

STANLEY R. MARTINSON, Employee/Petitioner, v. USX CORP., SELF-INSURED, Employer.

WORKERS' COMPENSATION COURT OF APPEALS

JULY 22, 1999

No. [REDACTED SSN]

HEADNOTES

VACATION OF AWARD - REFERRAL FOR HEARING. Where the evidence submitted raises significant issues of fact concerning the employee's diagnosis, ability to work, level of permanent partial disability, need for medical treatment and causation, such issues will be referred to the Office of Administrative Hearings for determination before the court will make a decision on the merits of the petition to vacate.

Referred to OAH for fact hearing.

Determined by Wheeler, C.J., Johnson, J., and Pederson, J.

OPINION

STEVEN D. WHEELER, Judge

The employee petitions the court for vacation of the award on stipulation served January 26, 1989, on the basis that there has been a substantial change in the employee's condition and that there was a mutual mistake of fact with respect to the employee's medical and psychological condition at the time of settlement in January 1989. As the determination of the employee's claims will require substantial factual findings, which is not the function of this court, the matter is referred to the Office of Administrative Hearings for factual findings on the issues set forth in the decision below.

BACKGROUND

The employee, Stanley Martinson, was employed by U.S. Steel Corporation as a truck driver on November 18, 1978, when he sustained an admitted work injury. At the time, the employee was 25 years of age and had a weekly wage of \$340.00. On that date, while the employee was seated in his truck, he was struck on the left side of his face by a large rock which had been thrown up by another truck. The employee sustained a fracture of a facial bone and a large laceration of his face, in addition to cervical injuries.

Following the injury, the employee was unable to return to work and voluntary payments of temporary total and temporary partial disability benefits were made. On May 22, 1979, however, following a dispute concerning benefits, the employee filed a claim petition seeking temporary total disability payments. Just prior to trial, in March 1980, the self-insured

employer agreed to pay additional temporary total disability and to pay a permanent partial disability rating of 10% of the spine. Thereafter, the employer continued to pay temporary total and temporary partial disability benefits until May 1981. The employee apparently left the employ of the employer in November 1981 when he became self-employed as a logger.

On October 8, 1984, the employee again filed a claim petition seeking temporary total and temporary partial disability benefits from May 26, 1981 and retraining benefits. The matter came on for hearing before a compensation judge at the Office of Administrative Hearings. In his Findings and Order issued November 25, 1985, the compensation judge denied the employee's claim for temporary total disability from May 26, 1981 through March 30, 1984 on the basis that he had failed to conduct a diligent job search. The employee was awarded temporary total disability benefits, which were paid from April 1984 through June 30, 1986, except for a brief period when he was paid temporary partial disability benefits.

In June 1986, Dr. Ronald Hocevar, the employee's treating chiropractor, indicated that the employee could attempt to work a "skidder" in his logging operation. In July 1986, the employee and the self-insured employer entered into a stipulation for settlement which was approved by an award on stipulation dated July 31, 1986. Pursuant to that stipulation the employee was to receive the sum of \$25,000 in full and final settlement of all wage loss claims from July 1, 1986 through January 1, 1989. The stipulation provided that it was the intention of the parties that the employee purchase a logging "skidder" with \$20,000 from the settlement. Claims for additional permanency or medical expenses were not included in the settlement.

On July 8, 1988, the employee filed a claim petition in which he sought additional permanent partial disability and the payment of medical expenses. This claim petition was based on the medical reports from Dr. Hocevar which indicated that the employee had sustained a 30% permanent partial disability of his neck and shoulder and a July 7, 1988 report from Dr. Donald L. Werner, M.D., the employee's family practitioner, who stated that the employee had a 24% permanent partial disability of the spine. At the time of this petition and until the end of 1988, the employee was represented by attorney Robert Berger. On January 1, 1989, however, Mr. Berger was appointed as a district court judge and was no longer able to represent the employee. At about the same time, the employee engaged in settlement negotiations with the employer without the assistance of counsel.

On January 23, 1989, a stipulation for settlement negotiated between the employee and the self-insured employer was filed. Shortly thereafter, on January 25, 1989, attorney Patrick Roche, for Mr. Berger's former firm, petitioned the court for withdrawal from the case on the basis that the employee had dealt directly with the self-insured employer and had reached a settlement. The petition stated that an agreement had been reached with the employee concerning the amount of attorney fees that would be paid to the law firm. On the same date, the order approving withdrawal was executed by a settlement judge. On January 26, 1989, an award on stipulation was entered approving the settlement between the employee and the self-insured employer. This settlement provided that the employer pay the sum of \$35,000 to the employee in full, final and complete settlement of all claims arising out of the November 1978 injury, with the exception of

future medical expenses causally related to that injury. At the time of the settlement in 1989 the employee was apparently working as a self-employed logger.

