LAURI J. COLBY, Employee/Appellant, v. TELESERV LEGAL SYS. and ASSIGNED RISK PLAN/BERKLEY ADM'RS, Employer-Insurer, and BLUE CROSS/BLUE SHIELD OF MINN., UNITY HOSP., and ORTHOPEDIC PARTNERS, Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
OCTOBER 16, 2000

No. [REDACTED SSN]

HEADNOTES

CAUSATION - TEMPORARY AGGRAVATION. Where it was based on properly founded expert medical opinion and was not otherwise unreasonable in light of the evidence of record, the compensation judge's conclusion that the employee's work injury was merely temporary and not a substantial contributing cause of the employee's surgery and ongoing disability was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

Determined by Pederson, J., Rykken, J., and Wheeler, C.J.
Compensation Judge: William R. Johnson

OPINION

WILLIAM R. PEDERSON, Judge

The employee appeals from the compensation judge's denial of temporary total disability, temporary partial disability, permanent partial disability, and medical expenses. We affirm.

BACKGROUND

On October 4, 1995, Lauri Colby sustained an admitted Gillette injury[1] to her low back in the course of her employment with Teleserv Legal Systems [the employer]. At the time of her injury, Ms. Colby [the employee] was thirty-one years old and was earning a weekly wage of $380.00.[2] The employer and its insurer paid medical expenses and a brief period of temporary partial disability benefits following the employee's injury.[3]

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

[2] Pursuant to unappealed Finding 1.

[3] According to a Notice of Intention to Discontinue filed September 3, 1996, the insurer paid 1.6 weeks of temporary partial disability benefits in August 1996 and a total of $486.24 in medical expenses.

The employee first sought treatment on April 7, 1995, at the Silver Lake Clinic, where she reported a two-week history of right-sided low back pain without specific injury. She related worsening symptoms with prolonged sitting at work and reported radiating pain into the upper thigh area with certain movements. She was diagnosed with SI joint strain and provided with medications and information on low back care. The employee did not significantly improve with her medications, and in late June was referred to physical therapy.

On July 25 and 28, 1995, the employee returned to the clinic, and Dr. David Spencer administered a "stretch and spray technique" to improve her range of motion, recommending that she follow up with home heat. On the latter of those dates, following the spray and stretch, the employee noted marked improvement in her low back tenderness. On examination, the doctor recorded no leg pain and no paresthesias. On August 13, 1995, the employee completed her physical therapy, and the therapist reported that they were unable to meet their functional goal of enabling the employee to sit for up to three hours without pain down her leg. The employee continued to have spasms of the back and right leg.

On October 16, 1995, Dr. Spencer signed a Health Care Provider Report indicating that the employee had reached maximum medical improvement [MMI] on October 1, 1995.[4] This MMI opinion was served and filed on November 1, 1995.

On February 12, 1996, the employee returned to the clinic asking to be seen by a specialist for her chronic low back pain, and she was referred to orthopedist Dr. Robin Crandall. On February 21, 1996, the employee complained to Dr. Crandall of severe lumbar pain with bilateral leg pain. Dr. Crandall diagnosed chronic mechanical back pain, evidence of bilateral lower extremity radiculitis, and degenerative findings at L5-S1. He recommended a low back conditioning program and weight loss. On March 20, 1996, Dr. Crandall reported that the employee's back condition had improved over the past month, and he diagnosed resolving mechanical low back pain with lower extremity radiculitis. He recommended that the employee return for a final check in six months.

The employee continued to work full-time with the employer and did not return to the Silver Lake Clinic for treatment of her low back until August 1996. On August 13, 1996, the employee reported that she had been doing well until the previous week, when she had bent over and "felt a sudden pain in the low back area." The doctor diagnosed continued low back pain/muscle strain and spasm and referred the employee to physical therapy. She was given a note for work, releasing her to half days for two weeks. About two weeks later, the employee reported some improvement but continued to complain of low back pain, mainly on the right side. She was

[4] The Silver Lake Clinic records do not indicate whether the employee was seen between July 28, 1995, and October 16, 1995. In fact, there is no indication that the employee was seen or examined on October 16, 1995. In addition to MMI, the doctor's report reflects that additional physical therapy was planned and that the employee was capable of working if she avoided prolonged sitting and heavy lifting. The doctor also noted that it was too early to determine whether the employee had sustained any permanent partial disability.

released to return to work full time, restricted from lifting over ten pounds and from bending or reaching below the knees.

