

RONALD STRAND, Employee, v. J & R SCHUGEL TRUCKING and FIREMAN'S FUND INS. CO./SELF FUNDED SERVS. CO., Employer-Insurer/Appellants, and BLUE CROSS/BLUE SHIELD OF MINN. and BLUE PLUS, Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS  
APRIL 28, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - MEDICAL TREATMENT. Substantial evidence supports the compensation judge's determination that the employee's January 12, 1998 surgery, in which a pre-existing abscess discovered during the surgery was drained and cleaned, was causally related to his admitted July 9, 1997 personal injury in the nature of a left inguinal hernia.

Affirmed.

Determined by Johnson, J., Wheeler, C.J., and Hefte, J.  
Compensation Judge: Ronald E. Erickson

OPINION

THOMAS L. JOHNSON, Judge

J & R Schugel Trucking and Fireman's Fund Insurance Company appeal the compensation judge's finding that the employee's claim for medical and indemnity benefits resulting from treatment for an abscess is compensable under the Workers' Compensation Act. We affirm.

BACKGROUND

On July 9, 1997, Ronald Strand, the employee, sustained a personal injury in the nature of a left inguinal hernia while working for J & R Schugel Trucking, the employer, insured by Fireman's Fund Insurance Company. The employer and insurer admitted liability for the employee's injury.

The employee had a previous, non-work-related hernia which was surgically repaired in 1975. (T. 47-48.) Prior to the July 9, 1997 injury, during driving physicals, doctors noted scar tissue at the site of the original surgery. The employee testified the hernia repair did not cause any symptoms or problems, and the doctors told him the scar tissue was nothing to worry about. (T. 39-40, 48-49.) On May 23, 1997, the employee was seen by Dr. Anthony C. Jaspers for a Department of Transportation physical. Dr. Jaspers noted "a firm area in the left lower quadrant that may be a hernia." The employee was referred to the surgical department for

symptomatic hemorrhoids and a possible hernia. (Pet. Ex. D; Resp. Ex. 5.)

The employee returned to see Dr. Jaspers on July 15, 1997. He told Dr. Jaspers he was pulling hard on a spare tire caught between the cab and box of his semi, when he felt and heard a pop in his left lower abdomen. Initially, he noticed a bulge in his abdomen which decreased but remained sore. On examination, Dr. Jaspers noted tenderness in the left lower abdomen above the site of his previous hernia scar. The doctor thought the employee might have a defect there although he could not be sure. Dr. Jaspers referred the employee to Dr. Mark Wu, who saw the employee on November 6, 1997. Dr. Wu noted the previous left inguinal hernia repair. On examination, Dr. Wu noted a "lumpy area" in the left hernia repair incision which was quite tender. The inguinal canal felt weak with a questionable reducible lump present. Dr. Wu scheduled the employee for left inguinal hernia repair surgery on January 12, 1998. During the course of the operation, Dr. Wu found a large lump in the area of the prior hernia repair which he identified as an abscess. The doctor drained the abscess cavity and then closed the wound. He was unable to proceed with the hernia repair because of the presence of the abscess. On May 4, 1998, Dr. Wu reoperated on the employee to complete the left inguinal hernia repair. (Resp. Ex. 5.)

The employee was off work from January 12 through February 27, 1998 as a result of the surgical procedure. Dr. Wu released the employee to return to work on February 28, 1998, subject to a 30-pound lifting restriction. The employee returned to work for the employer as a truck driver on February 28 and worked until May 4, 1998, the date of the second surgery. The intervenor, Blue Cross/Blue Shield of Minnesota and Blue Plus paid medical expenses for the January 12, 1998 surgery.

A representative of the insurer wrote Dr. Wu on February 5, 1998, asking him to clarify whether the abscess discovered on January 12, 1998 and the associated treatment was due to the work injury. Dr. Wu responded, "the abscess is related to previous hernia repair -- as a complication. It is work related if previous hernia is work related." (Resp. Ex. 5.) On July 27, 1998, Dr. Wu wrote a memo to clarify the purpose of the January 12, 1998 surgery. The doctor stated:

The plan was for Mr. Strand to undergo a left inguinal hernia repair on 1/12/98. During the surgery, Mr. Strand was found to have an abscess, so the left inguinal hernia repair was not done. While the abscess was not causing Mr. Strand any discomfort, it was essential to remove the abscess material prior to proceeding with the hernia repair which was carried out on 5/4/98.

The abscess that developed followed an unrelated hernia repair that was carried out in 1974 or 1975. The abscess was not related to the hernia that was repaired on 5/4/98. However, I want to make it clear that the intent on 1/12/98 was to repair the left inguinal hernia that was related to a 7/9/97 work injury which occurred while working as a truck driver at J & R Schugel.

(Pet. Ex. D; Resp. Ex. 5.)

