

JOAN M. STANOCH ANDERSON, Employee/Appellant, v. STATE OF MN., SEVENTH JUDICIAL DIST., SELF-INSURED, Employer.

WORKERS' COMPENSATION COURT OF APPEALS
MAY 13, 1998

HEADNOTES

CAUSATION - SUBSTANTIAL CONTRIBUTING CAUSE. Substantial evidence, including the opinion of the employer's independent examiner, supported the compensation judge's decision that the employee did not sustain a cervical injury as a result of her work activities.

PERMANENT PARTIAL DISABILITY - SUBSTANTIAL EVIDENCE. Substantial evidence, including the opinion of the employer's independent examiner and the results of several diagnostic tests, supported the compensation judge's conclusion that the employee's work-related carpal tunnel syndrome did not meet the requirements for a 3% rating under Minn. R. 5223.0130, subp. 3F (1993).

Affirmed.

Determined by Wilson, J., Wheeler, C.J., and Hefte, J.
Compensation Judge: William R. Johnson.

OPINION

DEBRA A. WILSON, Judge

The employee appeals from the compensation judge's decision that the employee did not sustain a work-related cervical injury and from the judge's denial of permanent partial disability benefits for her cervical condition and bilateral carpal tunnel syndrome.¹ We affirm.

BACKGROUND

The employee began working as a court reporter for the State of Minnesota, Seventh Judicial District [the employer], in 1986. Her job duties included making a stenographic record of court proceedings, preparing transcripts, and performing some secretarial tasks. Sometime in 1992, the employee began experiencing pain and other symptoms in both hands and wrists, and by the spring of 1993 she had been diagnosed as having bilateral carpal tunnel

¹ The employee also appealed from the judge's denial of her claim for thoracic outlet syndrome. However, as the employee did not address this issue in her brief, the issue is deemed waived. Minn. R. 9800.0900, subp. 1.

syndrome. The employee underwent carpal tunnel release surgery on her right hand in December of 1993 and on her left hand in January of 1994. The self-insured employer admitted liability for the employee's hand and wrist condition and paid the employee various benefits, including benefits for a 0.5% whole body impairment relative to each hand.

The employee was pregnant at the time of her carpal tunnel surgeries and remained off work, on maternity leave, until June of 1994, when she returned to her usual job. After she complained of additional hand and wrist symptoms, both her job duties and her work hours were modified. Despite this modification, however, the employee continued to complain of hand and wrist symptoms and also cervical symptoms, which had apparently first developed in early 1993. Physicians who treated or evaluated the employee for either hand and wrist symptoms or cervical symptoms include Drs. James Romanowsky, Robert Shapiro, Thomas Balfanz, H. L. Saylor, Paul Schultz, Richard Berger, Edward McElfresh, Paul Hjort, Robert Wengler, Craig Hyser, and Chris Tountas. Diagnostic tests have included a March 1993 cervical MRI scan, which disclosed an osteophyte at C6-7, and numerous EMGs.

When the matter first came on for hearing before a compensation judge in November of 1995, the primary issue was whether the employer was entitled to discontinue temporary partial disability benefits. The compensation judge concluded that the employee continued to experience symptoms as a result of her carpal tunnel condition, that her treating doctor's six-hour-a-day restriction on work hours was reasonable, and that the employer therefore was not entitled to discontinue benefits. Neither party appealed from that decision.

In January of 1996, the employee filed a claim petition alleging entitlement to benefits for a 7% whole body impairment due to her cervical condition and for a 3% impairment, for each hand, due to her carpal tunnel condition. This claim and a related medical request were consolidated for hearing, which was held on October 31, 1997. By this time, the employee was also claiming that she had developed thoracic outlet syndrome as a result of her work activities. Evidence submitted at hearing included medical records and reports and the deposition testimony of Dr. Hyser, the employer's independent examiner.

In a decision issued on November 14, 1997, the compensation judge concluded that the employee had not sustained a cervical or thoracic outlet syndrome injury as a result of her work activities and that she was not entitled to additional benefits for permanent partial disability relative to her carpal tunnel syndrome. The employee appeals.