Following the settlement, the employee continued to work as a self-employed logger and was treated on a periodic basis by Dr. Hocevar, and occasionally by Dr. Werner. All of the medical expenses incurred during 1991, 1992, 1993 until June 1994 for the care and treatment of the employee's cervical spine were paid by the self-insured employer. (See Stipulation for Settlement filed 6/13/94.)

On June 13, 1994, the employee, again acting without counsel, entered into a settlement agreement with the employer. On July 8, 1994, a settlement judge issued an order disapproving the June 13, 1994 stipulation on the basis that it was not reasonable. The proposed settlement provided that the self-insured employer would pay a lump sum of \$8,000 to extinguish all past and future claims not settled by the January 1989 settlement. In essence, the only purpose of the settlement was to close out any claims for future medical expenses. The stipulation indicated that all past doctors' bills had been paid since June 26, 1986.

On January 15, 1999, the employee filed an application to set aside the January 26, 1989 award on stipulation on the basis that since that date the employee had sustained a substantial change in his medical condition and that the stipulation for settlement was predicated on a mutual mistake of fact concerning the employee's medical and psychological condition at the time of the settlement. The self-insured employer objected to the petition to vacate on the basis that the employee's medical condition has not changed substantially and that any physical or employment difficulties the employee may be having were not causally related to the 1978 injury.

DECISION

The law in effect on the date of settlement is controlling for purposes of vacating an award on stipulation. Franke v. Fabcon, Inc., 509 N.W.2d 373, 49 W.C.D. 520 (Minn. 1993). "Cause" to vacate the award in the present case includes (a) fraud, (b) mistake, (c) newly discovered evidence, and (d) substantial change in condition. Krebsbach v. Lake Lillian Coop. Creamery Ass'n, 350 N.W.2d 349, 353, 36 W.C.D. 796, 801 (Minn. 1984). A number of factors may be considered in determining whether an award should be vacated based on a substantial change in condition, including: (a) a change in diagnosis; (b) a change in the employee's ability to work; (c) additional permanent partial disability; (d) necessity of more costly and extensive medical care/nursing services than initially anticipated; (e) causal relationship between the injury covered by the settlement and the employee's current worsened condition; and (f) the contemplation of the parties at the time of the settlement. Fodness v. Standard Café, 41 W.C.D. 1054, 1060-61 (W.C.C.A. 1989).

With regard to the first factor, the employee contends that he has had a significant deterioration of his cervical spine condition and in addition suffers from chronic pain syndrome, anxiety, depression, dependence on pain medication and alcoholism. With respect to the employee's ability to work, it is the contention of the employee that based on Dr. William Wilson's

report of August 18, 1998 the employee is completely unable to work in any competitive employment as a result of his work injury. On the question of permanency, the employee contends that he has a permanent partial disability far in excess of the 10% paid by the self-insured employer and awarded by the compensation judge prior to the 1989 settlement. The basis cited for his position were the reports from Dr. Werner and Dr. Hocevar. On the issue of additional medical treatment the employee claims that as a result of treatment for chemical dependency and psychological counseling, he has outstanding medical expenses of \$18,000 which the employer has refused to pay.

The employer contests these assertions on the basis that any changes in diagnosis, ability to work or permanency that the employee may be experiencing are not causally related to the effects of the 1978 injury. More specifically, they indicate that if the employee is chemically dependent or has had a worsening of his physical or psychological conditions that those changes were caused by other factors, including the employee's heavy work activities as a logger.

As noted by the statement of the relative positions of the parties with regard to the principal elements and factors to be considered by this court, there is a significant dispute concerning the exact nature of the employee's diagnosis, ability to work, permanency and need for medical treatment and whether there is a causal relationship between the employee's current condition and the 1978 injury. As it is not the function of this court to resolve those factual issues, many of which may depend on credibility determinations and the resolution of disputes between medical experts, all are referred to the Office of Administrative Hearings for resolution. The compensation judge shall conduct a hearing and make findings of fact concerning the employee's diagnosis, ability to work, and permanent partial disability both at the time of the January 1989 settlement and at the present time. The compensation judge is specifically directed to determine what, if any, diagnoses, inability to work or permanent partial disability were substantially caused by the 1978 injury. In making these determinations the compensation judge should make findings concerning work restrictions applicable in 1989 and currently that were substantially caused by the 1978 injury.¹

When these findings have been made and returned to this court, a determination on the employee's petition to vacate will be finalized.

¹ Apparently the employee filed a medical request for payment of the medical expenses associated with the treatment of the employee's depression and chemical dependency. If that request has not already been heard, the compensation judge may wish to consolidate it with the hearing of the issues being referred by this court.