

ANITA K. MOORMAN, Employee/Appellant, v. ST. ANTHONY HEALTH CTR. and AM. COMP. INS./RTW, INC., Employer-Insurer, and MEDICA CHOICE/HRI, Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS  
FEBRUARY 17, 1999

No. [REDACTED SSN]

HEADNOTES

**PRACTICE & PROCEDURE - REMAND; MAXIMUM MEDICAL IMPROVEMENT.** As this court is unable to determine the factual basis for the compensation judge's determination that the employee reached MMI as of July 8, 1994, and the compensation judge failed to address the employee's alternative claim that she was medically unable to continue working after August 6, 1997, the appealed findings and conclusions of law are vacated and the matter remanded for redetermination.

**PRACTICE & PROCEDURE - REMAND; MEDICAL TREATMENT & EXPENSE.** Where the compensation judge failed to explain her determination that the treatment provided by Dr. Holmes was not causally related to the August 14, 1993, injury, and failed to make the findings required by Minn. R. 5221.6050, subp. 7.D., of the permanent treatment parameters, the matter is remanded for a redetermination of the medical causation for, and reasonableness and necessity of, the treatment in dispute.

Vacated and remanded.

Determined by Johnson, J., Wilson, J., and Hefte, J.  
Compensation Judge: Carol A. Eckersen

OPINION

THOMAS L. JOHNSON, Judge

The employee appeals from the compensation judge's finding the employee reached maximum medical improvement (MMI) from her August 14, 1993 injury effective July 8, 1994, and was not entitled to temporary total disability benefits from August 6, 1997 through the date of hearing. The employee also appeals from the judge's determination that medical treatment provided by Dr. Holmes from and after May 15, 1997 was not causally related to the work injury, exceeded the treatment parameters and was not reasonable or necessary. We vacate and remand for redetermination.

BACKGROUND

The employee sustained an admitted, work-related injury to her left hip and left leg

on August 14, 1993, while working, part-time, as a nursing assistant for the employer, St. Anthony Health Care.<sup>1</sup> The employee was treated by Dr. James Keane following the injury. He diagnosed a left hip strain and took the employee off work. In follow-up on August 16, 1993, Dr. Keane noted the employee's left hip pain had intensified and she was unable to stand on her left leg alone. A course of physical therapy was prescribed. On August 20, 1993, Dr. Keane noted the employee had been given crutches by the physical therapist. A lumbar CT scan, an MRI scan of the hip area, x-rays of the left hip and lumbar spine, and a bone scan were negative.

The employee experienced some improvement in her left hip pain and range of motion with physical therapy, and on September 27, 1993, Dr. Keane released the employee to return to work with the employer, two hours a day, seated work only in a reclining position, with no carrying, pulling or pushing, or lifting. The employee continued to receive physical therapy on a daily basis. On October 25, 1993, the employee reported coldness and numbness in the left leg when doing physical therapy exercises. Concerned that the employee might be developing early reflex sympathetic dystrophy (RSD), Dr. Keane referred the employee to an orthopedist, Dr. Orrin Mann, for further evaluation.

Dr. Mann first saw the employee on October 29, 1993. She reported constant stabbing pain in the left hip area, as well some pain in the left buttocks and quadriceps areas and in the low back. She was unable to bear weight on the left leg and was using crutches and occasionally a wheel chair. Dr. Mann was uncertain whether the employee's left leg weakness was the result of a mechanical or musculo-neurologic dysfunction or whether it was secondary to functional overlay, and referred the employee for additional testing.

An independent medical examination (IME) was completed by Dr. John Sherman, an orthopedic surgeon, on November 10, 1993. Dr. Sherman thought the most likely explanation for the employee's symptoms was RSD or possibly a conversion reaction. He recommended an aggressive mobilization and reactivation physical therapy program. Dr. Dorn, a neurologist, examined the employee on November 18, 1993. He concluded the problem was primarily in the hip and ruled out a lumbar spine radiculopathy. He believed the problem might be RSD or some sort of vascular compromise, and recommended against more aggressive therapy until a complete evaluation was done. Subsequent vascular studies were negative. The employee completed an MMPI on November 29, 1993. Psychologist James Gilbertson interpreted the results as showing a "[s]trong suggestion of a conversion profile." (Ex. I.)

