

CHRISTOPHER GELDERT, Employee, v. FEDERATED PROPANE and LEGION INS./GAB ROBINS, INC., Employer-Insurer, and FEDERATED PROPANE and NATIONWIDE MUT. INS. CO., Employer-Insurer, and FEDERATED PROPANE and FEDERATED MUT. INS. CO., Employer-Insurer/Cross-appellants, and FEDERATED PROPANE and MUT. SERVS. CAS./BERKLEY RISK SERVS., Employer-Insurer/Appellants.

WORKERS' COMPENSATION COURT OF APPEALS  
NOVEMBER 10, 1999

No. [REDACTED SSN]

HEADNOTES

**CONTRIBUTION & REIMBURSEMENT; EVIDENCE - EXPERT MEDICAL OPINION.** Where the expert medical report upon which the judge relied was arguably the most detailed and extensive of the medical reports in evidence, having been based on a thorough review of the employee's medical records and a thorough examination of the employee, and where alleged errors in that report either were very minor or were not errors or were misconstructions of the doctor's intent, the compensation judge's conclusion that the employee made a full recovery from his May 1988 work injury very quickly and that the insurer on the risk for that injury was not liable for contribution under a 1998 Temporary Order was not clearly erroneous and unsupported by substantial evidence.

**CONTRIBUTION & REIMBURSEMENT - SUBSTANTIAL EVIDENCE.** Where there had been a 3.5-year interim between resolution of the employee's 1990 carpal tunnel injury and any recurrence of symptoms potentially attributable to that injury, where there had been a full seven-year interim between that resolution and a 1998 EMG report identifying carpal tunnel symptomology, and where the judge's decision was supported by expert medical opinion, the compensation judge's conclusion that the insurer at risk on the 1990 injury was not liable for contribution under a 1998 Temporary Order was not clearly erroneous and unsupported by substantial evidence.

**GILLETTE INJURY - DATE OF INJURY; GILLETTE INJURY - ULTIMATE BREAKDOWN.** Where there was ample medical evidence - - in the form of medically reported complaints, referral and consultation records, radiological records, and records of injections and other treatment - - to constitute the sort of "ascertainable events" from which the date of a Gillette-type injury could be established, the judge's finding of a Gillette-type injury in May of 1995 was neither clearly erroneous nor unsupported by substantial evidence, even absent the sort of "ultimate breakdown" that might result in a wage loss or disability from all work, and even though the employee had not associated specific work activities with his symptoms at the time.

**CAUSATION - GILLETTE INJURY.** Where it was supported by expert medical opinion and was not unreasonable in light of the evidence of record, the compensation judge's conclusion that the employee's November 1995 Gillette-type injury was a permanent aggravation of a May 1995

Gillette-type injury was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

Determined by: Pederson, J., Wilson, J. and Wheeler, C. J.

Compensation Judge: Jennifer Patterson

## OPINION

WILLIAM R. PEDERSON, Judge

The employer and insurer Mutual Services Casualty appeal from the compensation judge's finding of a Gillette-type injury<sup>1</sup> on May 22, 1995, and from the judge's order apportioning liability for attorney fees and for the medical expenses at issue. The employer and insurer Federated Mutual Insurance Company cross-appeal from the judge's finding of a permanent Gillette-type aggravation of that May 1995 injury on November 16, 1995, from the judge's order that Federated Mutual Insurance Company shall continue as paying agent in the case, from the judge's denial of contribution and reimbursement from Legion Insurance and Nationwide Mutual Insurance Company, and from the judge's order apportioning liability for attorney fees and the medical expenses at issue. We affirm.

## BACKGROUND

On May 26, 1988, Christopher Geldert sustained an injury to his neck while repairing a propane tank in the course of his employment as a service technician with Federated Propane. Federated Propane [the employer] was insured at the time against workers' compensation liability by Nationwide Mutual Insurance Company [Nationwide<sup>2</sup>]. Mr. Geldert [the employee], who was thirty-one years old at the time, saw chiropractor Gary Verbovanec for his injury. Dr. Verbovanec informed the employer that he was treating the employee for an injury to his "neck and upper back" and released the employee to return to work with restrictions. The employee missed no work because of the injury and returned to unrestricted duty after four chiropractic treatments over the course of two weeks. Over the course of the following nearly seven years, the employee returned to Dr. Verbovanec for treatment an average of about twice a year, mostly for soreness in his neck, for which at one point, in October of 1991, he used a cervical collar.

