

STEVE D. BILLS, Employee, v. N. CASTINGS and ARGONAUT INS. CO., Employer-Insurer/Appellants, and BLUE CROSS & BLUE SHIELD OF MN, Intervenor/Medical Provider.

WORKERS' COMPENSATION COURT OF APPEALS  
NOVEMBER 12, 1999

No. [REDACTED SSN]

HEADNOTES

MEDICAL TREATMENT & EXPENSE - REASONABLE & NECESSARY; MEDICAL TREATMENT & EXPENSE - TREATMENT PARAMETERS. Substantial evidence, including expert opinion and medical records, supported the compensation judge's findings that the employee was suffering from major depression and other psychological and emotional difficulties during the time he attended chronic pain clinic sessions in 1995 and that he accordingly benefitted little from the chronic pain treatment in 1995, as well as the finding that the employee continues to suffer from chronic pain and that a second structured pain control program is reasonably necessary to assist the employee in learning to manage and accommodate his chronic pain syndrome. Based on these factors, the compensation judge reasonably concluded that a departure from the treatment parameters, which generally allow only one chronic pain management program, is warranted.

Affirmed.

Determined by Johnson, J., Rykken, J., and Wheeler, C.J.  
Compensation Judge: Gregory A. Bonovetz

OPINION

STEVEN D. WHEELER, Judge

The employer and insurer appeal from the compensation judge's determinations that the pain management program requested by the employee is reasonable and necessary and that a departure from the medical treatment parameters is warranted. We affirm.

BACKGROUND

The employee, Steve D. Bills, sustained an admitted work injury to the low back on January 28, 1993 while working for the employer, Northern Castings. The employer accepted liability for the injury. The employee returned to part-time light duty work with the employer from about July 6, 1993 to some time in March 1994, when he was medically taken off work due to the effects of the work injury. (5/8/95 Findings & Order: Findings 4-8 [unappealed].)

The employee treated for his injury with Dr. Thomas Loo, M.D., at the Mesaba

Clinic, and with Dr. P. R. Hindle, M.D. at the Duluth Clinic. In June 1993 Dr. Hindle ordered physical therapy and placed the employee on Elavil, an antidepressant, to help with sleep disturbance. In March 1994, the employee was receiving physical therapy. Dr. Loo had also placed the employee on the antidepressant Elavil. On March 28, 1994 the employee was seen by Raymond N. Sampson, Ph.D., a psychologist, who recorded that the employee was experiencing guilt feelings, decreased energy, concentration problems, psychomotor problems, suicidal ideation and depressed mood. He diagnosed major depression and recommended to Dr. Loo that the employee's Elavil dosage be increased. (Exh. H: 6/11/93; Exh. I: 5/10/94 letter.)

On May 3 and 4, 1994 the employee underwent a functional capacities evaluation (FCA) at Center Therapy in Duluth. The employee cooperated with the evaluation but exhibited exaggerated pain behaviors and self-limited his activities from perceived pain. Psychosocial screening was performed as part of the FCA and indicated significant psychosocial factors which might complicate or delay the injury recovery process. Heather Rhodes, M.S., a licensed psychologist, who conducted the psychosocial screening, recommended that the employee continue participation in psychological counseling and that he be evaluated for participation in a chronic pain program. (Exh. J.)

The employee continued to treat with psychologist Raymond Sampson and demonstrated "severe to extreme depression" on the Zung Depression Screening Inventory on May 6, 1994. The diagnosis was changed to major depression, severe, without psychotic features. (Exh. I: 5/24/94 & 9/12/94 letters.)

On May 18, 1994 Dr. Hindle recommended that the employee participate in a chronic pain program at the Duluth Clinic. On October 4, 1994 psychologist Raymond Sampson opined that the employee had reached the maximum benefit that his psychological treatment could provide him for pain relief, but that the employee still needed psychotherapy for his depression symptoms. He stated that the employee would never be able to return to work for the employer. On November 9, 1994 psychologist Sampson reported that the employee's diagnoses continued to be somatoform pain disorder and major depression. He opined that the 1993 work injury was a substantial and material factor contributing to these conditions. He further stated that the pain clinic treatment being recommended would not be of much help to the employee. In a letter dated November 17, 1994 he further clarified this opinion by explaining that the employee needed to reach successful treatment of his somatoform pain disorder and major depression using cognitive behavioral therapy, relaxation exercises and home exercise and that further improvement in his condition might only be expected once the somatoform pain disorder and major depression was first resolved with further psychological treatment. Dr. Hindle, on the other hand, continued to recommend chronic pain treatment. (Exh. J: 5/18/94, 11/22/94; Exh. I: 10/4/94, 11/9/94, 11/17/94.)

