

JACK E. BAKER, Employee, v. FARMERS UNION MKTG. & PROCESSING ASS'N and NATIONAL FARMERS UNION, Employer-Insurer/Appellants, and MN DEP'T OF HUMAN SERVS. and BLUE CROSS/BLUE SHIELD OF MINN., Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
MARCH 14, 2000

No. [REDACTED SSN]

HEADNOTES

CAUSATION - OCCUPATIONAL DISEASE. Contraction of an infectious disease may be compensable as a personal injury whether or not the disease could also be characterized as an occupational disease. See Olson v. Executive Travel MSP, Inc., 437 N.W.2d 645, 41 W.C.D. 782 (Minn. 1989). Although the employee's claim is based on contraction of histoplasmosis, it involves the compensability of a personal injury under Minn. Stat. § 176.011, subd. 16, thus this court need not address whether the disease is a "hazard characteristic of and peculiar to" the employee's occupation as required by Minn. Stat. § 176.011, subd. 15(a), the occupational disease statute.

CAUSATION - SUBSTANTIAL EVIDENCE; EXPERT MEDICAL OPINION - FOUNDATION. The employee's treating physicians had adequate foundation for their opinions that the employee's histoplasmosis was likely caused by his exposure to histoplasma organisms as a result of his work for the employer. The compensation judge could reasonably rely on their opinions and her finding of "primary liability" on the part of the employer and insurer is supported by substantial evidence.

Affirmed.

Determined by: Johnson, J., Wheeler, C.J., and Pederson, J.
Compensation Judge: Joan G. Hallock

OPINION

THOMAS L. JOHNSON, Judge

Farmers Union Marketing and Processing Association and National Farmers Union appeal the compensation judge's finding that they "have primary liability for a September 16, 1998 injury/disease in the nature of histoplasmosis." (Finding 18.) We affirm.

BACKGROUND

Jack Baker, the employee, began working for Farmers Union Marketing and Processing Association, the employer, in February or March 1997. The employer operated a rendering plant which produced animal protein byproducts used in pet food. Dead animals were

trucked to the Rendispose area of the employer's premises, unloaded and ground up in a grinder. Initially, the employee's job was to unload semi trailers containing the dead animals, including pigs, cows, turkeys and chickens. The employee unloaded the animals with a forklift or a bobcat and loaded them into the grinder. (T. 18-20, 71.) On a typical shift, the employee unloaded eight or nine trucks. After unloading the trucks, the employee went inside the truck with a pressure hose and washed out the truck. (T. 26-28.) The employee also washed the floor of the rendering plant. (T. 28-29.)

In May 1998, the employee injured his knee at work. (T. 18.) He was off work until August 11, 1998. (T. 47.) Upon his return to work, the employee worked in a light-duty job moving equipment from the electrical to the maintenance shop. (T. 18-19, 32.) Sometime around the first part of September 1998, the employee returned to a job in the Rendispose area. (T. 23-24.)

On September 15, 1998, the employee began to experience itching on his arms, legs and face which he thought was caused by bug bites. (T. 30-31.) The next day, the employee saw Dr. Dennis P. Nelson at Affiliated Community Medical Center in Redwood Falls, Minnesota. On examination, Dr. Nelson noted swelling on the employee's forehead and right eye with lesions on his lower back and leg. The doctor diagnosed urticaria, prescribed Epinephrine and Benadryl and took the employee off work. The employee testified his symptoms improved and he returned to work a week later. The first day back on the job, the employee testified his symptoms returned and he returned to the doctor. The employee did not thereafter return to work for the employer. (T. 32-33, 52.)

