FRANCES KOPITZKE, Employee/Appellant, v. B & L MFG. and RISCOMP INDUS./OHMS, Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
JUNE 7, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - GILLETTE INJURY. Substantial evidence supports the compensation judge's finding that the employee's work activities were not a substantial contributing factor to the employee's carpal tunnel syndrome.

PRACTICE & PROCEDURE - DISCOVERY. The compensation judge did not abuse her discretion in denying a motion to compel discovery of copies of all first reports of injury filed within the past 10 years with the employer in connection with any carpal tunnel syndrome and/or wrist pain, together with supplemental information in connection with said employees.

EVIDENCE - ADMISSION. The compensation judge did not err by admitting article regarding research on carpal tunnel syndrome into evidence.

Affirmed.

Determined by Hefte, J., Johnson, J., and Pederson, J.
Compensation Judge: Joan G. Hallock

OPINION

RICHARD C. HEFTE, Judge

The employee appeals the compensation judge's findings that the employee's work activities were not a substantial contributing cause of her carpal tunnel syndrome and that the employee had not conducted a diligent job search, and also appeals evidentiary rulings by the compensation judge. We affirm.

BACKGROUND

On March 10, 1997, Frances Kopitzke (employee) began working at an assembly position for B & L Manufacturing (employer), which was insured for workers' compensation liability by Riscomp Industries (insurer). The employee passed a pre-employment physical before starting her job. The employee was trained in winding and tinning jobs. Winding involved wrapping a wire around a core for electrical components. The employee described holding the core with her left hand and using a machine to wrap the wire. Tinning involved

soldering two wire leads on the core. During her first week of employment, the employee spent 13.2 hours winding, 15.6 hours the second week, 13.8 hours the third week and 10 hours the fourth week, but no more than two hours at a time. The employee claims that she first experienced right wrist pain and numbness in her thumb and small finger of her right hand on March 25, 1997. On April 4, 1997, the employee reported to her supervisor that she was experiencing right wrist pain, numbness in her right hand and fingers, a pulling sensation in her wrist, and that she was dropping parts. The employer sent the employee to Dr. J. Jones at the Ortonville Clinic, who diagnosed a ganglion cyst and carpal tunnel syndrome and recommended that the employee wear a splint at work. The employee returned to work the same day, was taken off the winding job and put on lighter duty jobs. The employer's assistant supervisor testified by deposition that the employee had told her on the first day of work on March 10, 1997, or on her first day at the winding position, that she had wrist pain because she had previously broken her wrist, and that later she said that she had sprained her wrist.

The employee was treated by Dr. Robert Ross at the Ortonville Clinic on April 11, 1997, who recommended an EMG. The employee was diagnosed with bilateral carpal tunnel syndrome, and right carpal tunnel release surgery was recommended. Dr. Ross opined that the employee's repetitive motion at work was an aggravating effect on the employee's condition. The employee had been treated by Dr. Ross in the past for right arm pain, most recently in June 1996. By May 2, 1997, Dr. Ross had taken the employee off work. In July 1997, Dr. Ross opined that the employee was not capable of returning to work for the employer with her disability. On September 29, 1997, the employee underwent an independent medical examination with Dr. Thomas Litman. Dr. Litman opined that the employee had severe bilateral carpal tunnel syndrome, but that it existed before the employee worked for the employer. "It is not possible that severe carpal tunnel syndrome could have developed in both wrists between March 10, 1997 and April 23, 1997, when the EMG was performed." Dr. Litman indicated that the employee was not totally disabled but that the employee should avoid frequent use of the wrists until surgery was performed. The employee underwent right carpal tunnel release surgery on February 13, 1998, with a good result.

On July 28, 1997, the employee filed a claim petition for temporary total disability benefits and medical expenses. On December 26, 1997, the employee filed a motion to compel the employer to furnish copies of all first reports of injury filed within the past 10 years in connection with any carpal tunnel syndrome and/or wrist pain, together with supplemental information in connection with said employees. The employer and insurer objected. Compensation Judge James Otto denied the motion, holding that "it does not appear that the information requested is relevant to issues raised by the employee's Claim Petition and that the probative value of any evidence to be obtained by said discovery request is highly questionable." (Order denying motion to compel, served and filed Dec. 31, 1997.) A hearing was held on August 27, 1998, before Compensation Judge Joan Hallock. The compensation judge found that the employee's work activities were not a substantial contributing cause of her carpal tunnel syndrome and that the employee had not conducted a diligent job search. The employee appeals.

