CHARLYNN M. PINCOMBE, Employee, v. MIKETIN BOARDING HOME, Employer, and MINN. WORKERS' COMP. ASSIGNED RISK PLAN/BERKLEY ADM'RS, Insurer/Appellant, and MILLER DWAN MEDICAL CTR., INC., MEDICA/HEALTHCARE RECOVERIES, and MN DEP'T OF HUMAN SERVS., Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
SEPTEMBER 23, 1999

No. [REDACTED SSN]

HEADNOTES

INSURANCE - COVERAGE; EXCLUSIONS FROM COVERAGE; EVIDENCE - ESTOPPEL & LACHES. Where it was reasonable for the compensation judge to conclude that the insurance application provided by the insurer to the employer was misleading as to the categories of workers for whom an election of coverage must be made, where it was also reasonable for the compensation judge to infer that the employer had relied on the misleading application, and where substantial evidence supported the conclusion that the employer had paid insurance premiums based in part on wages paid to the otherwise excluded worker, the compensation judge did not err in concluding that the insurer was equitably estopped from denying insurance coverage.

Affirmed.

Determined by Wilson, J., Johnson, J., and Rykken, J.
Compensation Judge: Gregory A. Bonovetz.

OPINION

DEBRA A. WILSON, Judge

The Minnesota Workers' Compensation Assigned Risk Plan/Berkley Administrators appeals from the compensation judge's decision that it is equitably estopped from denying insurance coverage for the injured worker in this matter. We affirm.

BACKGROUND

Robert and Karin Galovich were married in 1989 and subsequently entered into a lease agreement with Bronhilda Miketin, effective January 1, 1990, to operate a licensed boarding facility for the mentally ill known as Miketin Boarding Home [Miketin]. Shortly thereafter, on January 8, 1990, Robert Galovich executed an application for workers' compensation insurance from the Minnesota Workers' Compensation Assigned Risk Plan [the Assigned Risk Plan]. The application indicated that Robert and Karin were leasing the business from the owner, under the legal status of a partnership, and that the estimated number of employees was four. Section VI of the application, entitled "Elections Available Under the Law," provided information about

statutory exclusions from workers' compensation coverage, and it was indicated under that section that Robert and Karin were not electing coverage under the policy. The Doyle Agency, Inc., was designated as agent of record for the insurance, and Maureen Olson, of the Doyle Agency, also executed the application. The policy specified that the insurance agent was not acting as the agent for the company and had no authority to bind coverage.

Charlynn Pincombe began working for Miketin in approximately February of 1990.[1] Charlynn was the daughter of Karin Galovich and consequently the stepdaughter of Robert Galovich. The Galoviches did not affirmatively elect workers' compensation insurance coverage for Charlynn when she started work nor did they specifically inform the Assigned Risk Plan of her employment at Miketin. However, Robert Galovich testified that Charlynn's wage was included in the wage estimate provided to the Assigned Risk Plan for purposes of calculating the insurance premium, that personnel at the Dolan Agency knew of Charlynn's employment and of her relationship to the Galoviches, and that Robert assumed that Charlynn was covered by insurance because no one ever told him otherwise.

The Galoviches renewed the insurance policy on a yearly basis without having to complete another application. The record indicates that the Galoviches failed to respond to requests from the insurer for updated payroll information after 1991 and that the insurer therefore calculated the premium using the previous year's estimated payroll, multiplied by an inflation factor. Robert Galovich testified that he simply sent insurance documents on to either his accountant or to the Dolan Agency, who, he presumed, took care of them. At one point, in about 1993, a question arose as to whether Karin Galovich's wage had been erroneously included as part of the wages for which insurance premiums had been charged; that issue was resolved, and the Galoviches received a refund from the insurer. No further updated payroll information was apparently provided to the insurer after 1993, but the insurer never performed a physical audit to secure the information.

Sometime in 1997, Robert and Karin Galovich separated, and Robert alone signed a new lease agreement for the business on July 1, 1997. However, the Galoviches' divorce was not finalized until February of 1998. In the interim, on August 25 and December 5, 1997, Charlynn Pincombe allegedly sustained work-related injuries while employed by Miketin. The Assigned Risk Plan initially accepted liability for the August 1997 injury and paid certain treatment expenses.[2] In answer to a claim petition filed on January 30, 1998, the Assigned Risk Plan again admitted liability for the August 1997 injury but denied primary liability for the alleged

[1] There are no personnel or employment records in evidence. However, Robert Galovich testified that he thought Charlynn "started about a month after [he and Karin] took over [the business]." On further questioning, Robert agreed that she began "roughly February 1990." It is undisputed that Charlynn had not been hired as of the date Robert Galovich executed the application for workers' compensation insurance coverage.

[2] Charlynn lost no time from work after the August 1997 injury.

December 1997 injury. Subsequently, the Assigned Risk Plan denied liability for both injuries, contending that Ms. Pincombe was "specifically excluded from coverage under the Minnesota Workers' Compensation Act because of her status as the child and/or stepchild of the owners of the sole proprietorship."

