ROBERT NORWICK, Employee/Appellant, v. MAPLEWOOD TOYOTA and MADA INS. EXCHANGE/BERKLEY RISK SERVS., INC., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
MARCH 18, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - TEMPORARY AGGRAVATION. Substantial evidence, including the opinion of the independent medical examiner, supports the compensation judge's determination that the employee's admitted November 11, 1996 and November 13, 1997 work injuries were temporary aggravations of his long-standing, pre-existing degenerative right knee condition, and were not a substantial contributing factor to the employee's current disability or need for knee replacement surgery.

Affirmed.

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

OPINION

THOMAS L. JOHNSON, Judge

The employee appeals from the compensation judge's determination that the employee's personal injuries of November 11, 1996 and November 13, 1997 were temporary aggravations of his pre-existing condition, and from the compensation judge's denial of his claims for temporary partial disability benefits and knee replacement surgery. We affirm.

BACKGROUND

Robert Norwick, the employee, sustained admitted personal injuries to his right knee on November 11, 1996 and November 13, 1997, while working as a car salesman for Maplewood Toyota, the employer. The employer was insured for workers' compensation purposes by MADA Insurance Exchange, administered by Berkley Risk Services, Inc.

The employee first injured his right knee in approximately 1974 while playing soccer. He sought no medical care, but had intermittent problems with his knee thereafter. On December 3, 1984, the employee sought treatment from Dr. D.E. Larson at Alexandria Orthopedic Associates stating he had reinjured his right knee ten days previously playing racquetball. Dr. Larson diagnosed a probable torn right medial meniscus and asymptomatic patellofemoral

malalignment of both knees. The doctor performed arthroscopic surgery on December 17, 1984. The arthroscopy revealed a posterior bucket handle tear of the medial meniscus. Dr. Larson removed the torn medial meniscus "leaving the anterior horn and a stable peripheral rim. [The] [a]nterior cruciate [ligament] was found to be stretched out moderately without significant instability. [A] [t]ransverse tear in the lateral meniscus along the inner rim was resected removing no more than 10% of the [lateral] meniscus." (Ex. A-1.) The employee had a good recovery and was released to resume full activity as of January 8, 1985.

The employee returned to see Dr. Larson on December 6, 1985. He said he did well until the middle of the summer when he reinjured his knee running bases playing softball. The employee reported the knee locked up and swelled and took several days to gradually unlock. In early December 1995, the right knee suddenly locked up again while getting up from a sitting position. The employee reported pain with swelling and inability to straighten the knee. A probable torn right lateral meniscus was diagnosed, and on December 20, 1985, Dr. Larson performed a second arthroscopic surgery on the right knee. This surgery revealed "a bucket handle tear involving the posterior half of the lateral meniscus. Partial lateral meniscectomy was done through the arthroscope. [The] [m]edial meniscus peripheral rim was smooth. [The] [a]nterior cruciate [ligament was] again attenuated but stretched out further. Trace Lachman's and negative pivot shift present. Have advised the patient that he will have to be careful with the knee with regards to softball and basketball but that the knee should function well for ADL [activities of daily living]." On December 31, 1985, Dr. Larson again cautioned the employee "against excessive use of the knee and the possibility of a Lenox-Hill brace was discussed should he feel that full vigorous sports are a necessity in the future." (Ex. A-1.)

The employee began working as a car salesman for the employer, Maplewood Toyota, in February 1996.[1] On November 11, 1996, the employee stepped off a curb at work and twisted his right knee. His symptoms persisted, and the employee sought treatment from Dr. Lilly Ramphal on December 4, 1996. Dr. Ramphal diagnosed a probable meniscus tear of the right knee, recommended conservative care, and restricted the employee from sports activities and any heavy lifting, pushing or pulling. An MRI scan, taken December 30, 1996, showed post-operative changes in the medial meniscus with moderate degenerative changes in the medial compartment, advanced degenerative changes in the lateral compartment, and a chronic anterior cruciate ligament tear. Dr. Ramphal referred the employee to Dr. Paul Yellin, an orthopedic surgeon. Dr. Yellin examined the employee and reviewed the MRI scan on January 7, 1997, and recommended further arthroscopic surgery. The surgery, performed on February 18, 1997, included a partial medial meniscectomy for chronic long-term fray tears and "new component," a subtotal lateral meniscectomy for chronic degenerative tearing, and removal of residual fibers of the anterior cruciate ligament. Dr. Yellin described the surgery as a "clean out of an endstage degenerative arthritic knee with perhaps a new component of meniscal tearing and some loose

[1] The employee has a master's degree in counseling and theology, and worked as a counselor for the Lutheran Church from 1977 until 1991. He began working as a car salesman in 1991. (T. 28-29.)

