

GERALD N. RANSOM, Employee, v. FORD MOTOR CO., SELF-INSURED,
Employer/Appellant.

WORKERS' COMPENSATION COURT OF APPEALS
APRIL 21, 1999

No. [REDACTED SSN]

HEADNOTES

PERMANENT PARTIAL DISABILITY - KNEE; PERMANENT PARTIAL DISABILITY -
COMBINED RATINGS; RULES CONSTRUED - MINN. R. 5223.0510, SUBPS. 1. and 3. The
combining of ratings for categories within Minn. R. 5223.0510, subp. 3, is neither precluded by
Minn. R. 5223.0510, subp. 1, nor otherwise improper per se, where one of the categories at issue
is not a lesser included category.

Affirmed.

Determined by Pederson, J., Johnson, J. and Hefte, J.
Compensation Judge: Harold W. Schultz, II

OPINION

WILLIAM R. PEDERSON, Judge

The self-insured employer appeals from the compensation judge's rating of the
employee's permanent partial disability. We affirm.

BACKGROUND

Gerald Ransom is a long-time employee of the Ford Motor Company, with which
he has sustained several different work-related injuries, including a left knee injury in about 1983,
a low back injury in July 1987, and a right knee injury on May 1, 1995. On the date of the latter
injury, Mr. Ransom [the employee] was about forty-nine years old and was working as an
assembler in the paint department at the Ford Company [the employer], at a weekly wage of
\$900.00. The employer admitted liability for the injury and commenced payment of medical
expenses and other workers' compensation benefits. Subsequent to the injury, the employee was
treated by orthopedic surgeon Dr. Jack Bert, whose treatment included arthroscopic surgery.
When symptoms continued, the employee sought treatment with Dr. Richard Ivance, who
performed a second arthroscopic surgery in November of 1995. In April of 1996, the employer
paid the employee compensation for a permanent impairment of 6% of the body as a whole,
pursuant to Minn. R. 5223.0510, subp. 3.B.(4), which rates permanent knee impairment associated
with removal of "more than 50 percent of both cartilages."

The employee's right lower extremity symptoms continued throughout 1996, and in January 1997 Dr. Ivance performed a tibial osteotomy in a further attempt to relieve the symptoms. On August 19, 1997, the employee filed a Claim Petition, in which he alleged entitlement to temporary total disability benefits and penalties arising out of his July 1987 low back injury and his May 1995 right knee injury. On September 9, 1997, the employee was examined for the employer by Dr. Joseph Tambornino. Dr. Tambornino's history included reference to "a 1983 work injury" that the employee "could not recall any details of" and to a left knee injury "fifteen years ago at work," which had apparently responded well to subsequent arthroscopic surgery by Dr. Bert. Dr. Tambornino opined that the employee was able to work with only moderate restrictions based on his right knee injury, and he did not address the issue of consequent permanent partial disability.

On March 9, 1998, Dr. Ivance signed a Health Care Provider Report, indicating that the employee had reached maximum medical improvement [MMI] on February 17, 1998, with regard to his May 1995 work injury, subject to a total permanent partial disability of 10% of the body as a whole - - 6% pursuant to Minn. R. 5223.0510, subp. 3.B.(4), and 4% pursuant to subpart 3.G. of that rule - - which rates permanent knee impairment associated with a tibial osteotomy. In a letter to the employee dated April 9, 1998, the employer drew the employee's attention to the provision in subpart 1 of Minn. R. 5223.0510, that "if an impairing condition is represented by a category designated as combinable under subpart 3, it must be rated under that category and under the appropriate categories describing loss of function under subpart 4." Based on that provision, the employer asserted that Dr. Ivance's combination of two separate ratings under subpart 3 of the rule was improper. On April 17, 1998, responding to a letter from the employee's attorney, Dr. Ivance rated the employee's permanent loss of function in his right knee as an impairment of 2% of the body as a whole, pursuant to Minn. R. 5223.0510, Subp. 4.A.(1)(b), based on a finding that flexion in the knee was limited to between 91 and 120 degrees. On May 6, 1998, the employee filed a second amendment of his August 1997 Claim Petition, alleging entitlement to benefits for an additional 6% whole-body impairment consequent to his May 1, 1995, work injury, based on his January 1997 tibial osteotomy and his loss of function in the knee.

