GREGG SNABB, Employee/Appellant, v. QUADRION CORP. and WAUSAU INS. CO., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
OCTOBER 5, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL EVIDENCE; EVIDENCE - EXPERT MEDICAL OPINION. A compensation judge has considerable discretion in choosing among conflicting medical experts. Where the compensation judge considered all of the medical evidence before her, and the opinions of the independent medical expert (IME) witness for the employer and insurer were well-founded, the compensation judge did not err adopting the IME's opinion that the employee's September 24, 1997 injury had resolved and that the employee's current complaints were not causally related to that work injury.

Affirmed.

Determined by: Johnson, J., Wilson, J., and Wheeler, C.J.
Compensation Judge: Carol A. Eckersen

OPINION

THOMAS L. JOHNSON, Judge

The employee appeals the compensation judge's determinations that the employee's injury resolved, and that he was able to return to work without restrictions and was not entitled to temporary partial disability benefits. We affirm.

BACKGROUND

Gregg Snabb, the employee, sustained a personal injury on September 24, 1997, while working for Quadrion Corporation, the employer, insured by Wausau Insurance Company. The employee earned a weekly wage of $620.13. The employer and insurer admitted liability and paid medical expenses and periods of wage loss benefits to the employee.

The employee went to Annandale Family Physicians on September 24, 1997 and saw Catie Trimble, a physician's assistant. He complained of pain on the right side of his neck following an injury at work the night before. On examination, Ms. Trimble noted muscle spasm in the cervical spine and supraspinatous tendon with decreased range of motion and discomfort on flexion and extension. Ms. Trimble prescribed medication and took the employee off work. The employee returned to see Ms. Trimble on September 29, 1997 stating he was feeling better. On

examination, Ms. Trimble noted full range of cervical motion and diagnosed a resolved "wry" neck. The employee was released to return to work. The employee returned to Annandale Family Physicians on October 8, 1997, complaining of pain and weakness in his right shoulder with decreased range of motion. Ms. Trimble referred the employee to an orthopedic surgeon for evaluation. (Pet. Ex. A-2.)

The employee saw Dr. Henry M. Bernstein, an orthopedic surgeon at the Litchfield Medical Clinic, on October 14, 1997. Dr. Bernstein recorded a history of an injury on September 24, 1997 with continuing right-sided neck pain and the recent onset of right shoulder pain. X-rays of the cervical spine were essentially normal. On examination, the doctor noted limited range of motion of the shoulder and neck. Dr. Bernstein diagnosed a cervical disc syndrome and probable rotator cuff injury of the right shoulder. The doctor prescribed physical therapy and rest and took the employee off work. (Pet. Ex. A-3.) Dr. Bernstein requested an MRI examination of the cervical spine which was obtained on November 3, 1997. The scan showed a broad-based central and posterolateral plus right-sided disc herniation contacting the ventral lateral surface of the spinal cord. (Pet. Ex. A-4.) The employee returned to see Dr. Bernstein on November 4, 1997 with continued neck pain and radiation of pain into both shoulders with pain, tingling and numbness in the left hand. On examination, Dr. Bernstein noted limited cervical motion but no gross motor deficit of the left upper extremity. The doctor diagnosed a herniated cervical disc with radicular symptoms and recommended continued conservative care, epidural steroid injections or a surgical consultation. The employee elected to seek a surgical consultation. (Pet. Ex. A-3.)

Dr. Bernstein referred the employee to Dr. Edward G. Hames, III, a neurosurgeon, whom the employee saw on November 18, 1997. On examination, the doctor found reduced range of cervical motion but his neurologic examination was normal. Dr. Hames felt the prior MRI scan was difficult to interpret and ordered a cervical myelogram and CT scan which were completed on December 4, 1997. The cervical myelogram showed evidence of degenerative disc disease at C5-6 with a mild ventral extradural deformity without nerve compression. The CT scan was consistent with the myelogram. Dr. Hames re-examined the employee that same day. He concluded the cervical myelogram was essentially normal and the disc bulge at C5-6 was insignificant. The doctor concluded the employee's pain was a result of soft tissue injury and opined the employee could return to work on an unrestricted basis. (Pet. Ex. A-6.)

The employee returned to see Dr. Bernstein on December 22, 1997, with continuing complaints of cervical and arm pain radiating to the elbow. On examination, Dr. Bernstein found limited range of cervical rotation and flexion with no neurological deficits in the upper arms. The doctor concluded the employee's symptoms were a result of a cervical radiculopathy most likely due to the C5-6 disc prolapse. The doctor recommended epidural steroid injections and stated the employee was unable to return to work.

