

The social security number and dates of birth
have been redacted from this opinion.

**STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
WORKERS' COMPENSATION BOARD OF MAGISTRATES**

Garfield Adams,
SSN: XXX-XX-XXXX,

Plaintiff,

-VS-

VHS Harper University Hospital/
Self-insured,

Defendant.

_____ /

OPINION

APPEARANCES

Garfield Adams – in Pro Per

Craig M. Zamler – (P29008) for defendant – VHS of Michigan Inc./VHS Harper University Hospital/self-insured

TRIAL DATE(S)

The trial was commenced in this matter on October 2, 2018. The record was closed on October 16, 2018 with the parties agreeing on the average weekly wage and exhibits.

CLAIM

This claim arising out of an Application for Mediation or Hearing filed by plaintiff on October 21, 2016 against VHS Harper University Hospital. In that application, Mr. Adams alleged a date of injury of May 22, 2014. Plaintiff alleged he was assaulted injuring his neck, back and legs. At the time of trial, plaintiff amended his application and withdrew the claim for the legs. However, he added a claim for his shoulders, which was objected to by defendant.

STIPULATIONS

The parties stipulated that on the date of injury, May 22, 2014;

Garfield Adams -vs- VHS Harper University Hospital

1. They were subject to the Act.
2. The defendant was self-insured.
3. Mr. Adams was employed by VHS Harper University Hospital.
4. Defendant had notice and claim of plaintiff's injury within the prescribed time period.
5. The parties left to proofs whether a personal injury arose out of and in the course of employment.
6. The parties agreed the average weekly wage was \$821.56. This yields a compensation rate of \$490.02 based on Mr. Adams tax filing status of single with no dependents.
7. Plaintiff was not engaged in dual employment.
8. Plaintiff did not receive any benefits under sections 354 or 358 of the Act which would reduce his weekly indemnity benefits.
9. Plaintiff was not paid any weekly benefits.
10. The parties left to proofs whether plaintiff suffered a disability that was due to his alleged personal injury.

WITNESSES TESTIFYING AT TRIAL

Plaintiff – Garfield Adams III

Defendant – Daniel Francis Herman

EXHIBITS

Plaintiff

1. Various records including the Notice of Dispute dated June 11, 2014 and a letter from the TPA indicating they received a report of a work injury. There were also various medical records.
2. Witness statements
3. Medicaid payments made by Blue Cross Complete.
4. Average weekly wage calculation based on direct deposits and job logs dated June 25, 2014 through September 9, 2014.

Defendant

- A. Deposition testimony of Neil Friedman, M.D. taken on July 13, 2016.
- B. Deposition testimony of Guy A. Hostetler taken on July 19, 2016.
- C. Summary investigation of Officer Garfield Adams completed by Daniel Herman dated May 23, 2014.

LAY TESTIMONY

Plaintiff - Garfield Adams

Mr. Adams testified on his own behalf. Mr. Adams lives in Detroit, Michigan. He is 49 years of age with a date of birth of xx/xx/xx.

Garfield Adams -vs- VHS Harper University Hospital

On May 22, 2014, Mr. Adams was working at the Harper University Hospital in the Webber lobby. He became involved in a confrontation with a visitor that was trespassing. He called for a supervisor but received no response.

Mr. Adams testified that the visitor tried to sneak a child into the hospital. At which time, Mr. Adams told the visitor of the hospital's visitation policy.

The visitor went up to the front desk to the receptionist. He was denied a visitor's pass. At that point, the visitor assaulted and pushed Mr. Adams. An altercation ensued and Mr. Adams fell backwards taking the visitor down to the floor with another officer. Mr. Adams injured his back.

On cross-examination, plaintiff did not agree that the visitor was not trespassing and had received a pass for the baby. He also did not agree the visitor wanted to take the baby to Wendy's.

He also denied he took off his badge and stated they could take this "fucking" job.

Mr. Adams testified there were only two people present at the time of the altercation. This was the receptionist and himself.

He acknowledged he received his final warning on an incident that occurred on December 6, 2013. At that time, Mr. Adams testified he had refused to take an incident report from an individual who had an accident in the parking structure. The individual wanted Mr. Adams to indicate that DMC was at fault. He disagreed with the warning/write-up for that incident.

He testified he was suspended after the altercation on May 22, 2014. He was told he would be contacted. He was to be contacted for a meeting that was to occur in June 2014. He did receive a certified letter dated June 10, 2014 indicating he was terminated.

Mr. Adams did not file a grievance in regard to the termination. He was off work from the date of the incident, May 22, 2014 through his termination in June.

He testified he was not given the opportunity to file a grievance. He was told he did not have a right to that process. He did call the HR (Human Resource) Department which would not allow him to file the grievance. He indicated he spoke with the Director, Hakeem Berry and was told he did not have any grievance. Plaintiff continued to claim he was not allowed to file for that proceeding.

Plaintiff testified his job logs showed he did apply for work commencing on June 25, 2014. He did apply at Botsford Hospital approximately one month after the incident as a security person. He testified that as part of unemployment, he had to register at MI Works. This is where he applied for the positions. He was willing to try any job but was uncertain as to whether he would be able to perform any work. He was denied unemployment and claimed that he could not work due to pain and needed to sit, stand or lay down at will.

Garfield Adams -vs- VHS Harper University Hospital

Mr. Adams' 2014 tax returns showed income from Fidelity Investments. This was in an amount of \$21,454.00. He testified this was a cash-out of his 401K account. He lived off this money.

