DALE A. MAHON, Employee, v. HELMKE CONSTR., INC., and GRINNELL MUT. REINSURANCE, Employer-Insurer/Appellants.

WORKERS' COMPENSATION COURT OF APPEALS
JULY 8, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - MEDICAL TREATMENT. Where surgery immediately following the employee's work-related knee injury in May of 1994 revealed an intact medial meniscus; the employee apparently developed some new symptoms four years later, which his treating doctor initially attributed to climbing ladders; the nature of the proposed surgery changed from patellar shaving in 1995 to arthroscopic meniscectomy in 1998; and the treating doctor's most recent causation opinion, relating the employee's torn medial meniscus to the 1994 work injury, was offered without any explanation whatsoever, the compensation judge's causation decision, relating the employee's need for an arthroscopic meniscectomy to the employee's 1994 work injury, was clearly erroneous and unsupported by substantial evidence in the record as a whole.

Reversed.

Determined by Wilson, J., Johnson, J., and Pederson, J.
Compensation Judge: Gary P. Mesna.

OPINION

DEBRA A. WILSON, Judge

The employer and insurer appeal from the compensation judge's decision as to medical causation and the reasonableness and necessity of proposed knee surgery. We reverse.

BACKGROUND

On May 13, 1994, the employee injured his right knee in the course and scope of his employment as a carpenter with Helmke Construction, Inc. [the employer], when he fell from a ladder. X-rays taken three days later, on May 16, 1994, showed no fractures, and his treating physician, Dr. Timothy Zoellner, suspected a "torn anterior cruciate, probable torn medial meniscus and a Grade I to II sprain of [the employee's] MCL." Following an MRI scan, apparently taken later that same day, the employee was scheduled for arthroscopic surgery, which was performed on May 24, 1994. According to the surgical report, the employee's preoperative diagnosis was "torn anterior cruciate," and the post-operative diagnosis was "same plus partial tear posterior horn lateral meniscus." Arthroscopic examination of the "[m]edial compartment showed intact meniscus, smooth articular surfaces." The nature of the procedure performed by

Dr. Zoellner was anterior cruciate ligament reconstruction.

A June 3, 1994, progress note indicates that the employee was expected to be able to return to light work in about a month; however, on July 28, 1994, Dr. Zoellner advised that the employee should "continue with no work unless he can do simply sit-down work." The employee testified at hearing that he was off work for some period and then tried to stay off his right leg as much as he could. It is not clear exactly when he returned to his job or to full job duties.

On August 24, 1994, when seen again by Dr. Zoellner, the employee had "excellent healing and range of motion" but "a moderate amount of patellofemoral crepitance." The same notation was made on October 6, 1994, at which time Dr. Zoellner instructed the employee to do more strengthening exercises and continue working with a knee brace. In later office notes dated December 1, 1994, Dr. Zoellner again reported "some patellofemoral crepitance" but noted that the employee had been doing a lot of kneeling and squatting. Four months later, on April 7, 1995, Dr. Zoellner reported that the employee was "back with grinding in his knee cap," having tried to treat the symptoms with squats and full knee extensions, contrary to what Dr. Zoellner had advised. The employee had also, apparently, stopped wearing his knee brace at work. Dr. Zoellner indicated that he was unable "to do an impairment rating" at that time because "[t]his is directly related to his work related ACL injury." In May and June of 1995, the doctor again noted crepitance, but the June note may have been made in reference to a left wrist injury, for which the employee had also been seeing Dr. Zoellner.

In July of 1995, Dr. Zoellner wrote that the employee was "still having catching and grinding and pain with any bending or kneeling." After confirming these symptoms on examination, Dr. Zoellner indicated that the employee was "going to consider scope, debridement." According to a March 27, 1996, letter by Dr. Zoellner to the insurer, "[t]he surgery . . . referred to for [the employee] is for arthroscopy and debridement of his symptomatic chondromalacia of his patellofemoral joint."

