

FRANKLIN GUY FRAZIER, Employee, v. RNW ASSOCS. and RELIANCE INS./  
D&T CONSULTING, Employer-Insurer/Appellants.

WORKERS' COMPENSATION COURT OF APPEALS  
SEPTEMBER 30, 1999

No. [REDACTED SSN]

HEADNOTES

REHABILITATION - CONSULTATION. Substantial evidence, including the employee's testimony and the records of his treating doctors, supports the compensation judge's determination that the employer and insurer failed to prove the employee had completely recovered from his personal injury with no restrictions or residual disability, and, therefore, the compensation judge's award of a rehabilitation consultation.

Affirmed.

Determined by: Johnson, J., Wilson, J., and Wheeler, C.J.  
Compensation Judge: Jeanne E. Knight

OPINION

THOMAS L. JOHNSON, Judge

The employer and insurer appeal from the compensation judge's finding that the employee is entitled to a rehabilitation consultation. We affirm.

BACKGROUND

Franklin Guy Frazier, the employee, sustained a personal injury on October 1, 1996, while employed by RNW Associates, the employer, insured by Reliance Insurance/D&T Consulting. On that date, the employee was delivering freight to a company in Erie, Pennsylvania. In the process of strapping a load of freight to the wall of the trailer, a 300 pound crate tipped and fell on the employee, hitting his left shoulder and neck. The employee experienced immediate pain in his neck and reported the incident to his employer. (T. 20-21.) The employer and insurer admitted liability for the employee's personal injury and paid medical expenses and some temporary total disability benefits.

The employee continued working but two days later experienced severe pain in his neck and sought treatment at an emergency room in Fairfax, Virginia. The employee was given a neck brace and told to seek medical attention when he arrived home. (T. 22-23.) On October 15, 1996, the employee sought treatment from Dean Renneke, D.C. The employee gave a history of an injury on October 1, 1996, when freight fell on the left side of his head, neck and

shoulder resulting in decreased ability to turn his head and left arm pain. On examination, Dr. Renneke found decreased cervical range of motion with muscle spasm and tenderness. The doctor diagnosed a possible disc injury in the cervical spine with myofascitis and cervical subluxation and commenced a course of chiropractic treatment including hot packs, ultrasound, electrical muscle stimulation and manual manipulation. The doctor took the employee off work. (Pet. Ex. C.) An MRI scan of the cervical spine on November 29, 1996 showed no evidence of a herniated disc, but showed evidence of small to moderate-sized osteophytic disc complexes at the C3-4 and C4-5 levels without impingement on the spinal cord or significant canal narrowing. (Pet. Ex. B.) The employee continued to treat with Dr. Renneke, and on December 2, 1996, complained of continuing neck and left shoulder pain. The doctor continued the employee's off work status.

On December 17, 1996, the employee was seen by Dr. Paul T. Rud, an orthopedic surgeon, at the request of Dr. Renneke. On examination, Dr. Rud found limited range of cervical motion and shoulder pain. The doctor noted the employee's reflexes were symmetric and sensation and motor function were intact. Dr. Rud diagnosed a musculoligamentous strain of the neck with underlying mild osteoarthritis. The doctor opined the employee's care to that time was appropriate.

The employee returned to see Dr. Renneke on December 18, 1996. The doctor continued the employee's off work status and recommended a four-week strength training program to stabilize the employee's condition and allow his return to work. By January 31, 1997, the employee stated his condition was improving. Dr. Renneke released the employee to return to work without restrictions effective February 1, 1997.

