

MARY SPRIGGS, Employee/Cross-Appellant, v. UNIV. HEALTH CARE CTR. and LUMBERMEN'S UNDERWRITING ALL., Employer-Insurer/Appellants, and ST. PAUL STAMP WORKS and JOHN DEERE INS. CO., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
JULY 15, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - PERMANENT AGGRAVATION. Substantial evidence supports the compensation judge's finding that the employee had sustained permanent neck injuries as a result of her work injuries.

MEDICAL TREATMENT & EXPENSE - SURGERY Substantial evidence supports the compensation judge's finding that the employee's proposed fusion surgery was not reasonable and necessary medical treatment.

Affirmed.

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

OPINION

DEBRA A. WILSON, Judge

The employer, University Health Care Center, and its insurer, Lumbermen's Underwriting Alliance, appeal from the compensation judge's decision that the employee sustained permanent work-related injuries and that the employee's proposed cervical fusion surgery was causally related to the employee's work injuries. The employee cross-appeals from the compensation judge's finding that the employee had no significant change in her cervical condition since the denial of a previous medical request for fusion surgery and from her finding that the evidence fails to show that the proposed fusion surgery is reasonable and necessary to cure and relieve the employee from the effects of her work-related injuries. We affirm.

BACKGROUND

The employee sustained a Gillette-type¹ injury to her right shoulder culminating on December 18, 1989, while employed by the St. Paul Stamp Works [St. Paul]. On or about

¹ See Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 21 W.C.D. 105 (1960).

September 30, 1991, the employee sustained a specific injury to her right shoulder while employed at the University Health Care Center [University]. In Findings and Order served and filed August 15, 1995, Compensation Judge John Jansen found that the employee had established that her need for treatment for her neck condition was causally related to her work injuries of December 18, 1989, and September 30, 1991. That decision was affirmed on appeal by this court. Spriggs v. University Health Care, 55 W.C.D. 184 (W.C.C.A. 1996), summarily aff'd (Minn. Sept. 23, 1996).

On January 10, 1997, the employee filed a medical request seeking approval of a four-level cervical fusion procedure. The employers and their insurers objected to the employee's medical request. Compensation Judge Bernard Dinner found that the proposed surgery was not reasonable or necessary medical treatment. (Findings and Order served and filed Apr. 24, 1997, affirmed by this court Nov. 4, 1997.) On July 6, 1998, the employee filed another medical request for approval of a four-level fusion surgery to her neck. The employers and insurers again objected, and a hearing was held before Judge Kathleen Nicol Behounek on October 22, 1998. On November 23, 1998, Judge Behounek served and filed her Findings and Order denying the employee's request for the four-level fusion. The judge found in part that the employee had sustained a permanent aggravation of her neck condition as a result of the work injuries; that the proposed surgery was causally related to the work injuries; that the employee's condition had not changed since the previous request; and that the proposed surgery was not reasonable or necessary to cure or relieve the employee from the effects of her work-related injury. University and its insurer appeal, and the employee cross-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

Causation

University and its insurer, Lumbermen's Underwriting Alliance, appeal from the compensation judge's findings that "the evidence fails to demonstrate that the employee's work related neck condition was a temporary aggravation of a pre-existing condition" and that "the employee's work related injuries of December 18, 1989 and September 30, 1991 permanently aggravated or caused her neck condition and symptoms." (Findings 8, 9.) First, they argue that the wording of finding 8 indicates that the compensation judge erroneously placed the burden of proof on the employer and insurer. We disagree. The compensation judge found that the employee's work-related injuries permanently aggravated or caused her neck condition and symptoms. The employer and insurer raised the issue of temporary aggravation as a defense. The employee had the burden of proving causation. The compensation judge did not erroneously place the burden of proof on the employer and insurer.

University and Lumbermen's also argue that the compensation judge exceeded her authority by deciding that the employee's work-related neck injury was permanent rather than temporary. They argue that the only issues at the hearing were causation and the reasonableness and necessity of the proposed surgery. At the hearing, however, the attorney for University and Lumbermen's asserted that, while the employer and insurer were not asserting a primary liability defense, they were asserting the "defense that those injuries were not more than temporary aggravations of a well-established and preexisting condition." The compensation judge commented during the hearing that "the issue of whether or not this was a temporary injury or whether it was permanent in nature has now been raised by the defense that there's no causal relationship to the present need for surgery and the original work injuries." The compensation judge further noted, "That's another issue that needs to be addressed by the Court, what the nature of the original neck injuries were and whether it was permanent or temporary in nature. . . ." The compensation judge did not exceed her authority by deciding whether the employee's neck injury was permanent.