Dr. Mann restarted physical therapy in mid-November 1993 which continued through December 1993. On January 6, 1994, Dr. Loran Pilling evaluated the employee, diagnosing a conversion hysteria. The employee completed Dr. Pilling's four-week pain clinic program, followed by additional physical therapy through April 1994. On June 6, 1994, an

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<sup>1</sup> At the time of the injury the employee had a second part-time job as a home health aide. The employee was unable to return to her home health aide job following the August 14, 1993 injury.

independent medical examination was performed by Dr. Bruce Van Dyne. Dr. Van Dyne observed the employee had made progress with the recent physical therapy, and was walking with a cane. He noted the employee's work hours had gradually increased, and she had been working two days a week, eight hours a day for the past two months. Dr. Van Dyne's impression was of a musculoligamentous strain of the left hip and groin area and secondary evolution of a chronic pain syndrome with considerable functional overlay. He did not believe the employee had reached MMI, and recommended the employee maintain an active strengthening and conditioning program for at least six months.

Between June 13 and 17, 1994, the employee completed a functional capacities evaluation (FCE) at Saunders Physical Therapy. The evaluator, John Hovde, concluded the FCE was valid, and the test results placed the employee in the less than sedentary category. He noted she had considerable difficulty with weight bearing on the left leg and provided the employee with a Lofstrand crutch. Mr. Hovde concluded the employee's light-duty work with the employer was consistent with her physical abilities, and recommended she continue to work an eight hour day with restrictions including sitting no more than 45 minutes at a time, up to a maximum of four hours a day; no static standing more than 15 minutes; maximum walking/standing up to six hours; no squatting, crawling, crouching or kneeling; occasional bending; carrying only seldom and no more than five to 10 pounds; and no lifting over 5 pounds from the floor or above the shoulder, and up to 10 pounds from the knuckle to shoulder or at waist height. He also suggested scheduling alternate days to increase the employee's work hours.

On June 29, 1994, Dr. Mann completed a work ability report diagnosing "chronic left leg pain," and stating the employee was "at MMI, 0% PPD." He released the employee to return to work with permanent restrictions as set forth in the FCE, stating she could continue in her current job duties every other day. Dr. Mann's report was properly served on July 8, 1994. (Ex. B; Ex. 3.) The employee's light-duty job was terminated by the employer on July 19, 1994. A QRC and job placement specialist were assigned and a job search was initiated. The employee obtained a job doing telemarketing from her home, beginning in September 1994. The job was part time, 20 hours a week, paying \$5.00 per hour. The employee was physically able to do this job.

In August 1995, the employer and insurer requested additional job placement services. The employee obtained a part-time job with Food and Fuel working 21 hours a week, earning \$5.25 an hour, with the possibility of additional hours. Her telemarketing job was terminated. On November 30, 1995, a second functional capacities evaluation was completed at Key Functional Assessments at the request of the insurer. The evaluator recommended a four hour work day, five days a week, with restrictions not significantly different from those previously recommended. The evaluator additionally suggested gradually increasing the employee's work day tolerance by adding 15 minutes every few weeks.

On February 8, 1996, Dr. Mann met with the employee and her QRC. He noted her chronic hip pain had not substantially changed in the past year, and saw no further therapeutic options. He did not believe that the employee would be able to increase her hours at Food and

Fuel beyond the four to five hours a day she was then working. The insurer disagreed, and rehabilitation assistance was put on hold while the parties attempted to resolve the dispute. In November 1996, the employer and insurer accepted the restricted hours, and rehabilitation was closed.