He lastly testified he believed the medical was up-to-date based on the Blue Cross Complete documents (Plaintiff Exhibit 3). He had not treated in a while. He did go to the DMC (Detroit Medical Center) for his prescription but they did not have those medications. He testified he did not need any further treatment because the DMC doctors did not find anything wrong. He stated Blue Cross Complete made him go to the DMC doctors because they were the only one's on the plan that could treat him.

Defendant-Daniel Francis Herman

Daniel Francis Herman testified on behalf of the defendant, VHS of Michigan/VHS Harper University Hospital. He currently works at DMC/Sinai Grace Hospital as the manager of security operations. He has been there for four years. In 2014, he was the security supervisor and Mr. Adams' lieutenant.

After the May 2014 incident, he investigated and produced the 4-page report (Defendant's Exhibit C). Mr. Herman typed this report himself and it was sent to James White.

He testified the report was based on interviews with witnesses and/or their statements. The report summarized that information.

After investigating, he recommended termination of Mr. Adams employment. He testified Mr. Adams was provided with a formal warning after the incident in December 2013. The procedure is that an individual gets a progression of warnings. There are different steps and warnings that an individual can get depending on the violation. Steps could be skipped if the violation was significant.

He testified he does know Shellie Andrews, who provided a witness statement (Plaintiff's Exhibit 2). He also testified that Ms. Andrews, Mr. White and Mr. McCarty resigned from VHS of Michigan. Mr. McCarty resigned because he was tired of the DMC. Mr. White and Ms. Andrews resigned because of an alleged affair. On cross-examination, Mr. Herman testified Ms. Andrews resignation being due to the alleged affair was speculative.

He lastly testified on direct-exam that no one is refused the right to a grievance. He reiterated that every employee has the right to a grievance.

On cross-examination, he met with plaintiff on June 2, 2014. He did not remember whether he told Mr. Adams that it was up to Mr. McCarty regarding the grievance.

He testified Mr. Adams was the aggressor and threatened the visitor, Mr. Narico.

He again took statements but he did not recall the dates or time he took those statements. However, those statement were taken within a week of the incident.

Garfield Adams -vs- VHS Harper University Hospital

He again testified that Rick McCarty resigned and Jim Wright resigned due to an alleged affair. Shellie Andrews resigned but he was uncertain as to the reason. He thought it could be due to the affair, however this was speculation.

Mr. Herman was not present on the date of the incident, May 22, 2014. Jim Wright was the supervisor and instructed him to investigate the witnesses that were in the lobby. He did not take Ms. Tiggles' statement who may have been the receptionist at the time of the incident. He did get a statement from Areal. Areal did hear profanity however, she was not sure if Mr. Adams said, "fucking job".

Lastly, he testified plaintiff was terminated for violation of customer service standards. He did complete the disciplinary form.

Exhibits

Plaintiff Exhibits

Exhibit 1

These are various records which includes Notice of Dispute dated June 11, 2014, a letter from Sedgwick Claims Management Services dated June 10, 2014 and various medical records.

The first record is a Notice of Dispute dated June 11, 2014 signed by Barbara Krzeminski. The Notice of Dispute is based on the injury not work-related. It is claimed the injury, if any, did not arise out of or in the course and scope of plaintiff's employment with DMC.

The next letter is dated June 10, 2014 from Ms. Krzeminski, who is with Sedgwick Claims Management Services, Inc. In that letter, Mr. Adams was informed Sedgwick was the workers' compensation claim administrator for the defendant. They acknowledged receipt of the report of a work-related injury. Ms. Krzeminski was the examiner assigned to Mr. Adams claim.

There is a medical record dated May 22, 2014 from the emergency department at Detroit Receiving Hospital. Plaintiff was treated by Sarah Albers, M.D. The illness or injury was a lumbar muscle strain.

There is a report from the DMC Occupational Health Services dated May 23, 2014. Diagnosis was neck/back/shoulder pain and hypertension. He was provided Motrin 800 mgs and Flexeril 5 mg. He was off work until his next visit on May 29, 2014.

The next visit was on May 30, 2014. This report is somewhat difficult to read it appears the diagnosis was right cervical thoracic lumbar pain. He was again prescribed 800 mgs. of Motrin. There was an x-ray to the right hip/pelvis. He was off-duty however, there was no date that expired. He was to follow-up with the clinic on June 3, 2014.

Garfield Adams -vs- VHS Harper University Hospital

Mr. Adams again went to the DMC Occupational Services on June 9, 2014. This was again for right shoulder, cervical and thoracic pain. It was recommended that they have an MRI of the lumbar spine. He was off-duty until his return to the clinic on June 18, 2014.

On November 18, 2014, he was seen by Avnish Sandhu, D.O. This visit was for management of his hypertension and back pain.

Mr. Adams reported he injured his back at work in May 2014. He was employed as a DMC Security and was involved in an altercation with a patient when he fell on his head backwards and injured his back. He was offered physical therapy from work however he did not finish physical therapy as he had lost his job and the therapy was discontinued.

He complained of lower back pain, sharp intermittent pain that radiated all the way to the posterior thigh. His pain was worse with movement and relieved with rest. He was taking Norco, Flexeril and Ibuprofen for his back pain prescribed by the Urgent Care doctor. He also had uncontrolled blood pressure.

Physical examination showed low back pain on the right side around the L4-L5 area. He had normal range of motion and normal strength. The doctor found no tenderness.

The impression was uncontrolled hypertensive urgency and low back pain. It was recommended that he have physical therapy. He was also given Flexeril and Naprosyn.

On June 5, 2017, he was seen by Gregory Berger, M.D. for low back and neck pain status post work injury, May 2015. He reported neck, back and knee pain. He did undergo physical therapy which helped however, when he stopped, the pain came back. He reported the knee pain had resolved. The neck and shoulder pain was intermittent but overall better. His back pain was worse with radiating pain to the back of the right leg with weakness. He was taking Norco and Aleve with some benefit.

