DEBRA A. RICHARDSON, Employee/Appellant, v. UNISYS CORP. and RELIANCE INS. CO., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
OCTOBER 16, 1990

Determined by Cervantes, J., Toussaint, J., and Shimon, J.
Compensation Judge: Daniel Gallagher

Reversed and remanded.

OPINION

MANUEL J. CERVANTES, Judge

Employee appeals from the findings and order of the compensation judge denying reinstatement of rehabilitation services. We conclude that the compensation judge did not apply the proper legal standards for determining employee's eligibility for rehabilitation and we therefore remand for reconsideration.

BACKGROUND

Employee sustained an admitted, work-related injury to her middle and low back on July 12, 1988. She was employed as a crater and maintenance B worker at employer's Mendota Heights plant at the time of the injury. Employee was off work on July 13, from July 20 through July 27, and from August 17 to October 3, 1988. She eventually returned to light-duty work, with restrictions, at the Mendota Heights plant. The Mendota Heights operation was closed sometime in October 1988 and employee was transferred to the Roseville plant.

Employee reinjured her back in early November. Shortly thereafter, a QRC was assigned to employee with the goal of returning employee to work for employer. An on-site job analysis was completed on December 5, 1988, and employee returned to work in a light-duty, modified crater position with lifting and carrying restrictions of five pounds or less, no climbing or overhead work, and a requirement that employee be able to change positions from standing, sitting, and walking as needed.

Employee injured her back again while lifting at work on January 6, 1989. She returned to work in late February with the same restrictions, but was off work from mid-March to mid-April for non-work-related reasons. She returned to work with a 20 pound lifting restriction in April 1989. This was increased to 35 pounds as of May 23, 1989. Employer and emloyee continued to work with the QRC through June 30, 1989 when employee was laid-off for economic reasons.

Following the lay-off, employer-insurer requested that the QRC close employee's rehabilitation file. A request for assistance was filed and on September 13, 1989, rehabilitation assistance was reinstated pursuant to an administrative decision filed September 7, 1989. Employer-insurer again terminated rehabilitation on October 30, 1989 when they filed a request for a formal hearing.

At the time of the lay-off, employee had lifting restrictions of 35 pounds occasionally and 15-20 pounds repeatedly. Her doctor increased her lifting restriction to 50 pounds on August 25, 1989 without further explanation. At no time after June 30, 1989 did employer offer employee work within her restrictions.

ANALYSIS

The compensation judge denied rehabilitation assistance finding that employee was not a qualified employee under Minn. Rule 5223.0100, subp. 4 A. A qualified employee is one who is precluded from engaging in the same work that he or she was engaged in at the time of the injury.

We first note that an employee need not be permanently precluded from engaging in her prior occupation or position to be eligible for rehabilitation. Rehabilitation assistance is available so long as an employee is precluded from returning to his or her previous work duties as a result of the work injury. At the time of the lay-off, employee was in a modified, light-duty job. There has been no finding of maximum medical improvement (MMI), and it appears that employee's condition was still improving at the time of discontinuance of rehabilitation.

Following her injury, employee was subject to restrictions which prevented her from performing the more physically strenuous work at the Mendota Heights plant. Employee testified that as part of the crater/maintenance B job, she routinely lifted cable weighing 60 to 70 pounds, put up six to seven feet-high steel racks, and manually unloaded 450 pound computers on wheels from trucks at the loading dock. The work she returned to at Mendota Heights was modified to meet her restrictions. After the Mendota Heights plant closed, she was transferred to the Roseville plant. Employee explained that everything was done manually in Mendota but that everything was mechanized in Roseville. She still was, however, in a modified, light-duty position at the Roseville plant.

The fact that employee might have been able to meet the weight lifting requirements for the regular crater position at the Roseville plant,[1] does not negate the fact that employee

[1]Although employee's lifing restriction was increased to 50 pounds as of August 25, 1990, employee had been off work for two months and there is nothing to indicate whether employee could have actually lifted that much on a regular basis at work and whether her other restrictions were still in effect.

continued to suffer residual symptoms and limitations which would have precluded her from carrying out the duties of her pre-injury job at the Mendota Heights plant. Employee's ability to perform her changed job duties at the Roseville plant does not negate her eligibility for rehabilitation benefits. See, Rissanen v. Boise Cascade Corp. (WCCA, June 28, 1989). The relevant inquiry is whether employee was able to engage in the work duties she usually and customarily performed at the Mendota Heights plant at the time of her injury.

Under Minn. Rule 5220.0100, subp. 4 B, there must also be a finding that employee "can reasonably be expected to benefit from rehabilitation services which could significantly reduce or eliminate the decrease in employment." The compensation judge made no specific finding in this respect. He indicates in his memorandum, however, that although there is some evidence that employee could benefit from rehabilitation services, unless the employee cooperated more with her QRC than she had since being laid off, she could not reasonably expect to benefit from rehabilitation services. He states that employee's QRC contacted nine agencies between June 30, 1989 and October 30, 1989 regarding employment for employee and concludes that employee did not adequately respond to the services provided during that period.

In fact, employee had no rehabilitation assistance between June 30 and September 13, 1989, as employer-insurer asked the QRC to close employee's file when she was laid off. The file was briefly re-opened following an administrative decision reinstating rehabilitation and employee worked with her QRC to develop a job placement plan which she signed on October 23, 1989. Employer and insurer never signed the plan and terminated rehabilitation once again on October 30, 1989. Marcia Nelson, employee's QRC, testified that she planned to secure a new R-33 (medical restrictions report), do vocational testing, provide job-seeking skills training, assist in a job search, and monitor employee's job search. She further testified that she had contacted nine agencies on the morning of October 30, 1989, and that she relayed those to employee but was unable to follow up because employer-insurer terminated assistance that day. The record indicates that employee did attempt a job search on her own between November 1 and December 27, 1989, the date of hearing.

We note that employer and insurer have apparently improperly terminated rehabilitation. No request was made to the commissioner or a compensation judge prior to the initial termination of rehabilitation on July 13, 1989, as required by Minn. Stat. § 176.102, subd. 8. Although it may have been an oversight on the part of the legislature, there does not appear to be any recourse for employee. Compare Minn. Stat. § 176.102, subd. 13.

We, therefore, vacate and set aside the decision of the compensation judge, and remand for reconsideraton of employee's eligibility for rehabilitation assistance in accordance with this decision.

CONCURRING OPINION

KAREN C. SHIMON, Judge

I concur in the result reached by the majority. A remand is essential in order that the Compensation Judge make findings supporting the "requisite necessity for retraining", or lack thereof. Krause v. ITT Continental Baking Co., 436 N.W.2d 769, 41 W.C.D. 705, 706 (Minn. 1989).