

DONNA BRITTAIN, Employee, v. INDEP. SCH. DIST. #917, SELF-INSURED/BERKLEY ADM'RS, Employer/Appellant, and HEALTHPARTNERS, INC., Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
JULY 5, 2000

No. [REDACTED SSN]

HEADNOTES

CAUSATION - PRE-EXISTING CONDITION; CAUSATION - AGGRAVATION. Substantial evidence, including expert medical opinion, supports the compensation judge's finding that the employee's brain injury from a 1998 work-related motor vehicle accident was a substantial contributing cause of an aggravation to and/or acceleration of the employee's pre-existing brain injury and of an aggravation to and/or acceleration of the employee's pre-existing psychological condition, and the resulting need for treatment.

Affirmed..

Determined by Rykken, J., Wheeler, C.J., and Pederson, J.
Compensation Judge: Bernard Dinner

OPINION

MIRIAM P. RYKKEN, Judge

The self-insured employer appeals the compensation judge's finding that the employee's brain injury from a 1998 work-related motor vehicle accident was a substantial contributing cause of an aggravation to and/or acceleration of the employee's pre-existing brain injury and the employee's pre-existing psychological condition, and of the employee's resulting need for medical treatment and entitlement to payment of ongoing temporary partial disability benefits. We affirm.

BACKGROUND

On March 3, 1998, Donna Brittain (employee) was involved in a work-related motor vehicle accident while working as an occupational therapist for Independent School District #917 (self-insured employer). The employee's job required her to travel between schools, working with students to develop fine motor and gross motor activities.

The employee had a history of a pre-existing brain injury and psychological conditions. In 1985, the employee sought counseling at Human Services, Inc. (HSI) for depression. The employee was treated intermittently through 1995. The employee was prescribed Prozac for a time in 1990. The employee did not have any difficulty performing her job and did not require any accommodations. In May 1995, the employee sustained a head injury in a bicycle accident. The employee was unresponsive for several minutes, and suffered post-traumatic

confusion and amnesia and retrograde amnesia. After the injury, the employee experienced headaches, dizziness, fatigue, memory loss, and concentration problems. The employee was evaluated by Dr. Deborah Roman, a neuropsychologist at the University of Minnesota, and was diagnosed with a concussive brain injury and cognitive deficits in nonverbal memory, complex reasoning and planning, visual planning, distractibility and depression. The employee improved significantly by August 1995 except for some impairment in her nonverbal memory skills and difficulty in concentration and organization skills. The employee was off work until late September 1995 when she returned to a reduced workload and gradually increased her hours.

The employee returned to her job as an occupational therapist for the employer on a full time basis on September 25, 1995. To assist her memory function, the employee made careful notes and used a planner. The employee changed her job duties so that she would work with children less physically challenging. The employee was able to work full time, and received excellent performance reviews. The employee was able to drive, but required quiet in the car. The employee experienced continued dizziness and balance problems, and discontinued some recreational activities such as roller-blading, biking, and softball. The employee returned to therapy at HSI in August 1996 for increased emotionality, stress intolerance, and depression after the 1995 bicycle accident, and for help dealing with family problems, job dissatisfaction, financial decisions, and relationship problems.

During the March 3, 1998, work-related accident, the employee struck her head on the windshield with enough force to crack the windshield and cut her forehead. The employee was treated at Cannon Falls Hospital and transferred to Regions Hospital. After x-rays and observation, the employee was discharged and referred to Dr. Barbara Gibson for further treatment of neck pain, headaches, and shoulder pain. Dr. Gibson prescribed physical therapy, EMG testing, exercise instruction, and medication. The employee complained of problems with concentration and distraction. The employee was unable to work until April 13, 1998, when she returned to work with restrictions regarding lifting and taking breaks. The employee reported more difficulty with nonverbal memory and concentration, was easily distracted from her work, and was prescribed Ritalin. Dr. Gibson referred the employee to Dr. Roman for evaluation on May 4, 1998, who confirmed mild cognitive deficits. Dr. Roman recommended a reduced workload in a distraction free environment and frequent breaks. The employee testified that she experienced difficulty in performing her work and managing her daily activities.

In June 1998, the employee treated with her family practitioner at HealthPartners, to whom she reported difficulty coping with her situation, and was referred to Dr. John Benninghoff for mental health treatment. Dr. Benninghoff prescribed antidepressant medication and recommended therapy. The employee began a treatment program, starting at five days per week, and later was referred back to HSI for a therapy program.

In September 1998, the employee began treating with Dr. Ellen Snoxell, a rehabilitation psychologist. Dr. Snoxell diagnosed the employee with dementia due to traumatic brain injury as well as organic affective syndrome. Dr. Snoxell opined that the employee's 1998 work injury caused permanent residual deficits including difficulty functioning in high stimulus

environments and performing divided attention tasks and multiple tasks simultaneously. The employee also sought counseling at HSI, where she had received prior treatment, with Dr. James Wojcik. Dr. Wojcik opined that while the employee's 1995 bicycle accident had caused cognitive difficulties and psychological injury and depression, the 1998 work injury had caused further decline of the employee's neuropsychological function and emotional state, as evidenced by longer latency of response while she processed information, lower distraction and stress tolerance thresholds, and an increased depression level.

The employee's supervisor testified that after the employee's 1995 bicycle accident, she observed that the employee had to take notes in order to perform her job, but observed no other changes. The employee received performance reviews in 1996 and 1997 which indicated that her work exceeded district standards. After the 1998 work accident, however, the supervisor testified that the employee was easily distracted, had difficulty handling a full caseload, and had problems working in a noisy environment, as the classrooms often were. A co-worker also testified that the employee had increased difficulty working after the 1998 accident.

