

MICHAEL L. CARSON, Employee, v. CITY OF DULUTH, SELF-INSURED,
Employer/Appellant.

WORKERS' COMPENSATION COURT OF APPEALS
NOVEMBER 1, 2000

No.]REDACTED SSN]

HEADNOTES

TEMPORARY TOTAL DISABILITY - WORK RESTRICTIONS; JOB SEARCH -
SUBSTANTIAL EVIDENCE. Where the judge reasonably concluded that the evidence supported
the employee's claim of ongoing restrictions, and where the judge reasonably concluded that the
employee did not fail to conduct a reasonably diligent job search under the circumstances, the
compensation judge's award of temporary total disability benefits was not clearly erroneous and
unsupported by substantial evidence.

Affirmed.

Determined by Pederson, J., Rykken, J., and Johnson, J.
Compensation Judge: Donald C. Erickson

OPINION

WILLIAM R. PEDERSON, Judge

The self-insured employer appeals from the compensation judge's award of
temporary total disability benefits from September 2, 1999, through October 6, 1999. We affirm.

BACKGROUND

On January 4, 1999, Michael Carson was hired by the City of Duluth as a police
officer for a one-year probationary period.¹ The employee's work schedule consisted of working
twelve-hour shifts on four consecutive work days, followed by four days off. On August 18, 1999,
the fourth day of his work shift, while chasing a suspect through a small creek, the employee
slipped and fell, striking his head, left palm, and left forearm on rocks in the creek. At the time of
the incident, Mr. Carson [the employee] was thirty-three years old and was earning a weekly wage
of \$695.97. The City of Duluth [the employer] was self-insured against workers' compensation
liability at the time of the injury.

¹ Prior to his employment by the City, Mr. Carson had completed a degree in law
enforcement from Mankato State University and had obtained skills training through Hibbing
Community College. Mr. Carson started working in law enforcement in 1998 and held several
part-time positions with police departments in southern Minnesota over the course of that year.

Immediately following his injury, the employee was taken by ambulance to the Emergency Room at St. Mary's Hospital in Duluth, where attention was directed mainly to his head injury. He received fourteen stitches to close a wound in his forehead. Two days later, the employee returned to St. Mary's Walk-In Care, seeking attention for persistent left wrist pain. No fractures were identified on x-rays, and the employee was treated with a splint. He was advised to remain off work for a couple of days "and then no use of wrist or hand for seven days." The employee was not scheduled to work on August 19, 20, 21, or 22, and because of persisting problems he missed work on August 23, 1999, as well. He completed his seven days of restrictions by answering non-911 telephone calls at the employer's front desk.

The employee returned to his normal patrol duties on August 31, 1999, but continued to experience left wrist problems that affected his ability to use his left hand and wrist to lift, twist, or turn anything. The employee subsequently testified that it was difficult for him to open car doors, to turn doorknobs, or even to lift a gallon of milk. He further stated that it would have been impossible for him to subdue suspects, to apply handcuffs, or to perform the more physical tasks of his patrol duties. He did advise his supervisors of his continuing left wrist difficulties, but he did not seek medical attention.

On September 2, 1999, the employee was advised that he was being terminated as a probationary employee and was given the choice of resigning so that a termination would not appear on his record. The employee resigned on September 2, 1999. After his employment was terminated, the employee did not immediately seek medical assistance for his wrist symptoms because he felt that, since he was not working and using it, perhaps his wrist would heal on its own. During his exit interview with the employer on September 13, 1999, the employee did mention his wrist difficulties, and he was advised by the benefits administrator to seek medical attention.

On October 7, 1999, the employee was seen by orthopedist Dr. David Webb at the Duluth Clinic. Dr. Webb diagnosed a left wrist sprain with a possible triangular fibrocartilage tear. He placed the employee in a cast and restricted him from returning to his usual and customary work as a police officer. The employee was released to perform mainly sedentary work with no hazardous-duty. The employee returned to see Dr. Webb again on October 26, 1999, reporting no improvement after three weeks of immobilization. Dr. Webb removed the cast and referred the employee for an MRI. On November 4, 1999, the radiologist reported that the MRI revealed a "vertical tear through the central portion of the triangular fibrocartilage complex." On that same date, Dr. Webb referred the employee to Dr. Peter Goldschmidt for consideration of surgical treatment options. Dr. Webb continued to restrict the employee from performing the duties of a patrol officer.

