

EDWIN J. JACKA, Employee, v. COCA-COLA BOTTLING CO.. SELF-INSURED/KEMPER NAT'L INS. CO., Employer/Appellant, and ARVOLD CHIROPRACTIC CLINIC and COMM'R, DEP'T OF LABOR & INDUS., Intervenors, and MINN. ATT'Y GEN.

WORKERS' COMPENSATION COURT OF APPEALS
APRIL 13, 1999

No. [REDACTED SSN]

HEADNOTES

MEDICAL TREATMENT & EXPENSE - TREATMENT PARAMETERS. Substantial evidence supports the compensation judge's finding that the employee's treatment after April 3, 1995, was a valid departure from the permanent treatment parameters.

Affirmed.

Determined by Hefte, J., Pederson, J., and Wheeler, C.J.
Compensation Judge: James R. Otto

OPINION

RICHARD C. HEFTE, Judge

The self-insured employer appeals the compensation judge's finding that the employee's chiropractic treatment after April 3, 1995, was an appropriate departure from the parameters pursuant to Minn. R. 5221.6050, subp. 8D because the treatment decreased the employee's subjective complaints and improved his functional status. We affirm.

BACKGROUND

This court's previous opinion in this case, Jacka v. Coca-Cola Bottling Co., slip op. (W.C.C.A. Mar. 12, 1997), is incorporated herein by reference. On June 22, 1993, Edwin Jacka, (employee) sustained an admitted work-related injury to his lumbar back in the course of his employment with Coca-Cola Bottling Company (self-insured employer). On May 23, 1994, the employee began treatment with chiropractor Dr. Jordan R. Arvold and continued treatment through the date of his hearing on June 19, 1996. The employer disputed liability for treatments rendered by Dr. Arvold from October 17, 1994 to June 19, 1996. Following a hearing, the compensation judge found that the treatment rendered by Dr. Arvold provided significant relief for the employee's condition, was consistent with accepted chiropractic practice, and was not excessive. The compensation judge found that the treatment rendered after April 3, 1995, was not authorized under the permanent treatment parameters of Minn. R. 5221.6200, subp. 3 and 5221.6010, subp. 2, but also found that the treatment was an appropriate departure from the parameters pursuant to Minn. R. 5221.6050, subp. 8D because it decreased the employee's subjective complaints and

improved his functional status. On this basis, the compensation judge awarded payment to Arvold Chiropractic Clinic for most of the employee's outstanding treatment expenses.

On appeal, the Workers' Compensation Court of Appeals bifurcated the issues relating to the permanent treatment parameters from the other issues on appeal. The Minnesota Department of Labor and Industry was joined as an intervenor. The case was consolidated with Kelley v. Viking Auto Salvage, slip op. (W.C.C.A. Mar. 17, 1997), and referred to a compensation judge for another hearing. At a pre-trial hearing, the compensation judge received into evidence the records of the rulemaking proceedings concerning the permanent treatment parameters. Prior to any further proceedings, the chief administrative law judge certified the matter to the Minnesota Supreme Court. In Jacka v. Coca-Cola Bottling Co., 580 N.W.2d 27, 58 W.C.D. 395 (Minn. 1998), the supreme court held that the permanent treatment parameters, Minn. R. 5221.0001 et. seq., are to be used by compensation judges as standards which establish the limits of compensable treatment in all but the most exceptional circumstances, and that the parameters apply to all treatment provided to an employee after January 5, 1995, irrespective of the date of injury. After the supreme court's decision, the case returned to this court for determination of the remaining issue of the compensation judge's application of the treatment parameters. The parties were given the opportunity to file additional briefs on the remaining issue.

DECISION

The permanent treatment parameters promulgated by the Department of Labor and Industry were effective January 4, 1995, and state that they are applicable to "all treatment provided after the effective date" of the rules, "regardless of the date of injury." Minn. R. 5221.6020, subp. 2. Limitations of the duration of a specific treatment modality begin with the first time the modality is initiated after the effective date. Id. The employee's first treatment with Dr. Arvold after that date was on January 10, 1995. The treatment at issue in this matter was rendered after the effective date of the permanent treatment parameters. The parameters limit the duration and type of treatment but also allow for departures under certain circumstances.

