back that evening?

A. Yes.

Q. Okay, so the next night you go back and what happens?

A. It was an exact repeat of the night before. I got ill.

(Trial transcript, pgs. 107-108)

(Magistrate Smith's Opinion on Remand at 11-13.)

Magistrate Smith further discussed the testimony of defendants' psychological expert, Dr. LaBuda, explaining why he questioned her credibility:

Dr. Labuda diagnosed the Plaintiff with a somatic symptom disorder. She explained that is a psychological condition where there are excessive thought, feelings, and behaviors in relation to a physical or medical complaint. She did not believe the condition to be disabling, but did concede that it creates difficulties (Labuda deposition page 41). She also diagnosed a panic disorder, and yet again stated, while not disabling a panic disorder can cause difficulties. When asked specifically about the job offer, Dr. Labuda testified:

Q. . . . My question to you is when he gave you the history, did he voice to you any complaints that the physical and mental requirements of the alternative job as a part-time security guard were beyond what he could do?

A. No, he didn't say that to me specifically.

Q. And from a psychological standpoint, did this, in your opinion, constitute a reasonable work offer, assuming it was within his physical restrictions?

A. Yes, from a psychological standpoint.

(Labuda dep., pgs. 53-54)

Dr. Labuda's testimony conflicts with her report. She documented that following the injury the Plaintiff experienced difficulties with sleep, anxiety and depression. The Plaintiff reported unrelenting chronic pain which was unresolved with medication, nerve blocks, and physical and occupational therapy. He had stopped activities such as fishing, hunting, driving a manual transmission Mustang, and riding his motorcycle. His insomnia results in him lying in bed for hours before falling asleep and then waking up constantly throughout the night. His depression has caused him to lose interest in activities he had enjoyed prior to the injury. He has suffered weight loss and has difficulty making decisions. His panic attacks are accompanied by intense anxiety, nausea, vomiting, sweating, dizziness, increased respiration, and increased heart rate.

Specifically, regarding the return to work, Plaintiff informed Dr. Labuda that when he pulled into the facility he sat in his car and was unable to get out secondary to anxiety/panic attack symptoms. He reported his heart was racing and he felt nauseous. Upon returning a second time he experienced a recurrence of the anxiety, he felt something terrible would happen so he left (Labuda dep., pgs. 17-18). (Magistrate Smith's Opinion on Remand at 10-11.)

Ultimately, Magistrate Smith concluded that defendant Sandvik's job offer as a part-time security guard was not reasonable employment for *this* plaintiff, writing:

The security guard position offered to the Plaintiff is not "reasonable employment" for several reasons. Plaintiff has established that his psychiatric/emotional injury is work related. Therefore, any restrictions that apply to that condition must be considered when offering reasonable employment, and that was not done here. I give greater weight to the testimony of Mr. Sarns over that of Dr. Labuda and accept Mr. Sarns' opinion that Plaintiff is unable to work because of his psychological [sic] condition. Mr. Sarns evaluated the Plaintiff just before the return to work attempt and documented the affect [sic] the job offer had on the Plaintiff. Dr. Labuda, claimed the Plaintiff suffered from non-disabling psychological conditions and at the same time admitted they can cause "difficulties." Dr. Labuda then documents the Plaintiff's reaction to his return to work activities and still believes he can do the job. I do not find that opinion to be credible at all. I find based upon the above that the security job offer is not within[g] the capabilities of Plaintiff and that it poses a proximate risk to his health and safety. (Magistrate Smith's Opinion on Remand at 13.)

We find Magistrate Smith's findings are reasonable and supported by competent, material, and substantial evidence, MCL 418.861a(3), . . . the evidence reported above. Therefore,

we adopt Magistrate Smith's findings concerning this issue. Finding no legal error in Magistrate Smith's analysis, we reverse that part of Magistrate Ognisanti's opinion and order terminating plaintiff's weekly wage loss benefits after May 27, 2017. We find plaintiff remains entitled to receive and defendants liable to pay for continuing wage loss benefits even as of and after May 27, 2017.

## V

In *Hages*, 2024 Mich ACO #4 at 20-21, the WDCAC held that *if* defendant Sandvik's part-time job offer was found to be "reasonable employment" a remand was appropriate to have the magistrate decide whether plaintiff had "good and reasonable cause" to leave the Sandvik site without performing the security guard job. MCL 418.301(9)(a). See *Hages*, 2024 Mich ACO #4 at 20-21. Having found the part-time security guard job was not "reasonable employment" it follows that plaintiff is not charged with the need to prove his refusal of the offer was reasonable. However, in view of Magistrate Smith's above-described findings we also find plaintiff had "good and reasonable cause" to refuse the job offer and to leave the offered position.

