

RANDY E. DAVISON, Employee v. WATER GREMLIN CO. and WESTERN NAT'L MUT. INS. CO., Employer-Insurer/Appellants and RONALD J. BERK, L.P.

WORKERS' COMPENSATION COURT OF APPEALS

MAY 6, 1998

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

HEADNOTES

CAUSATION - PSYCHOLOGICAL INJURY. Medical and psychological opinions with adequate foundation, as well as the employee's testimony accepted by the compensation judge, substantially support the compensation judge's findings that the employee's right shoulder work injury and its consequential pain and disability were causal contributing factors to the employee's depression and psychological treatment.

Affirmed.

Determined by Hefte, J., Wilson, J., Johnson, J.
Compensation Judge: Bernard Dinner

OPINION

RICHARD C. HEFTE, Judge

The employer and insurer appeal the determination of the compensation judge that the employee's right shoulder work injury of February 21, 1994, his subsequent surgery and consequential disabling reflex sympathetic dystrophy are substantial contributing, aggravating causes to the employee's depression. (Finding 6.) The employer and insurer also appeal the finding that psychological treatment of the employee was reasonable and necessary.

BACKGROUND

Randy Davison, employee, sustained an admitted work injury on February 21, 1994, when he fell and injured his shoulder while carrying a bar of lead. He was treated by an orthopedic surgeon, John Park, M.D., who performed surgery to the employee's right shoulder in June of 1994.

After being off work for six months following his work injury, the employee attempted to return to work on a number of occasions. However, his right shoulder had deteriorated to a point that he was unable to perform his pre-injury job. He has not been employed in any gainful employment since his injury and prior to the hearing in this matter. In July of 1995, the employee began treating with Dr. Seth Rosenbaum, a psychiatrist. Dr. Rosenbaum suspected the employee had reflex sympathetic dystrophy and was depressed because of his physical

limitations from his injury and continuing pain. Therefore, in November of 1995, the employee was referred to Dr. Todd Hess for sympathetic nerve blocks. Dr. Hess diagnosed complex regional pain syndrome/reflex sympathetic dystrophy. At the same time, Dr. Rosenbaum also referred the employee to Ronald Berk, a licensed psychologist at the Neurophysiological Institute, for pain relief therapy and for treatment of suspected depression.

Mr. Berk diagnosed that the employee had been and was still suffering from depression. He treated the employee's depression from December 1995 to September of 1996 with psychotherapy and biofeedback training. Prior to his work injury in February 1994, the employee had been treated for alcohol dependency. The record also indicated that the employee had some childhood conflicts, more recent financial problems, as well as having experienced the death of a brother from cancer. Mr. Berk testified that the employee's major depression was related to his February 21, 1994, work injury to his shoulder, his resultant pain and inability to return to work; and he also concluded that the employee's depression required psychological treatment.

Dr. John Rauenhorst, a psychiatrist, conducted an independent medical examination of the employee on behalf of the employer and insurer. He concluded that the employee's prior chemical dependency, his general personality, child experiences and other psychosocial stressors such as his brother's illness and death, contributed to the employee's psychological condition. Therefore, he concluded that the employee's psychological condition and the treatment for this condition were not causally related to the employee's February 21, 1994, right shoulder work injury or any of its consequences.

After the employer and insurer denied payment of the expenses of psychological treatment, the employer filed a medical request for the payment of Mr. Berk's bill for services. A medical decision and order sustaining the employee's medical request was served and filed on June 12, 1997. The employer and insurer filed a request for a formal hearing. The matter was then heard before Compensation Judge Bernard Dinner, who granted the medical request, finding that the employee had sustained a consequential psychological injury in the form of depression; and that the employee's original work injury of February 21, 1994, and its consequences constituted a substantial contributing factor to the employee's depression. The compensation judge also found that the psychological treatment provided by Mr. Berk was reasonable and necessary to cure and relieve the employee from the effects of his psychological injury. It was ordered that Mr. Berk's expenses for the psychological treatment of the employee be paid by the employer and insurer subject to the Minnesota fee schedule. 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

Dr. Rauenhorst reported that the employee's February 21, 1994, right shoulder work injury was not a contributing cause of any psychological or psychiatric condition that the employee may have sustained subsequent to his work injury. He bases his opinion on certain stressors that the employee experienced such as childhood experiences, prior alcoholic abuse or alcoholic dependency, financial concerns, and the fact that one of his brothers died from cancer in 1996. Dr. Rauenhorst also points out that the employee's alleged depression did not develop until some 18 or 20 months after his work injury of February 21, 1994. On the other hand, Dr. Rosenbaum, a physical medicine and rehabilitation specialist, and Mr. Berk, a licensed psychologist, both concluded that as a result of the employee's work injury and its consequences the employee developed a major depression primarily secondary to his debilitating and continuing pain from his work injury and surgery, and from his loss of function due to his shoulder injury.

