

KENNETH R. LANDFRIED, Employee/Appellant, v. GEN. CLEANING and ACCEPTANCE INDEM. INS. CO., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS  
FEBRUARY 15, 2000

No. [REDACTED SSN]

HEADNOTES

CAUSATION - TEMPORARY AGGRAVATION. Substantial evidence, including expert opinion, supports the compensation judge's conclusion that the employee's work-related low back injury was merely a temporary aggravation of the employee's preexisting condition and was not a substantial contributing cause of the employee's permanent partial or permanent total disability.

Affirmed.

Determined by Wilson, J., Rykken, J., and Pederson, J.  
Compensation Judge: Ronald E. Erickson

OPINION

DEBRA A. WILSON, Judge

The employee appeals from the compensation judge's denial of benefits for permanent total and permanent partial disability. We affirm.

BACKGROUND

The employee was born in 1929 and left school after the fourth grade. His work history includes employment as a truck driver, a garbage route driver, and a furniture mover. In 1990, the employee suffered a stroke, after which he essentially retired from his self employment as a furniture mover, and he began receiving social security retirement benefits in about 1991, at age sixty-two. In addition to the stroke, conditions noted in the employee's medical records include noninsulin-dependent diabetes, hypertension, a heart attack, extreme obesity, and a large umbilical hernia, which was treated with surgery. Records also indicate that the employee complained of and was treated for low back pain in 1990 and 1992. X-rays taken at that time revealed lumbar degenerative changes.

The employee testified that he returned to work in 1994 because Social Security benefits provided insufficient income. He apparently worked for about a year as a foreman for prison work details at a work farm and then for another year as a janitor at an air base. The employee testified that he obtained both jobs through an organization called Arrowhead Economics, which evidently assists retirees to reenter the labor force, and that both jobs paid about \$4.00 an hour for full-time work.

The employee apparently lost his janitorial job at the air base because of durational limits on jobs obtained through Arrowhead Economics. However, in September of 1996, shortly after leaving that job, the employee obtained part-time janitorial work with General Cleaning [the employer], cleaning office buildings in Duluth, Minnesota, and Superior, Wisconsin. The employee apparently earned about \$6.00 an hour for this work, with an average weekly wage of \$82.64. His job duties included cleaning bathrooms and emptying waste baskets and garbage cans. The employee testified that the garbage bags weighed as much as forty pounds and that he would lift and carry them for disposal.

On December 18, 1996, the employee sustained a work-related injury when he tripped over a rail, landing first against a five-gallon bucket, striking his left hip, and then bouncing off the bucket and landing, on his buttocks, on a concrete floor. Two days later he consulted Dr. Niles Batdorf, his usual family physician, with complaints of back pain. Noting no ecchymosis but limited range of motion and positive straight leg raising, Dr. Batdorf diagnosed "contusions and back strain," prescribed medication, and indicated that the employee could return to work in three days "if feeling up to it." The employee did not, however, return to his job, and he continued to complain of low back pain through January and into February of 1997. During this same period, in late December into early January, the employee was also evaluated for complaints suggesting that he may have had another stroke, this time mild.

Office notes from January 8, 1997, indicate that the employee was still experiencing some lumbar pain, with "a mild cough/sneeze/strain effect," and Dr. Batdorf prescribed physical therapy, which the employee attended only sporadically because of car trouble. A note of January 29, 1997, indicates that the employee was still complaining of low back pain, now also radiating into the left leg, and Dr. Batdorf kept the employee off work pending a recheck in three weeks. In a note dated February 19, 1997, Dr. Batdorf wrote, "out of work thru 3/14/97 due to injury." However, in his office note also dated February 19, 1997, Dr. Batdorf indicated that the employee "may return to light duty starting February 25, 1997 . . . . No lifting greater than 10 lbs. [and] [n]o excessive standing, bending or squatting."

