

MARY GRAY, Employee, v. SEARS ROEBUCK & CO. and LUMBERMEN'S MUT. CAS. INS. CO, a/k/a KEMPER INS. CO., Employer-Insurer/Cross-Appellants, and SEARS ROEBUCK & CO. and LIBERTY MUT. INS. CO., Employer-Insurer/Appellants, and HEALTHPARTNERS, Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
FEBRUARY 7, 2000

No. [REDACTED SSN]

HEADNOTES

GILLETTE INJURY - DATE OF INJURY. The compensation judge did not err by determining a second date of injury where the employee had been able to return to work at her regular job for several months after the first date of injury, and where, after being off work for several months for non-work-related reasons, the employee was only able to work three weeks and then was taken off work indefinitely after two weeks of vacation.

CAUSATION - GILLETTE INJURY. Where the employee's work activities after a change in coverage were not a substantial contributing cause of the employee's Gillette injury and the employee's work activities before a substantial contributing cause of the injury, the compensation judge erred by assigning liability to the second insurer.

TEMPORARY TOTAL DISABILITY; JOB SEARCH. The compensation judge did not err by awarding temporary total disability benefits where the employee had not conducted a job search when the employee had a reasonable expectation of returning to work, then was taken off work entirely.

TEMPORARY PARTIAL DISABILITY - SUBSTANTIAL EVIDENCE. Substantial evidence supports the compensation judge's award of temporary partial disability benefits where the employee was not able to work full days due to increased symptoms from her work-related condition.

NOTICE OF INJURY - GILLETTE INJURY. Substantial evidence supports the compensation judge's finding that the employee had given adequate notice of a left foot injury.

MAXIMUM MEDICAL IMPROVEMENT - SUBSTANTIAL EVIDENCE. Substantial evidence supports the compensation judge's finding that the employee had not reached maximum medical improvement before October 20, 1998, even though the employee declined to consider surgical options where the employee's condition had improved to a point where she was able to attempt to return to work but could not continue.

Affirmed in part and reversed in part.

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

OPINION

MIRIAM P. RYKKEN, Judge

Sears Roebuck & Company and Liberty Mutual Insurance Company appeal the compensation judge's finding that the employee sustained a permanent Gillette injury culminating on October 1, 1997, that the employee was entitled to temporary disability benefits, that the employee provided proper statutory notice of a left foot condition, and that the employee did not reach maximum medical improvement until October 20, 1998. Sears Roebuck & Company and Lumbermen's Mutual Insurance Company (a/k/a Kemper Insurance Companies) cross-appeal the compensation judge's finding determining an injury date of October 1, 1997. We affirm in part and reverse in part.

BACKGROUND

Mary Gray, the employee, worked for Sears Roebuck & Company, the employer, as a salesperson from 1968 through 1970 and from 1971 through 1987. The employee worked part time, initially 15 hours per week, later increasing to 20 to 30 hours per week. The employee's duties included waiting on customers and stocking merchandise. From 1987 through 1991, the employee began working as a dock greeter for the employer, a customer service related position which required the employee to be on her feet approximately 25 of the 30 hours per week that she worked. During these time periods, the employee did not sustain any injuries to her feet nor experience any symptoms in her feet. In 1991, the employee became a replenishment supervisor for the employer, working 30 to 40 hours per week. This position required the employee to open boxes of merchandise and to stock merchandise in the stockroom or on the sales floor, which required frequent use of ladders and straightening merchandise on the shelves. Almost all of her work required walking on concrete floors or climbing ladders. In April 1997, the employee's job title changed to in-stock specialist, but her duties essentially remained the same.

In January 1996, the employee began noticing symptoms in her feet, but did not seek treatment until June 1996 while at a routine physical examination with Dr. Joann Rogers. The employee experienced more pain in her right foot than her left. Over the next month, the employee's symptoms worsened, and she returned to Dr. Rogers on July 26, 1996. Dr. Rogers ordered x-rays and referred the employee to S. Scott Standa, a podiatrist. The employee consulted Dr. Standa on August 13, 1996. Dr. Standa diagnosed right tibialis posterior dysfunction and early rupture with development of a pes planus of the right foot,¹ which Dr. Standa described as a permanent injury, and prescribed an orthotic device and an air cast for her right foot.

