

NADINE BAUER, Employee, v. IMPERIAL CUSTOM MOLDING and AMERICAN COMPENSATION INS./RTW, Employer-Insurer, and GORECKI MFG., INC. and STATE FUND MUT. INS., Employer-Insurer/Appellants, and MN DEP'T OF ECONOMIC SEC., MEDICA/HEALTHCARE RECOVERIES, INC. and NORAN NEUROLOGICAL CLINIC, Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
AUGUST 4, 1998

HEADNOTES

COSTS AND DISBURSEMENTS. An award of costs and disbursements to be reimbursed equally by two insurers reversed as the employee prevailed only against one employer and did not prevail on any issue against the other employer; the employer and insurer against whom the employee prevailed is ordered to reimburse the employee's costs and disbursements.

Reversed and modified.

Determined by Hefte, J., Johnson, J., and Wheeler, C.J.
Compensation Judge: Ronald E. Erickson

OPINION

RICHARD C. HEFTE, Judge

Gorecki Manufacturing, Inc., employer, and State Fund Mutual Insurance Company, insurer, appeal from the compensation judge's award of costs and disbursements. We reverse.

BACKGROUND

The relevant facts in this matter are not in dispute. Initially, the employee filed a claim petition on January 24, 1996, alleging two work injuries: a specific injury on December 20, 1992, and a Gillette-type injury culminating as of January 24, 1994, against the employer Imperial Custom Molding (ICM) and its insurer, RTW, Inc. Later on September 5, 1996, the employee filed an amended claim petition alleging five work injury dates with three additional employers: Gorecki Manufacturing, Inc., Grand Casino's, Inc. and Cell Agriculture Manufacturing. Grand Casino was eventually dismissed from the case and Cell Agriculture Manufacturing settled their part of the case. Employer Gorecki Manufacturing (Gorecki) and its insurer remained as parties in the case with ICM and its insurer. The employee alleged she sustained a work injury on May 29, 1996, while in the employ of Gorecki. The employee claimed she sustained a right carpal tunnel syndrome or right DeQuervian stenosis tenosynovitis and a cubital tunnel problem as a result of her work injuries at both employers.

This matter came on for hearing before the compensation judge on August 19 and October 8, 1997. The main issues were the liability of the employer ICM or of the employer Gorecki, or of both employers, for the employee's alleged work injuries and wage loss benefits from the various dates of injury claimed by the employee.¹ Both employers and insurers denied liability.

In his Findings and Order, the compensation judge found for the employee on one issue of primary liability against ICM only. The compensation judge found that,

The employee has established by a preponderance of the evidence that the [employee's] right carpal tunnel syndrome and the right wrist first dorsal compartment release performed by Dr. Diekmann on November 2, 1995, was causally related to her employment activity with Imperial Custom Molding [ICM]. The employee's work activities with Gorecki Manufacturing, Inc. have not been shown to be a significant contributing cause of the employee's right carpal tunnel syndrome or right De Quervian's stenosing tenosynovitis and the resulting surgery on November 2, 1995.

(Finding 24.) The compensation judge ordered that the employee be awarded certain temporary total and temporary partial disability benefits against ICM and denied any liability or wage loss claims of the employee against Gorecki.

As to the employee's cubital tunnel problem and resulting surgery in December of 1996, the compensation judge found:

In mid December 1996, the employee underwent surgery performed by Dr. Diekmann in the nature of a right ulnar nerve transposition. This was for cure and relief of what Dr. Diekmann previously diagnosed as a cubital tunnel problem. Dr. Diekmann was not able to relate the employee's work activity at Gorecki Manufacturing, Inc., to her cubital tunnel problem and the resulting surgery. Likewise, Dr. Diekmann was unable to relate the employee's cubital tunnel problem and the resulting surgery to her work activity at Imperial Custom Molding. The employee has failed to establish by a preponderance of the evidence that the employee sustained an

¹ The employee injured her left arm on August 28, 1996, while working for Gorecki. Gorecki and its insurer admitted notice and liability for this injury and have paid temporary total and temporary partial disability from and after September 9, 1996, to the date of the hearing. There is no issue in this case from this admitted injury.

injury to her right upper extremity while employed at Gorecki Manufacturing, Inc., on May 29, 1996, or on August 28, 1996.

(Finding 34.)

The compensation judge concluded, in Order No. 12, that, IT IS FURTHER ORDERED that the employee is awarded reimbursement costs and disbursements. The reimbursement is to be paid equally by the two insurers. The employer Gorecki and its insurer appeal Order No. 12 of the compensation judge's Findings and Order.