On January 10, 1997, the employee returned to see Dr. Mann stating her pain was getting worse. On exam, she was unable to put any weight on the left leg and could not fully straighten her hip. Dr. Mann continued the employee's work restrictions, prescribed medication, and referred her for additional testing. Although the employee continued to work, she slowly decreased her hours due to pain and discomfort. In March 1997, Dr. Mann referred the employee to Dr. Todd Holmes at the Sister Kenny Institute for a physiatry consultation.

Dr. Holmes first saw the employee on May 15, 1997. She described a sharp pain in the left hip and pulling in the anterior groin on the left. The employee walked with a Lofstrand crutch with an antalgic gait. She had difficulty standing without support. Dr. Holmes recommended an eight week course of mobilization and counter-strain therapy. On June 2, 1997, Dr. Mann concurred with Dr. Holmes' recommendation and encouraged Dr. Holmes to manage the employee's care. The employee reported she was working only two hours a day, which Dr. Mann believed was not "excessive," stating he would rather not take her off work at that point.

The employee began the recommended therapy on June 10, 1997, with Donald Darling at Physical Therapy Orthopedic Specialists, Inc. (PTOSI). She received treatment through July 25, 1997. The employee reported significant improvement in her left hip pain and increased flexibility and mobility, although she continued to have pain with weight bearing and was still using a crutch. On August 6, 1997, the employee returned to Dr. Mann, stating the insurer refused to pay for additional physical therapy, and reporting deterioration in the two weeks since discontinuance of the therapy. Dr. Mann took the employee off work for two months. In a letter dated September 5, 1997, Dr. Mann stated it was medically necessary for the employee to be off work, and he believed the employee should continue with therapy. He prescribed an additional four months of physical therapy, and additionally indicated that, since the employee was improving, the prior MMI report was no longer valid and she had not yet reached MMI.

In early September 1997, physical therapy was reinstated. On September 10, 1997, Dr. Holmes noted the employee was better, had decreased soreness and had less of a hop in her gait. He observed the employee was off work and stated he agreed with Dr. Mann's recommendation. On about October 25, 1997, physical therapy was again discontinued by the insurer. On November 24, 1997, Dr. Holmes noted progressive worsening of the employee's symptoms, and recommended resumption of the therapy.

On January 27, 1998, the employee was seen by Dr. Lloyd Leider for an independent medical examination. Dr. Leider could find no orthopedic diagnosis that would explain her complaints, and opined her current diagnosis was conversion hysteria as a result of the August 14, 1993 work injury. He found no orthopedic reason to restrict the employee from work, and agreed with Dr. Mann's original opinion that the employee had reached MMI in June 1994.

Dr. Leider concluded the treatment provided after January 10, 1997 was related to the employee's August 1993 work injury, but stated it appeared the employee had not benefited from any treatment modality to that point in time, and saw no reason to believe she would respond to any similar treatment after January 10, 1997. Dr. Leider concluded, accordingly, that the employee's treatment from and after January 10, 1997 was not reasonable or necessary. Dr. Leider's report was properly served on the employee on February 16, 1998. (Ex. 2.)

The employee returned to Dr. Mann on February 5, 1998. Her condition was unchanged or perhaps worse. Dr. Mann recommended continuing treatment with Dr. Holmes. Physical therapy was resumed with Mr. Darling that same day. The employee responded favorably, and on March 19, 1998, Mr. Darling reported that the employee had normal active range of motion, and was now able to walk without crutches and without increased pain. On March 26, 1998, Dr. Holmes noted an "amazing change" since her last visit with him, observing she was now walking without her crutch. (Ex. A: 3/26/98.) He recommended that physical therapy be continued, and released her to return to work with restrictions of occasional lifting, pushing-pulling and carrying up to ten pounds, and walking, standing and sitting up to thirty minutes with frequent position changes.

