JIM D. ANTHONY, Employee/Appellant, v. MRS. GERRY'S KITCHEN, SELF-INSURED, adm'd by BERKLEY ADM'RS, Employer.

WORKERS' COMPENSATION COURT OF APPEALS
JUNE 26, 2000

No. [REDACTED SSN]

HEADNOTES

PRACTICE & PROCEDURE - EXPEDITED HEARING; DISCONTINUANCE - MATTERS AT ISSUE. Where the employer and insurer's rehabilitation request and request for formal hearing indicated that the reason for discontinuance of rehabilitation services was because the employee had no current restrictions, and the employee did not specifically agree to expand the issues to determine whether the employee's injury were temporary or permanent at an expedited hearing, the compensation judge erred by making a finding as to the nature of the employee's injury, and the finding must be vacated.

REHABILITATION - DISCONTINUANCE. Substantial evidence, including expert medical testimony that the employee had no work restrictions, the fact that the employee had voluntarily resigned his position, and that the employee's QRC did not provide assistance in finding the employee's later positions, supports the compensation judge's denial of payment for rehabilitation services and denial of continued rehabilitation services.

Affirmed in part and vacated in part.

Determined by: Rykken, J., Pederson, J., and Wheeler, C.J.
Compensation Judge: John E. Jansen

OPINION

MIRIAM P. RYKKEN, Judge

The employee appeals from the compensation judge's denial of the employee's claim for payment of previous rehabilitation services, from the denial of the employee's request for continued rehabilitation assistance, and from the compensation judge's determination that the employee's injury of October 9, 1996 was temporary in nature. We affirm the denial of claims for rehabilitation services, and vacate the determination that the employee's work-related injury was temporary in nature.

BACKGROUND

Jim D. Anthony, the employee, began working for Mrs. Gerry's Kitchen on April 9, 1984. His job included unloading 50 and 100 pound bags of vegetables from semi trailer trucks, operating pasta cooking equipment and performing construction work, such as operating a jackhammer, loading and lifting wheelbarrows full of concrete, carrying six gallon buckets of

concrete. On October 9, 1996, the employee was operating the pasta cooker, which involved repetitively walking up steps, carrying pasta boxes, and dumping pasta into a hopper. On that date, he injured his low back while pulling boxes off a pallet and stacking them onto a two-wheel cart. He noticed a popping sensation in his low back and noted immediate, severe, sharp pain extending down into his buttocks, groin area and left leg.

Prior to the employee's work-related injury in 1996, he sustained a personal, nonwork-related work injury to his low back, on May 29, 1988. As he tore shingles off a garage, the roof gave way, and the employee fell to the dirt floor. He sought medical treatment, and was restricted from work entirely for two weeks. His treating physician at that time then released him to return to work on a gradual basis, one hour per day the first week, with instructions to increase his hours one hour per day each week until he reached full-time work. After the employee reached the level of full-time, eight hours per day work following this incident, his treating physician released him to return to work without any physical work restrictions. The employee continued to work for Mrs. Gerry's Kitchen, and testified that he eventually was able to perform his work activities with no problems following this roof incident. (T. 100-101.)

On October 9, 1996, Mrs. Gerry's Kitchen, the employer, was self-insured for workers' compensation liability with Berkley Administrators serving as the third-party claims administrator. On October 9, 1996, the employee was 46 years old, and earned an average weekly wage of at least $442.64.[1] The self-insured employer admitted primary liability for this injury, and paid various workers' compensation benefits, including temporary total disability benefits from October 1, 1996 through January 10, 1997, and May 9 through May 14, 1997; temporary partial disability benefits on two days, October 9, 1996 and May 8, 1997; and medical expenses on behalf of the employee.

Following his injury, the employee initially sought treatment at the Albert Lea Clinic, where he underwent an MRI scan on October 16, 1996. That MRI showed multi-level degenerative discs with a bulge in the left lateral direction by L2-3 and L3-4. The radiologist's report stated that he "cannot totally exclude mild irritation of the left L2-3 nerve root." (Pet. Ex. B3.) Drs. Smith and Harmon prescribed pain medication and physical therapy. By January 1997, the employee returned to work in various light-duty jobs.

