

MARLIN McMORROW, Employee, v. APOLLO PIPING SUPPLY, INC., and TRANSAMERICA/TIG INS., Employer-Insurer/Appellants, and APOLLO PIPING SUPPLY, INC., and WAUSAU UNDERWRITERS INS. CO., Employer-Insurer, APOLLO PIPING SUPPLY, INC., and NORTHBROOK NAT'L INS. CO., Employer-Insurer, and APOLLO PIPING SUPPLY, INC., and EMPLOYERS INS. OF WAUSAU, Employer-Insurer, and EMPLOYERS HEALTH INS., Intervenor, and SPECIAL COMP. FUND.

WORKERS' COMPENSATION COURT OF APPEALS
AUGUST 16, 1999

No. [REDACTED SSN]

HEADNOTES

PERMANENT TOTAL DISABILITY - SUBSTANTIAL EVIDENCE. Where, in addition to having undergone total knee replacements bilaterally, the employee was without the use of two of the fingers on his dominant hand, had for several years worn a hearing aide, was developing night vision problems, was suffering from atherosclerotic heart disease that had resulted in a heart attack, and had undergone surgical repair of umbilical and supraumbilical hernias, where these physical problems were magnified by the fact that the employee was 62 years old, had completed only the tenth grade, and had experience only at physical labor, and where there was expert vocational opinion in support of the judge's decision, the compensation judge's conclusion that the employee was permanently totally disabled was not clearly erroneous and unsupported by substantial evidence, notwithstanding the absence of expert medical opinion totally restricting the employee from working and the fact that the employee had not conducted a reasonably diligent job search.

CAUSATION - SUBSTANTIAL EVIDENCE. Where, prior to total replacement of his work-injured right knee, the sixty-two-year-old employee was already totally disabled from employment by a total left knee replacement and other vocational factors set forth in Schulte v. C. H. Peterson Constr., 278 Minn. 79, 83, 153 N.W.2d 130, 133-34, 24 W.C.D. 290, 295 (1967), partial relief of the employee's symptoms as a result of the total right knee replacement did not remove the employee's work injury from being a substantial contributing factor in his disability or render that disability other than permanent and total.

Affirmed.

Determined by: Pederson, J., Wilson, J., and Rykken, J.
Compensation Judge: Bernard Dinner

OPINION

WILLIAM R. PEDERSON, Judge

The employer and insurer Transamerica/TIG Insurance appeal from the

compensation judge's award of permanent total disability benefits. We affirm.

BACKGROUND

On September 16, 1978, Marlin McMorrow tore a tendon and muscle in his right biceps and crushed the patella in his right knee when he fell twenty feet from a forklift in the course of his job in the warehouse of Apollo Piping Supply, Inc. Mr. McMorrow [the employee] was forty-eight years old at the time of his injury and was earning an average weekly wage of \$323.60. The crushed patella was surgically reconstructed, and the repair wires were surgically removed a year later. About the time of the wire removal, September 1979, the employee's treating physician, Dr. Charles Lai, anticipated that, "[b]ecause of the significant impact at the time of the injury, it is likely that he will develop osteoarthritis in the future." Apollo Piping Supply, Inc. [the employer], and its insurer at the time, Transamerica/TIG Insurance [TIG], admitted liability for the injury and paid temporary total disability benefits for about fourteen months, from the time of injury through November 5, 1979, when the employee returned to work for the employer. Benefits paid by the employer and TIG have ultimately included compensation also for a 5% permanent partial disability of the right arm and for a 25% permanent partial disability of the right leg, consequent to a total right knee replacement in 1993.

In 1983, the employee was transferred by the employer to work at its City Desk, a job that required the employee to spend about six hours a day on his feet and regularly to lift sometimes heavy stock from shelves. The employee began to experience increasing crepitation and locking and buckling in his right knee, and in April of 1984 he underwent arthroscopic surgery on that knee to trim and extract loose bodies of bone. Four years later, in April of 1988, the employee began experiencing pain also in his left knee, consequent to what was diagnosed as degenerative arthritis, and the following month he underwent an arthroscopic left-knee meniscectomy in treatment of that condition. By June 2, 1989, Dr. Robin Crandall, the employee's treating physician, was finding "no question . . . that a knee arthroplasty will be indicated." Dr. Crandall advised the employee, however, that, given his size, "he should probably wait until he is retired" before considering surgery. In July 1990, the employee developed renewed pain also in his right knee. Noting the employee's history of a crushed right patella, Dr. Crandall prescribed anti-inflammatories, contemplated repeat steroid injection, and indicated that the employee "probably is getting to the point where knee arthroplasty would be indicated."