In November 1990, the employee began to experience tingling and numbness in both of his hands, wrists, and elbows, for which he saw Dr. Carl Erickson on November 16, 1990. The employer was insured at the time against workers' compensation liability by Legion Insurance

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

<sup>2</sup> Hereafter, Nationwide Mutual Insurance Company in combination with the employer.

[Legion<sup>3</sup>]. Expressly reporting no neck pain or shoulder discomfort, Dr. Erickson diagnosed bilateral carpal tunnel syndrome and prescribed anti-inflammatories and wrist splints. Conservative treatment was more successful on the right than on the left, and on January 7, 1991, the employee underwent left carpal tunnel release. By February 27, 1991, the employee's carpal tunnel symptoms had essentially resolved bilaterally.

In the latter half of 1994, the employee began to experience an increase in neck and right shoulder discomfort. On April 10, 1995, he returned to Dr. Verbovanec's clinic for chiropractic treatment, complaining by then also of some right arm pain and numbness. After failing to obtain relief in four treatments, however, he was referred back to Dr. Erickson, whom he saw on May 22, 1995. At the time of this consultation, the employer was insured against workers' compensation liability by Mutual Services Casualty/Berkley Risk [Mutual<sup>4</sup>]. Dr. Erickson diagnosed "[l]ong-standing neck and right upper extremity discomfort suggestive of radiculopathy" and ordered an MRI scan, which was conducted that same day. On the "MRI Information Sheet" the employee's current symptoms were described as "muscle pain in right arm for about a month off & on [with] tingling in right arm almost all the time." As "Clinical Information," the MRI report itself listed "[n]eck pain as well as right shoulder and arm pain and radiculopathy." The scan was read to reveal two-level degenerative disc disease in the cervical spine, with a 5mm left-sided disc herniation at C5-6 and a broad-based central bulging of the C4-5 disc. The herniation at C5-6 was read to be causing mild indentation of the cervical cord and likely impingement on the exiting C6 nerve roots. At C4-5 there was also a prominent right-sided osteophytic spurring, contributing to moderate right-sided foraminal narrowing and probable mild to moderate impingement on the exiting right C5 nerve.

The following day, May 23, 1995, the employee saw neurosurgeon Dr. Michael Amaral, to whom he reported an "insidious onset of right upper extremity pain about a month and a half ago," which was "now constant in the area of the shoulder and arm" and was going "all the way down into the whole right upper extremity." Reporting "[n]o numbness" and "no noted weakness," Dr. Amaral diagnosed "a right C6 radiculopathy with some component of C5," consequent to a right-sided foraminal stenosis at C5-6. Dr. Amaral recommended cervical traction and epidural steroid injections, which the employee subsequently underwent, receiving the injections on June 26 and July 20, 1995. By August 1995 the employee's symptoms had greatly diminished.

On November 16, 1995, while lying on his back in a crawl space installing a furnace air-duct system, the employee experienced a recurrence of his right upper extremity pain. He evidently reported the incident to the employer, apparently reporting also his history of problems

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<sup>3</sup> Hereafter, Legion Insurance in combination with the employer.

<sup>4</sup> Hereafter, Mutual Services Casualty/Berkley Risk in combination with the employer.

several months earlier.<sup>5</sup> At the time of this November 1995 incident, the employer was insured against workers' compensation liability by Federated Mutual Insurance Company [Federated<sup>6</sup>]. The employee missed no work subsequent to the injury, but on March 5, 1996, on the referral of Dr. Basil LeBlanc, he underwent a cervical epidural myelography and a cervical epidural steroid and local anesthetic injection, "in an attempt to relieve right-sided lower neck, trapezius muscle, and shoulder pain which radiates into the right upper extremity." The following month, on April 17, 1996, the employee was examined again by Dr. Amaral, complaining of a recurrence of his radiculopathy symptoms "a few months ago." After making findings that he considered "a somewhat similar exam to what I saw in May of 1995," Dr. Amaral ordered a cervical myelogram and post-myelogram CT scan, to "display the nerve roots and the bone with more precision than an MRI scan."