Hearing on the coverage issue was held on March 15, 1999. In a decision issued on April 6, 1999, the compensation judge concluded that the Assigned Risk Plan was equitably estopped from denying coverage. The Assigned Risk Plan 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 (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). 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

As a general rule, the Minnesota Workers' Compensation Act does not apply to the children or stepchildren of business partners or sole proprietors, unless a written election of coverage is made. Minn. Stat. § 176.041, subd. 1(d) and 1(e); Minn. Stat. § 176.041, subd. 1a; Minn. Stat. § 176.011, subd. 2. In the present case, it is undisputed that the Galoviches' business was either a sole proprietorship or a partnership[3] and that no written election of coverage was ever made to ensure workers' compensation insurance coverage for Charlynn Pincombe, the daughter of Karin and the stepdaughter of Robert Galovich. Ms. Pincombe argued, however, and the compensation judge agreed, that, under the facts of this case, the Assigned Risk Plan was equitably estopped from denying coverage.

[3] The application for insurance indicated that the business was a partnership, and Robert Galovich testified that he and Karin made decisions as to the business jointly, at least until their separation. However, Karin and Robert never formalized their business relationship with any partnership agreement or other documentation.

The doctrine of equitable estoppel may be invoked "to prevent a party from taking unconscionable advantage of [its] own wrong by asserting [its] strict legal rights." Northern Petrochmical Co. v. U.S. Fire Ins. Co., 277 N.W.2d 408, 410 (Minn. 1979). "Its application may be appropriate where the party against which estoppel is sought made inducements, whether express or by silence, which were relied upon to the harm of the party seeking the estoppel." Sandnas v. Iron Range Lumber, Inc., 52 W.C.D. 392, 398 (W.C.C.A. 1994). In applying the doctrine in the present matter, the compensation judge first concluded that the language regarding election of coverage in the insurance application, which was prepared and/or provided by the insurer, was misleading, explaining in his memorandum as follows:

> In this case the Minnesota Workers' Compensation Assigned Risk Plan, in its application form misled and misinformed the employee when it indicated the Minnesota Workers' Compensation Law excludes from coverage sole proprietors, partners and certain executive officers of family farms or closely held corporations. Although in fact the law does exclude those individuals, the statutes also specifically exclude the spouses, parents and children of those mentioned individuals. The Minnesota Workers' Compensation Assigned Risk Plan misled and misinformed the employer by failing to include **all** of the excluded categories. In the present case this employer could very reasonably rely upon the representations of the Minnesota Workers' Compensation Assigned Risk Plan when it indicated in its application the excluded categories were sole proprietors, partners and certain executive officers of family farms and closely held corporations. The insurer's failure to include **all** of the excluded categories in its application misled the employer to assume stepdaughter/daughter was not excluded[,] i.e. the insurer did not include in the excluded categories "children" or "stepchildren."

After reviewing the insurance application and the language at issue,[4] we cannot conclude that the compensation judge's determination on this point is unreasonable or clearly erroneous.

[4] The specific language in the application referenced by the compensation judge reads as follows:

> Minnesota Workers' Compensation law (MS 176) excludes from coverage sole proprietors, partners or certain executive officers of family farm or closely held corporations. An election may be made to provide coverage for those excluded or their spouses, parents, children (regardless of age) or independent contractors by completing the information below:

We also conclude that the evidence minimally but adequately supports the compensation judge's conclusion as to detrimental reliance by the employer. It is true that Robert Galovich never specifically testified that he relied on the insurance application as the basis for his belief that Charlynn Pincombe was covered under the policy or that he failed to make a written election because of the language in the application. Robert Galovich did testify, however, that he read the application before he signed it, that the only information that he was ever given regarding the need to elect coverage was contained in the application, that he assumed that Ms. Pincombe and all of his workers were covered, that he intended that all of his workers be covered, and that he would have formally elected coverage for Ms. Pincombe had he known that such election was required. From this testimony a reasonable fact finder could infer that Robert Galovich's failure to elect coverage for Ms. Pincombe was at least partially attributable to misleading language in the insurance application. Contrary to the arguments of the Assigned Risk Plan, the present matter is not in fact substantially identical to Sandnas, cited above, in that the insurance documents at issue in Sandnas accurately delineated those workers for whom election of coverage is required by statute, and the employer in Sandnas testified that he had not even read the application.

Robert Galovich, an apparently unsophisticated employer, at least as to insurance matters, intended to have insurance coverage for all of his employees, including his stepdaughter. As explained by the compensation judge, "when the insurance carrier advises [an] employer that the excluded categories [of workers] are sole proprietors, partners and certain executive officers the employer can rightfully conclude that the insurer has accurately advised him." We acknowledge that the Assigned Risk Plan was never specifically informed of Robert's intentions as to coverage and that it apparently had no knowledge, prior to the injuries underlying the dispute here, of Charlynn Pincombe's familial relationship to Robert and Karin Galovich. However, estoppel may be appropriate even where there is no affirmative intent to deceive. See Lofgren v. Pieper Farms, 540 N.W.2d 834, 53 W.C.D. 464 (Minn. 1995). Moreover, Robert Galovich testified that the payroll upon which the insurance premiums were based included Charlynn Pincombe's wages, and the insurer offered no evidence to the contrary.

Whether equitable estoppel should apply is generally a question for the fact finder, see, e.g., O'Donnell v. Continental Casualty Co., 263 Minn. 326, 331, 116 N.W.2d 680, 684 (1962), and, given the particular circumstances of this case, we cannot conclude that the compensation judge's determination is clearly erroneous and unsupported by substantial evidence in the record as a whole. We therefore affirm the judge's decision that the Assigned Risk Plan is equitably estopped from denying insurance coverage for Charlynn Pincombe's alleged work-related injuries.