

SUE E. BUSKE, Employee, v. STATE, DEP'T OF HUM. SERVS., SELF-INSURED, Employer/Appellant, and MAYO FOUND., Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
DECEMBER 5, 2000

No. [REDACTED SSN]

HEADNOTES

CAUSATION - CONSEQUENTIAL INJURY. Substantial evidence, including expert opinion, supported the compensation judge's conclusion that the employee sustained a consequential right hand and wrist injury due to overuse caused by her admitted work-related left hand and wrist injury, despite discrepancies in the record regarding the timing and cause of the disputed condition.

Affirmed.

Determined by Wilson, J., Johnson, J., and Rykken, J.
Compensation Judge: Jeanne K. Knight

OPINION

DEBRA A. WILSON, Judge

The self-insured employer appeals from the compensation judge's finding that the employee sustained a consequential injury to her right hand and wrist as a result of her 1975 work-related left hand and wrist injury. We affirm.

BACKGROUND

The employee sustained a significant work-related injury to her left hand and wrist on November 10, 1975, while working for the Minnesota Department of Human Services [the employer].¹ Dr. William Cooney, of the Mayo Clinic, has been the employee's treating doctor for her left hand and wrist since 1975, despite the employee's move to California in 1982.²

On March 2, 1991, the employee injured her left knee and ribs in an automobile accident while driving to California from Minnesota following treatment by Dr. Cooney for her left hand and wrist. In May of 1992, the parties entered into a stipulation for settlement, wherein the employee agreed to accept \$75,000 in full, final, and complete settlement of any and all claims arising out of the 1975 and 1991 incidents, with the exception of medical expenses related to the 1975 injury.

¹ The employee has had thirteen surgeries to her left hand and wrist since 1975.

² A fuller description of the background can be found at Buske v. State, Dep't of Human Servs., 60 W.C.D. 44 (W.C.C.A. 2000).

Eventually the employee developed right hand pain and soreness. She returned to Minnesota for treatment of her left hand and wrist in August of 1997. Dr. Cooney's office notes from August 26, 1997, reflect that the employee had been seen by a doctor in California in June, "because of [left] wrist pain that appeared to be related to crutch walking." The employee returned to Dr. Cooney on September 22, September 30, and October 14, 1997, with ongoing complaints relative to her left hand and wrist. The first medical record of treatment to the right hand occurred when the employee was seen in the emergency room of St. Mary's Hospital on October 27, 1997. At that time, the employee reported having lifted wet laundry from the floor ten days previously and "has had worsened right wrist pain since." Dr. Cooney saw the employee the next day and recorded that the employee had "felt a pop while lifting wet clothes."

On December 31, 1997, the employee returned to Dr. Cooney with a history of having fallen two weeks before, and Dr. Cooney casted the employee's right wrist. Five months later, on May 29, 1998, Dr. Cooney opined that, "[d]uring the [employee's] treatment for her left wrist, she was forced to use her right wrist related to daily activities and develop[ed] increasing pain in her right wrist which culminated in a full blown reflex sympathetic dystrophy."

On October 21, 1998, the employee filed a medical request, seeking, in part, payment of medical expenses incurred in treatment of her right hand and wrist. The employee prevailed at an administrative conference, and the employer filed a petition for formal hearing, which came on for hearing on March 5, 1999. In findings and order filed on May 4, 1999, the compensation judge found, in part, that the employee did not prove a compensable consequential injury to her right hand and wrist because Dr. Cooney's opinion to that effect lacked foundation. In a decision filed on November 5, 1999, this court held that, under the circumstances of this case, Dr. Cooney had foundation to render a causation opinion, and we vacated the judge's decision as to the claimed consequential injury and remanded the matter for reconsideration. In findings and order on remand filed June 27, 2000, the compensation judge found that the employee had proven that she sustained a Gillette-type injury³ to her right hand and wrist as a result of overuse and that the overuse occurred because of the admitted injury to the employee's left upper extremity. The employer 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 (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, "[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,

³ See Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 32 W.C.D. 105 (1960).

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

The employer contends that the judge’s finding of a consequential injury to the right hand and wrist is erroneous and contrary to the evidence. Specifically, the employer appeals from Finding 3, in which the compensation judge stated, in part, “[t]he employee testified she began to experience pain and swelling in her right hand while using crutches in 1997. The use of crutches was due to the consequential left knee injury.” We agree that there is no support in the record for a portion of Finding 3.⁴ However, this particular error does not render the judge’s consequential injury finding erroneous or contrary to the evidence.

The judge found at Finding 7 that the employee’s right hand and wrist injury was “as a result of overuse of the right hand and wrist. The overuse occurred because of the admitted injury to the left arm.” In her memorandum, the judge noted, “[b]ecause of the severity of her left arm condition, [the employee] primarily relies on her right arm.” This finding is supported by the employee’s testimony and the May 29, 1998, opinion of Dr. Cooney. There is no causation opinion to the contrary.

The employer also contends that a conflict exists between the employee’s testimony and contemporaneous medical records regarding when and how her right wrist problems began. We acknowledge the employer’s point, and, as we pointed out in our November 5, 1999, decision, we might have affirmed the judge’s ultimate conclusion denying the employee’s consequential injury claim had the judge provided a legitimate basis for her decision. However, on remand, the compensation judge did not find that the employee’s testimony or the opinions of Dr. Cooney were lacking in credibility. In fact, in her memorandum, the judge noted, “[w]hile it is troubling that the employee did not mention any pain and soreness in the right wrist to Dr. Cooney during her medical visits prior to October 27, 1997, that fact does not raise the inference that her testimony concerning the start of right wrist pain some two years earlier was false.” Assessment of a witness’s credibility is the unique function of the trier of fact. Even v. Kraft, Inc., 445 N.W.2d 831, 42 W.C.D. 220 (Minn. 1989). Nor did the compensation judge find that the laundry incident and the fall were the sole cause of the employee’s right hand and wrist problems. Rather, in her memorandum, the compensation judge noted, “[i]t appears from the medical records that the fall,

⁴ The employee testified that her right hand and wrist problems started in 1997, explaining that, because her left hand was deteriorating during that time, she was solely dependent on her right hand. On cross-examination, she was asked about Dr. Cooney’s notations in 1997 that the left hand and wrist were deteriorating in 1997 because of the use of crutches, and the employee testified that she recalled that she had broken her foot in November or December of 1996 and that she had to use crutches for that injury, which lead to increasing left hand and wrist problems. The fact that the employee had been on crutches for a foot injury as opposed to a knee injury is not critical under the circumstances.

combined with the overuse syndrome, led to the employee's current right arm complaints." The medical records combined with the opinion report of Dr. Cooney provide substantial evidence to support the judge's conclusion.

Our remand contemplated more than one possible result. Certainly some aspects of this case were troubling, as the compensation judge herself noted, and certainly the evidence might well have supported different findings than those made by the compensation judge on remand, but our function on appeal is to determine whether the judge's findings "are supported by evidence that a reasonable mind might accept as adequate." Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239. The employee's testimony and the opinions of Dr. Cooney provide that evidence in this case, and we therefore affirm the judge's finding that the employee sustained a compensable consequential injury to the right hand and wrist.