

KENNETH D. KENT, Employee/Appellant, v. LESUEUR, INC., and LIBERTY MUT. INS. CO., Employer-Insurer, and LESUEUR, INC., and STATE FUND MUT. INS. CO., Employer-Insurer, and HRI for FIRST HEALTH, Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS  
APRIL 13, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - TEMPORARY AGGRAVATION; CAUSATION - PRE-EXISTING CONDITION. Substantial evidence, including the opinions of two physicians, supported the compensation judge's conclusion that the employee's underlying pre-existing osteoarthritis was not permanently aggravated by his work activities or work injuries and that the employee's disability and need for treatment for the period at issue was not causally related to any work-related knee condition.

Affirmed.

Determined by Wilson, J., Johnson, J., and Wheeler, C.J.  
Compensation Judge: Rolf G. Hagen

OPINION

DEBRA A. WILSON, Judge

The employee appeals from the compensation judge's findings as to the causation of the employee's knee condition and resulting disability. We affirm.

BACKGROUND

The employee began working for LeSueur, Inc., [the employer], a foundry, in January of 1984. In 1993, he started an assignment with the employer as a "Die Cast Molder," which involved running and removing parts from a large machine. Performing this work required the employee to do a significant amount of standing, twisting, turning, and climbing onto and off of platforms. In addition to his work for the employer, the employee has had his own business for many years, plowing snow in the winter and mowing lawns in the summer.

Medical records suggest that the employee has a history of joint symptoms dating back to childhood, when he was apparently diagnosed with juvenile rheumatoid arthritis. More recently, in 1991, he was treated for an infection in his right knee apparently originating with a small scrape or puncture wound. However, the first knee treatment relevant to this proceeding

occurred on May 30, 1996, when the employee sought care for aching joints, especially in the right knee. Over the next two and a half years, he was evaluated or treated for knee symptoms by several physicians, including Daniel Borgen, William Shores, Steven Curtis, Peter Daly, and Thomas Raih. All physicians essentially agree that the employee has degenerative osteoarthritis in both knees; whether this condition has been aggravated or accelerated by the employee's work activities or by work injuries is disputed.

On May 5, 1997, the employee's primary treating physician, Dr. Curtis, performed arthroscopic surgery to repair a meniscus tear in the employee's left knee. On June 2, 1997, shortly after his return to work after this surgery, the employee tripped on an extension cord on the job, and he subsequently experienced additional left knee symptoms. In August of 1997, Dr. Curtis released the employee to return again to work, on a part-time basis, this time with restrictions on squatting, kneeling, climbing, and crawling. These restrictions were made permanent in November of 1997.

The matter came on for hearing before a compensation judge on September 9, 1998. Parties to the proceedings included the employee, Liberty Mutual Insurance Company [Liberty Mutual], the employer's workers' compensation insurer from 1992 through about September 29, 1996, and State Fund Mutual Insurance Company [State Fund], the employer's insurer beginning September 30, 1996. The matter was procedurally complex for reasons not relevant here, and the disputed issues were numerous, involving several claimed dates of injury to the employee's knees as well as back injury claims. The parties stipulated to several work injuries, including the June 2, 1997, injury to the employee's left knee. Issues included whether the employee had sustained a Gillette<sup>1</sup> injury or injuries to his knees; the date and nature of any such injuries; and the nature of the admitted June 2, 1997, injury.

In findings relevant to this appeal, the compensation judge concluded that the employee had sustained a Gillette-type injury to his left knee, in the nature of a meniscal tear, effective May 30, 1996; that the June 2, 1997, admitted left knee injury was a temporary aggravation/strain that resolved no later than August 11, 1997; that the employee did not prove that he had sustained any other work injuries to his knees<sup>2</sup>; that the employee failed to prove that his work activities permanently aggravated or accelerated his preexisting osteoarthritis; and that the employee's need for restrictions and treatment after August 11, 1997, was due to his underlying, preexisting osteoarthritis and "not to any work related condition." The employee appeals.

## STANDARD OF REVIEW

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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> The compensation judge specifically denied the employee's claim that he sustained work-related knee injuries on October 11, 1995, and November 26, 1996, and the judge's findings to this effect were not appealed.

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 employee's first claim on appeal is that "[t]he issue of whether the employee had sustained a permanent [knee] injury was not before the compensation judge." As part of this argument, the employee asserts that, "[a]lthough the judge found that the employee sustained a Gillette injury on May 30, 1996 . . . he went on to find that it was not 'permanent in nature.'"<sup>3</sup> The employee then alleges that the "parties had extensive discussions off the record" and that it "was specifically agreed that permanency would not be litigated." Accordingly, the employee maintains that the judge "exceeded the scope of issues presented for determination" and that the judge's decision that "the employee did not sustain a permanent injury should be vacated."

