

MAXINE C. PIERSON, Employee/Appellant, v. MARATECH CORP. and COM. UNION INS. CO., Employer-Insurer, and MN DEP'T OF ECON. SEC. and BLUE CROSS/BLUE SHIELD OF MINN., Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS  
JANUARY 6, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - GILLETTE INJURY. Substantial evidence, including primarily medical expert opinion, supports the compensation judge's determinations that the employee did not sustain a work-related Gillette-type injury culminating on March 28, 1997.

Affirmed.

Determined by Hefte, J., Wheeler, C.J., and Wilson, J.  
Compensation Judge: Catherine A. Dallner

OPINION

RICHARD C. HEFTE, Judge

Maxine C. Pierson, the employee, appeals from the compensation judge's findings and order that the employee, while working for MaraTech, the employer, did not sustain a work-related Gillette<sup>1</sup>-type personal injury to her left upper extremity and therefore the employee was not entitled to temporary total disability, medical and rehabilitation benefits. The employee also appeals from the finding that the employee did not conduct a diligent job search and from the compensation judge's finding of the employee's average weekly wage. We affirm the finding that the employee did not sustain a work-related injury and was not entitled to any workers' compensation benefits in this matter.<sup>2</sup>

BACKGROUND

Maxine Pierson, the employee, alleged that she sustained a Gillette-type work injury which culminated on March 28, 1997, in the nature of a left hand and arm injury. The

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<sup>1</sup> Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 21 W.C.D. 105 (1960).

<sup>2</sup> With this affirmance that the employee did not prove primary liability in this matter, we do not consider the remaining issues argued by the employee, which are related to the entitlement of workers' compensation benefits.

employee, a college graduate, was 58 years of age at the time of the hearing herein. Her previous work history generally included employment as a senior collection investigator for the county attorney's office in Hennepin County; work with a law office as a manager supervising secretarial and paralegals; and work as an employee for a state of Minnesota collection unit. From March of 1996 through March of 1997, the employee worked for the employer in this matter as the sole employee and manager of its Minneapolis office.

The employee testified that in December of 1996 she started to notice symptoms of tingling, numbness and pain in her left hand. She also stated that toward the "end of 1996" she began to work out in a gymnasium. By March 1997 she was working out in the gym two, sometimes three times a week, using hand weights, free weights, dumbbells, the Cybex machine and participating in aerobics. Following her initial symptoms in December of 1996, the employee consulted Dr. Gary Good in March 1997 and gave a medical history that she had hurt her hand and wrist in the gym a week earlier. Dr. Good diagnosed deQuervian's disease. Later, the employee also saw Dr. Randall Norgard and Dr. Douglas Becker. Drs. Good, Norgard and Becker all indicated that the employee's work activities for the employer were causally related to her left arm symptoms. Dr. William Call conducted an independent medical examination of the employee and gave his opinion that the employee's left side deQuervian's syndrome was not work related.

After a hearing in this matter, Compensation Judge Dallner found that the employee did not sustain a Gillette-type personal injury to her left upper extremity arising out of and in the course of her employment with her employer. Therefore the compensation judge denied the employee's claims for temporary total disability benefits, medical expenses, a rehabilitation consultation and denied the claims of the intervenors, Blue Cross/Blue Shield and the Minnesota Department of Economic Security. The employee appeals.

## 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 (1996). 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 employee claims that substantial evidence does not support the finding of the compensation judge that the employee did not sustain a Gillette-type injury as a result of her work activities at MaraTech, the employer. To establish a Gillette injury an employee must “prove a causal connection between [her] ordinary work and ensuing disability.” Steffen v. Target Stores, 517 N.W.2d 579, 581, 50 W.C.D. 464, 467 (Minn. 1994). Evidence of specific work activities causing specific symptoms leading to disability “may be helpful as a practical matter,” however, determination of a Gillette injury “primarily depends on medical evidence.” Id.

The compensation judge apparently questioned the credibility of the employee’s overall testimony, stating in her memo that “[t]here are also a number of discrepancies in the employee’s testimony and the history she gave to her treating and examining physicians regarding the onset of her left hand and wrist problems.” On March 11, 1997, the employee initially reported to her treating physician, Dr. Good, that she thought she injured her left wrist and hand at the gym while working out about one week prior to her initial doctor’s appointment. Sometime later she apparently told Dr. Norgard and Dr. Becker that her problem was related to her work where she was typing on her computer 75 to 85 percent of her time. She also told her personal therapist that she typed less than one-half of the time at work. She also testified that she did not, at any time, inform Dr. Norgard or Dr. Becker of her weight lifting and other activities at the gym, and it is evident that Drs. Norgard and Becker were unaware of the employee’s gym activities when they gave their causation opinions.

The compensation judge considered all the evidence, and denied primary liability of the claimed Gillette injury and workers’ compensation benefits primarily based on the medical evidence in the case. The compensation judge accepted Dr. Call’s opinions stating that she “found the opinions of Dr. Call more persuasive than the opinions of the employee’s treating physicians.” (Memo. p. 4.) The compensation judge wrote in her memorandum concerning her finding on primary liability:

Dr. Call obtained a history directly from the employee, conducted a thorough examination of the employee, and reviewed the records of the employee’s treating physicians, including Dr. Good, Dr. Norgard, and Dr. Becker as well as the reports of the employee’s EMGs of the left and right upper extremities. Dr. Call opines that the employee demonstrates a history and physical examination consistent with deQuervian’s disease on the left side which Dr. Call explains is extensor tendinitis of the first dorsal compartment of the wrist. Dr. Call found no objective evidence, either in his own examination findings or in the EMGs of carpal tunnel syndrome. Dr. Call opines that the employee’s deQuervian’s disease is not work related.

A review of Dr. Calls’ records reveal that he was given a description of the employee’s job activities as provided by the employee personally as well as in her medical records. The doctor also stated there were indications in the medical records that the employee was regularly working

out at a gym including lifting weights at the time of her alleged injury. Also, the employee apparently continued to work out for several months after she left her employment, and during this time she experienced the same symptoms in her right hand and wrist. The compensation judge's choice between conflicting expert medical opinions is generally upheld unless the factual basis for the expert's opinion is not supported by the record, see Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985), and we find no grounds to overturn the judge's reliance on Dr. Call's opinion in this regard.

Substantial evidence supports the finding and order of the compensation judge that the employee did not sustain a work-related Gillette-type personal injury culminating on March 28, 1997, to her left upper extremity and that the employee is not entitled to her various claims of workers' compensation benefits therefrom. Accordingly, we affirm.