

GARY P. DUDA, Employee/Appellant, v. PIZZA HUT, INC., and CNA INS. CO., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
NOVEMBER 8, 2000

No. [REDACTED SSN]

HEADNOTES

PERMANENT PARTIAL DISABILITY - SUBSTANTIAL EVIDENCE. Where the employer and insurer's medical expert opined that the employee's cervical and lumbar spine injuries were minor and were entitled to 0% permanent partial disability ratings, the compensation judge was supported by substantial evidence in awarding no permanent partial disability for those injuries.

PERMANENT PARTIAL DISABILITY - SUBSTANTIAL EVIDENCE. Where the employer and insurer's medical expert and the employee's expert both suggested that the employee undergo cortisone injection treatment for his right knee, and the employer and insurer's expert recommended additional physical therapy and medications before a permanent partial disability determination was made, the compensation judge was supported by substantial evidence in finding that issuing a permanent partial disability rating was premature.

MEDICAL TREATMENT & EXPENSE - REASONABLE & NECESSARY. Where the employer and insurer's medical experts opined that chiropractic treatment was unnecessary after November 11, 1997, and the employee's chiropractor's records after January 29, 1998 were not in evidence, the compensation judge was supported by substantial evidence in finding chiropractic treatment after January 29, 1998 not reasonable and necessary.

Affirmed.

Determined by Wheeler, C.J., Johnson, J., and Rykken, J.
Compensation Judge: Danny P. Kelly

OPINION

STEVEN D. WHEELER, Judge

The employee appeals from the compensation judge's determination that he did not sustain a ratable permanent partial disability for his lumbar and cervical spine, that a rating of permanent partial disability for his right knee was premature and that certain chiropractic expenses between February 12, 1998, and May 1, 1998, were not reasonable and necessary. We affirm.

BACKGROUND

The employee sustained an admitted injury to his low back, cervical spine and both knees when he was involved in a motor vehicle accident as a Pizza Hut delivery person on

February 7, 1997. The employee worked part-time for Pizza Hut to supplement his regular full-time employment as a designer/drafter for Simon's Engineering. At the time of the injury the employee was twenty-four years of age.

Immediately following the injury, the employee was taken by a supervisor to the Hennepin County Medical Center. He testified that at that time he was experiencing tingling and numbness in his limbs from his elbows to his fingers and from his knees to his toes. Following a return to HCMC, which he did not find satisfactory, he sought care from Steven C. Spaniol, D.C., at the Back & Neck Care Center.

The employee was first seen by Dr. Spaniol on March 5, 1997, with complaints of constant neck and upper back pain, low back pain and right knee pain. The employee saw Dr. Spaniol on a very frequent basis during March and April 1997 and on a few occasions in May 1997. He did not resume treatment until early in August 1997. Thereafter, the employee was treated by Dr. Spaniol four times in August 1997, three times in September 1997, two times in October 1997, once in November 1997, twice in December 1997, and three times in January 1998. On January 29, 1998, Dr. Spaniol performed a full re-examination of the employee.

The medical records presented from Dr. Spaniol cover each of the examinations performed from March 5, 1997 through January 29, 1998. (Pet. Ex. B.) Dr. Spaniol's billing records indicate that he also treated the employee on February 12, February 17, April 15 and May 1, 1998. (Pet. Ex. A.) Petitioner's Exhibit A, which contains all of the records from Dr. Spaniol's office, does not contain any office notes with respect to the treatments after January 29, 1998. In addition, Dr. Spaniol's June 19, 1998 report traces the employee's treatment history from his initial treatment and examination on March 5, 1997 through his most recent re-examination on January 29, 1998. Neither Dr. Spaniol's report or his records make any reference to the treatment offered after January 29, 1998. In his June 19, 1998 report, Dr. Spaniol indicates that on January 29, 1998, the employee's lumbar range of motion was restricted and he noted mild chronic muscle spasm on the right erector spinae muscle group. He stated that the employee's cervical range of motion was also restricted. He did not find any muscle spasm, but did indicate that on palpation of the cervical and upper back musculature he found tenderness of the entire cervical musculature and some myofascitis in the upper trapezius muscles, bilaterally, and the right sub occipital muscle group. He also noted tenderness in the right and left rhomboid areas. Dr. Spaniol's report indicated that the treatment provided to the employee

consisted of gentle manipulation of the cervical, thoracic and lumbar spine, in order to re-establish normal biomechanics. Electrical muscle stimulation and moist hot packs were administered to decrease muscle spasm, reduce pain, and enhance healing. Mr. Duda was initially seen on a scheduled basis, and as his condition improved and stabilized, his care was reduced to that of a PRN, or "as needed" basis. Mr. Duda's interim treatment consisted of manual manipulation of the spine to aid in the restoration of the normal movement of the cervical and lumbar spine, and to aid in the

opening of the intervertebral foramin, thereby, decreasing the nerve root impingement, and radicular symptoms that he was experiencing in the upper and lower extremities.

