JERALDINE AWE, Employee, v. BUREAU OF ENGRAVING, SELF-INSURED/ALEXSIS, Employer/Appellant, and GRAPHIC COMMUNICATIONS LOCAL 1B H&W FUND, Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
DECEMBER 10, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - PRE-EXISTING CONDITION; PRACTICE & PROCEDURE - REMAND. Where there was no evidence in his Findings and Order that the compensation judge fully considered the employee's work schedule on the date of her alleged injury and a triage note dated three days prior thereto - - both apparently importantly material to the position of the employer in their reflection on the condition of the employee's health in the hours immediately preceding her alleged respiratory injury - - the case was remanded for further findings and reconsideration.

Reversed and remanded.

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

OPINION

WILLIAM R. PEDERSON, Judge

The self-insured employer appeals from the compensation judge's conclusion that the employee sustained an exacerbation of her previous respiratory problems secondary to her work activity with the employer on June 4, 1996, and from the judge's determination of the amount of the disability benefits paid by the intervenor. We reverse and remand for reconsideration as to liability and for clarification of the judge's finding on the amount of the intervenor's claim.[1]

BACKGROUND

Jeraldine D. Awe [the employee] began working as an electrical tester for the Bureau of Engraving [the employer] on June 26, 1995. The employer is a manufacturer of printed circuit boards for the electronics industry, self-insured against workers' compensation liability.

[1] The self-insured employer and the intervenor agree that the amount of disability benefits paid to the employee from June 4, 1996, through October 14, 1996, amounts to $2,727.25. Should liability be found again on remand, Finding 10 and Order 3 should be modified to reflect this agreement.

The employee's job as an electrical tester was to check the quality of these circuit boards using a testing machine. From time to time the employee would be "farmed out" to other departments if they needed help. Among the other departments to which the employee would be farmed out was the water rinse area, where workers employed a rinse machine to wash dust and residue off the circuit boards prior to their electrical testing, final inspection, and shipment to customers. In addition to this water rinse machine, the rinse area apparently also contained two routing machines, used for cutting circuit boards.

Prior to the date of her alleged injury herein, June 4, 1996, the employee had a substantial history of respiratory problems and use of inhalers. The employee testified to having frequent colds and episodes of bronchitis lasting anywhere from a couple of days to a couple of months. In a record from Unity Hospital, dated July 20, 1992, the employee described herself as "borderline asthmatic," indicating that she used a Ventolin inhaler on an as-needed basis. On November 29, 1995, the employee was seen at the North End Medical Center with complaints of hoarseness, cough, and wheezing for the past seven days. She had been using a Proventil inhaler at the time, which lessened her wheezing. Dr. John Morgan diagnosed bronchial asthma on that date and prescribed a cough medicine and an antibiotic. Later that same day, the employee reported to the doctor by telephone that she was "coughing very hard" and had vomited after a coughing spell, and the doctor restricted the employee from working for about a week. On December 11, 1995, the employee was seen again by Dr. Morgan, this time with complaints of a sore throat and white patches on her tongue. Later that evening she was seen at the Unity Hospital emergency room, where she provided a history of thirteen weeks of bronchial chest cold. Dr. Alton Olson noted that the employee had had sore throat, cough, and laryngitis for four weeks, and, noting also that she had just completed a ten-day regimen of amoxicillin and "does smoke one and a half packs per day," he advised her to stop smoking.

The employee's respiratory problems evidently increased in the spring of 1996. On April 10, 1996, she apparently called the clinic and indicated that she had stayed home from work overnight because she had developed a cough with sputum production and had had a "cold sweat." On April 26, 1996, while being admitted to Unity Hospital for an unrelated condition, she provided a history of asthma, of smoking one-half package of cigarettes a day, and of using inhalers. On April 30, 1996, she reported to her family doctor that she was smoking one package of cigarettes a day, and she was advised to stop smoking. It was noted at that time that she had a cough and was using an inhaler. On May 24, 1996, the employee was seen again at Unity Hospital, complaining of a pain in her lower right quadrant. She gave a history on that date of periodic use of a Ventolin inhaler to relieve exacerbations of asthma. Attendance records appear to indicate that the employee did not work at all for about a week thereafter. A telephone triage note records that the employee called the North End Medical Center on June 1, 1996, and complained to a nurse that she had been coughing for the past twelve hours, wanted a prescription for cough medication, and wanted Dr. Morgan paged.[2] According to office notes of MultiCare Associates, the employee saw Dr. James Keane on Monday, June 3, 1996, complaining of a cough