On June 21, 1996, the employee underwent an independent medical examination [IME] by Dr. David Kittleson at the request of Federated. Upon completion of his examination and records review, Dr. Kittleson diagnosed right C5-6 disc herniation with radiculopathy, concluding that the employee's November 16, 1995, work injury was an aggravation of a preexisting condition. Dr. Kittleson further concluded that the employee had reached maximum medical improvement [MMI] with regard to his November 16, 1995, aggravation, that he had sustained no permanent partial disability as a result of that injury, and that no further treatment for that injury was indicated. Dr. Kittleson agreed that further diagnostic testing was appropriate prior to any disc surgery, but he emphasized that such testing was appropriate "only for [the employee's] pre-existing condition," which, the doctor indicated, "has been present since at least the fall of 1994."

On December 20, 1996, Dr. Verbovanec, responding to an inquiry from the employee's attorney, indicated that the employee's first complaints to him, in May of 1988, had been of "bilateral neck pain with bilateral upper extremity radiation." It was Dr. Verbovanec's opinion that the cervical disc herniations evident on the employee's May 1995 MRI scan at C5 and C6 "correlate with the clinical findings for the May 26, 1988, work related accident" and "were directly caused by the May 26, 1988, work related accident." On January 30, 1997, the employee was examined again by Dr. Amaral, who subsequently reiterated to the employee's attorney the employee's need for a cervical myelogram and post-myelogram CT scan. Dr. Amaral indicated in his report that the employee's foraminal stenosis had developed as a result of degenerative disc disease over a long period of time and that "this is a slow progressive process."

On August 5, 1997, the employee filed a Medical Request, seeking payment from Federated for a cervical myelogram and post-myelogram CT scan. On September 4, 1997, Federated filed a Medical Response, refusing to pay for the requested testing on grounds that it was necessitated only by the employee's pre-existing condition, of which the employee's

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<sup>5</sup> See the compensation judge's unappealed Finding 12.

<sup>6</sup> Hereafter, Federated Mutual Insurance Company in combination with the employer.

November 16, 1995, injury was merely a temporary aggravation that had completely resolved. Following an administrative conference on September 9, 1997, by a Decision and Order filed October 2, 1997, the employee's work injury of November 16, 1995, was found to be a substantial contributing factor in the employee's need for the disputed testing, and Federated was therefore held to be liable for the cost of that testing. On October 29, 1997, Federated filed a Request for Formal Hearing.

On January 12, 1998, the employee was examined by neurosurgeon Dr. Terry Hood, apparently at the request of Dr. Erickson. Dr. Hood reported to Dr. Erickson that the employee's bilateral arm pain "appears unlikely related to the findings of his May 1995 MRI," agreeing that a cervical myelogram and post myelogram CT should be performed but requesting also an EMG of both arms "to rule out any peripheral neuropathy or entrapment." Federated filed a Petition for Temporary Order the following day, naming Nationwide, Legion, and itself as insurers on the risk for work injuries alleged by the employee in May 1988, November 1990, May 1995, and November 1995.<sup>7</sup> That Petition was subsequently granted, naming Federated as paying agent in the case.

On January 15, 1998, the employee underwent the recommended cervical myelogram, post-myelogram CT scan, and EMG. The cervical myelogram was read to reveal hypertrophic spurs at the C4-5 and C5-6 disc spaces, which were read to be causing mild effacement of the ventral thecal sac but without evidence of significant cord compression. The post-myelogram CT scan was read to reveal a small central disc herniation at C5-6 that had decreased in size slightly since the employee's 1995 MRI scan, together with hypertrophic spurs and a low-grade bulging at C4-5 that had progressed since the 1995 MRI scan. Finally, Dr. Bruce Norback, who had performed the EMG, concluded that, "given the [employee's] clinical history, the record is more compatible with bilateral carpal tunnel syndrome than suggesting [of] any radicular findings."