## VI

Defendants argued the WDCAC erred by remanding the matter to have a magistrate address whether the job offer would remain available. However, in view of Magistrate Smith's above-described finding that the offered "security job offer is not within[g] the capabilities of Plaintiff and that it poses a proximate risk to his health and safety" (Magistrate Smith's Opinion on Remand at 13), the issue of whether the job remained available and the relevance of this issue are moot.<sup>7</sup>

## VII

Plaintiff argued that the magistrate's order should be clarified to hold the wage loss benefits the magistrate stopped after May 27, 2017, "are suspended but not terminated," in the event that the termination of benefits because plaintiff refused an offer of reasonable employment is affirmed. In light of the above findings this argument is also moot.<sup>8</sup>

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<sup>7</sup> We also note that the reference to whether the job would remain available referred to whether Mr. Green would allow plaintiff to perform the security guard job if he had considered plaintiff's mental/emotional conditions. See *Hages*, 2024 Mich ACO #4 at 20.

<sup>8</sup> The WDCAC addressed this issue in *Hages*, 2024 Mich ACO #4 at 21-22.

## VIII

The final substantive issues the WDCAC directed the magistrate to address on remand concerned the treatment rendered by psychologist Mr. Sarns and potential liability for same. The WDCAC previously entered the following order:

IT IS FURTHER ORDERED that the matter is REMANDED for further findings concerning whether and, if so, the extent that treatment sessions with Samuel Sarns were reasonable, necessary, and reimbursable; . . . (*Hages*, 2024 ACO #4, Order at 1.)

This order arose in response to plaintiff's argument that Magistrate Ognisanti erred when he held the treatment plaintiff received from Samuel Sarns was *not* reasonable and necessary, and was *not* reimbursable pursuant to the following language from MCL 418.315(1):

The employer shall furnish, or cause to be furnished, to an employee who receives a personal injury arising out of and in the course of employment, reasonable medical, surgical, and hospital services and medicines, or other attendance or treatment recognized by the laws of this state as legal, when they are needed.

After remand, defendants argued that the WDCAC erred in reversing the findings of the original magistrate to hear this case – Magistrate Ognisanti – that Mr. Sarns' treatment was not reasonable and necessary, so as to place liability on defendants for payment for same. As we have noted above regarding other issues, our findings in our prior opinion and order reversing that conclusion are not subject to alteration by us after remand, by virtue of the doctrine of law of the case precludes it. *Grace; Rott*. It should further be noted that we did not foreclose a similar finding on remand by Magistrate Smith, but instead reversed Magistrate Ognisanti's analysis due to errors inherent therein.

Defendants' only remaining argument echoes one made as well regarding the issue of partial versus total disability – that Magistrate Smith erred in relying upon the testimony of Mr. Sarns because he was not an expert. We have already addressed that argument above. Put succinctly, a limited license psychologist is entitled to engage in the practice of psychology as long as he/she is supervised by a fully licensed psychologist and does not advertise to the public in that regard. MCL 333.18223(2). As a result, Mr. Sarns is fully qualified to "testify about treatment." (Defendants' brief after remand at 37.) Defendants again raise their due process argument, which has also been dealt with above.

On remand, Magistrate Smith weighed the credibility of witnesses who addressed plaintiff's mental/emotional conditions and found Mr. Sarns' testimony as plaintiff's treating psychologist to be most credible. Magistrate Smith wrote the following:

I give significant weight to the testimony of Mr. Sarns as it pertains to his treatment. Mr. Sarns is qualified to treat, and has on other occasions, treated individuals with CRPS. Mr. Sarns has provided the Plaintiff with treatment consistent with the recommendations of Dr. Labuda. Above and beyond that, both Mr. Sarns and Plaintiff suggest that there is a chance that Plaintiff would not be alive today without it. How can one hear that testimony and not find that the requirements of Rayis v Utica Packing Company, 1991 Mich ACO #214; Stackable v GTech Corporation, 2019 AACO #30; Ljucovic v Lakeside Building Maintenance of Michigan, 2006 Mich ACO #40 have been met. (Magistrate Smith Opinion on Remand at 16.)

Defendants have offered no challenge to this analysis, beyond its insupportable argument about Mr. Sarns' qualifications. The magistrate's weighing of the credibility of the various witnesses is therefore not before us for review. MCL 418.861a(11); *Cane*. In any event, we find Magistrate Smith's analysis of the evidentiary record and his findings regarding treatment by Mr. Sarns and defendants' liability for same are supported by "competent, material, and substantial evidence" in this record; therefore, we adopt his findings. MCL 418.861a(3); *Mudel*, 462 Mich 699-700.