¹ At his deposition, Dr. Standa explained the nature of tibialis posterior dysfunction as follows:

There's a tendon in the ankle area, it comes beneath the ankle and it's a tendon, the tibialis posterior tendon. It's one of the structures that help to support the arch area of the foot, and we feel that at times . . . that tendon can elongate and even partially rupture, causing a change in the shape of the

The employee testified that she reported her symptoms to her supervisor in August 1996. The supervisor indicated that her claim would be processed as a short term disability claim. On September 3, 1996, the employee reported to Dr. Standa that she felt pain and swelling in her right foot and ankle on weight-bearing. Dr. Standa noted that the employee spent a great deal of time standing on her feet at work, and recommended extra depth shoes and that she take six weeks off work. The employee stopped working on September 17, 1996, due to her symptoms of swelling and pain in her feet. While she was off work, the swelling in her feet decreased, but the pain persisted. The employee testified that she experienced symptoms in both feet, but had more significant problems with the right foot.

In November 1996, the employee returned to her regular work as a replenishment supervisor, wearing the air cast. By January 1997, she worked without the air cast, but her right foot pain continued and the swelling returned. The employee was off work from July 1997 until some time in September 1997 for non-work-related surgery. She then worked about three weeks in September 1997, and her symptoms worsened. The employee therefore took two weeks of vacation until she could see Dr. Standa on October 15, 1997.² While off work these two weeks, the employee noted less swelling, but still had pain in her feet. On October 15, 1997, Dr. Standa opined that the employee was totally disabled from work as a result of tibialis posterior dysfunction of both feet, and stated that “[t]his is a progressive problem. The more time she spends on her feet, the more likely she is to deform her feet and have a very serious problem that might even require surgery to stabilize the feet.” (Pet. Ex. A.)

The employee attempted to return to work on December 5, 1997, with restrictions of no lifting over 20 pounds, and not to be on her feet more than two hours in an eight hour day. The employee’s work required her to work outside of her restrictions, however, and the employee’s symptoms worsened after three days, when she was again taken off work by Dr. Standa. The

foot. An alternate theory on this is that [in] a patient with a flatter than normal foot, that tendon can stretch over time and rupture, so there’s two theories of what goes on here.

He also explained the development of pes planus, as follows:

That’s where the longitudinal arch of the foot flattens over time, and we think one of the reasons for that is the stretching and the rupture of this tendon.

(Deposition of Dr. Standa, p. 8, Apr. 21, 1999.)

² The record does not clearly specify on which dates the employee worked in September and October 1997. She returned to work at some point in September, worked approximately three weeks, and then remained off work for two weeks prior to her appointment on October 15, 1997, with Dr. Standa. The employee testified that after her return to work in September 1997, she worked “a few days,” in October (T. 79) and was “off work again right away in October of 1997.” (T. 36.)

employee remained off work until October 1998. During that time, the employee considered herself still employed by the employer, and understood from an employee handbook that she was not to look for work elsewhere as her job search would be deemed to be a voluntary resignation. (Pet. Ex. D.)

On August 18, 1998, Dr. Standa released the employee to work with restrictions of six hours sitting and two hours standing during an eight hour shift. The employee contacted the employer with these restrictions. On August 25, 1998, the employee underwent an independent medical examination with Dr. Mark Engasser, at the request of the employer and Liberty Mutual Insurance Company. Dr. Engasser also diagnosed bilateral posterior tibialis tendinitis, but opined that the employee's condition was not caused by her work, that this condition developed before October 1, 1997, and that the employee sustained no new aggravation or Gillette injury on or after October 1, 1997.

On October 12, 1998, the employee attempted to return to work in an office position for the employer. She worked part of two days, but her symptoms worsened during this time. The employee testified that this office position required her to work outside of her restrictions. The employee was taken off work by Dr. Standa indefinitely, and she continued to be off work through the date of the hearing. The employee continues to note symptoms of continuous pain and swelling when standing or walking.