On November 8, 1999, the employee filed a claim petition and affidavit of financial hardship, seeking temporary total disability benefits continuing from September 2, 1999. Shortly thereafter, the employer commenced payment of temporary total disability benefits effective October 7, 1999, based on the restrictions provided by Dr. Webb. The employer continued to deny

liability for the employee's claimed temporary total disability from September 2, 1999, through October 6, 1999, based on the lack of any medical report restricting the employee from all work.

On November 29, 1999, the employee was referred for a rehabilitation consultation with QRC Christine Delich. The QRC found the employee eligible for rehabilitation services and formulated a rehabilitation plan, wherein the goal was for the employee to return to work with a different employer at the same or a modified job as a police officer.

The employee's claim for approximately five weeks of benefits came on for hearing before a compensation judge at the Office of Administrative Hearings on May 12, 2000. In a Findings and Order issued on that same date, the compensation judge concluded that the employee was restricted from performing his normal duties during the period in question and, as his restrictions had not been defined, he was excused from searching for other work. He awarded the period of temporary total disability benefits in dispute. 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, 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

On appeal, the employer contends that the compensation judge's award of temporary total disability benefits, in the absence of documented work restrictions, is clearly erroneous. The employer argues that the work restrictions that the employee received on August 20, 1999, expired on August 29, 1999, and that the employee returned thereafter to his regular duties until his resignation on September 2, 1999. The employer contends that the employee had no documented restrictions and sought no medical attention between September 2, 1999, and October 6, 1999, that the employer was unaware of any work restrictions during this period, and that the compensation judge could not reasonably conclude that the employee had work-related restrictions during that period. The employer argues, citing Kautz v. Setterlin Co., 410 N.W.2d 843, 40 W.C.D. 206 (Minn. 1987), that without documented restrictions there were

in fact no restrictions on the employee's physical activities and thus no legal entitlement to wage loss benefits. We disagree.

The judge concluded that the preponderance of the evidence supported the employee's claim of ongoing restrictions related to his left wrist injury of August 18, 1999, and this conclusion was not unreasonable. When Dr. Webb examined the employee on October 7, 1999, he diagnosed a left wrist sprain and a possible triangular fibrocartilage tear. He immediately placed the employee in a cast and restricted him from his usual and customary work as a police officer. Dr. Webb's diagnosis of a triangular fibrocartilage tear was ultimately confirmed by MRI on November 4, 1999. Despite the lack of medical treatment during the period in dispute, the judge reasonably concluded that the employee's triangular fibrocartilage tear was related to his injury of August 18, 1999, and that the employee was restricted from performing his normal duties from that date forward. The employee provided a reasonable explanation for his failure to seek medical attention immediately following his resignation, and the evidence clearly supports the conclusion that the employee continued to suffer from residual disability related to the work injury. The compensation judge's conclusion that the employee suffered from restrictions during the period in dispute is reasonably supported by the records of Dr. Webb and by the employee's testimony.

The employer also argues that the employee is not entitled to temporary total disability benefits because there was absolutely no evidence in the hearing record that the employee engaged in a reasonable and diligent search for employment during the period of September 2, 1999, through October 6, 1999. The employer argues that the judge's finding that the employee was "excused from searching for other work" is without precedent and clearly erroneous. We are not persuaded.

The compensation judge explained in the memorandum attached to his Findings and Order that his award of temporary total disability benefits was based on his review of the totality of the evidence and circumstances presented by this case. The judge concluded that the employee clearly did not have the physical ability to perform his normal duties as a patrol officer during the period in question. The triangular fibrocartilage tear that was subsequently diagnosed was in existence prior to the diagnosis and would have disabled the employee from his normal duties. The judge indicated further that the employee's ability to seek other work would have been difficult under the circumstances here, in which the employee's restrictions were undefined. In this case, the judge also reasonably considered the employer's subsequent payment of temporary total disability benefits and its approval of a rehabilitation plan providing for the employee's return to work as a patrol officer.

Given the facts of this case, we cannot conclude that the compensation judge's award of temporary total disability benefits during the brief period at issue was unreasonable or unsupported by substantial evidence in view of the entire record as submitted. Accordingly, we affirm. Hengemuhle, 358 N.W.2d 59, 37 W.C.D. 239.