We note, however, that Mr. Sarns' charges are subject to cost containment, MCL 418.315(2), and are not reimbursable for charges prior to Mr. Sarns' first treatment rendered to plaintiff on May 19, 2016. (Magistrate Smith Opinion on Remand at 16; Magistrate Ognisanti opinion at 26; Sarns deposition at 32-35, 38; compare Sarns deposition exhibit 1 and exhibit 3; see discussion in trial transcript 1 at 48-49.) We also note Mr. Sarns' testimony that while plaintiff often came to his office on a weekly basis, plaintiff did not do so every week. (Sarns deposition at 43.) Obviously, Mr. Sarns is only entitled to payment for the instances when he actually provided treatment.

### Conclusion

For the reasons noted above and in *Hages*, 2024 Mich ACO #4, the WDCAC previously affirmed in part and modified in part Magistrate E. Louis Ognisanti's order mailed October 14, 2019. The additional findings made by Magistrate Smith on remand are adopted. Magistrate Smith summarized his findings as follows:

I find that the Plaintiff has met his burden in showing that he is totally disabled as a result of his work-related upper extremity and psychological injuries. I find that the job offer made by the Defendant is not "reasonable

employment” as defined by the Act, as it is not within the capabilities of the Plaintiff and poses a proximate threat to the Plaintiff’s health and safety. I find that the treatment rendered by Mr. Sarns, beginning on May 19, 2016, and continuing to present day is reasonable and necessary, and is reimbursable. I find that the Plaintiff is entitled to the stipulated rate of \$775.00 per week, ongoing until further order of this court. (Magistrate Smith Opinion on Remand at 16.)

We agree and conclude that in addition to the work-injury-related weekly wage loss benefits and medical benefits awarded by Magistrate E. Louis Ognisanti, plaintiff has established his work-related physical and mental injuries entitle him to receive and that defendants must pay wage loss benefits in the amount originally ordered by Magistrate Ognisanti from February 21, 2016, *and* until further order of the Workers’ Disability Compensation Agency, and for the reasonable and necessary psychological treatment plaintiff received from Samuel Sarns, M.A., limited license psychologist, from and after May 19, 2016. until further order of the Workers’ Disability Compensation Agency.

Chairperson Royal concurs.

Duncan A. McMillan

Commissioner

Daryl Royal

Chairperson

STATE OF MICHIGAN  
WORKERS' DISABILITY COMPENSATION APPEALS COMMISSION

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FRED HAGES,  
PLAINTIFF,

V

DOCKET #19-0030

SANDVIK INCORPORATED AND  
SENTRY INSURANCE A MUTUAL COMPANY,  
DEFENDANTS.

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This cause initially came before the Workers' Disability Compensation Appeals Commission ("WDCAC") on claims for review timely filed by plaintiff-appellant, Fred Hages, and defendants-appellants, Sandvik, Incorporated and Sentry Insurance A Mutual Company, from an opinion and order, mailed October 14, 2019, of Magistrate E. Louis Ognisanti. In *Hages v Sandvik, Incorporated and Sentry Insurance A Mutual Company*, 2024 Mich ACO #4, the WDCAC considered the record and counsels' briefs and concluded that Magistrate Ognisanti's order should be affirmed in part and modified in part, and the matter was remanded to the Board of Magistrates to complete the analysis in accordance with the WDCAC's opinion in *Hages*, 2024 Mich ACO #4.

In a supplemental opinion on remand mailed April 1, 2025, Magistrate James W. Smith addressed the issues the WDCAC directed the Board of Magistrates to address. In accord with the attached opinion, this WDCAC agrees with Magistrate Smith's findings, specifically that (1) plaintiff's found upper extremity physical injuries caused partial disability, (2) plaintiff's found mental/emotional injuries caused total disability, (3) the job offered to plaintiff as a part-time security guard did not constitute reasonable employment and plaintiff therefore had no obligation to perform that job, and (4) that the treatment sessions rendered to plaintiff by Samuel Sarns, limited license psychologist, from and after May 19, 2016, were reasonable and necessary, and related to plaintiff's work-related injuries. Accordingly, we adopt these findings as our own. Therefore,

IT IS ORDERED that defendants shall pay to plaintiff weekly wage loss benefits in the amount of \$775.00 from February 21, 2016 (see MCL 418. 833(1)), until further order of the Workers' Disability Compensation Agency with interest thereon as provided in MCL 418.801(6); defendants are entitled to credit for the wage loss benefits they have paid pursuant to the Michigan Worker's Disability Compensation Act, MCL 418.101 *et. seq.*; and,

IT IS FURTHER ORDERED that defendants are liable, subject to cost containment, for and shall pay the reasonable and necessary expenses related to Mr. Sarn's treatment of plaintiff's mental/emotional condition from May 19, 2016, until further order of the Workers' Disability Compensation Agency; defendants are entitled to credit for the payments they have paid for Mr. Sarn's treatment of plaintiff's mental/emotional condition pursuant to the Michigan Worker's Disability Compensation Act, MCL 418.101 *et. seq*; and,

No appeals remain pending.

Duncan A. McMillan

Commissioner

Daryl Royal

Chairperson