The doctor's past medical history noted he had cervicalgia, lumbago and lumbar radicular pain with a date of onset of April 28, 2016.

Physical examination showed normal spinal range of motion. He had normal muscle strength and tone. Straight-leg raising test was negative bilaterally. He did have positive lumbar facet loading, bilaterally from the L3-L5. Examination of the lower extremities was normal. The doctor's assessment was lumbago, lumbar radicular pain and cervicalgia. He was prescribed Norco and Capsaicin. He was to return to the clinic in one month and start physical therapy.

Exhibit 2

These are witness statements from Shellie A. Andrews and Robin Kendrick-Tiggle dated March 20, 2016. There is also a newsletter dated October 30, 2009 indicating effective November 1, 2009, only one family member and guest age 18 or older may visit inpatient units at DMC. That memo does indicate there can be two visitors at one time. They do need to be family members and guest age 18 and older. It also notes the policy may vary slightly, depending upon the specific hospital. It requested the individual's check-in at the

Garfield Adams -vs- VHS Harper University Hospital

nursing desk before entering a patient's room. It should be noted this policy was instituted to protect patients and family from getting and/or spreading the flu virus this season. This was the reason why DMC was restricting inpatient visits.

The statement of Ms. Andrews is not signed nor dated. Ms. Andrews noted the confrontation and after that incident, plaintiff began his write-up of the incident. He had abruptly paused to go to the men's room. After leaving the men's room, he fell to his knees supporting himself by leaning over a desk chair stating, "my back, my back" and "I can't move". Ms. Andrews notes Mr. Adams was in excruciating pain. She stated as his supervisor, she immediately had Mr. Adams escorted to Occupational Health for an exam.

Ms. Andrews also noted she contacted Jim White, who is the Director of DMC Police Authority. She states Mr. White immediately maintained Mr. Adams was guilty of a wrongful act and Mr. Adams be immediately terminated without an investigation.

She states Mr. White informed that the cameras in the lobby were not functioning properly. She further stated Mr. White felt it constituted an immediate termination of employment since Mr. Adams had taken his radio and watch off placing them on the podium.

Lastly, she stated prior to this incident, Mr. White did not like Mr. Adams and had given her an ultimatum to find something to get Mr. Adams fired or she would be fired.

There is the statement of Ms. Tiggie. She claims she was the receptionist working at the time of this incident. Again, this statement is dated March 20, 2016.

She states a young man and woman with a baby came into the lobby and attempted to pass security to visit a patient. They were stopped and asked if they had a pass to visit the patient. They did not and were instructed by Mr. Adams to go to the reception desk to obtain a pass. They were told they could not take the baby to the floor to visit the patient because there was a restriction in place for children visiting, an influenza restriction. She claims management instructed them to refuse visitation to any children on the 10th floor and also several other floors without exception.

She states both visitors were very upset. It was suggested one person go up and visit the patient and the other could wait in the lobby with the child. The young woman went up to visit the patient while the young man stayed in the lobby with the baby. He sat directly across from Ms. Tiggie. She reports he became more and more upset because he noticed they were letting some children in to visit patients but not him. The individual went back up to the desk and was angry. He asked why were the other children being allowed to visit but not his child. Ms. Tiggie explained those children were not going to that floor. The visitor felt this was unfair. She explained to him there were hospital rules and she could lose her job if she allowed him to take the baby to the 10th floor.

She further reports the young man returned to his seat and became more and more agitated talking to other people in the lobby. He went over to Mr. Adams and attempted to get a pass by telling him he only wanted to go to the Wendy's restaurant. Mr. Adams explained he could not give him a pass because if he allowed him to go by and he went

Garfield Adams -vs- VHS Harper University Hospital

onto the floor then Mr. Adams could lose his job. By this time, the young lady had returned.

Plaintiff told her to maybe go upstairs and speak with the patient's nurse to possibly receive an exception form from the nurse so the baby may at least visit for 15 or 20 minutes. She refused and began to argue with Mr. Garfield. The young man said all he wanted to do was to take the baby to Wendy's and promised not to go to the floor. Mr. Garfield told him he was sorry but he could not allow him to pass that point with the baby and no pass was provided.

The young man tried to walk pass Mr. Garfield and Mr. Garfield blocked him and stated he was sorry he could not let him pass. Plaintiff called for backup on the radio but no one came. The young man was holding a bag and placed it on the floor to prepare himself to fight. Mr. Garfield told him to go to the side and talk about this. Plaintiff bent over to pick up the bag but the man became even more angry as Mr. Garfield tried to move him to the side. He pushed plaintiff and began to curse. Mr. Garfield walked over to the reception desk, laid his badge down and blocked the individual. The young man grabbed plaintiff around his neck and began to fight and Mr. Garfield was pulled to the ground by the young man. Two officers showed up as plaintiff wrestled with the individual on the ground trying to get him handcuffed. The other officers stood there and watched. One officer finally bent down and assisted plaintiff in arresting the individual.

Exhibit 3

These are payment forms for medical services. They indicate what Healthy Michigan Plan paid and the copayments. They commence with a date of service of November 10, 2014. The provider was Atul Verma. These records include various treating physicians and also prescriptions from VHS Sinai Grace Hospital. The last date was a prescription filled on July 18, 2016 at VHS Sinai Grace Hospital Inc.

Exhibit 4

These are various records which includes paycheck stubs from DMC. There is also a calculation of the average weekly wage. This indicates the difference between plaintiff's and defendant's calculations. However, since the parties have agreed on an average weekly wage, these records are not relevant.

