

TROY SCHROEDER, Employee/Appellant, v. CANTEEN COMMISSORY and TRANSP. INS. CO., Employer-Insurer, and FAIRVIEW HOSP., ORTHOPAEDIC CONSULTANTS, P.A., MCGLYNN BAKERIES, INC., HEALTH PLAN, PROVANTAGE, INC., CIGNA GRP, INS., and HEALTHPARTNERS, INC., Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
FEBRUARY 25, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL EVIDENCE. Where the medical experts opined that the infection in the employee's knee could not have been caused without a puncture of his skin large enough to permit the introduction of the actinomyces bacteria and plant material found in the employee's knee, and where the employee testified that at most he only sustained a pinprick wound when his knee struck a piece of machinery at work, the compensation judge was supported by substantial evidence in finding no causal relationship between the employee's work injury and the knee infection.

Affirmed.

Determined by Wheeler, C.J., Wilson, J., and Pederson, J.
Compensation Judge: Kathleen Nicol Behounek

OPINION

STEVEN D. WHEELER, Judge

The employee appeals from the compensation judge's determination that the employee's left knee infection, and the consequent treatment and surgery, was not causally related to a work injury which the employee sustained in October or November 1994.

BACKGROUND

The employee, Troy Schroeder, began working as a baker for Canteen Commissory, the employer, in April 1994. The employee testified that in October or November 1994 he sustained an injury to his left knee when he slipped and fell against a pin sticking out from the side of a large mixer. He testified that, "I lost my balance and kind of slipped on the stuff on the floor and I know I slammed my knee right into it really good that time" (T. 32.) After the injury the employee completed his shift. The employee stated that when he examined himself after his shift he noticed a small red bump. (T. 72.) He described it in various ways as "a bruise" (T. 33, 69-71), a "mosquito bump" (T. 73), "it was like a bite," "the skin was open like a mosquito bite" and "it was really red, and it was just like a bump" (T. 72-73). He returned to work the next

day, although he testified that for several days after the incident his leg was stiff. At the time of the injury the employee was 35 years of age and had a weekly wage of \$399.87.

The employee first sought medical attention at the Spring Lake Park Family Practice Clinic on January 19, 1995. At that time he saw Dr. Robert Titzler. The doctor's office note indicates that the employee reported that he "probably date injury 12/15: fell against edge of step, hit knee - improved - but now 1 - 2 weeks increasing pain." In a letter referring the employee to an orthopedist, dated January 23, 1995, Dr. Titzler stated that the employee "sustained an injury to his left knee in mid December by falling against the edge of a step on the lateral aspect of his left knee. Initially he reported this to be black and blue and sore but seemed to get better. Now in the last week or two reports increasing pain and discovery of a lump just lateral to patella." (Ex. 2 and Resp. Ex. 3, Depo. of Dr. Francke, depo. ex. 5.) The employee was referred to orthopedic surgeon J. Patrick Smith who performed exploratory arthroscopy on January 31, 1995. During the surgery Dr. Smith also excised a subfacial tumor. A post surgical pathological report revealed an "abscess with actinomyces and plant material from the mass." (Exs. 2 and 4.) The employee received follow-up treatment from Dr. Smith on March 28 and August 22, 1995. On the latter visit the employee indicated that he had an injury at work and had reaggravated his knee. Dr. Smith's diagnosis was "medial tibial contusion, possible Grade 1 medial collateral strain." He prescribed ice, exercise and anti-inflammatories. During this entire time the employee continued to work on a full time basis for the employer until he terminated his employment voluntarily on November 2, 1995. Thereafter the employee went to work for McGlynn Bakeries, also as a baker.

There is no evidence in the record indicating any treatment of the employee after August 22, 1995, until he met with Dr. Alan W. Markman, an orthopedic surgeon, on January 29, 1997.

At the time of his initial examination by Dr. Markman the employee complained of several "lumps" on the anterior aspect of the left knee. An MRI was taken on February 19, 1997, which disclosed a mass in the area of the prepatellar bursa. On February 20, 1997 Dr. Markman performed a resection of the left knee mass anterior prepatellar bursa region. The post surgery pathology report indicated that the employee had "some plant fragments along with Actinomyces in the lesion" removed from the employee's left knee. Dr. Markman referred the employee to an infectious disease specialist, Dr. Daniel A. Zydowicz for treatment of the infectious condition. Dr. Zydowicz first saw the employee on February 28, 1997, diagnosed actinomycosis infection and placed him on oral antibiotics. Shortly thereafter the employee was placed on intravenous antibiotics for several months. As the infection continued to be present the employee was subsequently continued on other antibiotics until at least April 1998. Dr. Zydowicz last saw the employee in February 1998.