STANDARD OF REVIEW

In reviewing cases on appeal, the Workers' Compensation Court of Appeals must determine whether the findings of fact and order [are] clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted. Minn. Stat. § 176.421, subd. 1 (1992). Substantial evidence supports the findings if, in the context of the entire record, they are supported by evidence that a reasonable mind might accept as adequate. Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts

or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, [f]actfindings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). Findings of fact should not be disturbed, even though the reviewing court might disagree with them, unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole. Id.

DECISION

Cervical Injury

The compensation judge concluded that the employee had not proven by a preponderance of the evidence that she had sustained a work-related cervical injury as claimed. On appeal, the employee points to reports and records by Drs. McElfresh, Balfanz, Hjort, and Wengler that indicate that the employee has a cervical condition caused or aggravated by her work. Noting also that her cervical MRI disclosed a degenerative change at C6-7 and that her records contain some notations of spasm and/or loss of range of motion, the employee maintains that the compensation judge erred in denying her claim for a 7% impairment pursuant to Minn. R. 5223.0070, subp. 2A(3)(a) (1993). We acknowledge that the evidence cited by the employee might be sufficient, if accepted by a trier of fact, to support both the requisite finding of causation and the requested 7% rating, and we note that the compensation judge offered little explanation for his denial of the employee's cervical injury claim. However, it appears that the judge based his decision at least in part on the opinion of Dr. Hyser, who concluded that the employee had no objective abnormality in her neck, no objective evidence of cervical injury, and no work-related cervical disability.

The employee contends that Dr. Hyser's opinion should be disregarded on foundation grounds because the doctor was unaware of the employee's specific job duties and lacked access to all of the employee's prior medical records. It seems to us, however, that Dr. Hyser's purported lack of knowledge about the employee's job has little or no bearing on the validity of the doctor's opinion that there is no objective evidence of any injury to the employee's neck. As for the employee's other challenge, we are satisfied that Dr. Hyser had adequate information, including information as to past treatment, to render a competent opinion on the issue.

Because the record as a whole and the opinion of Dr. Hyser in particular supports the compensation judge's denial of the employee's claim of a work-related cervical injury, we affirm the judge's decision on that issue and his resulting denial of permanent partial disability benefits for a 7% whole body impairment.

Permanent Partial Disability - Carpal Tunnel Syndrome

The employer voluntarily paid the employee benefits for a 0.5% whole body impairment, for each hand, pursuant to Minn. R. 5223.0130, subp. 3E (1993), which is applicable simply to carpal tunnel release. At hearing, the employee claimed additional benefits under Minn. R. 5223.0130, subp. 3F, which provides a 3% rating for [c]arpal tunnel release with moderate parathesias (emphasis added). On appeal, the employee contends that the compensation judge erred in denying this claim, and we again acknowledge that there is evidence that would support a 3% rating under the rule in question, including numerous notations in the medical records of tingling and parathesias in one or both of the employee's hands. We also note that both Dr. Schultz and Dr. Wengler have indicated that the employee's condition warrants the requested rating. However, there is also evidence to support the result reached by the compensation judge. Specifically, the employee's latest EMGs have been normal, Dr. Berger indicated that the employee's symptoms have an atypical distribution and uncertain etiology, and Dr. Hyser indicated that the employee's reported continuing hand symptoms do not correspond neurologically to carpal tunnel syndrome or in fact to anything, further indicating that there were no objective abnormalities on examination. Contrary to the employee's suggestion, the fact that Dr. Hyser could or would not pin down the cause of the employee's reported symptoms does not compel rejection of his opinion that those symptoms are unrelated to the employee's carpal tunnel work injury.

A finding of permanent partial disability is one of ultimate fact. See, e.g., Jacobowitch v. Bell & Howell, 404 N.W.2d 270, 39 W.C.D. 771 (Minn. 1987). Because the evidence of record reasonably supports the compensation judge's conclusion that the employee's work-related carpal tunnel condition does not merit a 3% rating under the applicable permanent partial disability rules, we must affirm the judge's denial of additional permanent partial disability benefits.