The employee returned to Affiliated Community Medical Center on September 23, 1998 and saw Dr. Gregory B. McCallum who diagnosed recurrent urticaria. By September 28, 1998, the employee's rash had resolved but he had problems with nausea, vomiting and diarrhea. The employee returned frequently to see Dr. McCallum in November and December 1998. The diagnoses included progressive anemia, fatigue, hepatomegaly, myalgia and possible tuberculosis. (Resp. Ex. 3.) On January 7, 1999, the employee was hospitalized at Methodist Hospital under the care of Dr. Leslie Baken with the Department of Infectious Disease of the Park Nicollet Clinic. Following a series of tests, the employee was diagnosed with histoplasmosis. (Resp. Ex. 6.) The employee was discharged after eight days and continued to treat with Dr. Baken. (Resp. Ex. 5.)

The employee filed a claim petition in April 1999, seeking temporary total disability benefits from and after September 16, 1998 resulting from histoplasmosis. The employer and insurer denied the employee sustained a personal injury or occupational disease arising out of his employment. The case came on for hearing before a compensation judge at the Office of Administrative Hearings on August 24, 1999.

At the hearing, the employee testified the dead animals with which he worked included turkeys and chickens. Often, the birds were covered with excrement. The employee wore protective clothing while working but he did not wear a mask. (T. 21-22.) The employee

unloaded the trucks with a forklift or bobcat and placed the dead animals in the grinder. As he did so, he testified he became covered with detritus from the dead and decomposing animals. (T. 25-26.) Once the truck was unloaded, the employee cleaned the truck by going inside the truck with a pressure hose and washing it out. The employee also cleaned and washed the floor of the rendering plant area. The larger waste was loaded into a truck and the smaller waste was washed into troughs. (T. 27-29.)

William Zimmerli has worked for the employer for about 20 years. He was the plant superintendent for seven or eight years and became the plant manager in February 1998. Mr. Zimmerli testified the chickens and turkeys which came to the employer's plant are those which have died at farms which raise them for human consumption. Typically the employer received the dead birds within one to three days of death. (T. 136.) The plant receives one to two trucks of dead turkeys a day. (T. 129-31.) This amount is about 50,000 pounds of turkey a day. The birds were not clean when received by the employer and Mr. Zimmerli acknowledged the birds could have feces on them. (T. 137-38.) In his capacity as superintendent and then plant manager, Mr. Zimmerli testified he was familiar with the employer's plant and surrounding grounds. He testified he had never seen any congregation of birds or bats on the property and was not aware of any areas on the property containing quantities of bird droppings. (T. 56.) Finally, Mr. Zimmerli testified that, other than the employee, no cases of histoplasmosis have ever been reported to him. (T. 73-74.)

Mr. Zimmerli disagreed with the employee's testimony that he had returned to his regular job of unloading trucks with a forklift some time around the first part of September 1998. Mr. Zimmerli testified that on September 1, 1998, the employee was assigned to return to work in the Rendispose area and his duties were to wash the floors and scrub the walls. The employee was not returned to his prior job of driving the forklift or bobcat. (T. 70-72.) Douglas Tauer, a shift supervisor with the employer, also testified the employee returned to the Rendispose floor on September 1, 1998 and his duties were to keep the area clean. He testified the employee did not operate the bobcat or forklift between September 1 and September 16, 1998. (T. 144-146.) Leon Seifert, a shift supervisor with the employer, was the employee's supervisor beginning on September 1, 1998. He also testified the employee's job from September 1 until he left the employer was washing floors in the Rendispose area. Mr. Seifert testified the employee did not operate a bobcat or forklift during that time. Finally, Mr. Seifert testified there were no accumulation of bird or bat feces in the Rendispose area. (T. 162-164.)

In a Findings and Order served and filed October 15, 1999, the compensation judge found "the employer and insurer have primary liability for a September 16, 1990 injury/disease in the nature of histoplasmosis. The histoplasmosis can be traced to the employment as a direct and proximate cause." (Finding No. 18.) The compensation judge ordered the employer and insurer to pay temporary total disability benefits from September 16, 1998, together with medical expenses, and ordered them to reimburse the intervenors. 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). 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

Occupational Disease

Minn. Stat. § 176.011, subd. 16, states that "personal injury means injury arising out of and in the course of employment, and includes personal injury caused by occupational disease." An occupational disease is defined at Minn. Stat. § 176.011, subd. 15(a), which states, in part, that an employer is not liable for compensation for any "occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process, or employment which results from a hazard to which the worker would have been equally exposed outside of the employment." The employer and insurer here contend the employee failed to prove histoplasmosis was a hazard characteristic of and peculiar to the employee's occupation. Accordingly, appellant's assert the compensation judge's findings are clearly erroneous and unsupported by substantial evidence.

