JEANNE M. BAIN, Employee, v. BECKLUND HOME HEALTH CARE and AM. COMP. INS./RTW, INC., Employer-Insurer/Appellants.

WORKERS' COMPENSATION COURT OF APPEALS
FEBRUARY 19, 1999

No. [REDACTED SSN]

HEADNOTES

MEDICAL TREATMENT & EXPENSE - TREATMENT PARAMETERS. Where some or all of the disputed chiropractic and physical therapy treatments were provided after the effective date of the permanent medical treatment parameters, the compensation judge should have considered the employer and insurer's argument that the treatments exceeded the limitations in the parameters. Case remanded to the compensation judge for resolution of factual issues raised by the parties on appeal.

Remanded.

Determined by Wheeler, C.J., Wilson, J., and Johnson, J.
Compensation Judge: Danny P. Kelly.

OPINION

STEVEN D. WHEELER, Judge

The employer and insurer appeal from the compensation judge's determination finding the chiropractic services performed from November 7, 1994 through April 25, 1995 and the physical therapy treatment provided between February 17, 1995 and April 5, 1995 to be reasonable and necessary.

BACKGROUND

The employee, Jeanne M. Bain, sustained an admitted work injury to her low back on July 18, 1994 while working as a home care aide for Becklund Home Health Care, hereinafter the employer. At the time of her injury the employee was 29 years of age.

Following a week of self-treatment the employee sought the assistance of Aagesen Chiropractic Clinic. Dr. Aagesen treated the employee from July 25, 1994 through November 3, 1994 on 34 occasions. On November 3 Dr. Aagesen referred the employee to Physicians' Diagnostics and Rehabilitation Clinic, hereinafter PDR, for physical therapy treatment under the supervision of Dr. Todd Ginkel, D.C.. The employee was treated by PDR from November 7, 1994 through April 25, 1995. Simultaneously, the employee continued to see Dr. Aagesen from November 7, 1994 through April 24, 1995, receiving 21 treatments. The employer and insurer

voluntarily paid for the chiropractic treatment between July 25, 1994 and November 3, 1994 and for the physical therapy treatments from November 3, 1994 through February 10, 1995.

On January 30, 1995, the employee was examined by Dr. David J. Gottlieb, D.C., at the request of the employer and insurer. Dr. Gottlieb opined that the employee had sustained a paralumbar strain injury on July 18, 1995, but that her condition had resolved. He further opined that treatment by Dr. Aagesen was only reasonable and necessary for six weeks following the injury and that while the initial referral to PDR had been reasonable and necessary continued physical therapy after January 30 was not warranted. (Resp. Ex. 1.)

The employee's claims for permanent partial disability (PPD) and medical expenses were heard by a compensation judge at the Office of Administrative Hearings on April 30, 1998. In Findings and Order, served June 29, 1998, the compensation judge found that the employee had a 3.5% PPD rating and that the contested chiropractic and physical therapy expenses were reasonable and necessary. The employer and insurer appeal only from the latter determination.

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

In awarding payment for the employee's treatment at the Aagesen Chiropractic Clinic from November 4, 1994 through April 24, 1995 and treatment at PDR from February 17 through April 5, 1995, the compensation judge made specific findings concerning the nature of treatment and the effects of the treatment on the employee. In his memorandum he indicates that in making his decision with respect to the reasonableness and necessity of these treatments he applied the factors recognized in the Field-Seifert and Horst decisions[1] of this court. His decision

[1] See Field-Seifert v. Goodhue County, slip op. (W.C.C.A. Mar. 5, 1990), and Horst v.

does not discuss whether the permanent treatment parameters, Minn. R. 5221.6010, *et. seq.*, applied or, if they applied, whether their limitations and restrictions, as interpreted by the supreme court's decision in Jacka v. Coca Cola Bottling Co., 580 N.W.2d 27, 58 W.C.D. 395 (Minn. 1998), made the treatments provided to the employee excessive and noncompensable.[2]

On appeal, the employer and insurer's only argument is that the "extensive treatment that the employee received at both Aagesen Chiropractic Clinic and Physicians' Diagnostics and Rehabilitation are not reasonable and necessary medical treatment for the employee's work-related injury as they significantly depart from the applicable permanent treatment parameters." (ER/INS brief at p. 5.) They also point out that the compensation judge did not discuss the supreme court's decision in Jacka. The employer and insurer emphasize that they had voluntarily paid for more treatment than were required by the permanent treatment parameters and that no basis was found by the compensation judge to deviate from the parameters.

The employee argues that the findings of the compensation judge, using the factors set forth in Horst and Field-Seifert, provide a sufficient basis upon which this court can make a factual finding that the requirements of the treatment parameters for a deviation from the limitations on passive and active treatment have been met.

This court is not a finder of fact and declines to analyze the record or to attempt to interpret the compensation judge's factual findings in the manner requested by the employee. Several weeks before the issuance of the compensation judge's decision the supreme court, in Jacka, found the permanent treatment parameters to be strictly enforceable, except in certain "rare cases." The permanent treatment parameters were effective on January 4, 1995, in the midst of the part of treatment at issue in this case. The compensation judge, however, apparently failed to consider the permanent treatment parameters in his decision and resolved the issues based on the arguments made at the hearing.

Under the circumstances of this case we believe that justice would be served by remanding the matter to the compensation judge for further consideration consistent with the requirements of the permanent treatment parameters, as interpreted in Jacka, and more recently in the supreme court's decision in Asti v. Northwest Airlines, 588 N.W.2d 737, 59 W.C.D. 59 (Minn. Feb. 11, 1999). On remand, the compensation judge is free to take additional evidence and make additional findings and the parties are free to take whatever positions they might concerning whether and how the treatment parameters apply to the treatment under dispute in this case.

Perkins Restaurant, 45 W.C.D. 9 (W.C.C.A. 1991).

[2] We note that the hearing on this matter was held on April 30, 1998, and that the supreme court's decision in Jacka was not issued until June 11, 1998. No agreement was made concerning the applicability or effect of the permanent treatment parameters adopted January 4, 1995.