DAVID N. HOLM, Employee, v. LTV STEEL MINING CO. and AIG/SEDGWICK JAMES, Employer-Insurer/Appellants, and MN DEP'T OF LABOR & INDUS./VRU, BLUE CROSS/BLUE SHIELD OF MINN., MN DEP'T OF ECON. SEC./UI, Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
JULY 15, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - AGGRAVATION; CAUSATION - PRE-EXISTING CONDITION. Although there was no dispute over the fact that the employee had possessed a sensitivity to wearing eyeglasses prior to any work at the employer, although the issue of the causation of the employee's symptoms was complicated by the unusual nature of the employee's complaints, and although the employee's symptoms always immediately subsided upon removal of the eyewear that apparently triggered the symptoms, the compensation judge's conclusion that the employee's symptomatic reaction to protective eyewear required for work at the employer constituted an aggravation of the employee's pre-existing condition such as to entitle him to temporary total disability benefits was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

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

OPINION

WILLIAM R. PEDERSON, Judge

The employer and insurer appeal from the compensation judge's conclusion that the employee sustained a personal injury arising out of and in the course of his employment. We affirm.

BACKGROUND

David Holm [the employee] began working as a laborer for LTV Steel Mining Company [the employer] on October 16, 1995. He has a high school education and some additional correspondence training as an electrician. On the date of injury alleged herein, January 27, 1997, he was forty-one years old and was earning a weekly wage of $736.00.

To prevent accidents, the employer requires its laborers to wear safety glasses while

performing their duties.[1] The employee testified that he had never worn protective eyewear on any job prior to working for the employer. He also testified, however, that, dating back to about 1987, he had noticed a burning sensation behind his ears whenever he attempted to wear sunglasses for recreational purposes. The discomfort would start within one-half hour to three hours and would eventually reach a level necessitating removal of the glasses. He experimented with different sunglasses, but the burning sensation persisted. He attributed the problem in part to the fact that the sunglasses were of poor quality. The discomfort was limited to an area behind his ears, and he did not seek medical advice on the issue.

Upon commencing employment with the employer, the employee began experiencing a burning sensation behind his ears whenever he wore the required safety glasses. He reported the problem to his supervisor, who provided a different pair, which seemed to reduce the severity of his symptoms. However, within about two or three months, the employee noticed a change in his symptoms, which now included pain in his eyes, much like the pain that occurs when a person crosses his eyes and holds them in that position. The employee testified that over the succeeding several months his symptoms gradually progressed, to include the development of headaches, a band of pain around his head, seconds of dizziness, and blurred vision. The employee associated his symptoms and their progression with prolonged wearing of the safety glasses. Similar to his experience with sunglasses, however, his symptoms would vanish almost immediately upon his removal of the safety glasses from his face. When he was not wearing the eyewear, he had no symptoms.

In an effort to cope with the symptoms and to continue working, the employee periodically removed the safety glasses when he felt that it was safe for him to do so and that he would not be observed by a supervisor. He also tried several different types of safety glasses, including some that he purchased himself. He even tried a safety visor mounted on a hard hat so that the bows of the glasses would not touch his ears. He also tried using straps to hold the glasses in place. All efforts were ineffective, and the longer the employee wore the glasses the more pronounced his symptoms became. Eventually the employee sought medical attention with Dr. Matthew Gahn on December 30, 1996. Dr. Gahn prescribed slightly corrective lenses for the glasses in hopes of relaxing the employee's eyes. The employee tried the prescription glasses on two or three occasions, but he found that they actually brought on his symptoms faster and more severely. He stated that he could not even wear the glasses for one hour.

On January 27, 1997, the employee sought the advice of his family physician, Dr.Christopher Whiting. Dr. Whiting referred the employee for an ophthalmologic evaluation by Dr. Peter Van Patten. On February 3, 1997, Dr. Van Patten assessed a severe spectacle intolerance of uncertain etiology, under a differential diagnosis of occult mastoiditis with secondary

[1] Dean Stankey, the employer's staff coordinator of employee benefits, testified that safety glasses are not only required to be worn by all laborers at LTV but are also required and monitored by the Mine Safety and Health Administration. An employee's failure to wear protective eyewear can result in a citation and fine against the company by MSHA.

hyperesthesia, atypical greater occipital neuralgia, or somatization neurosis. He suggested consultations with other specialists to address these possibilities. On February 10, 1997, the employee was seen for a neurologic evaluation by Dr. David Camenga. Dr. Camenga's impression was hyperesthesia associated with the use of eyewear, and he recommended that the employee return to work with "no required constant use of eye covers (glasses, goggles or similar)."