The employer and insurer argue on appeal that the compensation judge's finding that the employee's right shoulder work injury was a substantial contributing factor to his major depression and treatment is without substantial evidentiary support and manifestly contrary to the evidence. It is also argued that Dr. Rosenbaum and Mr. Berk's opinions lack adequate foundation. We disagree.

The compensation judge indicated in his memorandum that he gave greater evidentiary weight to the opinions and testimony of Dr. Rosenbaum and Mr. Berk. He accepted their opinions over the causation opinion of Dr. Rauenhorst. Dr. Rauenhorst bases his opinion on causation on the stressors that the employee experienced other than his work injury and its consequences. First, the record of the employee's prior abusive alcoholic behavior indicates the problem arose and occurred mainly in 1977, approximately 18 years before the employee's work injury. The doctor also makes mention of the employee's childhood experiences as stressors. How these stressors are causally related to the present depression of the 50-year-old employee is not adequately explained by Dr. Rauenhorst other than to report that these stressors could be factors in his current psychological treatment.

Further, Dr. Rauenhorst indicates that over 18 months elapsed between the [employee's] injury of February 21, 1994, and the development of the adjustment disorder in the fall of 1995. This length of time argues against the causal relationship. Using 18 months or more

from the date of the injury, Dr. Rauenhorst apparently concluded the employee's depression did not develop until the fall of 1995. A review of the record indicates that Dr. Rosenbaum began treating the employee in July of 1995. At that time, Dr. Rosenbaum indicated the employee was already depressed. The record also indicates that, according to the employee's testimony and the medical records, that his depression began about six months after his July 1994 surgery. This was at the time when the employee attempted unsuccessfully to return to his former employment. At that time he became depressed not only because of his inability to physically do his pre-injury job, but also of his continuing pain. Therefore there is factual support that the employee's depression developed in January 1995 contrary to Dr. Rauenhorst's factual conclusion that the employee's depressive state began to develop in the fall of 1995. By the time the employee saw Mr. Berk in the fall of 1995, the employee's problem had already become a major depression, and had existed for some time.

As to other stressors claimed by Dr. Rauenhorst as contributing to the employee's depression, the employee in his testimony denied they had any real affect on him in 1995 and 1996. The employee stated that his brother's death was not a long-lasting or significant factor to his anxiety or depression. The employee testified the stressors that did effect him were the pain and disability he was going through following his shoulder surgery. The employer and insurer also argue that Mr. Berk originally was not aware of all of the stressors set forth by Dr. Rauenhorst. However, Mr. Berk was informed of these stressors at the trial and was questioned about them. On cross-examination, Mr. Berk indicated that he was unaware of any other stressors known to him prior to trial or revealed to him during the trial that would indicate that these stressors were germane to his present expressed opinions. Mr. Berk did not change his opinion on causation.

There is adequate evidentiary foundation for the opinions of Mr. Berk and Dr. Rosenbaum that the employee's work injury and its consequences were a contributing factor to the employee's depression. Their opinions were founded on the stressors of continuing pain and disability that the employee experienced as a result of his right shoulder injury and surgery. The employee also sustained effects from developing reflex sympathetic dystrophy.¹ The compensation judge's reliance upon and giving the greater weight of the evidence to the reports and testimony of Dr. Rosenbaum and Mr. Berk were reasonable and supported by substantial evidence in the record. Where more than one inference may reasonably be drawn from the evidence, the compensation judge's findings shall be upheld. Nord v. City of Cook, 360 N.W.2d 337, 342, 37 W.C.D. 364, 371 (Minn. 1985).

Substantial evidence supports the compensation judge's finding that the employee's work injury was a substantial contributing factor to his major depression; and supports

¹ The compensation judge found that as a consequential effect of the personal injury to his right shoulder the employee developed a reflex sympathetic dystrophy to the right upper extremity as a result of his work related injury of 1994. (See unappealed Finding 3.)

the finding that the treatment of this condition by Mr. Berk was reasonable and necessary in order to cure and relieve the employee from the effects of his depression.² We affirm.

² The employer and insurer only argue in their brief that the psychological treatment of the employee by Mr. Berk was not reasonable and necessary on the basis of a lack of causation between the employee's work injury and the employee's depression. No other issue was raised or argued concerning the reasonableness and necessity of the psychological treatments rendered to cure and relieve the employee from his depression.