In Minnesota, the unexpected contraction of an infectious disease may be compensable as a personal injury whether or not the disease could also be characterized as an occupational disease.

It is well recognized that a pre-existing disease or infirmity of the employee does not disqualify a claim arising out of employment if the employment aggravated, accelerated, or combined with the disease or infirmity to produce disability for which compensation is sought. Common examples included hypertrophic arthritis; cancer or malignant tumor; degenerative processes involving the brain; paresis accelerated by injuries to the head; hernia; and innumerable phases of heart difficulties.

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

In Fehling v. Dayton Rogers Mfg. Co., 28 W.C.D. 35 (W.C.C.A. 1975), this court noted that there are “factual situations that may be logically called a ‘personal injury’ or ‘occupational disease.’” In Jensen v. Kronick’s Floor Covering Serv., 309 Minn. 541, 245 N.W.2d 230, 29 W.C.D. 61 (1976), the supreme court observed that the occupational disease definition did not “set out criteria from which one can exclusively classify the impairment [carpal tunnel syndrome] resulting from repetitive minute trauma as either a personal injury or occupational disease.” In Gilmore v. Little Jack’s Steak House, 32 W.C.D. 4 (W.C.C.A. 1979), this court concluded that contact dermatitis was both a personal injury and an occupational disease. Noise induced hearing loss may also be categorized as an occupational disease or a Gillette-type personal injury. Flint v. American Can Co., 426 N.W.2d 190, 41 W.C.D. 68 (Minn. 1988).

In Olson v. Executive Travel MSP, Inc., 437 N.W.2d 645, 41 W.C.D. 793 (Minn. 1989), the employee became ill with influenza-type B while traveling in the Orient on business for the employer. The infection impaired the employee’s immune system and she developed pneumonia which resulted in chronic bronchiectasis. The compensation judge found the employee sustained both a personal injury and an occupational disease and awarded benefits. On appeal, the parties focused their arguments on the occupational disease issue. The supreme court affirmed the award of benefits and stated:

We are of the opinion, however, that this case involves the compensability of a personal injury under subdivision 16 of § 176.011, thus obviating the need to address whether there was also a compensable occupational disease under subdivision 15.

Id. at 646; 41 W.C.D. at 794. In a footnote, the court acknowledged the argument of the employer/insurer that the employee could not seek compensation for a disease under the personal injury subdivision of the act. Citing Gillette v. Harold, Inc., 101 N.W.2d at 204, 21 W.C.D. at 105, the court stated “[a]pplication of this provision has not been previously so limited.” Id. at 646 n.1, 41 W.C.D. at 795 n.1.

We conclude this case, as did Olson, involves the compensability of a personal injury under Minn. Stat. § 176.011, subd. 16. We need not, therefore, address the appellants’ arguments regarding whether the employee also proved a compensable occupational disease.

Personal Injury

The compensation judge found the employee’s contraction of histoplasmosis was a personal injury and awarded workers’ compensation benefits. Even assuming the employee’s histoplasmosis does constitute a personal injury, the appellants contend the compensation judge’s finding is unsupported by substantial evidence. Specifically, the

employer and insurer argue the evidence is insufficient to establish a causal relationship between the employee's employment and his contraction of histoplasmosis.