On May 18, 1998, the employee filed a claim petition for temporary total disability benefits, temporary partial disability benefits, medical expense benefits, a rehabilitation consultation, and penalties. The claim petition listed dates of injury of September 17, 1996, and December 9, 1997. The employer was insured for workers' compensation liability by Lumbermen's Mutual Casualty Insurance (Lumbermen's Mutual) through September 30, 1997, when Liberty Mutual Insurance Company (Liberty Mutual) took over the risk.

A hearing was held on April 28, 1999. At the hearing, by agreement between the parties, the employee limited her temporary total disability claim to January 3, 1998, through October 11, 1998, and from and after October 14, 1998, in exchange for retention of her short term disability benefits paid for the earlier time periods of claimed temporary total disability. The employee also sought temporary partial disability benefits for October 12, 1998, and October 15, 1998. The compensation judge found that the employee had sustained Gillette injuries on September 17, 1996, and October 1, 1997, which arose out of and in the course of her employment with the employer, but that the employee had not met the statutory notice requirement for the first injury. Therefore, the compensation judge awarded temporary total disability benefits from January 3, 1998, through October 11, 1998, and October 20, 1998, through January 20, 1999, temporary partial disability benefits for October 12 and 15, 1998, and a rehabilitation consultation, all payable by the employer and Liberty Mutual since Liberty Mutual was on the risk for the October 1, 1997, injury. The employer and Liberty Mutual appeal; the employer and Lumbermen's Mutual cross-appeal.

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 (1998). 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

Date of Gillette Injury

The compensation judge determined that the employee "sustained a permanent aggravation of her pre-existing foot problems in the form of bilateral tibialis posterior dysfunction on October 1, 1997, which arose out of and in the course of her employment and that she gave proper statutory notice of the injury in a timely fashion." (Finding No. 7.) The judge also commented that the employee's right foot symptoms continued since her earlier injury on September 17, 1996, and that the employee "may have had some initial milder complaints regarding the left foot back in 1996" but that they were apparently not disabling until the October 1, 1997 injury. (Finding No. 7.) Because Liberty Mutual was on the risk on October 1, 1997, the compensation judge concluded that Liberty Mutual was liable. Liberty Mutual challenges the judge's assignment of October 1, 1997 as the injury date, and also challenges the judge's assignment of liability to Liberty Mutual as insurer on that date.

The employer and Liberty Mutual first argue that the compensation judge erred by finding that the employee sustained a second permanent Gillette injury culminating on October 1, 1997. The employer and Lumbermen's Mutual cross-appeal the same finding, arguing that the employee did sustain a second Gillette injury, but during or after October 1997, not on October 1, 1997. A Gillette injury is a result of repeated trauma or aggravation of a preexisting condition which results in a compensable injury when the cumulative effect is sufficiently serious to disable an employee from further work. Gillette v. Harold, Inc., 257 Minn. 313, 321-22, 101 N.W.2d 200, 205-06, 21 W.C.D. 105, 111-13 (1960); Carlson v. Flour City Brush Co., 305 N.W.2d 347, 350, 33 W.C.D. 594, 598 (Minn. 1981). A finding as to a Gillette injury is primarily dependent on the medical evidence. See Marose v. Maislin Transp., 413 N.W.2d 507, 40 W.C.D. 175 (Minn. 1987). Selection of a date of injury of a Gillette injury is not a medical decision, however, but a question of fact to be determined by the compensation judge. Ellingson v. Western Insurance Co., 42 W.C.D. 565, 574 (W.C.C.A. 1989).

