

MELVIN R. FULTON, Employee, v. UNITED DEF. SYS. and AM. INT'L GRP./CRAWFORD & CO., Employer-Insurer/Appellants.

WORKERS' COMPENSATION COURT OF APPEALS
DECEMBER 10, 1999

No. [REDACTED SSN]

HEADNOTES

MEDICAL TREATMENT & EXPENSE - TREATMENT PARAMETERS; RULES CONSTRUED - MINN. R. 5221.6020, SUBP. 2. Where the employer and insurer deny primary liability for the work injury alleged by the employee, the permanent medical treatment parameters do not apply pursuant to Minn. R. 5221.6020, subp. 2.

MEDICAL TREATMENT & EXPENSE - CHIROPRACTIC TREATMENT. Substantial evidence supports the compensation judge's finding that certain chiropractic treatment provided to the employee was reasonable and necessary, and the judge's award of payment for the disputed treatment.

PERMANENT PARTIAL DISABILITY - SUBSTANTIAL EVIDENCE. Substantial evidence, including the opinion and records of the employee's treating physician, supports the compensation judge's award of a 10 percent permanent partial disability for radicular pain or paresthesia with MRI scan evidence of abnormalities at multiple levels of the cervical spine, under Minn. R. 5223.0370, subp. 4.C.(2).

Affirmed.

Determined by: Johnson, J., Wheeler, C.J., and Pederson, J.
Compensation Judge: Peggy A. Brenden

OPINION

THOMAS L. JOHNSON, Judge

The employer and insurer appeal from the compensation judge's finding that chiropractic treatment was reasonable and necessary, and from the finding that the employee sustained a 10 percent whole body permanent disability secondary to his personal injury. We affirm.

BACKGROUND

Melvin R. Fulton, the employee, worked for the employer, United Defense Systems, for approximately 30 years as a maintenance mechanic. On December 10, 1996, the

employee was working inside a heat treating oven when he hit the back of his head on a thermocouple. The employer was then insured by American International Group/Crawford & Company. The employee did not initially report the incident to the employer and did not miss any time from work.

On March 25, 1997, the employee sought treatment with Patrick Corrick, D.C.,¹ complaining of cervical pain with limited rotation, headaches and left shoulder pain. On examination, Dr. Corrick noted limited range of cervical motion with muscle spasm and tenderness. The diagnosis was a cervical sprain/strain and C7 neuralgia. Dr. Corrick discussed a treatment plan with the employee and initiated a regimen of chiropractic care, including manual adjustments and electrical muscle stimulation. (Pet. Ex. B; T. 29, 33.) Dr. Corrick gave the employee instructions for home exercises and recommended the employee ice his neck at home. The employee continued to treat with Dr. Corrick on an as-needed basis. (T. 29-30.)

On May 15, 1997, the employee underwent an MRI scan at the request of Dr. Corrick. Dr. Kenneth Heithoff, the radiologist, noted severe multi-level degenerative disc disease from C3-4 through C6-7, with multi-level central disc herniations producing mild to moderate central stenosis and compression of the spinal cord. The scan also showed a left lateral extension of a disc herniation at C6-7 producing moderate compression of the left C7 nerve root, and severe left-sided lateral spinal stenosis at C4-5 due to a protrusion of the C4-5 disc and moderately severe unciniate spurring. (Pet. Ex. C.)

The employee treated with Dr. Corrick approximately twice weekly from March 25, 1997 through June 19, 1997. From June 1997 through June 1998, the employee received between four and six treatments a month. Thereafter, the employee saw Dr. Corrick approximately one time a month through May 1999. (Pet. Ex. E.) The employee testified Dr. Corrick's treatments reduced the pain, stiffness and headaches he suffered from his injury and helped him continue working for the employer. (T. 32-34, 40-42.) By report dated May 3, 1999, Dr. Corrick opined the employee obtained distinct improvement as a result of his treatment. The doctor stated the frequency, intensity and duration of the employee's symptoms generally decreased over the period of treatment. In a report dated August 19, 1998, Dr. Corrick rated a 10 percent permanent partial disability secondary to the employee's personal injury.²

The employee saw Dr. Paul Hartleben, an orthopedic surgeon, on November 7, 1997. The employee complained of left-sided neck pain with mild radiation into his left arm and shoulder. On examination, Dr. Hartleben noted normal range of motion and a normal neurologic examination. The doctor diagnosed multiple-level cervical degenerative disease without radiculopathy or myelopathy. He concluded the employee's injury of December 10, 1996 was a

¹ The employee had treated approximately twice a month with Dr. Corrick since the early 1990s for a low back injury. (T. 27-28.)