The employee returned to work to his job as a truck driver for the employer in February 1997. No modifications or accommodations were made to the employee's job. (Resp. Ex. 9, p. 10.) The job typically involved long-haul trucking for two to three weeks at a time traveling to all 48 states. The employer's primary sources of freight were Four Season Sunrooms shipped from Holbrook, New York, and California Closets shipped from Columbus, Ohio. The freight usually was packed in cartons weighing from 20 to 200 pounds. (T. 12-17.) As the employee made various deliveries along his route, he had to reorganize the freight within the trailer. This required the employee to move boxes around and restrap them within the trailer. (T. 18-20.) After he returned to work, the employee testified he continued to experience significant shoulder and neck pain with tingling into his left arm. He testified that unloading and moving freight within the trailer increased his shoulder and neck pain. The employee avoided doing this work when he could get someone to help him, but often had to do it on his own. (T. 27-29.)

On March 27, 1997, the employee told Dr. Renneke he did not feel he was 100 percent yet. He continued to have muscle pain and limited cervical range of motion. The employee last saw Dr. Renneke on May 13, 1997. On that day, the employee had complaints of moderate neck and left shoulder pain. On examination, the doctor noted mild to moderate left trapezius muscle hypertonicity and normal cervical range of motion. (Pet. Ex. C.)

The employee returned to see Dr. Rud on August 4, 1997, complaining of continued

neck pain with radiation of symptoms into his left arm. On examination, Dr. Rud found no evidence of any muscle wasting or weakness and sensation was intact, but noted a definite limitation of cervical range of motion. Dr. Rud recommended the employee see a neurosurgeon for a surgical evaluation. If surgery was not indicated, the doctor stated he would recommend the employee be seen at a pain center. (Resp. Ex. D.)

In September 1998, the employee quit his job with the employer. He testified he did so because he was denied a raise and because the job was physically too strenuous and aggravated his injury. The employee obtained a job with Overnight Express in St. Paul, Minnesota. In this job, the employee was able to choose the freight he hauled, 95 percent of which is on pallets and does not require loading or unloading by the employee. (T. 32.) The employee further testified, however, that other aspects of truck driving such as steering, shifting, opening and closing doors, truck maintenance and minor repairs, coupling and uncoupling trailers, cranking trailer dollies and the general road vibration all aggravated his neck. (T. 34-38.)

In October 1997, the employee filed a Rehabilitation Request seeking a rehabilitation consultation with a qualified rehabilitation consultant (QRC) and a medical request seeking authorization to see a neurologist pursuant to Dr. Rud's recommendation. In a Rehabilitation Response, the employer and insurer denied the employee was entitled to a rehabilitation consultation and filed a medical response denying the requested referral to a neurosurgeon. By Orders dated December 26, 1997, a settlement judge at the Department of Labor and Industry ordered the employer and insurer to pay for a rehabilitation consultation and approved the employee's request to see Dr. Watts of Central Minnesota Neuroscience, Ltd. The employer and insurer filed a Request for Formal Hearing on both issues, and the case was heard by a compensation judge at the Office of Administrative Hearings on February 3, 1999. In a Findings and Order served and filed April 1, 1999, the compensation judge found the employee was entitled to a rehabilitation consultation.<sup>1</sup> 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). 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, 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

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<sup>1</sup> At the hearing, the employee withdrew his request to see Dr. Watts. Accordingly, the compensation judge did not decide the issues presented by the employee's medical request.

as a whole.” Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

## DECISION

The employer and insurer contend the compensation judge’s determination that the employee is entitled to a rehabilitation consultation is not supported by substantial evidence. They assert the employee was able to return to his former employment with the employer without residual disability or restriction caused by his personal injury, and is not, therefore, entitled to a rehabilitation consultation.

Minn. Stat. § 176.102, subd. 4(a) provides: “A rehabilitation consultation must be provided by the employer to an injured employee upon request of the employee, the employer or the commissioner.” An insurer may not challenge an employee’s right to a rehabilitation consultation on the basis that the employee is not qualified for rehabilitation services. Rather, the purpose of the rehabilitation consultation is to determine whether the employee is a qualified employee. See Goodwin v. Byerly’s, Inc., 52 W.C.D. 90 (W.C.C.A. 1994). An employer and insurer are not, however, always and indefinitely responsible for providing a rehabilitation consultation at the request of the employee merely because the employee sustained a personal injury. In response to an employee’s request for a rehabilitation consultation, an employer and insurer may assert certain defenses, including a complete recovery from the effects of the personal injury. Lewis v. Honeywell, Inc., 53 W.C.D. 364 (W.C.C.A. 1995); Judnick v. Sholom Home West, slip op. (W.C.C.A. Aug. 4, 1995).