In August and September of 1990, Dr. Crandall saw the employee for "degenerative arthritis of his knees" (emphasis added), and the employee's complaints of bilateral pain continued into April of 1991. On April 17, 1991, while declining to recommend right knee replacement "at present," Dr. Crandall indicated that the employee's right-knee "patellofemoral disease is extremely severe" and that the employee's "left knee certainly would warrant joint replacement surgery." On May 3, 1991, Dr. Crandall injected the right knee with Xylocain/steroid, and on June 4, 1991, he performed a total replacement of the left knee.

On September 11, 1991, while convalescing from his left knee replacement and still experiencing right knee pain, the employee completed an application for Social Security disability

benefits. As part of that application, the employee declared that he had not filed “nor do I intend to file for any workers’ compensation” benefits regarding his disability. On September 20, 1991, Dr. Crandall apparently issued the employee a release from work for another month and scheduled a reexamination in three months. Four days later, on September 24, 1991, a month prior to his sixty-second birthday, the employee informed the employer that he would not be returning to work with the employer and that he would be moving to Corpus Christi, Texas, to live closer to his aging mother-in-law. On that same date, the employee called Dr. Crandall’s office to request that his release from work be extended from October 23 to October 31, 1991, and was informed by the doctor’s nurse that he would need to make an appointment to discuss this with the doctor. The employee’s application for Social Security disability benefits was evidently approved effective November 1991. He has not worked for the employer since his surgery in June 1991.

Following his move to Corpus Christi, the employee apparently maintained only minimal communication with the employer. Once established in Corpus Christi, he began treating in November 1991 with orthopedist Dr. Christopher Isensee, who prescribed a knee rehabilitation program. In a December 1991 letter to an insurer that is not here a party, Dr. Isensee reported that the employee was subject to continuing inflammation and could perform only sedentary activities, restricted from carrying more than twenty pounds. In treatment notes for January 14, 1993, about a year later, Dr. Isensee indicated that the left knee had improved considerably, but that the employee was now having pain in his right knee and had been made “aware that the right knee will probably have to be replaced at some time in the not too distant future.” On August 11, 1993, the employee returned to complain of his pain also to Dr. Crandall, and on September 28, 1993, he underwent a total right knee replacement. The surgical report suggests that the procedure was complicated by the fact that “the patella was twice the size of normal and heterotopic bone extended into the distal patellar tendon.” In a subsequent letter to TIG on December 17, 1993, Dr. Isensee indicated that he had “recommended that [the employee] continue with rehabilitation exercises and give the knee more time.” By deposition in October of 1995, the employee evidently testified¹ that he had no intention of looking for work. Subsequently he apparently did search for work, however, for about six months.² On November 8, 1995, Dr. Crandall wrote to the employee’s attorney, reiterating his opinion that the employee “is permanently disabled due to the fact that he has had bilateral total knee arthroplasties.”

On October 24, 1996, the employee filed a Claim Petition,³ alleging against the

¹ The employee’s deposition is not in evidence; the fact is evident from other testimony in evidence.

² The employee testified that he has no records of the search but that he thinks he contacted “[p]robably thirty places.”

³ An earlier Claim Petition, filed April 27, 1995, had been subsequently withdrawn and dismissed without prejudice.

employer and TIG entitlement to various benefits including permanent total disability benefits continuing from September 1991, all consequent to a work-related injury to his “knees” on September 16, 1978. In their Answer on November 7, 1996, the employer and TIG admitted liability for an injury to the employee’s right lower extremity but specifically denied liability for any injury to the left lower extremity. The employee subsequently amended his Claim Petition to allege entitlement to benefits consequent to a Gillette-type injury⁴ “between 01-31-87 - Sept., 1991,” in addition to the September 1978 specific injury already claimed. The amended claim also joined the Special Compensation Fund and three insurers in addition to TIG, including Wausau Underwriters Insurance Company [Wausau], for the period January 1, 1990, through January 1, 1992.

