DARRELL LaDOUCEUR, Employee/Appellant, v. STATE, DEP'T OF TRANSP., SELF-INSURED, and HARTFORD INS. CO., Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
JANUARY 25, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL EVIDENCE. Substantial evidence, including expert medical opinion, supported the compensation judge's conclusion that the employee's sleep disorder was not causally related to his work accident.

Affirmed.

Determined by Wilson, J., Pederson, J., and Hefte, J.
Compensation Judge: Donald C. Erickson.

OPINION

DEBRA A. WILSON, Judge

The employee appeals from the compensation judge's finding that the employee's sleep disorder is not causally related to his work-related motor vehicle accident. We affirm.

BACKGROUND

The employee began work for the State of Minnesota [the self-insured employer] in 1982. From 1986 to 1996 the employee worked in the Department of Transportation as a highway maintenance worker. During the winter months, snow removal was his primary job responsibility.

On March 24, 1996, the employee was involved in a work-related accident when the snowplow he was operating rolled over and slid into a ditch on its top. The employee ended up suspended upside down from his seatbelt, but he does not recall receiving a blow or strike to his head. A passerby assisted the employee in exiting the truck and drove him to Mercy Hospital in Moose Lake, where he was treated for a left shoulder injury and released. Two days later, the employee treated with his family physician, Dr. Kenneth Etterman, who diagnosed "cervical, shoulder, upper back and lumbar sprain-strain." Dr. Etterman's notes on April 9, 1996, reflect that the employee continued to have pain and that his "[s]leep is disturbed as well." On April 18, 1996, Dr. Etterman noted that the employee's sleep was disturbed at night and that the employee had to nap during the day. The employee was treated with physical therapy, medication, and exercises. Thereafter, the employee had persistent complaints of pain in the thoracic and lumbar

spine, with involuntary muscle tightness in the thoracic spine, tightness of the paralumbar muscles, and reduced range of lumbar motion. An MRI taken on June 2, 1997, confirmed degenerative changes at L4-5 and L5-S1, which had earlier appeared on x-rays.

The employee was off work from the time of the injury until June 18, 1996, when he returned to work on a light-duty, part-time work-hardening basis, cleaning the edge drains along freeways. The employee testified that his back was extremely sore while performing this job and that he "couldn't stay awake." He also testified to difficulty staying awake while driving. The employee was restricted to working four hours per day, three days per week on September 13, 1996, and four hours per day, five days per week on November 5, 1996, by Dr. Peter R. Hindle. Some time thereafter, the employer provided work for the employee in Duluth, an hour's drive from the employee's home. The employee would drive one hour to work, work two hours, and then drive an hour home.

The employee began treating with Dr. Jed Downs, an occupational medicine specialist, on February 7, 1997, and on March 4, 1997, Dr. Downs recorded that the employee had concerns of falling asleep behind the wheel during his commute. On May 22, 1997, Dr. Downs released the employee to work four hours per day, stating that the "four hours I was referring to did not include driving time."

The employer filed a notice of intention to discontinue benefits, and in an order on discontinuance filed on July 3, 1997, a settlement judge at the Department of Labor and Industry found that the employee had been released to four hours of work plus one hour drive time each way, and he ruled that temporary partial disability benefits were to be premised upon that schedule.

On May 23, 1997, the employee returned to Dr. Downs, stating that he did not feel his drowsiness issues had been adequately addressed and repeating his concern about falling asleep at the wheel. Dr. Downs changed the employee's medications to see what effect that might have on the employee's drowsiness. On June 20, 1997, the employee reported to Dr. Downs that he was having difficulty staying awake on the road and "he feels like he's had involuntary loss of consciousness," and Dr. Downs subsequently referred the employee to Dr. Wolcott Holt for a neurological consultation.

The employee was seen by Dr. Holt, on July 29, 1997, and, after a normal EEG, Dr. Holt ordered a multiple sleep latency study, which he interpreted as being consistent with narcolepsy. On October 13, 1997, Dr. Downs restricted the employee to no driving for more than fifteen minutes, based on a diagnosis of narcolepsy. The employer and insurer reinstated payment of temporary total disability benefits on that date and then filed a notice of intention to discontinue benefits on October 17, 1997, alleging that employee's temporary total disability was related to narcolepsy, which was a superseding, intervening cause of disability unrelated to the admitted work injury. In an order on discontinuance filed November 21, 1997, a settlement judge found that the employee had failed to show that the work injury was a substantial contributing factor in the employee's inability to work and allowed the discontinuance. The employee filed an objection to discontinuance on December 15, 1997, and a claim petition on January 22, 1998,

seeking temporary total disability benefits continuing from October 13, 1997, and permanent partial disability benefits. By order of February 9, 1998, the objection to discontinuance and claim petition were consolidated for purposes of hearing.

A hearing was held on April 24, 1998. In opening arguments, employee's counsel outlined his claim and explained that the,

> big problem [the employee] was having was in driving. He was having trouble staying awake.
>
> * * *
>
> The big question for the Court to resolve is causation. Was this work injury of March 24th, 1996 a substantial cause of the problems he was having driving and the restrictions he's had from the operation of vehicles and equipment since October of 1997.
>
> * * *
>
> Our position is . . . [t]hat this sleep disorder, narcolepsy, was caused substantially by this accident and its effects. And therefore, the permanency claim for narcolepsy is payable and the weekly benefits are payable.

