

MAURICE ETEDGUI, Employee, v. MASTERCRAFT CABINETS and GEN. ACCIDENT GRP., Employer-Insurer/Appellants.

WORKERS' COMPENSATION COURT OF APPEALS
JANUARY 13, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL EVIDENCE. Substantial evidence, including extensive medical treatment records, supports the compensation judge's determination that the employee sustained a work-related injury to his low back on December 8, 1993.

NOTICE OF INJURY - SUBSTANTIAL EVIDENCE. Substantial evidence supports the compensation judge's finding that the employer and insurer had actual knowledge of the claimed low back injury within the 180-day limit set forth in Minn. Stat. § 176.141.

EVIDENCE - RES JUDICATA. Where the issue of maximum medical improvement (MMI) for the employee's low back condition had not been litigated or specifically decided previously, the compensation judge properly held the issue of MMI for the employee's lumbar spine condition and his claim for temporary total disability benefits were not barred by the doctrines of *res judicata* or collateral estoppel.

MAXIMUM MEDICAL IMPROVEMENT - SUBSTANTIAL EVIDENCE. Substantial evidence, including the opinions of Dr. Davenport and Dr. Bower recommending a physical rehabilitation or chronic pain program, supports the compensation judge's finding that the employee had not reached MMI as of the date of hearing.

TEMPORARY TOTAL DISABILITY - SUBSTANTIAL EVIDENCE. The compensation judge's finding that the employee had not been released to return to work and was entitled to temporary total disability benefits from September 20, 1995, through the date of hearing is not manifestly contrary to the evidence and must be affirmed.

CREDITS & OFFSETS. The compensation judge properly denied a credit for overpayment of benefits between August 15, 1994, and September 13, 1995, where the employee had not attained MMI for his December 8, 1993, low back injury and was found temporarily totally disabled through the date of hearing.

MEDICAL TREATMENT & EXPENSE - SURGERY. Substantial evidence supports the compensation judge's determination that the employee's July 25, 1997, lumbar spine surgery was causally related to his December 8, 1993, work-related low back injury and was reasonable and necessary.

Affirmed.

Determined by Johnson, J., Hefte, J., and Pederson, J.
Compensation Judge: Karen C. Shimon

OPINION

THOMAS L. JOHNSON, Judge

The employer and insurer appeal from the compensation judge's findings that the employee sustained a work-related low back injury on December 8, 1993; the employer and insurer had actual knowledge of the claimed low back injury within the meaning of Minn. Stat. § 176.141; the principles of collateral estoppel or *res judicata* did not bar determination of maximum medical improvement (MMI) and the employee's claim for temporary total disability benefits; the employee had not reached MMI as of the date of hearing; the employee was not required to conduct a job search and was entitled to temporary total disability benefits from September 20, 1995 through the date of hearing and continuing; the employee did not fraudulently collect workers' compensation benefits from August 15, 1984 through September 13, 1995; and the July 25, 1997 lumbar spine surgery was causally related to the December 8, 1993 work injury and was reasonable and necessary. We affirm.

BACKGROUND

The employee, Maurice Ettegui, slipped and fell at work, sustaining an admitted, work-related injury to his cervical spine on December 8, 1993, while working for the employer, Mastercraft Cabinets, then insured by General Accident Group. The employee was treated for neck pain at the Methodist Hospital emergency room on the date of the injury. He was off work for two and a half days, returning to his job with the employer on Monday, December 13, 1993. That same day, he was seen for follow-up by his family physician, Dr. Aaron Mark, reporting an injury to the "neck and back." On about January 13, 1994, the employee was terminated by the employer.

The employee returned to Dr. Mark on January 25, 1994, complaining of neck, shoulder, arm and low back pain. Dr. Mark referred the employee to an orthopedist, Dr. Nolan Segal, who saw the employee on January 27, 1994. Dr. Segal diagnosed myofascial neck and low back injuries aggravating underlying degenerative disc disease and arthritis in the cervical and lumbar spines. He took the employee off work and prescribed medications and a course of physical therapy. The employee did not show significant improvement, and on March 14, 1994, Dr. Segal took the employee off work indefinitely.

On March 18, 1994, the employee fell down some stairs at his house. He was taken to Methodist Hospital where he was treated for back pain and a left ankle sprain. He remained in the hospital for four days. On April 13, 1994, an independent medical examination (IME) was performed by Dr. W. Robert Leslie. Dr. Leslie concluded the employee had sustained

a cervical injury on December 8, 1993, but did not believe there had been any significant injury to the low back. Dr. Leslie opined the employee could return to work with restrictions.

