

LOUIS INDIHAR, Employee, v. STATE, DEP'T OF COMMERCE, SELF-INSURED, Employer/Appellant, and BLUE CROSS/BLUE SHIELD OF MINN., ALLINA, INC., and MN DEP'T OF ECONOMIC SEC., Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS  
APRIL 24, 2000

No. [REDACTED SSN]

HEADNOTES

CAUSATION - PSYCHOLOGICAL INJURY. Where the employee's treating psychologist stated that the pain caused by admitted injuries, when mixed with anxieties which occurred at work, caused the employee to be unable to function and that he should not work until the emotional issues regarding dealing with the pain were resolved, the compensation judge was supported by substantial evidence when he found that the employee's psychological condition was substantially caused by the employee's physical injuries.

Affirmed.

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

OPINION

STEVEN D. WHEELER, Judge

The self-insured employer appeals from the compensation judge's determination that the employee was entitled to temporary total disability benefits from January 28, 1998 through July 13, 1998, primarily due to the effects of a psychological disorder which was substantially contributed to by pain and disability caused by a bilateral thumb injury. The self-insured employer also appeals from the compensation judge's award of payment for the services of psychologist John Huffaker, M.A., L.P. We affirm.

BACKGROUND

The employee, Louis Indihar, graduated from high school in Gilbert, Minnesota, in 1970. After a year at a junior college, the employee completed a bachelor of science degree in business with a major in accounting at the University of Minnesota in 1974. Over the years he has also completed a number of computer programming classes and received an FMLI certificate.<sup>1</sup> He also studied to be a certified financial examiner and is within one credit of completion. Following completion of college, the employee worked as an accountant for a life insurance company for nine years. He then operated a small business for one year before joining Unisys as a general

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<sup>1</sup> An FMLI certificate is from the Fellow Life Management Institute, a life insurance industry organization.

laborer and an administrative assistant from 1984 through 1991. While at Unisys, the employee sustained injuries in the nature of a hernia (1985), and injuries to his right knee (1986) and right shoulder (1989). In December 1991, the employee commenced work for the State of Minnesota, Department of Commerce, hereinafter the employer. Initially he worked as an intermediate auditor, examining insurance companies.

On November 16, 1993, the employee sustained admitted personal injuries in the nature of bilateral elbow, forearm and wrist problems arising out of his employment with the Department of Commerce. (Unappealed Finding 1.) In 1996, the employee was promoted to a position of financial institution examiner. While so employed, on November 15, 1996, the employee developed a new injury to his bilateral thumbs. (Unappealed portion of Finding 3.) At the time of his injury of November 16, 1993, the employee's weekly wage was \$712.40. On the date of the November 15, 1996 injury his weekly wage was \$774.40.

The employee attributed the November 1993 injuries to his forearms to using his computer at work. The employee testified that his job required him to travel to the offices of insurance companies where he would examine their financial records. He took along a portable computer. His work involved paging through documents, handwriting and operating the computer. The injuries were primarily treated with anti-inflammatories and a splint in January or February 1994. The employee again complained of right elbow swelling and pain in both elbows in May or June 1994, which he associated with use of his computer at work.

In April 1995, the employee filed a first report of injury alleging bilateral upper extremity work-related injury. He then began treating with Dr. John E. Harapat, who referred him for a functional capacities evaluation. As a result of the FCE the employee's use of a computer keyboard was reduced from four hours to three hours per day, but the employee noticed no improvement in his condition. The employee treated with Dr. Harapat from April through August 1995, and then renewed treatment again on December 6, 1996. On this latter occasion he reported that he was experiencing thumb pain which had begun on approximately November 15, 1996. He attributed this pain to keyboarding, writing and turning pages. A first report of injury concerning this injury was filed on December 9, 1996.

Thereafter, the employee was referred to a number of physicians and underwent physical therapy and diagnostic testing. EMGs performed in mid January and July of 1997 were found to be normal. In April 1997 the employee was provided with a trial dosage of an anti-inflammatory medication. A rheumatologist recommended that the employee participate in a pain management clinic, which treatment the employee declined.

In June 1997 the employee sought treatment with Dr. David P. Falconer of Metropolitan Hand Surgery Associates, who recommended another FCE. This FCE, completed on July 16, 1997, indicated that the employee was found to be uncooperative with the evaluation procedures and did not complete all tests due to subjective pain reports. The examiner indicated that she did not feel that the employee appeared to exert genuine effort and self-limited his performance. She concluded that the results of the FCE were inclusive.

