SHARON A. EMERSON, Employee, v. HERITAGE MANOR HEALTH CTR. and AM. COMP. INS. CO./RTW, INC., Employer-Insurer/Appellants, and BLUE CROSS/BLUE SHIELD OF MINN., Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
JULY 12, 1999

No. [REDACTED SSN]

HEADNOTES

MAXIMUM MEDICAL IMPROVEMENT - SUBSTANTIAL EVIDENCE. Although the employee's condition had changed little in two years, where the recommended treatment and diagnostic measures were substantive and there was evidence in the medical record to conclude that the judge's decision was not unreasonable, the compensation judge's decision that the employee had not yet achieved MMI was not clearly erroneous or unsupported by substantial evidence.

WAGES - IRREGULAR; WAGES - OVERTIME. Where wage records revealed that the employee worked for the employer several times as few as sixteen hours a week and several times as many as thirty-two hours a week during the twenty-six weeks preceding her work injury, the compensation judge's calculation of the employee's weekly wage by the statutory averaging method was not unreasonable, notwithstanding the fact that the employee's actual total hours for the period ultimately correlated fairly highly with her anticipated twenty-four hours a week, and notwithstanding the fact that the record contained evidence of the overtime paid the employee during only the twenty-six week pre-injury period, as opposed to "throughout the year."

PERMANENT PARTIAL DISABILITY. Where the employee had not yet reached MMI, the compensation judge's award of permanent partial disability benefits was premature under the facts of the case.

MEDICAL TREATMENT & EXPENSE - REASONABLE & NECESSARY. Where x-rays routine to the employee's first examination revealed sufficient structural abnormalities to render her subsequent CT scan not unreasonable in light of her continuing low back symptoms, the compensation judge's award of payment for the scan was not unreasonable, notwithstanding the fact that the employee's doctor's first report revealed no suggestion of neurological involvement.

MEDICAL TREATMENT & EXPENSE - REASONABLE & NECESSARY. Where there was expert medical opinion that the employee's depression was related to her work injury, the compensation judge's conclusion that psychological treatment was reasonable and necessary to cure or relieve the work injury was not clearly erroneous and unsupported by substantial evidence.

MEDICAL TREATMENT & EXPENSE - REASONABLE & NECESSARY. Where the employee's low back symptoms had apparently gotten worse in the two years since her work

injury, and where the employee was not yet at MMI, the compensation judge's award of proposed further treatment including a repeat MRI scan, an EMG, facet joint injections, and physical therapy was not clearly erroneous and unsupported by substantial evidence, notwithstanding the fact that all of those diagnostic tool and treatment modes except the EMG had been tried with only minimal success previously.

Affirmed in part and reversed in part.

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

OPINION

WILLIAM R. PEDERSON, Judge

The employer and insurer appeal from the compensation judge's award of temporary total and permanent partial disability benefits, from the judge's award of proposed medical treatment and payment for a past CT scan, and from the judge's determination of the employee's average weekly wage. We reverse the award of permanency benefits as premature, and we affirm on all other issues.

BACKGROUND

On July 25, 1996, Sharon Emerson sought treatment with Dr. Jan Dawson for symptoms of low back pain radiating into her lower extremities and related weakness, tingling, and numbness. Dr. Dawson's examination was essentially normal with only some tenderness to palpation, but x-rays revealed "small disc margin spurs throughout the lumbar spine and . . . narrowing of the L4-5 disc space," together with "hypertrophic degenerative changes of the facet joints in the lower lumbar spine." A CT scan of the lumbar spine was subsequently conducted on August 5, 1996,[1] which revealed degenerative changes at the facet joints at L3-4, L4-5, and L5-S1, with slight annular bulging at L4-5. On August 9, 1996, Ms. Emerson [the employee] made a First Report of Injury, attributing her condition to an incident that occurred on July 12, 1996, in the course of her work as a Licensed Practical Nurse for Heritage Manor Health Center - - a fall onto a bed in the process of assisting a resident of the center in moving out of a wheelchair and into her bed. Heritage Manor Health Center [the employer] and its insurer initially denied primary liability, but on September 9, 1996, after an MRI scan on August 28, 1996, they accepted primary liability for a work injury to the employee's low back on the date claimed.

