

BILL CARROLL, Employee, v. UNIV. OF MINN., SELF-INSURED/SEDGWICK JAMES OF MINN., Employer-Insurer/Appellant, and GRP. HEALTH PLANS, INC., and CAP. ORTHOPEDICS, LTD.

WORKERS' COMPENSATION COURT OF APPEALS
MAY 4, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL EVIDENCE. Given the employee's history of pre-existing left knee problems and a non-work-related injury to the left knee in a motorcycle accident and the absence of an adequate medical opinion tying the employee's work injury to the knee condition of patella chondromalacia and surgery therefrom, substantial evidence does not support the compensation judge's conclusion that the employee's work injury caused or contributed to the employee's patella chondromalacia, the resultant knee surgery and disability.

CAUSATION - GILLETTE INJURY. Where there was evidence of the employee's work activities consisting of continuing use of his arms and shoulders and other manual labor, and the employee's treating medical reports and evidence support a finding that the employee's work activities contributed to his shoulder injury, substantial evidence supports the compensation judge's finding of causation of a Gillette injury.

Affirmed in part and reversed in part.

Determined by Hefte, J., Wilson, J., and Johnson, J.
Compensation Judge: Harold W. Schultz, II

OPINION

RICHARD C. HEFTE, Judge

The self-insured employer, University of Minnesota, appeals from the finding that the employee's May 28, 1998 surgery to his left knee for chondromalacia patella and disability thereafter was caused or substantially contributed to by the employee's work injury of October 5, 1995; and appeals from the finding that the employee sustained a Gillette¹-type injury which culminated in September 1997. We affirm in part and reverse in part.

BACKGROUND

¹ Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 21 W.C.D. 105 (1960).

Bill Carroll, the employee, was working for the self-insured employer, University of Minnesota, as a ventilation mechanic on October 5, 1995 when he claims he sustained a work-related knee injury which eventually caused surgery to his left knee. His primary duties in this job were to perform preventive maintenance on heating and ventilation equipment such as unit heaters, fan systems and air conditioners. The employee claims he twisted and injured his left knee while exiting a ventilation unit after cleaning cooling coils on October 5, 1995. The employee has given other versions as to how this injury occurred, and gave various medical histories of his left knee problems prior to October 5, 1995. At the hearing, the employee admitted that he injured his left knee in a motorcycle accident in May of 1986. However, the compensation judge found that the preponderance of the evidence is that the employee did sustain a work injury to his left knee on October 5, 1995 which contributed to his knee surgery. The employer does not contest the finding that the employee sustained a sprain or strain to his left knee while working on October 5, 1995. The employer does maintain that there is a lack of substantial evidence to support the finding that the employee's left knee work injury of October 5, 1995 causally contributed to the eventual diagnosis of chondromalacia patella² of the employee's left knee, the employee's resultant left knee surgery of May 28, 1998 and any disability therefrom.

Following his work injury in 1995 the employee initially saw Dr. Arthur Wineman, his family physician and gave him a history of having had intermittent knee pains over a period of several years. Thereafter the employee was seen for an orthopedic consultation and treatment by Dr. Randy Twito. The employee gave Dr. Twito a history of twisting his left knee at work on October 5, 1995; however, the employee did not mention any pre-existing left knee problems to the doctor. The employee complained of pain in the medial joint line to Dr. Twito. The doctor testified that he initially felt, based on the history given by the employee and where the employee complained of pain in his left knee, that the employee's October 5, 1995 left knee injury resulted in a mild strain to the medial collateral ligament. Dr. Twito recommended an MRI of the employee's left knee. The MRI results were negative for a meniscus or ligament tear, but did show a mild to moderate chondromalacia in the patella. Two and one-half years after his left knee injury, on May 28, 1998, Dr. Twito performed surgery on the employee's left knee, reporting that the surgery was for the employee's chondromalacia patella condition. He reported the surgery to be an arthroscopic chondroplasty, retropatellar surface trochlear groove femur and resection plica.