Dr. Frank Rhame, a physician specializing in infectious diseases, was retained by the employer and insurer to testify in the case. In preparation for his testimony, Dr. Rhame reviewed the employee's medical records and conducted a search in the medical literature for articles about histoplasmosis. (Resp. Ex. 1; T. 78-79.) The doctor located and reviewed three articles from the medical literature on histoplasmosis. (Resp. Ex. 8.)¹ The doctor explained that a histoplasmosis hazard is created by spores which land in soil enriched by bird or bat feces. The spores grow in the nitrogen enriched soil and then become liberated into the air. A human becomes infected by inhaling the spores. The doctor stated that Minnesota is one of the endemic areas for histoplasmosis, particularly along riverbeds where birds congregate. (T. 89-91.) The city of Redwood Falls is located on ground just above the Minnesota River and Redwood County is established in the medical literature as an endemic area for histoplasmosis. (Resp. Ex. 1, 8.)² In his research, Dr. Rhame found no evidence that histoplasmosis is recognized as a hazard characteristic of and peculiar to the rendering process or the occupation of a rendering plant worker. (T. 82.) Dr. Rhame concluded the employee's histoplasmosis was a sporadic case resulting from breathing the air in Redwood County. The doctor testified the employee's histoplasmosis was not caused, aggravated or accelerated by the employee's employment with the employer. (T. 89.)

Dr. Baken, the employee's treating physician, stated the following: "Through intensive epidemiologic questioning, I have determined that the most likely cause for Mr. Baker's histoplasmosis is through his exposure to histoplasma organisms as a result of his work with dead animals being processed for dog and cat food. Animals that are likely to carry and shed histoplasmosis include, but are not limited to, turkeys, chicken, and other fowl to which he has been regularly exposed at his workplace." (Resp. Ex. 5.)

By report dated March 1, 1999, Dr. McCallum stated:

Although it may never be conclusively proven, where and when he acquired the histoplasmosis infection, it may have been work related. Histoplasmosis is found in bird droppings and has been associated with turkeys. Mr. Baker states that when he returned to work following his knee injury, he worked extensively with turkeys and therefore had a possible exposure.

Dr. McCallum went on to state that "it may be impossible to have definite proof as to where he

¹ "Histoplasma Capsulatum" by Ward E. Bullock; "Histoplasmosis and Histoplasmin Sensitivity in Minnesota" by Herman Kleinman; "Histoplasmosis: Protecting Workers at Risk," publication of National Institute of Occupational Health and Safety, September 1997.

² The employee has lived in the Redwood Falls, Minnesota area since 1995. (T. 42.)

contracted histoplasmosis, but I feel if he had significant exposure to turkeys at Central Bi Products, it would be reasonable to conclude that this is a work related illness.” (Pet. Ex. 3.)

The employer and insurer contend the opinions of both Dr. McCallum and Dr. Baken lack foundation in two areas. First, appellants assert neither Dr. Baken nor Dr. McCallum addressed the Kleinman article which concludes that histoplasmosis is endemic to the geographic area of Redwood Falls. This failure, the appellants contend, is so significant that it renders the opinions of Dr. Baken and Dr. McCallum without foundation. Absent the doctors’ opinions, the appellants assert there is inadequate evidence of a causal relationship between the employment and the histoplasmosis and the compensation judge’s decision must be reversed. We are not persuaded.

Both Dr. McCallum and Dr. Baken treated the employee for several months, were aware of the employee’s employment history and reviewed the relevant medical records and tests. As a general rule, this level of knowledge establishes a doctor’s competence to render an expert opinion. See Grunst v. Immanuel-St. Joseph Hospital, 424 N.W.2d 66, 40 W.C.D. 1130 (Minn. 1988). We acknowledge that neither Dr. Baken nor Dr. McCallum referred to the Kleinman article “Histoplasmosis and Histoplasmin Sensitivity in Minnesota,” which identified Redwood Falls as an area of high histoplasmin sensitivity. (Resp. Ex. 8.) From their failure to mention the study, we cannot conclude, however, the doctors were unaware of it. Even assuming the doctors were unaware of the conclusions stated in the article, such lack of knowledge does not render their opinions without foundation.