The employee then sought another opinion from Dr. Jeffrey Husband, a hand specialist at Park Nicollet, in August 1997. Dr. Husband opined that the employee had bilateral dorsal wrist pain, but did not indicate the cause of such difficulties.

Between August 1995 and June 17, 1997, the employee continued to work within the restriction of no more than three hours of keyboarding per day. On June 17, 1997, Dr. Harapat imposed a new set of restrictions which included no grasping, no pinching, no rotation of wrists and no keyboarding. As a result of the imposition of these restrictions, the employee was unable to do the auditing work he had been doing since 1991 and he was instructed to report to the central office where he spent his time reading an auditing manual. The employee continued in this position, with no loss of pay or benefits, until January 1998. The employee, however, noted no improvement in his upper extremity complaints. In November 1997, the employee underwent a bone scan at the recommendation of Dr. Falconer, the results of which appeared to be normal. On November 18, 1997, Dr. Falconer administered a cortisone injection into the employee's right wrist and thumb, which did not provide any appreciable improvement in his pain complaints. The employee was last seen by Dr. Falconer on December 23, 1997, at which time he imposed additional restrictions of limiting pinching to ten to twenty times per hour. The employee felt that he was not capable of performing even this physical activity, discontinued treating with Dr. Falconer and chose to continue treating with Dr. Matthew Putnam, the director of hand surgical services at the University of Minnesota.

In December 1996, the employee had began working with QRC Sandra Heinrich. At the employee's request, rehabilitation services were transferred to QRC Alden Bjorklund, with whom he first met in August 1997. Mr. Bjorklund commenced working with the employee's supervisor in October 1997, in order to identify a job within the employee's restrictions with the employer. The employer proposed consideration of a job as a Petrofund commerce analyst. The QRC interviewed the head of the department and found him to be cooperative and sympathetic to persons with upper extremity difficulties. The QRC reviewed the proposed position with the employee and testified that the employee's initial reaction was that the work was no different than what he had previously been doing and that he had no interest in working in that department. The QRC also met with a sales representative from a voice-activated software firm. It was determined that the voice-activated software would be helpful in eliminating 90% of the hand activities necessary in the Petrofund analyst job. The QRC then met with Dr. Falconer on December 23, 1997, to review the position. Dr. Falconer advised the employee that he should give the job a trial and that it would not make his condition worse. He stated that his staff would be available to assist the employee in any way possible to accommodate the position. The QRC then sent the R-32 proposal concerning the Petrofund job to Dr. Harapat for his approval. Dr. Harapat advised, in his letter dated January 22, 1998, that he agreed that the employee should try the position on a trial basis.

Initially the employee indicated that he felt the job was not physically suitable for him, but following a meeting with a representative of the Department of Commerce on January 7, 1998, the employee was formally offered the position of Petrofund analyst on January 8, 1998. The employee accepted the position on January 21, 1998, and reported for work on January 26,

1998. On that date the employee met with his supervisor, Robin Brown, for approximately an hour. He was then given reading material consisting of approximately 50 pages of statutes, rules and regulations. The employee returned to work on January 27 and continued with his reading of the materials. The employee then returned to work on January 28 but apparently left, leaving a medical leave slip on the desk of the personnel director indicating that he would be absent after 2:30 p.m. for a medical appointment. During the three days he was at work he was not required to do any keyboarding. In addition, at no time did the employee offer any complaints of pain or discomfort to his supervisor or to his fellow employees.

The employee sought treatment from Dr. Harapat on January 28, 1998. Dr. Harapat advised the employee that he thought he should continue working. The employee called in sick on January 29, without indicating a reason. Thereafter, the employer requested a doctor's statement or some explanation for his absence from work.

Prior to reporting to work at the Petrofund the employee sought treatment from a psychologist, Mr. John Huffaker, M.A., L.P., with whom he had worked on a number of occasions, the first being in 1988. He was seen by Mr. Huffaker on January 15, 1998. At that time he complained of pain in his right thumb and wrist and that his fingers were numb. He stated that he was anxious about this pain. The employee was again seen by Mr. Huffaker on January 21, 1998. Mr. Huffaker's notes indicate that the employee was preoccupied with pain and was depressed about his pain. The employee was then again seen by Mr. Huffaker on January 29, 1998, complaining that his work activities caused intense pain in his hands. Mr. Huffaker's notes indicate that the employee stated that as a result of his pain he could not concentrate and felt anxious and wanted to leave the worksite. He stated to Mr. Huffaker that he was unable to let go of the pain until he went to bed. (Pet. Ex. CC, office notes.)