fragments removed which most likely have recently broken off within the knee joint." (Ex. A-5.) Dr. Yellin provided a 6 percent permanent partial disability rating for the right knee condition, apportioning one percent to the November 11, 1996 injury. (Ex. A-5.)[2] The employee was off work for approximately five weeks following the surgery, returning to part-time work with the employer on March 24, 1997. Dr. Yellin released the employee to return to work without restrictions on May 1, 1997; the employee returned to his regular work, full-time, on May 5, 1997.[3]

On November 13, 1997, the employee was sweeping snow off a car, slipped on ice and fell, reinjuring his right knee. He was seen at St. John's Hospital, given crutches and referred back to Dr. Yellin. The employee saw Dr. Yellin's associate, Dr. Svendsen on November 17, 1997. The doctor noted patellofemoral and tibial femoral crepitus but no ligamentous instability. He took the employee off work and prescribed physical therapy. The employee returned to see Dr. Yellin eight days later. He was on crutches and walked with a limp. On examination, the right knee flexed to 120 degrees but lacked 10 degrees of extension. When next seen on December 18, 1997, the employee was still on crutches and reported continuing pain in his right knee. On examination, Dr. Yellin noted swelling in the knee joint and grating with crepitence. Dr. Yellin diagnosed end stage degenerative arthritis of the right knee, status post-medial and lateral meniscectomy and anterior cruciate deficient knee, and recommended total knee replacement surgery. The doctor imposed restrictions advising the employee to avoid kneeling, squatting, crawling and climbing, work no more than 8 hours per day, alternate sitting with standing and walking, limit standing to no more than two hours per work day, and avoid prolonged walking. (Ex. 2 at 21-22.)

Dr. Yellin believed that while the 1984 and 1985 surgeries predisposed the employee to degenerative joint changes, the November 11, 1996 incident resulted in additional tearing of the medial meniscus, and the November 13, 1997 incident further aggravated the employee's chronic degenerative condition. He concluded both injuries permanently aggravated the employee's underlying right knee condition, and were substantial contributing factors to the employee's ongoing disability and need for knee replacement surgery.

Dr. Gary Wyard examined the employee on January 15, 1998, at the request of the employer and insurer. Dr. Wyard diagnosed long-standing tricompartmental arthritis secondary to multiple traumatic injuries and prior arthroscopic surgery. The doctor concluded the November 11, 1996 and November 13, 1997 injuries temporarily aggravated his pre-existing condition, and opined neither injury was a substantial contributing factor to the employee's current medical condition or need for restrictions. Dr. Wyard did not believe knee replacement surgery

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[2] See Minn. R. 5223.0510, subp. 3.B.(4). The employer and insurer paid the employee the 1% permanent partial disability assigned by Dr. Yellin, as well as temporary total disability benefits.

[3] The employer and insurer paid temporary partial disability benefits from March 24 through May 2, 1997.

was appropriate at the present time, and opined neither the November 11, 1996 nor the November 13, 1997 injury was a substantial contributing factor to the employee's current need for medical care, including any knee replacement surgery.

The employee requested approval for total knee replacement surgery in the spring of 1998. Shortly thereafter, in April 1998, the employer and insurer filed a Petition to Discontinue payment of temporary partial disability benefits contending the employee had no restrictions or loss of earning capacity resulting from his admitted personal injuries. The claims were consolidated, and were heard by a compensation judge at the Office of Administrative Hearings on June 12, 1998. (T. 7.) In her findings and order, served and filed August 18, 1998, the compensation judge concluded the employee's injuries were temporary, and permitted discontinuance of temporary partial disability benefits, finding the employee had no physical restrictions causally related to his November 1996 and November 1997 work injuries. The compensation judge also denied the employee's request for knee replacement surgery concluding that any need for surgery resulted from the employee's long-standing, pre-existing condition and was not causally related to the admitted work injuries. 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

The employee appeals from the compensation judge's determination that the employee's November 11, 1996 and November 13, 1997 admitted work injuries were temporary aggravations of his pre-existing right knee condition, and were not a substantial contributing factor to the employee's current disability or any need for knee replacement surgery. The employee asserts that the evidence does not support such a conclusion, pointing out that he had no medical treatment or any restrictions from 1986 to 1996. During this time, the employee contends, he worked full-time and maintained an active athletic and social lifestyle. The employee asserts, however, that since the 1996 and 1997 injuries he experiences constant and debilitating knee pain, is no longer able to participate in sports activities, and has limitations on kneeling, squatting, crawling, standing and walking. These facts, the employee argues, mandate a conclusion that the 1996 and 1997 injuries caused permanent injury to his right knee. We are not persuaded.

There is little disagreement regarding most of the facts in this case. Rather, determination of whether the employee's 1996 and 1997 work injuries were temporary or permanent aggravations of his chronic knee condition rests primarily on the conflicting medical opinions of Dr. Yellin and Dr. Wyard. The compensation judge found Dr. Wyard's opinion more persuasive. (See Mem. at 6.)