In light of its safety regulations and the employee's seniority status, the employer was unable to accommodate the restrictions recommended by Dr. Camenga. As a result, the employee was off work between January 27, 1997, and July 2, 1997. During this period, the employee repeatedly checked with the employer to see if there were any job openings that did not require him to wear safety glasses. He also continued to seek a medical solution for his problem, and on June 23, 1997, Dr. Camenga recommended a consultation with occupational medicine specialist Dr. Lynn Quenemoen and hypnotherapy with Erika Eberhardt, Ph.D. Unfortunately, Dr. Quenemoen had no specific recommendations, and hypnotherapy was unsuccessful.

By July 1997, the employer had informed the employee that if he did not return to work he would no longer have a job, and on July 2, 1997, the employee returned to work without accommodation of the restrictions set forth by Dr. Camenga. Shortly after returning to work, the employee again developed a progression of the symptoms that he had previously experienced. He again experimented with different types of safety glasses and tried to avoid wearing the glasses in an effort to continue working. By November 1997, however, his symptoms again came to include burning behind the ears, a burning sensation around the head, pain in the eyes, headaches, dizziness, blurred vision, and occasional nausea. On November 17, 1997, the employee again left his employment because of the symptoms associated with wearing the eye protection.

On March 15, 1998, a change in the employee's seniority status enabled the employer to offer the employee a position as an equipment operator, which the employee accepted and was continuing to perform as of the date of the hearing. This new job with the employer does not require the employee to wear safety glasses while he is in the cab of the equipment he is operating. He continues to wear protective eyewear during periods when he is outside the cab of the equipment, but these periods generally last no longer than half an hour. The employee acknowledged that during these brief periods he continues to experience the burning behind the ears and pain in his eyes, but, because of their short duration, these symptoms have not interfered with his ability to work. The symptoms apparently resolve immediately upon the employee's removing of his eyewear when he returns to his cab.

On June 27, 1998, the employee was examined at the request of the employer and insurer by neurologist Dr. Donald Starzinski. Dr. Starzinski diagnosed a very limited somatization disorder, revolving around the use of eyewear and predating the employee's employment with the employer. He opined that any activity that would necessitate the use of eyewear would cause the employee's symptoms. He also explained that the diagnosis of hypesthesia due to eyewear use is essentially only a descriptive process and that the intolerance to eyewear that sometimes does not even touch the skin cannot be organically explained.

On June 25, 1997, the employee filed a Claim Petition with the Department of Labor and Industry, seeking temporary total disability as well as medical and rehabilitation benefits, stemming from a work injury on January 27, 1997. On July 9, 1997, the employer and insurer filed an answer to that petition, denying that the employee sustained a compensable injury within the meaning of the workers' compensation act. The Department of Labor and Industry/VRU, Blue Cross and Blue Shield of Minnesota, and the Department of Economic Security/UI were subsequently joined as Intervenors. The matter came on for a hearing before Compensation Judge Gregory A. Bonovetz on October 13, 1998. In his Findings and Order issued October 22, 1998, the judge concluded that the employee's required use of safety glasses while performing his laboring duties substantially aggravated a pre-existing condition and did in fact constitute an injury arising out of and in the course of the employee's employment. As a result, he concluded, the employee was entitled to temporary total disability benefits from January 27, 1997, to July 2, 1997, and from November 27, 1997, to March 15, 1998, as well as the claimed medical and rehabilitation expenses. The employer and insurer appeal.

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 employer and insurer contend that the employee's inability to tolerate eyeglasses is a personal condition similar to color blindness and that the employer's inability to accommodate that condition does not convert it into an occupational injury. They point out that the employee's sensitivity to eyeglasses has been "lifelong" and that he has experienced symptoms both on and off the job.[2] They argue that the employer's requirement that the employee wear

[2] In his letter to employee's counsel of January 20, 1998, Dr. Camenga stated that the employee's "inability to tolerate eye wear has been lifelong, and did not arise solely in the work situation."

protective glasses at work is simply an appropriate safety precaution and a regulatory requirement of MSHA. They argue further that the employee has identified no specific feature of the protective glasses as a trigger for his symptoms and that there has been no injurious event. The change in the employee's symptomatology, they contend, is linked solely to the duration for which the glasses are used. Moreover, they argue, regardless of the type of eyewear utilized or the duration of its usage, the employee's symptoms begin to clear immediately following the removal of the glasses and clear completely and without residuals within a maximum period of one-half hour. They further contend that substantial evidence does not support the compensation judge's conclusion that the employee provided sufficient and credible medical support establishing a relationship between his employment activities and his disability. This is a difficult issue, but we are not persuaded that the judge's decision was unreasonable.

The compensation judge identified the issue for determination as whether the symptomatology induced by the wearing of the required safety glasses constituted an injury or illness arising out of and in the course of employment. He determined that the employee's required use of safety glasses while working for the employer "substantially aggravated any pre-existing, latent symptomatology and led to the employee experiencing profound symptoms - - symptoms which he had never previously experienced." The judge further found that the disabling symptomatology precipitated by the use of the safety glasses "did in fact arise out of and in the course of his employment with the employer herein."