As to his left shoulder, the employee saw Dr. Wineman in April of 1997 and noted a history of pain in his left shoulder. At this time, the doctor's notes made no reference to any specific trauma or other precipitating incident. Dr. Wineman diagnosed a probable impingement syndrome of the shoulder and recommended physical therapy as well as a cortisone injection. The employee continued to work full-time. The employee was referred back to Dr. Twito on August 12, 1997 for treatment of chronic left shoulder pain. Dr. Twito, on November 11, 1997, performed a partial acromionectomy and repair of a partial thickness rotator cuff tear of the

² Chondromalacia patella, is defined as inflammation and roughening of the undersurface of the kneecap (patella); also referred to as retropatellar arthritis. Encyclopedia of Medicine, American Medical Association, p. 275, 774 1989.

employee's left shoulder. Following this surgery, the employee was off work until March 20, 1998, when he was released to work with restrictions; and thereafter, in April 1998, Dr. Twito released the employee to work at his regular job without restrictions.

The employee claimed entitlement to workers' compensation benefits as a result of his October 5, 1995 left knee injury and the subsequent diagnosis of chondromalacia patella with the resulting 1998 surgery and disability of his left knee; and for benefits as a result of a Gillette-type injury to his left shoulder which culminated in September 1997. In his findings and order, the compensation judge found that the employee sustained a compensable injury to his left knee resulting in chondromalacia patella of the left knee, surgery and disability; and that he sustained a work-related Gillette-type injury to his left shoulder. The self-insured employer, University of Minnesota, 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 (1998). 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

Left Knee

The self-insured employer contends that the evidence fails to establish that the employee's October 5, 1995 work injury caused or substantially contributed to the diagnosis of the condition of chondromalacia patella in the employee's left knee, the need for left knee surgery and resultant disability for which the employee seeks compensation. Therefore, the self-insured employer maintains that the compensation judge's findings and order should be reversed on this issue. We agree.

The burden of proof is on the employee to establish that his disability is causally related to the work injury. "It is not necessary . . . for the employee to show that the work-related injury was the sole cause of the disability. It is only necessary to show that the injury was a legal

cause, that is, an appreciable or substantial contributing cause.” Salmon v. Wheelbrator Frye, 409 N.W.2d 495, 497-98, 40 W.C.D. 117, 122 (Minn. 1987). Injuries are compensable if the employment is a substantial contributing factor not only to the cause of the condition but also to the aggravation or acceleration of a pre-existing condition. Wallace v. Hanson Silo, 305 Minn. 395, 235 N.W.2d 363, 28 W.C.D. 79 (1975). Where an employee has had a history of a pre-existing medical problem, the Minnesota Supreme Court has stated, “[w]hether the employment [aggravating the pre-existing condition] is a question of fact, not law and a finding of fact on this point . . . based on any medical testimony or, in the commoner afflictions where the [compensation judges] themselves have acquired sufficient medical expertise, based on the [compensation judge’s] expert knowledge even without medical testimony, will not be disturbed on appeal.” Bender v. Dongo Tool Co., 509 N.W.2d 366, 367 49 W.C.D. 511, 513 (Minn. 1993).

On occasion the employee did not provide a history of any left knee problem to his left knee prior to his October 1995 work injury. However, the employee told Dr. Wineman that he had a several year history of intermittent pain in his left knee prior to his October 1995 work injury. At the hearing, the employee admitted he was in a motorcycle accident in 1986 where he was thrown from his bike and received a direct trauma to his left knee which left a scar on the front of his knee.³

Following the employee’s October 5, 1995 knee injury, the employee was initially treated by his family physician, Dr. Wineman. Dr. Wineman felt, that after his examination, that the employee sustained a meniscal injury to his left knee. Thereafter the employee was referred to an orthopedist, Dr. Randy Twito who first examined the employee on December 1, 1995, and had an MRI done of the employee’s left knee on December 14, 1995. In his original history to Dr. Twito, the employee indicated he sustained a twisting injury to his left knee at work. The employee complained of pain along the joint line with tenderness along the medial side of the knee. The MRI scan revealed some fissuring of the retropatellar cartilage, with no evidence of a meniscal or ligamentous tear. The scan also showed a mild to moderate chondromalacia of the patella. When aware of the MRI, Dr. Wineman, on October 6, 1996, concluded: “Left knee pain of uncertain etiology, may represent in part a patellofemoral syndrome. However, exam suggests a meniscal injury.” At this time the employee’s knee was treated with conservative management. According to the medical records, Dr. Twito next noted the employee’s left knee problem in his notes of September 1997. Thereafter, the employee’s next apparent visit to Dr. Twito for his knee problem was in April 1998. At this time the doctor noted the employee was having increasing symptoms in his left knee. Shortly thereafter, on May 28, 1998, some 31 months after the employee’s injury in 1995, Dr. Twito performed surgery for the chondromalacia patella problem in the employee’s left knee.