The employee clearly had significant right knee degeneration prior to the 1996 and 1997 work injuries. On December 17, 1984, Dr. Larson performed arthroscopic surgery, removing more than half of the medical meniscus and no more than ten percent of the lateral meniscus. The anterior cruciate ligament was stretched, but still intact. A second arthroscopic surgery was performed on December 20, 1985 involving the posterior half of the lateral meniscus. Dr. Larson noted the anterior cruciate ligament was "virtually non-functioning." The employee was advised to use caution when playing softball, basketball and other vigorous sports and to avoid excessive use of the knee.

The employee, nonetheless, testified he resumed a physically active lifestyle after the 1985 surgery. He jogged three to five times a week, played organized softball and volleyball, and enjoyed dancing and golf. He acknowledged he experienced knee pain if he overdid it, such as by running seven or eight miles. (Finding 5.)

After the November 11, 1996 and November 13, 1997 injuries, the employee experienced progressively worsening right knee pain. Dr. Yellin concluded the 1996 injury caused additional tearing of the medial meniscus and the 1997 injury permanently aggravated the employee's degenerative knee condition. He opined, therefore, that the employee's work injuries were a substantial contributing factor to the employee's ongoing disability and need for knee replacement surgery.

Dr. Wyard, on the other hand, found nothing in the medical records, clinical findings or tests to suggest any acute trauma to the knee in 1996 or 1997, or that either injury caused any permanent physical alteration of the employee's knee. Accordingly, he concluded the employee's current disability was attributable solely to his long-standing, preexisting degenerative knee condition, and opined that the November 11, 1996 and November 13, 1997 injuries were temporary sprain/strain-type injuries that did not permanently affect the underlying degenerative condition. (Ex. E at 17-22.) Dr. Wyard found the employee's complaints of progressive pain and discomfort after 1996 wholly consistent with this conclusion, stating "sooner or later this knee was going to start to manifest itself in terms of pain and discomfort . . . . It would be unusual to have a knee with this definitive of findings on it that wasn't a problem to some degree and extent." (Ex. E at 26.)

Dr. Yellin agreed that the December 30, 1996 MRI scan and the February 18, 1997 surgery revealed long-standing degenerative changes in the right knee, not attributable to the 1996 or 1997 injury. (See Ex. 2 at 25.) He acknowledged that he could not differentiate "for sure" old versus new tears of the medical meniscus, and described the February 18, 1997 surgery as a "clean out of an endstage degenerative arthritic knee." Dr. Yellin further conceded that there was

a high probability after 1985 that the employee eventually would need a total knee replacement, and agreed that participation in activities such as jogging, softball and volleyball increased the probability that a total knee replacement would be needed. (Ex. A-5; Ex. 2 at 19-20, 27-28.)

It is the compensation judge's responsibility, as the trier of fact, to resolve conflicts in expert testimony. Thus, the compensation judge's choice between conflicting medical experts will not be reversed on appeal, so long as there is adequate foundation for the opinion relied upon. See Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985). The compensation judge did not find the "evidence as to a new acute injury . . . compelling," and accepted Dr. Wyard's opinion.

The employee argues, however, that Dr. Wyard's opinions were based on several erroneous assumptions and, accordingly, lack foundation. Specifically, the employee argues that Dr. Wyard premised his causation opinion on an incorrect belief that the employee had ongoing knee problems between 1985 and 1996. We disagree. In his deposition, Dr. Wyard was asked to assume the employee would testify he had no treatment to his right knee from 1985 through November 1996 and "was relatively asymptomatic, that he was relatively unrestricted in his physical activities despite his prior history and problems and surgeries." Accepting this statement as true, Dr. Wyard opined the 1996 injury " was significant only in the effect that it was a temporary aggravation of that pre-existing condition." (Ex. E at 15-16.) The hypothetical facts given to Dr. Wyard accurately restate the employee's testimony at the hearing regarding his knee condition prior to November 1996. The employee also argues Dr. Wyard erroneously assumed no new objective findings of injury were found during the February 18, 1997 surgery. As noted previously, even Dr. Yellin acknowledged that he could not be sure whether tears found during the 1997 surgery were old or more recent. Accordingly, Dr. Wyard had adequate foundation for his opinion.

There is substantial support, including the testimony and reports of Dr. Wyard, accepted by the compensation judge, for the judge's determination that the employee did not sustain permanent injury to his right knee as a result of the November 11, 1996 and November 13, 1996 work injuries. We, therefore, affirm.

The employee acknowledges this court's resolution of whether the employee's 1996 and 1997 work injuries were temporary or permanent is determinative of whether a causal relationship exists between the employee's 1998 work restrictions and his 1996 and 1997 work injuries, and between the proposed knee replacement surgery and his work injuries. Having affirmed the compensation judge's finding that the November 11, 1996 and November 13, 1997 incidents resulted in no permanent injury to the employee's right knee, we must similarly affirm the compensation judge's denial of wage loss benefits and denial of approval for knee replacement surgery based on failure to prove a causal relationship.