

SHANNON M. JETT, Employee, v. WAL-MART STORES, INC., and AIG/CLAIMS MGMT., INC., Employer-Insurer/Appellants.

WORKERS' COMPENSATION COURT OF APPEALS
SEPTEMBER 21, 1999

No. [REDACTED SSN]

HEADNOTES

MEDICAL TREATMENT & EXPENSE - TREATMENT PARAMETERS; MEDICAL TREATMENT & EXPENSE - REASONABLE & NECESSARY. Where the employee had had nearly six years of significant ongoing symptoms and her treating physician had opined that she had no other treatment options, the compensation judge's award of an evaluation for a chronic pain management program was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

Determined by Pederson, J., Wheeler, J., and Johnson, J.
Compensation Judge: Jennifer Patterson.

OPINION

WILLIAM R. PEDERSON, Judge

The employer and insurer appeal from the compensation judge's determination that the employee was eligible for chronic pain management pursuant to Minn. R. 5221.6600, subp. 1, of the medical treatment parameters, and from the judge's consequent award of a chronic pain evaluation and program, if recommended.¹ We affirm.

BACKGROUND

On April 3, 1993, Shannon Jett [the employee], at the age of twenty, sustained an admitted work-related injury in the electronics department at Wal-Mart [the employer]. The employer was insured for workers' compensation liability by AIG/Claims Management, Inc. [the insurer]. The employee was holding a ladder for a coworker who was removing a 25-inch boxed

¹ At oral argument, the parties advised the court that an evaluation to determine whether the employee was a candidate for a chronic pain management program was conducted following the issuance of the compensation judge's Findings and Order. The evaluating medical professionals determined that the employee was not a candidate for such a program. Therefore, we will limit our discussion to whether a chronic pain evaluation was reasonable and necessary and in accordance with the treatment parameters.

television set from overhead storage when it fell from a height of approximately eight feet. The employee threw up her arms to protect her head and caught the television in her outstretched arms. At the time, the employee did not complain of any injuries, but the following day she was extremely sore and unable to get out of bed.

Two days after the work incident, the employee sought medical treatment at the East Main Clinic where she complained of stiffness and achiness from the base of the neck down to the middle of the spine. The doctor noted that she had no previous history of neck or back injury and diagnosed an acute thoracic and lower cervical muscle strain. He recommended two days off work, followed by two weeks of light duty. He also prescribed medication. The employee returned to the clinic unimproved on June 10, 1993, and the doctor changed her medication and referred her to the Two Rivers Center for physical therapy. The employee reported that her treatment in 1993 relieved symptoms in her lower back but that she continued to experience chronic headaches, neck pain, pain at the cervical-thoracic spine junction, arm pain, hand tingling, and occasional episodes of pain in her entire spine.

The employee continued working at her pre-injury job in the electronics department for the employer, and, after her therapy ended in July 1993, she did not seek additional treatment until June 30, 1994. The employee explained that she had not returned to the doctor because she thought that, with time, she would recover on her own. When she returned to the clinic on June 30, 1994, she indicated that she had been experiencing cervical neck and thoracic back pain since her work injury. The doctor prescribed a muscle relaxant. One week later, the employee returned to the clinic reporting that her pain continued and that the medication was not helping. The doctor felt a re-evaluation of physical therapy would be beneficial and prescribed a low dose anti-depressant for treatment of chronic pain. The employee did not undergo physical therapy in 1994, as the insurer did not agree to pay for it.

On July 21, 1994, the employee was seen for an independent medical examination by neurologist Dr. David Dorn at the request of the insurer. Dr. Dorn diagnosed a strain of the cervical and thoracic spine causally related to the work-injury of April 3, 1993. The doctor opined that the employee reached maximum medical improvement on July 21, 1994, that she had a disability rating of 0% of the whole body, and that consideration should be given to a one-time visit with a physical therapist for re-evaluation and instruction in home exercise. Dr. Dorn did not place any restrictions on the employee that would have affected her ability to perform her job at Wal-Mart.

The employee again had a gap in her medical treatment until September 28, 1995, when she went to the emergency room at Mercy Hospital, complaining of severe back and neck pain. She was discharged with advice to use heat as needed and ibuprofen on a regular basis. In December 1995, the employee was seen by her family physician, Dr. David Rosenbaum, complaining of continued symptoms in her neck and upper back and tingling in her hands and arms. The doctor recommended an EMG, physical therapy, medication, and x-rays of the cervical spine. The EMG test was read as normal, as were x-rays of the cervical spine. The employee also underwent an MRI scan of the cervical spine on December 20, 1995, which was read as

showing no significant abnormality. In January of 1996, the employee underwent an additional course of physical therapy, which did not provide relief. In the spring of 1996, the employee left employment with the employer after being moved to the paper and chemicals department, a job assignment that required lifting cases of bleach and toilet paper overhead. The employee subsequently obtained a less physically demanding position as an electrical technician with Universal Circuits.