In reviewing the Findings and Order of the compensation judge, it is clear that the judge's decision in this case was premised in substantial part on his assessment of the employee's credibility. The judge specifically found that the employee "is a truthful, credible witness." The evidence clearly establishes that, before he began working for the employer herein, the employee had experienced a sensitivity to sunglasses in the form of a burning sensation behind his ears. The compensation judge found that the employee had never experienced pain or burning on the side of his head, headaches, dizziness, blurred vision, or nausea associated with wearing any form of glasses prior to his work for the employer. The judge concluded that the employee's compliance with the employer's protective eyewear requirement resulted in a substantial aggravation and intensification of his symptomatology to the point where new and intense symptoms actually disabled the employee. The judge also concluded that, since the disabling symptomatology had its origins in the wearing of the safety glasses and since wearing of the safety glasses was a requirement of the employment, the disabling symptoms arose out of the employment. Substantial evidence supports these conclusions of the compensation judge.

We agree with the employer and insurer that an employer's inability to accommodate an employee's personal medical condition does not convert that personal condition into an occupational injury. However, as the compensation judge correctly pointed out in his memorandum, the existence of a pre-existing condition or personal predisposition does not disqualify an employee from coverage if his employment aggravated, accelerated, or combined with the pre-existing condition to produce disability. See, e.g., Wyatt v. Hancock Nelson Mercantile Co., 296 Minn. 489, 207 N.W.2d 342, 26 W.C.D. 673 (Minn. 1973); Wallace v. Hanson Silo Co., 305 Minn. 395, 235 N.W.2d 363, 28 W.C.D. 79 (1975). For a disability to be

compensable, it is not necessary for the employee to show that the employment was the sole or even a "major" cause of the disability. Rather, it is only necessary for the employee to show that the work activity was an appreciable or substantial contributing cause. See Roman v. Minneapolis Street Ry. Co., 268 Minn. 367, 129 N.W.2d 550, 23 W.C.D. 573 (1964); Salmon v. Wheelbrator Frye, 409 N.W.2d 495, 497-98, 40 W.C.D. 117, 122 (Minn. 1987). Moreover, whether the employment aggravated the pre-existing condition is a question of fact, not law. Bender v. Dongo Tool Co., 509 N.W.2d 366, 367, 49 W.C.D. 511, 513 (Minn. 1993).

Particularly applicable to this case is the basic premise of Minnesota workers' compensation law that an employer takes an employee as it finds him.

> The Compensation Act was designed for the protection of all laborers coming within its purview. That is, it does not apply to those only who are strong in body. Neither is it limited to those only who are normal. Those who are below normal, have a weakness or a disease, are also within its protection. Compensation is not dependent upon any implied assumption of perfect health. It does not exclude the weak or physically unfortunate.

Walker v. Minn. Steel Co., 167 Minn. 475, 476, 209 N.W. 635, 635, 4 W.C.D. 143, 144 (1926). Again, in Salmon v. Montgomery Ward & Co., 281 Minn. 406, 410, 161 N.W.2d 682, 684-85, 24 W.C.D. 644, 648 (1968), the court stated,

> while an employer is not an insurer of the health of his employees he must take them as he finds them with all of the infirmities they bring to their employment, and he assumes the risk of having a preexisting condition aggravated by some injury which might not be harmful to a normal, healthy person.

The compensation judge determined that the employee sustained a personal injury arising out of and in the course of his employment. An injury is said to arise out of the employment "if it arises out of the nature, conditions, obligations, or incidents of the employment; in other words, out of the employment looked at in any of its aspects." Swenson v. Ellen Zacher, 264 Minn. 203, 118 N.W.2d 787, 789, 22 W.C.D. 342, 347 (1962). An incident of the employment relationship in this case was the requirement that the employee wear safety glasses. The compensation judge concluded that, in complying with this requirement, the employee experienced a progressive, ever-worsening series of symptoms that ultimately necessitated his leaving work. Because the disabling symptomatology had its origins in an essential requirement of the job, the disabling symptoms arose out of the employment.

In explaining his decision, the compensation judge specifically acknowledged the employer's argument that the employee's condition arose solely from a risk personal to him and is therefore not compensable. The judge concluded, however, that the employee's compliance with the employer's requirement resulted in a substantial aggravation and intensification of his

symptoms. The employee's testimony is sufficient to support the conclusion that his compliance with the employer's requirement resulted in a substantial aggravation of a latent preexisting condition, and Dr. Camenga's opinion, in his report of January 20, 1998, also supports this conclusion.

