

DAVID ROBERTS, Employee/Appellant, v. SCHWICKERT'S, INC., SELF-INSURED/BERKLEY RISK SERVS., INC., Employer-Insurer, and ORTHOPAEDIC & FRACTURE CLINIC, Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
MAY 20, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL EVIDENCE. Substantial evidence supported the determination that the employee's work injury to his lumbar spine in 1992 and the resultant herniated disc surgeries were not a "substantial contributing cause" of the employee's temporary total disability and need for medical treatment in 1997.

Affirmed.

Determined by Hefte, J., Wilson, J., and Wheeler, C.J.
Compensation Judge: James R. Otto

OPINION

RICHARD C. HEFTE, Judge

The employee appeals the compensation judge's finding that the employee's work injury of May 22, 1992, has not been shown to be a substantial contributing cause of the employee's temporary total disability from February 1, 1997 through March 18, 1997 and the need for medical treatment from and after January 1997 through March 18, 1997. We affirm.

BACKGROUND

Prior to the date of the hearing in this matter, October 2, 1998 and at the time of his back injury in 1992, David Roberts, the employee, had been employed as a carpenter, roofer, or concrete worker in an industrial construction setting. On May 22, 1992, the employee, while working for Schwickert's, Inc., the self-insured employer (hereinafter, the employer), sustained an injury at work to his lumbar spine.

The employer accepted liability for this injury in 1992 and paid various workers' compensation benefits. These benefits included the expense of the employee's surgery in March of 1993 for herniated discs of the employee's lumbar spine at L4-5 and L5-S1. The surgery was performed by Dr. Wynn Kearney, Jr. In the latter part of 1993 Dr. Kearney released the employee to return to construction work with a 75 pound weight restriction and with instructions on proper lifting techniques. Between 1994 and 1997, the employee periodically returned to Dr. Kearney

for examinations wherein he mentioned that on occasion he had back and leg symptoms. The employee told Dr. Kearney in a November 1995 examination that he had no “real” [back] problems in the last year or two, and after an April 23, 1997 examination, Dr. Kearney reported “David has done well. He has essentially no pain. Interestingly, he is a martial arts student who tried for his black belt last night . . . This activity seems to indicate that his back is giving him very few problems at this time.” At the time of the hearing the employee stated that he continually had some back pain following his 1993 lumbar spine surgery. Following his March 1993 surgery, the employee testified he did not return to work for the employer, but did find full-time construction work with a new employer commencing in approximately June or July of 1993.

In 1997 while working for another employer, Fagan Industries, the employee stated that when he awoke on February 1, 1997 his back bothered him so much that he was unable to get out of bed. Thereafter he was off work from February 1, 1997 to March 18, 1997. When the employee was able to return to work, Fagan was in a layoff stage. Therefore, the employee found and began work for a different employer in March of 1997, doing construction work full-time until the day of his hearing, October 2, 1998. The employer, self-insured at the time of the employee’s May 22, 1992 work injury, denied liability for the employee’s back problem of February 1, 1997, and the employee filed a claim petition. The employer engaged Dr. Daniel C. Randa to perform an independent medical examination of the employee. This examination was done on September 4, 1998.

Following the hearing herein, the compensation judge found that the employee’s May 22, 1992 work injury was not a substantial contributing cause of the employee’s claim for disablement from February 1, 1997 through March 18, 1997 and medical expenses incurred after January 1997 through March 18, 1997. 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 (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

Substantial Contributing Cause Standard

The employee claims that the compensation judge's finding that the employee failed to prove his May 22, 1992 work injury was a substantial contributing cause to the employee's disablement and need for medical treatment after January 1, 1997 through March 18, 1997 is not supported by substantial evidence. We disagree and affirm.

It is argued by the employee that the compensation judge did not apply the appropriate legal standard of "substantial contributing cause," referring to the compensation judge's statement in his memorandum that the term "substantial contributing cause" has never been defined by the supreme court and that the term appears to defy definition. 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 compensation judge specifically found that, "Mr. Roberts' personal injury of May 22, 1992 has not been shown by a preponderance of the evidence to have been a substantial contributing cause of Mr. Roberts' disablement or need for medical treatment from and after January 1997 through March 18, 1997." (Finding 5.) In his memorandum the compensation judge also stated:

The evidence produced in substantiation of a fact, which, when weighed against evidence opposing the fact, has more convincing force and great probability of truth. Mr. Roberts has not sustained his burden of proof as the evidence that he has produced in substantiation of his claim falls far short of overcoming the evidence, including the persuasive testimony of Dr. Randa, that Mr. Robert's disablement and need for medical treatment in February and March of 1997 is not causally related to his personal injury of May 22, 1992.

