

KAROLEE KNUDSON LEE, Employee/Appellant, v. JOHNSON MEM. HEALTH SERVS. and FARM BUREAU MUT. INS. CO., Employer-Insurer, and JOHNSON MEM. HEALTH SERVS. and STATE FUND MUT. INS. CO., Employer-Insurer, and ABBOTT NW. HOSP., INST. FOR LOW BACK & NECK CARE, CTR. FOR DIAGNOSTIC IMAGING and NW. ANESTHESIA, P.A., Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
NOVEMBER 6, 2000

No. [REDACTED SSN]

HEADNOTES

CAUSATION - TEMPORARY AGGRAVATION; EVIDENCE - EXPERT MEDICAL OPINION; CAUSATION - GILLETTE INJURY. Substantial evidence exists to support the compensation judge's finding that the employee's injury represented a temporary aggravation of a pre-existing condition. It is the compensation judge's responsibility, as trier of fact, to resolve conflicts in expert testimony. Insufficient evidence supported a finding that the employee sustained a Gillette-type injury or aggravation as a result of her work activities.

Affirmed.

Determined by: Rykken, J., Wilson, J., and Wheeler, C.J.
Compensation Judge: Gary P. Mesna

OPINION

MIRIAM P. RYKKEN, Judge

The employee appeals the compensation judge's findings that the employee sustained a temporary aggravation of a pre-existing low back condition and that the employee did not sustain a Gillette¹ injury. We affirm.

BACKGROUND

In September 1988, the employee, Karolee Knudson Lee, began working for Johnson Memorial Health Services, the employer, as a certified nursing assistant. In June 1990, she was certified as a licensed practical nurse (LPN) and continued working for the employer in that capacity. On December 26, 1997, the employee sustained an admitted work related injury to her low back while working as an LPN for the employer. At the time of her injury, the employee was 35 years old, and earned a weekly wage of \$364.21. On that date, the employer was insured for workers' compensation liability by Farm Bureau Mutual Insurance Company. Farm Bureau paid medical expenses on behalf of the employee, and temporary total disability benefits from December 27, 1997, through January 7, 1998, when the employee returned to light duty work. On

¹ Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 21 W.C.D. 105 (1960).

March 24, 1998, the employee sustained a subsequent injury to her low back. On that date, the employer was insured by State Fund Mutual Insurance Company. State Fund denied primary liability for the March 24, 1998 injury, asserting that the employee's symptoms after that incident were a manifestation of the employee's condition pre-existing the March 24, 1998 incident.

The employee has a history of low back symptoms. The record includes limited chiropractic records dating back to May 1, 1992, and includes notes that the employee sought treatment for neck and arm complaints on May 1, 1992, and twice in November 1992, as well as treatment for low back symptoms on August 19, 1992, and December 14, 1993. Thereafter, there is no documentation in the hearing record of any medical or chiropractic treatment for low back symptoms until April 1997. The employee treated with Dr. Michael Youngquist, chiropractor, in April and May 1997 for complaints of low back and left leg pain, including moderate diffuse left lower back symptoms which were generally achy but occasionally sharp in quality, mid-line lower back pain, moderate diffuse lateral posterior left thigh symptoms of an achy and shooting nature, and lateral posterior left lower leg pain. The employee reported to Dr. Youngquist that her "symptoms developed gradually several years ago and overall, have gotten worse. There was a dull and achy radiation of symptoms to the posterior thigh on the left." (Pet. Exh. I.) The employee reported some improvement with treatment, which she received on seven occasions between April 16 and May 27, 1997, but continued to note symptoms. After May 27, 1997, she did not treat again until December 15, 1997, when she reported to Dr. Youngquist a significant increase in low back symptoms with no known cause, including radiation of symptoms to her left leg, which had started one week earlier. The employee was seen again on December 18 and 20, 1997, with no change in symptoms or findings. On December 22, 1997, the employee reported improvement and Dr. Youngquist noted improved objective findings.

On Friday, December 26, 1997, the employee sustained an injury at work while attempting to lift a patient into a wheelchair. Dr. Youngquist examined the employee on December 29, 1997, when the employee reported lower back pain which was sharp and shooting, left gluteal symptoms which were sharp and shooting, moderate to severe diffuse posterior left thigh symptoms which were generally achy but occasionally sharp and tingling, tingling posterior left lower leg symptoms, and tingling left foot symptoms. The employee reported on a patient history questionnaire that she had experienced similar low back pain before, but not as severe and not with tingling in her feet. An x-ray of the lumbar spine, taken on December 29, 1997, was interpreted by Dr. Youngquist to indicate degeneration within the L3, L4 and L5 disc spaces; spondylolisthesis, retrolisthesis and curvature at various levels; and a "5 mm right leg length inequality" which Dr. Youngquist later referred to as a "functional short leg on the left." (Pet. Exh. I.) Dr. Youngquist diagnosed a lumbar strain with radiculitis. The employee also consulted Dr. Ralph Gerbig on December 30, 1997, reporting "occasional low back discomfort over the past year or so." She reported new symptoms of tingling into the fingertips of both arms, and more persistent tingling and pain radiating into her left leg, noted after her injury on December 26. Dr. Gerbig approved the employee's follow-up appointment with Dr. Youngquist for December 31, and sent recommended work restrictions to Dr. Youngquist.