The employee requested a second opinion and ongoing treatment from Dr. Steven Curtis, Orthopedic and Fracture Clinic, as he had treated the employee's 1992 work-related elbow injury. Dr. Curtis first examined the employee on December 17, 1996, and assigned physical work restrictions of a 15 pound lifting limit and avoidance of repetitive bending, twisting, prolonged sitting and standing. (Pet. Ex. C1.) Those particular restrictions were assigned to be effective between December 17, 1996 through January 1, 1997. Dr. Curtis prescribed an aggressive physical therapy program, again examined the employee on February 21, 1997, and revised the employee's

[1] Average weekly wage was not at issue at the hearing, so the compensation judge issued no finding determining the employee's wage rate. A wage of $442.64 was admitted by the self-insured employer; the employee claims a higher wage rate.

physical work restrictions to "avoid repetitive bending, may increase lifting to 20 pounds, avoid climbing." (Pet. Ex. C1.) Those work restrictions were assigned to expire on March 15, 1997.

On March 17, 1997, Dr. Curtis revised restrictions to "limit lifting to 30 pounds, avoid repetitive bending, twisting, avoid continuous standing for more than 60 minutes," (Pet. Ex. C1) and assigned those restrictions to expire on April 15, 1997. However, on May 7, 1997, the employee tripped at work while climbing a ladder to load a 20 pound box of pasta into a hopper. He reported slipping on the steps leading up to the hopper, and noted a sharp pain in his lower back with radiation into his left lower extremity down to the ankle. Dr. Curtis examined the employee on May 14, 1997, who reported worsened symptoms, and increased the employee's physical work restrictions to include avoidance of repetitive bending, twisting, or lifting over 10 pounds, and avoidance of continual standing of more than one hour.

On May 14, 1997, Dr. Curtis stated that:

> I feel that we are reaching the end of what can be done for him medically and that his future employability is more a question of finding appropriate work for his limited capabilities. I did complete a report of work ability having him avoid repetitive bending, twisting, limiting his lifting to ten pounds and avoiding continuous standing for more than one hour at a time until June 10, 1997 and that should be sufficient time to have his QRC contact me.

(Pet. Ex. C1.) (Emphasis added.)

On May 14, 1997, Dr. Curtis also recommended that the employee change his employment, stating that "I suggested to him that he would be best served by finding a line of work that would not involve heavy manual labor or repetitive activities." (Pet. Ex. C1.) The next indication of ongoing medical treatment for his low back is a medical chart note dated March 11, 1998, when the employee complained of sharp pain in his left flank. Physician's Assistant Heather Lunning diagnosed latissimus dorsi strain, prescribed Ibuprofen and Norflex for pain and muscle spasm and advised him to return if his symptoms worsened.

In December 1996, the employee was assigned a disability case manager, Stephanie Vollum. In June 1997, the employee contacted the insurance administrator to request a rehabilitation consultation, and to advise that he wanted to choose a QRC. The employer approved assignment of Bill Hokeness as QRC. Mr. Hokeness (QRC) received file materials from the insurance administrator, conducted an initial rehabilitation consultation on July 1, 1997, and submitted a report to the employer on August 4, 1997. In August and September 1997, the employee advised his QRC that he had a job prospect with another employer, and expressed concern to the QRC that he may be laid off during the slow season or that he might be assigned to work which would not be self-paced or which would exceed his physical work restrictions. On September 12, 1997, the employee advised his QRC that he was hired by NAPA Auto Parts to work at the parts counter and make deliveries. He also advised the QRC that although he had

requested a permanent job in the employer's label department, the employer offered this job to a co-worker, even though she had less than five years' seniority, as compared to the employee's 13.5 years' seniority.

According to the QRC's file notes, the employee advised the QRC in November 1997 that Dr. Curtis' physical work restrictions were still in effect. In February 1998, the employee advised the QRC that Dr. Curtis had recommended to him a number of times that he should change jobs. On May 19, 1998, the QRC submitted an R-3 Rehabilitation Plan Amendment to the employer, proposing an amendment to allow the QRC to continue to monitor the employee's return to work, and to assist the employee in a job change when needed to "re-establish him in suitable gainful employment." The stated reason for the amendment was that

> The employee secured medically suitable work outside of the DOI [date-of-injury] employer. He has held two different jobs which have been medically suitable but have been less than the DOI wages. Counseling and guidance have helped the employee with reemployment and should be available as the employee strives for suitable gainful employment.