In addition, Dr. Spaniol notes that Mr. Duda did some rehabilitation at health clubs consisting of various postural strengthening exercises and some light weight lifting to improve the strength of his right knee. As of June 19, Dr. Spaniol indicated that, "The current treatment rendered to Mr. Duda consists of manual manipulation of the cervical and lumbar spine, rendered on an 'as needed' basis for symptomatic relief of pain and stiffness. A series of specific exercises has been instituted, which Mr. Duda completes at home, in order to increase the strength of the cervical and lumbar musculature."

Dr. Spaniol opined that, because of the length of time since the accident, the employee's continued subjective complaints and objective examination findings, he felt the employee had sustained a permanent injury to his neck and low back as a result of the February 7, 1997 motor vehicle accident. Dr. Spaniol reported that the employee was experiencing great difficulty doing his work as a graphic designer because of the long hours that he was required to sit at his computer. He stated that the employee was under a restriction of lifting no more than fifty pounds and that he should undergo position changes every thirty to forty minutes.

On June 19, 1998, also, Dr. Spaniol issued a maximum medical improvement physician's report in which he indicated that the employee had a 7% permanent partial disability rating as a result of a cervical and lumbar strain/sprain with associated muscle spasm. In this report he also stated that the employee may require periodic chiropractic treatment to help with exacerbations. (Pet. Ex. B.)

Dr. Spaniol indicated that because of the severity of the employee's knee difficulties, he referred him to Dr. Jack M. Bert, an orthopedic specialist, for care and treatment of his knee condition. Dr. Bert saw the employee on August 19, 1997 and February 24, 1998. Initially, Dr. Bert prescribed physical therapy for two weeks, an aggressive exercise program and anti-inflammatory medications. (Pet. Ex. F.) The employee underwent physical therapy treatment at the Eden Prairie Clinic of the Methodist Hospital from September 17, 1997, to October 22, 1997. In addition, Dr. Bert prescribed Naprosyn for the employee on August 19, 1997. In his March 16, 1998 report, Dr. Bert stated that the employee "may have a permanent injury to his knee, but he will need to be injected with steroids and have some further physical therapy before assessing him for permanency." At that time he also stated that,

I have recommended that he return to see me in three months for an injection of steroids. Estimated cost of treatment including physical therapy and steroid injections would be a minimum of \$1,500 to \$2,500 this year. He should avoid bending, squatting and stooping maneuvers, and any climbing or crawling activities.

There is no indication that the employee has undergone additional physical therapy or steroid injection treatment in the records presented. (Pet. Ex. F.) In his report dated November 23, 1998, Dr. Bert stated that the employee had sustained a patellar tendon originitis of the right knee with associated patellofemoral pain syndrome, secondary to the February 7, 1997 motor vehicle injury. He rated the permanency for this condition at 1% of the whole body under Minn. R. 5223.0510, subp. 2C. (Pet. Ex. E.)

In early February 1998, the insurer requested that the treatment provided by Dr. Spaniol be reviewed by a chiropractor, Dr. Thomas B. Sato, with Professional Reviews, Inc., of Norcross, Georgia. Dr. Sato's report, dated February 5, 1998, indicates that the treatment provided by Dr. Spaniol was only reasonable and appropriate through November 11, 1997.

On February 9, 1999, the employee was examined by Dr. Robert B. Hartman, an orthopedic surgeon, at the request of the employer and insurer. At the time of this examination the employee claimed that his neck and low back caused him pain on a daily basis, with the low back being more severe than the neck pain. The employee also reported he had occasional aching in his left knee and continuous aching in his right knee. On examination, Dr. Hartman was unable to find any muscle spasm associated with the cervical or lumbar spine. His final diagnosis was chronic neck and low back pain with no objective physical examination abnormalities and post-traumatic right patellofemoral pain. Dr. Hartman opined that as a result of the February 7, 1997 motor vehicle accident that the employee sustained a sprain/strain to his cervical and lumbar spine which would be rated at 0% permanent partial disability pursuant to Minn. R. 5223.0370, subp. 3A, and Minn. R. 5223.0390, subp. 3A. He also stated that with respect to the chiropractic care for the employee's neck and lower back, that the services provided by Dr. Spaniol were excessive and unnecessary beyond six treatments. With respect to the employee's right knee difficulties, Dr. Hartman stated,

Although he continues to have subjective complaints, and an abnormal objective physical examination, Mr. Duda's injury is not necessarily permanent. He has not had a thorough trial of anti-inflammatory medications, physical therapy, and corticosteroid injections into the right knee joint, It would be prudent for Mr. Duda to receive six weeks of monitored physical therapy including a Cybex evaluation at the end of the treatment period. If Mr. Duda is able to achieve 90% strength in his right quadricep muscle compared to the contralateral leg or based on the appropriate values for his age, it may be concluded that he has concluded any need for further active physical therapy. Similarly, Mr. Duda should be placed on an anti-inflammatory medication and undergo at least one corticosteroid injection into the right knee. If over the course of the next three months Mr. Duda complies with physical therapy, has an injection, and tries anti-inflammatory medication, yet remains symptomatic, then it may be concluded that he has suffered a permanent injury to the patellofemoral joint. However, pursuant to

Section 5223.0510, Subpart 2G of the Workers' Compensation code for the State of Minnesota, Mr. Duda is entitled to zero percent permanent partial disability with regard to his knee.