The exhibit also contains a letter dated March 22, 2018 which was sent to Mr. Adams by his former attorney Robert S. Strager. This letter had enclosed a subpoena from the defendant for Mr. Adams' tax records from 2014 through 2017 including any income earned in 2018. There was also enclosed a Social Security Earnings Information form, which was signed by Mr. Adams.

The last document in this exhibit are monthly records of work searches through the Unemployment Insurance Agency. There are reports for three months. All reports have been signed by Mr. Adams. The first report was signed on July 12, 2014 indicating he had applied for eight jobs, with the first being on June 25, 2014 and the last on July 12, 2014. He applied for two jobs per week. The positions applied to were security officer, assembler, material handler and surveillance operator.

The second report was signed August 13, 2014 and shows an additional eight jobs applied to from July 21, 2014 through August 12, 2014. Those positions included security, environmental, driver, dispatch, cashier clerk and courier.

The last form was signed on September 12, 2014. There were an additional eight positions applied to from August 19, 2014 through September 9, 2014. These positions were for security, courier, facilities associate, driver and transporter.

Defendant Exhibits

Exhibit A

This is the deposition testimony of Neil Friedman, M.D. taken on July 13, 2016. Dr. Friedman specializes and is Board Certified in Physical Medicine and Rehabilitation. He is also Board Certified in Electrodiagnostic Medicine.

He examined plaintiff on January 2, 2015 at the request of Sedgwick CMS (p6). His report of the exam is dated January 2, 2015 (p8-18).

When the doctor saw plaintiff on January 2, 2015, his primary complaint was low back pain radiating up the spine to the neck. He also reported bilateral posterior thigh pain. He had stiffness in the arms. He had no complaints distal to the knee (p9).

The doctor took a history from Mr. Adams that on May 22, 2014, he was in the lobby of Harper Hospital. A visitor was there with a small child visiting a patient. Plaintiff informed the child needed a pass to go up to the patient's floor. The patient came to the lobby and became verbally aggressive. The patient's boyfriend (visitor) became upset. He became verbally and physically aggressive. He pushed plaintiff and Mr. Adams pushed back. Another officer came to assist and a physical altercation ensued. Plaintiff fell down and his gun "punched him in the back". The visitor was placed under arrest and Mr. Adams returned to his desk and his back "went out" (p10-12).

He was seen at Occupational Health and placed off work for ten days. He went to the DMC and had a CT scan. He was referred for physical therapy at the Rehabilitation Institute of Michigan and for an MRI. The physical therapy and the MRI were cancelled after he was terminated.

He reported he did obtain insurance and had ten visits of physical therapy. They provided temporary symptom improvement but it only lasted several days (p11-12).

His past medical history was positive for hypertension. He had no symptoms in the low back, spine, arms or legs previously (p12).

His medications were Norco which was discontinued in November 2014. He was taking Naproxen and Ibuprofen, as needed. He took Flexeril but only at bedtime (p13).

Garfield Adams -vs- VHS Harper University Hospital

His physical examination showed he was 6'2" tall and weighed 280 pounds. The doctor noted the exam was limited to the "lumbar strain" allegation. The doctor found his reflexes were diminished but symmetric in both legs. Straight-leg raising in the seated position on the left found low back discomfort at 90 degrees and on the right low back pain at 80 degrees. In the supine position, plaintiff reported a little tightness at 40 degrees on the left and on the right low back pain at 20 degrees.

He did not use an assistive device and had a normal gait. He could heel/toe walk. He squatted and rose without difficulties. He did report low back discomfort with heel walking. Range of motion was limited by low back pain. The doctor noted flexion of 40 degrees and extension of 10 degrees.

He was tender in the lumbar paraspinal muscles. There was noted to be no muscle tension in the neck, thoracic or lumbar paraspinal muscles. He had increased pain with axial loading. Pseudo rotation found no increase in back discomfort (p13-15).

Dr. Friedman reviewed various medical records (p15-16). He reviewed records from the DMC dated June 9, 2014. The diagnosis was right shoulder/cervical thoracic strain. He was referred for an MRI of the lumbar spine. He was to continue physical therapy. The MRI was for the lumbar strain and to rule out a herniated disc.

He reviewed a report from Occupational Health dated May 30, 2014. The diagnosis was right cervical, thoracic and lumbar strain. He was prescribed Motrin and Norco. He was referred for x-rays of the right hip and pelvis. He was also referred to physical therapy.

He reviewed an x-ray report dated May 29, 2014. The x-ray of the pelvis showed minimal osteoarthritic changes in the right hip. The right hip study was normal.

Dr. Friedman's impression was the clinical exam failed to reveal any objective evidence of any significant orthopedic or neurological pathology affecting the lumbar spine and lower extremities. Plaintiff did have diffuse spine pain and proximal leg pain (p16).

The doctor requested the forwarding of the CT report. Dr. Friedman felt for completeness, an MRI should be done. The doctor opined if the CT and MRI were negative, there was no need for further testing, treatment or activity limitation.

The doctor did complete an addendum report after reviewing the MRI results (p18). The addendum report was dated January 29, 2015 (p19-21). The doctor noted in the report the CT had never been performed (p19). The MRI had been completed at the Michigan Institute of Neurological Disorders (MIND). This study was dated January 20, 2015 and noted an "unremarkable MRI of the lumbar spine". (p20; Disposition Exhibit 4)

The doctor opined no further testing or treatment was necessary. Plaintiff could be gainfully employed without restrictions (p20).

The doctor testified the MIND report dated January 20, 2015 was authored by Bruce Wolf, D.O. (p21).