On September 16, 1996, the employee was seen again at the Silver Lake Clinic, with complaints of muscle spasm on the right side of her low back at the lumbosacral spine area. She had improved with the physical therapy and was released back to work without restrictions but placed on medications. That same night, the employee developed some flu-like symptoms and vomited, following which she had a sudden return of pain in her low back area. Three days later she returned to the clinic with increased back pain and spasm. She was taken off work for several days and again provided with medications.

The employee returned to Dr. Crandall's office on November 1, 1996, complaining of low back pain with occasional bilateral buttock pain. Dr. Crandall scheduled an MRI, which revealed a small moderate posterior paracentral disc herniation at L5-S1. He recommended a conservative treatment program with anti-inflammatories and work restrictions. The employee continued to work full-time, but with restrictions. When she was seen again on February 12, 1997, the employee complained of pain and discomfort, despite having been administered epidural blocks and treatment with different types of anti-inflammatories. She advised Dr. Crandall, however, that she could live with the pain that she had and was essentially "getting by."

On March 21, 1997, the employee was examined for the employer and insurer by orthopedist Dr. David Boxall. Dr. Boxall obtained a history from the employee, reviewed her medical records, and performed an examination. He opined that there was no evidence to support the claim that the employee's herniated disc at L5-S1 resulted from her work activities. He noted that the activities she was performing on the job were extremely light duty and not the type of activity likely to cause a disc herniation. He concluded that the employee's April 1995 injury was temporary in nature and had resolved by August 1996.

On June 26, 1998, the employee again saw Dr. Crandall, complaining of continued pain with no evidence of any real major improvement. Three days later she underwent a CT scan, which again showed a right disc herniation at L5-S1. Dr. Crandall noted that "[t]here is some calcifications along the margin and some spurring and this is causing some displacement. The displacement does not appear to be severe but her pain is severe. She can really barely get by. The leg pain is severe." On August 18, 1998, the employee underwent a laminectomy on L5-S1 on the right side, with partial facetectomy and foraminotomy, performed by Dr. Crandall.

On October 21, 1998, Dr. Crandall, in a letter to the employee's attorney, noted that the employee related her back pain to her activities at work. He further stated "[i]t is possible that you could get disc space deterioration and a work setting could cause this although most herniated lumbar discs are due to some basic type of injury." He concluded, however, that the employee's work activities were a significant contributing factor to her medical condition.

On February 10, 1999, the employee filed a claim petition alleging entitlement to temporary total and temporary partial disability benefits continuing from August 18, 1998, as well

as to payment of medical expenses and compensation for an undetermined permanent partial disability.

The employee was again seen by Dr. Boxall on June 24, 1999. Dr. Boxall reiterated his opinion that the April 1995 injury was temporary in nature and had resolved by August of 1996. He further stated that the April 1995 injury played no role in the employee's subsequent need for medical treatment for her low back.

The employee's claim petition came on for hearing before a compensation judge on January 7, 2000. By Findings and Order filed March 6, 2000, the compensation judge concluded, in reliance on the opinion of Dr. Boxall, that, although the employee did sustain a work-related injury on April 4, 1995, that injury was only a temporary one and not the cause of the employee's herniated disc. The judge concluded that the employee was therefore not entitled to any of the benefits claimed relative to the injury. 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).

DECISION

The compensation judge determined that the employee's work injury in 1995 was a temporary aggravation that had resolved by October 1, 1995, and that the employee had failed to prove "that her present problems, and claimed present disability, is causally related to her temporary aggravation type injury on April 4, 1995." In arriving at this determination, the judge quoted extensively from the March 21, 1997, report of Dr. Boxall. In particular, the judge concurred with Dr. Boxall in concluding that the description of the injury in 1995 does not appear to be consistent with a disc herniation. The judge felt that Dr. Crandall's causation opinion was somewhat equivocal when he stated that a work setting could cause disc space deterioration but that most herniated lumbar discs are due to "some basic type" of injury. The judge concluded that the vomiting episode at home in September 1996 was the most likely cause of the employee's disc herniation, given the description of the onset of sudden pain, and that the greater weight of the evidence indicated only a temporary aggravation from work activities.

On appeal, the employee contends that the judge's determination that the employee's work injury is not a substantial contributing cause of the employee's disability and need for surgery is clearly erroneous and unsupported by substantial evidence. The employee argues that she credibly testified that her symptoms never resolved after April 4, 1995, and that this testimony is supported by the medical records. She contends that her medical complaints consistently included low back pain and radicular symptoms. She argues that there is absolutely no evidence that her injury resolved by October 1, 1995, as concluded by the compensation judge, or that any injuries at home constituted superseding intervening injuries so as to sever the causal connection between her work injury and her subsequent disability.