(Resp. Ex. 10.)

The R-3 form was not signed by the insurance administrator, so the QRC filed it directly with the Department of Labor and Industry (DOLI). On August 4, 1998, the insurance administrator wrote to the QRC stating that "[i]n reviewing this claim file it appears your rehabilitation file can close at this time. It is my understanding Mr. Anthony is working and additional rehabilitation services are not necessary. Please file an R-8 form as soon as possible." (Resp. Ex. 10.)

The QRC received that letter on August 5, 1998. On August 17, 1998, he called the employee and spoke with his wife, who advised the QRC that the employee was now working for Crossroads Motors "doing oil and lube work and is no longer working for NAPA." The employee had started that new position on July 20, 1998. The QRC wrote to the insurance administrator, on September 8, 1998, advising of the employee's new job and his new wage rate and suggesting that the insurance administrator contact the employee's attorney regarding closure of the rehab file. The QRC cited the rehabilitation rules as requiring agreement of all parties to close a rehab file, and advised that he would continue to monitor the employee's situation. The QRC also wrote in his letter that

> I would like to add that Mr. Anthony advised me that prior to my rehab consultation a number of work task changes were attempted at Mrs. Gerry's Kitchen. They did not prove to be permanent work that was medically suitable and Mr. Anthony secured other employment after being released from Mrs. Gerry's Kitchen. Mr. Anthony further advised me that he has not received the wage

> loss difference in spite of returning to work. I suspect that his attorney will be involved with that issue as well.

(Resp. Ex. 10.)

The QRC filed another R-3 Rehabilitation Plan Amendment form on September 18, 1998, proposing to extend rehabilitation services through December 31, 1998, since the employee was not in agreement with closure of rehabilitation services and asserting that the employee had not returned to suitable gainful employment by definition. The QRC submitted this proposed amendment to the insurance administrator on September 23, 1998, and filed the form with DOLI on October 21, 1998, unsigned by the employer and insurance administrator.

On September 30, 1998, the self-insured employer filed a rehabilitation request, requesting that rehabilitation services be terminated. The employer asserted that the employee had been released to return to work with limited restrictions in June 1997, which restrictions had expired; that the employee was at maximum medical improvement (MMI) with no permanent partial disability sustained as a result of his work injury; that the employee resigned his position with the employer at a time when he was earning in excess of his pre-injury wage; and that the employee has been employed on a full-time basis since then, with the QRC only monitoring his employment. The employer also asserted that despite the employer's request that the rehabilitation file be closed, the QRC refused to close his file.

On October 20, 1998, the employee filed a rehabilitation response, disagreeing with the proposed termination of the rehabilitation plan, and asserting that the employee continued to be under physical work restrictions due to his low back condition and continued to work at a wage loss, but was receiving no temporary partial disability benefits. The employee argued that the QRC believed that the employee had not achieved suitable gainful employment, and that rehabilitation services should continue, to allow the employee to obtain suitable work within his physical work restrictions at a pay rate closer to his pre-injury wage.

On December 24, 1998, the QRC mailed another R-3 rehabilitation plan amendment to the insurance administrator. In his letter, he acknowledged that there was a dispute regarding continued rehabilitation services, but asserted that a dispute did not negate his responsibility to keep a current rehabilitation plan on file with the DOLI. The QRC also stated that "the DOLI has advised QRCs that it takes a Decision and Order or an agreement among the parties to change/terminate a Rehab Plan." (Resp. Ex. 10.)

On January 7, 1999, the insurance administrator wrote to the QRC, advising that he did not agree with continuation of rehabilitation services, and therefore would not voluntarily sign the plan. On January 7, 1999, the QRC filed a rehabilitation request with the DOLI, requesting payment for services between September 1 - December 31, 1998, in the amount of $535.57 plus interest. The QRC requested that this issue be consolidated with the other rehabilitation issue at the January 11, 1999 administrative conference. The self-insured employer denied this payment,

arguing that they had requested to terminate the employee's rehabilitation plan, and that the QRC should have closed the file upon their request.