He was provided a history from plaintiff that he was a security guard involved in a physical altercation. He fell and landed on his gun holster and developed low back pain. This occurred on May 22, 2014 (p22).

He did, by history, receive treatment at the ER at Detroit Receiving Hospital. He was referred to the Occupational Clinic. Plaintiff reported he underwent a CT study. He was referred to physical therapy. He was to undergo an MRI. That appointment was cancelled because he was terminated (p22-23).

The doctor testified he limited his exam to what was alleged. It was requested he exam/evaluate plaintiff for the lumbar strain (p23).

The doctor testified on physical examination there was no significance to the diminished reflexes since they were symmetric. The doctor felt this could be due to a number of medical reasons or that the reflexes are normal to that individual. The symmetric nature indicates no abnormality (p23).

The doctor felt the low back pain without radiating symptoms was of no significance on straight-leg raising tests. The test was to reproduce symptoms due to a pinched nerve in the low back. The primary symptom would be pain radiating down the leg. Low back pain only is a non-specific complaint (p24).

The doctor found no limitation in his movement except the reported low back pain on bending forward and backwards. The doctor testified this was subjective. There was no objective measure to correlate plaintiff's complaints of pain (p24).

The axial loading test on exam elicited a non-physiologic finding. This suggests symptom fabrication or exaggeration (p25).

The doctor opined based on his assessment, plaintiff did not need any additional treatment (p25). However, the doctor did recommend additional testing. An MRI of the lumbar spine was completed and found unremarkable (p25).

Plaintiff did not verbally report any additional symptoms in the shoulder, arm or neck. Plaintiff's handwritten response was only injury to the back (p25-26). He indicated some pain up the spine, some stiffness in the arm and some pain in the back of the thighs that did not extend below the knee (p26). The doctor felt there was no clinical findings to correlate those symptoms.

The doctor felt plaintiff required no restrictions in activities (p26). In the absence of any objective clinical findings and no abnormality on the MRI, there was no reason to limit plaintiff's activities (p27).

On cross-examination, the doctor testified he saw Mr. Adams on one occasion about 1 ½ years prior. He did not know Mr. Adams current condition or disability status (p27).

Garfield Adams -vs- VHS Harper University Hospital

He saw plaintiff at the request of Barbara Krzeminski at Sedgwick CMS. He saw plaintiff for a pending workers' compensation case. He was not going to render any treatment (p28).

Plaintiff complained of low back pain and other symptoms. The low back pain went up the spine to the neck and he had bilateral posterior thigh pain (p29).

The doctor felt plaintiff performed the usual duties of a security officer. He did not ask Mr. Adams his actual job duties of a security guard at the facility where he was employed (p29).

By history, plaintiff was injured at work in a physical altercation. He fell down and the holstered gun on the right side of his belt, punched him in the back (p30-31). He went back to the workstation and his back went out (p31).

The doctor confined his exam to the low back. He did have increased low back pain with axial loading (p31). This is a Waddell sign and non-physiological. There is no explanation since it does not match any anatomic scientific fact. This was one of the symptoms suggesting exaggeration (p31).

The doctor testified that pain was purely subjective and totally dependent on the patient's reporting. After the fall, he reported spine pain and proximal leg pain. The spine pain was most great at the lumbar level and he did have posterior thigh discomfort (p32).

The doctor testified a pain complaint cannot be objectively demonstrated (p33).

The doctor's January 29, 2015 report indicated plaintiff did not have the CT scan. This was never performed and contradicted his history (p33).

Lastly, Dr. Friedman testified plaintiff did not report prior difficulties in performing his job. By history, after the incident, he developed problems relative to his low back (p34).

Exhibit B

This is the deposition testimony of Guy A. Hostetler, MA, CRC, CDMS, ABVE, ABDA, DABFC, LPC taken on July 19, 2016. Mr. Hostetler is a Vocational Rehabilitation Counselor with multiple certifications in that area (p4). He is a Certified Rehabilitation Counselor and Certified Disability Management Specialist. He is also a Licensed Professional Counselor in the State of Michigan (p5).

He completed an Employee Ability and Wage Earning Analysis at the request of Sedgwick CMS (p6). He met with plaintiff on July 11, 2016 and completed his report on the next day (p6-7). He completed an eleven page report dated July 12, 2016 (p7).

The report was placed in the record at the time of the deposition (p8-32).

Mr. Adams does have an Alabama driver's license with a chauffeur's endorsement (p11). He drove to the appointment (p12).

Garfield Adams -vs- VHS Harper University Hospital

His educational background shows he received a high school diploma in 1987 (p12). He has had multiple ongoing classes for work at the hospital.

He has a Deputy and PA330 certification. He is certified for citizen's arrests. He has an MCOLES through the State of Michigan Police Physical evaluation (p13).

In regard to his computer skills, he does not have any knowledge of Microsoft Office programs. He types by hunt/peck fashion. He doesn't really even use email. He can get to the internet through his cell phone. He did utilize a computer to take the continuing education units at the hospital (p13).

His work history shows from 2003 through 2014, he was a security/police officer at Harper University Hospital. He earned \$19.80 per hour. Prior to this employment, from 1999 through 2003, he worked at the Motor City Casino as a Security Officer/Money Runner. He earned \$15.85 per hour.

He worked from 1997 through 2000 at the Hotel St. Regis as a Security Officer. He earned \$14.00 per hour.

His history shows he has performed other work including light truck driving, warehouse/storage yard, assembly and housekeeping (p14).

Mr. Hostetler utilized O*NET for evaluating plaintiff's prior occupations. They included security guard, light truck or delivery service driver, maids and housekeeping cleaners, team assemblers and stock clerks-stocker, warehouse or storage yard (p14-16).

