

JAMES COLEMAN, Employee, v. TAD RESOURCES INT'L and CIGNA INS. CO., Employer-Insurer/Appellants.

WORKERS' COMPENSATION COURT OF APPEALS
SEPTEMBER 14, 1998

No. *[redacted to remove social security number]*

HEADNOTES

MAXIMUM MEDICAL IMPROVEMENT - SUBSTANTIAL EVIDENCE. Where one of the employee's treating physicians had been attempting to secure a podiatric evaluation for the employee, which the employee understood might help his balance and walking, it was not unreasonable for the compensation judge to conclude that the employee had not reached MMI from his work-related foot condition pending the evaluation, despite medical opinion evidence to the contrary.

Affirmed.

Determined by Wilson, J., Pederson, J., and Hefte, J.
Compensation Judge: Bonnie A. Peterson.

OPINION

DEBRA A. WILSON, Judge

The employer and insurer appeal from the compensation judge's decision denying discontinuance of temporary total disability benefits, alleging that the judge erred in concluding that the employee had not reached maximum medical improvement [MMI] from the effects of his work-related left foot injury. We affirm.

BACKGROUND

The employee sustained work-related injuries to his low back, left leg, and foot on May 18, 1994, while working for TAD Resources International [the employer]. Prior to these injuries, the employee had been treating with Dr. Marshall Harris, D.C., for neck pain and stiffness and numbness and tingling in the left leg and foot. When he treated with Dr. Harris on May 18, 1994, the employee reported that the numbness and tingling in the left leg and foot had become slightly worse. Dr. Harris performed adjustments to the employee's cervical, thoracic, and lumbar spine.

The employee treated with Dr. Harris again on May 25, 1994, at which time he had added complaints of pain and numbness in the left calf, and Dr. Harris again adjusted all three areas of the spine. Dr. Harris last saw the employee on June 1, 1994, at which time he noted that

the employee's neck and left leg and foot complaints were showing some improvement. Dr. Harris adjusted the spine and released the employee to return for treatment on an as-needed basis.

The employee treated at the emergency room of Midway Hospital on May 27, 1994. His complaints on that day consisted of pain in the left calf and left foot numbness of two weeks duration. X-rays taken on that day revealed minimal degenerative disc disease at L5-S1. Dr. James Sturm, who treated the employee at Midway, diagnosed a possible herniated disc, opined that the employee's lumbar disc problem was causing the numbness in the left foot, and referred the employee to a neurologist. The employer and insurer accepted liability for the employee's injury and paid temporary total disability benefits continuing from May 21, 1994. Sometime thereafter, the employee returned to his home in Texas.

The employee began treating with Dr. Bill Balch on June 15, 1994, complaining of shooting pain in the left foot and ankle with swelling when he was on his feet too long. Two days later, on June 17, 1994, the employee was seen at Methodist Hospital in Levelland, complaining of left lower extremity burning/pain beginning five weeks before. The employee returned to Dr. Balch again on June 23, 1994, July 7, 1994, and August 1, 1994. The doctor's notes for August 1, 1994, reflect that the employee's left foot was hurting all the time. A CT scan of the lumbar spine performed on August 24, 1994, was interpreted as showing slight bulging of L4-5 and L5-S1 with the bulge at L5-S1 encroaching upon the thecal sac but not displacing the nerve root.

On October 24, 1994, Dr. Richard Blide conducted an independent medical examination [IME]. Dr. Blide diagnosed probably HNP L5-S1 with S1 radiculopathy, left and reflex sympathetic dystrophy [RSD] of the left lower extremity.

The employee was admitted to Methodist Hospital Levelland on January 12, 1995, with diagnoses of pneumonia, a history of a herniated disc, and a history of alcoholism. It was noted that the employee had severe pain in his left leg and was incapacitated because of weakness and pain in that leg. Treatment during this hospitalization was apparently directed toward the pneumonia, which was quite severe. The employee was discharged from the hospital on January 30, 1995, and subsequently treated with Dr. Balch for ongoing left foot problems on March 20 and May 2, 1995.

The employee was examined by Dr. Gary Wyard, for an IME on September 1, 1995, at which time Dr. Wyard recorded complaints of low back pain, left leg pain, and left foot symptoms with swelling in the left leg. Dr. Wyard diagnosed a herniated disc at L5-S1 with neurological deficit, and he opined that that condition was causally related to the work injury, that the employee had been temporarily totally disabled since May 12, 1994, and that the employee had reached MMI with regard to his low back, left leg, and left foot conditions.

In June of 1996, the employee apparently began treating with Dr. R. Menard, who diagnosed RSD and administered lumbar sympathetic blocks in July of 1996. The blocks

apparently helped the employee's foot and leg symptoms, but his toes were still upright with limited flexibility.¹ On August 29, 1996, Dr. R. Menard issued a report of Medical Evaluation, opining that the employee had reached MMI as of August 15, 1996. This report was served on the employee on January 27, 1997, along with a notice of intention to discontinue workers' compensation benefits [NOID]. On September 30, 1996, the employee was examined again by Dr. Blide, this time for an Impairment Rating using Minnesota Guidelines. Dr. Blide opined that the employee was at MMI as of the date of that examination.

