MARY G. KNOLL, Employee/Petitioner, v. INTEK WEATHERSEAL PRODS. and LIBERTY MUT. INS. CO., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
NOVEMBER 3, 1999

No. [REDACTED SSN]

HEADNOTES

VACATION OF AWARD - SUBSTANTIAL CHANGE IN CONDITION. Where the employee's Petition to Vacate contained no current medical documentation of the employee's restrictions or functional abilities, where the current record provided no adequate basis for comparing the employee's condition at the time of her Petition with her condition at the time of the Award, where there was no evident change in the employee's ability to work or in her permanency rating, and where her medical expenses had all been paid by the employer and insurer, the employee did not establish good cause to vacate her Award on Stipulation on grounds of a substantial change in condition.

VACATION OF AWARD - VOID AWARD. Noting no statutory or legal authority requiring the inclusion of the "standard language" at issue, and noting evidence in other language of the stipulation that the employee was represented by experienced counsel who fully advised the employee of the terms of the stipulation, the court found no grounds for finding the employee's Stipulation for Settlement void for lack of the question and answer format "routinely included in stipulations" for informing an employee of potential consequences of full, final, and complete settlement.

Petition to vacate award denied.

Determined by Pederson, J., Rykken. J., and Wilson, J.

OPINION

WILLIAM R. PEDERSON, Judge

The employee petitions to vacate an Award on Stipulation filed in this matter on February 27, 1992, based on a substantial change in her medical condition. Finding an insufficient basis to vacate the Award on Stipulation at this time, we deny the employee's Petition.

BACKGROUND

Mary G. Knoll sustained an injury to her neck while employed as a utility fabricator for Intek Weatherseal Products on June 10, 1988. On that date, Ms. Knoll [the employee] was twenty-nine years old and was earning a weekly wage of $455.38. Intek

Weatherseal Products [the employer] was insured for workers' compensation liability by Liberty Mutual Insurance Company [the insurer]. On June 25, 1988, the employee sought treatment with Dr. Lawrence Erickson at the River Valley Clinic. She apparently underwent physical therapy and chiropractic treatment in the following months, but she received no lasting benefit[1] and in fact noted an increase in her symptoms with activity in the course of her continuing work for the employer.

On December 20, 1988, Dr. Erickson referred the employee for a neurologic consultation with Dr. Neil Dahlquist. Dr. Dahlquist diagnosed a trapezial strain following what he concluded was a normal neurologic examination. After experiencing little improvement in her condition, the employee was referred to orthopedist Dr. H. William Park on January 10, 1989. Dr. Park concluded that there might be a discogenic origin to the employee's neck and shoulder pain and recommended an MRI scan. The MRI scan apparently showed a small bulging disc at C5-6, without any nerve root or spinal cord compression. On January 31, 1989, Dr. Park suggested continued conservative treatment, including home traction and anti-inflammatory medications.

About this same period of time, the employee began losing time from work and began receiving intermittent temporary total and temporary partial disability benefits, as well as rehabilitation assistance. On March 27, 1989, the employee was referred to neurosurgeon Dr. Phudhiphorn Thienprasit. The employee complained to Dr. Thienprasit mostly of pain going down the left shoulder but not of any numbness or weakness in the arms. She related to the doctor that her pain was made worse by activity. Dr. Thienprasit reported a normal motor, sensory, and reflex exam of the upper extremities, but he suggested that the employee change jobs. In about September of 1989, after leaving her job with the employer, the employee began working only five hours a day, five days a week, as a cook at the St. Elizabeth Ann Seton School. This schedule of reduced hours was consistent with the recommendations of her treating physicians.