The employer and Liberty Mutual argue that substantial evidence does not support the compensation judge's finding that the employee sustained a Gillette injury on October 1, 1997 (Liberty Mutual's first date of coverage), but instead that the employee's work activities in 1996 were the cause of the employee's condition, and that the employee only suffered temporary aggravations of the same condition after she returned to work in November 1996. The medical records show that the employee was off work in September 1996 due to her symptoms of swelling and pain in her feet, and the compensation judge found that the employee sustained a Gillette injury on September 17, 1996. The compensation judge, however, found that the employee failed to provide statutory notice of this injury, a finding which was not appealed. (Finding No. 6.) However, the employee was able to return to her regular job as a replenishment supervisor in November 1996, and worked until July 1997. The employee was off work from July 1997 until September 1997 for non-work-related reasons. She worked about three weeks in September 1997, during which time her symptoms worsened. The employee therefore took two weeks of vacation until she could see Dr. Standa on October 15, 1997. On that date, Dr. Standa opined that the employee was totally disabled from work as a result of tibialis posterior dysfunction of both feet.

Based upon this history, as borne out in medical records and in testimony by the employee and Dr. Standa, the compensation judge reasonably concluded that as of October 1, 1997, the employee's "left foot problems became much more severe and disabling." (Finding No. 7.) The compensation judge also relies on Dr. Standa's medical records in concluding that the employee's right foot problems continued in 1997 and that the employee developed "a new and permanent aggravation of her pre-existing condition." (Finding No. 7.)

This court has held that it is not necessary for a Gillette culmination to occur on the last day of employment; other "ascertainable events" can be used to reasonably infer an earlier culmination date. Schnurrer v. Hoerner-Waldorf, 345 N.W.2d 230, 36 W.C.D. 504 (Minn. 1984). However, in certain circumstances, the date of disability may be determined by the date an employee can no longer do her work or when her work is altered because of her symptoms. See Johnson v. Brown and Bigelow, slip op. (W.C.C.A. July 22, 1994). Under these circumstances, in view of the worsening of the employee's symptoms after working approximately three weeks in September 1997, the compensation judge could reasonably infer a second date of injury of October 1, 1997. After this time, it appears the employee was only able to return to work for three days in December 1997 and two days in October 1998. Substantial evidence supports the compensation judge finding that the employee sustained a Gillette injury on October 1, 1997. Accordingly, we affirm.

Liability for Gillette Injury

We have affirmed the compensation judge's assignment of the October 1, 1997 injury date, and have affirmed the judge's conclusion that the employee's bilateral tibialis posterior dysfunction was causally related to her repetitive work activities for the employer. However, we conclude that this injury date is not necessarily determinative of liability. Even though it appears that the employee's ultimate breakdown from this injury occurred just after the expiration of the insurance coverage period of Lumbermen's Mutual, it does not necessarily follow that the insurer

commencing insurance coverage on October 1, 1997, Liberty Mutual, is liable for the employee's condition.

The last employer and insurer on the risk are typically deemed liable for disability resulting from Gillette-type injuries, but "this rule is subject to the finding that during the last period of employment the work duties performed by the employee must have been a substantial contributing factor to the employee's disability." Tannahill v. Mid-American Lines, Inc., 40 W.C.D. 726, 728 (W.C.C.A. 1987); cf. Carlson v. Flour City Brush Co., 305 N.W.2d 347, 33 W.C.D. 594 (Minn. 1981); Michels v. American Hoist & Derrick, 269 N.W.2d 57, 31 W.C.D. 55 (Minn. 1978) (cases discussing equitable apportionment of liability for a Gillette injury where the employee's work activities each day up until the date of disablement aggravated or contributed to the employee's disability). "[I]mposition of liability on the last insurer is not automatic but must rest on proof connecting the employee's disability to the employee's job duties during that insurer's period of coverage." Crimmins v. NACM No. Central Corp., 45 W.C.D.435, 439 (W.C.C.A. 1991), summarily aff'd, (Minn. Nov. 26, 1991).