On January 21, 1998, the employee underwent an IME by neurologist Dr. Joel Gedan at the request of Nationwide. Dr. Gedan concluded in part that the employee had sustained a work-related mild cervical strain in May of 1988 that had completely resolved, that the employee had sustained a new neck injury in May of 1995 which had never fully resolved, and that the employee had sustained a permanent aggravation of that injury in November of 1995. Dr. Gedan concluded also that the employee's work-related carpal tunnel syndrome in November 1990 was a temporary injury from which the employee had reached MMI already in February 1991. Dr. Gedan concluded further that the employee's recent cervical myelogram and post-myelogram CT scan had been reasonable and necessary and were "clearly related to the neck and radicular symptoms related to work-related injuries in May and November 1995." He added that those tests and the EMG of the employee's upper extremities were "most directly related to the re-injury or permanent aggravation, which occurred on November 16, 1995," and "not reasonably attributed

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<sup>7</sup> Apparently mistakenly, the Petition identified Legion as being on the risk for both the alleged November 1990 injury and the alleged May 1995 injury.

to the mild cervical strain almost ten years ago in April 1988.” Dr. Gedan apportioned liability for the employee’s cervical condition 50% to the May 1995 injury and 50% to the November 1995 injury, noting that degenerative changes in the employee’s cervical spine visible on x-rays at the time of the 1988 injury were “obviously not related to that cervical strain.” Dr. Gedan recognized that the employee had had “occasional treatment one or two times a year in 1989, 1990, and 1991, occurring about one year apart,” but he concluded that it was “most unlikely that a very mild strain requiring a few chiropractic treatments with an otherwise normal examination would cause symptoms a year later.” Noting also that there was “no treatment for over two years from October 1991 to January 1994 for any cervical spine symptoms,” he concluded that it was “most reasonable to conclude that there were no ongoing problems relating to the 1988 cervical strain.”

On December 10, 1998, Federated filed a Petition for Formal Hearing on Contribution. In its Petition, Federated identified Mutual as being on the risk at the time of the employee’s alleged May 1995 injury, and it indicated that it had so far paid a total of \$2,136.05 in diagnostic expenses under its January 1998 Temporary Order. In its Petition, Federated contended that, based on medical reports of Drs. Amaral, Kittleson, Verbovanec, and Gedan, the diagnostic expenses at issue were in whole or in substantial part the result of injuries other than that for which Federated was liable. On that basis, Federated sought an Order granting either full reimbursement for the expenses, with interest, or contribution for the expenses as the court might deem just. On December 18, 1998, Mutual filed an Objection to Petition for Contribution, affirmatively alleging that all responsibility for benefits rested with Nationwide consequent to the employee’s injury on May 26, 1988, or, in the alternative, that the employee’s condition represented a single Gillette-type injury culminating on November 16, 1998, and that the medical evidence did not support apportionment.

Federated’s October 1997 Request for Formal Hearing and its December 1998 Petition for Contribution came on for hearing on February 10, 1999. Issues at hearing included the following: (1) whether the employee had completely healed from the May 1988 work injury to his neck; (2) whether the employee sustained a Gillette-type injury to his neck on May 22, 1995; (3) whether the employee sustained a Gillette-type injury to his neck on November 16, 1995; (4) whether the employee’s January 1998 EMG report was sufficient medical support to link the employee’s 1998 arm symptoms to his 1990 carpal tunnel syndrome work injury; (5) whether the employee’s 1990 carpal tunnel injury was a substantial contributing factor in his need for health care treatment from 1995 on; and (6) whether, and if so how, liability for the expenses at issue should be apportioned among the party insurers. By Findings and Order filed March 10, 1999, the compensation judge concluded in part as follows, largely reliant on the opinion of Dr. Gedan: (1) that the employee had made a very quick and full recovery from his May 1988 work injury; (2) that the employee had sustained a Gillette-type injury to his neck on May 22, 1995; (3) that the employee had sustained a permanent Gillette-type aggravation of that May 1995 injury on November 16, 1995; and (4) that the employee’s January 1998 EMG report was not sufficient medical support to link the employee’s 1998 need for treatment to his 1990 carpal tunnel injury. On those findings, the judge denied Federated’s claims for contribution and/or reimbursement from Nationwide and Legion, and she apportioned liability equally between Federated and Mutual

for the expenses at issue and for resulting Roraff<sup>8</sup> and section .191 attorney fees, ordering also that Federated should continue as paying agent in the case. Mutual appeals and Federated cross-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 (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, "[f]actfindings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). Findings of fact should not be disturbed, even though the reviewing court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." Id.

