KERRY KRIER, Employee/Appellant, v. ENDRES PROCESSING, LTD., and AM. COMP. INS./RTW, INC., Employer-Insurer, and GOODHUE CNTY. OFF. OF CHILD SUPPORT, Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
AUGUST 23, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL EVIDENCE. Substantial evidence, including expert opinion, supported the compensation judge's decision as to the nature of the employee's work injury.

TEMPORARY TOTAL DISABILITY - SUBSTANTIAL EVIDENCE. Substantial evidence, including expert opinion, supported the judge's finding that the employee was not totally disabled as a result of his work injury.

MEDICAL TREATMENT & EXPENSE - REASONABLE & NECESSARY. Substantial evidence, including expert opinion, supported the compensation judge's conclusion that the employee did not need pain clinic treatment as a consequence of his work injury.

MAXIMUM MEDICAL IMPROVEMENT - SUBSTANTIAL EVIDENCE. Substantial evidence, including expert opinion, supported the compensation judge's conclusion that the employee had reached maximum medical improvement from the effects of his work injury.

REHABILITATION - ELIGIBILITY. Where at least two physicians indicated that the employee was capable of work without restrictions related to his work injury, substantial evidence supported the judge's conclusion that the employee was not eligible for rehabilitation assistance.

Affirmed.

Determined by Wilson, J., Pederson, J., and Rykken, J.
Compensation Judge: Carol A. Eckersen.

OPINION

DEBRA A. WILSON, Judge

The employee appeals from the compensation judge's decision that the employee sustained a scalp laceration and mild concussion on the date of injury, that the employee reached maximum medical improvement from that injury, that the employee was not entitled to temporary total disability benefits, that a pain clinic was unreasonable and unnecessary, and that the employee was not a qualified employee for rehabilitation purposes. We affirm.

BACKGROUND

The employee began work for Endres Processing on May 13, 1996, as a plant operator. His job duties consisted of loading a mixer with food waste and running that waste into an auger to produce poultry and hog feed. The employee commuted over forty miles each way to work.

On November 30, 1996, the employee was on a ladder with his arms extended above him when a motor, gearbox, and motor mount, weighing approximately one hundred and twenty-five pounds, fell from above, striking him on the top left side of his head. He was knocked to the ground but did not lose consciousness. He was taken by ambulance to Regina Medical Center, where he was noted to be alert and oriented but complaining of numbness in the hands, chest, and lower extremities. Because no radiologist or neurosurgeon was available, the employee was transferred to St. Paul Ramsey Hospital. When the employee was seen in the emergency room of St. Paul Ramsey, the physician's impression was "possible mild cord contusion now resolving." The employee's head wound was sutured, and he was given pain medication and released. The employee returned to St. Paul Ramsey on December 2, 1996, complaining of depression and continuing tingling/numbness. At first, he said the numbness was in his feet, ankles, and hands, later that it was in his entire arms, and still later that it was in his whole body. He was taken off work.

On December 4, 1996, the employee was seen in the emergency room of the Mayo Clinic. He complained of persistent numbness in the hands and forearms and coldness of the feet. A neurological exam performed at that time by Dr. H. Moses was essentially normal. Two days later, on December 6, 1996, the employee was seen for a neuropsychological assessment at Abbott Northwestern Hospital on referral by his then attorney, Holly Neumann. Dr. George Montgomery noted that two days before his evaluation the employee "was very frightened and upset over continuing numbness and cold in his hands." While deferring to the employee's neurologist as to "any physical-neurological consequences of his injury," the doctor noted that "an injury to higher processing and receptive centers of the brain is not likely."

The employee returned to the Mayo Clinic on December 16, 1996, where he was seen by Dr. Karen Newcomer in the Spine Center. The employee's primary complaint at that time was overall body pain. Dr. Newcomer noted that the employee "seems very somatically focused" and opined, "I do not have a high suspicion for any particular abnormality . . . ." With regard to the employee's complaints of upper extremity numbness and tingling, she noted that "[t]his does not fit a dermatomal or peripheral nerve distribution," but she recommended further testing. She also noted that the employee had a headache "which is possibly related to a closed-head injury." In an addendum, she stated that the employee "denies any previous psych history, but he is very somatically focused, and I would like to evaluate him for any psych abnormalities."