In support of his claim, the employee introduced the deposition of Dr. Downs, who testified that, based on the employee's history, medical articles that he had reviewed, and the temporal relationship "there was more likely than not a causal relationship [between the employee's work injury and his diagnosis of narcolepsy]." On cross-examination, Dr. Downs admitted that he would defer to a neurologist or someone with expertise in sleep disorders for opinions regarding the diagnosis and causation of narcolepsy.

The employee also offered the deposition of Dr. Holt, who testified that narcolepsy is caused by an abnormality of the brain and that "there are definitely people who have developed this rapid onset after cerebral injury." He further testified that he believed that the employee sustained a blow to his head during the 1996 accident but that the employee did not remember the blow because he suffers from amnesia. Dr. Holt went on to opine that the 1996 accident was a substantial contributing factor in the employee's narcolepsy.

In Findings and Order filed on July 27, 1998, the compensation judge found that the employee had sustained a 12.5% whole body impairment due to the injury to his thoracic and lumbar spine but that the employee had failed to establish that his sleep disturbance condition was causally related to the work injury. 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

In his memorandum, the compensation judge explained that he had rejected the opinion of Dr. Downs because Dr. Downs lacked experience with sleep disturbances and because

> the temporal relation is, under the facts present in this case, insufficient to establish a causal connection. The employee not only had incidents where he fell asleep while operating equipment prior to the work related accident, he also has an underlying mental condition of depression sufficient in itself to explain his sleep condition, and has been taking medications, which could also cause the sleep disturbance noted.

On appeal, the employee contends that substantial evidence does not support the judge's suggestion that there are "other" causes of the employee's sleep disorder. We are not persuaded.

First, with regard to the theory that the employee's sleep disorder pre-existed the 1996 work injury, Gary Lingle, a coworker of the employee, testified that, prior to that injury, he had observed the employee apparently asleep at the wheel of a small loader at work, such that the vehicle kept going around in circles. Steve Aldrin, another coworker, testified that he had also observed the incident with the small loader, and, in addition, had been riding in a truck that the employee was driving, prior to the time of the injury, when the employee appeared to fall asleep at the wheel. Also, records from the Duluth Clinic in December of 1992 include a notation of decreased energy, particularly in the morning, and clinic records from March 9, 1993, contain a note of a side effect of sleepiness from the medication Doxipan, which interfered with the employee's job as a truck driver. In April of 1994, the employee was seen at Gateway Family Health Clinic with complaints of tiredness, and he related that he was able to sleep almost any time and had been sleeping quite a bit. On September 1, 1995, the employee was seen again complaining of tiredness. While the employee testified that his sleepiness now is different than it was prior to the work accident, and while he offered an explanation as to the cause of each of the prior episodes of sleepiness, it was for the compensation judge to evaluate the credibility of the employee's testimony in this regard. Even v. Kraft, Inc., 445 N.W.2d 831, 42 W.C.D. 220

(Minn. 1989). It is obvious from his findings that the compensation judge accepted the testimony of the employee's coworkers and the prior medical records over the explanations by the employee. In addition, neurologist Dr. Bruce Van Dyne, the employer's independent examiner, opined that the employee did not meet the criteria for narcolepsy and that the employee's sleep condition, whatever it is, was not caused, aggravated, or accelerated by the 1996 work injury because the employee had suffered from excessive sleepiness prior to the accident. Dr. William Simonet, too, indicated that the employee's sleep difficulties were noted to be present prior to the 1996 accident.

Second, the employee contends that there is no evidence that either depression or the medications that the employee takes for depression may be causing the employee's sleep condition. We are not convinced. Dr. Van Dyne testified that depression can be a source of disturbed night time sleep. He also testified that either Prozac or Imipramine could be causing the employee's fatigue. Similarly, Dr. John Rauenhorst, who conducted an independent psychiatric examination of the employee on April 10, 1998, opined that the employee's depression and sleep problems predated the 1996 work injury and that the employee's sleep disturbance problems "are consistent with, and likely related to, his depression, and the medications which he is taking." Dr. Simonet also opined that "[t]his patient's major problem is a psychiatric problem of depression." While there is also evidence that the employee had reported improvement in his fatigue and depression with medications prior to the work injury, it was for the compensation judge to weigh that evidence, and, where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the judge's findings are to be affirmed. Hengemuhle at 60, 37 W.C.D. at 240.

The employee does not address the compensation judge's first reason for rejecting Dr. Downs' opinion - - that Dr. Downs lacked experience with sleep disorders. Dr. Downs himself testified that he had no training in sleep disorders, that he did not actually treat many patients with sleep disorders, and that, if he thought somebody had a diagnosis of a sleep disorder, "I'll refer them on to either typically pulmonologists or neurologist to address those diagnostic issues and treatment issues."

The compensation judge rejected Dr. Holt's opinion that the employee's narcolepsy is causally related to the work injury because that opinion was premised on Dr. Holt's belief that the employee sustained a head injury in the 1996 accident, which resulted in amnesia and a brain injury. Substantial evidence supports the compensation judge's rejection of Dr. Holt's opinion. The employee himself testified that he does not recall striking his head in the 1996 accident, there is not a single medical record that reports a blow to the head as part of the accident, and the employee gave extraordinary details of the accident for someone who allegedly suffers from amnesia as a result thereof. We therefore affirm the compensation judge's finding that the employee did not establish that his sleep disorder is causally related to the 1996 work injury.