[2] At the hearing, the employee had no recollection of the call and denied making it.

with sputum production and "pain in the right side." The notes indicate that she was using Proventil at the time, two puffs four times daily, as well as Serevent, two puffs twice daily. She was apparently diagnosed with bronchitis and started on an antibiotic. Later that same day, the employee called the clinic to request a less expensive antibiotic.

That same date, June 3, 1996, the employee started her shift in the electrical test area at the employer and was sent to operate the water rinse machine in the rinse area, located in a separate room.[3] The employee had previously worked in the water rinse area, but had not done so since its recent relocation to a smaller room. The employee later testified that she detected odors in the water rinse room and that, although she did not know what they were, they had "a chemical smell." She testified that chemicals were being used in her own department, but those chemicals had never caused her any problems with breathing or headaches. She also testified that she observed dust in the room, presumably generated by the routing machines, although measures were apparently in place to minimize this,[4] and she did not wear a mask while working. After working in this room for a couple of hours, the employee evidently began to cough, and the coughing apparently led to a sore throat and headache and shortness of breath. The employee completed her shift, but her symptoms did not go away, and she called her clinic again on June 4, 1996, indicating that she still had her cough and was now wheezing. She was restricted from working and apparently advised again to quell her symptoms with her Ventolin inhaler. On June 10, 1996, she was seen again at her clinic for ongoing cough, for which she was again prescribed medication and inhalers and eventually diagnosed with reactive airway disease and bronchitis. The employee did not return to work for the employer subsequent to June 4, 1996. On that date she was thirty-eight years old and was earning a weekly wage of $288.74.

Over the course of the following four months, the employee continued to receive frequent treatment, including various medication and inhalers, for several different respiratory-related symptoms, including shortness of breath, hoarseness, wheezing, congestion, sore throat, and persisting cough sometimes productive of blood or green sputum and sometimes resulting in vomiting or urinary incontinence. The employee was seen by pulmonary specialist Dr. Ieva Grundmanis on June 20, 1996, on which date, because of her ongoing cough and lack of rest, she was admitted to the hospital, where she was seen also by otolaryngologist Dr. Richard Glaze. She

[3] At the hearing, there was some confusion as to the date of the alleged injury. The summary of lost time, Employer Exhibit 1, reflects the employee's attendance on Monday, June 3, 1996, but not Tuesday, June 4. The employee testified that she punched in on June 3 and punched out on June 4. This testimony is also consistent with an April 16, 1996, office note of MultiCare Associates, indicating that the employee works nights.

[4] William Currie, the employer's vice president of facilities and environmental affairs, testified that the routing machines have a hood that closes on them. Each machine has four high-speed router heads that cut the profile of the board. They have brushes that come down around the router bit to brush away dirt and debris. Attached to each router head is a vacuum that sucks the debris created during routing to an area in the back of the plant.

was discharged from the hospital again about a week later, on June 28, 1996.