In April 1994, the employee began treating with Dr. Andrew Smith, a neurosurgeon, who saw the employee primarily for his cervical problems. Dr. Smith, in turn, referred the employee to Dr. John T. Anderson for evaluation of the employee's ongoing shoulder complaints. The employee completed another course of physical therapy and had several cortisone injections into the subacromial space, with little lasting improvement of his cervical, shoulder or low back symptoms.

On August 2, 1994, the employee was seen by Dr. David Ketroser for a second IME. The employee described immediate onset of neck and low back pain following the December 8, 1993 work injury. He reported continuing neck and shoulder pain, and constant low back pain radiating into the buttocks. Dr. Ketroser concluded the employee had sustained a work-related cervical injury, but that his low back symptoms were not related to the fall at work. The doctor found no objective findings on examination, and opined that the employee had reached maximum medical improvement (MMI). He further opined the employee was capable of full time work without restrictions. The employer and insurer served the employee with Dr. Ketroser's MMI report, along with a notice of intent to discontinue benefits (NOID), on August 15, 1994. The employee requested an administrative conference. In a decision served and filed September 16, 1994, a settlement judge at the Department of Labor and Industry allowed discontinuance of temporary total disability benefits 90 days after service of Dr. Ketroser's report.

On November 10, 1994, the employee filed an Objection to Discontinuance alleging continuing entitlement to temporary total disability benefits from and after November 14, 1994, based solely on his cervical spine injury. Following a hearing on February 3, 1995, Compensation Judge David Barnett found the employee's shoulder symptoms were causally related to his admitted cervical injury. He further concluded that the employee had shown no recent improvement relative to his cervical spine or shoulder symptoms. The judge, nonetheless, awarded ongoing temporary total disability benefits concluding that MMI was not determinable since MMI for the low back injury had not been litigated. The employer and insurer appealed. This court reversed in a decision issued on September 19, 1995, finding MMI had been reached for the cervical spine injury effective August 15, 1994, and discontinuance of temporary total disability benefits was proper 90 days post-MMI.

On October 14, 1994, the employee returned to Dr. Smith with complaints of continuing neck, shoulder and low back pain. The employee was referred for a course of physical therapy, but reported increasing low back pain. On January 13, 1995, Dr. Smith noted severe pain in the right lower extremity, radiating from the low back down the leg to the ankle, which the doctor believed was strongly suggestive of an L5 radiculopathy. Physical therapy was continued through the end of the month with little improvement.

On July 11, 1995, the employee was seen by a neurologist, Dr. Ivan Brodsky, at the request of Dr. Mark. Dr. Brodsky concluded that the employee had a significant musculoskeletal

strain syndrome with degenerative osteoarthritis and stenosis in the neck and low back. He recommended a structured exercise program to improve the employee's functional capabilities. On August 1, 1995, the employee was seen by Dr. John Davenport for another IME. Dr. Davenport concluded the employee's December 8, 1993 injuries were temporary, and that MMI had been reached. He further opined the employee could return to full-time work without restrictions.

The employee received no further medical treatment for his neck or back until February 6, 1997, when he slipped and fell on ice. He was taken to Methodist Hospital where he was treated for low back, right buttocks and right hip pain. On follow-up, he was noted to have a right lumbar radiculopathy and was referred for physical therapy. The employee did not improve, and was referred by Dr. Mark to Dr. Steven Lebow, a neurologist. Dr. Lebow noted that the employee's right shoulder and low back had not been scanned previously, and referred the employee for a complete diagnostic work-up of his right shoulder, cervical spine and lumbar spine. Dr. Lebow interpreted the myelogram and scans as showing a complete rotator cuff tear in the right shoulder, a complete block at C6-7 secondary to spondylosis, and a herniated disc on the right at L5-S1. Dr. Lebow believed these findings accounted for the employee's persistent right shoulder, low back and right leg pain, and referred the employee to Dr. John Seymour for a surgical evaluation.

Dr. Seymour examined the employee on May 1, 1997. He diagnosed a free-fragment disc herniation compressing the L5 nerve root, and recommended lumbar surgery. A laminectomy and foraminotomy was performed by Dr. Seymour on July 25, 1997. During the course of the surgery, the L5 nerve root was observed to be swollen and tightly compressed in the lateral recess at L5 and in the L5-S1 foramen, but no disc herniation was identified.