On October 10, 1996, the employee was examined by rehabilitation specialist Dr. Peter Hindle. Dr. Hindle's report contains a note that "[p]ast medical history includes

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[1] The report of the scan itself is the first reference to it in the medical records; Dr. Dawson is listed as the treating doctor on the report.

depression and tiredness for which she has been on Prozac for 15 years." Dr. Hindle diagnosed lumbosacral strain with sacroiliitis and referred pain into the right leg from the S1 region, with other complications including morbid obesity and probable functional overlay. He recommended a calorie-reducing diet for long-term weight loss, prescribed medication and a regimen of physical therapy, and took the employee off work for a month. Dr. Hindle saw the employee again in follow-up on November 14, 1996, when he indicated that she could begin increasing her work time by an hour a day every two weeks, from four hours a day three times a week to eventually full time work.

By December 27, 1996, the employee was apparently back at full wage, and on December 30, 1996, the employer and insurer filed a Notice of Intention to Discontinue [NOID] temporary partial disability benefits. About January 6, 1997, however, the employee found the work too painful, and on January 9, 1997, Dr. Hindle reduced her again to light duty, indicating that "she is likely near maximum medical improvement" and "may need to be on a chronic pain management program." An administrative conference on the employer and insurer's NOID was held on February 24, 1997, and on that same date the employee filed a Claim Petition, alleging entitlement to compensation for a 10% whole-body permanent impairment pursuant to Minn. R. 5223.0390, subp. 4C(2), to payment of various medical expenses, and to rehabilitation services, all consequent to the July 12, 1996, work injury.

By Order filed March 3, 1997, a settlement judge at the Department of Labor and Industry denied discontinuance of the employee's wage loss benefits on grounds that the employee's refusal to work full time had been reasonable. The employer and insurer filed another NOID on March 18, 1997, alleging that the employee was over ninety days past MMI, pursuant to a November 8, 1996, report of independent medical examiner Dr. Donald Starzinski. Two days later, on March 20, 1997, the employer and insurer also responded to the employee's Claim Petition, denying liability for the claimed medical care and alleging in part that the employee's July 1996 low back work injury had been only minor and temporary and that the employee had fully recovered from it without any residual disability, limitations, or other consequences. On April 11, 1997, a settlement judge denied the employer's March 18, 1997, NOID on grounds that the employee was not yet at MMI, pursuant to the opinion of Dr. Hindle that she might still benefit from treatment for functional overlay at a chronic pain center.

On May 15, 1997, with the employee doing "possibly somewhat better" than she had been doing, Dr. Dawson recommended a neurological evaluation. On June 4, 1997, the employee saw Dr. Charles Burton at the Institute for Low Back and Neck Care, who concluded in part that the employee was suffering from a chronic pain syndrome "significantly potentiated by stress and depression." On August 25, 1997, Dr. Dawson reiterated an earlier request for a repeat MRI scan, which was apparently again denied. On September 11, 1997, the employee underwent a chronic pain evaluation by Dr. John Bowar of the Sister Kinney Institute, who diagnosed frustration and depression secondary to chronic and radiating low back pain and recommended admission into a chronic pain program. Upon the employee's completion of the program on October 23, 1997, Dr. Bowar recommended that the employee "follow up with a psychiatrist closer to home to see if we are giving her the optimum treatment."

On October 27, 1997, the employee filed a Medical Request, seeking payment of nearly $2,800 in outstanding medical bills , continued use of a TENS unit, and reimbursement of certain out-of-pocket medically related expenses. The employer and insurer responded, refusing to pay about a third of those bills. On December 16, 1997, the employer filed another in a series of NOIDs, asserting that the employee had been served notice of MMI on December 12, 1997, and that temporary total disability benefits would be discontinued as of March 12, 1998. By an Order on Discontinuance filed January 15, 1998, a settlement judge granted the request to discontinue benefits as intended. The judge explained in his memorandum, "In April 1997 the employee was at MMI except for treatment for the functional overlay. Since that time the employee has [been] treated for that condition by Dr. Bowar. Dr. Bowar has opined that the employee is at MMI. That opinion is credible." The employee subsequently filed an Objection to Discontinuance.

On January 26, 1998, Dr. Dawson reiterated his opinion that the employee had not yet reached MMI. He reminded the employee's attorney that "[a]fter evaluation from the Institute for Low Back and Neck Care in June 1997, a number of recommendations were made for further treatment." He indicated that, although the employee "does have an appointment for a psychiatry evaluation," "[s]he has not been treated for facet syndrome at multiple levels by injections or block, nor has she had treatment of bilateral trochanteric bursitis," and "[a] conditioning program advised has not been instituted." Dr. Dawson also indicated that, in his opinion, "The employee would benefit from treatment of trochanteric bursitis and treatment of facet syndrome with injections or blocks" and that "[t]his, hopefully, would facilitate improvement of her chronic pain syndrome and hope for placement into an acceptable work situation."