The employee continued to treat at the Mayo Clinic and was seen by Dr. Patty Atkinson, a neurologist, on December 31, 1996, with continuing complaints of total body pain. The employee was reported to be 85% improved at the time of this examination. Dr. Atkinson

reviewed MRIs of the spine, a CT scan of the head, and an EMG. She noted three thoracic discs "that abut the spinal cord causing some mild impression of the cord with no signal change seen." She opined that "[h]e is likely to continue to very gradually improve."

On January 2, 1997, the employee was seen by Dr. Randy Shelerud in the Spine Center. Dr. Shelerud found "no objective evidence of radiculopathy, hip or shoulder joint pathology or peripheral neuropathy to explain his symptoms. It is possible that he may have had a very mild central cord syndrome or possibly thoracic level 'contusion' related to a disc disease." On that same date, the employee was seen by Jeffrey Smigielski, Ph.D., for a neuropsychological evaluation for assessment of possible traumatic brain injury. Dr. Smigielski found mild abnormality on tasks assessing attention/concentration, higher level executive reasoning, and learning efficiency. He opined that "[t]he possibility that these results reflect residuals of mild traumatic brain injury cannot be entirely ruled out; however, features of the profile and the patient's clinical presentation raise the possibility that these findings might well represent cognitive manifestations of primarily psychological etiology." The employee was also evaluated by psychiatrist Dr. John Graf. Dr. Graf diagnosed a conversion disorder and noted that the employee was fearful of returning to work. Also on January 2, 1997, the employee began a six-week program of physical therapy. He was released to return to work on January 8, 1997, to work forty-five minutes at a time, take a fifteen to twenty minute break, and then work forty-five minutes again, with lifting of no more than twenty pounds.

The employee returned to work on a part-time basis and on February 6, 1997, was seen again by Dr. Shelerud, complaining of an increase in neck pain after using a new machine at his job. At that time, the employee was working three hours per day. The doctor excused the employee from work for three days, started him on more physical therapy, and told him to gradually increase his work time with a goal of increasing to full time. The doctor also noted that,

> He is still somatically focused and has multiple issues, though realizes that despite these, we are going to continue to work on increasing his function. If he is unable to continue to improve with this regimen, then I think a pain management program approach would be appropriate, particularly for behavior modification and further psychologic assessment.

On March 12, 1997, the employee returned to Dr. Shelerud, requesting that he be released to full-time work with lifting restrictions, and the doctor released him to full-time work with a fifty-pound lifting restriction effective March 17, 1997. The release also specified that the employee be given breaks every two hours of five minutes in duration. The doctor noted that the employee "appears more content and in better spirits today. He voices to me that he understands that he may always have some pain problems, but that he needs to continue to be physically active and does have some days that are better than others." On July 10, 1997, Dr. Shelerud completed a form indicating that the employee had reached maximum medical improvement [MMI] from the effects of his injury.

On June 23, 1997, the employee was seen by Dr. S. Boss, with the Interstate

Medical Center, complaining of "fleeting spells up to 3-4 times a day where he suddenly sees double and sometimes triple vision and feels 'out of it.'" He was taken off work and told not to drive because of the doctor's concern that he might be experiencing seizures. He was told to see a neurologist. On July 2, 1997, the employee was seen again by Dr. Atkinson, who reported a one-month history of "spells" with double or triple vision. Because of the employee's history of a blow to the head, Dr. Atkinson kept the employee off work and ordered further testing. An ophthalmological review on July 7, 1997, revealed no cause for the vision problems, and an EEG of that same date was normal. Similarly, an MRI on July 15, 1997, offered no explanation for the employee's "spells."