The employee was seen by Dr. Brian A. Erickson, M.D. for evaluation for pain clinic treatment on April 12, 1995. Dr. Erickson diagnosed chronic lumbar sacral strain with underlying disk disease, a pain disorder with psychological factors, and a major depressive episode which he believed to be in partial remission. He recommended that the employee undergo pain

clinic treatment. The employee participated in the Center Therapy chronic pain program at the Polinsky Rehabilitation Center beginning later that month. During the time he underwent this treatment the employee continued to suffer from a major depressive disorder which at times had psychotic features, and was taking various antidepressant medications as well as Ultram and Flexeril for pain. In a discharge summary dated July 12, 1995 the pain clinic's psychologist, Lynne Killian, noted that the employee had "demonstrated significant chronic pain dysfunction and depression at the time he began this program . . . Depression and corresponding memory/concentration disturbances continue to warrant concern." (Exh. G: 4/12/95; Exh. 12; Findings 2, 3 [unappealed]).

After completing the chronic pain clinic the employee returned to work for the employer for five days but was unable to continue due to extreme pain and discomfort. On August 30, 1995 Dr. Loo opined that "due to the fact that he has severe bouts of depression and anxiety... and because of his chronic lumbosacral strain" the employee could no longer work for the employer in any capacity. (Exh. B: 8/30/95.)

The employee was seen by psychologist Raymond Sampson on August 2, 1995. He reported that he was then taking Serzone for depression and Ultram and Flexaril for his pain, but that he did not find them helpful. The employee also told his psychologist that the pain clinic was "bogus" and that he was "right back where he started from." (Exh. I: 8/2/95.)

The employee apparently began individual therapy with a licensed clinical social worker, Kathleen DelGreco, at the Range Mental Health Center some time in December 1995. He was also seen there at various times in group sessions conducted by Charles Hyndman, M.S., a licensed psychologist. (Exhs. A, E.)

The employee began treating with Dr. Gregory J. Milne, M.D., a psychiatrist, on January 12, 1996 on referral by Dr. Erickson. On February 9, 1996, the employee was again seen by Dr. Milne and reported being increasingly depressed and having thoughts of harming himself, and Dr. Milne noted him to be agitated, pacing and unable to sit still. The doctor diagnosed a major depressive disorder, chronic pain syndrome, and chronic back pain. The employee as of that date was taking a variety of prescribed medications including Prozac, Baclofan and Amantadine, which had been started by Dr. Erickson during the pain clinic treatment, and was currently also on Wellbutrin, Depakota and Trazodone. Dr. Milne admitted the employee to the Mesabi Regional Medical Center for rapid modification and stabilization of his medications. (Exh. F: 2/9/96.)

On May 3, 1996, Dr. Milne opined that the employee was permanently disabled and unable to participate in a formal job search. The employee continued to treat throughout 1996 at the Range Mental Health Center. (Exhs. A, E; Exh. F: 5/3/96.)

On September 9, 1996 the employer and insurer and the employee entered into a stipulation for settlement representing a full, final and complete close-out of all claims arising from the January 28, 1993 injury except for future reasonable and necessary non-chiropractic medical expenses. Pursuant to the stipulation, the employer and insurer also agreed to pay all outstanding

medical expenses including the costs of the Center Therapy chronic pain program, although they disputed that the employee had a chronic pain condition causally related to the work injury. The stipulation was reviewed by a compensation judge and an Award on Stipulation was served and filed on September 17, 1996. (Judgment Roll.)

