

LORIL PAWLOWICZ, Employee, v. FITGERS ON THE LAKE and STATE FUND MUT. INS. CO., Employer-Insurer/Appellants.

WORKERS' COMPENSATION COURT OF APPEALS  
JANUARY 26, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - MEDICAL TREATMENT. Substantial evidence supports the compensation judge's finding that the employee's 1995 work injury was a substantial contributing cause of the employee's need for medical treatment in 1997.

Affirmed.

Determined by Hefte, J., Wilson, J., and Wheeler, C.J.  
Compensation Judge: Gregory A. Bonovetz

OPINION

RICHARD C. HEFTE, Judge

The employer and insurer appeal the compensation judge's finding that the employee's need for medical treatment in 1997 was causally related to her November 14, 1995, work injury. We affirm.

BACKGROUND

On November 14, 1995, Lori Pawlowicz (employee) sustained an admitted low back injury while working as a housekeeper for Fitgers on the Lake (employer), a hotel, which was insured for workers' compensation liability by State Fund Mutual Insurance Company (insurer). Before starting to work for the employer in March 1995, the employee had occasional incidents involving back pain. In 1991, the employee deflected a falling box and experienced low back pain including tightness and muscle spasm. She was treated with a muscle relaxant and the pain resolved within two weeks. In 1993, the employee experienced sharp back pain after getting up too fast from a couch and was treated in an emergency room with medication. No follow-up treatment was required and the pain resolved in about three days. In January 1994, the employee reported low back pain and was diagnosed with Guillain-Barre syndrome. The employee testified that she experienced no low back pain between January 1994 and November 14, 1995.

Before the November 14, 1995, work injury, the employee was able to perform all of her work activities without any problems with her low back. These activities included vacuuming, moving furniture, bending, washing floors, dusting, restocking the rooms, and

washing windows. The work injury occurred when a large mattress started to fall as she was turning it, and as she pushed it back and felt a pop in her back and severe back pain going down into her legs. After the injury, the employee was off work for about two weeks and treated with Dr. Lempi, a chiropractor, through January 1996. The employee was released to light duty, which she attempted but at the end of the work day her back would feel worse. The employee voluntarily left her job with the employer in January 1996. The employee's back pain improved, but was ongoing. The employee returned for treatment with Dr. Lempi once on October 15, 1996, reporting ongoing low back pain.

On February 18, 1997, the employee injured her back while lifting a gate at home on her hobby farm. The employee testified that the pain was similar to what she experienced after the 1995 work injury, but less severe. The employee was treated with physical therapy, which reduced the pain to the level it had been before the gate incident after about two weeks of treatment. The employer and insurer denied payment for the employee's medical treatment after the February 1997 injury. In March 1998, the employee underwent an independent medical examination with Dr. Drog, who opined that the employee's November 1995 work injury had been a temporary aggravation of a pre-existing condition. A hearing was held on April 17, 1998. The compensation judge found that the employee had sustained a permanent injury to her low back on November 14, 1995, which was a substantial contributing cause of the employee's need for medical treatment after the 1997 injury. 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 (1998). 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). 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 first argue that the compensation judge erred by not adopting Dr. Drog's opinion that the employee's November 1995 work injury was a temporary aggravation of pre-existing degenerative disc disease as this opinion was unopposed by other medical evidence in the record. While a medical opinion as to causation is desirable in making a

case to a compensation judge, it is not always essential where there is other reliable evidence on the issue. See Reimer v. Minnit Tool/M.I.T. Tool Corp., 520 N.W.2d 397, 51 W.C.D. 153 (Minn. 1994); see also Bender v. Dongo Tool Co., 509 N.W.2d 366, 367, 49 W.C.D. 511, 513 (Minn. 1993) (in the commoner afflictions, a finding of fact on causation will not be disturbed on appeal even without medical testimony). Further, although under Flansburg v. Giza, 284 Minn. 199, 201-02, 169 N.W.2d 744, 746, 25 W.C.D. 3, 6 (1969), unopposed expert medical testimony cannot be disregarded, such testimony is not necessarily conclusive upon a trier of fact. Tuomela v. Reserve Mining Co., 299 Minn. 203, 204, 216 N.W.2d 638, 639, 27 W.C.D. 312, 313 (1974). The compensation judge did not err by failing to adopt Dr. Drog't's opinion.

The employer and insurer argue that substantial evidence does not support the compensation judge's finding that the employee's 1995 work injury was a substantial contributing cause of the employee's need for medical treatment in 1997. "Where a work injury creates a permanently weakened physical condition which an employee's subsequent normal physical activities may aggravate to the extent of requiring additional medical care, such additional care is compensable." Nelson v. American Lutheran Church, 420 N.W.2d 588, 590, 40 W.C.D. 849, 851 (Minn. 1988). Questions of medical causation fall within the province of the compensation judge. Felton v. Anton Chevrolet, 513 N.W.2d 457, 50 W.C.D. 181 (Minn. 1994).

The employee's prior incidents of low back pain were described by the compensation judge in an unappealed finding:

Although prior to beginning work with the employer herein in March of 1995 the employee on two or three occasions had experienced incidents of low back pain, including once in 1991 while deflecting a falling box of supplies while in the military, once in June of 1993 when jumping off the couch too quickly she experienced a sharp pain in her low back and once in January of 1994 when she experienced some back pain along with numbness in her arms, legs and face as a side effect of Guillain-Barre Syndrome, any back symptomatology which she experienced was isolated, of very short duration and of no ongoing impact.

(Finding 5.) The compensation judge also found that "[a]t no time prior to her start of work with the employer herein in March of 1995 did the employee have any ongoing low back pain or symptomatology." This finding was also unappealed. Before the November 14, 1995, work injury, the employee was able to perform all of her work activities without any problems with her low back, including vacuuming, moving furniture, bending, washing floors, dusting, restocking the rooms, and washing windows. The employee returned to work about two weeks after the November 1995 injury, but had ongoing symptoms and voluntarily left her employment. The employee testified that she had ongoing symptoms with her back. This evidence supports the compensation judge's finding that the employee had sustained a permanently weakened condition since the employee had experienced low back symptoms on a daily basis after the November 1995 injury. The compensation judge also found that the employee's injury in February 1997 was at

most a temporary exacerbation of the low back condition which had been continuing since the work injury of November 1995. This finding was also not appealed. The employer and insurer did appeal the compensation judge's finding that the employee's February 1997 injury was not an intervening injury since the physical effort involved was minimal and part of the employee's normal activities. However, the employer and insurer did not address this issue in their brief. Issues raised in the notice of appeal but not addressed in the appellate brief are deemed waived. Minn. R. 9800.0900, subp. 1. Substantial evidence supports the compensation judge's finding that the employee's 1995 work injury was a substantial contributing cause of the employee's need for treatment in 1997. Accordingly, we affirm.