On August 13, 1997, the employee was examined for the employer and Wausau by orthopedic surgeon Dr. Stephen Barron. In his report on August 21, 1997, Dr. Barron rendered an opinion that the employee had a 25% permanent partial disability to both lower extremities but was nevertheless capable of working full time, restricted from lifting over thirty pounds and from doing any repetitive stair or ladder climbing. The following month, on September 11, 1997, Dr. Peter Daly testified for the employer and TIG, based on an examination of the employee that he had conducted on October 26, 1995. In his deposition, Dr. Daly rendered an opinion that the employee was not permanently totally disabled from working because of his knee conditions, notwithstanding the fact that he had a 25% “old law” permanent partial disability of the right lower extremity. It was Dr. Daly’s opinion that the employee could work full time within restrictions against repetitive squatting and repetitive lifting and carrying of more than thirty pounds. It was also Dr. Daly’s opinion that the employee’s total right knee replacement was inevitable, given the severity of his 1978 injury.

A year later, on September 11, 1998, Dr. Crandall testified by deposition, in part that the employee’s total right knee replacement in 1993 was inevitable given the trauma he sustained in his 1978 work injury. Dr. Crandall testified also that, as a direct consequence of his bilateral knee replacements, the employee’s work restrictions “would be fairly extensive,” that he “should avoid any type of stooping, squatting, crawling, bending, kneeling activity” and “any twisting-type activity. And generally, no jumping or running,” which “would tend to make the joints wear out quicker.” He added, “I generally don’t even recommend knee replacement unless people are retired, for example” because “[t]here’s just too much loading in a work setting on total knees.” Dr. Crandall testified that the employee’s 1991 left knee replacement and his subsequently increasing right knee symptoms would together have been sufficient to render the employee permanently and totally disabled from his occupation and that the employee remains permanently totally disabled from that occupation following his 1993 right knee surgery, even though his right knee symptoms may no longer be as severe as they were prior to that surgery. Dr. Crandall also testified, finally, that the employee “will definitely require future medical care” for his knees, which could well include revision or replacement surgeries due to wear.

⁴ Gillette v. Harold, Inc., 257 Minn. 313, 321-22, 101 N.W.2d 200, 205-06, 21 W.C.D. 105 (1960).

Dr. Crandall acknowledged that the employee's determination not to look for part-time work was not pursuant to Dr. Crandall's recommendation, but he emphasized that the employee "would have to have a job that is strictly - - more or less a desk, white-collar-type, sedentary job."

On September 15, 1998, QRC Jane Moncharsh testified by deposition for the employer and TIG, based on an evaluation of the employee that she had conducted on October 24, 1995. She testified in part to an opinion the employee had not become totally disabled from competitive employment in 1991, that there had been jobs available for him within his restrictions and abilities that would have utilized his background and transferrable skills. She cited as examples, "just returning to work at [the employer] or a variety of other jobs such as telemarketing, order taking," cashier jobs, basic sales jobs, and jobs in record keeping, posting, and detailing. She testified that, when she had evaluated him in 1995, the employee had indicated that he basically did not want to return to work, that "he did not want to do anything that would jeopardize his Social Security benefits," but "that he might be interested in doing some type of volunteer or other work." She testified further that, in her opinion, the employee had significantly diminished his chances of obtaining full-time permanent employment by, beginning after his right knee replacement, living half of each year in Corpus Christi and the other half in Wisconsin,⁵ although "he would have a possibility of obtaining temporary positions or certainly at least part-time regular positions in both places."

The matter came on for hearing on September 18, 1998. Issues at hearing still active here on appeal included whether or not the employee had been permanently totally disabled since at least September 1, 1991, and whether or not the employee's September 1978 right knee injury was a substantial contributing factor in any such permanent total disability.