As a result of these initial visits, Mr. Huffaker provided the employee with a number of letters indicating that the employee was unable to work. In the first letter, dated February 5, 1998, Mr. Huffaker made the following comments:

Since our initial meeting January 15, 1998 I have concluded that you have a medical condition and psychological factors that have significant roles in the maintenance of your physical pain. A DSM-IV diagnosis of 307.98, Pain disorder associated with both psychological factors and a general medical condition, is appropriate here. It also appears clear that you presently feel unable to perform the duties of your job due to your current level of pain.

In a letter dated February 20, 1998, Mr. Huffaker made the following comments:

I am responding to the 2/18/98 letter from Ms. Kathleen Lilly, the personnel director at your employer, regarding her comment about

my 2/5/98 letter to you. In that letter I indicated you have a DSM-IV diagnosis of 307.98, Pain disorder associated with both psychological factors and a general medical condition. I also indicated that “you presently feel unable to perform the duties of your job due to your current level of pain.”

In her 2/18 letter, Ms. Lilly has indicated that I have not supported the claim of your inability to work in my letter. In fact, I do believe you have been unable to work and will be unable to work for at least another six weeks from this date. At that point, around 4/3/98, I will again review the status of your psychological condition and ability to work.

Mr. Huffaker thereafter issued letters on April 3, 1998, May 4, 1998, June 5, 1998, and July 3, 1998, continuing to certify that the employee had a pain disorder which had been significantly contributed to by his hand/thumb condition and which caused him to be unable work. In a January 27, 1999 letter, Mr. Huffaker summarized his opinion and the course of treatment of the employee with the following statements:

Mr. Indihar’s initial meeting with me was 1/15/98. At that time, he reported suffering from tinitis [sic], hyperacusis and repetitive stress injury. He said he had pain in his right thumb that moved from his wrist to his thumb, that his fingers were numb and that he was unable to work. He said he felt a loss of everything in his life and felt as if he were 65 years old. He reported occasional thoughts of suicide, with no plan of action. He was experiencing a lot of anxiety about his pain and his future.

In subsequent meetings, Mr. Indihar elaborated on his condition. He stated that the pain and numbness in his hands, especially his thumb area, caused him to lose concentration at work, that he would feel anxious and nauseous and would want to flee his work setting. He reported that anything he would do at work triggered the pain, that he experienced anxiety constantly while at work, and that the whole day would revolve around his pain. He felt hopeless, helpless and thoroughly despairing about his condition and the significant anxiety accompanying it.

Based on the information he provided me, I gave him a diagnosis of 307.98, Pain disorder associated with both psychological factors and a general medical condition, and certified him unable to perform his job duties.

Following his initial session with me, Mr. Indihar saw me weekly for several months, eventually cutting back to every other week. Our work together has been to help him find some acceptance for his condition and to find some hope and direction for his life. Overall, he continues very discouraged about the condition of both his hands and the state of his life and focuses much of his attention on his pain. He experiences persistent anxiety, deriving both from his relationship with his pain and the generally negative outlook he has for his life.

On July 7, 1998, Mr. Huffaker indicated, in a form apparently related to the Family Leave Medical Act of 1993, that the employee would be unable to work until at least July 14, 1998. The reason given was the same one tendered in his earlier letters. (Pet. Ex. CC.)

On July 14, 1998, the employee underwent surgery to stabilize the right thumb carpometacarpal (CMC) joint. He was released to return to work on July 20, 1998, with restrictions of no right arm activity for at least four weeks. (Pet. Ex. A, operative report of 7/14/98; work slip of 7/17/98.) Eventually the employer received a release to return to work from Dr. Harapat which indicated that the employee could return with restrictions effective October 6, 1998. These restrictions included limited overuse of the left hand, use of a splint on the right hand, working with his hands two to three minutes at a time, up to eight to ten times per hour, right hand pinch/grasp five to ten times per hour, lift/carry five to ten times per hour and to avoid repetitive turning of pages. (Pet. Ex. C.) The employee started doing "research activities" in connection with a job search in October 1998 but did not commence an actual job search until December 28, 1998. (T. 101, 186-87.) When the employee was initially released to return to work in October 1998, no jobs were available with the State of Minnesota, Department of Commerce. Subsequently a position in the Petrofund program became available in February 1999. Eventually the employee returned to work in that position in March of 1999.