## DECISION

### The 1988 Neck Injury

At Finding 5, the compensation judge found that the employee had had four sessions of chiropractic treatment in May and June 1988 directly pursuant to his May 1988 work-related neck injury, and at Finding 6 she found that between July 1989 and July 1994 the employee had had five additional episodes of neck pain, for which he had sought chiropractic treatment a total of fourteen more times. Nevertheless, the judge concluded also in Finding 6 that "the employee made a full recovery from his May 1988 work injury very quickly" and that "[c]hiropractic treatment received by the employee from July 1989 on was not causally related to his May 1988 work injury." Mutual contends that the judge's conclusion lacks "foundation," alleging that the medical report of Dr. Gedan on which the judge relies contained six factual errors. Mutual argues substantively from two of these alleged errors:<sup>9</sup> (1) Dr. Gedan's crediting of the employee's recollection that he had had no treatment between October 1991 and January 1994 for any neck symptoms, Mutual asserting that the employee sought treatment for neck pain from Dr. Verbovanec on five dates in October 1991 and one date in January 1994, and (2) Dr. Gedan's

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<sup>8</sup> See Roraff v. State, Dep't of Transp., 288 N.W.2d 15, 32 W.C.D. 297 (Minn. 1980).

<sup>9</sup> The other four alleged errors are more minor ones and are listed by Mutual apparently only as foundational grounds for de novo review.

statement that “May 1995 represents the third work-related injury, and the first time that the right arm pain is identified,” Mutual noting that the employee sought treatment for right arm pain from Dr. Verbovanec three times in July 1994. Federated argues that “Dr. Gedan’s opinion that the employee’s cervical condition from 1988 had ‘rapidly resolved’ is contradicted not only by Dr. Verbovanec’s medical reports . . . but also by the employee’s own uncontroverted testimony . . . that his neck has never felt ‘normal’ since the May 26, 1988 injury.” We are not persuaded.

Mutual’s observation that the employee sought treatment for neck pain on five dates in October 1991 and one date in January 1994 does not controvert Dr. Gedan’s observation that the employee did not seek any treatment for his neck over the course of the twenty-six months “between” those months. Dr. Gedan’s assertion, which frames the period beginning November 1991 and ending December 1993, is entirely accurate. With regard to the second alleged error in Dr. Gedan’s report, it is clear from the context of Dr. Gedan’s statement that the doctor was simply observing that, of the four work injuries claimed by the employee in this case, the May 1995 Gillette-type injury was the first to involve symptoms of right arm pain. Dr. Gedan clearly was aware of the July 1994 complaints of right arm pain, as he made very evident in his extensive review of the employee’s treatment history. Nor is Dr. Gedan’s medical opinion dispositively refuted by Dr. Verbovanec’s reports or materially contradicted by the employee’s agreement in testimony that his neck never “returned to normal on a sustained basis” (emphasis added) after his 1988 injury.

A trier of fact’s choice between experts whose testimony conflicts is usually upheld unless the facts assumed by the expert in rendering his opinion are not supported by the evidence. Nord v. City of Cook, 360 N.W.2d 337, 342-43, 37 W.C.D. 364, 372-73 (Minn. 1985). Dr. Gedan’s report on January 21, 1998, is arguably the most detailed and extensive of the medical reports in evidence. Preparatory to making that report, Dr. Gedan reviewed substantial chiropractic and medical records of the employee’s treatment dating back to 1988, including the employee’s cervical myelogram and post-myelogram CT scan. He conducted a thorough clinical examination of the employee, and his report contains an extensive and detailed history of the employee’s neck and upper extremity conditions. Because the facts contained in this history are not unsupported by the evidence, and because it was not unreasonable for the compensation judge to rely on Dr. Gedan’s conclusions, we affirm the judge’s conclusions that the employee made a full recovery from his May 1988 work injury very quickly and that Nationwide is therefore not liable for contribution for the diagnostic expenses here at issue. See Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239.

### The 1990 Carpal Tunnel Injury

The compensation judge concluded that the employee’s 1990 carpal tunnel syndrome was not a substantial contributing factor in the employee’s need for treatment in 1998 and therefore denied Federated’s Petition for Contribution from Legion to payment of the diagnostic expenses at issue. Federated argues that the tests performed in January 1998 were performed at least in part to determine whether symptoms at that time might still be symptoms of the employee’s 1990 carpal tunnel condition. Federated contends that the employee’s 1990 carpal