This case does not involve apportionment as that concept is ordinarily understood, as no evidence of record indicates that the employee's work activities during both insurers' periods of coverage contributed to the employee's disability. The issue here is instead one of primary liability. See Crimmins, 45 W.C.D. at 439. Liberty Mutual argues that since the employee did not actually work after September 1997, other than a few days in late 1997 and late 1998, there is no evidence to support the conclusion that the employee's work on or after October 1, 1997, substantially contributed to her disability. We agree. Because the record will not support a finding that the employee's work activities during Liberty Mutual's period of coverage substantially contributed to the employee's disability, there is no basis for imposing liability on that insurer. The record, including medical records and testimony by the employee and Dr. Standa, however, does support a conclusion that the employee's work during Lumbermen's Mutual's period of coverage, extending through September 1997, substantially contributed to the employee's disability. We therefore reverse the compensation judge's Findings 8, 10, 11 and 14, along with the corresponding Orders, solely as to which insurer is liable, and hold that Lumbermen's Mutual is responsible for payment of benefits resulting from the employee's Gillette injury of October 1, 1997.

Temporary Total Disability Benefits

The employer and Liberty Mutual argue that the employee is not entitled to temporary total disability benefits from January 3, 1998, through October 11, 1998, and from October 20, 1998, through January 20, 1999, because she was able to work but did not conduct a diligent job search for work within her restrictions. Generally, in order to be entitled to temporary total disability benefits, an employee must, if she is able to work within her restrictions, engage in a reasonably diligent job search. Redgate v. Sroga's Standard Serv., 421 N.W.2d 729, 733, 40 W.C.D. 948, 954 (Minn. 1988). A diligent job search is a search that is reasonable in light of all the facts and circumstances of the case, including the rehabilitation assistance provided to the employee. Id. at 734, 40 W.C.D. at 956; see also Noll v. CECO Corp., 42 W.C.D. 553 (W.C.C.A.

1989). Whether an employee has engaged in a reasonably diligent job search is a question of fact for determination by the compensation judge.

Where there appears to be a reasonable possibility that an employee will return to work with the employer, however, it may not be necessary that the employee engage in an immediate search for employment to be eligible for temporary total disability benefits. Jacobson v. Seaboard Farms, slip op. (W.C.C.A. May 6, 1996); Glasow v. Gresser Concrete Masonry, slip op. (W.C.C.A. Apr. 18, 1995). In this case, the employee believed that she was still an employee of the employer. She continued to turn in work restrictions slips, and thought that she would be terminated if she looked for work elsewhere, based on her understanding of information in an employee handbook. (T. 77.) She received no rehabilitation assistance from the employer. The employee attempted to return to work for the employer in an office job in October 1998, but was unable to perform this job since she was required to be on her feet more than her restrictions allowed, and her symptoms worsened. Under the circumstances of this case, the compensation judge could reasonably conclude that from January 3, 1998, through October 11, 1998, the employee had a reasonable expectation of returning to work for the employer and that a diligent job search was not required for the employee to be eligible for temporary total disability benefits.

After the employee's attempt to return to work for the employer in October 1998 failed, Dr. Standa again took the employee off work. Dr. Standa testified in his deposition that he examined the employee on October 20, 1998, and noted swelling in both ankles and excessive pronation of both feet. The employee reported continued pain in both feet. On that date, Dr. Standa restricted the employee from all work indefinitely. (Pet. Ex. B, p. 18.) The compensation judge accepted Dr. Standa's opinion that the employee was restricted from work at that time. Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985). Substantial evidence supports the compensation judge's finding that the employee was entitled to temporary total disability benefits from October 20, 1998, through January 20, 1999. Therefore, we affirm the compensation judge's award of temporary total disability benefits. As discussed above, liability for these benefits is assigned to Lumbermen's Mutual instead of Liberty Mutual.

Temporary Partial Disability Benefits

The employer and Liberty Mutual also argue that the employee is not entitled to temporary partial disability benefits for her attempted return to work on October 12, 1998, and October 15, 1998. In order to be eligible for temporary partial benefits, the employee must establish a reduction in earning capacity which is causally related to the work injury. Arouni v. Kelleher Constr., Inc., 426 N.W.2d 860, 864, 41 W.C.D. 42, 48 (Minn. 1988). An employee's entitlement to temporary partial disability benefits is based on the difference between the employee's wage on the date of injury and the wage the employee is able to earn in his or her partially disabled condition. Minn. Stat. § 176.101. Temporary partial disability benefits are generally based on an employee's post-injury wage, which is presumed to be representative of an employee's reduced earning capacity. However, in appropriate circumstances, this presumption can be rebutted with evidence indicating the employee's ability to earn is different than the post-injury wage. Schwan v. Fabcon, 45 W.C.D. 209 (W.C.C.A. 1991).