The matter came on for hearing on July 8, 1998. At the beginning of the hearing, the compensation judge granted the employee's motion to withdraw without prejudice his petition for benefits related to his low back and to litigate only his claim for permanent partial disability benefits consequent to his May 1, 1995, right knee injury. The facts were essentially undisputed at hearing, and the issue was essentially whether the employee, having already been compensated for a 6% whole-body impairment under subpart 3.B.(4) of Minn. R. 5223.0510, was entitled to be compensated for an additional 4% whole-body impairment under subpart 3.G. of that same rule.¹ By findings and order filed September 8, 1998, the compensation judge concluded that the employee was entitled to compensation for a total 12% permanent whole-body impairment as claimed, together with statutory interest and reimbursement of attorney fees pursuant to Minn.

¹ The employee's entitlement to an additional 2% rating under Minn. R. 5223.0510, subp. 4.A.(1)(b), was not contested by the employer.

Stat. § 176.081, subd. 7. The judge’s award was apparently based in part on his conclusion in Finding 10, that “[t]he Rule under which [the employee] received [the previously paid] 6% whole body disability refers to the removal of ‘more than 50% of both cartilages,’ which means from both knees,”² and that “the May 1, 1995 injury involves only the right knee.”³ The judge concluded in his memorandum that there was nothing in the statute or rules that prohibited the combining of a 6% rating based on meniscectomy with a 4% rating based on tibial osteotomy and that “none of the conditions/surgical procedures are ‘exclusive’ pursuant to Minn. Rule 5223.0510, Subp. 2, which would prohibit” such a combining.⁴ Citing Minn. R. 5223.0300, subps. 3.D. and 3.E., the judge noted that “multiple categories may be used in certain circumstances, with the safeguard . . . of the formula to prevent excessive compensation.”⁵ The judge concluded that an assessment of 12% whole-body disability was not excessive in this case, given that “[t]he employee has had four surgeries and both lower extremities are involved.” The employer appeals.

STANDARD OF REVIEW

“[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers’ Compensation Court of Appeals] may consider de novo.” Krovchuk v. Koch Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

DECISION

² Minn. R. 5223.0510, subp. 3.B., rates permanent impairment related to “[m]eniscectomy, or excision of semilunar cartilage in a single knee,” instructing, “[i]f meniscectomy, or excision of semilunar cartilage is performed on both knees, rate each separately and combine the ratings for the overall impairment.”

³ In his memorandum, the judge went on to explain that, although the parties had not directly addressed the issue, it appeared that the 6% permanency already paid had been paid for removal of cartilage not only from the employee’s right knee, consequent to his May 1995 injury, but also from the employee’s left knee, consequent to a 1983 work injury. In their arguments on appeal, both parties indicate that this inference of the judge was erroneous, that the applied rule’s reference to “both” cartilages was here understood to apply to both the medial and the lateral menisci in the right knee alone.

⁴ Subpart 1 of Minn. R. 5223.0510 provides in part, “If an impairing condition is represented by a category designated as exclusive under subpart 2, it must be rated by that category only and that rating may not be combined with a rating under any other category of this part for that impairing condition.”

⁵ Minn. R. 5223.0300, subp. 3.D., provides, “If more than one category is necessary to represent all of the mutually exclusive impairing conditions resulting from an injury, categories shall be selected to avoid double compensation for any part of a condition.”