The employee filed a claim petition seeking payment of wage loss benefits and medical expenses from and after January 12, 1998.<sup>1</sup> The employer and insurer denied liability for benefits contending the January 12, 1998 surgery and resultant disability were not causally related to the work injury. The case came on for hearing before a compensation judge at the Office of Administrative Hearings on October 27, 1998. In a findings and order served and filed November 25, 1998, the compensation judge found the surgery on January 12, 1998 was reasonable, necessary and causally related to the employee's personal injury. Accordingly, the compensation judge ordered the employer and insurer to pay the medical expenses and wage loss benefits resulting from the surgery. The employer and insurer appeal.

#### 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). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings must be affirmed. Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 60, 37 W.C.D. 235, 240 (Minn. 1984). 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 employer and insurer assert the compensation judge erred as a matter of law in awarding medical and wage loss benefits for the January 12, 1998 surgery because the employee failed to prove a causal relationship between the work injury and surgery. To prove causation, the employee must prove the work injury was a substantial contributing cause of the disability for which benefits are sought. See, e.g., Swanson v. Medtronics, Inc., 443 N.W.2d 534, 42 W.C.D. 91 (Minn. 1989). The appellants contend the primary purpose of the July 12, 1998 surgery was to cure and relieve an abscess which developed following the 1975 hernia repair. There is no dispute that the 1997 work injury did not substantially contribute to the abscess. Therefore, the appellants contend, there is no causal relationship between the admitted work injury and the disability after January 12, 1998. The employer and insurer, accordingly, ask this court to reverse the award of benefits.

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<sup>1</sup> The employer and insurer paid wage loss benefits and medical expenses following the May 4, 1998 hernia repair by Dr. Wu.

It is undisputed the 1997 work injury was not a substantial contributing cause of the employee's abscess condition. We do not agree, however, that this fact legally precludes an award of benefits. The employer is liable for any medical treatment reasonably required to cure and relieve the employee from the effects of the personal injury. Minn. Stat. § 176.135, subd. 1(a). The employee has the burden of proving that the claimed medical expenses were reasonable, necessary, and causally related to the work injury. See, e.g., Adkins v. University Health Care Ctr., 405 N.W.2d 233, 39 W.C.D. 898 (Minn. 1987). The compensability of medical treatment under Minn. Stat. § 176.135 is a question of fact for the compensation judge. Casey v. Northern States Power Co., 247 Minn. 295, 77 N.W.2d 67, 19 W.C.D. 335 (1956).

In Hopp v. Grist Mill, 499 N.W.2d 812, 48 W.C.D. 450 (Minn. 1993), the employee sustained an admitted right knee injury which aggravated a pre-existing thrombophlebitis. Because the employee was morbidly obese, a treating physician concluded weight loss was essential to the treatment of the thrombosis and recommended gastric bypass surgery for weight loss. The employer and insurer objected to the bypass surgery contending it was treatment for a pre-existing condition not caused by the admitted work injury. The supreme court affirmed the compensation judge's award of benefits related to the gastric bypass surgery. The court noted that while the employee's general health would benefit from weight reduction, a medical expert clearly stated that the gastric bypass surgery was directed primarily to the medical care of the employee's thrombosis which was a consequence of the work injury. Accordingly, the court concluded the compensation judge's award of benefits was supported by substantial evidence. Compare, Adkins, id. (gastric bypass surgery not necessary for treatment of a low back injury); see also Hamlin v. Old Milwaukee Club, slip op. (W.C.C.A. November 19, 1993) (gastric bypass surgery reasonable and necessary to cure and relieve the effects of the employee's work-related knee injury).

Dr. Wu planned to repair the employee's work-related left inguinal hernia on January 12, 1998. During the course of the operation, the doctor discovered an abscess at the site of the prior hernia repair. In his operative report, Dr. Wu stated he could not proceed with the operation because of the presence of the abscess. In his note of February 6, 1998, Dr. Wu stated the planned hernia repair was contraindicated because of the presence of the abscess and the danger of infection. By April 17, 1998, the doctor noted the wound was completely healed with no evidence of inflammation and the employee was now ready to proceed with the hernia repair. In his July 27, 1998 report, Dr. Wu explained, "It was essential to remove the abscess material prior to proceeding with the hernia repair . . ." (Pet. Ex. D; Resp. Ex. 5.) Based upon this medical evidence, the compensation judge concluded the hernia repair could not be accomplished until the abscess was drained and the wound healed. That is, it was medically necessary to first treat the abscess in order to treat the hernia. Accordingly, the compensation judge found the surgery of January 12, 1998 was reasonable and necessary to cure and relieve the work-related injury. This is a reasonable inference to be drawn from the evidence. See Hopp v. Grist Mill, id. The compensation judge's award of medical and wage loss benefits is affirmed.