At the time of the resection surgery on February 20, 1997 by Dr. Markman the employee ceased working for McGlynn Bakery. He had not returned to work by the date of hearing in June 1998. On September 10, 1997, the employee filed a claim petition seeking temporary total disability benefits from February 20, 1997 and medical expenses associated with treatment of his left knee condition. The employer and insurer answered by denying primary

liability and asserting a lack of notice. The matter came on for hearing before a compensation judge at the Office of Administrative Hearings on June 5, 1998. In her Findings and Order of July 17, 1998, the compensation judge found that the employee had sustained a work-related injury in October or November 1998 when his left knee struck a pin located on a bakery mixer, but that the employee's left knee infection condition, which had required the various surgeries and treatment, had not been caused by the work incident in October or November 1994.

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

The issue before this court is whether the compensation judge's finding of no causal relationship between the work injury of October or November 1994 and the employee's left knee infection was supported by substantial evidence in the record and was not clearly erroneous. In this case the compensation judge partially relied on the employee's treating internist and infectious disease specialist, Dr. Zydowicz, and on the employer and insurer's expert, Dr. Elliot Francke. The compensation judge noted that, according to Dr. Zydowicz, in order for the plant material and the actinomyces infection to be found in the employee's knee the employee would have had to have sustained some form of puncture of the skin which would have injected both the plant material and actinomyces bacteria into the employee's knee. She noted that Dr. Zydowicz, and the employer and insurer's expert, Dr. Francke, also an infectious disease specialist, stated that the infection organism and plant material must be directly inoculated through the skin in order for the disease to develop. The compensation judge stated as follows:

The preponderance of the evidence fails to show that the employee sustained a puncture or trauma of the knee as a result of the October 1994 work incident, which would provide the mechanism necessary to inoculate or inject the germ into the employee's knee. There was no evidence that the mixer pin was

driven into the employee's knee at the time of that evidence, or that the incident resulted in any type of puncture of the skin of the knee.

(Memo at p. 6.) The compensation judge summarized the testimony of the employee, concerning the various descriptions he had given concerning the nature of the injury and whether his skin had been sufficiently punctured to permit the introduction of the foreign materials. She noted that the employee's testimony was essentially that "as a result of the incident, he noticed a red bump on his knee that looked like a mosquito bite. He testified that he did not know if the pin had punctured the skin of his knee, and that he did not know or see if there was bleeding after it occurred."

(Memo at p. 6.) Based on these factual findings she indicated that Dr. Zydowicz's opinion was not persuasive with respect to a causal relationship between the October or November 1994 incident and the employee's left knee infection condition.

On appeal the employee argues that Dr. Zydowicz's opinion was based on a full understanding of all the facts and circumstances and a complete review of the medical records, which included the several different histories concerning how he was injured and the extent of any wounds. On this basis the employee contends that Dr. Zydowicz's opinion should have been honored by the compensation judge as to causation.

We have reviewed the deposition testimony of both Dr. Zydowicz and Dr. Francke. We agree with the compensation judge's analysis that both experts indicated that some type of puncture, greater than a pinprick, would be necessary to introduce the actinomyces bacteria and the plant material into the employee's knee. We have reviewed the testimony of the employee and find that the compensation judge has accurately reflected his testimony concerning the nature of the injury. He testified variously that he felt that his injury was a "bruise," "like a red bump," a "mosquito bump," "it was like a bite," "but it was open the skin was open like a mosquito bite" and that "it was really red, and it was just like a bump." (T. 33, 69-73.) In addition, the compensation judge had the opportunity to observe the demeanor of the employee while he was testifying. The compensation judge's factual determination with respect to the nature and extent of any puncture wound required her to analyze the varying descriptions the employee gave concerning the nature of his initial injury, and how it occurred. Under the circumstances of this case we cannot find fault with the compensation judge's analysis of the employee's testimony concerning the critical question of whether there was a sufficient puncture or trauma to the employee's knee in October or November 1994 to satisfy the requirements for introduction of both the infectious and plant materials, as described by both of the experts. Factual determinations of this nature are placed in the hands of the compensation judge and we see no reason to overturn her determination.

Given the experts' requirement that there be a puncture wound of more than pinprick size to the knee and the compensation judge's factual determination that no significant puncture wound or other similar trauma occurred in October or November 1994, there is a substantial factual and evidentiary basis for the compensation judge's determination that there was no causal relationship between the work injury in the fall of 1994 and the employee's infectious disorder in his left knee.