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 (1998). 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

Primary Liability

The employee argues that the evidence does not support the compensation judge's finding that the employee's work activities were not a substantial contributing cause of the employee's carpal tunnel syndrome. Dr. Ross opined that the employee's condition was caused by or aggravated by her work activities. The compensation judge discounted Dr. Ross's opinion, noting that he testified only that he was aware of the type of work performed at the employer, but did not recite what he knew of the employee's work duties. The employee had been seen in June 1996 for right arm pain, and has a history of obesity and high blood pressure. Dr. Litman opined that the employee had severe bilateral carpal tunnel syndrome, but that it existed before the employee worked for the employer. "It is not possible that severe carpal tunnel syndrome could have developed in both wrists between March 10, 1997 and April 23, 1997, when the EMG was performed." Therefore, Dr. Litman concluded that the employee's carpal tunnel syndrome was caused by factors present prior to March 10, 1997. Dr. Litman did not indicate that any work factors could have contributed to the employee's condition or aggravated the employee's condition. Dr. Litman did not state that the employee's work injury developed because of or was aggravated by the employee's work activities for the employer from March 10, 1997, through April 23, 1997. It is the compensation judge's responsibility, as trier of fact, to resolve conflicts in expert testimony. Nord v. City of Cook, 360 N.W.2d 337, 342, 37 W.C.D. 364, 372 (Minn. 1985). The compensation judge concluded that the employee's work activities were not a substantial contributing cause of the employee's carpal tunnel syndrome. Substantial evidence supports this finding, and we affirm. Since we have affirmed the compensation judge's finding denying primary liability, we need not address the employee's argument that the compensation judge erred by finding that the employee had not conducted a diligent job search.

Evidentiary Rulings

It is a well established principal of workers' compensation proceedings that evidentiary rulings are within the sound discretion of the compensation judge. See Ziehl v. Vreeman Constr., slip op. (W.C.C.A. Oct. 15, 1991). Pursuant to Minn. Stat. § 176.411, "[e]xcept as otherwise provided by [the statute], when a compensation judge makes an investigation or conducts a hearing, the compensation judge is bound neither by the common law or statutory rules of evidence nor by technical or formal rules of pleading or procedure." Minn. Stat. § 176.411, subd. 1; Minn. R. 1415.2900, subp. 6; Bey v. Oxford Properties, Inc., 481 N.W.2d 40, 42, 46 W.C.D. 198, 201 (Minn. 1992). "The investigation or hearing shall be conducted in a manner to ascertain the substantial rights of the parties." Minn. Stat. § 176.411, subd. 1.

Compensation Judge James Otto denied the employee's motion to compel the employer to furnish copies of all first reports of injury filed within the past 10 years in connection with any carpal tunnel syndrome and/or wrist pain, together with supplemental information in connection with said employees. Judge Otto held that "it does not appear that the information requested is relevant to issues raised by the employee's Claim Petition and that the probative value of any evidence to be obtained by said discovery request is highly questionable." (Order denying motion to compel, served and filed Dec. 31, 1997.) The employee argues that this information could be relevant to show that it is possible to develop carpal tunnel syndrome after only a short time of performing employment activities for the employer. As a general rule, parties are not entitled to discovery that is unreasonably cumulative, duplicative, or unduly burdensome. Brody v. SMK Enters., 523 N.W.2d 492, 494, 51 W.C.D. 410, 412 (Minn. 1994). The compensation judge could reasonable conclude that the requested information was not relevant and that the request was unduly burdensome. The compensation judge did not err by denying the employee's motion. Furthermore, the employee did not raise the issue at the hearing nor provide an offer of proof regarding this evidence. In addition, the employee's notice of appeal does not raise this issue.

In her brief, the employee also claims that the compensation judge relied upon an erroneously admitted article discussing carpal tunnel syndrome in rejecting Dr. Ross's opinion. The compensation judge cited the article, which discussed research on carpal tunnel syndrome and was offered into evidence by the employer and insurer, in her memorandum when explaining the employer and insurer's argument that Dr. Ross did not explore other factors such as age, obesity, gender, and other diseases in his opinion. The compensation judge did not indicate that she was relying upon the article in rejecting Dr. Ross's opinion. Further, the employee did not raise this issue in her notice of appeal. This court's review is limited to the issues raised by the parties in the notice of appeal. See Minn. Stat. § 176.421, subd. 6; Minn. R. 9800.0900, subp. 1. We need not address this issue further.