The compensation judge's award of benefits in this case was based on a conclusion that permanency ratings for two separate categories described under Minn. R. 5223.0510, subp. 3., can be combined to arrive at a total permanency rating for a disabled knee. Agreeing with the employee that the issue is apparently one of first impression, the employer argues initially that the construction at issue in this case should be guided by provisions in Minn. R. 5223.0010, subp. 2. That rule provides in part as follows:

Where a category represents the disabling condition, the disability determination shall not be based on the cumulation of lesser included categories. If more than one category may apply to a condition, the category most closely representing the condition shall be selected. Where more than one category is necessary to represent the disabling condition, categories shall be selected to avoid double compensation for any part of a condition.

These provisions are, for purposes here at issue, substantively identical to provisions in Minn. R. 5223.0300, subps. 3.B. through 3.D., the version of the these provisions that became effective July 1, 1993. The two ratings added together by the judge in this case are for categories under Minn. R. 5223.0510, subp. 3, which describes “[c]ombinable categories.” The employer argues that Minn. R. 5223.0510, subp. 1, authorizes combining ratings for categories described in subpart 3 of the rule with ratings for categories described in subpart 4 of the rule, not with other categories within subpart 3 itself. Without contending that either of the subpart 3 categories here at issue is a “lesser included” category of the other, the employer argues that the judge’s combination of two subpart 3 categories would result in the sort of “double compensation” that is to be avoided under the rules. The employer also goes on to argue that allowing the combination of ratings within subpart 3 would be unfair on a policy basis, in that “if one employee undergoes arthroscopic surgeries for removal of cartilage, and then has a tibial osteotomy, prior to having [an] arthroplasty, that employee would end up with much greater [rated] disability than an employee who simply had the arthroplasty in the first place.” While we note that the judge was apparently mistaken with regard to a fact he identified as relevant to his decision,⁶ we are not persuaded that the judge’s combination of ratings within Minn. R. 5223.0510, subp. 3, was reversible legal error as contended.

While it may not expressly provide authority for combining with each other the

⁶ It appears from Finding 10 and the judge’s memorandum that the compensation judge may have justified his addition of the 4% permanency at issue in part on a presumption that part of the employee’s previously paid 6% permanency was compensation for an earlier injury, to the employee’s left knee. Both parties have indicated that this presumption of the judge was erroneous--that, in fact, all 6% of the permanency paid to the employee for a two-cartilage meniscectomy was relatable to his right knee alone. The employer, however, has not argued on appeal that this mistaken factual presumption is in any way material to the question before us.

ratings provided for under subpart 3 of the rule, Minn. R. 5223.0510, subp. 1, does not expressly prohibit a combination of the ratings provided for under subpart 3. The guiding principle with regard to combining permanency ratings remains that described in Minn. R. 5223.0300, subps. 3.B. and 3.D. - - i.e., “the disability determination shall not be based on the cumulation of lesser included categories,” and “[i]f more than one category is necessary to represent all of the mutually exclusive impairing conditions resulting from an injury, categories shall be selected to avoid double compensation for any part of a condition.” In this case, without more definite medical evidence to conclude otherwise, it does not appear to us, nor has it been expressly alleged by the employer, that a meniscectomy is necessarily a lesser included category in a tibial osteotomy or, for that matter, that a tibial osteotomy might necessarily be a lesser included category in a meniscectomy. Without further medical evidence or expert opinion, we cannot conclude that the mere cutting of, division of, or excision of pieces of, an employee’s tibia⁷ would in all cases mandate removal of most of the cartilage from his knee, or vice versa. Absent also any definite expert opinion or other medical evidence that one of the two categories here at issue may have been a lesser included category of the other in this particular case, we affirm the award of the judge.

⁷ See Dorland’s Illustrated Medical Dictionary 944 (26th ed. 1985) (“osteotomy” is defined as “the surgical cutting of a bone”; “tibial osteotomy” is not an entry); see also Webster’s Medical Desk Dictionary 503 (1st ed. 1986) (“osteotomy” is defined as “a surgical operation in which a bone is divided or a piece of bone is excised (as to correct a deformity)”; “tibial osteotomy” is not an entry).