The employee was told to stop driving, and was off work from January 1, 1999, through March 9, 1999. The employee returned to work on March 10, 1999. In May 1999, the employee was again evaluated by Dr. Roman. The employee continued to have nonverbal memory problems. Dr. Roman opined that the employee had experienced a mild concussion less severe than the 1995 head injury and that the employee's functional decline was due to longstanding psychiatric problems of depression, not the 1998 accident. Dr. Roman concluded that the employee's symptoms from the 1998 accident had resolved and any lingering effects were based upon her pre-existing condition. Dr. Roman also concluded that any residual nonverbal memory loss was attributed to the 1995 bicycle accident.

On July 6, 1999, the employer filed a petition to discontinue benefits alleging that the employee's condition was related to a pre-existing non-work related refractory mental illness and was not causally related to the employee's work injury. On August 24, 1999, the employee filed a medical request, claiming entitlement to payment for medical expenses incurred in 1998 and 1999. Both matters were consolidated for hearing, which was held on September 22, 1999. The compensation judge found that the employee had sustained an aggravation to and/or an acceleration of a pre-existing psychological condition and also an aggravation to and/or an acceleration of a pre-existing non-work related concussion and brain injury, and denied the petition to discontinue temporary partial disability benefits. The compensation judge also awarded payment of claimed medical expenses, determining that the medical expenses were causally related to the employee's March 2, 1998, injury, and were reasonable and necessary to cure or relieve the employee from the effects of that injury. The employer 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 (1998). 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 may 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 alleges that the employee’s condition was related to her pre-existing brain injury and psychological condition. An employee’s condition and need for treatment are compensable where a work-related injury is a substantial contributing factor not only to the cause of the condition but also to the aggravation or acceleration of a pre-existing condition. Wallace v. Hanson Silo Co., 305 Minn. 395, 235 N.W.2d 363, 28 W.C.D. 79 (1975). An employee need not prove that the work injury was the sole cause, only a substantial contributing cause of the disability for which benefits are sought. Swanson v. Medtronics, Inc., 443 N.W.2d 534, 536, 42 W.C.D. 91, 94-95 (Minn. 1989). The compensation judge found that as a result of the 1998 accident, the employee sustained a concussion injury to the brain; and sustained an aggravation to and/or acceleration of a pre-existing psychological condition, a consequential injury, a depression; and also aggravated a pre-existing non-work related concussion and brain injury as a result of a May 6, 1995 bicycle accident.

The employer relies upon Dr. Roman’s opinion. Dr. Roman opined that after the 1998 accident, the employee had experienced a mild concussion less severe than the 1995 head injury and that the employee’s functional decline was due to longstanding psychiatric problems of depression, not the 1998 accident, that the employee’s symptoms from the 1998 accident had resolved and any lingering effects were based upon her pre-existing condition, and that any residual nonverbal memory loss was attributed to the 1995 bicycle accident. Dr. Roman concluded that there was no organic explanation for the employee’s disability and functional decline. She explained that if the employee had suffered an organic injury the symptoms would have been the greatest shortly after the 1998 accident with steady improvement, instead of a steady deterioration which is more consistent with functional psychopathology or depression.

The compensation judge relied in part upon the opinion of Dr. Snoxell, who testified that the employee sustained permanent residual deficits from the 1998 accident including difficulty functioning in high stimulus environments, performing divided attention tasks, and performing multiple tasks simultaneously. In addition, Dr. Snoxell testified the employee also sustained an aggravation of a pre-existing psychological condition, including actual difficulty tolerating stress, increased depression and anxiety with decreased ability to perform activities of daily living which necessitated her involvement in an out-patient day hospital program, all as a substantial result of the work-related March 2, 1998 motor vehicle accident.

The employer argues that Dr. Snoxell was not aware of the employee's cognitive difficulties before the 1998 accident. However, Dr. Snoxell had reviewed the employee's medical records and was aware of the employee's symptoms. The compensation judge could reasonably rely upon Dr. Snoxell's opinion. It is the compensation judge's responsibility, as 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). Further, the compensation judge relied upon other evidence in making his decision. Dr. Wojcik evaluated the employee in March of 1994, when he treated Ms. Brittain for prior depression, and also examined the employee on May 16, 1995 after the initial bicycle accident. In a report dated April 18, 1999, Dr. Wojcik noted the differences following the employee's automobile accident in 1998:

Following Ms. Brittain's March 2, 1998, automobile accident, her stress tolerance appeared to become further impaired. Specific loss of neuropsychological function was measured by referral to specialists. My own experience of her was that she displayed longer latency of response while she processed information. Her stress tolerance decreased, and noise and distraction further limited her ability to perform at her highest level. That level is now only reached under conditions of quiet and calm. At this time, Ms. Brittain's ability to process complex psychological or perceptual information is impaired to the point that she has been unable to pass a driver's test. She took this test in response to our observations that she may have lost this capacity to perform. In addition, her emotional ability and depression level increased to the point that her attendance at a day treatment program for persons with serious mental illnesses was required, which had never been previously required in her course of illness.

Ms. Brittain appears to have sustained a long-term disability as a result of her traumatic brain injuries. The initial accident appeared to have been approximately 50% recovered from before the onset of the second injury. The remaining 50% recovery was likely to be much slower and may not have occurred at all. Following her second injury, the likelihood of total recovery is further diminished, although it would be beyond my expertise to quantify how much so.

Substantial evidence of record supports the compensation judge's finding that the employee's work-related 1998 accident was a substantial contributing cause of the employee's brain injury and psychological condition, and her resulting need for medical treatment. Accordingly, we affirm.