At the beginning of 1998, the employee had also begun following up, on her own, the recommendation of Dr. Bowar that she seek care from a psychologist and a psychiatrist. On January 5, 1998, she had seen psychologist Charles Hyndman, who had diagnosed "Major Depression" consequent in important part to chronic pain and "sadness over losing her work role" as a result of her July 1996 work injury. Mr. Hyndman referred the employee to psychiatrist Dr. Randall LaKosky, for review of her current medications. Noting that the employee had "been on Prozac for years for panic disorder" prior to her treatment at the pain clinic, Dr. LaKosky diagnosed on February 17, 1998, "depression secondary to a significant pain syndrome." He noted also that the employee's pain was evident and credible during their consultation and that she demonstrated also "many symptoms of . . . post traumatic stress disorder." When Mr. Hyndman saw the employee again on February 23, 1998, he reiterated his conclusion that she was "suffering from a major depression," noting at the start that she had spoken "about her continuing pain, her embarrassment in public when she has to get up slowly after sitting for a while."

The employee continued to be treated by Dr. Dawson into the summer of 1998. By June 1998 her pain was reported to be worsening, and by August 27, 1998, her symptoms had grown severe. On that date, Dr. Dawson again requested a repeat MRI scan, together with authorization to perform facet joint injections. In a letter to the employee's attorney dated September 17, 1998, he reiterated that, when the employee was evaluated at the Sister Kenny Institute, her recommendations had included six to eight psychology counseling sessions and a change of antidepressant medication. He emphasized that the employee had been able to see

psychiatrist Dr. LaKosky only once, however, due to financial restrictions. After reviewing also the employee's physical symptomology and her need for an EMG and for a repeat MRI and further facet joint injections, payment for both of which had been denied, Dr. Dawson asserted once more his opinion that "[i]n view of Mrs. Emerson's increasing symptomatology, in my opinion she has not reached maximal medical improvement as yet." He emphasized, "It would be in Mrs. Emerson's best medical interest to be given treatments and/or further diagnostic studies as described above prior to making a determination of maximum medical improvement."

The employee's February 1997 Claim Petition, her October 1997 Medical Request, and her February 1998 Objection to Discontinuance were consolidated for hearing, and the matter came on for hearing on September 23, 1998, before Compensation Judge Gregory A. Bonovetz. Issues at hearing included the following: the employee's weekly wage at the time of her July 12, 1996, work injury; whether the employee had reached statutorily effective MMI with regard to that work injury on December 12, 1997; the employee's entitlement to temporary total and permanent partial disability benefits; and the employee's entitlement to payment for her August 1996 CT scan and certain out-of-pocket medical expenses and to payment for certain proposed medical expenses including an MRI scan, psychological counseling, a wheelchair, housework assistance, an EMG, and physical therapy. By Findings and Order filed November 19, 1998, Judge Bonovetz concluded in part that the employee had been earning an average weekly wage of $350.43 on the date of her work injury, that she had not yet reached statutorily effective MMI with regard to that injury, that she was therefore entitled to continuing temporary total disability benefits, that she was also entitled to "the sum of $7,500.00 representing 10% permanent partial disability," and that most of her claimed past and proposed medical expenses, including the August 1996 CT scan, were reasonable and necessary and payable by the employer.[2] 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 (1996). 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,

[2] The judge's medical benefits award apparently excluded payment of a $1,113.20 bill found to represent treatment for a urinary problem unrelated to the work injury, payment for evaluation and treatment with a Twin Cities physical therapist found to be alternative to awarded chronic pain treatment, and payment for a wheelchair and assistance with housework.

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

Temporary Total Disability and MMI

Judge Bonovetz concluded that a report of MMI had not been properly served on the employee because "a 12/12/97 medical report of Dr. Bowar," as referenced in the service cover letter in evidence, "is not found anywhere within the respondent's exhibits" or elsewhere in the record. "Having failed to prove the existence much less the service of a 12/12/97 MMI report," the judge indicated, "the employer and insurer have failed to comply with the statutory requirements for proper discontinuance of temporary total disability benefits as of March 12, 1998." The judge concluded also that,

> Because the employee has yet to undergo reasonable and necessary recommended procedures intended to improve her orthopedic/neurologic condition and because the employee has been precluded from pursuing the recommended psychologic/psychiatric treatment intended to improve the Major Depression emanating from the effects of the work injury of July 12, 1996, as of the date of hearing, September 23, 1998, the employee still had not reached maximum medical improvement from the effects of the injury of July 12, 1996.