The employer argues that the employee's treatment after April 3, 1995, was beyond the durational limits for chiropractic treatment and did not meet the criteria for additional treatment. Pursuant to Minn. R. 5221.6200, subp. 3A, passive care, including chiropractic care, is generally not indicated beyond twelve calendar weeks after passive care is initiated. The treatment parameters provide for an additional twelve treatments under certain circumstances under Minn. R. 5221.6200, subp. 3B(1), which provides:

An additional 12 visits for the use of passive treatment modalities over an additional 12 months may be provided if all of the following apply:

- (a) the employee is released to work or is permanently totally disabled and the additional passive treatment must result in progressive improvement in, or maintenance of, functional status

achieved during the initial 12 weeks of passive care;

(b) the treatment must not be given on a regularly scheduled basis;

(c) the health care provider must document in the medical record a plan to encourage the employee's independence and decreased reliance on health care providers;

(d) management of the employee's condition must include active treatment modalities during this period;

(e) the additional 12 visits for passive treatment must not delay the required surgical or chronic pain evaluation required by this chapter; and

(f) passive care is inappropriate while the employee has chronic pain syndrome.

The compensation judge did not consider whether the employee's treatment after April 3, 1995, met the criteria under Minn. R. 5221.6200, subp. 3B(1), but found that the treatment after that date was a valid departure from the parameters under Minn. R. 5221.6050, subp. 8, which provides:

A departure from a parameter that limits the duration or type of treatment in parts 5221.6050 to 5221.6600 may be appropriate in any one of the circumstances specified in items A to E. The health care provider must provide prior notification of the departure as required by subpart 9.

A. Where there is a documented medical complication.

B. Where previous treatment did not meet the accepted standard of practice and the requirements of parts 5221.6050 to 5221.6600 for the health care provider who ordered the treatment.

C. Where the treatment is necessary to assist the employee in the initial return to work where the employee's work activities place stress on the part of the body affected by the work injury. The health care provider must document in the medical record the specific work activities that place stress on the affected body part, the details of the treatment plan and treatment delivered on each visit, the employee's response to the treatment, and efforts to promote employee independence in the employee's own care to the extent possible so that prolonged or repeated use of health care providers and medical facilities is minimized.

D. Where the treatment continues to meet two of the following three criteria, as documented in the medical record;

(1) the employee's subjective complaints of pain are progressively improving as evidenced by documentation in the medical record of decreased distribution, frequency, or intensity of symptoms;

(2) the employee's objective clinical findings are progressively improving, as evidenced by documentation in the medical record of resolution or objectively measured improvement in physical signs of injury; and

(3) the employee's functional status, especially vocational activity, is objectively improving as evidenced by documentation in the medical record, or successive reports of work ability, of less restrictive limitations on activity.

E. Where there is an incapacitating exacerbation of the employee's condition. However, additional treatment for the incapacitating exacerbation may not exceed, and must comply with, the parameters in parts 5221.6050 to 5221.6600.

In this case, the compensation judge allowed the departure under Minn. R. 5221.0650, subp. 8D since the treatment resulted in progressive improvement of subjective complaints and the ultimate improvement of the employee's functional status, meeting two of the three criteria under that subpart. Dr. Arvold's records indicate that the employee was treating two to four times per month, was showing subjective and objective improvement, and the frequency of treatment was decreasing. The employee testified that his condition had improved and that his functional ability had improved.

As the supreme court noted,

The compensation judge's application of the permanent treatment parameters in Jacka demonstrates the flexibility inherent in the permanent rules. Although the judge found that [the employee's] chiropractic treatment fell outside the basic treatment parameters, he applied Minn. R. 5221.6050, subp. 8D to determine that a departure was appropriate due to [the employee's] demonstrated improvement in functional status and objective complaints.

Jacka, 58 W.C.D. at 404. Substantial evidence supports the compensation judge's finding that the employee's chiropractic treatment after April 3, 1995, was an appropriate departure under Minn. R. 5221.0650, subp. 8D. Therefore, we need not consider whether the employee met the criteria for additional visits under Minn. R. 5221.6200, subp. 3B(1), since the treatment qualified as a valid departure. Accordingly, we affirm the compensation judge's award of chiropractic expenses.

The employee also raised the issue of whether the employer had met the notice requirement under Minn. R. 5221.6050, subp. 7B, and the consequences of failure to give such notice. Since we have affirmed the compensation judge's finding that the departure was appropriate, we need not address the notice issue.