On July 11, 1996, the employee also saw lung specialist Dr. Kathy Gromer. Dr. Gromer noted that the employee was recently diagnosed with COPD [chronic obstructive pulmonary disease] due to past cigarette smoking[5] and had a long history of recurrent episodes of "acute bronchitis." Dr. Gromer noted that, following her discharge from the hospital, the employee returned to the employer to drop off her work excuse and went down to the work area where she normally works. The employee reported that even this brief exposure to the work area resulted in sharply increased coughing and discomfort. She advised Dr. Gromer that her job at the employer exposed her to routing, laminating, and printing processes involving organic solvents as well as metals. Dr. Gromer concluded that the employee's "recent cough exacerbation and current wheezing was most likely due to the recent occupational exposure" and continued to prescribe medications and a medical excuse from work through August 15, 1996. When the employee returned to see Dr. Gromer on August 16, 1996, she complained of continued problems with headache, backache, and chest pain triggered by coughing spells, and Dr. Gromer altered her medications and continued her work excuse. On September 12, 1996, the employee underwent a bronchoscopy, which revealed severe airway inflammation and irritation, and the employee was restricted from work for another thirty days. On October 4, 1996, Dr. Gromer reported that the employee's cough had basically resolved. By that time the employee had been terminated by the employer for exceeding the maximum number of hours of leave permitted under the Family Medical Leave Act.

On November 13, 1997, the employee filed a claim petition alleging entitlement to temporary total and temporary partial disability benefits due to her reactive airways disease. The self-insured employer denied liability for the injury, alleging that it was not work-related. On January 26, 1998, Graphic Communications Local 1B H & W Fund [the intervenor] intervened for reimbursement of medical expenses and disability benefits paid on behalf of the employee.

On April 17, 1998, the employee was examined by Dr. Jack Shronts at the request of the employer. In a report dated May 15, 1998, Dr. Shronts diagnosed (1) a life-long history of asthma, (2) mild bronchitis secondary to cigarette smoking, and (3) gastroesophageal reflux disease contributing to the asthma and bronchitis symptoms. The doctor opined that the employee's temporary increase in respiratory symptoms in June 1996 was due to a respiratory infection and not to any unidentified irritants in the workplace.

The matter was heard by Compensation Judge Ronald E. Erickson at the Office of Administrative Hearings on March 4, 1999. Evidence presented at the hearing included the testimony of the employee, who confirmed under cross-examination that it was her position "that [she wasn't] having any problems with [her] coughing and [her] breathing prior to the June 4th date," and the testimony of the employer's vice president of facilities and environmental affairs,

[5] The employee later testified that she started smoking at age 18, and prior to June 4, 1996, smoked up to one and one-half packs of cigarettes a day.

William Currie. The employee's medical records were also submitted into evidence, but there was no testimony by any medical experts. In his Findings and Order of April 19, 1999, the compensation judge found that, secondary to her work activities at the employer on or about June 4, 1996, the employee had sustained an exacerbation of preexisting respiratory problems "due to exposure to chemicals or solvents in the workplace." On that conclusion, the judge awarded temporary total disability benefits from June 5, 1996, through October 14, 1996, as well as reimbursement to the intervenor for medical expenses and disability benefits paid during this same period. The judge also awarded contingent attorney fees and directed submission of a statement of attorney fees for consideration of Edquist fees.[6] The employer appeals.

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

On appeal, the employer contends that Dr. Gromer's opinion and report relating to the cause of the employee's respiratory problems are without foundation and are not reasonably supported by the evidence. The employer argues that the overwhelming weight of the evidence supports instead the opinions expressed by the independent medical examiner, Dr. Shronts. Because there is no evidence in his decision that the compensation judge considered certain evidence that we find importantly material to the employer's position, we are compelled to remand for further findings and reconsideration.

It is evident from Judge Erickson's Findings and Order that he carefully considered the employee's prior history of cigarette smoking and chronic bronchitis. It is also evident, in Finding 3 and elsewhere in the judge's decision, that he credited the employee's testimony that, when she was "farmed out" to the water rinse area on or about June 4, 1996, there was a chemical

[6] See Edquist v. Browning-Ferris, 380 N.W.2d 787, 38 W.C.D. 411 (Minn. 1986).