In November 1998, the employee filed a claim petition seeking temporary total disability benefits from January 28, 1998, to the present and continuing, and medical benefits. On December 30, 1998, the self-insured employer requested a formal hearing regarding a rehabilitation dispute. The matters were consolidated for hearing on June 24, 1999.

On March 2, 1999, the employee was evaluated by psychiatrist Dr. John Rauenhorst at the request of the self-insured employer. Dr. Rauenhorst diagnosed anxiety disorder not otherwise specified, history of alcohol abuse and/or chemical dependency, and history of possible marijuana and/or other drug use and dependency. Dr. Rauenhorst indicated that the employee's anxiety disorder was a result of several factors, including the employee's genetic makeup, abuse by his mother as a child, his basic personality, his problems with alcohol and other substances and a history of problems with relationships with women. He stated that the employee did not need any future psychiatric or psychological care and that only a few sessions with Mr. Huffaker would have been reasonable. He stated that the employee's work activities and his hand and wrist injuries

were not a substantial contributing factor to his psychological condition during the period after January 28, 1998. (Resp. Ex. 2.)

In Findings and Order served and filed on September 10, 1999, the compensation judge found that the employee had established by a preponderance of the evidence that his bilateral thumb injuries arose out of his employment, culminating in November of 1996. He also found that the employee's psychological condition was work-related and awarded him temporary total disability benefits from January 28, 1998 through July 13, 1998, from July 14, 1998 through October 19, 1998, and from December 18, 1998 through March 8, 1999. The employee's claim for temporary total disability benefits was denied for the period October 20, 1998 to December 18, 1998, as a result of a lack of a diligent job search. The employee's request for change of QRC away from Mr. Bjorklund was granted. Medical expenses for services rendered by Mr. Huffaker were approved. The self-insured employer appeals from the finding of primary liability for the psychological injury, the award of temporary total disability benefits from January 28, 1998 through July 13, 1998, and the award of Mr. Huffaker's expenses.

#### 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 compensation judge determined that the employee had established, by credible evidence, that his psychological condition arose out of and in the course of his employment. The judge stated that he adopted "the opinion of the employee's treating psychologist Dr. Huffaker who found the employee's physical problems were a substantial contributing factor in the development of a pain disorder associated with both psychological factors and general medical condition (DSM-IV 307.89)." In making this determination the compensation judge specifically rejected the opinion of the self-insured employer's expert, Dr. Rauenhorst.

The self-insured employer's position on appeal is that the compensation judge's reliance on psychologist Huffaker's opinion was ill-founded for three reasons: "1) Mr. Huffaker's opinion is inadequately founded; 2) the compensation judge apparently mistakenly thought Mr. Huffaker was either a physician or a Ph.D.; and 3) Mr. Huffaker's opinions and the compensation judge's finding ignore the Employee's extensive pre-existing psychological condition." (ER brief at p. 14.) As a result, the self-insured employer argues that the only well-founded opinion with respect to the employee's psychological problem was that of its expert, Dr. Rauenhorst, who opined that his difficulties were not related in any way to his work activities.

We are not persuaded by the self-insured employer's arguments. While the self-insured employer argues that Mr. Huffaker did not indicate that he had reviewed any of the employee's extensive psychological/psychiatric records, it is clear that the compensation judge could have concluded that Mr. Huffaker was familiar with the employee's background. Mr. Huffaker had first treated the employee in 1988 and had seen him for at least two more courses of treatment before the fourth course which began on January 15, 1998. In addition, it appears, from Mr. Huffaker's notes, that he was aware of the employee's medical condition and his pain difficulties. We note that the history provided by the employee concerning his pain as it related to his physical activities was consistent with the histories provided by the employee to his treating physicians. As a result, we cannot say that the compensation judge was clearly erroneous in finding Mr. Huffaker's opinion to be adequately founded. If there was any question with respect to the background information relied on by Mr. Huffaker, that difficulty was more about the proper weight to have been given to his opinion rather than to its foundation and admissibility.

We agree that the compensation judge may have mistakenly referred to Mr. Huffaker as either a physician or a Ph.D., in that in his finding he referred to him as Dr. Huffaker. We do not find that this error was significant and may have merely been a typographical mistake.<sup>2</sup> It is clear that psychologist Huffaker had a master's degree and was a licensed psychologist. Under the circumstances, he would have qualified as an expert in the area in which he was rendering an opinion, the employee's psychological condition and ability to work in light of his pain disorder. In all places in the compensation judge's decision, where Mr. Huffaker is referred to as a doctor, the text shall be vacated and changed to reflect the psychologist's actual status.