Pursuant to a medical report from Dr. Erickson dated October 15, 1990, the employer and insurer paid the employee impairment compensation for a 14% permanent partial disability to the whole body. In February 1992, after the employee had received temporary partial disability benefits for essentially the preceding two and a half years, the parties entered into a Stipulation for Settlement relative to the employee's claims for additional benefits. In that Stipulation, the employee contended that she was unable to continue her employment with Intek Weatherseal Products as a result of restrictions due to her neck injury. She contended that she was incapable of working more than thirty hours a week and therefore was entitled to ongoing temporary partial disability benefits. In addition, she claimed that her permanent partial disability benefits should have been paid in the form of economic recovery compensation. The employer and insurer asserted that the employee was physically and vocationally capable of earning more

[1] The record does not include chiropractic or physical therapy records for 1988, but reference to this treatment is contained in the December 20, 1988, neurologic consultation with Dr. Neil Dahlquist.

than her wages as a cook. They denied that the employee was entitled to economic recovery compensation or to any additional temporary total or temporary partial disability benefits. The parties resolved their disputes, and the employer and insurer paid the employee a lump sum of $76,500.00 in return for a full, final, and complete settlement of any and all claims, exclusive of medical expenses, arising out of the employee's June 10, 1988, injury. The Stipulation was approved by the Department of Labor and Industry on February 26, 1992.

About six years later, in about January of 1998, the employee began experiencing increasing neck and arm pain. She returned to see Dr. Thienprasit, who subsequently diagnosed cervical spondylosis at the C5-6 level with compromise of the cervical spinal canal. The doctor also diagnosed a right carpal tunnel syndrome. On August 26, 1998, the employee underwent an anterior decompression and fusion at C5-6 and a right carpal tunnel release, performed by Dr. Thienprasit.

On May 27, 1999, the employee filed a Petition to Vacate her 1992 Award on Stipulation, contending that there had been a substantial change in her medical condition. On August 10, 1999, the employer and insurer filed a memorandum in opposition to the employee's Petition.

DECISION

For this court to grant a petition to vacate an award, the moving party must show good cause. Stewart v. Rahr Malting Co., 435 N.W.2d 538, 539, 41 W.C.D. 648, 649 (Minn. 1989). Good cause includes a substantial change in the employee's condition since the time of the Award at issue. Id. Where a change in condition is alleged as the basis for vacation, the focus of this court's inquiry is on whether the alleged change has been "substantial or significant" and whether there is adequate evidence of a causal relationship between the worsened condition and the work injury. See Franke v. Fabcon, Inc., 509 N.W.2d 373, 377, 49 W.C.D. 520, 525 (Minn. 1993). This court has identified a number of factors, in addition to that of causal relationship, that may be considered in determining whether a "substantial" change in medical condition has occurred. These factors include (a) change in the employee's diagnosis, (b) change in the employee's ability to work, (c) additional permanent partial disability, and (d) the necessity of more costly and extensive medical care or nursing services than were initially anticipated. See Fodness v. Standard Café, 41 W.C.D. 1054, 1060-61 (W.C.C.A. 1989).

The employee contends first that there has been a change in her diagnosis. This clearly is true. The March 22, 1999, report of Dr. Phudhiphorn Thienprasit notes that the "abnormality at the C5-6 level, which started out in 1988 as a herniated disc . . . had since developed into a cervical spondylosis, resulting in neurologic findings that necessitated its treatment by an anterior cervical fusion surgery that she finally underwent in August 1998." At the time of settlement, the employee's symptoms were of left neck and shoulder tightness, and the MRI scan performed in January 1989 revealed a small cervical disc herniation at the C5-6 level without any sign of nerve root or spinal cord compression. When the employee underwent surgery on August 26, 1998, she presented with neck pain extending down into her right arm, and

her small herniation had progressed into a spondylosis necessitating decompression and fusion. This progression clearly represents a change in medical diagnosis since the Award on Stipulation.

