

VERLIN PRIEBE, Employee/Appellant, v. RON SAXON FORD and FIREMAN'S FUND INS. CO., Employer-Insurer/Cross-Appellants, and RON SAXON FORD and W. NAT'L MUT. INS. CO., Employer-Insurer, and MEDICA/HEALTHCARE RECOVERIES, INC., and ST. PAUL AUTO DEALERS HEALTH & WELFARE FUND, Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS  
JULY 29, 1999

No. [REDACTED SSN]

HEADNOTES

PERMANENT TOTAL DISABILITY; CAUSATION - SUBSTANTIAL EVIDENCE. Substantial evidence supports the compensation judge's finding that the employee's low back condition was not a substantial contributing cause of his permanent total disability.

CAUSATION - TEMPORARY AGGRAVATION; CAUSATION - HEART CONDITION. Substantial evidence supports the compensation judge's finding that the employee's work activities did not cause, or substantially contribute to, a temporary aggravation of the employee's heart condition.

Affirmed.

Determined by Wilson, J., Wheeler, C.J., and Johnson, J.  
Compensation Judge: Jeanne E. Knight

OPINION

DEBRA A. WILSON, Judge

The employee appeals from the compensation judge's decision that the employee's 1978 admitted low back injury was not a substantial contributing cause of the employee's permanent total disability and that the employee's underlying heart condition was not aggravated by his work activities. We affirm.<sup>1</sup>

BACKGROUND

On September 1, 1978, the employee sustained an admitted low back injury while

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<sup>1</sup> The employer and Fireman's Fund Insurance Company cross-appealed from the compensation judge's decision that the employee is permanently and totally disabled. Because we affirm the judge's denial of permanent total disability benefits on causation grounds, we need not address the cross-appeal.

working as a mechanic for Ron Saxon Ford [the employer]. At that time, the employer was insured for worker's compensation liability by Fireman's Fund Insurance Company [Fireman's Fund]. The employee initially missed three days from work after the injury. Thereafter, he continued to have problems with his back and treated with a chiropractor before referral to an orthopedist. The employee was hospitalized for ten days in May 1979 and then returned to work for ten days before being taken off work again. On August 14, 1979, the employee returned to light-duty work, but he was off work again from December 6, 1979, through June 1980, when he returned to his job with restrictions of no lifting, pushing, or pulling over 25 pounds. The employee also limited his activities at home.

The employee went without additional treatment until October 1988, when he was off work for two weeks and received chiropractic care. The employee was also off work from June 24 through July 11, 1991; from November 11 through November 18, 1991; from August 3 through August 24, 1992; and from May 25 through July 12, 1993, due to his back condition.

In August 1993, the employee began developing difficulty breathing, and in October 1993, he began treating with Dr. Frank Kirschbaum, who diagnosed severe cardiomyopathy probably caused by viral infection. On November 4, 1993, the employee felt lightheaded while cleaning injectors on a car at work. The car was running, and exhaust was being vented into the work area. The employee went to a window for a few minutes, until he felt better, and then finished the work. Shortly thereafter, when he took the car on a test drive, he noticed that his heart was beating very fast, he felt a tight band sensation around his head, and he had nausea. He returned to the shop, and paramedics were called. He was then hospitalized until November 9, 1993, and returned to work on November 25, 1993. At that time, the employer was insured for workers' compensation liability by Western National Insurance Company [Western].

After returning to his job, the employee experienced headaches that would go away when he left the job site. An occupational safety and health investigation conducted at the employer's premises on December 13, 1993, revealed inadequate ventilation in the service garage where the employee had worked, and the employer was fined \$170.00. On December 14, 1993, the employee wore an air monitor at work, which indicated that he was exposed to carbon monoxide exceeding the recommended levels.

On January 12, 1994, the employee left work with chest palpitations. About two weeks later, on January 25, 1994, the employee saw Dr. Priscilla Hedberg, a cardiologist at the St. Paul Heart Clinic, who took the employee off work. Dr. Hedberg observed that the employee had a non-sustained ventricular tachycardia, and she later testified that, if the carbon monoxide levels at the employee's work place were elevated, carbon monoxide exposure would be the cause of the employee's symptoms and resulting hospitalization on November 4, 1993. Dr. Kirschbaum recommended that the employee should avoid exposure to exhaust fumes, even at acceptable levels, since carbon monoxide could trigger his arrhythmias. The employee continued to experience fluttering in his heart, pounding, rapid heartbeat, and pressure occasionally after leaving the employer.