The employee was then seen by Mayo Clinic psychiatrist Dr. Gordon Moore on July 16, 1997. The employee was interviewed with his wife, and the doctor noted that "they adamantly advocate their conceptualization which is all of his symptoms are secondary to a variety of injuries that allegedly occurred after the original head injury that brought him here in December of 1996." On examination the doctor reported that "[t]he patient is alert and describes his difficulties in a dramatic fashion. He finds it difficult to be convinced that these come from some psychological problem or conflict . . . . He believes that he has had a head injury and that explains his difficulties." On that same date the employee was re-examined by Dr. Atkinson, who noted that Dr. Moore was recommending a behavioral program such as the pain management program for treatment. Dr. Atkinson indicated that, since the employee did not have seizures, he would be able to drive.[1]

On July 28, 1997, the employee was evaluated at the Mayo Comprehensive Pain Rehabilitation Center. Dr. Bruce Sletten noted that, although the employee continued to work at that time, it was likely that he would have chronic occupational difficulties without intervention, and it was therefore recommended that he participate in a three-week intensive outpatient program focused on reducing his attention to his symptoms. The employee was interested in the program, and in March of 1998, he filed a medical request seeking payment for pain management treatment.

On March 3, 1998, Dr. John Rauenhorst conducted a psychiatric evaluation of the employee at the employer and insurer's request. In his report of March 24, 1998, he opined that the referral to the Mayo Pain Clinic was not reasonable and necessary since the employee was working and functioning at a high level at that time. He also stated that the employee had reached MMI from the psychiatric effects of his work injury.

The employee's medical request proceeded to an administrative conference, and in a decision and order pursuant to Minn. Stat. § 176.106, the pain management program was determined to be a reasonable and necessary medical expense. On June 26, 1998, the employer and insurer filed a Request for Formal Hearing.

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[1] According to notices of intention to discontinue found on the judgment roll, the employee apparently returned to work with restrictions on July 14, 1997, and without restrictions on July 17, 1997.

On July 16, 1998, the employee was seen at the emergency room of the Zumbrota Hospital, complaining of neck and shoulder pain, triple vision, lack of coordination, and memory lapses. He was seen by Dr. Glenn Faith, a family practice doctor, who "took him off of road-driving and machinery operating until he is released to do such by his personal physician." The employee discontinued working and chose Dr. Faith as his treating doctor. On July 30, 1998, Dr. Faith issued written restrictions that precluded the employee from driving on public roads or operating equipment. About a week later, on August 7, 1998, the employee filed a claim petition seeking temporary total disability benefits continuing from July 16, 1998.

On August 27, 1998, the employer made a written job offer to the employee, involving sweeping and cleaning in the raw material department. The hours of employment were set to fit with the employee's wife's schedule so that she could drive him to work. The employee was given until September 11, 1998, to reply to the job offer. In the meantime, on September 3, 1998, the employee returned to see Dr. Faith. The employee indicated to the doctor at that time that he was improved and felt that he could "possibly" drive. The doctor suggested that he practice driving on county roads, accompanied by his wife. The employee was a no-show for a follow-up appointment on September 8, 1998. Three days later, on September 11, 1998, the employee called the employer to say that he would return to work the following Monday.

When he returned to work on September 14, 1998, the employee was first assigned to clean out a trailer. However, the employee complained of "having trouble" inside the trailer and so was moved to a parking lot to do sweeping. The employee then complained of fatigue and asked for lighter work. The employer was unable to accommodate the employee's request, and, although the employee did complete an eight-hour shift, he called in the next day and reported that he was sore and would not be able to work. He did not call in or report for work thereafter.

The employee returned to Dr. Faith on October 6, 1998, with increased complaints of neck, shoulder, and arm pain. In his office notes of that date, Dr. Faith indicated that the employee would likely benefit from a pain clinic and/or a physical therapy program. The employee saw Dr. Faith again on November 12, 1998, complaining of vision problems, severe headaches, and numbness in both arms and hands that was relieved by opening his mouth and flexing his neck to the left. Dr. Faith opined that the employee might have "an upper motor neuron lesion."