The employee has misread the judge's findings and order. At no point did the

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<sup>3</sup> In his brief, the employee attributes the "permanent in nature" language to page 11 of the compensation judge's memorandum. What the employee is apparently quoting reads, in context, as follows:

Dr. Curtis went on to opine that the work activities did not substantially contribute to the development of his knee osteoarthritis but did opine that it substantially contributed to the tear of employee's medial meniscus. Dr. Curtis further opined that the work injuries provided aggravations of this preexisting osteoarthritic condition which predated his work injuries. Dr. Curtis did not however opine that any work aggravations were permanent in nature.

(Emphasis added).

judge find or conclude that the May 30, 1996, Gillette injury - - the meniscus tear - - was not permanent. Rather, he concluded that the employee's work activities and/or injuries did not permanently aggravate the employee's preexisting osteoarthritis."<sup>4</sup> As these are clearly separate issues, the relief requested by the employee is both unnecessary and inappropriate.

The employee's second argument on appeal, related to the first, is that, because the judge apparently concluded that the May 30, 1996, Gillette injury was only temporary, he failed to address whether that injury was "a substantial contributing factor" in the employee's disability. Again, however, the judge did not conclude that the May 30, 1996, Gillette injury was merely temporary. Moreover, the judge did in effect address the "substantial contributing factor" issue in the following findings:

16. The preponderance of the evidence supports a finding that on or about August 11, 1997 the employee was released to return to work with restrictions of 3 hours a day, 5 days a week, avoiding squatting, kneeling, climbing and crawling; further, the preponderance of the evidence supports a finding that these restrictions are attributable to the employee's pre[existing] osteoarthritic knee (bilateral) condition and not to any work related condition.

17. The preponderance of the evidence supports a finding that from and after August 11, 1997, employee's overall disability and need for medical treatment (to his knees, bilaterally) are the result of the natural progression and deterioration of his preexisting osteoarthritic knee (bilateral) condition and not the result of any specific or Gillette type work injury claimed to have been sustained while in the employ of the employer and therefore, not the responsibility of this employer or its insurers, Liberty and State Fund.

The judge's findings in this regard are supported by the opinions of both Dr. Daly and Dr. Curtis, who indicated that the employee's restrictions were necessitated by the employee's underlying osteoarthritis.

The employee's final argument is that the compensation judge ignored the "uncontroverted" opinion of Dr. Raih, who reported that the employee had sustained a "permanent aggravation of a pre-existing problem with osteoarthritis." Noting that he had "no significant

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<sup>4</sup> The judge also concluded that the employee was not entitled to wage loss benefits because his restrictions were related solely to his osteoarthritis. This again, however, has no necessary bearing on whether the meniscus tear, for which the employee underwent surgery, was a permanent injury for which permanent partial disability benefits may be available.

knee problems until after [the May 30, 1996] injury,” and contending that he lost no significant time from work until after the June 2, 1997, aggravation, the employee asserts that “[i]t makes more sense to adopt” the permanent aggravation opinion of Dr. Raih. We are not persuaded.

The opinions of both Dr. Daly and Dr. Curtis support the conclusion that the employee’s underlying osteoarthritis was not permanently aggravated or accelerated by the employee’s work activities or injuries. As explained by Dr. Curtis, osteoarthritis is “a consequence of ‘wear and tear,’” a “common type of arthritis occurring in all types of people regardless of their occupation.” While noting that arthritis symptoms may be aggravated by injuries, Dr. Curtis indicated that the employee’s work activities “did not substantially contribute to the development of his knee osteoarthritis but did cause the tear of his medial meniscus.” Dr. Daly concluded that the employee’s “knee conditions were not substantially contributed to by his work activities” and that “[t]he natural progression of osteoarthritis in his knees would have occurred with or without his work activities.” It is also important to note here that there is no medical opinion expressly connecting the employee’s meniscal tear to his osteoarthritis, and Dr. Raih, upon whose opinion the employee relies, concluded in part that the employee’s June 2, 1997, aggravation was merely temporary. The meniscus tear and the June 2, 1997, aggravation were the only compensable knee injuries found by the compensation judge.

A compensation judge’s choice between conflicting expert opinions is generally upheld unless the fact assumed by the experts are not supported by the record. See Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985). In the present case, the compensation judge’s decision is amply supported by the opinions of Dr. Curtis and especially Dr. Daly, and we therefore affirm that decision in its entirety.