

LARRY C. BENSON, Employee, v. J.B. DISTRIB. and AMERICAN HARDWARE INS. CO., Employer-Insurer/Appellants, and PRIMARY BEHAVIORAL HEALTH CLINIC and ALLINA HEALTH SYSTEM/UNITY HOSP., Intervenors, and SUBURBAN RADIOLOGICAL CONSULTANTS and NORAN CLINIC and REHABILITATION HEALTH CENTER, Potential Intervenors/Interested Parties.

WORKERS' COMPENSATION COURT OF APPEALS
OCTOBER 1, 1998

HEADNOTES

CAUSATION - SUBSTANTIAL EVIDENCE. Substantial evidence, including lay testimony, medical records, and expert medical opinion, supported the compensation judge's finding that the employee's work-related injury was a substantial contributing cause of a closed head injury resulting in altered short-term memory and a psychological injury in the nature of chronic pain syndrome, depression, and post-traumatic stress disorder.

MEDICAL EXPENSES - REASONABLE & NECESSARY. Substantial evidence supported the compensation judge's determination that the expenses of MRI scans of the neck and brain were reasonable and necessary.

Affirmed.

Determined by Wheeler, C.J., Hefte, J., and Wilson, J.
Compensation Judge: Rolf G. Hagen

OPINION

STEVEN D. WHEELER, Judge

The employer and insurer appeal from the compensation judge's findings that, as a result of his admitted March 13, 1993 work injury, the employee sustained a closed head injury resulting in altered short-term memory and a psychological injury in the nature of chronic pain syndrome, depression, and post-traumatic stress disorder. The employer and insurer further appeal from the determination that MRI testing was reasonable and necessary. We affirm.

BACKGROUND

The employer, J. B. Distributing, sells oil and gas additives to auto parts stores and garages. The employee, Larry G. Benson, worked for the employer as a route salesman. On March 16, 1993, the employee was involved in a serious motor vehicle accident in the course of his employment when an oncoming vehicle lost control and skidded into the employee's lane.¹

¹ The collision had been sufficiently forceful that the other driver was killed despite having been restrained by a seat belt.

The employee was initially treated for lacerations to the right knee and left hand, and for a neck sprain. The employer and insurer admitted the injury with respect to these conditions. (T. 107-8, 114-115.)

The employee was able to return to work in his route sales job for the employer within a few weeks after the injury. Subsequently, on September 1, 1993, the employee reported to his physician, Dr. Bensman, that he was apparently experiencing memory problems and changes in his level of mental function. Dr. Bensman thought that this would be compatible with a possibility that the employee had sustained traumatic injury to his head in the accident. The employee was referred to Dr. David P. Dorn, a neurologist. Dr. Dorn suspected a mild closed-head injury and opined that the employee's recent short-term memory problems were a subtle residual effect of the injury. The employee also underwent psychological testing by a psychologist and a speech pathologist, and later treated with another psychologist, John Patrick Cronin. Mr. Cronin performed a neuropsychometric assessment which revealed problems in abstraction, concept formation, memory and concentration. He opined that the employee sustained a mild brain injury as a result of the work-related accident. He also diagnosed a pain disorder associated both with psychological factors consistent with a traumatic brain injury and with the employee's medical condition. (Exh. C; Exh. D: 9/30/93; Exh. F: 6/12/95.)

The employee accordingly claimed that, in addition to the admitted injuries sustained in the work-related motor vehicle accident, he sustained a closed-head injury which resulted in memory loss and other consequential psychological conditions and sought reimbursement for the treatment costs associated with these conditions. The employer and insurer disputed the occurrence of such an injury and denied primary liability. On March 17, 1997, the employee filed a medical request seeking reimbursement for these medical expenses, resulting in the hearing below. (Judgment Roll.)

Following the hearing, a compensation judge found that the employee had sustained a mild closed-head injury as part of the March 16, 1993 work injury, resulting in sustained altered short-term memory, chronic pain syndrome, depression, and post-traumatic stress disorder. The compensation judge awarded reimbursement for the expenses of the employee's medical and psychological treatment, including the costs of MRI scans of the brain and neck. The employer and insurer appeal.

STANDARD OF REVIEW

On appeal, this court must determine whether the compensation judge's findings and order are "clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. ' 176.421, subd. 1(3) (1992). Substantial evidence supports the findings if, in the context of the record as a whole, 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 the evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings must 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). Factfindings may not be disturbed, even though this 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

Causation

The employee had no recollection of striking his head or of being struck on the head during the motor vehicle accident, nor could he say with certainty that he had been rendered unconscious. He was conscious and coherent when first approached in his vehicle by emergency personnel, and was not treated for any visible injury to the head. (T. 146-149.) The employer and insurer argue that, in light of these facts, substantial evidence failed to support the compensation judge's determination that the employee likely either struck his head or was struck in the head during the collision.

There was, however, circumstantial evidence which supported the judge's inference that the employee sustained a closed head injury. The employee's testimony, accepted as credible by the compensation judge, strongly suggested that there was a significant period during which the employee was unaware of events which he would reasonably have been expected to have observed. Specifically, the employee testified that he recalled seeing the other vehicle, apparently out of control, skidding towards him, that he tried unsuccessfully to avoid a collision, and that he remembered the crash and the sound of breaking glass, but that his next memory was of someone approaching his van asking if he was all right. His next recollection was of a police officer approaching his vehicle, at which time he perceived that several people were trying to give medical assistance to the other driver, who was lying in a ditch. Although the other vehicle had come to rest directly in the employee's field of view, and police reports indicate that citizens reaching the scene had unfastened its driver's seat belt and removed him from his vehicle before unsuccessfully attempting to revive him by CPR techniques, the employee had no recollection of observing the other driver being taken out of his vehicle. (T. 114-115, 118-124; Exh. 8.)