The employee reported complete relief of his leg pain following the surgery. After about a month, however, his low back pain returned. In December 1997, Dr. Seymour discharged the employee from his care with a referral to Dr. John Bowar, a physiatrist. When seen by Dr. Bowar on January 28, 1998, the employee reported his right leg pain had returned, primarily in the buttocks and thigh. Dr. Bowar diagnosed a mechanical low back problem with possible post-compression neuropathy. He suggested a trial of Neurontin, and recommended a physical conditioning program. Implementation of the conditioning program was postponed while Dr. Seymour completed an evaluation of the employee's cervical spine condition. On April 17, 1998, the employee was seen by Dr. Davenport for another IME. Dr. Davenport again concluded the injuries sustained on December 8, 1993 were temporary, and opined that the July 1997 lumbar surgery was not work-related. He recommended a chronic pain management program, indicating the program suggested by Dr. Bowar was reasonable. He again opined that the employee was capable of returning to work as a cabinet maker without restrictions.

The employee filed a claim petition on August 19, 1997, alleging injuries to the neck and low back on December 8, 1993. He sought temporary total disability benefits from and after September 20, 1995 and payment of various medical expenses. The matter came on for hearing before Compensation Judge Karen C. Shimon at the Office of Administrative Hearings.

In a findings and order served and filed July 24, 1998, the compensation judge found (1) the employee sustained a work-related injury to the low back on December 8, 1993; (2) the employer had timely notice of the employee's claimed low back injury pursuant to Minn. Stat. § 176.141; (3) determination of MMI for the low back injury was not barred by collateral estoppel or the doctrine of *res judicata*; (4) the employee had not reached MMI with respect to the lumbar spine injury as of the hearing; (5) the employee was not required to perform a job search and was entitled to temporary total disability benefits from September 20, 1995 and continuing; (6) the employee did not fraudulently collect benefits and the employer and insurer were not entitled to a credit for benefits paid to the employee between August 15, 1994 and September 13, 1995; (7) the July 25, 1997 surgery was reasonable and necessary and causally related to the December 8, 1993 work injury. The employer and insurer appeal.

STANDARD OF REVIEW

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). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings must be affirmed. Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 60, 37 W.C.D. 235, 240 (Minn. 1984). 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." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

DECISION

Causation - Low Back Injury

The employer and insurer contend that substantial evidence fails to establish that the employee sustained a work-related low back injury on December 8, 1993. Upon careful review of the record, we conclude that there is adequate evidence to support the compensation judge's determination.

The employee complained of "back pain" when seen in follow-up by Dr. Mark on December 13, 1993. When he returned to Dr. Mark on January 25, 1994, he reported an injury on December 8, 1993, and complained of low back pain. Dr. Mark referred the employee to Dr. Segal who saw the employee on January 27, 1994. The employee reported immediate onset of low back pain following the December 8, 1993 work accident. Dr. Segal diagnosed a myofascial lumbar spine injury with aggravation of underlying degenerative disc disease and arthritis. The employee received treatment for persistent low back pain, as well as right buttock and right leg pain, through July 11, 1995, when he was examined by Dr. Brodsky. Dr. Brodsky concluded that the employee had a significant musculoskeletal strain syndrome and recommended a physical rehabilitation program. According to the employee, the insurance company refused to pay for the program. The employee agreed he did not seek treatment after seeing Dr. Brodsky

until February 1997, testifying that he got tired of going to doctors and getting no results. (T. 47-49.)

On February 6, 1997, the employee slipped on ice and fell at his house. He testified that he experienced the same low back and right leg pain he had had before. (T. 49) He was eventually referred to Dr. Lebow, who noted the employee had never had a scan of the low back and ordered a complete diagnostic work-up. Dr. Lebow interpreted the April 10, 1997 myelogram-CT scan as showing a herniated disc on the right at L5-S1, which he believed accounted for the employee's persistent low back and right leg pain. Dr. Seymour agreed and recommended a lumbar laminectomy which was performed on July 25, 1997. In Dr. Lebow's opinion, the employee's low back condition was related to the December 8, 1993 injury. (Pet. Ex. J.)