On January 13, 1998, Dr. Bernstein released the employee to return to full-time, light-duty work with a 15 to 20 pound lifting restriction. (Pet. Ex. A-3.) The employee returned to work for the employer. On January 23, 1998, the employee sustained a sudden increase in pain

so intense he was unable to move his head and was seen at the emergency room of Fairview Southdale Hospital. On examination, Dr. Ramming found diminished sensation in the employee's left thumb and index finger and slightly weakened grasp on the left with weakened thumb extension and abduction. The balance of the neurologic examination was normal. The doctor diagnosed a possible C6 radiculopathy on the left secondary to a C5-6 herniated disc. Dr. Ramming consulted with Dr. Ahlberg, a neurosurgeon, prescribed medications and a soft cervical collar and recommended the employee see Dr. Ahlberg for an evaluation. (Pet. Ex. A-9.) The employee saw Dr. Ahlberg on January 26, 1998. He complained of persistent neck pain and left greater than right shoulder pain secondary to a work injury on September 24, 1997. On examination, the doctor felt the employee might have a slight flexion and pronation weakness on the left with a slightly diminished left biceps reflex. Sensation, however, was intact. Dr. Ahlberg felt possible diagnoses were a left C6 radiculopathy, thoracic outlet syndrome or compression neuropathy. The doctor recommended further work-up, including an EMG of both arms. (Pet. Ex. A-5.)

The employee returned to see Dr. Bernstein on January 29, 1998, complaining of left and right arm pain. On examination, the employee's cervical range of motion was restricted with weakness of the left biceps and triceps. Dr. Bernstein diagnosed cervical radiculopathy secondary to disc disease. The doctor noted he was attempting to obtain approval to refer the employee to the Institute for Low Back and Neck Care. Dr. Bernstein allowed the employee to return to light-duty work. (Pet. Ex. A-3.)

Dr. Charles Burton examined the employee on February 2, 1998, and found evidence of a C5-6 lateral disc herniation with associated weakness and reflex changes in the left arm. The doctor felt the employee was a candidate for a fusion at the C5-6 level. Dr. Burton took the employee off work and recommended physical therapy. (Pet. Ex. A-1.) EMGs of the upper extremities were obtained on February 10, 1998, which were indicative of a moderately severe bilateral carpal tunnel syndrome. (Pet. Ex. A-8.) Dr. Burton re-examined the employee on March 2, 1998. His neurological examination was normal and the employee's range of cervical motion was normal. Dr. Burton recommended continued conservative therapy and facet injections at C5-6, and removed the employee from work pending completion of the additional therapy. The employee received cervical facet blocks at the Center for Diagnostic Imaging on March 3, 1998. (Pet. Ex. A-4.) In a March 27, 1998 examination, Dr. Burton found normal range of motion, normal reflexes and sensation and no motor deficit. The doctor opined the employee's pain might be due to cervical injury, carpal tunnel syndrome or some other cause, including thoracic outlet syndrome. Dr. Burton released the employee to return to work with restrictions on May 6, 1998, stating the employee had reached maximum medical improvement and should continue to work in a modified duty capacity.

Dr. Joel Gedan examined the employee on March 12, 1998, at the request of the employer and insurer. The doctor reviewed the employee's medical records and obtained a history from the employee. On examination, Dr. Gedan found full range of motion of the cervical spine in both shoulders, normal muscle strength in the arms and a normal neurologic examination except for some mild sensory abnormality in the median nerve distribution of the left hand

consistent with carpal tunnel syndrome. The doctor found no evidence of muscle spasm. Dr. Gedan concluded the employee's physical examination was essentially normal. He diagnosed a cervical strain and left and right shoulder strain related to the September 24, 1997 injury. In Dr. Gedan's opinion, the employee's present complaints of neck pain and left arm symptoms could not be related to the personal injury with any reasonable degree of medical certainty. Based on his normal examination findings and the lack of definite x-ray findings to explain the employee's symptoms, Dr. Gedan concluded the abnormality shown on the x-ray studies were not clinically significant or related to the September 1997 injury. Dr. Gedan concluded the employee could return to work on a full and unrestricted basis and had sustained no permanent partial disability as a result of the September 24, 1997 injury. Finally, Dr. Gedan concluded the employee had reached maximum medical improvement, and the September 24, 1997 injury was essentially resolved. (Pet. Ex. A-11.)