² See Minn. R. 5223.0370, subp. 4.C.(2).

temporary aggravation of pre-existing degenerative disc disease, opined that chiropractic care was appropriate for a six to eight-week period following the injury, and rated a zero percent permanent partial disability. (Resp. Ex. 1.)

On March 12, 1998, Dr. Gary Wyard examined the employee at the request of the employer and insurer. The employee complained of neck pain with occasional radiation into his left arm. On examination, Dr. Wyard found normal range of motion of the neck and shoulders without muscle spasm or muscle atrophy and his neurologic examination was normal. Dr. Wyard diagnosed long-standing cervical degenerative disc disease temporarily aggravated by the December 10, 1996 personal injury. Dr. Wyard rated no permanent partial disability and opined the chiropractic treatment was not necessary to cure the employee from the effects of the work injury. (Resp. Ex. 2.)

The employee filed a claim petition on December 15, 1997, seeking payment for the MRI scan³ and Dr. Corrick's medical bills. In their answer, the employer and insurer denied the employee sustained a personal injury and denied liability for any benefits. The matter was heard by a compensation judge at the Office of Administrative Hearings on June 9, 1999. Before commencing the hearing, the compensation judge discussed the issues in the case with the attorneys. In summarizing those discussions the judge stated:

First of all, the claim comes out of an alleged work injury on December 10, 1996. The employer denies primary liability as it relates to an injury on that date as well as statutory notice. The area of injury alleged is to the cervical spine. At issue in today's case are the following questions: First of all, the question of primary liability, notice, also the extent and causal relationship of permanency. Also at issue is an outstanding billing with Dr. Corrick. (T. 5-6).

In a Findings and Order served and filed July 12, 1999, the compensation judge determined the December 10, 1996 injury was a permanent aggravation of the employee's degenerative cervical disc disease. The judge found Dr. Corrick's treatment from March 25 to June 19, 1997 was reasonable and necessary and causally related to the employee's December 10, 1996 injury. The judge further found Dr. Corrick's treatments on July 15, August 19, September 23, October 21, November 18, and December 23, 1997, and January 22, February 26, and March 24, 1998, were reasonable and necessary to relieve the effects of the work injury. The compensation judge denied reimbursement for the balance of Dr. Corrick's treatment, finding it was not reasonable and necessary. Finally, the compensation judge found the employee sustained a 10 percent permanent partial disability as a result of the December 10, 1996 work injury. The employer and insurer appeal the award of chiropractic treatment expenses and the permanent

³ The parties stipulated the MRI evaluation was a reasonable and necessary medical expense which the judge would award if the claim was found compensable.

partial disability benefits.

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 are to be affirmed. Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 60, 37 W.C.D. 235, 240 (Minn. 1984). 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 as a whole." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

DECISION

Chiropractic Treatment

The appellants contend the permanent medical treatment parameters govern Dr. Corrick's treatment. They concede liability for the first 12 calendar weeks of treatment,⁴ but argue the employee failed to prove a departure under Minn. R. 5221.6050, subp. 8(A-E). Accordingly, the employer and insurer contend the compensation judge erred in awarding chiropractic treatment after the initial 12 weeks of treatment.

