

JANICE E. BAKER, Employee/Appellant, v. DEB SHOPS, INC., and LIBERTY MUT. INS. CO.,  
Employer-Insurer and POLINSKY MEDICAL REHABILITATION CTR.

WORKERS' COMPENSATION COURT OF APPEALS  
FEBRUARY 19, 1998

HEADNOTES

**MEDICAL TREATMENT & EXPENSE--CHIROPRACTIC TREATMENT.** Substantial evidence supports the compensation judge's finding that the employee's chiropractic treatment from May 9, 1995, through January 15, 1997, was not reasonable and necessary.

**CAUSATION.** Substantial evidence supports the compensation judge's finding that the employee's neck and thoracic spine problems were not causally related to the employee's work injury.

Affirmed.

Determined by Hefte, J., Johnson, J. and Wheeler, C.J.  
Compensation Judge: Catherine A. Dallner

OPINION

RICHARD C. HEFTE, Judge

The employee appeals the compensation judge's findings that the employee's chiropractic treatment from May 9, 1995, through January 15, 1997, was not reasonable and necessary and that the employee's work-related low back injury was not a substantial contributing cause of the employee's neck and thoracic spine problems.<sup>1</sup> We affirm.

BACKGROUND

On June 1, 1993, Janice Baker (employee) sustained an admitted low back injury while working as a retail clothing clerk for Deb Shops (employer), which was insured for workers' compensation liability by Liberty Mutual Insurance Company (insurer). Initially, the employee's treating physician was Dr. Stephen Lutz. The employee underwent several courses of physical therapy following her injury. From June 11, 1993, through September 15, 1993 the employee underwent physical therapy followed by a work-conditioning program at Superior Memorial Hospital. (Employee's Exh. B.) From November 30, 1993 through December 20, 1993, the

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<sup>1</sup> In the notice of appeal, the employee also appealed the compensation judge's finding regarding the extent of the employee's permanent partial disability. In her brief, the employee withdrew this portion of the appeal. Therefore, we will not address that issue.

employee underwent pelvic stabilization exercises and other therapy at the Center for Muscle and Joint Therapy to treat extreme right sacroiliac type pain. (Employee's Exh. F.) From January 1994 through May 1994, the employee underwent physical therapy with Dr. Daniel Wallerstein, an osteopath at Northland Rehabilitation. Dr. Wallerstein instructed the employee in home exercises and recommended a strengthening program. (Employee's Exh. E.) On March 30, 1994, the employee underwent an independent medical examination with Dr. Richard Galbraith, who opined that the employee had a normal neurologic examination, with no objective neurologic findings on examination to account for her continued symptoms. (Employer and insurer's Exh. 1.) On April 6, 1994, the employee was evaluated by Dr. Duane Person, who diagnosed chronic musculoligamentous strain with multi-level degenerative disc disease of the lumbar spine. (Employee's Exh. C.)

On June 20, 1994, the employee began treating on her own with Dr. John Downs at the Duluth Clinic. (Employee's Exh. G, Deposition of Dr. John Downs dated February 7, 1995.) Dr. Downs assessed right SI dysfunction consistent with a right anterior sacral torsion, L5 lumbar segmental dysfunction and multifidus spasm which could be responsible for referred pain pattern. Dr. Downs recommended several options for the employee. His first choice was a referral to Mr. Mark Bookhout at PTOSI in the Twin Cities for evaluation and treatment twice a day for one week, to be followed up with physical therapy in Duluth. Another possibility was a trial of chiropractic care, for which Dr. Downs recommended Dr. Robert Torgrimson. Dr. Downs also suggested that the employee might benefit from right sacroiliac joint injection. While waiting for approval of his referral to Mr. Bookhout, Dr. Downs treated the employee with sacroiliac injections. The employee reported some improvement after the injections.

The parties then litigated the employee's entitlement to temporary total disability and temporary partial disability, the employee's change of physicians to Dr. Downs and associated medical expenses, approval of Dr. Downs' referral to physical therapist Mark Bookhout, and also whether the employee had reached MMI, and the extent of any permanent partial disability. In a Findings and Order served and filed June 19, 1995, Compensation Judge Gregory Bonovetz denied temporary total disability benefits, awarded temporary partial disability benefits, and approved the employee's change of physicians to Dr. Downs and his referral to Mark Bookhout. He also found that findings of MMI and permanent partial disability would be premature. This decision was not appealed.

The employee did not follow up on the approved referral to Mr. Bookhout. Instead, in May 1995 she began treating with chiropractor Dr. Torgrimson as referred by Dr. Downs. Also, in July 1995, Dr. Downs referred the employee to the Polinsky Medical Rehabilitation Center for a work-hardening program and pelvic stabilization. (Employee's Exh. I.) Dr. Torgrimson initially treated the employee several times a week. The employee was gradually able to reduce the frequency of her visits, but she continued to receive treatments once to several times per month through June 1996. The employee then did not treat with Dr. Torgrimson through November 1996. In December 1996, the employee returned to Dr. Torgrimson. (Employee's Exh. J.) The employee was seeing Dr. Torgrimson on a "will call" basis at the time of the hearing. (T. 35.) Dr. Torgrimson treated the employee's neck and mid-

back as well as her low back. The employee reported improvement with treatment and improved ability to function. (T. 39-41.) In a March 17, 1997 report, Dr. Torgrimson opined that the employee would "need periodic supportive care for her chronic permanent instability." (Employee's Exh. J.)