The employee continued to treat for his depression and chronic back pain at the Range Clinic. On January 20, 1997 a progress note signed by Dr. LaKosky indicates that the employee was still adjusting to his back injury but had become more expressive and insightful and was actively seeking insight into pain management techniques. On March 27, 1997 the employee's therapist, Ms. DelGreco, discussed with the employee the possibility that he might attempt trying a pain clinic again. The employee admitted that his psychological state had not been open to the prior chronic pain clinic program, as he was then still exceedingly resentful and not accepting of his disability. Ms. DelGreco suggested he ask his psychiatrist, Dr. Randal LaKosky, M.D., and his treating orthopedic physician, Dr. Loo, whether they thought attendance at a pain clinic was advisable. Ms. DelGreco suggested a program at the Mayo Clinic, which she had found to have been successful for many of her clients. (Exh. 15: 1/20/97 & 3/27/97 Progress Notes.)

On April 23, 1997 the employee was seen for a consultation by Dr. LaKosky. Dr. LaKosky noted that the employee's doctor, Dr. Loo, and his therapist, Kay DelGreco, were recommending that the employee attend a pain clinic. Dr. LaKosky was in agreement with this recommendation. (Exh. 15: 4/23/97 consultation note.)

On June 25, 1997 Ms. DelGreco discussed with the employee whether he was motivated to undergo pain clinic treatment, pointing out that he would need to be very open with what they attempted to teach him and would need to make a major commitment. The employee told Ms. DelGreco that he believed himself to be "at a very different place" than the first time he attempted a chronic pain clinic. Accordingly, Ms. DelGreco again recommended that the employee attempt a chronic pain program, either at the Sister Kenny Institute or at the Mayo Clinic. (Exh. A: 6/25/97, 6/26/97.)

The employee filed a medical request on August 18, 1997 seeking a pain clinic evaluation at the Sister Kenny Institute. The employer and insurer filed a medical response on September 2, 1997, denying liability. (Judgment Roll.)

The employee was seen by Dr. John M. Rauenhorst, M.D. for a psychiatric evaluation on behalf of the employer and insurer on September 24, 1997. Dr. Rauenhorst's impression was of a depressive disorder, in remission, a history of back injury, and psychosocial stressors including conflicts with the workers' compensation system. He stated that he would not recommend a pain clinic, as the employee's prior attempt at such treatment had not been particularly helpful. He also did not think the employee was sufficiently motivated to succeed in such a program. Finally, Dr. Rauenhorst opined that the employee's work injury was not a substantial contributing cause of his depressive disorder. (Exh. 11.)

On November 10, 1997 Dr. LaKosky recorded that “[c]linically, [the employee] is doing relatively well, no evidence of any significant depression. He is still having a lot of trouble with his chronic pain and all this since he has discontinued his psychotropic med[ication]s. . . [He is] trying to get the chance to go through the pain clinic at Sister Kenney. I think he, at this point, is ready for it. I think the depression has improved so he could tolerate the pain clinic.” (Exh. C: 11/10/97.)

The employee underwent a pain clinic evaluation by Dr. John Bowar, M.D. on December 8, 1997. Dr. Bowar recommended inpatient admission to a pain clinic. (Exh. D.)

On May 15, 1998 Dr. LaKosky prescribed the employee’s attendance at the pain management program at the Mayo Clinic. The employee amended his medical request on July 17, 1998 to seek reimbursement for the expenses of the pain clinic evaluation and authorization to attend the pain management program at the Mayo Clinic. (Exh. C: 5/15/98 prescription; Exh. M.)

On July 30, 1998 Dr. LaKosky noted that the employee was still in good remission of his depression but having severe chronic pain. (Exh. C: 7/30/98.)

A hearing was held before a compensation judge of the Office of Administrative Hearings on October 29, 1998. Following the hearing, the judge authorized the employee’s attendance at the Mayo Clinic pain management program and awarded reimbursement for the expenses of the pain clinic evaluation at Sister Kenny Institute on the condition that another admission evaluation is not required by the Mayo Clinic. 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

### Factual Findings

The compensation judge found that the employee was suffering from major depression and other psychological and emotional difficulties during the time he attended chronic pain clinic sessions in 1995 and that he accordingly benefitted little from the chronic pain treatment in 1995. The compensation judge further found that the employee continues to suffer from chronic pain which markedly affects his ability to function and contributes to his anxiety toward engaging in activities which might exacerbate his pain and that a structured pain control program is reasonably necessary to assist the employee in learning to manage and accommodate his chronic pain syndrome. (Findings 3-6.)