On January 11, 1999, an administrative conference was held at the Department of Labor and Industry. In a Decision and Order pursuant to Minn. Stat. § 176.106, served and filed January 20, 1999, a rehabilitation specialist, serving as a commissioner's representative, denied the employer's request to terminate the rehabilitation plan and ordered that the Plan Amendment include continued job search until May 31, 1999, at which time any party could request to change the plan or terminate the plan. The rehabilitation specialist indicated, in his memorandum, that

> The information presented indicates that the employee could benefit from a continued job search effort to attempt to return to a wage that would be as close as possible to that he was earning at the time of injury. The employee is working 40 hours a week and the plan shall note this and require a special approach to job search in order to accomplish the effort.

In a separate Decision and Order, the rehabilitation specialist determined that the services provided by the QRC, Bill Hokeness, from September through December 1998, were reasonable and ordered the self-insured employer to pay the outstanding bill from the QRC, in the amount of $537.57, including interest. The QRC resubmitted his bills to the insurance administrator. The QRC's case notes from February 4, 1999, indicate that he prepared job seeking skills training information for the employee, and sent that information plus a "job seeking skills training manual" to the employee, along with six job leads found on the Internet. On February 5, 1999, the QRC prepared a draft of the employee's resume and sent that to the employee for his review. On February 8, the QRC prepared an R-3 Rehab Plan form to extend services through May 31, 1999.

On February 11, 1999, the self-insured employer appealed from both Decisions and Orders, and requested a formal hearing. The employer objected to the order for continued rehabilitation assistance to the employee, and asserted that the specialist exceeded his authority in changing the rehabilitation plan in the absence of a formal rehabilitation request to change that plan to allow the QRC to conduct a job search. The employer further asserted that the employee continued to work on a full-time basis at a voluntarily-reduced wage, and that a job search was inappropriate. The employer also contended that the QRC's bills were neither reasonable nor necessary. The QRC placed rehabilitation services "on hold" in view of the employer's appeal.

At the request of the employer, the employee was examined by Dr. Mark Friedland on February 22, 1999, who diagnosed "chronic complaints of lumbosacral pain with minimal L1-2 through L4-5 degenerative disc disease on previous scans." Dr. Friedland opined that the employee sustained a temporary exacerbation of his longstanding multi-level lumbar degenerative disc disease and chronic lumbosacral strain/sprain as a result of his October 9, 1996 injury. However, Dr. Friedland concurred with Dr. Curtis that the employee had reached MMI by at least June 15, 1997, and that he had sustained no permanency relative to any 1996 injury or May 7,

1997 incident. Dr. Friedland noted evidence of functional overlay. He found that the employee was never released from light duty restrictions imposed by Dr. Swanson in April 1989 (lifting limit of 50 pounds with no repetitive bending, twisting or stopping activities), and therefore that those restrictions relate solely to the employee's 1988 low back injury.

The employee underwent a consultation with Dr. Robert Wengler on April 7, 1999. Dr. Wengler diagnosed "back pain and left lower extremity sciatica probably secondary to a contained herniation seen at the L3-4 level on the left side." Dr. Wengler suggested a lumbar discogram, stated that the employee "may be a candidate for a chymopapain injection, "and assigned a permanency rating of 12% permanent partial disability of the whole body, relative to the employee's 1996 work injury. Dr. Wengler assigned physical work restrictions of no lifting over 25 pounds, and avoidance of repetitive bending, stooping, heavy pushing or pulling or positions of prolonged postural stress. (Pet. Exh. B2.)

On March 5, 1999, the Office of Administrative Hearings issued a Notice of Hearing, indicating that the matter had been scheduled for an Expedited de Novo Hearing pursuant to Minn. State. Sec. 176.106, subd., 7, and that "[t]he issues and claims raised at hearing generally are limited to those Rehabilitation/Medical issues forming the basis for Request for Formal Hearing." Hearing was held before a compensation judge on June 9, 1999. In Findings and Order, served and filed August 20, 1999, the compensation judge determined that the employee's work-related injury of October 9, 1996, was a temporary aggravation of the employee's pre-existing condition, which fully resolved by June 10, 1997. The compensation judge therefore determined that, at least since that date of June 10, 1997, the employee was not eligible for rehabilitation services as a result of his work-related injury in 1996.