Mr. Adams questioned his ability to work but would try. He felt he could do dispatch, motor patrol vehicle driver and money courier positions (p16-17).

In regard to medical restrictions, Mr. Hostetler was provided Dr. Friedman's report. The doctor felt he was able to be gainfully employed without restrictions (p17).

Plaintiff reported he has looked for work since his injury. The last time he looked for work was in 2014 (p17). In 2014, he was looking at security jobs (p18).

He went to MI WORKS on July 14, 2014. He has not been back since. His resume was posted online back in July 2014 (p18).

Mr. Adams was currently not looking for work because he was undergoing physical therapy and taking pain medications (p18). He felt he was qualified to perform the jobs that he previously applied to but was not physically capable (p18). He did not maintain search records (p18).

Mr. Hostetler performed a Job Skills Analysis (p19-22). He found the previous occupations of security officer and security guard were light to sedentary with an SVP of 4 and 3. His previous work as a light truck and delivery service driver was medium strength with an SVP

Garfield Adams -vs- VHS Harper University Hospital

of 3. The maid and housekeeping was light with an SVP of 2. Team assembler was light to sedentary with an SVP of 2. The last position, stock clerk, was heavy with SVP of 4 (p20-21).

Mr. Hostetler felt based on his transferable skills and physical ability, he could perform work as a security guard, security or identification clerk, alarm monitor, dispatcher (non-emergency), parking lot attendant, motor vehicle operator, cashier, police, fire and ambulance dispatcher and first line supervisor of security workers (p21-25).

It was Mr. Hostetler's opinion that plaintiff has the ability physically to function. His restrictions were unclear since he has not seen a physician in a while (p25). Dr. Friedman again felt he required no restrictions.

His education was a high school graduate with training and certifications to be a security officer at a hospital (p25-26).

Mr. Hostetler performed a Labor Market Survey (LMS) (p26-30). For the LMS, he utilized sedentary to light-duty as a restriction (p28). He located eight positions which included ambulance dispatcher, security dispatcher, roadside assistance dispatcher, mobile security patrol officer, driver, surveillance operator and two cashier positions.

Mr. Hostetler noted he located a number of jobs currently available within plaintiff's training, qualifications, work and educational history, transferrable skills and restrictions (p30-31). The pay rate would be in the range of \$10.27 to \$24.68 per hour. He felt if plaintiff was unable to do any work in any capacity, he had no wage earning capacity. If he could do light to sedentary work, his range was expected to be between \$11.00 and \$14.00 plus per hour (p31).

On direct-examination, Mr. Hostetler testified he used for background information, plaintiff's resume, interview, Dr. Friedman's report, the Dictionary of Occupational Titles (DOT) and O*NET. He used various data bases to look for available employment to complete his LMS (p33-34). Plaintiff confirmed his jobs performed and also his training and qualifications (p34-35). Dr. Friedman's report showed no restrictions. Mr. Hostetler had no other medical (p36).

He testified if there were no restrictions, Mr. Adams could return to his former type of employment. There was no barrier to a return to work. If it was assumed he could do sedentary to light work, he had a number of occupations available to him (p37).

Mr. Hostetler obtained the strength requirements and SVP from the DOT. Strength requirement in the DOT are listed as sedentary, light, medium, heavy and very heavy. SVP ranges from 1-9 (p38-39). The SVP is based on how long it takes a person to be able to do a job at a medium level.

He testified in his LMS, if there is a name regarding a job, he was able to get ahold of somebody. He was able to determine whether the position was available by calling (p40-41).

Lastly, he noted the wage range of the positions was from \$10.27 to \$24.68 per hour. Mr. Hostetler felt with plaintiff's background, he was worth more than \$10.27 per hour. He could earn between \$11.00 and \$14.00 per hour (p41).

On cross-examination, Mr. Hostetler again did the evaluation for Barbara Krzeminski at Sedgwick CMS (p42). He did have Dr. Friedman's opinion of no restrictions (p43). Mr. Hostetler testified this was the only medical information Mr. Nelson's office had (p43-44).

He was not aware of Drs. Mounayer or Berger's restrictions but did use sedentary to light-duty work in his LMS (p44). He was also not aware of Dr. Khoury restrictions (p45).

He testified for eighteen years, plaintiff had been a security officer and for the last ten and half years that has been at Harper University Hospital (p45).

His only formal education is a high school diploma (p45-46). He had very limited computer skills. He did use the computer for training and dispatch. He had no knowledge of Microsoft Office and did not use email. He did have access to the internet through his phone. He had no home computer. He hunts and pecks to type (p46).

When he last worked at Harper, his rate was \$19.80 per hour (p46-47). He reported this was the most he ever made (p47).

Mr. Hostetler was not aware of specifics regarding the other positions. He used the DOT and his experience regarding physical demands (p47).

In 2014, Mr. Adams did look for security work. He was not hired at any of those jobs (p48). He had been at MI Works in 2014 and posted his resume online in 2014. He has not seen his resume since 2014 (p48-49).

Plaintiff did not feel he was physically capable of performing those jobs (p49). According to the DOT, the way plaintiff performed his security officer job would be medium to heavy strength (p49). This would be outside the sedentary to light-duty restriction but within Dr. Friedman's restriction or lack thereof (p49-50). Mr. Hostetler testified he could not return to the security officer job if he was only able to do a light to sedentary position (p50).

He also testified he could not do a light truck or delivery job because they would be medium strength (p50). He testified assuming a light to sedentary position, plaintiff could not do janitorial work, team assembler (depending on job), or stock clerk positions (p50-51).