Upon review of the judge's findings and order and his memorandum attached thereto, it appears that the judge essentially offers two reasons for his conclusion that the April 4, 1995, injury was temporary in nature. He concludes first that the 1995 injury had resolved by October 1, 1995, and second that the description of the 1995 injury is not consistent with a disc herniation.

We agree with the employee that substantial evidence does not support the judge's conclusion that the employee's work injury had resolved by October 1, 1995. The apparent basis for the judge's conclusion is the October 16, 1995, report from the Silver Lake Clinic, wherein the doctor checked the box indicating that the employee had achieved maximum medical improvement by October 1, 1995. However, nowhere in that report is it indicated that the employee's condition had "resolved." In fact, there is no indication that the employee was even examined on October 16, 1995. The October 16, 1995, report further indicates that additional physical therapy is planned and that the employee should not sit for prolonged periods or do any heavy lifting. The last medical record in evidence prior to that report is the physical therapy note of August 13, 1995. On that date, the therapist had noted that the employee continued to have spasms of the back and right leg. Although the employee was discharged at that time, she had not met the goal of being able to sit for up to three hours without having pain down her leg. Substantial evidence does not support the contention that the employee's condition had resolved by October 1, 1995.

The compensation judge further concluded that even if the employee's condition had not resolved by October of 1995, by no means did any disability extend beyond March of 1996. The judge specifically referred to Dr. Crandall's office note of March 20, 1996, wherein the doctor had found that "[p]hysical examination does show straight leg signs negative. Reflexes are symmetric. She is quite heavy around the midline but there is no major tenderness in the lower lumbar spine. The pain does seem to be resolving." On that date, Dr. Crandall did send the employee back to work, concluding that "she is doing quite well." Although Dr. Crandall suggested the employee's pain seemed to be "resolving," substantial evidence in the record, including the opinions of Dr. Boxall, do support the judge's conclusion that the employee's injury was temporary in nature. The March 20, 1996, visit to Dr. Crandall was followed by a period without medical treatment until the incident at home in August of 1996. Dr. Crandall's March 20, 1996, exam findings, the lack of ongoing treatment, and Dr. Boxall's opinion that the employee's

work injury in 1995 would not likely cause a disc herniation all support the judge's conclusion that the 1995 injury was temporary in nature.[5]

The parties agreed that the employee sustained a Gillette injury to her low back on April 4, 1995. The issue before us is whether substantial evidence supports the compensation judge's conclusion that the work injury was merely temporary in nature and not a substantial contributing cause of the employee's surgery and ongoing disability. The employee testified to her physical symptoms following the 1995 injury. She introduced the opinion of Dr. Crandall that her work injury was a substantial contributing factor in her disability. The employer and insurer offered the opinion of Dr. Boxall that the 1995 injury was merely temporary. The compensation judge construed Dr. Crandall's opinion as being equivocal and specifically adopted Dr. Boxall's opinion that the employee's April 1995 injury had resolved and that the work injury was not the type of activity which would be likely to cause a disc herniation. We cannot conclude that the compensation judge's factual determination was unreasonable or clearly erroneous, based on the evidence of record. It is the responsibility of the compensation judge, as trier of fact, to resolve conflicts in expert testimony. See Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985). The compensation judge accepted the expert medical opinion of Dr. Boxall over that of Dr. Crandall. Generally, this court will not reverse a compensation judge's choice between opposing expert medical opinions unless the facts relied on by the expert relied on are unsupported by substantial evidence. Id., 360 N.W.2d at 342-43, 37 W.C.D. at 372-73. In this case, there is no evidence or claim that the opinions of Dr. Boxall were based on any false premises or were otherwise without proper foundation. Although the record in this case is subject to differing interpretations, we cannot say that the judge's decision to rely upon the opinion of Dr. Boxall is clearly erroneous or unsupported by substantial evidence. Accordingly, the determination of the compensation judge in this case is affirmed. Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239.

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[5] The compensation judge commented rather extensively on the employee's home incidents in August and September of 1996. He concluded that the description of the sudden pain in September of 1996 is more consistent with a disc herniation than is her history of the 1995 injury. In his memorandum, the judge stated,

> The Compensation Judge believes that the vomiting episode in September of 1996 is the most likely cause, given the description of the onset of sudden pain. At any rate the employee's present problems stem from that period and not from the original work injury. That injury was a temporary aggravation ending before these incidents in August and September of 1996.

Given the judge's conclusion that the 1995 injury was temporary in nature, we deem the judge's comments relative to the significance of the at-home incidents to be irrelevant. Therefore, we will not address the employee's arguments relative to superseding intervening injuries.