The employee was examined by Dr. Bruce Van Dyne, a neurologist, on November 18, 1998, at the request of the employer and insurer. In his report of that date, Dr. Van Dyne diagnosed a closed head injury and scalp laceration, possible mild cervical strain, and numerous chronic and non specific symptoms. He found that the employee had a completely normal examination, with no residual neurologic or musculoskeletal injuries as a result of his work injury, and placed no restrictions on the employee. The doctor also specifically stated that the employee had no neurologic condition that would preclude him from driving or operating equipment.

Dr. Rauenhorst re-examined the employee on December 1, 1998. At that time, he

found the employee describing more problems with his symptoms and diagnosed somatoform disorder. He opined that the November 1996 work injury was not a significant contributing factor to the employee's psychiatric difficulties and that, from a psychiatric viewpoint, there was no reason why the employee could not drive. He also stated that he would not recommend treatment at the Mayo Clinic pain program, explaining in a December 8, 1998, addendum report that he did not think that a pain program would be helpful because the employee had a number of complaints other than pain.

The matter proceeded to hearing on December 15, 1998, and in findings and order filed on March 12, 1999, the compensation judge found, in part, that the nature of the employee's work injury was a scalp laceration and mild concussion, that the employee had reached MMI from the effects of the injury, that the employee was not entitled to continuing temporary total disability benefits from July 16, 1998, that the recommended pain program was not compensable, and that the employee was not a qualified employee for rehabilitation purposes. 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 (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

Nature of the Injury

The employee contends that substantial evidence does not support the judge's finding that the employee "merely sustained" a laceration and mild concussion, arguing that "[t]he medical records clearly show that in addition to the laceration and mild concussion, the Employee sustained a cervical strain and somatization disorder . . . ." We are not convinced.

The employee argues that Drs. Van Dyne, Boss, and Faith diagnosed a cervical strain. The judge, however, adopted the opinions of the Mayo clinic physicians and Dr. Van Dyne. Dr. Van Dyne diagnosed only a "possible" cervical strain and then went on in his report

to note that, as of November 18, 1998, the employee did not have any residual neurologic or musculoskeletal injury as a result of the November 1996 work injury. While the diagnosis of a somatoform disorder was made by Dr. Rauenhorst, the doctor opined that this condition was not causally related to the work injury. A judge's choice between expert opinions is generally upheld unless the facts assumed by the expert in rendering his opinion are not supported by the evidence. Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985). There is no contention that the Mayo Clinic physicians or Dr. Van Dyne relied on any unsupported facts in rendering their opinions.

We note that there have been a variety of suggested diagnoses in this matter, including mild central cord syndrome, thoracic level contusion, mild traumatic brain injury, and conversion disorder. However, based on the medical records, the compensation judge reasonably concluded that these diagnoses were eventually ruled out by the Mayo Clinic or were determined to be unconnected to the employee's work injury. Accordingly, we affirm the judge's findings regarding the nature of the employee's injury.

Temporary Total Disability

The employee contends that he was temporarily totally disabled from July 16, 1998, through December 15, 1998, because Dr. Faith had opined that the employee had a spinal cord contusion, causally related to his work injury, which would account for the symptoms of double vision, dizziness and numbness that disabled the employee at that time. The compensation judge, however, relied on the records of the Mayo Clinic and Dr. Van Dyne in finding that the employee's symptoms were not causally related to the 1996 work injury and that the employee did not need restrictions against driving or machinery operation because of his work injury.[2] In his July 10, 1997, Health Care Provider Report, Dr. Shelerud stated the employee had "no impairments" to his ability to work, and Dr. Van Dyne opined in November of 1998, "I do not feel that [the employee] has required any specific restrictions with respect to his work and recreational activities from 7/16/98 to the present." Since there has been no challenge to the facts assumed by the Mayo Clinic physicians or Dr. Van Dyne, the judge's choice between expert opinions must be upheld, and the judge's denial of temporary total disability benefits is affirmed.[3] Nord, 360 N.W.2d 337, 37 W.C.D. 364.