After the collision, metal shelving located behind the driver's seat in the employee's van was pushed forward against the back of the seat, cans of the employer's product had, by the force of the impact, been thrown into and were strewn about the driver's compartment, the driver's side window was shattered, and the employee, whose hair and clothing were covered with broken glass, was pinned in his van. The employee testified that he had a headache and that his neck was stiff. (T. 115-124, 148-150.)

Psychological testing performed on the employee was inconclusive, but suggested a possibility of subtle difficulties with reasoning and problem-solving skills associated with the functioning of the pre-frontal brain regions. Anne M. Schneider, the psychologist who performed the tests, opined that if accompanied by documented personality changes following the accident, the findings would provide some confirmation of subtle problems from a head injury. Similarly, language and cognitive evaluation testing performed by Diane D. Sineps, a speech pathologist, was interpreted as consistent with the effects of a mild closed-head injury. (Exhs. E, G.)

The employee testified that, since the accident, he had experienced headaches, memory problems, flashbacks of the accident, nightmares and depression. The employee's wife, two co-workers and one of the employee's regular route customers variously testified that they had observed personality changes and memory problems in the employee since the accident. (T. 37-41, 54-57, 71-75, 93-99, 126-132, 155, 169-170.)

Overall, we conclude that this evidence provided substantial support to the compensation judge's finding that the employee sustained a closed-head injury.

To rebut this evidence, the employer and insurer relied principally upon the opinions of their medical and psychological experts, neurologist Dr. Gilbert Westreich and psychologists Daniel Dossa and Thomas E. Bemak, and on the opinion of M. Rodney Lundgren, an accident reconstructionist. Based upon the medical history, Dr. Westreich opined that the employee had sustained a mild concussion, but without lasting effects. (Exh. 2 at 11 and dep. Exh. 1.) Psychologist Thomas Bemak similarly concluded that the employee had not sustained a closed-head injury. (Exh. 5.) Psychologist Daniel Dossa attributed the employee's symptoms to an acute stress disorder rather than to a closed-head injury. (Exh. 1 at 22-23, 36-38, 94.) Each of these experts based their conclusions in part on an absence of definite evidence that the employee had experienced a loss of consciousness following the accident. The employer and insurer's accident reconstructionist opined that, in his opinion, the passenger side window was not broken by an impact from the employee's head. (T. 209.)

The compensation judge accepted the views of the employee's physicians over those of the employer and insurer's experts. We must affirm a compensation judge's choice between divergent expert opinion unless the opinions relied upon were without adequate foundation. Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985). There is no obvious foundational defect in the opinions on which the judge relied in this case. With respect to the opinion of the employer and insurer's accident reconstructionist, we note, first, that his opinion was based solely upon a review of accident reports and diagrams and later photographs of the vehicles taken by others at some time after their removal from the scene; he did not examine either the vehicles or the scene of the accident. We do not believe that the compensation judge clearly erred in giving less than conclusive weight to this opinion under the circumstances. In addition, even if we were to adopt Mr. Lundgren's opinion denying the possibility that the employee's head struck the broken side window, nothing in this testimony rebutted the other possibility found by the judge, that the employee was struck on the head by flying product thrown about in the van during the collision. Accordingly, we conclude that the compensation judge did not clearly err in failing to find that the evidence offered by the employer and insurer conclusively rebutted the employee's claims.

Finally, the employer and insurer argue that the compensation judge committed an error of law in finding that the employee had sustained a compensable psychological injury, based on the well-known principle that Minnesota workers' compensation law does not allow compensation where a psychological injury results solely from workplace stress unaccompanied by physical injury. See, e.g., Lockwood v. Indep. School Dist. No. 877, 312 N.W.2d 924, 34 W.C.D. 305 (Minn. 1981). We do not find this principle applicable here. Not only did the employee sustain an admitted physical injury in the motor vehicle accident, but we have affirmed

the finding that he further sustained a mild closed-head injury with consequent symptoms of psychological and functional impairment. Although the employee's psychological problems may also have been the result of the stress of the accident itself, we cannot say that compensation must be denied under the circumstances of this case.

MRI Expenses

The employer and insurer object to the MRI expenses as not reasonable or necessary. They predicate this objection principally on the views of Dr. Westreich, who opined that there were insufficient physical findings to justify an MRI of the employee's neck, and that an MRI of the brain to rule out possible hydrocephalus, though a reasonable test in itself, should have been performed much earlier, and was no longer reasonable. (Exh. 2 at 18-27.) The compensation judge, however, accepted the contrary view of Dr. Dorn, who explained why he disagreed with Dr. Westreich and considered these tests reasonable and necessary. (Exh. A at 21-28.) As the resolution of this issue involved a choice between opposing expert opinions, and we must affirm. Nord, supra, 360 N.W.2d 337, 37 W.C.D. 364.

Attorney Fees

The compensation judge ordered that the employee's attorney should serve and file a statement of attorney's fees sought within 10 days of the service and filing of the judge's Findings and Order, subject to the right of any interested party to interpose an objection and obtain a hearing on the amount of fees to be awarded. The employee's attorney fee statement was served on January 30, 1998. The employer and insurer filed both their appeal and an objection to the attorney fees on February 13, 1998, and the matter of a fee award remains pending during the pendency of this appeal. The employer and insurer, in their appellate brief to this court, contend that the employee's fee request is excessive.

As no fees as yet have been awarded, the issue presented by the appellants is clearly premature. Upon the completion of the appeal process from the compensation judge's findings and order, the compensation judge will have jurisdiction to determine what fees, if any, are appropriate in this matter. Should any party disagree with the basis or amount of any fees so awarded, an appeal may then be taken to this court.