tunnel injury persists sufficiently to constitute a cause for the diagnostic expenses here at issue, which Federated has paid under its Temporary Order. Noting that the employee never underwent right carpal tunnel release subsequent to his diagnosis of a bilateral syndrome in 1990, Federated suggests that by July of 1994 symptoms from this condition had spread up into the employee's right arm and shoulder. Federated emphasizes Dr. Norback's conclusion on his EMG report, that the employee's record at the time of his diagnostic tests was "more compatible with bilateral carpal tunnel syndrome than suggesting [of] any radicular findings." Citing Klaven v. Northwest Medical Center, slip op. (W.C.C.A. Sept. 24, 2991), Federated argues that "diagnostic tests performed to rule out certain causes of an employee's symptoms are compensable tests" and that the compensation judge's decision contrary to the specific findings of Dr. Norback was therefore clearly erroneous and unsupported by substantial evidence. We are not persuaded.

The employee's bilateral carpal tunnel condition was first diagnosed in mid November 1990, and he underwent release surgery on the left side in early January 1991. By January 23, 1991, however, "his right hand [was] not bothering him much," and a week later he was "having no difficulty" on that side. On February 27, 1991, the employee's doctor reiterated that the employee's "right hand and wrist are not bothering him." Thereafter there is no evidence of any symptoms resembling carpal tunnel symptoms until July 1994, nearly three and a half years later. Those symptoms were eventually evaluated by an MRI scan in May of 1995, which was reported by Dr. Amaral to be suggestive of a radiculopathy consequent to foraminal stenosis. It is true that Dr. Hood's IME opinion on January 12, 1998, and Dr. Norback's EMG report three days later contemplated peripheral neuropathic rather than spinal causes for the employee's symptoms. However, the compensation judge implicitly drew a conclusion contrary to those, and that conclusion was not unreasonable, given the lengthy intervals between the initial resolution of symptoms in February 1991, the reappearance of similar symptoms in July 1994, and the diagnostic EMG in January 1998. Although diagnostic tests may be compensable medical expenses by insurers at risk on implicated injuries, the judge's reasonable conclusion relieves the 1990 injury from implication in the employee's current condition. Therefore we affirm the compensation judge's denial of Federated's request for contribution from Legion to payment of the diagnostic expenses at issue.<sup>10</sup> See Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239.

#### The May 1995 Neck Injury

At Finding 11, the compensation judge concluded as follows:

The seeking of medical care; the referral to a neurosurgeon; the MRI scan read as showing multi-level degenerative disc disease, stenosis and one bulge and one herniation in discs; the epidural steroid

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<sup>10</sup> Klaven is clearly distinguishable. In that case, the insurer liable for the employee's spinal work injury was held liable also for tests to determine whether or not post-surgical problems in the employee's back were due to cancer rather than to the work injury. If anything, the holding in Klaven is contrary to Federated's position.

injections and other care he received between May and August 1995; and the opinion of Dr. Gedan are sufficient to establish a date of injury of May 22, 1995.

As authority for that conclusion, the judge cited Gagnon v. Richard Capp D.D.S., 58 W.C.D. 327 (Minn. 1998). Contending that the only Gillette-type injury occurring in 1995 was a single one culminating in November of that year, Mutual argues that the judge's apparent reliance on Gagnon was misplaced, that the employee never experienced the "ultimate breakdown" essential to establish a Gillette-type work injury<sup>11</sup> in May 1995, and that the medical report of Dr. Gedan on which the judge also relied was unsupported by substantial evidence. Moreover, assuming that there was only a single injury, and given that there are controverting medical opinions on the issue, Mutual contends further that the compensation judge's apportionment of liability for the expenses here at issue was improper. We are not persuaded.

Mutual argues that, whereas in Gagnon "the employee was able to identify the causal connection between her ordinary work and her ensuing disability," "[i]n this case, the Employee could not identify any work activities before November 16, 1995 to attribute to the pain in May of 1995." As the court in Gagnon specifically stated, however, "[w]hile evidence of specific work activities causing specific symptoms leading to disability 'may be helpful as a practical matter,' determination of a Gillette injury 'primarily depends on medical evidence.'" Gagnon, 58 W.C.D. at 333, quoting Steffen v. Target Stores, 517 N.W.2d 579, 581, 50 W.C.D. 464, 467 (Minn. 1994). Here there was ample medical evidence - - in the form of medically reported complaints, referral and consultation records, radiological records, and records of injections and other treatment - - to constitute the sort of "ascertainable events" from which the date of a Gillette-type injury could be established, even in the absence of the sort of "ultimate breakdown" that might result in a wage loss or disability from all work. See Gagnon, 58 W.C.D. at 334, citing Schnurrer v. Hoerner-Waldorf, 345 N.W.230, 233, 36 W.C.D. 504 509 (Minn. 1984) (the date of a Gillette-type injury is not necessarily the date the employee goes off work; it is a date "determined on all the evidence bearing on the issue").