The employee elected not to undergo the procedure recommended by Dr. Zoellner and apparently sought no real additional treatment for right knee symptoms for more than two years. However, in January of 1997, when he saw Dr. Zoellner for a lifting injury to his right elbow, the employee reported that he still had some intermittent stiffness, aching, and crepitance in his right knee. The doctor recommended treatment for the employee's elbow symptoms and concluded that the employee's knee "appear[ed] stable with no change."

On May 18, 1998, the employee was seen for "medial joint line knee pain for approximately a week [that] began after he went up and down the step ladder all day at work." Examination revealed medial joint line symptoms and "positive Apley's." Dr. Zoellner prescribed exercises, full-time use of a knee brace, and ice, indicating that, "[i]f symptoms persist, we will need to consider scoping [the employee's] knee for torn medial meniscus." The doctor reiterated his treatment recommendations on June 1, 1998, when the employee's knee condition showed no significant improvement.

On June 18, 1998, Dr. Zoellner wrote again to the insurer, stating as follows: "From my May 18th note on [the employee], it appears that his knee pain began with climbing up and down a step ladder all day." Dr. Zoellner's office notes from September 3, 1998, indicate that the employee's knee was still catching, grinding, and popping in the medial joint line, and the doctor noted that his office had "sent all sorts of communication back to the work comp carrier" but had still not received authorization for the proposed procedure, an arthroscopic meniscectomy.

On November 6, 1998, following the employee's filing of a medical request, the Department of Labor and Industry issued a "Certification of Dispute," indicating that the insurer would not accept liability for a right scope meniscectomy. A few months later, Dr. Zoellner wrote to the employee's attorney, indicating that "[i]t is my medical opinion that the need for [the employee's] knee arthroscopy stems from the May 16 [sic] 1994 injury."

On February 2, 1999, the employee was examined by Dr. David Boxall, the employer and insurer's examiner. Dr. Boxall found no signs suggestive of a meniscal tear. While noting that the employee did have considerable patellofemoral crepitation, Dr. Boxall found a "negative patellofemoral compression sign" and therefore concluded that surgery was not warranted. However, if surgery were to be performed, the appropriate procedure would be pateller shaving. Dr. Boxall further concluded that the employee had developed a Gillette[1] injury in the nature of patellofemoral compression syndrome, after, and unrelated to, the employee's May 1994 work injury. Dr. Boxall based his conclusion as to causation in part on his assumption that medical records contained no notations of crepitation until more than six months after the employee's May 1994 injury. It is evident, however, that Dr. Boxall overlooked the reference to crepitation in Dr. Zoellner's notes in August of 1994, three months, not six months, after the employee's injury. In addition, the employee testified that he had begun experiencing grinding, popping, and clicking in his right knee immediately following his surgery.

On February 23, 1999, the matter came on for hearing before a compensation judge to resolve the parties' dispute over the reasonableness and necessity of the arthroscopic meniscectomy proposed by Dr. Zoellner. The judge resolved the issues in the employee's favor. The employer and insurer appeal.

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

[1] See Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 21 W.C.D. 105 (1960).

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 employer and insurer contend that the compensation judge erred in approving the surgery proposed by Dr. Zoellner, arguing that substantial evidence does not support the conclusion that the employee reasonably requires an arthroscopic meniscectomy as a result of his May 1994 work injury. The employee, in response, contends in part that the compensation judge was entitled to rely on the positive patellofemoral compression sign found by Dr. Zoellner, rather than the negative patellofemoral compression sign found by Dr. Boxall, in concluding that the proposed surgery was reasonable and necessary. The employee's arguments in this regard, together with the arguments of both parties at the hearing below, illustrate that there may be some confusion or disagreement as to the exact nature of Dr. Zoellner's treatment recommendation. At the commencement of the hearing, the employee's attorney indicated that the employee wanted to "proceed with the surgery that was recommended back in 1995"; this was, according to Dr. Zoellner's records, a scope debridement procedure to treat chondromalacia. However, in closing argument, the employer and insurer's attorney maintained that Dr. Zoellner's current recommendation was for arthroscopic treatment of a torn medial meniscus. The employee's attorney then responded that the doctor had merely recommended a "scope meniscectomy without specifying the medial aspect of it . . . consistent with what he recommended a long time ago."