The employer and insurer contend that the employee's condition has not improved in two years, that she was at MMI no later than December 8, 1997, and that a medical opinion to that effect was in fact properly served on her on December 12,1997. In the alternative, they contend that MMI was properly served on her as of the date of the hearing. While we do question the reasonableness of the judge's conclusion that service per se was not accomplished on December 12, 1997,[3] we

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[3] Admitted into evidence as Employer and Insurer's Exhibit 4 is an inquiry from the Insurer addressed to Dr. Bowar, seeking Dr. Bowar's opinions as to the existence of MMI, the date of any MMI, and the extent of any permanent partial disability. On the line following "MMI" the word "Yes" is written and circled by hand, on the line following "DATE" the date "10-27-97" is written by hand, and on the line following "PPD %" the numbers "10.5" and "5223.0070 S1A3b" are written by hand. Other information, including job search restrictions, is also handwritten onto the form, and at the end is a signature, apparently of Dr. Bowar, dated "12-8-97." Also admitted into evidence, as Employer and Insurer's Exhibit 5, is a letter from the insurer to the employee, dated four days later, December 12, 1997, purporting to serve upon her a "medical report, dated 12/12/97 [sic], which indicates that in the opinion of Dr. Bowar, you have reached Maximum Medical Improvement by 10/27/97 for this injury." There is no formal physician's report of MMI dated

are not persuaded that Judge Bonovetz was unreasonable in concluding that the employee has not yet reached MMI in fact.

Upon the employee's completion of her chronic pain program in October 1997, Dr. Bowar recommended that the employee "follow up with a psychiatrist closer to home to see if we are giving her the optimum treatment." He indicated, "I believe 6-8 psychology counseling sessions to help strategize and help reinforce that she is doing the right thing would be of significance to getting her back to work." Implied in Dr. Bowar's recommendation was the expectation that the employee's ability to work could still improve with the recommended psychological/psychiatric treatment. The employee subsequently commenced such treatment but the employer and insurer have refused to pay for it. Subsequently Dr. Dawson recommended also a more current MRI scan and an EMG, to assist in diagnosing the employee's increasing radicular symptoms.[4] In addition, Dr. Dawson recommended additional facet joint injections to improve the employee's condition for working. All of these requests were also denied. We grant that a doctor's recommendation of mere self-care maintenance measures, as opposed to actual medical treatment and diagnostic measures expected to promote further recovery or improvement, does not in itself compel a conclusion that MMI has not been reached. See Saldana v. Salvation Army, slip op. (W.C.C.A. May 9, 1995). In this case, however, the compensation judge was reasonable in finding that the recommended treatment and diagnostic measures were substantive. We acknowledge that this is a close issue, but, because it was not unreasonable, we affirm Judge' Bonovetz's conclusion that Ms. Emerson has not yet achieved MMI in fact. Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239.

Weekly Wage

December 12, 1997, in evidence. It appears that the judge's denial of service hinged on what is probably a typographical error in the insurer's December 12 cover letter - - an inadvertent repetition of the current date in place of the date of Dr. Bowar's handwritten response on the employer's MMI query. This appears inconsistent, in that Settlement Judge John Ellefson apparently relied on some evident MMI opinion of Dr. Bowar in initially granting discontinuance on January 15, 1998, and in that Judge Bonovetz himself appears to have credited and to an extent relied on Dr. Bowar's "unserved" response on the query form as a basis for his award of permanent partial disability benefits: in Finding 25, Judge Bonovetz noted that Dr. Bowar had made his rating under a rule no longer applicable at the time of the employee's work injury and selected the applicable rule "which most closely reflects the rules cited by Dr. Bowar."

[4] The employer and insurer have argued that the employee's subjective complaints are unchanged, offering as evidence several references to unchanged clinical examination and testimony by the employee to the effect that her symptoms have not gotten any better over that two-year period. Notwithstanding a few references in the medical record to unchanged clinical exams and the employee's testimony that her symptoms have not improved, we find ample evidence in the record that the employee's symptoms have deteriorated.

