DAVID BECKER, Employee/Cross-Appellant, v. LUND BOAT CO. and NATIONAL UNION FIRE INS. CO., Employer-Insurer/Cross-Appellant, and LUND BOAT CO. and SELF-INSURED/GALLAGHER BASSET SERV., INC., Employer-Insurer/Appellants.

WORKERS' COMPENSATION COURT OF APPEALS
JANUARY 22, 1998

HEADNOTES

ATTORNEY FEES - RORAFF FEES. Roraff fees are appropriate where medical expenses are the only benefits at issue and the employee would not have been able to retain counsel without the possibility of an award of Roraff fees. It is immaterial whether the defense to a medical claim is reasonableness and necessity or primary liability.

ATTORNEY FEES - RORAFF FEES. Fee award affirmed where compensation judge articulated valid factual reasons for the award based on the appropriate statutory criteria.

Affirmed.

Determined by Johnson, J., Wilson, J., and Olsen, J.
Compensation Judge: Rolf G. Hagen

OPINION

THOMAS L. JOHNSON, Judge

The self-insured employer and National Union Fire Insurance Company appeal the compensation judge's order awarding the employee's attorney the sum of $18,416.00 in attorney's fees for representation of the employee in his claim for medical benefits pursuant to Minn. Stat. § 176.135 and Roraff v. State of Minnesota, 288 N.W.2d 15, 32 W.C.D. 297 (Minn. 1980). We affirm.

BACKGROUND[1]

The employee, David Becker, sustained a back injury on May 19, 1989, while working for Lund Boat Company, then insured by National Union Fire Insurance Company (Lund/National Union). The employee sustained a herniated disc at L4-5 and underwent an hemilaminectomy at L4-5 and L5-S1 on December 5, 1989. In approximately February 1990, the

[1] This case was previously before this court. See Becker v. Lund Boat Company, et al., File No. *[redacted to remove the social security number]* (W.C.C.A. Oct. 2, 1996). Much of this factual background is taken from that decision.

employee returned to work in a light-duty capacity and returned to regular duty employment a few months later. Lund/National Union accepted liability and paid medical and wage loss benefits for the 1989 injury. In February 1994, the employee sustained a temporary aggravation of his back condition and again sought treatment from Dr. Mathison on one occasion. Lund Boat Company, self-insured for workers' compensation in February 1994 (Lund/Self-Insured), accepted liability for the temporary aggravation.

The employee's job duties at Lund changed in July 1994, when he moved from a labor position in the finishing department to a foreman's position in the assembly area. The employee contended this job was harder than his former job. Within a short time of the job change, the employee stated he began to have more trouble with his back, including pain into his left leg. The employee was terminated by Lund in November 1994.

On December 21, 1994, the employee returned to see Dr. Mathison, complaining of problems with his low back and left leg for the past three months. Dr. Mathison diagnosed bursitis or tendinitis of the left hip and treated the employee with medication and a steroid injection. The employee failed to improve with conservative treatment. By March he developed pain into his right leg. Dr. Mathison referred the employee for an MRI which revealed postoperative changes and a possible recurrent disc at L4-5.

On June 12, 1995, the employee filed a Medical Request, seeking payment of medical expenses for his treatment with Dr. Mathison, physical therapy, the costs of the MRI, and medical mileage. The request sought payment of these expenses from Lund/National Union, on the basis of the 1989 injury. Lund/National Union refused to pay the claimed expenses, alleging that the employee's need for treatment in 1994/95 was related to his most recent aggravation rather than to the 1989 injury. Lund/Self-Insured also denied payment of the claimed medical expenses, stating that the employee's condition in 1994/95 was attributable solely to the 1989 injury, when National Union was on the risk. (Judgment Roll.)[2] After a settlement conference, the settlement judge ordered Lund/National Union to pay the contested medical expenses. (Judgment Roll, Order served and filed October 6, 1995.)

Lund/National Union filed a request for formal hearing, alleging that there was insufficient medical evidence of a causal relationship between the contested treatment and the 1989 injury. They also claimed that the employee sustained an alleged exacerbation involving the left leg in late 1994 and experienced symptoms and treatment after beginning work for Homecrest Industries in March 1995. Lund/National Union therefore requested an opportunity to join

[2] It is unclear from the record precisely when and how Lund/Self-Insured and its administrator, Gallagher Bassett, became involved in this matter. Although they were never formally joined as parties to the action, their attorney stated at oral argument before this court on March 20, 1996, that they agreed to an informal joinder and were present at the 1995 medical conference. The parties acknowledge that at some point they agreed to litigate the claimed August 1994 injury. See transcript of hearing before Judge Otto, 2/16/96 at 3.

additional parties prior to the formal hearing. The employee also requested a formal hearing, claiming that the judge's findings were incomplete regarding the relationship between the employee's left leg pain and all of his employment at Lund, not just the period when National Union was on the risk. Homecrest and its insurer, Northbrook Indemnity Insurance Company, were ultimately joined as parties to the action. (Judgment Roll, Order for Joinder served and filed December 15, 1995.)

The matter came on for hearing before a compensation judge of the Office of Administrative Hearings on February 16, 1996. In Findings and Order served and filed on March 1, 1996, and Restated Findings and Order served and filed on March 20, 1996, the compensation judge determined (1) that the employee had failed to give notice of an injury sustained in August 1994; (2) that the employee's employment at Homecrest did not contribute to his need for treatment with Dr. Mathison in March 1995, or to any disability or need for treatment after March 1995; (3) that 50% of the employee's condition is attributable to the 1989 injury and Lund/National Union is therefore responsible for 50% of the claimed medical expenses, plus attorney fees; and (4) that no compensation shall be allowed for injuries sustained in August 1994 or March 1995 because the employee failed to provide notice of those injuries. The employee appealed the determination that he failed to provide notice of an injury sustained in 1994. Lund/Self-Insured contested the implication that the employee sustained a Gillette injury in August 1994. Lund/National Union cross-appealed the finding that the employee did not sustain a Gillette injury in March 1995, and also sought clarification of the finding regarding the alleged August 1994 injury.