STANDARD OF REVIEW

"[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers' Compensation Court of Appeals] may consider de novo." Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A.) 1993).

DECISION

Minn. Stat. § 176.511, subd. 2 provides as follows: The commissioner or compensation judge, or on appeal to Workers' Compensation Court of Appeals, may award the prevailing party reimbursement for actual and necessary disbursements. A hearing before a compensation judge was held on August 19, 1997, and October 8, 1997, wherein the employee claimed wage loss benefits from both employers, ICM and Gorecki, as a result of her work-related injuries.

The issues at the hearing were: (1) whether the employee established by a preponderance of the evidence that the employee's right carpal tunnel syndrome and right De Quervian stenosing tenosynovitis, and her right wrist first dorsal compartment release surgery of November 2, 1995, were causally related to her employment activities or injury while employed at ICM, or causally related to her work activities or injury while employed at Gorecki, or causally related to her work activities at both employers; (2) whether the employee's cubital tunnel problem and resultant surgery of December 1996 were causally related to the employee's work activities or injury at ICM or at Gorecki, or causally related to both; (3) if primary liability is established, whether the employee is entitled to temporary total disability or temporary partial disability benefits for certain periods of time as claimed by the employee.

In his Findings and Order, the compensation judge found that the employee established a causal relationship between her employment activities with ICM and the employee's right carpal tunnel syndrome and her right wrist first dorsal compartment release surgery. (Finding 24.) The compensation judge went on in Finding 24 to find the employee's work activities with Gorecki Manufacturing, Inc. have not been shown to be a significant contributing cause to the employee's right carpal tunnel syndrome and its resulting surgery of November 2,

1995. Neither ICM or Gorecki were found liable for workers' compensation benefits as a result of the employee's cubital tunnel problem and surgery of December 1996.

As primary liability was found by the compensation judge in favor of the employee and against the employer ICM, the compensation judge awarded the employee certain temporary total and certain temporary partial disability benefits to the employee to be paid by ICM only. Therefore, the employee prevailed against the employer ICM only on one of the two primary liability issues and partially prevailed as to a portion of her claimed wage loss benefits against ICM. The compensation judge found that the employee did not prevail on any primary liability issues against employer Gorecki and therefore Gorecki was not liable for any temporary wage benefits.

With this factual basis, the compensation judge ordered that the employee is awarded reimbursement costs and disbursements. The reimbursement is to be paid equally by the two insurers. (Order 12.) ICM claims that under the totality of the circumstances of this case, where the employee only prevailed on a small portion of her claims, the compensation judge reasonably ordered that the employee's costs and disbursements be paid equally by the two insurers. The employee argues that both insurers should be responsible equally for the costs, as under Minn. Stat. § 176.511 the compensation judge may award the prevailing party reimbursement for her costs and disbursements against both employers and insurers, as [i]n splitting the costs between the two insurers an analogy is drawn from Sec. 176.191: a dispute between two employers as to liability. We disagree.

The compensation judge does not give any reason, either in his findings or memorandum, as to why the two insurers under the undisputed facts of this case were ordered to equally share reimbursement of the employee's costs under Minn. Stat. '176.511, subd. 2. Regardless of the fact that the employee may have prevailed only in a small portion of her claims against employer ICM, it does not follow that employer Gorecki should be responsible for and share equally in the employee's costs and disbursements. The employee was not a prevailing party on any of her claims against employer Gorecki. No primary liability was established against Gorecki. Gorecki was not found to be liable for any claimed workers' compensation wage loss benefits of the employee. And, under the fact situation in this case, there is no dispute between two employers regarding liability analogous to Minn. Stat. § 176.191. This statute would not be applicable in the present case. Liability was not admitted by either of the two employers. Gorecki denied all the employee's claims. ICM, although it originally admitted liability and paid some compensation benefits after the employee was initially injured in 1992, denied liability claiming the 1992 injury at ICM was a temporary injury only, or because the employee's claims were not causally related to any work injury at ICM. The compensation judge erred in awarding reimbursement of the employee's costs and disbursements to be paid equally by the two insurers. Under the facts of this case and Minn. Stat. § 176.511, subd. 2, the employer Gorecki and its insurer are not liable for any reimbursement of the employee's actual and necessary disbursements..

We reverse Order 12 of the compensation judge awarding the reimbursement of costs and disbursements to be paid equally by the two insurers. Order 12 is modified to state that

the employee's costs and disbursements are to be paid solely by the employer ICM and its insurer RTW.