³ The employee did not initially give Dr. Wineman or Dr. Twito any history of a 1986 motorcycle accident. At first he did not mention the motorcycle accident in the medical history he provided to Dr. Drake, an independent medical examiner. The doctor learned of the motorcycle accident only after he noticed the scar on the employee’s knee during a physical examination and then specifically inquired as to what caused the scar.

The compensation judge basically found that the employee did sustain a work injury on October 5, 1995 resulting in chondromalacia, surgery to his left knee and disability. In his memorandum, the compensation judge only stated there was a causal relationship herein based on the testimony of Dr. Twito. No explanation as to this opinion on causation was given by the compensation judge in his findings and order, or in his memorandum. Although the November 1995 MRI scan showed mild to moderate chondromalacia of the patella, Dr. Twito did not report or testify that the employee's October 1995 work injury caused, aggravated, accelerated or contributed to the employee's patella chondromalacia. The history that the employee gave Dr. Twito was that he was backing out of a ventilation duct when his foot became entangled and he sustained a twisting injury to his left knee. In October 1997, the employee's attorney inquired of Dr. Twito by letter as to what was the doctor's opinion as to whether the employee's work activities were the cause, aggravation or acceleration of the employee's worsening knee symptoms. Dr. Twito's return letter noted simply, "In regards to the knee, again he did not provide a mechanism of injury to link this to a work-related aggravation prior to his visit in September of 1997." (Ex. H.)

On July 28, 1998, Dr. Twito's deposition was taken by the employer's attorney. The employee had not given a history to Dr. Twito of any pre-existing problem with his knee. The employee only told the doctor he twisted his knee on October 5, 1995 and that he had medial joint line pain. Dr. Twito testified he felt that the employee sustained a grade 1 sprain which the doctor explained is some soreness in the knee but no actual disruption of the ligament. (Dr. Twito depo, p. 8.) Dr. Twito, who had the MRI done in 1995 and performed the operation on the employee's left knee in 1998 agreed in his deposition that there was no way to determine when the [employee's] chondromalacia developed. (*Id.*, p. 10.) When asked in his deposition, Dr. Twito admitted that he was not aware of the fact that the employee had been involved in a motorcycle accident in 1986 where he sustained a traumatic injury to his left knee. The doctor admitted the injury to the employee's knee from a motorcycle accident might develop the chondromalacia problem; however, he also stated that chondromalacia may develop without trauma. When asked to give a scenario that may have caused or contributed to the employee's chondromalacia, taking into consideration the knee trauma from the motorcycle accident, Dr. Twito answered, "It's speculation. As I said, it would be hard to actually say what actually caused it." (*Id.*, p. 11.) As to the consequence of the employee's October 1995 work incident of twisting his knee, Dr. Twito concluded, based on the history of a twisting injury and his treatment of the employee, that "He [employee] most likely had some kind of mild sprain." (*Id.*) At Dr. Twito's deposition, the employee's attorney asked no questions of Dr. Twito as to causation or aggravation of the employee's left knee chondromalacia from the employee's work injury. Dr. Wineman in his examination notes of October 8, 1996, apparently aware of the 1995 MRI results, stated, "No specific injury noted except he has occasionally sprained it [left knee]." Dr. Wineman concluded that the employee's left knee problem may represent in part a patellofemoral syndrome and that this problem was of "uncertain etiology."

Dr. Drake, who performed an independent medical examination for the employer, did not testify that the employee's October 1995 injury was a cause or contributing factor to the employee's chondromalacia patella. He stated:

Well, chondromalacia patella, to me implies, either a slow repetitive breakdown of the undersurface of the cartilage or the patella, which can be caused from several things. A direct blow to the patella is one. Secondly would be a malalignment syndrome of the patella where the patella sits in its notch in kind of an abnormal fashion or third, a history of recurrent dislocations and fourth, just age related cartilage breakdown.