Prior to October 26, 1998, the employer provided work for the employee consistent with Dr. Burton's recommendation of moderate duty. On October 26, 1998, Dr. Burton made permanent the employee's moderate-duty restrictions. (Pet. Ex. A-1.) The employer was unable to accommodate permanent restrictions in the molding department where the employee had been working and offered the employee a job in the second operations department. The employee accepted that job and worked in the second operations position from November 16, 1998 through the date of hearing. The employee did not receive overtime in this job and earned less than his date-of-injury wage.

On March 26, 1998, the employer and insurer filed a Notice of Intention to Discontinue Workers' Compensation Benefits contending the employee was able to return to work without restrictions according to Dr. Gedan's report. An administrative conference was held on April 21, 1998. By Order served and filed April 29, 1998, a compensation judge at the St. Paul Settlement Division allowed the employer and insurer to discontinue workers' compensation benefits. The employee filed an Objection to Discontinuance and claimed entitlement to temporary partial disability benefits from March 25, 1998 and continuing. The case was heard by a compensation judge at the Office of Administrative Hearings on March 24, 1999. In a Findings and Order served and filed May 24, 1999, the compensation judge denied the employee's claims for temporary partial disability benefits. The employee appeals.

STANDARD OF REVIEW

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, 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." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

DECISION

The employee argues that his claim for temporary partial disability benefits is supported by substantial evidence, including expert medical testimony from Dr. Burton, Dr. Ahlberg and Dr. Bernstein. The employee asserts the compensation judge erroneously ignored that medical evidence and asks this court to reverse the compensation judge's decision. We decline to do so.

The compensation judge made extensive findings reciting the employee's treatment and evaluations from Ms. Trimble, Dr. Bernstein, Dr. Hames, Dr. Ahlberg, Dr. Burton and Dr. Gedan. In her memorandum, the compensation judge observed that the employee relied on the opinions of Drs. Bernstein and Burton and discussed their opinions together with other medical evidence. Clearly, the compensation judge did not "simply dismiss" the opinions of Dr. Burton and Dr. Bernstein as the employee suggests. Rather, it is apparent the compensation judge considered all the medical evidence.

The employee cites Jepsen v. Bayliner Marine Corp., 55 W.C.D. 370 (W.C.C.A. 1996) as authority for the proposition that the compensation judge erroneously discounted the opinions of Dr. Burton and Dr. Bernstein. We do not find that case applicable. In Jepsen, the compensation judge denied compensation for a Gillette-type injury based on a lack of foundation for the supporting medical opinion. On appeal, this court reversed, concluding the supporting medical opinion was based on adequate foundation and the compensation judge's conclusion to the contrary was erroneous. In the present case, the compensation judge considered the opinions of Drs. Burton, Ahlberg and Bernstein. That is, the compensation judge did not conclude the opinions were inadequately founded as in the Jepsen case. Rather, the compensation judge found the opinions of Dr. Gedan were more persuasive, and the judge adopted his opinions. It is the compensation judge's responsibility, as the trier of fact, to resolve conflicts in expert testimony. Nord v. City of Cook, 360 N.W.2d 337, 342, 37 W.C.D. 364, 372 (Minn. 1985). A compensation judge has considerable discretion in choosing among conflicting expert opinions. Jacobowitch v. Bell & Howell, 404 N.W.2d 270, 39 W.C.D. 771 (Minn. 1987). Dr. Gedan's opinions were adequately founded and the compensation judge reasonably relied upon them.

The employee next argues that the employer, in reliance on Dr. Burton's restrictions, moved the employee to a new job resulting in a wage loss. Accordingly, the employee contends the compensation judge erroneously denied temporary partial disability benefits. Again, we disagree.

At a discontinuance hearing, the employer and insurer have the burden of establishing an evidentiary basis for their discontinuance request. In this case, the respondents did so based upon the report of Dr. Gedan. The burden of proof then shifted to the employee to

prove entitlement to benefits. King v. Farmstead Foods, 45 W.C.D. 292 (W.C.C.A. 1991). The employee was required to prove a causal relationship between his wage loss and the personal injury. The compensation judge concluded the employee failed to do so. The judge accepted Dr. Gedan's opinion that the employee's injury had fully resolved by March 26, 1998, and the employee was able to work without restrictions. Since the employee was able to work without restrictions or residual disability, he has no entitlement to workers' compensation benefits. Kautz v. Setterlin, 410 N.W.2d 843, 40 W.C.D. 206 (Minn. 1987). We affirm.