In testimony at the hearing, the employee acknowledged that he had testified by deposition in 1995, in response to a query concerning his desire to go back to work, that "I guess what it boils down to, sir, is that what I went through all this time, and the suffering, nobody will ever know unless you go through it. That's no - - I couldn't do it, I just couldn't, it hurt that bad." Also testifying for the employee at hearing was QRC Obie Kipper. Mr. Kipper testified in part that the employee is physically qualified for only sedentary jobs constituting 11% of the labor market due to the condition of his knees. He testified further that the employee has only "minimal to no transferable skills" and that the employee's long-standing hearing problems and problems with the fingers of his dominant right hand also have an impact on his employability. It was Mr. Kipper's opinion that the employee therefore "can't resume sustained gainful work activity." By Findings and Order filed December 14, 1998, the compensation judge concluded in part that the employee had not proven that he sustained a Gillette injury to his left knee on June 1, 1991, but did prove his entitlement to permanent total disability benefits continuing from September 1, 1991, substantially as a result of his September 16, 1978, right knee injury. The employer and

⁵ The employee testified that, following his 1993 right knee surgery, he began spending his summers in Wisconsin because the high humidity of the south Texas summers aggravated a heart condition that had caused him to suffer a heart attack in May 1981.

TIG 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 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).⁶ 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

Total Disability After September 1991

"[A] person is totally disabled if his physical condition, in combination with his age, training, and experience, and the type of work available in his community, causes him to be unable to secure anything more than sporadic employment resulting in an insubstantial income." Schulte v. C. H. Peterson Constr., 278 Minn. 79, 83, 153 N.W.2d 130, 133-34, 24 W.C.D. 290, 295 (1967). The compensation judge found that the employee was totally disabled from working as of September 1, 1991, following his total left knee replacement, and that the employee's September 1978 right knee work injury was a substantial contributing factor in a continuing total disability, even after the employee's restriction from working due to his left knee surgery was lifted. The employer and TIG contend that the employee went off work in September 1991 not because of his 1978 right knee work injury but because of his left knee problems and that, when he did so, he had "no intention of returning to work after his left knee was replaced." Therefore, they argue, any right knee problems that may have persisted immediately following the employee's

⁶ The employer and TIG assert in their Reply Brief that the Northern States Power case "has no relevance to this court's standard of review." To the contrary, the opinion in that case has been a repeatedly cited element of our standard of review ever since shortly after Minn. Stat. § 176.421, subd. 1, itself was amended in 1992 to establish that the third ground for appeal is a contention that the findings and order of a compensation judge were both "clearly erroneous and unsupported by substantial evidence" (emphasis added). Minn. Stat. § 176.421, subd. 1(3) (1992); see Hingtgen v. Health One Transp., slip op. (W.C.C.A. Mar. 18, 1993).

release to return to work after his 1991 surgery post-dated a withdrawal from the labor market and were therefore unrelated to any wage replacement liability. We are not persuaded that the judge's conclusions were unreasonable.

The employee's physical condition since September 1991 is clearly impaired substantially. When he went off work in that month, subject at the time to one more month of his doctor's restrictions from all work consequent to his left knee surgery, the employee was also suffering physically from symptoms in his right knee that had been "fairly severe" for about a year.⁷ According to the employee's medical records, eventual testimony, and application for Social Security disability benefits, these right-knee symptoms were expected eventually to require treatment by total knee replacement, just as had the employee's left knee symptoms. The employee's medical records in Corpus Christi and in Minnesota document a continuation and increase in these right knee symptoms following the conclusion of the employee's convalescence from his left knee surgery. Moreover, it is evident from records of Dr. Crandall's treatment and other evidence of record that total knee replacements such as that already in place in the employee's left knee are subject to wear and further "revision," making continued employment difficult. In addition to these bilateral knee problems, the employee was also physically without the use of two of the fingers on his dominant right hand, had for several years been wearing a hearing aide for a disability apparently related to previously perforated and scarred tympanic membranes, was developing night vision problems that were affecting his driving, was suffering from atherosclerotic heart disease that had already resulted in one acute heart attack, and had undergone surgical repair of umbilical and supraumbilical hernias. Clearly the employee's physical condition when he went off work in September 1991 was substantially impaired and at further risk, and it was impaired and at risk by several physical conditions in addition to his recent left knee replacement, conditions including substantial long-term and continuing problems in his work-injured right knee.