Plaintiff did respond to alarm situations and dispatched people, so he had some training/experience for alarm monitor (p52). He could also do the cashier position because it was unskilled. He would learn the position very quickly. The training could possibly take a day (p52).

Garfield Adams -vs- VHS Harper University Hospital

Mr. Adams has never been a parking lot attendant but has monitored parking lots as part of his job. This is basically unskilled work (p52).

Mr. Hostetler felt he had done some dispatch work at the hospital. He has done some security dispatch. He had the base skills to do fire, police and ambulance dispatch but would require further training (p53).

He did do supervisor work at the hospital. He had people work for him (p53).

Mr. Hostetler's job search was completed on the internet (p53). He only called jobs he found to see if they were open. He was confirming availability. He was not performing job development services for plaintiff (p54).

Again, plaintiff has been doing dispatch work at the hospital. Also, he has customer service experience because of his security position (p56-57). He does have modern communications technology because he passed MCOLES certification and/or PA330 certification and worked at the hospital (p58).

When contacting employers, Mr. Hostetler did not tell anyone that plaintiff was involved in a work-related injury (p59).

He testified the roadside assistant dispatch position did not have the job requirements however the DOT showed it to be a sedentary position (p60-61). The mobile patrol officer position could occasionally require lifting up to 25 pounds. This would make it medium however it was a solidly light-duty position (p61).

The job requirements for the driver position identified was a high school diploma, valid drivers license and the ability to drive standard or automatic transmissions. There were no physical requirements noted. Mr. Hostetler based the physical requirements on the DOT (p61-62).

He testified a majority of the positions are within the DOT standards. Again, he just verified availability when he contacted the employers (p63). In regard to the MGM position, Mr. Adams again has operated surveillance equipment at the hospital (p63).

The cashier positions would be entry level. There would be some training (p63-64).

Mr. Hostetler testified he performed a forensic evaluation. He was not there to find plaintiff a job. He did not go over the jobs with Mr. Adams (p64).

Lastly, on cross-examination, Mr. Hostetler based his opinions on his 36 years of experience and research. Those were the type of positions plaintiff would be able to perform within his physical restrictions, training, qualifications and education (p65).

On redirect examination, Mr. Hostetler testified plaintiff has not looked for work since 2014. In 2014, he applied for work in a few different places (p66).

Garfield Adams -vs- VHS Harper University Hospital

He has also not been back to Mi Works since July 2014, (p66). He felt plaintiff was qualified to perform the jobs he applied too. Mr. Adams again did not maintain records of his job searches (p66).

Mr. Adams has not been to any vocational training workshops. Mi Works puts on a number of seminars for people looking for work (p66).

Mr. Adams did not indicate whether he followed up on any jobs or with employers (p67).

Mr. Hostetler testified the cashier positions are sedentary to light and entry level (p67). Also, plaintiff has done some of the type of work required in the dispatcher positions (p68).

Finally, Mr. Hostetler felt entry level unskilled positions will not pay \$19.00 per hour (p68).

Exhibit C

This is the summary investigation of Officer Garfield Adams dated May 23, 2014. This was sent by Daniel Herman, Security Supervisor to James White, Director of Security at Harper University Hospital.

The report notes on May 22, 2014 at about 2 pm a visitor, Jamal Roy-Narcio, attempted to enter the Harper Hospital with his seven month old child to go to Wendy's restaurant. Officer Adams asked if he had a pass for the child. The visitor stated "no" and Mr. Adams directed them to the Information Desk to obtain a pass.

Mr. Narcio went to the desk and obtained a pass. He put this on the back of his child and again attempted to walk into the hospital. Plaintiff attempted to stop him and stated let me talk to you. Mr. Narcio continued to proceed in the direction of Wendy's stating, "Man, get the fuck on, I just want to spend some time in Wendy's with my family". Officer Adams insisted on talking to Mr. Narcio as he wanted to lecture him. Mr. Narcio then dropped the baby's car seat and diaper bag to the ground. Officer Adams' then took a few steps over to the Reception Desk where Paris Anderson, receptionist, was working. Plaintiff took off his radio, cell phone and put it into the desk drawer and stated, "Tell them they can have this fucking job".

Plaintiff got in the face of Mr. Narcio and Mr. Narcio pushed him. Officer Adams then grabbed Mr. Narcio by the collar of his shirt and pushed him to the wall. The employee at the Receptionist Desk called Security for assistance stating there was a fight in the lobby. Officer McLean was the first officer to enter the lobby to assist plaintiff.

The report lists written statements given by witnesses Paris Anderson, Areal Burris, Katrina Cranford and Tashona Whyte. Richard McCarty interviewed Mr. Narcio, Whitney Lemon and plaintiff.

Ms. Burris was interviewed on May 23, 2014. At the time of the incident, she was at her podium in the Webber Lobby. She heard someone shouting profanity from the hall to her left. She observed plaintiff and Narcio exchanging words. Officer Garfield asked Mr. Narcio did he have a pass. He responded as stated above and then pushed plaintiff twice.

She observed plaintiff putting something on the desk and stated they can have this job. She wasn't sure if he said, "fucking job". She observed plaintiff grabbing the car seat and telling Narcio he had to leave. He pushed him again. Plaintiff grabbed Narcio by the collar and pushed him against the wall. Another officer walked towards the lobby. She saw the three struggle to the floor and then saw Narcio walking away in handcuffs. She didn't hear plaintiff call or yell for assistance. She did not observe/note any injuries to any of the parties. This was Ms. Burris' last day with Premier Parking.