Mutual argues that the medical report of Dr. Gedan upon which the judge relied "ignores the opinion of the two treating physicians, misstates the actual medical records, finds pain 'severe' where there is no report of severe pain, and fails to address the evidence that the injections administered in 1995 were administered for degenerative changes progressing over many years." We have already addressed the credibility of Dr. Gedan's opinion above. Suffice it to say here that Dr. Gedan's very detailed report does not appear to us to materially "ignore" or "misstate" any of the employee's treatment records, does not appear to mischaracterize his pain, and appears

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<sup>11</sup> See Carlson v. Flower City Brush Co., 305 N.W.2d 347, 350, 33 W.C.D. 594, 599 (Minn. 1981) (a Gillette-type injury occurs when an employee experiences an "ultimate breakdown" in a body member that has been under prolonged minute trauma related to her work), citing Jensen v. Kronick's Floor Covering Serv., 29 W.C.D. 61, 66 (W.C.C.A. 1975), *aff'd*, 309 Minn. 541, 245 N.W.2d 230, 29 W.C.D. 69 (1976).

to comprehend quite well the history of the employee's treatment and the rationale behind it. Because Mutual's argument as to apportionment presumes that there is only one Gillette-type injury here at issue, we do not need to address that issue. Because the compensation judge's application of Gagnon and case law cited in it was not improper, and because the judge's reliance on the medical opinion of Dr. Gedan was not unreasonable, we affirm the judge's finding of a Gillette-type injury in May of 1995 and the judge's consequent apportionment of liability to Mutual. See Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239; Nord, 360 N.W.2d at 342-43, 37 W.C.D. at 372-73.

### The November 1995 Neck Injury

At Finding 13, the compensation judge concluded that the return of radicular symptoms that the employee experienced at work on November 16, 1995, manifested a permanent Gillette-type aggravation of the Gillette-type injury that the employee sustained on May 22, 1995. Pursuant to the opinion of Dr. Kittleson, Federated contends that that November 1995 incident was at most a temporary injury and that it was not a substantial contributing factor in necessitating the diagnostic expenses here at issue, which Federated contends were the result of preexisting conditions. Federated argues that, according to Dr. Amaral's records, the employee's condition in April 1996 and even as late as January 1997 was little different from his condition in May 1995. It argues further that even Dr. Norback's conclusion in January 1998, that the employee's condition at that time was more compatible with carpal tunnel syndrome than with any radicular cervical problem, is further evidence contrary to the judge's finding. Finally, Federated reiterates its position that the opinion of Dr. Gedan, upon which the judge relied, is without proper foundation. We are not persuaded.

In her finding on this issue, the compensation judge noted the gap in the employee's treatment for neck and arm symptoms between July 20, 1995, and November 16, 1995. She also noted the employee's testimony that, in the judge's words, "November 16, 1995 marks the point that [the employee] had neck and arms symptoms on a far more continuous basis than he had ever had them before then." The judge expressly based her finding of a permanent Gillette-type aggravation on "[t]he employee's testimony about his symptoms never returning to the condition they had been in before November 16, 1995, together with the opinion of Dr. Gedan." While there is certainly evidence upon which the judge could have based a contrary finding, we cannot conclude that the judge's decision was unreasonable. We have already addressed the credibility of Dr. Gedan's opinion; the fact that the record may contain contrary expert medical opinions - - which, we note, also vary quite substantially one from the other - - does not negate the very substantial deference that this court grants to hearing factfinders in the choice of medical opinion upon which to rely. See Nord, 360 N.W.2d at 342-43, 37 W.C.D. at 372-73. Because the judge's decision was supported by expert medical opinion and was not unreasonable in light of the evidence of record, we affirm the judge's conclusion that the employee's November 16, 1995, work injury was a permanent aggravation rendering Federated liable for half the expenses and attorney fees here at issue. See Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239. Accordingly, we also affirm the judge's order that Federated shall continue as paying agent in the case.