The employee's physical problems when he went off work in September 1991 also existed in a context of other significant obstacles to employment. In September 1991, the employee was also only a month short of sixty-two years old. Not only was the employee subject to substantial physical impairments, but educationally he had completed only the tenth grade in high school, and he had never returned to school to obtain a GED or, apparently, any other formal training certificate. His work experience had been fairly exclusively at physical labor, first apparently in the meat industry, later in the construction industry, then in military service, and finally in the plumbing industry. His work in the latter had included truck driving, warehouse work, at which he was working when he sustained his work injury in 1978, and apparently some supervisory functions that included some paperwork. The employer and TIG contend that, notwithstanding the employee's physical condition and these other obstacles to employment, the

⁷ There is some evidence, in the employee's testimony at hearing and in Dr. Crandall's treatment note for July 18, 1990, that the employee had also been wearing a metal brace on that right knee for two or three years. The evidence is ambiguous, however, and the brace may have been on the more quickly deteriorating left knee prior to surgery, rather than on the right knee up to the time he went off work.

employee was not totally disabled from all work subsequent to September 1991. They contend, based on the evaluation and testimony of QRC Moncharsh, that physically suitable work was available for the employee and that his failure to find a job was due solely to his failure to diligently search for work and to his eventual decision to alternate his residence between Corpus Christi and Wisconsin. Again we are not persuaded.

Initially we would reiterate that generally a reasonably diligent job search is not a prerequisite to entitlement to total disability benefits but instead goes only to the weight of evidence supporting an employee's claim. Scott v. Southview Chevrolet Co., 267 N.W.2d 185, 188-89, 30 W.C.D. 426, 432 (Minn. 1978). Only injured workers who are capable of work are required to affirmatively seek employment as a prerequisite to obtaining total disability benefits. Id.; see also Redgate v. Sroga's Standard Serv., 421 N.W.2d 729, 733, 40 W.C.D. 948, 954 (Minn. 1988). As part of his September 11, 1991, application for Social Security disability benefits, just prior to his moving to Corpus Christi, the employee certified that he had not filed and was not intending to file for any workers' compensation benefits regarding the disability there and then at issue. In support of this assertion, the employee testified that when he went off work in 1991 to have his left knee surgery it was his expectation that he would eventually be able to return to his job with the employer. When asked, "When did you first think about stopping work and not coming back to work at Apollo?", he replied, "I don't know if that ever truly really entered my mind except that like I keep repeating, . . . , I just don't want to endure that suffering anymore."⁸ The employer and TIG suggest that the employee essentially removed himself from the work force by the very act of moving to Corpus Christi, where the job market is purportedly more limited. However, an employee's move to a place of fewer employment opportunities is normally not fatal to a claim for wage replacement if the move was reasonably motivated and if there is no evidence of a clear intent to retire. See Boike v. St. Cloud Hosp., 39 W.C.D. 515 (W.C.C.A. 1986) (the compensation judge's finding of a withdrawal from the labor market was reversed where the employee's move to a Sun Belt "retirement community" was apparently made to mitigate disabling effects of her injury and there was an absence of facts establishing a clear intent to retire). In this case, it does not appear that the employee's move to the warmer climate of Corpus Christi in order to live closer to his aging mother-in-law was intentionally evasive of work or otherwise unreasonable, particularly given his age and medical circumstances.⁹ Nor was it clearly

⁸ In his post-hearing deposition, the employee's supervisor at the employer, Scott Forbes, testified that he visited the employee several times following the employee's June 1991 surgery and that it was always his understanding that the employee was intending to return to work following his recovery. He testified that, although the employee visited only rarely following his move to Texas, it remained Mr. Forbes's impression "from knowing [the employee] over a 25-year period of time or so, based upon his work history that [Mr. Forbes] saw and his work record at [the employer], that if [the employee] felt he could do the job, he would do the job." Moreover, the compensation judge's reference in his Memorandum to "the fact that [the employee] . . . kept in contact with Apollo Piping Supply" subsequent to his move Corpus Christi was without express or otherwise apparent challenge by the employer and TIG on appeal.

⁹ Neither do we conclude that the employee's eventual residence in Wisconsin each

unreasonable for the judge to conclude implicitly that the employee's failure to search diligently for work for the first few years following his move there was not fatal to his claim, given the employee's continuing recovery from left knee replacement and his ongoing and increasing right knee problems.