Judge Bonovetz found that, on the date of her work injury, the employee had been working irregular hours and with frequent overtime over the course of the twenty-six weeks prior to her work injury, and on that basis he computed an average weekly wage of $350.43. The employer and insurer contest the finding on two bases: first, that the employee's wage records during the twenty-six weeks preceding her injury reveal "very little discrepancy from the Employee's assigned 24 hours per week"; second, that Judge Bonovetz based his assessment of the regularity and frequency of the employee's overtime on that same twenty-six-week period instead of "throughout the year," pursuant to the language of Minn. Stat. § 176.011, subd. 18.[5] The employer and insurer contend that the employee's weekly wage should have been calculated based on her hourly wage for the twenty-four hours a week that she was employed to work regularly and should not have included overtime pay. Calculation by this method would have resulted in a weekly wage of $344.37 rather than $350.43. We are not persuaded that the judge's decision was unreasonable

The primary object of wage calculation is to "arrive at a fair approximation of [the employee's] probable future earning power which has been impaired or destroyed because of injury." Knotz v. Viking Carpet, 361 N.W.2d 872, 874, 37 W.C.D. 452, 455 (Minn. 1985), quoting Sawczuk v. Special School Dist. No. 1, 312 N.W.2d 435, 437-38, 34 W.C.D. 282, 287 (Minn. 1981). Even where statutory wage determination provisions are not followed precisely, a wage rate determined by a compensation judge may be allowed to stand if it is "sufficiently adequate" to this purpose. See Redgate v. Sroga's Standard Service, 421 N.W.2d 729, 40 W.C.D. 948 (Minn. 1988). Moreover, even an alternative method of calculating an employee's wage may be permitted, so long as that method will reasonably result in a reflection of the employee's injury-related loss of earning power. See Decker v. Red Wing Shoe Co., 41 W.C.D. 763 (W.C.C.A. 1988). Wage records in this case do reveal that the employee worked for the employer several times as few as sixteen hours a week and several times as many as thirty-two hours a week during the twenty-six weeks preceding her work injury. Notwithstanding the fact that the employee's actual total hours for the period ultimately correlated fairly highly with her anticipated twenty-four hours a week, and notwithstanding the fact that the record contains evidence of the overtime paid the employee during only the twenty-six week pre-injury period,[6] we conclude that Judge' Bonovetz's determination of the employee's weekly wage, minimally different as it is from the determination recommended by the appellant, was not unreasonable. Therefore we affirm the judge's finding as to weekly wage. See Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239.

Permanent Partial Disability

Judge Bonovetz awarded the employee compensation for a permanent partial

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[5] Judge Bonovetz made no determination as to the regularity or frequency of overtime over the course of the full year.

[6] Overtime was evidently paid during twelve - - nearly half - - of the twenty-six weeks preceding the work injury.

disability to 10% of her body as a whole, pursuant to Minn. R. 5223.0390, subp. 3.C.(2). The employer and insurer contend in part that, in the event that we should affirm the judge's determination that MMI has not yet been reached, any award of permanent partial disability benefits is premature. We agree. The rule under which Judge Bonovetz awarded benefits requires a showing of permanent "[s]ymptoms of pain or stiffness in the region of the lumbar spine, substantiated by persistent objective clinical findings" of involuntary muscle tightness or decreased range of motion. Until the employee's work-related low back condition is found to have improved to the fullest extent possible, any conclusion as to the persistence of such findings is premature. Moreover, Minn. Stat. § 176.101, subd. 2a(b), provides for payment of permanent partial disability benefits only "upon cessation of temporary total disability" benefits. Should the employee find her condition unchanged after undergoing the treatment that her doctors have recommended for her, or should those recommendations be withdrawn or she be otherwise found to have reached MMI in fact without such treatment, a final rating and award of benefits for permanent partial disability might be in order once the employee's temporary total disability benefits have ceased. We reverse the compensation judge's award of permanency benefits under the facts of this case.

Medical Benefits

The August 5, 1996, CT scan

Judge Bonovetz's award of medical expenses included an award of payment for the CT scan that the employee underwent on August 5, 1996, about three weeks before she underwent her August 28, 1996, MRI scan. The employer and insurer contend that the scan was not reasonable and necessary, in that the employee's July 25, 1996, examination with Dr. Dawson, her only examination prior to the scan, was nearly normal and revealed no suggestion of neurological involvement. We are not persuaded that Judge Bonovetz's award of payment for the scan was unreasonable. It is true that Dr. Dawson did not diagnose any neurological problem in his report on his July 25, 1996, examination of the employee. His x-rays routine to that examination, however, revealed sufficient structural abnormalities to render his subsequent order of a CT scan not unreasonable when the employee's low back symptoms continued unrelieved. Nor was it unreasonable for Judge Bonovetz to defer to that decision of Dr. Dawson in concluding that the scan was a reasonable and necessary diagnostic device in treatment of what was ultimately determined to be a work-related condition. Therefore we affirm the judge's award of payment for the CT scan. Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239.