The compensation judge weighed the evidence, accepted Dr. Randa's opinions and reasonably made his findings based on substantial evidence. Dr. Randa testified:

[I]t is my opinion that Mr. Roberts recovered completely from his lumbar laminectomies and was perfectly asymptomatic for any substantial amount of discomfort up to the time he sustained a new and distinct injury in January 1997, consisting of a lumbar strain In my opinion the injury of May of 1992 is unrelated to the subsequent lumbar strain of January 1997.

(Dr. Randa depo., pp. 13, 32.) The overall record reveals that the compensation judge did not err in applying the term "a substantial contributing cause" in this case.

Medical Foundation and Employee's Objections

The employee also argues that Dr. Randa's opinions were not supported by an adequate factual basis and foundation. The employee takes issue with Dr. Randa's statement that the employee had no medical care of his back subsequent to March of 1994 until February of 1997. (Dr. Randa depo., p. 13.) Dr. Randa reported in his deposition that the employee did not have much in the way of medical care subsequent to March 1994 until February of 1997. There is little or no evidence in the medical records after 1994 and until 1997 which indicate that the employee had any significant treatment for his low back. Dr. Randa felt that based on his history, the employee did not need any substantial medical care from 1994 to 1997 for his back. Two of the apparent five medical visits of the employee during the period after March of 1994 through 1997 were for check-ups of the employee's medical condition only. One check-up was requested by the employee himself, and the second check-up was requested by the employer. Substantial evidence supports Dr. Randa's factual conclusion that the employee basically did not receive or require any significant medical care or treatment of consequence to the employee's back during the period in question.

The employee also disputes that there was adequate foundation for Dr. Randa's opinion because the doctor based his opinion on the fact that the employee had made an excellent recovery from his 1993 surgery and because the doctor did not understand the employee's work history prior to February 1997. However, the medical reports reasonably substantiate the fact that the employee had an excellent result from his surgery. Following his surgery, Dr. Kearney reported that the result of the surgery appeared to be "excellent." The employee later agreed with Dr. Randa that he had an "excellent result from his surgery;" and in March of 1994 the employee indicated to Dr. Kearney that he was on a regular weight lifting program, sometimes lifting dead weights of up to 100 pounds. Dr. Kearney also stated on March 28, 1994 that the employee was released "to unrestricted work related activities in his present employment and present job duties." (Ex. 4.) Also an overall review of Dr. Randa's reports and deposition revealed that he adequately understood the employee's job duties which had been described to Dr. Randa by the employee.

Objections were made by the employee during the course of Dr. Randa's deposition. The compensation judge stated at the hearing that "I'll note the objections and consider them." The employee now claims that there is no indication in the findings and order that the compensation judge considered the objections in Dr. Randa's deposition. It is evident that the compensation judge reviewed Dr. Randa's report and his deposition. Most of the employee's objections were to the effect that Dr. Randa's opinions lacked factual foundation. The compensation judge adopted Dr. Randa's opinion on causation, which we have concluded had adequate foundation. "The compensation judge is not required to relate or discuss every piece of evidence introduced at the hearing." Braun v. St. John's Univ., slip op. (W.C.C.A. July 20, 1992). No objections were noted by the employee in his brief as to the lack of specific factual testimony of Dr. Randa and its relationship to the doctor's opinions. Dr. Randa was given, in his deposition, a lengthy factual hypothetical question. From a review of the deposition, a majority of the facts were well founded and adequately support the doctor's opinions. If a few facts were not correct or not given the doctor, this would only effect the weight given Dr. Randa's opinion. The compensation judge is bound neither by the common law or statutory rules of evidence when conducting a hearing. Minn. Stat. § 176.411, subd. 1. The compensation judge did not err by

not sustaining the employee's objections to Dr. Randa's testimony in this case.

In summary, substantial evidence supports the compensation judge's findings that the employee's May 22, 1992 injury was not a substantial contributing cause of the employee's claimed period of disability from February 1, 1997 to March 18, 1997 or the need for medical treatment after January 1997 through March of 1997. The employee made an excellent recovery from his 1992 lumbar laminectomy surgery and from which he recovered without any significant neurological deficit. Following surgery, the employee continued to demonstrate a normal neurological examination, required no specific continuing medical care and treatment of consequence and was able to engage full-time in strenuous bending, lifting and twisting activities in heavy construction jobs without difficulty. The employee was able to engage, after his surgery, in weight lifting workouts and in classes of Tae Kwon Do between 1994 and 1997. Substantial evidence supports the fact that the employee sustained a temporary muscle strain and his subsequent back problem was not causally related to his 1992 work injury, his lumbar disc problem and surgery.

We affirm the compensation judge in this matter.