In a report dated May 9, 1998, Dr. Holmes diagnosed chronic left hip and leg pain, symptoms of bursitis on the right side, somatic dysfunction (pain) in the cervical, thoracic and lumbosacral areas, and restriction in the sacroiliac joints and the pelvic ring. He opined the employee's August 14, 1993 work injury was a substantial contributing factor to her current condition. Dr. Holmes concluded the employee had not reached MMI based on her improvement with therapy, but expected that MMI would be reached shortly. He reiterated that he agreed with Dr. Mann's decision to take the employee off work on August 6, 1997, since her job was causing increased symptoms. Dr. Holmes suggested that when the employee plateaued in her improvement, an assessment be made to establish long-term restrictions. He further believed the employee would need continued physical therapy, on a reduced level, as she made the transition back to work.

On October 31, 1997, the employee filed a claim petition seeking temporary total disability benefits from and after August 6, 1997, payment of medical expenses, penalties, and attorney's fees. The petition was amended on April 8, 1998 to request rehabilitation assistance. The employee also filed a Medical Request on December 4, 1997, seeking approval for the four months of physical therapy prescribed by Dr. Mann and Dr. Holmes. The employer and insurer admitted a work-related injury to the left leg and hip, but denied liability for any additional benefits. The matter was heard by a compensation judge at the Office of Administrative Hearings on June 9, 1998. In a decision issued on August 20, 1998, the compensation judge concluded the employee had reached MMI effective July 8, 1994, and was not entitled to temporary total disability benefits from and after August 6, 1997. The compensation judge additionally concluded the treatment provided or ordered by Dr. Holmes was not causally related to the work injury, exceeded the treatment parameters, and was not reasonable or necessary. The employee appeals.

## STANDARD OF REVIEW

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). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings must be affirmed. Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 60, 37 W.C.D. 235, 240 (Minn. 1984). Similarly, 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." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

## DECISION

### Maximum Medical Improvement

The employee asserts the compensation judge's determination that the employee reached maximum medical improvement effective July 8, 1994 and was not entitled to temporary total disability benefits from and after August 6, 1997, is not supported by the evidence and is clearly erroneous. We are unable to ascertain the basis for the compensation judge's decision and, accordingly, vacate and remand for redetermination.

The compensation judge found "[t]he employee reached maximum medical improvement (MMI) and was properly served with an MMI report on July 8, 1994." (Conclusions of Law 1.) The July 8, 1994 report was from Dr. Mann.<sup>2</sup> The compensation judge did not however rely on Dr. Mann's opinion. Rather, she relied on the MMI opinion of Dr. Leider, stating she found "Dr. Leider's opinion more persuasive that the employee reached MMI in June 1994." (Mem. at 8.) Dr. Leider's report was not served on the employee until February 16, 1998. While an employee may medically reach MMI at an earlier date, MMI is not legally effective for the purpose of determining entitlement to temporary total disability benefits until the date on which the report containing the MMI opinion is served on the employee. Minn. Stat. § 176.101, subd. 3e(a) and (c); see e.g., Tews v. Geo. A. Hormel & Co., 430 N.W.2d 178, 41 W.C.D. 410 (Minn. 1988); Bushaw v. Geo. A. Hormel & Co., 39 W.C.D. 397 (W.C.C.A. 1987). Thus, the earliest date on which MMI could be legally effective, based solely on Dr. Leider's MMI opinion, would have been February 16, 1998, the date Dr. Leider's report was served on the employee.

Moreover, Dr. Leider's report, at best, seems to indicate that, historically, the employee reached MMI for any orthopedic diagnosis by June 1994, consistent with Dr. Mann's

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<sup>2</sup> Although Dr. Mann's report was served on the employee on July 8, 1994, he retracted this opinion on September 5, 1997, concluding the employee was improving with Dr. Holms' treatment.

June 29, 1994 work ability report. Dr. Leider found no orthopedic diagnosis to explain the employee's continued complaints and concluded that the employee's diagnosis, as of January 27, 1998, was conversion hysteria. While opining the employee would not likely benefit from further medical or chiropractic treatment, Dr. Leider's report states psychological or psychiatric treatment would be appropriate. Thus, it cannot be concluded, relying solely on Dr. Leider's report, that MMI has been reached.