The employer and insurer have likened the employee's "personal condition" to that of an individual who is color blind. A person who is color blind, they argue, may secure a job which would require the individual to distinguish colors. The individual may have been able to compensate in prior employment positions and may be able to successfully hide his or her color blindness in certain circumstances. When required to perform tasks which require distinguishing between red and green, however, the individual may be unable to do the job. This inability, they argue, would not constitute a compensable injury.

While color blindness may not constitute a compensable injury, we cannot agree that the analogy is applicable to this case. The essential and distinguishing feature of the instant case is the aggravation component causally related to the employment. The compensation judge reasonably found the employee's required use of safety glasses to be a substantial contributing factor in the worsening of the employee's symptoms and eventual disability. Unlike the employee who is color blind, the employee in the instant case has experienced a substantial aggravation and intensification of his symptoms by the time he reaches the point where is unable to perform his job duties.

We believe the employee's condition is more closely analogous to an asthmatic condition or contact dermatitis. The most effective treatment for the condition is avoidance of the offending agent. When not subjected to the inciting exposure, the individual may be totally asymptomatic. Despite the lack of symptoms, the underlying condition continues to exist. Although no concrete diagnosis has been established in this case, the compensation judge nevertheless concluded that the employee's condition had been substantially aggravated as a result of an essential requirement of the employment with the employer herein. The judge relied on Dr. Camenga's opinion in finding that the employee's condition was aggravated by his work activities, and this was proper. See Nord v. City of Cook, 360 N.W.2d 337, 342-43, 37 W.C.D. 364, 372-73 (Minn. 1985) (a trier of fact's reliance on expert opinion is usually upheld unless the facts assumed by the expert in rendering the opinion are not supported by the evidence). Even a disease of unknown origin may be a compensable personal injury provided there exists a causal relationship between the disease and the employment. Boldt v. Josten's, Inc., 261 N.W.2d 92, 30 W.C.D. 178 (Minn. 1977). Again, whether there exists the requisite causal connection between the work activities and the disability is a question of fact for the compensation judge's determination. See Bender, 509 N.W.2d 366, 49 W.C.D. 511.

The employer and insurer also contend that Dr. Camenga's medical opinion of January 20, 1998, should be rejected as insufficiently credible to support a relationship between the employee's work activities and his disability. They assert that Dr. Camenga had previously offered an opinion on June 23, 1997, indicating that the employee's condition was not work-related. That first opinion was offered after the employee had fully informed Dr. Camenga of the

entire history of his difficulties in the use of eyewear and after Dr. Camenga had examined him for the last time. Dr. Camenga's subsequent opinion was issued only at the urging of the employee's counsel, as he sought medical support for the employee's claim. The employer and insurer argue that Dr. Camenga in his letter offers no medical explanation for his revision of his position. We disagree.

At the outset, we note that Dr. Camenga's initial indication that the employee's condition was not work-related was set forth in a Report of Work Ability dated June 23, 1997. Prior to inquiry by counsel for the employee, there is nothing in the record to suggest that Dr. Camenga had ever been asked whether the employee's condition had been aggravated or accelerated by his job in a substantial and material way. Dr. Camenga responded by stating that "it is clear and without reasonable question that the requirement by his employer that he wear eye covers at all times does markedly aggravate that condition." While we agree that Dr. Camenga was apparently unaware of the reassignment limitations imposed upon the employer under the terms of its collective bargaining agreement, and while we are not persuaded in any sense by the doctor's remarks relative to that issue, we do not view Dr. Camenga's opinions here as inconsistent or without foundation. It is the compensation judge's responsibility, as trier of fact, to resolve conflicts in expert testimony. See Nord, 360 N.W.2d at 342-43, 37 W.C.D. at 372-73. Although Dr. Starzinski expressed an opposing view in this case, and although such a view could have been accepted by the judge, the conflict in medical opinion was reasonably resolved by the judge in favor of Dr. Camenga's opinion.

This was an unusual and particularly difficult case. LTV Steel Mining Company, in an effort to prevent injuries in a mining environment, reasonably and prudently requires its employees to wear protective eyewear. There is no dispute over the fact that Mr. Holm possessed a sensitivity to eyeglasses prior to any work at LTV, and the causation issue was complicated by the unusual nature of Mr. Holm's symptom complaints.[3] However, as difficult as the issues were for LTV, they were no less difficult for Mr. Holm, who did everything possible to comply with safety regulations and to maintain his employment. While the record might well have supported the determination sought by LTV, we cannot conclude that the compensation judge's findings as to causation were either clearly erroneous or unreasonable. Therefore we must affirm the decision of the judge imposing liability on LTV. See Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239.

[3] In his letter to Dr. Whiting dated February 10, 1997, Dr. Camenga stated, "In 30 years of neurology I do not recall a person with a similar complaint."