The employee worked 5.2 hours on October 12, 1998, and 4.5 hours on October 15, 1998. At that time, the employee's restrictions indicated that she was not to spend more than two hours per day standing. The employer and Liberty Mutual argue that there was no testimony that the employee actually exceeded the two hours per day standing restrictions on those days. However, it appears that the employer and Liberty Mutual presented no rebuttal evidence indicating that the employee's ability to earn on those days was different than her actual wages. The employee testified that she was continuously up and down on those days, and that her symptoms of pain and swelling progressively worsened during the course of each day. The compensation judge could reasonably conclude that the employee had established an actual loss of earning capacity that was causally related to her disability since she was not able to work a full day without experiencing increased symptoms. Accordingly, we affirm the award of temporary partial disability benefits, payable by Lumbermen's Mutual instead of Liberty Mutual.

Notice of Left and Right Foot Injuries

The employer and Liberty Mutual maintain that they never received notice of a left foot injury and that the January 12, 1998 first report of injury only applies to her right foot injury. The first report of injury indicates that the nature of the employee's injury is tibialis posterior tendonitis, without indicating either foot. Dr. Standa's January 2, 1998, letter states that the employee had been treating for tibialis posterior tendinitis and possible rupture on her right ankle. However, the employee had treated with Dr. Standa for both feet since at least October 1997, and Dr. Standa's letter of January 2, 1998, refers to the employee's "injuries."

The compensation judge also determined that the employee credibly testified that prior to filing the first report of injury, dated January 12, 1998, she advised an employer representative that she was experiencing problems with both feet. (T. 38-39; Finding No. 7.) Assessment of the credibility of a witness is the unique function of the trier of fact. Brennan v. Joseph G. Brennan, M.D., P.A., 425 N.W.2d 837, 839-40, 41 W.C.D. 79, 82 (Minn. 1988). A finding based on credibility of a witness will not be disturbed on appeal unless there is clear evidence to the contrary. See Even v. Kraft, Inc., 445 N.W.2d 831, 835, 42 W.C.D. 220, 225-26 (Minn. 1989). Substantial evidence, in both the employee's testimony and her medical records, supports the compensation judge's finding that the employer had adequate notice of the employee's bilateral foot condition, and we affirm.

Maximum Medical Improvement

The employer and Liberty Mutual also argue that the compensation judge erred by finding that the employee had not reached maximum medical improvement until October 20, 1998. Maximum medical improvement is defined as "the date after which no further significant recovery from or significant lasting improvement to a personal injury can reasonably be anticipated, based upon reasonable medical probability." Minn. Stat. §176.011, subd. 25. Whether maximum medical improvement has been reached is a question of ultimate fact for the compensation judge to decide. Hammer v. Mark Hagen Plumbing & Heating, 435 N.W.2d 525, 528-29, 41 W.C.D.

634, 639 (Minn. 1989). The burden of proving maximum medical improvement is normally on the employer and insurer. Burns v. Firestone Tire & Rubber, slip op. (W.C.C.A. June 29, 1993).

Dr. Standa opined that the employee reached maximum medical improvement on or about October 20, 1998. The employer and Liberty Mutual argue that the employee had reached maximum medical improvement by February 24, 1998, when Dr. Standa discussed surgical care as opposed to continued conservative care and the employee indicated she was not interested in surgery, or by March 24, 1998, when the employee was seen by Dr. Michael Bourne at the referral of Dr. Standa, who also recommended surgery since all conservative treatment had been attempted. However, by August 1998, the employee's condition had improved enough for Dr. Standa to release her to attempt to return to work with restrictions. The employee attempted to work in October 1998, but her condition then worsened and she was taken off work indefinitely by Dr. Standa as of October 20, 1998. Substantial evidence supports the compensation judge's finding that the employee had reached maximum medical improvement by that date, October 20, 1998. Therefore, we affirm.