On September 17, 1997, the employee returned to Dr. Rosenbaum, complaining of continued symptoms. Dr. Rosenbaum then referred her to orthopedist Dr. Jeffrey Dick, who examined the employee on October 6, 1997, and prescribed a cervical discogram. The discogram, performed on May 18, 1998, and considered valid, showed concordant pain at the C3-C7 discs with abnormal morphology at each level. On the basis of this test, Dr. Dick diagnosed post traumatic multi-level degenerative disc disease in the cervical spine and chronic pain syndrome. Because the employee had no neurologic compromise, and because her pain emanated from multiple discs in her neck, the doctor advised against surgery. On June 23, 1998, Dr. Dick referred the employee to the Sister Kenny pain management program, but the employer denied payment for the pain program.

On December 21, 1998, the employee was again examined by Dr. David Dorn. Dr. Dorn opined that a chronic pain management program was not reasonable and necessary treatment for the employee. Further, he opined that the employee did not meet the criteria for chronic management as set forth in Minn. R. 5221.6600, subp. 1.

The issue of the employee's claim for a chronic pain management program came on for hearing before Compensation Judge Jennifer Patterson on January 6, 1999. The judge determined that the chronic pain management program recommended by Dr. Dick was necessary to cure and relieve the employee from the effects of her injuries of April 3, 1993, and that the employee satisfied the chronic pain management requirements of the medical treatment parameters. 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

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 that establish the limits of compensable treatment, regardless of the date of injury. In the present case, the treatment at issue is Dr. Dick’s referral for an evaluation for a chronic pain management program pursuant to Minn. R. 5221.6600, subp. 2E. Before reaching that specific issue, however, the employer argues that the employee does not qualify for any chronic management modalities at all because she is not a candidate for chronic management pursuant to Minn. R. 5221.6600, subp. 1.

Minn. R. 5221.6600, subd. 1, states in relevant part as follows:

If a patient continues with symptoms and physical findings after all appropriate initial nonsurgical and surgical treatment has been rendered, and if the patient’s condition prevents the resumption of the regular activities of daily life including regular vocational activities, then the patient may be a candidate for chronic management.

The employer and insurer argue that the rule establishes a two-prong test and that both prongs must be met in order for an employee to qualify for chronic management. While they concede that the employee continues with symptoms and physical findings after receiving all appropriate initial nonsurgical and surgical treatment, they contend that the judge ignored the second prong of the rule, the requirement that those continuing symptoms prevent a resumption of regular daily activities. The employer argues that, rather than analyzing these prongs separately, the judge essentially merged the two, erroneously concluding that the mere presence of symptoms during the employee’s performance of regular activities of daily life, including regular vocational activities, satisfies the threshold for chronic management. We are not persuaded that the judge erred in awarding the chronic pain evaluation.

The compensation judge reasonably concluded that the employee’s symptoms are worsening and that the employee not only has objective findings on examination and discogram but also some non-organic symptoms as well. The judge also emphasized that the employee has had ongoing symptoms consisting of constant headaches, neck pain and burning sensations, tingling in her fingers, occasional leg pain, and episodes when her entire spine hurts. These symptoms had been present for nearly six years and had required the employee to change occupations in order to obtain lighter work. The symptoms also affected the employee’s activities of daily life, in that she performs household chores in pain and has had to give up leisure activities in order to avoid aggravating her symptoms. The Department of Labor and Industry promulgated the treatment parameters to “guide compensation judges in the determination of proper benefits.”

Jacka, 580 N.W.2d at 32, 58 W.C.D. at 401. “Whether any specific parts of any given treatment parameter have been met is a fact issue for the compensation judge, and we are not inclined to draw any arbitrary line as to the limits of the language” Asti v. Northwest Airlines, 59 W.C.D. 53, 57 (W.C.C.A. 1998), rev’d on other grounds, 588 N.W.2d 737, 59 W.C.D. 59 (Minn. 1999). As explained by the judge in her memorandum, the treatment parameters should not be interpreted to rule out a form of treatment for an employee who is stoic enough to work in pain, and “[n]o employee should have to quit his or her job in order to be eligible for any kind of healthcare treatment.” We agree. We also note that, pursuant to Minn. R. 5221.6600, subp. 1, one of the purposes of chronic management is to return the patient to the highest functional status reasonably possible.

In Asti v. Northwest Airlines, 588 N.W.2d 737, 740, 59 W.C.D. 59, 64 (Minn. 1999), the supreme court stated as follows:

It cannot be legitimately asserted that the drafters of the treatment parameter rules considered every possible scenario, yet determined that the wiser choice was to require the employee’s health to decline to the point of inability to work rather than to continue an inexpensive treatment that allows continued employment.

We believe the compensation judge’s analysis in the present matter is in keeping with the court’s statement in Asti. Despite minimal healthcare treatment, the employee has had nearly six years of significant ongoing symptoms. Her treating physician has opined that she has no other treatment options. It was not unreasonable for the judge to conclude that six years of chronic pain during work and leisure activities significantly impaired the employee’s ability to perform the regular activities of daily life and that an evaluation for a chronic pain management program was a reasonable approach toward returning the employee to the highest possible functional status. While the employer’s arguments may have some merit, we are not inclined to construe the treatment parameters so narrowly as to disallow a clearly reasonable and necessary referral. The decision of the compensation judge ordering the employer and insurer to pay for a chronic pain evaluation to be performed at the Sister Kenny Institute, together with the employee’s costs and disbursements, is therefore affirmed.