In Kautz v. Setterlin, 410 N.W.2d 843, 40 W.C.D. 206 (Minn. 1987), the Supreme Court held an employee is not entitled to workers’ compensation benefits where the employee is able to return to work without restrictions and suffered no residual disability from the work injury. The employer and insurer assert this is such a case, and the employee is not, therefore, entitled to rehabilitation services. The appellants point to the following facts which, they contend, support this assertion: Dr. Renneke released the employee to return to work without restrictions; the employee returned to work with the employer and worked at his pre-injury job from February 1997 until September 1998; and the employee voluntarily terminated his employment to go to work as an independent contractor with another employer. The appellants contend the compensation judge’s award of a rehabilitation consultation is contrary to the evidence and must be reversed. We disagree.

There is no dispute Dr. Renneke released the employee to return to work, without restrictions. (See Pet. Ex. C.) The employee, however, testified he talked the doctor into releasing him to return to work because he was unable to support his family on his workers’ compensation payments. (T. 25-26.) On March 27, 1997, Dr. Renneke noted the employee reported he had been back to work for six weeks, but “feels as though he is not 100% yet.” On examination, Dr. Renneke found muscle pain and hypertonicity and limited cervical range of motion. On May 13, 1997, the employee continued to complain of moderate neck and left shoulder pain and demonstrated mild to moderate muscle pain and hypertonicity with pain on right

rotation of the neck. (Pet. Ex. C.) On August 4, 1997, the employee saw Dr. Rud complaining of continuing neck pain with radiation of symptoms into his left arm. On examination, the doctor found a definite limitation of cervical range of motion and recommended the employee see a neurosurgeon for a surgical evaluation. If the neurosurgeon found surgery was not indicated, Dr. Rud stated he would recommend the employee be seen at a pain center. (Pet. Ex. D.) The employee testified to ongoing neck and shoulder problems from the time he returned to work in February 1997 to the date of hearing. He testified that one of the reasons for quitting his job with the employer was his continuing neck and shoulder problems. The employee testified that on several occasions he requested lighter duty work but none was available. Finally, the employee testified to ongoing problems which make the performance of certain tasks with his current employer difficult.

The question of whether an employee has sufficient restrictions or limitations on his activities to justify a rehabilitation consultation is a fact question for the compensation judge. In deciding that issue, the compensation judge can rely on evidence from a physician or health care provider who has issued formal restrictions on the employee's ability to work. The assignment of formal restrictions is not, however, a prerequisite to an award of a rehabilitation consultation. The compensation judge may also rely on the testimony of the employee about his ability to work following the injury. See e.g. Carlson v. Northland Paper Supply, slip op. (W.C.C.A. Jan. 8, 1999) (an employee's testimony constitutes substantial evidence supporting a finding of restrictions and entitlement to a rehabilitation consultation). See also Dobson v. Northwest Mechanical Servs., slip op. (W.C.C.A. Sept. 9, 1999); Nelson v. Northern Milk Prods., slip op. (W.C.C.A. Dec. 11, 1998).

The compensation judge concluded the employer and insurer failed to prove the employee has no restrictions or residual disability and was not entitled to a rehabilitation consultation. The judge observed that a lack of specific restrictions does not necessarily mean the employee has made a complete recovery from the injury. (Memo at p. 5.) In arriving at this determination, the compensation judge considered the testimony of the employee and the medical examinations and treatment of Dr. Renneke and Dr. Rud. The judge's decision that the employee is entitled to a rehabilitation consultation is supported by substantial evidence, and is, therefore, affirmed.