Neither doctor was asked whether the article would cause the doctor to change his or her opinion. The article in question was published in 1963 and reviewed cases of histoplasmosis in Minnesota from 1925 through 1961.³ The compensation judge noted the fact that the employee lived in an area where histoplasim reactors were significant over 30 years ago was not, standing alone, convincing. (Memo at p. 5.) The 1963 article is not a fact so material that a failure to mention it renders the doctors’ opinions without foundation. Rather, the study is evidence the compensation judge may consider in assessing the weight afforded the opinions of Drs. Baken and McCallum.

The second foundational deficit in the opinions of Dr. Baken and Dr. McCallum asserted by the appellants, involves the length of time necessary for the histoplasmosis spores to grow. Dr. Rhame testified that fresh bird feces do not contain histoplasmosis spores. Rather, soil enriched by the feces gets inoculated by airborne spores. (See also: Resp. Ex. 8.) The doctor stated it then takes one to two weeks before additional spores germinate and become hazardous to humans. (T. 91-92.) Thus, according to the appellant’s theory, feces-enriched soil around the rendering plant would need to be one to two weeks old before there is a risk of histoplasmosis. Plant manager William Zimmerli testified that the longest period of time that

³ The article reported 70 cases of histoplasmosis in Minnesota from 1925 to 1961, ranging from mild to acute. (p. 342.) Dr. Rhame stated the study reported only one case in Redwood County. (T. 117.)

poultry is on the employer's premises is 12 to 14 hours. (T. 136.) Therefore, the appellants argue that, given the "short length of time involved in the processing of animals, it is extremely remote, if not impossible, that the feces to which the employee was exposed may have contained viable histoplasmosis spores." (Brief at p. 18.) Since there was no evidence Dr. Baken or Dr. McCallum were aware of the one to two-week incubation period, the appellants contend the two doctors lacked foundation for their opinions. Again, we are not persuaded.

On cross-examination of Dr. Rhame the following questions and answers were recorded:

- Q Are you telling me you're not sure how - - exactly how long it is that they produce spores? Is there some confusion on - -
- A How long it takes to produce spores in nature is hard to say.
- Q Okay. So you're not sure.
- A Yeah.
- Q What about - -
- A Week or two is approximately how long it takes.
- Q Okay.
- A Maybe even longer, but its probably roughly that.
- Q Okay. But you're not certain. It's just - -
- A It's not really studied in the natural context.

(T. 106-107.) Dr. Rhame further acknowledged it was possible live fungus could be brought to the employer's plant on the feathers of dead poultry. (T. 108.) The article "Histoplasmosis: Protecting Workers at Risk" at p. 3 states: "The organism can be carried on the wings, feet, and beaks of birds and infect soil under roosting sites or manure accumulation inside or outside buildings." (Resp. Ex. 8.) Dr. Baken stated turkeys and chicken are likely to carry and shed histoplasmosis and opined that the employee's histoplasmosis resulted from his exposure to histoplasma organisms at work. (Resp. Ex. 5.)

The competence of a witness to render expert medical testimony depends upon both the degree of the witness's scientific knowledge and the extent of the witness's practical experience with the matter at issue. Reinhardt v. Colton, 337 N.W.2d 88, 93 (Minn. 1983). The fact that neither Dr. Baken nor Dr. McCallum commented on the incubation period for the histoplasma organisms does not render their opinions without foundation. It is apparent that Dr. Rhame's testimony of a one to two-week incubation period is, at best, an approximation since the doctor conceded the time is not studied. That an incubation period is even required to generate histoplasma spores is an opinion or theory advanced by Dr. Rhame. Dr. Baken opined that turkeys and chicken can shed histoplasmosis. This opinion is supported by Respondent Exhibit 8 as cited above.

The causal connection opinions of Dr. Baken and Dr. McCallum are adequately founded and the compensation judge could reasonably rely upon them. It is the compensation

judge's responsibility, as trier of fact, to resolve conflicts in expert testimony. See Nord v. City of Cook, 360 N.W.2d 337, 342, 37 W.C.D. 364, 372 (Minn. 1985). The compensation judge's decision is, therefore, affirmed.