Psychological Treatment

Pursuant to recommendations of Dr. Bowar, the employee has commenced treatment with both a psychologist and a psychiatrist for Major Depression and Post-Traumatic Stress Disorder, which have been diagnosed as secondary to a chronic pain syndrome related to her July 1996 work injury. Judge Bonovetz found that treatment reasonable and necessary to cure or relieve that work injury and awarded the employee payment for it accordingly. The employer and insurer contend that the treatment was neither at issue before the court, because not claimed

in the Claim Petition, nor proven to be causally related to the injury, in that Dr. Bowar was apparently unaware that the employee's medical history included treatment with Prozac for fifteen years prior to her work injury.[7] We are not persuaded that the judge's award of the treatment was unreasonable.

Where a work-related physical injury causes, aggravates, accelerates, or precipitates a mental injury, that mental injury is compensable. See Hartman v. Cold Spring Granite Co., 243 Minn. 264, 67 N.W.2d 656, 18 W.C.D. 206 (1954). Depression caused by a work-related physical injury is among those mental conditions that are compensable in Minnesota. See Dotolo v. FMC Corp., 375 N.W. 2d 25, 38 W.C.D. 205 (Minn. 1985). It is true that, in her February 1997 Claim Petition, the employee did not expressly list depression as a specific and separately compensable mental injury consequential to the July 1996 physical injury that was basic to her claim. However, near the beginning of the September 1998 hearing below, Judge Bonovetz expressly identified payment for "psychology counseling" as a matter presumed to be at issue for determination. The employer in no way objected to that presumption and, in fact, expressly conceded that it would be "denying any . . . psychological ramifications" of the physical work injury at issue. We will not reverse the judge's award of payment for the psychological treatment here at issue on grounds that the reasonableness and necessity of that treatment and its causal relationship to the work injury were not at issue before the compensation judge.

With regard to the merits of the judge's decision to award psychological treatment, we would emphasize initially that, in order for a mental injury to be compensable, it is not necessary that the work-related physical injury causing it be its sole cause; it is sufficient if the work-related physical injury is a substantial contributing factor. See Miels v. Northwestern Bell Tel. Co., 355 N.W.2d 710, 715, 37 W.C.D. 164, 170 (Minn. 1984). In this case, although Dr. Hindle did make reference to a history of "depression and tiredness for which [the employee] has been on Prozac for 15 years," Dr. LaKosky's report indicates that the employee's use of that medication had been for a panic disorder. Moreover, the argument that Dr. Bower was unaware of the employee's history of Prozac use was also made before the compensation judge. Nevertheless, Judge Bonovetz accepted Dr. Bower's conclusion that the employee's depression was related to her work injury. A trier of fact's reliance on an expert's opinion is usually 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). There is no evidence that Dr. Bowar was reliant on any false premises in a material sense when he related the employee's current depression to her work injury. Because it was not unreasonable, we affirm the compensation judge's award of payment to Ms. Emerson for her claimed psychological treatment. See Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239.

Other Proposed Treatment

Judge Bonovetz also awarded payment for certain other proposed treatment,

[7] See Dr. Hindle's records for October 10, 1996.

including an additional MRI scan, an EMG, facet joint injections, and additional physical therapy. The employer and insurer contend that these measures are not reasonable and necessary to cure or relieve the effects of the employee's work injury and that the compensation judge's award of payment for them is unsupported by substantial evidence. We are not persuaded that the judge's award was unreasonable. The employee's only MRI scan to date was in August 1996. Although she has not claimed a subsequent injury, her symptoms have gradually grown more severe. Under these facts, it would not be unreasonable to conclude that a repeat MRI might be a useful diagnostic device relative to the work injury, if only to assist in assessing the relatedness of the employee's current increase in symptoms to her work injury by comparing the two scans and assessing the nature of any changes. Similarly, the EMG, unrequested in the past, is not an unreasonable diagnostic measure for drawing some final conclusions on the nature of the employee's condition. While facet joint injections and physical therapy may not have proved permanently helpful in the past, they have not been entirely ineffective either, and further use of them is not an unreasonable measure for minimizing disability and facilitating healing at least until the employee has reached certified MMI. Because it was not unreasonable, we affirm the compensation judge's award to Ms. Emerson of payment for the additional medical benefits here at issue. See Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239.