The employee treated with Dr. Balch again on December 23, 1996. In a report dated January 6, 1997, Dr. Balch indicated that the employee continued to have a tremendous amount of spasm in the left foot and was unable to extend his left great toe. He further stated that

[the employee] has not been seen by a podiatrist nor has he been evaluated for the possibility of placing a prosthesis or insert into his shoe. I do not know if that would be beneficial or not, but at this stage of the game he remains totally incapacitated from the pain in his left foot.

Later in that same report, Dr. Balch indicated that the employee could possibly benefit from evaluation by a podiatrist. Several months later, on April 22, 1997, Dr. Balch opined that the employee

has indeed reached maximum medical improvement as noted in my letter of January 6, 1997. He could possibly achieve an improvement in symptoms of pain and spasm in his foot with an orthotic device, but it would not affect his ability to return to work. He is totally irreversibly disabled and is not expected to improve.

On July 15, 1997, Dr. Balch wrote to the employee, stating that

there has been no demonstrable change in either your back discomfort or the Reflex Sympathetic Dystrophy syndrome which has rendered your left foot cold, spastic, and in tremendous pain Mr. Coleman, I feel that your condition has stabilized. I am in the process of obtaining a podiatric evaluation for you to determine if a foot orthotic would provide a modicum of relief. In addition, I have been working with the Sisters of Saint Joseph to obtain a second opinion from a pain specialist. Otherwise, I have no additional options to offer My opinion is unchanged from January of this year, and is unlikely to change in the immediate future.

¹ Dr. Menard's records were not introduced as exhibits at the hearing below, but the September 30, 1996, report of Dr. Blide contains a detailed summary of Dr. Menard's treatment.

On July 17, 1997, Dr. Balch wrote to the employee's attorney, stating,

[w]ith regard to maximum medical improvement, it is unlikely that Mr. Coleman will ever improve his functional ability. He has lost much of the use of his back and left leg since his accident of May 12, 1994. We continue to try to improve his quality of life by seeking additional pain control measures such as orthotics and steroid injections into the spine.

The employee objected to the NOID and an administrative conference was held on February 26, 1997. In an order filed on March 6, 1997, the settlement judge found that there were reasonable grounds to allow a discontinuance of the employee's temporary total disability benefits based upon the employee's attainment of MMI. On March 13, 1997, the employee filed an objection to discontinuance, which was heard on July 18, 1997. In a decision filed on August 1, 1997, the compensation judge found that, [u]ntil an evaluation to determine whether a foot orthotic should be prescribed, the employee has not reached maximum medical improvement for his left foot problem. The employer and insurer 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

Maximum medical improvement' means the date after which no further significant recovery from or significant lasting improvement to a personal injury can reasonably be anticipated, based upon reasonable medical probability. Minn. Stat. § 176.011, subd. 25. A finding of MMI is one of ultimate fact, and factors relevant to the issue include history of improvement, current treatment, and proposed treatment. Hammer v. Mark Hagen Plumbing & Heating, 435 N.W.2d 525, 528-29, 41 W.C.D. 634, 639 (Minn. 1989). In general, discontinuance

of temporary total disability benefits on MMI grounds is appropriate only if the employee has reached MMI from all compensable conditions. Id. at 529, 41 W.C.D. at 641.

It is apparently undisputed that the employee has reached MMI from his low back and left leg injury.² With regard to MMI for the left foot condition, the compensation judge found, Dr. Balch has indicated that the employee's condition has stabilized but still is in the process of attempting to find a podiatric evaluation to determine if a foot orthotic would provide some relief, concluding that, [u]ntil an evaluation to determine whether a foot orthotic should be prescribed, the employee has not reached maximum medical improvement for his left foot problem. In her memorandum, the judge noted, It may be in fact that the employee's left foot condition has stabilized also. However, until he is evaluated by a podiatrist to determine whether or not an orthotic is beneficial, it was felt that it cannot be determined that the employee has obtained maximum medical improvement status.

In his letter to the employee dated July 15, 1997, Dr. Balch stated that he was in the process of obtaining a podiatric evaluation and was working to obtain a second opinion from a pain specialist. The employee testified that he has ongoing problems with his left foot and that he would like to see a podiatrist. It is his understanding that a podiatrist might improve my walking and my balance. The employee further testified that the workers' compensation insurer has refused to set up appointments or pay for these referrals. No evidence was introduced to contradict these statements. While there is certainly evidence which would support a finding that the employee has reached MMI, this court is not to substitute its view of the evidence for that of the compensation judge when the judge's findings are supported by evidence that a reasonable mind might accept as adequate. Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239. Dr. Balch's records and the employee's testimony provide substantial evidence to support the conclusion that the employee has not reached MMI regarding his left foot condition. Accordingly, we affirm the compensation judge's decision.³

² The first part of finding 7 reads, The employee has reached maximum medical improvement for his low back injury and for his left leg injury. . . . While finding 7 was appealed, the only issue briefed by the parties is whether the compensation judge erred in concluding that the employee had not reached MMI with regard to his left foot condition.

³ We also note that the only MMI report served on the employee was a form, completed by Dr. Menard, on which diagnoses are listed by code only. We are unable to interpret the codes to know which conditions were being addressed. In addition, the form is from the Texas Workers' Compensation Commission, and we do not know if the definition of MMI is the same in Texas as it is in Minnesota.