smell or exposure in the workplace that exacerbated her preexisting condition. And it is clear also that the judge relied on the medical opinions of Dr. Kathy Gromer in finding a work-related exacerbation and period of disability. Moreover, it is well settled that compensation is due not only where the worker's employment is a substantial contributing factor in causing the disabling condition but also where it is a substantial factor in aggravating or accelerating a pre-existing condition. See Wallace v. Hanson Silo Co., 305 Minn. 395, 235 N.W.2d 363, 28 W.C.D. 79 (1975). A review of the evidence leads us to question, however, whether the compensation judge, and perhaps even Dr. Gromer, may have misapprehended the sequence of the employee's medical treatment relative to her allegedly injurious experience on June 4, 1996. While a trier of fact's choice between experts whose testimony conflicts is normally upheld unless the facts assumed by the expert in rendering his opinion are not supported by the evidence, see Nord v. City of Cook, 360 N.W.2d 337, 342-43, 37 W.C.D. 364, 372-73 (Minn. 1985), we believe that the factual premise of the employee's claim should in this case be re-examined. Moreover, questions of medical causation ultimately fall within the province of the compensation judge. Felton v. Anton Chevrolet, 513 N.W.2d 457, 50 W.C.D. 181 (Minn. 1994).

From our review of the record, it appears that the compensation judge based his decision in part on the impression that the employee sought medical treatment following the completion of her shift on the date of her alleged injury. It would appear from a close reading of the medical record, however, that the employee instead sought treatment for a very severe cough on Monday morning, June 3, 1996, just hours before her alleged injury. She was seen by Dr. James Keane at MultiCare Associates on that date, complaining of pain in her right side and a cough severe enough to be producing green sputum. Dr. Keane apparently diagnosed bronchitis and prescribed an antibiotic at that time. The employee then went to work that same evening for the first time in over a week. She completed her shift on June 4, 1996, but apparently, although she evidently sought medical advice by telephone, did not return to see her doctor in person until June 10, 1996. The record is not specific as to the employee's work schedule on June 3 and 4, 1996, but the employee testified that she punched in on June 3 and punched out on June 4. If in fact the employee worked nights, as appears probable,[7] it would appear that she visited her doctor for severe respiratory symptoms immediately before reexperiencing nearly identical symptoms on the job that same night. If so, this would be an important factor to be considered by the judge in assessing the persuasiveness or weight to be given the medical opinions rendered by Dr. Gromer.

In addition, we note that the compensation judge made no reference in his Findings and Order to the telephone triage note of June 1, 1996, evident in the North End Medical Center records. That note suggests that the employee had been coughing for twelve hours already on that date, just three days before the alleged work injury. At the hearing, the employee denied making this telephone call. Again, a resolution of this factual issue by the judge would appear essential to his proper assessment of the medical evidence and to any review of the judge's decision that we

[7] In addition to the April 16, 1996, MultiCare office note referenced earlier, we note that a June 7, 1996, "Physician Certification for Family or Medical Leave," contained in the medical records of MultiCare Associates, indicates that the employee works the "3rd" shift.

might be called upon to make.

We would note here that we are unpersuaded by the employer's contention that Dr. Gromer's causation opinion was without adequate foundation. Our review of the evidence indicates that Dr. Gromer examined the employee, took her history, was aware of past diagnoses, and discussed her work activities with her. In other words, Dr. Gromer's opinions were adequately founded on her personal knowledge of the case. While it undoubtedly would have been preferable to know exactly what the employee allegedly reacted to, we do not find the omission of these facts so material as to render the doctor's opinion valueless. For a medical opinion to be afforded evidentiary value, the expert need not be aware of every relevant fact. In general, such omissions go only to the persuasiveness or weight to be given the opinion, not to its admissibility. Drews v. Kohl's, 55 W.C.D. 33, 39 (W.C.C.A. 1996); see also Stuhr v. Northwestern Travel Serv. Inc., 57 W.C.D. 352 (W.C.C.A. 1997); summarily aff'd (Minn. Dec. 15, 1997).

The two factual issues referenced above - - the employee's work schedule on the date of her injury and the June 1, 1996, triage note - - appear to us to be significant ones, to the extent that they relate to the employee's health immediately preceding her return to work on the day she was allegedly injured. There is no evidence in his Findings and Order that the compensation judge fully considered these factual issues in arriving at his determination of liability. Therefore, we remand the case to the judge for resolution of those issues and for reconsideration in their light based on the existing record.