The employee claimed that he was permanently and totally disabled as a result of his 1978 back injury and that he had experienced a work-related temporary aggravation of his pre-existing heart condition on November 3, 1993. On July 12, 1995, the employee underwent an independent medical evaluation with Dr. Ronald Vessey, who opined that the employee's tachyrrhythmia on November 4, 1993, was not caused by carbon monoxide exposure at the employer. On June 28, 1995, the employee underwent an independent medical evaluation with Dr. Paul Cederberg. Dr. Cederberg opined that the employee had multi-level degenerative disc disease of the lumbar spine, that he had a 15% permanent partial disability, and that he was not permanently totally disabled as a result of the 1978 injury to his low back.

A hearing was held on August 20 and 21, 1998. The compensation judge determined that the employee was permanently and totally disabled but that the employee's back condition was not a significant contributing factor in his permanent total disability. The compensation judge also found that the employee's work activities from October through November 4, 1993, did not substantially cause or contribute to a temporary aggravation of the employee's heart condition. 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 (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

##### Low Back Condition - Permanent Total Disability

The employee claims that the compensation judge erred by finding that his low back condition was not a substantial contributing cause of his permanent total disability. As a general rule, where an injury or condition is found to have arisen out of and in the course of employment, an employer and insurer are liable for every natural consequence that flows from the condition unless it can be shown that later disability is the result of an independent, intervening cause. Nelson v. American Lutheran Church, 420 N.W.2d 588, 590, 40 W.C.D. 849, 851 (Minn.

1988); Rohr v. Knutson Constr. Co., 305 Minn. 26, 29, 232 N.W.2d 233, 235, 28 W.C.D. 23, 26 (1975). Thus, an insurer's liability will continue despite an intervening, non-work-related condition if the work-related injury remains a substantial contributing cause of the ongoing disability. Rogers v. Cedar Van Lines, 36 W.C.D. 125, 126-27 (W.C.C.A. 1983) (interpreting Roman v. Mpls. Street Railway Co., 268 Minn. 367, 129 N.W.2d 550, 23 W.C.D. 573 (1964)). It is not necessary to show that the work injury is the sole cause of the employee's disability. Cole v. Hafner, Inc., 47 W.C.D. 314 (W.C.C.A. 1992); see also Salmon v. Wheelabrator Frye, 409 N.W.2d 495, 40 W.C.D. 117 (Minn. 1987).

In May 1997, the employee underwent a vocational assessment with vocational expert Jane Moncharsh. Ms. Moncharsh opined that the employee's low back condition was a substantial contributing factor to the employee's permanent total disability, in that the employee had light-duty restrictions as a result of that condition. In August 1995, the employee underwent a vocational evaluation with Richard Van Wagner. Mr. Van Wagner testified at the hearing that the employee's low back restrictions were not keeping the employee out of the job market. Resolution of conflicting expert testimony is a determination for the compensation judge. See, e.g., Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985). While we might have found otherwise if we were the trier of fact, causation is a fact finding for the compensation judge, and where substantial evidence supports the compensation judge's finding that the employee's low back condition was not a substantial contributing cause of his permanent total disability, we must affirm.

#### Temporary Aggravation

The employee also appeals from the compensation judge's finding that the employee's work activities from October through November 4, 1993, were not the cause of, or a substantial contributing cause of, a temporary aggravation of the employee's heart condition. 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). An employee need not prove that the employment was the sole cause, only a substantial contributing cause of the disability for which benefits are sought. Swanson v. Medtronics, Inc., 443 N.W.2d 534, 536, 42 W.C.D. 91, 94-95 (Minn. 1989).

The employee claims that his exposure to carbon monoxide temporarily aggravated his existing heart condition. Dr. Hedberg testified that, if the carbon monoxide levels at the employer were elevated, the employee's work-related exposure would have been the cause of his symptoms and resulting hospitalization on November 4, 1993. The employee cites evidence indicating that the ventilation equipment was deficient and that the carbon monoxide levels at the employer's premises were above recommended levels in December 1994. Dr. Vessey, however, opined that the employee's symptoms were classic symptoms of cardiomyopathy, the employee's underlying condition, and that:

When [the employee] was admitted to United Hospital on 11/4/93 he really did not have the usual clinical picture of a patient suffering

from carbon monoxide intoxication. There is no mention by any of his attending physicians of any pattern of neurological impairment or dysfunction indicating they thought he was suffering from carbon monoxide intoxication. In addition, they did not order a carboxyhemoglobin level until approximately 24 hours later, when it was well within normal limits. Overall, there does not appear to be any evidence that this man was suffering any neurological impairment, of the type that would normally be the first findings in a pattern of carbon monoxide intoxication, on 11/4/93 when he was admitted to United Hospital.

The compensation judge accepted the opinions of Dr. Vessey over those of Dr. Hedberg. This court must affirm the compensation judge's resolution of conflicting expert opinion unless the opinion adopted lacks adequate foundation or is based on facts not supported by the record. See, e.g., Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985). Finding no basis to overturn the judge's reliance on Dr. Vessey's opinion, we affirm.