The employee contends also that there has been a change in her ability to work. We do not recognize, however, a significant change in this respect. In a February 1990 office note, Dr. Erickson had recommended that the employee "continue to work 5-6 hours a day 5 days a week. I do not feel that she will be able to move beyond this point." At the time of her Award on Stipulation two years later, the employee was contending that she remained incapable of working more than twenty-five or thirty hours a week, and she was continuing to work as a cook five hours a day, five days a week. Now, at the time of her Petition to Vacate, the employee continues to be employed with the same employer, in the same capacity, and at the same hours. Although the employee testified at a deposition taken on August 6, 1999, that since her surgery she has altered the manner in which she performs her job, the record does not contain any medical documentation of the employee's restrictions subsequent to the surgery. The last note from Dr. Thienprasit, dated October 20, 1998, makes no reference to formal restrictions. It is evident that the employee did undergo a program of physical therapy between September and November 1998, in order to improve her range of reach and motion and to permit her to continue in her job as a cook. On November 20, 1998, however, the therapist reported that those goals had been met and that the employee was returning to work at full capacity the following week. Although the employee's Petition to Vacate asserts that the employee's surgery has left her with "substantial restrictions . . . that will permanently restrict her to sedentary type of work," documentation of such restrictions has not been provided. We fail to see any evidence of a significant change in the employee's ability to work since the Award on Stipulation.[2]

Additional factors under Fodness include additional permanent partial disability, the necessity of more costly and extensive medical care, and the causal relationship between the work injury and the claimed worsened condition. In the present case, the employee has provided no medical reports that rate permanent partial disability over and above that which she was claiming at the time of the stipulation for settlement. In fact, it could be argued that the employee's current permanency rating is less than the 14% she claimed at the time of settlement.[3] With regard to the necessity of additional medical treatment, we note that expenses related to the

[2] At oral argument, the employee's counsel contended that, following her Award on Stipulation, the employee supplemented her income from her food service job with income from additional part time jobs and that she has had to give up these additional jobs subsequent to her surgery. The employee's deposition testimony does contain some reference to such additional employment, but the fact remains that there is little evidence that the work that the employee was capable of doing at the time of the Award was significantly different from the work that she is capable of doing now, regardless of how that work status may have temporarily fluctuated in the interim.

[3] Minn. R. 5223.0070, subp. 2D, provides an 11.5% rating for fusion of a single vertebral level with or without a laminectomy.

employee's surgery have been paid by the employer and insurer. Where a stipulation for settlement leaves future medical expenses open and the employer and insurer have paid such expenses, the factor of increased necessity of medical care carries less weight in determining whether a substantial change in condition has occurred since the settlement. Burke v. F-M Asphalt, 54 W.C.D. 363, 368 (W.C.C.A. 1996). With regard to the causal relationship factor, the parties essentially agree that the employee's fusion surgery is causally related to her work injury. At oral argument, however, employee's counsel asserted that the employee's 1998 carpal tunnel release was also causally related to that 1988 neck injury. The record contains no evidence to support this allegation.

Finally, the employee has also argued that her Award on Stipulation should be vacated because the Stipulation signed by the employer and the employee failed to contain the "standard language" advising the employee of the consequence of a future change in circumstances. The language referenced is that set of questions "routinely included in stipulations" that an employee normally reviews and initials indicating that he or she understands the consequences of a full, final and complete settlement. The employee contends that the absence of this language from the Stipulation constitutes a basis for vacation of the Award. We know of no statutory or legal authority, however, requiring the inclusion of the question and answer format in a stipulation for settlement. Further, we note that, at the time of the settlement, the employee was represented by experienced counsel who fully advised the employee of the terms of the stipulation, as is clearly implied in Paragraph X of the Stipulation for Settlement.

We cannot conclude, simply by virtue of her surgery, that the employee has demonstrated a substantial or significant change in her medical condition since the Award. The Petition to Vacate filed May 27, 1999, contains no current medical documentation of the employee's restrictions or functional abilities. The current record provides us with no adequate basis for comparing the employee's condition at the time of the Petition to Vacate - - i.e., following full recovery and benefit from the post-settlement surgery - - with her condition at the time of the Award. These facts, given the absence of any evident change in the employee's ability to work or in her permanency, and given that her medical expenses have all been paid by the employer and insurer, lead us to conclude that the employee has not established good cause to vacate her Award on Stipulation. Therefore we deny the employee's Petition.