The self-insured employer's argument that the compensation judge and Mr. Huffaker ignored the employee's extensive preexisting psychological condition does not appear to be accurate. As pointed out above, Mr. Huffaker had seen the employee for at least three sets of treatment sessions since 1988 and saw him regularly during early 1998. The compensation judge was free to infer that Mr. Huffaker was aware of the employee's preexisting conditions. In addition, it is not clear how significant these preexisting conditions were in contributing to the

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<sup>2</sup> We note that the employer's brief, in one place, mistakenly refers to Mr. Huffaker as Dr. Huffaker.

employee's inability to work in 1998.<sup>3</sup> With respect to the compensation judge's awareness, we note in his finding that he states:

While the IME examiner finds otherwise the overwhelming evidence indicates that while the employee did have prior problems and had treated with [Mr.] Huffaker in the past, at no time prior to the period in question here had the employee ever been diagnosed with a pain disorder; nor had he ever been disabled from gainful employment as a result of a psychological condition. [Mr.] Huffaker opines that the employee's wrist condition is a "significant contributor to his pain disorder, DSM-IV diagnosis 307.98." *See*, Petitioner's Exhibit CC. The Compensation Judge adopts his opinion.

The compensation judge goes on to discuss his conclusions with respect to the opinion of Dr. Rauenhorst as follows:

Dr. Rauenhorst diagnoses a number of conditions including substance and alcohol abuse and anxiety disorder "not otherwise specified." As pointed out by counsel for the employee, the employee has not had any problems with alcohol or substance abuse since 1986. There is no evidence that this continues to plague the employee or influence his pain complaints. Dr. Rauenhorst chooses to ignore the employee's valid pain complaints, however, even he concedes that the employee had "concerns about return to work." These would appear to be valid concerns in that the employer at this time had approval for a return to work at a job using voice activated software but never got the software until March of 1999. The Compensation Judge rejects the opinions of Dr. Rauenhorst and finds that the employee did develop what [Mr.] Huffaker diagnoses as a pain disorder associated with both psychological factors and a general medical condition. There is other evidence that backs up the opinions of [Mr.] Huffaker and argues against the diagnosis made by Dr. Rauenhorst. The employee underwent a psychological evaluation at the Fairview Pain Management Center where he saw Dr. Patrick O'Laughlin, Ph.D. Dr. O'Laughlin diagnosed pain disorder with emotional features.

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<sup>3</sup> The employee treated with a number of psychologists from 1985 through 1997. He last was in chemical dependency treatment in 1985. He was treated for depression and anxiety in 1985, 1992-93 and 1994-97. When released by Dr. Shields on July 30, 1997, he was found to no longer be depressed. (Pet. Ex. EE.) We note that none of these treatments appear to have been related to concerns over a pain disorder associated with the employee's injuries.

(Finding 3.) From these statements we see that the compensation judge had a clear understanding of the psychological problems the employee had prior to 1998.

Based on the evidence from the employee's treating medical physician, Dr. Putnam, that the employee did have a physiological condition which caused pain in his hands, the opinions of psychologist Huffaker and Dr. O'Laughlin, and the testimony of the employee, it appears that there is substantial evidence in the record to support the compensation judge's determinations. With respect to the differences between the opinion of psychologist Huffaker and psychiatrist Rauenhorst, it is the responsibility of the compensation judge to resolve those conflicting opinions. In this particular case, since both opinions were well founded, the compensation judge's choice of Mr. Huffaker's opinion over that of Dr. Rauenhorst will not be disturbed. Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985).

As a result of our affirmation of the compensation judge's determination that the employee's psychological disorder was substantially contributed to by the physical conditions attributed to the employee's work activities, we affirm his award of temporary total disability from January 28 through July 13, 1998, and his award of medical expenses related to treatment during that period by Mr. Huffaker.

With respect to the employee's temporary total disability claim, the self-insured employer makes numerous arguments about the employee's having voluntarily quit a suitable job, failed to perform a diligent job search, failed to cooperate with rehabilitation and his withdrawal from the labor market. All of these theories for denying the employee's TTD benefits are subsumed by the opinion of Mr. Huffaker, that the employee was not capable of any work activity as a result of his psychological condition. Since the compensation judge accepted this opinion and we have affirmed that finding, it is unnecessary to address these other legal theories since, under Mr. Huffaker's opinion, it would not have been required that the employee perform a diligent job search or accept the offer of employment made in January of 1998.