On that same day, they interviewed Ms. Anderson, who was the receptionist. Ms. Anderson was puzzled why Mr. Narcio was asking for a pass because he had one. Mr. Narcio told her Security required him to get one for the baby. She did provide him with a pass which he placed on the baby's back. Mr. Narcio did approach plaintiff and plaintiff told him that he needed to speak with him for a second. Mr. Narcio responded they had nothing to talk about. Plaintiff told him to come here and Mr. Narcio told Mr. Adams he was trying to be with his family at Wendy's. Mr. Narcio put down the car seat and diaper bag and asked, "What do you want to do?". Plaintiff then asked, "What do you mean?". He took off his badge, walkie-talkie, keys and iPhone. He placed them into the desk drawer. She heard plaintiff state "Fuck this job, you can have this fucking job!" Plaintiff then walked up to Mr. Narcio and pushed off on him. He then grabbed Mr. Narcio by the collar and pushed him into the wall. Ms. Anderson did not believe he tried to call for assistance since he had put his radio into the drawer.

The report also notes they did identify some employees from transportation based on video footage. Those employees were Kennetha O'Neil, Rhonda Chisolm and Talena Studstill. Both Rhonda and Talena were not available for interview. Ms. O'Neil was interviewed regarding the incident. She stated plaintiff yelled to call Security. She called twice and reported fighting in the lobby. She heard the visitor yell. She did not see who struck first nor did she hear plaintiff use any profanity during the altercation. She did not observe him taking off any of his equipment. She did not notice anyone injured after the altercation. She noted she got there at the end of the incident and did not know who started the altercation.

The report lastly notes there was a recommendation to terminate plaintiff since he was on final warning for an incident involving customer service standards on December 6, 2013.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff has the burden to establish a compensable workers' compensation claim by the preponderance of evidence for each element of the claim, *Aquilina v General Motors Corp*, 403 Mich 206 (1978). Those elements include proving an injury or disease arose out of and in the course of employment and the injury or disease has placed a limitation on claimant's wage earning capacity in work suitable to his or her training and qualifications, MCL 418.301(1)&(4).

MCL 418.301(1) defines a work-related injury. Under section 301(1), "An employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided

Garfield Adams -vs- VHS Harper University Hospital

in this act. A personal injury under this act is compensable if work causes, contributes to, or aggravates pathology in a manner so as to create a pathology that is medically distinguishable from any pathology that exists prior to the injury." Symptoms alone, do not establish a personal injury. There must be some change in pathology. *Fahr v GMC*, 478 Mich 922 (2007).

A major issue in this case is the credibility of plaintiff and his witness statements contained in **Exhibit 2**. I find both have serious problems.

In regard to the statements of Ms. Andrews and Ms. Tiggie, I found them not to be credible. Ms. Tiggie's statement was taken almost two years after the alleged incident in May 2014. Ms. Andrews' statement does not have a date. There was an investigation, which Ms. Andrews stated did not occur or was not going to occur. That investigation was completed and a report done one day after the incident (Defendant Exhibit C).

In that investigative report, neither Ms. Andrews nor Ms. Tiggie were identified as present on the day of the altercation. There were numerous witnesses listed and even witnesses found through video, which Ms. Andrews stated was not working.

Ms. Tiggie's statement is highly questionable since she claims she was the receptionist on duty however, the investigative report showed that it was a Ms. Anderson. It should also be noted that plaintiff stated there were only two people present at the time of the altercation, the receptionist and himself. This incident occurred at approximately 2 pm. The investigative report shows there were several other individuals.

Also, I found Ms. Andrews statement not credible because her statement is not consistent with plaintiff's testimony. She reported that he had come to her complaining about his back and she had sent him to Occupational Health. However, on the date of the altercation, he did not go to Occupational Health but to the Emergency Room at Detroit Receiving Hospital (Plaintiff's Exhibit 1). Therefore, I found her statement not credible. I have placed little weight on plaintiff's witness statements from Ms. Andrews and Ms. Tiggie. There is a serious question as to whether they were even present at the time of the incident. Also, their statements are not consistent with that of plaintiff's testimony.

I further question plaintiff's own credibility regarding the incident and the resulting injuries. What is known, is that an altercation did occur between plaintiff and a visitor on May 22, 2014. That altercation commenced with verbal confrontation between the parties. It is not clear whether plaintiff actually used profanity however, profanity was used, at least, by the visitor. There is also no dispute that the verbal altercation became a physical confrontation. The visitor may have pushed plaintiff but instead of plaintiff trying to diffuse the situation, he escalated it by grabbing the individual. This led to the tussle and plaintiff on the floor.

It is also known that shortly after the incident, Mr. Adams was terminated by the defendant. There also is no question that he either placed personal items down on the reception desk or in a drawer. Outside of that, the facts are sharply disputed. Again, I did not find Mr. Adams to be credible and therefore, he has not sustained his burden of proof as required.

Lastly, since his credibility is an issue, I question his medical presentation. The records show symptomology without objective findings. The MRI that was completed at MIND was "unremarkable". Under section 301(1), for a compensable personal injury, the plaintiff does have to show pathology. While plaintiff has complaints, he has failed to show any pathology and those complaints, cannot be substantiated by objective testing or exam. Therefore, not only is there a significant issue in regard to his credibility but even with his presentation, he could not prevail since he cannot show a change in pathology. Therefore, he has failed to meet his burden that he has sustained a personal injury as defined by statute.

CONCLUSION

Plaintiff has failed to sustain his burden of proof that he has suffered a work-related personal injury/disability. Therefore, benefits are denied.

Attached Order is incorporated herein.

WORKERS' COMPENSATION BOARD OF MAGISTRATES

KEITH CASTORA, MAGISTRATE (251G)

Signed this 19th day of October, 2018, at Detroit, Michigan