Having concluded that further chronic pain clinic treatment is reasonable and necessary, the judge found that a chronic pain rehabilitation evaluation performed by Dr. John Bower of the Sister Kinney Institute had been reasonable and necessary, but that the employee's physicians had subsequently recommended attendance at the Mayo Clinic pain clinic rather than at the Sister Kinney pain clinic. In the absence of evidence whether the Mayo Clinic program would require another admission evaluation, the judge ordered that the employer and insurer pay all reasonable costs associated with the Mayo Clinic pain clinic, and the costs of the Sister Kinney pain clinic evaluation if the Mayo Clinic does not require a separate intake evaluation. (Orders 2, 3.)

The employer and insurer appeal from the judge's factual findings with respect to the employee's need for pain clinic treatment as unsupported by the record. Specifically, they argue that the employee received substantial benefit from the pain treatment sessions in 1995. They contend that the records of the Center Therapy pain clinic reflect that the employee received substantial benefit from the program, having met most of the occupational therapy progress goals at the date of discharge from the program. They further contend that there is no evidence that the employee's subsequent treating physicians reviewed the pain clinic records in detail and that their opinions as to whether the employee benefitted therefrom were accordingly without adequate foundation. Second, they assert that nothing in the medical evidence sets forth a specific diagnosis of a chronic pain syndrome and that there is no evidence that such a condition, if present, is causally related to the work injury. They argue further that no evidence supports a finding that the employee will be restored to a higher level of function by additional chronic pain treatment. Finally, they rely upon the opinions of Dr. Rauenhorst, and assert that the opinions of Dr. LaKosky and therapist DelGreco were without sufficient foundation.

Contrary to the assertions of the employer and insurer, we conclude that there is substantial evidence in the record to support the compensation judge's factual findings.

A chronic pain management program is one which provides "coordinated goal-oriented services to reduce pain disability, improve functional status, promote return to work, and decrease dependence on the health system of persons with chronic pain syndrome." Minn.R. 5221.6600, subp. 2E. The primary indication for such a program is a diagnosis of chronic pain syndrome. Minn.R. 5221.6600, subp. 2E(1).

In the present case, the employee was diagnosed with a somatoform pain disorder

by psychologist Raymond Sampson in 1994, who attributed causation for this condition to the 1993 work injury. The employee was diagnosed with a pain disorder with psychological factors by Dr. Brian A. Erickson, M.D. in April 1995, prior to participation in the pain clinic at the Polinsky Rehabilitation Center in 1995. Subsequent to participating in this pain clinic, the employee's physicians also diagnosed a continuing chronic pain problem. Dr. Gregory J. Milne diagnosed a chronic pain syndrome in February 1996. In November 1997 Dr. LaKosky noted that the employee "is still having a lot of trouble with his chronic pain," and in July 1998, the same doctor noted that the employee was still having severe chronic pain despite good resolution of his depression. Dr. (Exh. I: 11/9/94; Exh. G: 4/12/95; Exh. F: 2/9/96; Exh. C: 11/10/97, 7/30/98.)

While the records of the Center Therapy pain clinic do show that the employee met many of the occupational therapy improvement goals during the program, the evidence taken as a whole suggests strongly that there were no lasting benefits in the form of reduced pain disability, improved functional status, successful return to work or decreased dependence on the health system. It may be reasonably inferred from the evidence that the employee did not achieve lasting success at learning pain management strategies and techniques and applying them on an ongoing basis. The employee's subsequent medical and psychological treatment providers concluded that the employee had not obtained a lasting benefit from the initial pain program, and we believe that this opinion, grounded in their ongoing treatment of the employee, was sufficiently well-founded to support the judge's determination that the employee had not benefitted from the initial pain clinic.