In a decision served and filed October 2, 1996, this court affirmed the compensation judge's conclusion that the employee's work at Homecrest did not aggravate or accelerate his condition, cause any additional injury, disability or need for treatment, or result in a Gillette-type injury.[3] The court also vacated the compensation judge's finding that the employee failed to give proper legal notice to the self-insured employer of an injury in August 1994, and remanded the case to the compensation judge for further findings regarding: whether the employee's work activities for the self-insured employer substantially contributed to his disability, and if so, the date on which the injury culminated. The remanded case came on for hearing before Rolf G. Hagen on March 5, 1997. In Findings and Order on Remand served and filed April 25, 1997, the compensation judge found the employee sustained a Gillette-type personal injury culminating in disability on or about December 21, 1994. The compensation judge then ordered Lund/National Union and Lund/Self-Insured to each pay 50% of the outstanding medical expenses of the employee from and after December 21, 1994. The compensation judge further ordered the employee's attorney to file a Statement of Attorney's Fees. There was no appeal from the Findings and Order on Remand of Judge Hagen.

[3] On January 28, 1997, Judge Otto issued an Order dismissing Homecrest Industries and Northbrook, with prejudice.

Michael Rengel, Esquire, the employee's attorney, filed a Statement of Attorney's Fees on or about May 2, 1997. Objections were filed by Lund/National Union and Lund/Self-Insured. The matter came on for hearing before Judge Hagen on June 30, 1997. In Findings and Order served and filed July 17, 1997, the compensation judge awarded attorney's fees of $18,416.00 pursuant to Minn. Stat. § 176.135 and Roraff (hereinafter Roraff fees) and ordered each insurer to pay 50%. Lund/National Union and Lund/Self-Insured both appeal.

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

The appellants first argue that Roraff fees are not appropriate because the sole issue was primary liability and the reasonableness and the necessity of the medical expenses claimed by the employee were not in dispute. In support of their contention, the appellants cite Elliot v. Rosemount, Inc., File No. *[redacted to remove the social security number]* (W.C.C.A. April 24, 1995) and Helquist v. Kentucky Fried Chicken, File No. *[redacted to remove the social security number]* (W.C.C.A. October 19, 1993).

Medical expenses were the only benefits at issue in this case. Without the possibility of an award of Roraff fees, the employee would not have been able to obtain the assistance of counsel. That is a guiding principle in these cases. Peterson v. Everything Clean, Inc., 55 W.C.D. 126 (W.C.C.A. 1996). Accordingly, whether the defense to a medical claim is reasonableness and necessity or primary liability is immaterial to the issue of whether Roraff fees are appropriate. See Coffey v. Carlton College, File No. *[redacted to remove the social security number]* (W.C.C.A. May 6, 1997). We therefore affirm the compensation judge's conclusion that the employee's attorney was entitled to Roraff fees.

The appellants next argue that the amount of attorney's fees awarded was excessive and not based on substantial evidence of record. In this regard the appellants raise a number of

objections to the award of Roraff fees. They assert the hourly rate was excessive given counsel's expertise and experience in workers' compensation matters, the time expended was excessive given the lack of complexity of the claim, excessive time was spent on legal research and there was a duplication of effort between the employee's attorney Michael Rengel and Rachael Dymoke. We are not persuaded.

Reasonable attorney fees may be awarded to a successful claimant in a proceeding to recover medical expenses. Roraff v. State of Minnesota, 288 N.W.2d 15, 32 W.C.D. 297 (Minn. 1980). Factors to be considered in determining a reasonable fee in this case are listed in Minn. Stat. § 176.081, subd. 5(d) (1994), and include the amount involved, the time and expense necessary to prepare for trial, the responsibility and expertise of counsel, the difficulty of the issues, the nature of the proof needed, and the results obtained. The compensation judge made findings as to each of these factors and concluded that a reasonable fee was $18,416.00.

Mr. Rengel testified he has handled workers' compensation cases for the last 11 years and handled at least 100 cases and perhaps as many as 300. Based on this testimony, the compensation judge concluded an hourly rate of $140.00 was appropriate. Ms. Dymoke is a registered nurse and an attorney. The hearing before Judge Otto on February 16, 1996, was Ms. Dymoke's first case. The compensation judge reduced the claimed hourly fee of $125.00 to $100.00 per hour based upon her limited experience in workers' compensation cases. We cannot conclude these hourly rates are unreasonable. Accordingly, the findings are affirmed.

Finally, the appellants argue the time expended by Mr. Rengel and Ms. Dymoke was excessive. The compensation judge reviewed the fee petition and reduced the claimed hours for time spent on the appeal to this court and for legal research. Mr. Rengel testified concerning his and Ms. Dymoke's work on the case and was cross-examined by defense counsel. The compensation judge found the litigation involved numerous and complex issues of primary liability, medical causation and apportionment. He further found the results obtained for the employee were optimum. The amount of Roraff fees in a particular case is a factual determination for the compensation judge. Lindahl v. Thomas Chevrolet and Cadillac, No. *[redacted to remove the social security number]* (W.C.C.A. March 15, 1994). In this case, the compensation judge adequately articulated valid factual reasons for the award based on the criteria of Minn. Stat. § 176.081, subd. 5. Accordingly, we affirm the compensation judge's findings.