The compensation judge also determined that the rehabilitation services provided to the employee by his QRC were not reasonable or necessary, nor causally related to the employee's 1996 work injury, and accordingly determined that the self-insured employer was not liable to pay any portion of the claimed outstanding balance for such services. The compensation judge also denied the attorney's fees, costs or interest payable to the employee, since no benefits were awarded to the employee. 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).

"[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers' Compensation Court of Appeals] may consider de novo." Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

DECISION

Expansion of Issues

The compensation judge determined that the employee's injury of October 9, 1996 was a temporary aggravation of the employee's pre-existing back condition, which fully resolved by June 10, 1997. (Finding No. 8.) The employee appeals from this determination, arguing that the issue of the temporary or permanent nature of the employee's 1996 injury was not an issue to be addressed at the expedited hearing held on June 7, 1999.

Collateral estoppel, the preclusion of issues aspect of res judicata, precludes relitigation of the same issues which were actually litigated, determined by, and necessary to the determination of a previous judgment, regardless of whether the previous suit was on the same cause of action. Hauser v. Mealey, 263 N.W.2d 803, 806 (Minn. 1978); McGroom v. Al-Chroma, Inc., 386 N.S.2d 369, 372-373 (Minn. App. 1986). The employee argues that the compensation judge erroneously determined that the employee had a temporary aggravation of a preexisting injury which could be construed as a determination of future primary liability, and could have wide-spread collateral estoppel effect on all future benefits. The employee contends that the parties discussed this specific matter at the pretrial conference and hearing, and that the compensation judge discouraged the employee from obtaining a medical deposition of his treating physician, since the issues to be discussed at the hearing were very narrow - - only discontinuance of rehabilitation and rehabilitation bills. In particular, the employee argues, had he known that the compensation judge would be determining this issue, he would have sought medical opinions and testimony more fully addressing the medical aspect of the claim. Alternatively, he would have filed a claim petition and sought to consolidate all issues for one hearing, to prepare for a primary liability determination.

The self-insured employer argues that a determination of a temporary injury was necessarily intertwined with the issues of whether the employee had any ongoing physical work restrictions. The employer asserts that the employee had adequate notice that this would be an issue at the hearing, as the employer had contended that the employee had no permanent partial disability and only temporary work restrictions, and that intertwined in that argument would be presentation of evidence regarding the nature and extent of the employee's injury. In its rehabilitation request, the employer requested that the rehabilitation plan be terminated, and provided information on the employee's employment status and on the QRC's activities. The employer stated, in part: "The employee had been released to return to work with limited

restrictions in June of 1997, which restriction expired after 30 days. The Employee is at maximum medical improvement with no permanent partial disability."

In its request for formal hearing, the employer and insurer outlined the issues in dispute and the specific reasons for disputing the decision and order, making no mention of a "temporary" injury but stating in part: "There are no current restrictions on the Employee's activities, and he voluntarily chose to work in his present capacity." The employer further argues that the employee had the opportunity, at hearing, to cure any potential prejudice caused by expansion of the issues, by virtue of the employer's offer at hearing to allow the record to remain open for the employee to submit whatever additional medical evidence he required, but that the employee declined the opportunity to do so.

Upon review of the record, we note that in the pre-hearing discussions, the compensation judge and counsel for the employer and insurer and employee did indeed discuss which issues would be addressed at the hearing. It is apparent from the record that the employer asserted a defense to the employee's claim which included an allegation that the employee had sustained a temporary aggravation of a preexisting condition, even though its pleadings did not specifically articulate that defense. It is also apparent from the hearing transcript that the parties did not reach agreement as to whether the issues would be expanded beyond the specific rehabilitation issues delineated in the employer's and QRC's rehabilitation requests. When the employer requested a finding on the nature of the employee's injury; the employee's attorney responded that hearing on the rehabilitation issues.

> ...wouldn't require a Finding that there's been only a temporary aggravation and there's no current injury. That would be different from a question about whether or not the restriction had expired. And we disagree that restrictions have expired but it seems to me that would be the narrow issue to be determined today.