It appears to us, based in part on Dr. Boxall's report, that a debridement procedure for chondromalacia or patellofemoral compression syndrome is almost certainly different from a meniscectomy,[2] and on this record, at least, this difference is clearly relevant in evaluating the compensability of the surgery. From his treatment notes and reports, it further appears to us that, since May of 1998, Dr. Zoellner has been recommending arthroscopic surgery to repair a suspected torn medial meniscus, rather than arthroscopic patellar debridement or shaving. Proceeding on that conclusion, we will limit our review to whether substantial evidence supports the conclusion

[2] Also, as defined in Dorland's, chondromalacia is the "softening of the articular cartilage, most frequently in the patella." Dorland's Illustrated Medical Dictionary 262 (26th ed., 1985). Chondromalacia patellae is premature degeneration of the patellar cartilage, "the patellar margins being tender so that pain is produced when the patella is pressed against the femur." Id. The medial meniscus of the knee joint is "a crescent-shaped disc of fibrocartilage attached to the medial margin of the superior articular surface of the tibia." Id. at 796. The surgical report from the employee's 1994 arthroscopy indicates that the employee had a tear in his lateral meniscus at that time, but the lateral meniscus is a different structure than the medial meniscus. See id.

that arthroscopic medial meniscectomy surgery, as recommended by Dr. Zoellner, is reasonable, necessary, and causally related to the employee's May 1994 work injury.

We acknowledge initially that there is certainly some evidence that supports the compensation judge's award. The employee testified that he has experienced grinding and clicking in his right knee ever since his 1994 work injury, and, perhaps more importantly, Dr. Zoellner wrote on February 1, 1999, that the employee's "knee arthroscopy stems from the May [13], 1994 injury." However, while we are extremely hesitant to overturn a judge's decision on a factual issue such as medical causation, the evidence supporting the employee's claim, when viewed in context, is inadequate to support the judge's causation decision and award.

Dr. Zoellner apparently suspected a medial meniscus tear when he examined the employee on May 16, 1994, only three days after the employee's work injury. However, the operative report from the employee's anterior cruciate reconstruction on May 24, 1994, specifically indicates that the employee's medial meniscus was intact, with smooth articular surfaces, and the employee's post-operative diagnosis included a partial tear of the posterior horn of the lateral meniscus but made no reference to the medial meniscus at all. When the employee continued to experience crepitance in his right knee after surgery, Dr. Zoellner diagnosed chondromalacia and recommended patellar debridement, or shaving, to treat the condition. It was not until several years later, on May 18, 1998, after going up and down ladders all day at work a week before, that the employee complained - - evidently for the first time - - of medial joint line pain.[3] Similarly, it was not until May 18, 1998, that Dr. Zoellner - - for the first time - - indicated that arthroscopy might be necessary for a torn medial meniscus. Then, in a June 18, 1998, report, Dr. Zoellner suggested that climbing ladders at work was the cause of the employee's current knee pain. While Dr. Zoellner later related the employee's need for arthroscopic surgery to the employee's May 1994 injury - - after refusal by the insurer to approve the suggested procedure - - Dr. Zoellner offered no explanation for his conclusion. Given the chronology of events, and especially considering the operative report reflecting an intact medial meniscus at the time of the employee's May 1994 surgery, and the apparent change in the employee's symptoms, diagnosis, and proposed treatment in May of 1998, Dr. Zoellner's bare one-sentence causation opinion, without further explanation, is insufficient to support the judge's causation decision. We therefore reverse that decision and the resulting approval of Dr. Zoellner's proposed arthroscopic medial meniscectomy.

[3] At least we see no earlier reference in the medical records.