The employee's failure to search at all for work even after expiration of Dr. Crandall's initial total restriction in October 1991 renders this a less than simple issue.¹⁰ However, in his 1998 deposition, Dr. Crandall later testified that the employee's ongoing left knee problems together with his increasing right knee problems were sufficient to disable the employee at least from the occupation he had been performing at the time he left the employer. Given this additional opinion, we cannot conclude that the compensation judge was unreasonable in finding that the employee was, during the two years after he left the employer in September 1991, "unable to secure anything more than sporadic employment resulting in an insubstantial income," in light of "his physical condition, in combination with his age, training, and experience, and the type of work available in his community." Schulte v. C. H. Peterson Constr., 278 Minn. 79, 83, 153 N.W.2d 130, 133-34, 24 W.C.D. 290, 295 (1967). Therefore we will not reverse the judge's finding that the employee was totally disabled during that period of time. See Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239.

Medical Causation by the 1978 Work Injury After 1993

The compensation judge concluded that the employee's September 1978 work injury to his right leg and knee "is in and of itself a substantial, significant, contributing cause to employee's permanent and total disability from and after September 1, 1991 through date of hearing." The employer and TIG contend that, even if the employee was totally disabled for more than a month following his move to Corpus Christi in September 1991, any contribution to that total disability by his 1978 work injury was resolved after his recovery from his total right knee replacement in 1993. They acknowledge that the employee has a rated permanent partial disability to his right knee, but they argue that that disability was rated without regard for the surgery's degree of success or for the employee's ability to work and earn afterward. They argue that the employee's right knee replacement was completely successful and that the employee has been left without any related functional restrictions that might contribute to any arguable remaining disability from working and earning. We are not persuaded.

The employee evidently underwent physical therapy and other treatment for about

summer to avoid the Corpus Christi humidity's effect on his heart condition is any more unreasonable.

¹⁰ Already on November 6, 1991, the employee's orthopedic surgeon in Corpus Christi, Dr. Christopher Isensee, had entered in his treatment notes that the employee "has moved down here for retirement," and by June 3, 1994, following the employee's recovery from his second total knee replacement, Dr. Crandall, too, had noted that the employee had "pretty much retired."

five months after his right knee replacement. He testified that, although it is better than it was just before the surgery, his right knee is still more painful than his left, even following his recovery, and that, due to his right knee problems, he would no longer be able to do the carrying or pushing and pulling that he once did on his job. Dr. Crandall's opinion supports this testimony. The employee testified that he eventually did make about a six-month effort to find work in Corpus Christi in 1995, and by December 1995 he apparently had obtained and performed some work as an alternate election judge, a job that paid \$5.00 an hour on days of elections. The employee saw Dr. Crandall in September of 1997 with complaints of still continuing primarily right knee pain. Dr. Crandall concluded that the right knee actually looked better on x-rays than the left, but that the left "may need revision" eventually. This prospect of further surgery in the left knee further diminishes the employee's prospect of employment.

We conclude that, under these facts, it would not have been unreasonable for the compensation judge to find, in reliance on the testimony of QRC Kipper, that the employee remained totally disabled even after his right knee replacement had healed and that the employee's 1978 work injury continued to be a substantially contributing factor in that disability. The judge indicates in his Memorandum that he found the testimony of Mr. Kipper to be of more weight than that of Ms. Moncharsh in this case, due apparently to Mr. Kipper's greater attention to the employee's hearing and right hand impairments. This was the judge's prerogative, given that Mr. Kipper's opinion was not apparently based on any false information. See Nord v. City of Cook, 360 N.W.2d 337, 342-43, 37 W.C.D. 364, 372-73 (Minn. 1985) (a trier of fact's choice between experts whose testimony conflicts is usually upheld unless the facts assumed by the expert in rendering his opinion are not supported by the evidence). The employer and TIG have emphasized, with some merit, the fact that Drs. Crandall, Barron, and Daly have all provided physical restrictions under which the employee could work, while no doctor has recommended that he not work at all at any job. However, a determination of permanent total disability has both a medical and a vocational component, see McClish v. Pan-O-Gold Baking Co., 335 N.W.2d 538, 36 W.C.D. 133 (Minn. 1983), and the issue of an employee's total disability from working remains one of ultimate fact for the compensation judge. Garza v. Alamco Wood Prods., slip op. (W.C.C.A. June 9, 1993). Particularly given that it is supported by the expert opinion of Mr. Kipper, we cannot conclude that the compensation judge's award of ongoing permanent total disability benefits to Mr. McMorrow was unreasonable. See Nord, 360 N.W.2d at 342-43, 37 W.C.D. at 372-73. Therefore we will not reverse the decision of the compensation judge. See Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239.