And the history that he gave, this type of injury, and from what I could glean from the records in reviewing them, they basically stated to me that he had strained his knee, soft tissue strain. I find it very hard to believe that that's what caused his patellofemoral condition.

(Dr. Drake depo., p. 10-11.)

At the hearing it was shown that the employee had significant pre-existing left knee problems with continuing knee pain, as well as a traumatic left knee injury in a 1986 motorcycle accident. Dr. Twito's testimony reasonably indicates that the employee's history of the 1995 injury was a twisting type knee injury with no complaints of pain in the patella area of his knee. Dr. Twito's testimony, based on the history that the employee twisted his left knee and consideration of the employee's complaints of pain, more reasonably supports that conclusion that the employee only sprained his knee on October 5, 1995. Dr. Twito reasonably concluded this history does not provide the mechanism to cause or aggravate the condition of patella chondromalacia; and, the surgery to the employee's left knee was for the patella chondromalacia condition. It does not appear that the employee's claim here involves a common affliction for which an opinion on causation could be made without expert medical testimony. Based on the overall record there is a lack of medical causation or other substantial evidence linking the employee's chondromalacia and resultant surgery and disability to the employee's 1995 work injury. Therefore, the compensation judge's decision as to the causation of the employee's left knee chondromalacia, surgery and disability therefrom is clearly erroneous and not supported by the record as a whole. The findings and order as to the causation of the employee's left knee patella chondromalacia condition, surgery and disability are reversed. (Finding 36 reversed in total; Finding 39, 40 and applicable orders reversed in part.)

Left Shoulder

The employer claims that the compensation judge erred in finding that the employee sustained a Gillette injury to his left shoulder which culminated in September 1997 and resulted in left shoulder surgery on November 17, 1997. We disagree and affirm the compensation judge on this issue.

Proof of a Gillette injury depends primarily on medical evidence. Steffen v. Target Stores, 517 N.W.2d 579, 50 W.C.D. 464 (Minn. 1994). In September 1997 and prior thereto, the

record indicates the employee had symptoms of pain in his left shoulder which he began to notice while working for the employer, especially while working on window air conditioners. The employee's attorney provided a list to Dr. Twito of the employee's various 1997 work activities to support the claim for a Gillette injury. (See Ex. H.) The employee had to push heavy windows up and down in order to install the air conditioner units. The employee had to reach with his arms, and stretch. These windows were apparently installed in April and May of each year. (Unappealed Finding 17.) There is also evidence that the employee was doing frequent overhead work and work on ladders which affected his shoulders. Although the employer questions the veracity of some of these incidents at work because of the employee's inconsistent testimony and an inaccurate history of a fall of the employee at work, there is adequate evidence that the employee was involved in heavy work activities in 1997 for the employer to support Dr. Twito's opinion on causation. Dr. Twito had an MRI done which revealed internal degeneration and intrasubstance fiber tearing of the rotator cuff in the employee's shoulder. This was repaired by surgery done by Dr. Twito on November 11, 1997. The doctor acknowledged that he was aware of the history of the employee's work activities involving his left shoulder prior to his claimed Gillette injury of September 1997. Dr. Twito reasonably concluded that the employee's various work activities contributed to the employee's left shoulder injury and surgery. He testified:

In regards to the history which you [employee's attorney] provided regarding an incident in February of 1997 while working at the University of Minnesota, this certainly as described may have played a part in the current condition of the shoulder. I do not have the specific history from the patient which you provided nor any other history in regards to trauma to the shoulder. Assuming the facts to be as you presented in the absence of other traumatic injury, this may have been a contributing cause to his current diagnosis, as well as the need for future care and treatment for his shoulder condition. (Ex. H.)

The compensation judge reasonably concluded that the employee's medical evidence and his work activities adequately support a finding that the employee's work for the employer is a substantial contributing factor to the employee's Gillette shoulder injury which culminated in September 1997. We affirm on this issue.