(T. 11)

In response, the compensation judge commented that

> THE COURT: Well, I think we're saying the same thing. I assume - - we wouldn't be here if there weren't some, at least arguably some conflicting medical evidence on the issue of the restrictions and whether they're related to the 10/9/96 injury, is that - -
>
> MR. MATTAINI: I agree, Judge.
>
> THE COURT: That's what I'm essentially understanding we're talking about. And I think that's another way of saying whether or not there's a temporary injury or not. If the restrictions were resolved and no longer are in effect the injury apparently was

> temporary. Saying it the other way around if the injury were a temporary injury part of that is to the fact that the restrictions would no longer apply. On the other hand if that's not the case then we've got a different situation and that's what the issue is, whether there were restrictions. As I read the allegations, that the allegations on which Mr. Mattaini's claim is based I might add, and I didn't say that earlier but it's Mr. Mattaini's burden of going forward because he's the moving party. You're both shaking your heads so apparently you agree with that.
>
> MR. MATTAINI: Yes, Your Honor.
>
> THE COURT: All right. Are we clear then on the issues? (Short Pause) Let's deal with the exhibits.....

That colloquy could reasonably be interpreted to indicate solely an agreement on who had the burden of going forward, and not an agreement between the parties to expand the issues beyond those specifically spelled out in the employer and insurer's rehabilitation request and request for formal hearing. Pursuant to Minn. Stat. Sec. 176.371, "[t]he compensation judge's decision shall include a determination of all contested issues of fact and law..." However, the notice of hearing stated that issues raised at hearing are limited to those issues forming the basis for the Request for Formal Hearing, and specifically stated that:

> Additional issues or claims may be raised at the hearing only under the following two circumstances: (1) A Compensation Judge has issued an order consolidating the issues raised on the Request for Formal Hearing with additional issues, such as set forth on a Claim Petition, or (2) the parties agree to expand the issues and the Compensation Judge determines at the hearing that sufficient time exists to hear the additional issues.

(Judgment Roll)

This is a close procedural matter. It was not unreasonable for the compensation judge to make a determination on the nature of the employee's injury, based upon conflicting medical evidence concerning the duration of the employee's physical work restrictions and based on the statutory directive to determine all contested issues. In addition, the employer and insurer's argument of the inextricably intertwined issues has merit. However, at this hearing the employee specifically tried to confirm with the compensation judge that the issues were limited to the continuation of rehabilitation services. In addition, arguments were presented solely on the employee's physical work restrictions assigned only during a specific period of time. We therefore concur that the compensation judge's determination that the employee sustained a temporary injury on October 9, 1996 was beyond the specific issues anticipated to be addressed at the expedited hearing, and beyond the issues articulated in the employer and insurer's rehabilitation

request and request for formal hearing. To allow Finding No. 8 to stand could bar further proceedings to determine claims which rest on the temporary or permanent nature of the employee's injury. We therefore vacate Finding No. 8, as the specific issue of the nature of the employee's October 9, 1996, injury was not technically before the compensation judge at the June 9, 1999, hearing.

Denial of Rehabilitation Assistance

The employee appeals the compensation judge's denial of payment for rehabilitation services rendered and the judge's denial of the employee's request for continued rehabilitation services. "Rehabilitation is intended to restore the injured employee so that the employee may return to a job related to the employee's former employment or to a job in another work area which produces an economic status as close as possible to that the employee would have enjoyed without disability." Minn. Stat. § 176.102, subd. 1(b). The compensation judge determined that the employee did not establish by a fair preponderance of the evidence that the services provided by the QRC were reasonable or necessary, or were causally related to the employee's injury of October 9, 1996. The judge therefore determined that the self-insured employer was not liable to pay any portion of the claimed outstanding balance for such services. (Finding No. 9.) The compensation judge also granted the employer's request to terminate rehabilitation assistance.