The compensation judge found that the employee had sustained a low back injury on December 8, 1993, as alleged, and further found the non-work incidents on March 18, 1994 when the employee fell down stairs and on February 6, 1997 when the employee fell on ice, were exacerbations of his work-related injury. Where more than one inference may reasonably be drawn from the evidence, the findings must be affirmed. Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 60, 37 W.C.D. 235, 240 (Minn. 1984). The evidence here is sufficient to sustain the compensation judge's determination and we, accordingly, affirm.

Notice of Injury

The employer and insurer assert that the employee failed to prove that the employer had timely notice of the claimed low back injury as required by Minn. Stat. § 176.141. The compensation judge found the employer had actual knowledge of the low back injury within the statutory time frame. There is substantial evidence in the record to support this conclusion.

Essential to proof of a workers' compensation claim is a showing that the employer had written notice or actual knowledge of the alleged injury within the statutory period set forth in Minn. Stat. § 176.141. The normal outside period is 180 days. See Issacson v. Minnetonka, Inc., 411 N.W.2d 865, 866, 40 W.C.D. 270, 272 (Minn. 1987). There is no claim that the employee gave written notice of a low back injury to the employer. Thus, the crucial question is whether the employer and insurer had "actual knowledge" of the low back injury. Actual knowledge is knowledge of such information as would put a reasonable person on inquiry. Id. at 867, 40 W.C.D. at 273.

The first record of a back injury is Dr. Mark's chart note of December 13, 1993, indicating the employee had been "hit," possibly at work, in the "neck and back." Dr. Mark's chart note of January 25, 1994 specifically refers to an accident on December 8, 1993, "apparently at work." The note relates complaints of low back pain, although Dr. Mark was not sure when the low back pain began. Dr. Segal's chart note of January 27, 1994, specifically refers to an injury at work on December 8, 1993 with immediate onset of neck, arm and low back pain. The employee reported persistent pain in the low back area since the incident.

In March 1994, following his fall down stairs at home, the employee was examined by Dr. Mark Wikenheiser at Methodist Hospital. Dr. Wikenheiser noted that the employee was under the care of Dr. Segal for low back pain, and in the discharge summary commented “this injury is from original work comp injury.” On April 12, 1994, Dr. Leslie saw the employee at the request of the employer and insurer. In his IME report, Dr. Leslie reviewed the employee’s treatment records and examined both the cervical and lumbar spines, rendering an opinion as to the causal relationship of the employee’s neck and low back complaints to the December 8, 1993 injury. Dr. Leslie’s IME report, dated April 13, 1994, is addressed to a claims adjuster for General Accident Group and is date-stamped April 25, 1994.

Given these facts, the compensation judge could reasonably have concluded that the employer and insurer had knowledge of such information as would put a reasonable person on inquiry of a claimed work-related low back injury well within the 180-day statutory notice period. We, accordingly, affirm.

Collateral Estoppel/ Res Judicata

The employer and insurer contend the compensation judge erred, as a matter of law, in determining that the principles of *res judicata* or collateral estoppel do not bar the employee’s claim of temporary total disability subsequent to this court’s September 19, 1995 decision holding that MMI was reached for the cervical spine effective August 15, 1994. The employer and insurer argue that the employee’s claim is barred by the principles of *res judicata* under the “same factual circumstances” test. They further assert the employee conceded MMI for the low back at the previous hearing on February 3, 1995, and this court’s September 19, 1995 decision is a final judgment on that issue.

Although a statement was made by the employee’s former attorney during the February 3, 1995 hearing “conceding” MMI with respect to the low back, the issue was not before the compensation judge. The matter came on for hearing on an expedited basis, pursuant to Minn. Stat. § 176.238, on the employee’s Objection to Discontinuance. Section 176.238, subd. 6(d) specifically limits the issues which may be heard and determined in a §176.238 hearing to those raised by the notice of intent to discontinue (NOID) or petition to discontinue unless all of the parties agree to expand the issues. Compensation Judge Barnett specifically held that “[w]hether the employee also sustained injury to his low back . . . is not an issue for determination at this time.” (F&O Apr. 3, 1995, finding 3.) This finding was affirmed by the Workers’ Compensation Court of Appeals. Furthermore, this court reversed the compensation judge’s finding that MMI was not determinable, precisely because no low back injury claim had been made, admitted, established or adjudicated, and was “not at issue at the hearing.” (WCCA Decision, Sept. 19, 1995, p. 7.)