On February 23, 1997, before any attempt to return to work, the employee slipped and fell at home, fracturing his left hip. He underwent surgery for the hip fracture shortly thereafter and then recuperated for some period in a nursing home. Subsequent entries in medical records indicate that the employee continued to complain of low back pain during and following his recovery from his hip surgery.

In July of 1997, the employer offered the employee light part-time work as a "project duster," dusting office furniture two hours a shift, five days a week, for \$4.75 an hour. It is not clear whether the employee tried but was unable to perform the job or whether he simply rejected the offer.

On September 24, 1997, the employee underwent an MRI of the lumbar spine. According to the radiologist's report, the scan disclosed degenerative disc disease at all lumbar levels, central stenosis at L3-4 and L4-5, and lateral stenosis at L5-S1 on the left and at L3-4 and

L4-5 bilaterally. No herniations or significant disc protrusions were seen. Medical records by this time indicated that the employee's leg symptoms, which had "started in December," had been getting progressively worse.

In early February of 1998, the employee underwent another arthroplasty procedure on his left hip. According to the employee, this second procedure was more successful than the first, alleviating most of his hip symptoms.

The employee was evaluated by two independent medical examiners. Dr. Duane Person, the employee's expert, concluded that the employee's December 18, 1996, injury permanently aggravated the employee's underlying, preexisting lumbar degenerative disc disease, and he assigned the employee a 22% whole body impairment rating related to that condition. Dr. Larry Stern, who examined the employee on the employer and insurer's behalf, concluded that the employee had a 10% whole body impairment related to his low back condition but that the impairment was not related to the December 18, 1996, work injury, which was, in Dr. Stern's opinion, merely temporary. The employee was also evaluated by two vocational experts, both of whom concluded, in essence, that the employee was permanently and totally disabled from employment.

On August 3, 1999, the matter came on for hearing before a compensation judge for resolution of the employee's claim for permanent partial and permanent total disability benefits due to his December 18, 1996, injury. In a decision issued on September 21, 1999, the judge denied the employee's claim in its entirety. 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 compensation judge concluded that the employee had been permanently and totally disabled since February 23, 1997, and that he has a 10% whole body impairment related to his low back condition. The compensation judge also concluded, however, that the employee's December 18, 1996, work injury was not a substantial contributing cause of either the employee's permanent partial disability or his permanent total disability. The employee appeals, contending that substantial evidence does not support the judge's decision.

There is certainly evidence in the record to support the employee's claim. Medical records indicate that the employee continued to complain of low back symptoms from the date of his work injury until just prior to February 23, 1997, the date of his fall at home and resulting hip fracture. While there is evidence indicating diagnoses and treatment for degenerative disc disease dating back to 1990, there is no evidence in the record, despite numerous consultations for other problems, that the employee ever complained of any low back symptoms during the three or four years prior to his December 18, 1996, work injury. Similarly, there is no evidence that any physician ever recommended restrictions, related to the employee's low back condition, prior to the employee's work injury. The employee testified that he in fact had no such symptoms or restrictions and that he was able to perform all his job duties until the December 18, 1996, incident, after which he was never free from low back pain. It is also true that the employee's restrictions following his hip fracture were essentially the same as they were prior to that fracture, and vocational expert Jack Casper testified that the restrictions imposed by Dr. Batdorf on February 19, 1997, which were never lifted, moved the employee from the light work category to the modified sedentary work category, rendering the employee permanently and totally disabled from all employment given his age, lack of education, and employment history. Finally, the opinion of Dr. Person, as well as certain entries in the records of the employee's treating physicians, reasonably support the employee's contention that the December 18, 1996, incident permanently aggravated the employee's preexisting lumbar degenerative disc disease. However, while this and other evidence may support the employee's contention that the December 18, 1996, work injury permanently aggravated his back condition and substantially contributed to his permanent total disability, there is also evidence to the contrary.