Dr. Hartman further stated that the employee should engage in a physical therapy and home exercise program, that there is no need for advanced imaging of his knee and that he is not a surgical candidate. Dr. Hartman opined that if Mr. Duda demonstrates persistent pain in the right knee beyond the three months of treatment he recommended, that his injury would be considered permanent. (Resp. Ex. 1.)

On December 12, 1998, the employee filed a claim petition in which he sought compensation for a 7% permanent partial disability rating and medical expenses from Dr. Spaniol's chiropractic treatment. Attached to the claim petition was Dr. Spaniol's June 19, 1998 MMI physician's report. The matter came on for hearing before a compensation judge at the Office of Administrative Hearings on February 18, 2000. In Findings and Order issued April 14, 2000, the compensation judge determined that the employee had sustained an injury to his low back, cervical spine and both knees as a result of the motor vehicle accident of February 7, 1997. He determined that the injuries to the low back and cervical spine resulted in a 0% permanent partial disability rating under the disability schedule, since the employee's condition did not continue to cause him to exhibit chronic muscle spasm as required by Minn. R. 5223.0370, subp. 3A (cervical spine), and Minn. R. 5223.0390, subp. 3A (lumbar spine). With respect to the employee's right knee, the compensation judge determined that it was premature to determine whether there was any permanent partial disability rating to be attributed to that condition since the employee had not undergone all the necessary treatment recommended by Dr. Hartman. The compensation judge further awarded payment for the chiropractic treatment provided by Dr. Spaniol through January 29, 1998, but denied payment for periods after that date. The employee 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

The employee appeals from the compensation judge's decision with respect to permanent partial disability and medical expenses primarily on the basis that there was not substantial evidence in the record to support the compensation judge's decision. With respect to the denial of PPD concerning the employee's lumbar and cervical spine, the employee argues that he did exhibit muscle spasm to Dr. Spaniol over a lengthy period of time through January 29, 1998, and that these findings were sufficient to support an award of 3.5% permanent partial disability with respect to both the cervical and lumbar spine pursuant to Minn. R. 5223.0370, subp. 3B (cervical spine), and Minn. R. 5223.0390, subd. 3B (lumbar spine). With respect to the right knee finding, the employee contends that he has undergone a treatment program with anti-inflammatories and a month's treatment of physical therapy without a cessation of his symptoms. He argues that it would be unnecessary for him to undergo the additional treatments recommended by Dr. Hartman in order to qualify for a 1% PPD rating. With respect to the denial of payment for Dr. Spaniol's treatment from February 12, 1998, through May 1, 1998, the employee contends that the June 19, 1998 doctor's report states that the employee's treatment plan is to seek chiropractic assistance on an "as needed" basis to assist him in dealing with occasional pain and stiffness. The employee contends that this is a sufficient statement of the treatment plan for the treatments in the early part of 1998.

The issue before us, however, is not whether the compensation judge has made an error in determining each of these issues but whether there was adequate evidence in the record to support his conclusions. We find that Dr. Hartman's report of February 16, 1999 completely supports the compensation judge's determination with respect to a 0% PPD rating for the employee's lumbar and cervical spine conditions. We note that Dr. Hartman did not find any muscle spasm present on his examination in February 1999. With respect to the right knee, Dr. Hartman was fully aware of the employee's history and simply recommended that the employee undergo additional physical therapy, more medications and a steroid injection, the latter treatment having also been discussed with the employee by Dr. Bert in February 1998. The compensation judge was free to accept Dr. Hartman's opinions with respect to the ratings of the three body parts and his resolution of any dispute between Dr. Spaniol's opinion and Dr. Hartman's opinion will be left undisturbed by this court. Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985).

With respect to the issue of the payment of the medical expenses incurred from February 12 through May 1, 1998, the compensation judge was supported by the opinion of Dr. Hartman and Dr. Sato. Both of these medical experts opined that chiropractic care during the early part of 1998 was unnecessary. In addition, we note that none of the treatment notes for these visits were contained in the records from Dr. Spaniol's office. Based on this evidence, the compensation judge's denial of benefits during this period is affirmed. Hengemuhle, 358 N.W.2d 54, 37 W.C.D. 235.