Although the doctrines of *res judicata* and collateral estoppel apply in workers’ compensation matters in some instances, they do not bar further proceedings to determine claims not specifically litigated in a prior proceeding. Westendorf v. Campbell Soup Co., 309 Minn. 550, 550-51, 243 N.W.2d 157, 158, 28 W.C.D. 460 (1976); Erickson v. Hulcher Emergency Servs.,

40 W.C.D. 140, 140 (Minn. 1994) (order opinion); see also Fischer v. Saga Corp., 498 N.W.2d 449, 450, 48 W.C.D. 368, 368 (Minn. 1993). The compensation judge properly held that the employee's temporary total disability claim was not barred by *res judicata* or collateral estoppel on the facts of this case. We, therefore, affirm.

Maximum Medical Improvement - Low Back

The employer and insurer argue that substantial evidence establishes that the employee reached MMI with respect to his low back injury in 1994 or 1995. They assert that the employee presented no credible evidence showing that he had not yet attained MMI for the low back, and urge this court to adopt the opinions of Dr. Ketroser or Dr. Davenport.

The compensation judge concluded that no definitive diagnosis was made of the employee's low back condition until May 1997, following complete diagnostic testing not previously done. Based on these tests, the employee underwent surgery on July 25, 1997, resulting in some improvement of the employee's right leg pain. Although rejecting Dr. Davenport's opinion that the employee had reached MMI in 1995, the judge accepted his opinion that a chronic pain program would be reasonable, and concluded, therefore, that the employee had not yet attained MMI for his low back injury.

Following the December 8, 1993 injury, the employee reported consistent low back pain that did not respond to medication or physical therapy. On February 9, 1994, the employee complained of right foot pain to his physical therapist. The therapist suggested diagnostic testing to rule out a herniated disc, but no low back scans were done at that time. Subsequent treatment records reflect deterioration of the employee's low back condition. On January 13, 1995, the employee reported severe right leg pain radiating down the posterior lateral aspect to the right ankle which Dr. Smith noted were "more severe than they have been in the past." Although Dr. Smith believed the employee's symptoms were "strongly suggestive of an L5 radiculopathy" no diagnostic tests were done, and the employee was referred for another course of physical therapy.

On February 6, 1997, the employee slipped and fell on ice at his house. He testified his low back and right leg pain after the fall were the same as before. Physical therapy was again prescribed. When he did not improve, Dr. Mark referred the employee to Dr. Lebow. Dr. Lebow observed that the employee's lumbar spine had never been scanned. He concluded that a full investigation had not been made of the employee's condition, and referred the employee for a full diagnostic work-up. A myelogram-CT scan was completed on April 10, 1997. Based on these tests, Dr. Seymour diagnosed a right-sided L5 nerve root impingement and recommended surgery. The July 25, 1997 surgery initially resulted in complete resolution of the employee's right leg symptoms. Although his low back symptoms have not been significantly relieved and the employee reported the return of some right leg symptoms in January 1998, the chart notes reflect improvement in his objective clinical findings since the surgery. Subsequently, both Dr. Bower and Dr. Davenport have recommended a chronic pain or physical rehabilitation program.

Maximum medical improvement is "the date after which no further significant . . . lasting improvement to a personal injury can reasonably be anticipated." Minn. Stat. § 176.011, subd. 25. Whether MMI has been reached is a question of fact for the compensation judge to decide. Hammer v. Mark Hagen Plumbing & Heating, 435 N.W.2d 525, 528-29, 41 W.C.D. 634, 639 (Minn. 1989). On these facts, it could reasonably be inferred that, once properly diagnosed and treated, the employee experienced some improvement. Following the surgery, Dr. Bower and Dr. Davenport suggested additional treatment in the form of a chronic pain or physical rehabilitation program, presumably because there is some likelihood that such treatment would improve the employee's low back condition. While a different conclusion could be reached, the compensation judge's determination is supported by substantial evidence in the record as a whole, and we must, therefore, affirm. Minn. Stat. § 176.421, subd. 1(3).

Temporary Total Disability

The compensation judge found that none of the employee's treating doctors had released him to return to work, and he was entitled to temporary total disability benefits from September 20, 1995 through the date of hearing. The employer and insurer appeal, asserting the compensation judge's determination is clearly erroneous and unsupported by the evidence.