The finding that the proposed pain clinic treatment will assist the employee in reducing his pain disability and improving his functional status rests, necessarily, on the compensation judge's resolution of conflicting medical opinion. The views of Dr. LaKosky and therapist DelGreco are summed up in a letter opinion by Ms. DelGreco dated October 21, 1998 (Exh. A):

In June 1997 Dr. Randall LaKosky, Steve's psychiatrist, and myself, believed Steve would benefit from a chronic pain program as his severe symptoms of major depression had improved. At that time, Steve's functioning level was definitely impaired due to his daily level of chronic pain. . . when Steve attended the [previous] pain clinic, his depression was severe and at times had psychotic features. . . He was very insecure the first time he attended the chronic pain program. He achieved only minimum success during his attendance, mainly because of his depression, his insecurity at being away from the family, and I believe a denial process, in the sense that his injury would not be chronic and persistent. . . As of July, he did not need psychotropic medication any longer, as he was doing relatively well in self-management of his major depression. The main issue that seemed to continue as of July 30th, 1998, was the effect of chronic pain. . . I feel that Steve needs more intensive treatment, such as a chronic pain program to manage and improve

his functioning level. Steve definitely is to a point where I believe he could be a very active patient participant in a therapeutic program.

The compensation judge accepted this opinion over that of Dr. Rauenhorst, the employer and insurer's psychiatric examiner. This court must affirm the compensation judge's choice between conflicting expert opinions unless the opinion relied upon lacks adequate foundation. Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985).

The employer and insurer also point to evidence of activities in which the employee has been able to engage and argue that, accordingly, the employee is not debilitated from all activities by chronic pain. However, evidence that the employee was capable of performing some activities does not so clearly contradict the compensation judge's findings that we would here find it justified to reverse.

The employer and insurer also object from the compensation judge's finding that the treatment program at the Mayo Clinic is reasonable and necessary, noting that the employee was evaluated not for the Mayo program but for one at the Sister Kenny Institute. They further point out that no evidence was submitted describing specifically the details of the Mayo program. We note, however, that the Mayo Clinic pain program was prescribed for the employee by his treating psychiatrist on May 15, 1998. The compensation judge was entitled to rely upon the treating psychiatrist's program recommendation and the prescription represents minimal but sufficient support for the compensation judge's determination. The compensation judge reasonably dealt with the possibility of duplicative services by conditioning reimbursement for the Sister Kenny Institute pain clinic evaluation on whether the Mayo Clinic will require its own admissions evaluation or will accept that already done at Sister Kenny. (Order 3.)

#### Departure from the Treatment Parameters

Pursuant to the medical treatment parameters, "[o]nly one completed pain management program is indicated for an injury." Minn.R. 5221.6600, subp. 2E(3). The employer and insurer argue that pursuant to the treatment parameters, the employee is thus, in any event, not entitled to reimbursement for a second pain management program.

In an unappealed finding, the compensation judge determined that during the time the employee underwent the first pain clinic the employee continued to suffer from a major depressive disorder which at times had psychotic features, and was taking various antidepressant medications as well as Ultram and Flexeril for pain. The compensation judge further found that the employee's major depression and other factors had resulted in his obtaining little benefit from the initial pain clinic treatment. As we have discussed above, the employer and insurer disputed that the employee's depression, medication regimen, and other psychosocial factors had affected his ability to benefit from the pain clinic program, but the judge's finding is supported by expert opinion. We note, further, that the employee's prior psychologist, Raymond Sampson, had also offered the opinion just prior to the employee's admission to the first pain clinic that the pain clinic

treatment would not benefit the employee at that time as he first needed further psychological treatment of his major depression and somatoform pain disorder. (Exh. I: 11/9/94, 11/17/94.)

The compensation judge found, consistent with the opinions of the employee's current psychological treatment providers, that the employee's subsequent improvement in his psychological and physical status now made it more likely that a pain management program would be successful. Based on these factors, the compensation judge concluded that a departure from the treatment parameters is warranted.

In Jacka v. Coca Cola Bottling Co., 580 N.W.2d 27, 35-36, 58 W.C.D. 395, 408 (Minn. 1998), our Supreme Court stated that "in recognition of the fact that the treatment parameters cannot anticipate every exceptional circumstance, we acknowledge that a compensation judge may depart from the rules in those rare cases in which departure is necessary to obtain proper treatment." The compensation judge determined that the circumstances presented in the instant case were exceptional and that a departure from the rules was necessary. We cannot conclude that the compensation judge clearly erred in this determination, and affirm.