University and Lumberman's also argue that the compensation judge erred by finding that the prior decision of Judge Jansen, which was affirmed by this court and summarily affirmed by the supreme court, precluded the employer and insurer from asserting a causation defense. The compensation judge properly found that the prior decision determined primary liability for the employee's neck condition through the date of the prior hearing in 1995. The judge then considered whether the employer and insurer had shown a change in condition or circumstances with respect to causal relationship since the 1995 hearing. However, the judge also determined causation as a factual matter, so the determinative question is whether the judge's causation finding is clearly erroneous and unsupported by substantial evidence.

University and Lumbermen's argue that substantial evidence does not support the compensation judge's findings that the evidence failed to establish a temporary aggravation of a pre-existing condition and that the employee's injury was permanent in nature. They again argue that the employee's symptoms pre-existed her work injuries. However, the employee testified that she did not have the same symptoms before her work injuries as she has had since those injuries. The employee also testified that her pain was more severe and that she did not experience left arm pain before her work injuries. Dr. Timothy Garvey opined in February 1995 that the employee's

symptoms were causally related to her work injuries, based on her increasing pain. Dr. Garvey also testified, in his October 13, 1998, deposition, that, over the last year to 18 months, the employee's condition had deteriorated somewhat and that her symptoms had increased. The evidence reasonably establishes that the employee's symptoms had not decreased and that her functional ability had not improved to the levels that existed prior to the work injuries. Therefore, substantial evidence supports the compensation judge's finding that the employee sustained permanent injuries to her neck.

Reasonableness and Necessity of Surgery

The employee filed a medical request on July 6, 1998, again requesting approval of a four-level cervical fusion surgery, claiming that there has been a change in her condition and circumstances. Principles of res judicata "bar subsequent proceedings to determine claims which were litigated in a prior proceeding." Alexander v. Kenneth R. LaLonde Enters., 288 N.W.2d 18, 20, 32 W.C.D. 312, 314 (Minn. 1980); Denny v. Halcon Corp., 44 W.C.D. 290, 295-96 (W.C.C.A. 1990). However, the doctrine of res judicata only precludes litigation of issues and claims that were in fact decided in an earlier decision. Fischer v. Saga Corp., 498 N.W.2d 449, 450, 48 W.C.D. 368, 369 (Minn. 1993); Westendorf v. Campbell Soup Co., 243 N.W.2d 157, 28 W.C.D. 460 (Minn. 1976). While prior findings regarding a claim do not necessarily preclude a party from raising the same claim with respect to a subsequent period, "a different compensation judge is not free to reweigh the same evidence to reach a contrary result." Kaiser v. Hennepin County, 52 W.C.D. 741, 749 (W.C.C.A. 1995), summarily aff'd (Minn. June 30, 1995).

The employee is presently making her third request for surgery based on the same or similar neck pain. Evidence of the employee's cervical condition in the present case is reasonably similar to the evidence submitted at the 1995 hearing. The employee's doctor, Dr. Garvey, continues to indicate that the surgery is the employee's "option." Dr. Garvey also indicated that there has been no substantial change in the employee's physical condition since the previous hearing, wherein she requested the same surgery. The employee has continued to work, and Dr. Garvey has opined that the employee was still capable of working. The medical examinations both before and after 1995 appear to be substantially the same. The employee's range of motion in her neck continues to be within functional limits. Perhaps as importantly, the compensation judge also found that the proposed surgery was simply not reasonable and necessary to cure and relieve the employee's work-related injuries. Dr. Garvey's suggestion of surgery as an option for the employee is based on the employee's complaints of neck pain, and the employee contends that she is entitled to the fusion surgery because her doctor has indicated her chances for resolution of her subjective symptoms are good. The basis of this argument is the result of studies conducted by Dr. Garvey on other patients. However, the fact that fusion surgery has helped other patients does not necessarily make the surgery reasonable and necessary for the employee, particularly in the absence of objective medical findings on examination of the employee. The employee also argues that she has exhausted all non-surgical treatment without improvement. However, while the available options for the employee's treatment are a factor for the compensation judge to consider, the employee's exhaustion of other options is not necessarily determinative of whether the proposed surgery is reasonable and necessary. Substantial evidence

supports the compensation judge's finding that the proposed surgery is not reasonable and necessary, and we affirm.