MMI is a controlling legal standard. It is the responsibility of the compensation judge to determine and evaluate the employee's work-related condition or conditions taking into account the medical records, medical opinions and other relevant evidence presented. Hammer v. Mark Hagen Plumbing & Heating, 435 N.W.2d 525, 41 W.C.D. 634 (Minn. 1989). Here, the compensation judge failed to make any findings determining the employee's diagnosis or diagnoses. In her multiple "Findings of Fact" the compensation judge merely recites the diagnoses given by various providers who treated and evaluated the employee between 1993 and 1998.<sup>3</sup> The evidence is conflicting, and the findings fail to state which facts or opinions the compensation judge ultimately accepted or rejected. In the absence of such findings, it is impossible to determine whether MMI has been attained for all diagnoses or conditions causally related to the employee's August 14, 1993 admitted, work-related injury.

In addition, the compensation judge failed to address the employee's alternative MMI claim. That is, whether as a result of her August 14, 1993 work-related injury, the employee was medically unable to continue working from and after August 6, 1997 when Dr. Mann took the employee off work. (See T. 20-21, 25-26, 28, 107-09, 112.) See O'Mara v. State, Univ. of Minn., 501 N.W.2d 603, 48 W.C.D. 483 (Minn. 1993); Trojanowski v. Primnet Data Sys./Mailhouse, Inc., 56 W.C.D. 271 (W.C.C.A. 1997), *rev'd with mem.* (Minn. Mar. 18, 1997).

We, accordingly, vacate the appealed findings and fact and conclusion of law, and remand the matter to the compensation judge for redetermination, on the existing record, in accordance with this opinion.

### Medical Treatment

The employee contends that the compensation judge's determination that the claimed medical treatment was not causally related to the work injury, exceeded the treatment parameters, and was not reasonable or necessary is not supported by the evidence and is clearly erroneous. We vacate and remand for redetermination.

The employee asserts that there is no medical support for the conclusion that the

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<sup>3</sup> The employee appealed only two of the compensation judge's sixteen "Findings of Fact," but appealed three of the judge's five "Conclusions of Law." The background facts in this decision essentially follow the compensation judge's recitation of the evidence.

treatment provided by Dr. Holmes was not causally related to the August 14, 1993 injury. Even Dr. Leider concluded that “the treatment provided since approximately January 10, 1997, has been related to her apparent injury of August 1993.” (Ex. 2.) The compensation judge provides no explanation for her decision. We, therefore, vacate and remand for redetermination.

The compensation judge also concluded that the treatment provided under the direction of Dr. Holmes exceeded the treatment parameters and was not reasonable or necessary.<sup>4</sup> Pursuant to Minn. R. 5221.6050, subp. 7.D., a determination of the compensability of medical treatment under the workers’ compensation statutes “must include consideration of the following factors:”

- (1) whether a treatment parameter or other rule in parts 5221.6050 to 5221.6600 applies to the etiology or diagnosis for the condition;
- (2) if a specific or general parameter applies, whether the treatment was medically necessary as defined in part 5221.6040, subp. 10; and
- (3) whether a departure from the applicable parameter is or was necessary because of any of the factors in subpart 8.

The compensation judge failed to make any of the findings required by the treatment parameter rules, or to explain how the treatment exceeds any applicable parameters. We, accordingly, vacate and remand to the compensation judge to make a determination of the reasonableness and necessity of the treatment provided to the employee from and after January 10, 1997, in accordance with the permanent treatment parameter rules.

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<sup>4</sup> The permanent treatment parameters apply to all treatment provided after January 4, 1995, regardless of the date of injury. Jacka v. Coca Cola Bottling Co., 580 N.W.2d 27, 58 W.C.D. 395 (Minn. 1998).