The compensation judge denied the claim for rehabilitation services for three reasons. First, he relied upon the medical opinion of Dr. Steven Curtis, the employee's treating orthopedist, who had imposed temporary physical work restrictions for the employee on the last day he examined the employee, May 14, 1997. Based upon Dr. Curtis' opinion, the judge determined that the employee had no physical work restrictions as of June 10, 1997. The compensation judge noted that although the employee contacted the QRC on May 13, 1997, and an initial rehabilitation consultation was performed on July 1, 1997, the QRC never contacted Dr. Curtis to clarify whether the employee had any restrictions. (Finding No. 5.) The compensation judge also noted that the employee sought no medical care or treatment as a result of his injury between his May 14, 1997 appointment with Dr. Steven Curtis and his April 7, 1999 orthopedic consultation with Dr. Robert A. Wengler.[2] Based upon this evidence of record, the compensation judge determined that the employee was no longer under any medically-imposed physical work restrictions at least as of the hearing on June 9, 1999. A trier of fact's choice between expert opinions is generally upheld unless the facts assumed by the experts are not supported by the evidence. Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985). As to the physical work restrictions assigned between May 14, 1997 and the hearing date, June 9, 1999, we believe the compensation judge had substantial evidence of record to support his finding that the employee had no physical work restrictions for that period of time, and therefore affirm Finding No. 4.

[2] The employee actually consulted the Albert Lea Clinic on one other date during this period of time, on March 11, 1998, reporting a sharp pain in his left flank. (Resp. Exh. 5)

The compensation judge also reviewed the evidence on the employee's decision to voluntarily terminate his employment with the employer, and the two jobs the employee obtained on his own thereafter. The compensation judge found that in mid September 1997, the employee voluntarily resigned from his employment with the employer, and started a new full-time job in the automotive service business, and subsequently changed jobs to another employer in that business area, all without professional assistance from the QRC. (Finding No. 6.)

Finally, the compensation judge also noted that the QRC never contacted Dr. Curtis to obtain physical work restrictions, never provided any medical management since the employee was not receiving ongoing medical care and treatment, and that the QRC provided no assistance and rehabilitation since the employee found jobs without the QRC's assistance. (Finding No. 5; Memo, p. 4.) The QRC concurred that the employee obtained his two new jobs on his own, without QRC assistance, and that the QRC did not follow-up with either new employer to determine whether the employee's jobs were physically suitable for him. The employer argues that although the QRC indicated on the rehabilitation plan that one goal was to evaluate available work with the employer to determine if suitable work could be provided on a permanent basis, the QRC never contacted the employer nor did he visit the employer's site. The employer also argues that it was not until the employer filed a rehabilitation request to terminate rehabilitation services, that the QRC performed any kind of formal job search for the employee. The employer also argues that the employee needs no ongoing rehabilitation assistance, in that he is now earning a wage close to that which he earned pre-injury, at a job that is physically suitable by the employee's own acknowledgment.

In support of its arguments, the employer relies upon the opinions of Richard VanWagner, who conducted a vocational evaluation of the employee on March 8, 1999, at the request of the employer. In Mr. VanWagner's opinion, the rehabilitation services until the time of hearing were neither reasonable nor necessary, in that nothing in the QRC's records indicated that the QRC performed any services that led to the employee either obtaining or continuing to hold sustained gainful employment. (Resp. Ex. 1.)

The employee argues that the QRC followed proper statutes and procedures by requesting appropriate records from the insurance administrator, obtaining approval for an initial rehabilitation consultation, meeting with the employee on two occasions, filing the required forms with the Department of Labor and Industry. The employee also argues that the QRC telephoned the employee numerous times, provided the employee information on job seeking skills, reviewed the disability case manager's records and the employee's medical records and provided the employee advice about his new jobs. The employee further argues that he is entitled to rehabilitation services on an ongoing basis, in order to secure a job within his physical abilities paying as close to possible to his wages earned on the date of injury. At the time of the hearing, the employee was employed by Crossroads Motors, earning $8.75 per hour, or $350.00 per week, compared to his date-of- injury wage of at least $442.64. The employee argues that a job search supervised by a professional QRC is necessary to assist him in finding a higher paying job.

Although the compensation judge does not specifically cite to Richard VanWagner's opinion and deposition testimony, the compensation judge does refer to factors cited by Mr. VanWagner in reaching his conclusion that the QRC's services were not reasonable and necessary, and that the employee did not require any ongoing rehabilitation assistance. The compensation judge's findings are adequately supported by the vocational records in evidence and by the testimony presented by the employee, the QRC and Mr. VanWagner. Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239. The compensation judge's denial of the employee's claim for rehabilitation services as of the date of June 9, 1999, is substantially supported by evidence of record, and we therefore affirm.