On March 11, 1996, the employee filed a medical request for payment of chiropractic treatments from Dr. Torgrimson and for payment of treatment at the Polinsky Medical Rehabilitation Center. The employer and insurer objected, claiming that the chiropractic treatment was not reasonable and necessary and had not been approved in the earlier Findings and Order.<sup>2</sup> The employee also claimed entitlement to 10.5% permanent partial disability for her low back condition. A hearing was held on March 27, 1997. The parties stipulated that the employee reached MMI on April 3, 1996. The compensation judge held that the claimed chiropractic treatment was not reasonable and necessary, that the treatment at the Polinsky Center was reasonable and necessary, and awarded 3.5% permanent partial disability benefits. This appeal followed.

## 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 (1996). 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

### Chiropractic Treatment

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<sup>2</sup> The employer and insurer also argued in their objection that the claimed treatment was beyond the permanent treatment parameters. This argument was not made at the hearing and was not addressed by the parties or the compensation judge. Therefore, we will not consider the effect of the permanent treatment parameters in this case.

The compensation judge found that the employee's chiropractic treatments with Dr. Torgrimson from May 9, 1995, through January 15, 1997, were not reasonable and necessary. Considerations which may be relevant in determining whether chiropractic services are reasonably required include: evidence of a reasonable treatment plan, documentation of the details of the treatment, the degree and duration of relief resulting from the treatment, whether the frequency of treatment is warranted, the relationship of the treatment to the goal of returning the employee to suitable employment, potential aggravation of underlying conditions, duration of treatment, and cost. Field-Seifert v. Goodhue County, File No. [redacted to remove social security number] (W.C.C.A. Mar. 5, 1990). Other relevant factors include: the employee's testimony concerning the relief obtained; the possibility that other conditions not discovered by the chiropractor may be causing the employee's symptoms; whether treatment is scheduled on a regular or an as needed basis; the use of other health care providers in the event of continuing symptoms; the employee's overall activities and the extent of the employee's ability to work; and the employee's dependence on the treatment. Horst v. Perkins Restaurant, 45 W.C.D. 9, 10-11 (W.C.C.A. 1991), summarily aff'd (Minn. July 10, 1991).

The employee argues that Dr. Torgrimson had met several of the relevant factors in his reports by setting forth a treatment plan discussing the frequency of treatment, how it was arranged, the interrelationship with other treatment, the type of care and why it was chosen, and home exercises. The compensation judge, however, considered other factors. "The appropriate factors will vary from case to case, depending upon the unique circumstances of each situation." Fuller v. Naegele/Shivers Trading, File No. [redacted to remove social security number], slip op. at 4 (W.C.C.A. Apr. 14, 1993). The compensation judge noted that the employee had undergone several different courses of physical therapy in the years following her work injury. While the employee had testified that her condition had improved, she also testified that she believes that she needs continued treatments on a regular basis. (T. 44.) In addition, Dr. Torgrimson stated in November 1995:

I am of the belief [the employee] will have continued ongoing soft tissue complaints to a varied degree. Much of this will depend on the deconditioned state she has been in and her willingness to continue with strengthening exercises. I believe Ms. Baker will suffer from residuals in this case, relating to the chronic soft tissue involvement.

(Employee's Exh. J.) In a March 17, 1997 report, Dr. Torgrimson opined that the employee would "need periodic supportive care for her chronic permanent instability." (Id.)

The compensation judge also noted that the employee had not followed through on Dr. Downs' referral to physical therapist Mark Bookhout, which had been requested by the employee, strongly recommended by Dr. Downs, and approved by Compensation Judge Bonovetz in the 1995 Findings and Order. The employee argues that her decision not to seek treatment with Mr. Bookhout is not directly related to the issue of the reasonableness and necessity of her chiropractic treatment with Dr. Torgrimson and that she had a reasonable explanation for not

following through on that referral. The employee testified that she could not afford to stay in the Twin Cities and that there was no one to take care of her children while she was gone. (T. 30.) The compensation judge found that this explanation was not credible or convincing. Assessment of the credibility of a witness is the unique function of the trier of fact. Brennan v. Joseph G. Brennan, M.D., P.A., 425 N.W.2d 837, 839-40, 41 W.C.D. 79, 82 (Minn. 1988). A finding based on credibility of a witness will not be disturbed on appeal unless there is clear evidence to the contrary. See Even v. Kraft, Inc., 445 N.W.2d 831, 835, 42 W.C.D. 220, 225-26 (Minn. 1989). The compensation judge chose not to accept the employee's explanation, and we have no basis to reject her conclusion. Further, the compensation judge could reasonably consider the employee's decision not to seek treatment with Mr. Bookhout as part of her analysis of whether the employee's treatment with Dr. Torgrimson was reasonable and necessary. Substantial evidence supports the compensation judge's finding that the claimed chiropractic treatment was not reasonable and necessary. Therefore, we affirm.

### Causation

The employee claims that her work injury is a substantial contributing factor to her neck and thoracic spine problems, arguing that these problems involve associated pain or referred pain from the low back injury. The employee must establish that the work-related injury is a substantial contributing factor to the claimed disability. Swanson v. Medtronics, Inc., 443 N.W.2d 534, 536, 42 W.C.D. 91, 94-95 (Minn. 1989). Questions of medical causation fall within the province of the compensation.