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[2] Dr. Faith is the only doctor to restrict the employee from driving or operating machinery because of the work injury. In his December 1998 report, Dr. Rauenhorst did suggest that the employee might be at risk for accidents if he drove and restricted the employee from operating dangerous equipment at work. However, these restrictions were all based on his diagnosis of somatoform disorder, which he found was not causally related to the work injury.

[3] We note that, even if Dr. Faith's restrictions had been accepted as causally related to the work injury, the employee testified that he made no attempt to find other employment, within those restrictions, after July 16, 1998.

Pain Clinic

The compensation judge found that the recommended pain program was not causally related to the work injury, was not reasonable and necessary treatment, and was not consistent with the treatment parameters. The employee contends that there was no evidence to support the judge's determination that the pain program was not necessitated by the work injury, stating, "Dr. Rauenhorst and the physicians at the Mayo Clinic have confirmed a diagnosis of chronic pain syndrome." We are not persuaded.

Dr. Rauenhorst never diagnosed chronic pain syndrome; rather, he diagnosed somatoform disorder not causally related to the work injury. Dr. Sletten, who performed the evaluation at the Mayo Comprehensive Pain Rehabilitation Center, did opine that the employee "continues to experience chronic muscular pain secondary to an accident at work." However, this evaluation took place in July of 1997, at a time when the employee was working full time. When Dr. Faith took the employee off of work in July of 1998, it was not because of chronic muscular pain, but because of "spells" and vision difficulties.

The compensation judge indicated in her memorandum that she found the opinion of Dr. Rauenhorst persuasive as it relates to the pain clinic issue. In his report of December 1998, the doctor stated that symptoms such as "the faint feeling, his problems with his vision, and his perception of memory problems" would not likely be helped by a pain clinic program. In addition, Dr. Rauenhorst had indicated earlier that those symptoms were not causally related to the employee's work injury. It is the role of the compensation judge to choose between expert opinions. Since there is adequate foundation for Dr. Rauenhorst's opinions, substantial evidence in the medical record supports the judge's finding that the recommended pain clinic is not causally related to the work injury. This renders moot any arguments regarding the treatment parameters.

Maximum Medical Improvement

The compensation judge found that the employee had reached MMI on July 18, 1997, with service of Dr. Shelerud's report. The employee contends that the judge's MMI finding is inappropriate because a recommendation has been made for a pain program and because the employee continues to receive ongoing medical care from Dr. Faith. However, as stated above, we have affirmed the judge's finding that pain clinic treatment is not necessary as a consequence of the work injury. In addition, the compensation judge found that the medical treatment rendered by Dr. Faith was not causally related to the work injury.

Dr. Shelerud opined in July of 1997 that the employee was at MMI, and the employee worked full time thereafter, until he was taken off work in July of 1998 for symptoms unrelated to the work injury. There being no challenge to the foundation for Dr. Shelerud's MMI opinion, we affirm the judge's finding as to MMI.[4]

[4] In addition to Dr. Shelerud, there were opinions from Drs. Rauenhorst and Van Dyne that

Rehabilitation

In order to be eligible for rehabilitation assistance, an injured employee must satisfy the requirements of Minn. R. 5220.0100, subp. 22, which provides:

> Subp. 22. **Qualified employee.** "Qualified employee" means an employee who, because of the effects of a work-related injury or disease, whether or not combined with the effects of a prior injury or disability:
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> A. is permanently precluded or is likely to be permanently precluded from engaging in the employee's usual and customary occupation or from engaging in the job the employee held at the time of injury;
>
> B. cannot reasonably be expected to return to suitable gainful employment with the date-of-injury employer; and
>
> C. can reasonably be expected to return to suitable gainful employment through the provision of rehabilitation services, considering the treating physician's opinion of the employee's work ability.

Drs. Shelerud and Van Dyne have opined that the employee can work without restrictions, and Dr. Rauenhorst has opined that the employee's restriction against driving or use of machinery is not causally related to his work injury. These opinions provide substantial evidence to support the judge's finding that the employee is not a "qualified employee" within the meaning of the rehabilitation rules. We therefore affirm her decision on that issue.

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the employee had reached MMI.