On March 14, 1994, Dr. Segal directed the employee "to remain off work until further notice." Although various independent medical examiners, including Dr. Leslie, Dr. Ketroser and Dr. Davenport, believed that the employee could return to work with moderate restrictions or with no restrictions, none of the employee's treating doctors have released him to return to work since that time. Between March 1994 and Dr. Brodsky's evaluation in July 1995, the employee's low back condition did not improve. Dr. Brodsky recommended a supervised rehabilitation program in the hope that it would get the employee "functioning well enough that he could resume many of the activities he ha[s] given up," including work. The employer and insurer apparently refused to pay for the program and the employee went without treatment until February 6, 1997, when he slipped and fell on ice, aggravating his back condition. Dr. Lebow subsequently ordered a complete diagnostic work-up, resulting in a new diagnosis and eventual surgery on July 25, 1997. The employee's treating doctors have not released him to return to work following the surgery. A physical rehabilitation or chronic pain program has again been recommended.

The employee was 60 years old at the time of the hearing, and is a Moroccan-Israeli immigrant who has difficulty speaking English. In November 1995, a qualified rehabilitation consultant (QRC) noted that no functional capacities evaluation had been done and no effort had been made to assess the employee's functional restrictions.¹ The employee testified that he

¹ In November 1995, a rehabilitation consultation was completed at the employee's request. The QRC concluded the employee was eligible for statutory rehabilitation. She noted, however, that none of the employee's treating physicians had released the employee to work or provided any restrictions. The QRC recommended an FCE, and noted that the employee's chronic pain issues had not been addressed. Both the employee and the employer and insurer filed

remains unable to engage in sustained activity due to his neck and back pain.

It is the role of this court to determine whether the compensation judge's findings of fact are supported by substantial evidence in view of the record as a whole. Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 60, 37 W.C.D. 235, 240 (Minn. 1984). Findings of fact may not be disturbed, even though the court might disagree with them, unless they are manifestly contrary to the evidence. Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). While a different result could be reached, we cannot say that the compensation judge's finding that the employee had not been released to return to work and was entitled to temporary total disability benefits from and after September 20, 1995, is so manifestly contrary to the evidence as to require reversal. We must, therefore, affirm.

Fraudulent Receipt of Benefits /Credit

The employer and insurer sought repayment of benefits paid to the employee from August 15, 1994 through September 13, 1995. They asserted that the employee had reached MMI within 90 days of August 15, 1994 and was not entitled to wage loss benefits thereafter. The employer and insurer further contended that the employee had committed fraud based on surveillance videotapes taken in July 1994 and May and June 1995 and Dr. Davenport's August 1, 1995 opinion that the employee was malingering. We have affirmed the compensation judge's determination that the employee had not reached MMI for the low back injury sustained on December 8, 1993, and was temporarily totally disabled through the date of hearing. The employee was, therefore, entitled to temporary total disability benefits for the low back through the period claimed by the employer and insurer. We affirm.

Surgery - Causation/ Reasonable & Necessary

Finally, the employer and insurer contend that the evidence fails to establish the employee's July 25, 1997 surgery was causally related to his December 8, 1993 work injury, or that the surgery was reasonable or necessary to cure or relieve from the effects of the employee's low back injury. We disagree.

The compensation judge accepted Dr. Lebow's opinion that "there [was] no question that the low back was involved in the December 1993 injury." (Pet. Ex. J.) It is apparent from Dr. Lebow's chart notes that he believed the employee's low back and right leg symptoms in 1997 were a continuation of his 1993 low back injury. Dr. Lebow further believed that the impingement of the right L5 nerve root revealed by the April 10, 1997 myelogram-CT scan accounted for the employee's persistent low back problems. Dr. Seymour recommended a lumbar

rehabilitation requests, and an administrative conference was held on January 23, 1996 at the Department of Labor and Industry. A representative of the commissioner concluded that the employee had failed to document current restrictions from any doctor, and was not eligible for rehabilitation services at that time.

laminectomy to release the L5 nerve root and relieve the employee's back and right leg pain. The employee initially experienced complete relief of his right leg pain. Although the employee's low back pain returned within a month and some leg pain gradually returned over a six month period, the medical records show evidence of at least some objective improvement in the employee's low back condition.

Whether medical treatment was causally related to a work injury, and the reasonableness and necessity of the treatment are largely a question of fact for the compensation judge. See Hopp v. Grist Mill, 499 N.W.2d 812, 48 W.C.D. 450 (Minn. 1993). The evidence is at least minimally adequate to support the compensation judge's determination that the July 25, 1997 lumbar spine surgery was causally related to the employee's December 8, 1993 work-related low back injury and was reasonable and necessary. We affirm.