Minn. R. 5221.6020, subp. 2, deals with the application of the permanent treatment parameters and states the parameters "do not apply to treatment of an injury after an insurer has denied liability for the injury." See, Oldenburg v. Phillips & Temro Corp., slip op. (W.C.C.A. Oct. 29, 1999); Snickers v. Fingerhut Corp., slip op. (W.C.C.A. May 28, 1999); Dawson v. University of Minn., slip op. (W.C.C.A. May 6, 1999). In this case, the employer and insurer denied primary liability for the employee's injury in their answer to the employee's claim petition. At the time of the hearing, the employer and insurer continued to deny primary liability for the alleged work injury on December 10, 1996. Apparently, no part of Dr. Corrick's bill was paid prior to the hearing. (Pet. Ex. E.) The employer and insurer denied liability for the injury within the meaning of Minn. R. 5221.6020, subp. 2. Accordingly, the treatment parameters do not apply to the treatment received by the employee at issue herein.

Medical care and treatment not governed by the treatment parameters is analyzed under Minn. Stat. § 176.135 and long-standing case law principles. See, Fuller v. Naegele-Shivers Trading, slip op. (W.C.C.A. April 14, 1993); Horst v. Perkins Restaurant, 45 W.C.D. 9 (W.C.C.A. 1991); Field-Seifert v. Goodhue County, slip op. (W.C.C.A. March 5, 1990). The

⁴ See, Minn. R. 5221.6205, subp. 3.A.

compensation judge found the treatment by Dr. Corrick from March 25 through June 19, 1997 and one treatment a month thereafter through March 24, 1998 was reasonable and necessary to relieve the effects of the employee's work injury. In making this finding, the compensation judge considered the physical demands of the employee's work, his age and the employee's testimony regarding the relief provided by the treatment. In addition, the record establishes Dr. Corrick discussed a treatment plan with the employee. The employee was treated on an as-needed basis and the frequency of treatment gradually declined. The employee testified the chiropractic treatment relieved his symptoms and helped him maintain his job. (T. 41.) Dr. Corrick's medical records document an improvement in the employee's condition. (Pet. Ex. B.) We conclude substantial evidence supports the compensation judge's award of the disputed chiropractic treatment, and affirm.

Permanent Partial Disability

The compensation judge awarded a 10 percent permanent partial disability benefit under Minn. R. 5223.0370, subp. 4.C.(2) for radicular pain or paresthesia at multiple vertebral levels. The appellants contend this award is unsupported by substantial evidence. They argue that Dr. Hartleben and Dr. Wyard both diagnosed a strain/sprain type injury and rated no permanent partial disability. Because a majority of the physicians concluded the employee does not suffer from a permanent disability, the appellants contend substantial evidence does not support the compensation judge's finding.

Minn. R. 5223.0370, subp. 4.C.(2) provides:

Radicular pain or paresthesia, with or without cervical pain syndrome, with persistent objective clinical findings confined to the region of the cervical spine, that is, involuntary muscle tightness in the paracervical muscle or decreased passive range of motion in the cervical spine, and with any radiographic, myelographic, CT scan, or MRI scan abnormality not specifically addressed elsewhere in this part:

(2) multiple vertebral levels, ten percent.

The employee's May 1997 MRI scan showed severe multilevel degenerative disc disease and disc herniations at C3 to C7. The employee testified he had no neck symptoms prior to the work injury, but thereafter complained of radicular pain and limited motion. (T. 14; Pet. Ex. B.) Dr. Corrick's records confirm the employee demonstrated persistent muscle spasms in the paracervical muscles and persistent reduced range of cervical motion. (Pet. Ex. B.) A compensation judge's finding regarding the rating of permanent partial disability is one of ultimate fact and must be affirmed if it is supported by substantial evidence. Jacobowitch v. Bell & Howell, 404 N.W.2d 270, 274, 39 W.C.D. 771, 778 (Minn. 1987). Dr. Corrick opined the employee sustained a permanent aggravation of a degenerative cervical condition and rated permanent disability. The compensation judge accepted Dr. Corrick's opinions. It is the

compensation judge's responsibility, as trier of fact, to resolve conflicts in expert testimony. See, Nord v. City of Cook, 360 N.W.2d 337, 342, 37 W.C.D. 364, 372 (Minn. 1985). The compensation judge's decision is supported by substantial evidence, and is affirmed.