In his January 22, 1999, report, Dr. Stern concluded that the employee had suffered a lumbar strain in the December 18, 1996, work-related incident, explaining that, "[t]aking into consideration the 1990 and 1992 diagnostic findings of [the employee's] lumbar spine, it is my opinion [that] the December 18, 1996 injury was a temporary aggravation of his preexisting back condition." With regard to those 1990 and 1992 diagnostic findings, Dr. Stern explained as follows:

The radiology reports indicate that the x-ray tests were ordered by Dr. Waage. Unfortunately, the medical records do not contain the clinic notes that go along with those x-ray tests. I have no doubt that if those records could be located, they would indicate the x-rays were being taken because of lower back pain.<sup>1</sup> Mr. Landfried's job

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<sup>1</sup> Dr. Stern's assumption about the clinic notes is accurate - - the clinic notes in evidence at hearing indicate that the employee was complaining of low back pain.

was that of a furniture mover for several years, and clearly this is associated with back problems. The findings noted in 1990 and 1992 were spondylolytic and degenerative disc disease in nature. These are the same types of findings that were found on the MRI scan, although the MRI scan was able to demonstrate spinal stenosis, which the plain films could not. Spinal stenosis takes several years to develop, and in no way could be related to the lumbar spine injury of December 18, 1996.

As further explanation for his temporary aggravation opinion, Dr. Stern went on to write as follows:

In my opinion, the December 18, 1996 occurrence was a temporary aggravation of his preexisting back condition. Again, I interpret the medical records to document that he had previous back problems in 1990 and 1992. His injury date was December 18, 1996. My interpretation of his office visits during that period of time is that he was not having severe incapacitating pain. The MRI scan of his lower back was not obtained until almost nine months following the injury. In the intervening period of time, he had a left hip fracture, which occurred on February 23, 1997. It is important to review the emergency room note of February 23, 1997. It indicates Mr. Landfried fell while cleaning up his yard and injured his left hip. This is of importance in two regards. First, he was obviously feeling well enough to clean up his yard at that period of time, and he fell hard enough to break his left hip. Certainly, in a gentleman with preexisting lumbar spondylosis and degenerative disc disease, a fall severe enough to break one's hip would be considered severe enough to aggravate a significant preexisting back condition. Add to this the rehabilitation following his Austin-Moore prosthesis with his crutch and walker use, as well as his subsequent revision of surgery to a total hip replacement. I would not be surprised to see his back pain increase over time, which is exactly what happened. It is quite common following hip surgery for individuals to complain of increased back pain following their procedures.

In his memorandum, the compensation judge discussed Dr. Stern's opinion at some length and expressly indicated that he agreed with Dr. Stern's opinion on the issue.

The employee argues that the compensation judge erred in relying on Dr. Stern's opinion, in that "[t]here is no indication that Dr. Stern . . . took into account the fact that the Employee had no treatment for or complaints of low back pain for four years prior to his work injury," and in that Dr. Stern's report "does not indicate any knowledge that the Employee landed on his low back on a concrete floor." As to the employee's first concern, nothing in Dr. Stern's

report indicates that he was assuming that the employee did have continuing low back complaints prior to his work injury, so there is no support for any contention that Dr. Stern was assuming facts not supported by the record. As to the employee's other concern, we would note that the employee testified, contrary to his argument on appeal, that he ended up landing on his buttocks, not his back. In any event, we are satisfied that Dr. Stern had an adequate basis for his opinion and that the compensation judge was entitled to rely on that opinion in making his ultimate decision.

After thorough review of the record, we must acknowledge that this is a close case. However, the dispositive issue was medical causation, and we cannot conclude that the compensation judge erred in accepting Dr. Stern's opinion in this regard. See Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985) (a compensation judge's choice between experts whose opinions conflict is generally upheld unless the facts assumed by the expert are not supported by substantial evidence in the record as a whole). Therefore, while we might have decided the matter differently had we been in the factfinder's place, we are compelled to affirm the judge's decision that the employee's December 18, 1996, work injury is not a substantial contributing cause of either the his permanent partial disability or his permanent total disability.