The employee underwent chiropractic treatment on December 31, and returned for a follow-up medical appointment that same day with Dr. Gerbig's colleague at the Dawson Clinic, Dr. Sheriff Roushday. Dr. Youngquist restricted the employee from work until January 7, 1998, when he recommended that she return to work on light duty. The employee continued to report some improvement, of varying degrees, but also ongoing low back and left leg symptoms. The employee continued to receive chiropractic treatment from Dr. Youngquist, through April 1998.

On March 24, 1998, the employee sustained an exacerbation of her symptoms due to an incident at work when she caught a patient who was falling. Dr. Youngquist determined that since this incident did not result in any new subjective or objective findings, the employee's diagnosis remained unchanged and the incident was "classified as an exacerbation of her existing condition." On March 30, 1998, Dr. Youngquist completed a Health Care Provider Report which indicated that the employee was released to work with no restrictions, but that the employee had not yet reached maximum medical improvement (MMI). (Ee. Exh. I.) In an April 23, 1998, letter, Dr. Youngquist indicated that the reason why he did not specifically recommend work restrictions, in his report of March 30, 1998, was that the employee's current light-duty job description did not require activities beyond which he would recommend restrictions.

In April 1998, Dr. Youngquist referred the employee to Dr. George Adams for a neurological consultation, and for an MRI. Dr. Adams recommended prescription medication and also epidural injections if the medication did not alleviate her symptoms. The employee did not experience relief from the medication. An April 8, 1998, MRI indicated a large extruded disc herniation at the L5-S1 level, compressing the left S1 nerve root and thecal sac. Thereafter, Dr. Gerbig referred the employee to Dr. Alexander Lifson, who recommended surgery, "[c]onsidering her four-month history of problems with the progressively increasing symptomatology and the presence of an extruded disc herniation." (Pet. Ex. A.) The employee underwent a successful L5-S1 discectomy on April 27, 1998. Ten days after that surgery, the employee had a recurring disc herniation after vomiting during a viral illness, and underwent a second surgery for this herniation. The employee improved and returned to work with restrictions on June 17, 1998, limited to light duty work with no lifting, no twisting, avoidance of bending and no pushing of medication carts. The employee testified that following her recuperation from her first surgery, she "felt a lot better. The pain in my leg was pretty much gone." (T. 45.) However, after her recurrent disc herniation, she again noticed "shooting" leg pain. The employee received additional chiropractic treatment post-surgery. Dr. Youngquist discharged the employee from "further chiropractic care or rehabilitative efforts" on September 3, 1998, at which time he recommended exercises to the employee and determined that the employee was "at maximum improvement." (Pet. Exh. I.) By the time of the hearing on December 7, 1999, the employee testified that she had no left leg pain and no excruciating pain, but noticed stiffness in her lower back, "especially in the mornings" and after sitting for one-half hour. (T. 49.)

On November 23, 1998, the employee filed a claim petition regarding her December 26, 1997, injury. On an amended claim petition filed July 30, 1999, the employee alleged both a December 26, 1997 and a March 24, 1998, injury. She made an alternative claim

for Gillette-type injuries on those dates. The employee claimed temporary total disability benefits from April 14, 1998, through June 16, 1998, and medical expenses.

On April 12, 1999, the employee underwent an independent medical evaluation with Dr. Richard Galbraith at the request of the employer and Farm Bureau. Dr. Galbraith initially concluded that the employee's December 26, 1997, work injury was a temporary aggravation of her pre-existing condition, unrelated to her work. He also concluded that the incident on March 24, 1998, did not represent a new injury. He stated that:

At best, it would be another temporary aggravation of her pre-existing problem which from that point on became more intensified and one could raise the question but certainly causally could not give a definitive answer that the March 24, 1998, incident where the resident pulled her to the left was the causation for her ultimate herniated disc that was found on April 8, 1998. At any rate, she did not have any previous diagnostic studies going all the way back to 1994 that would give us a clue as to when that herniated disc actually occurred. It certainly in my judgement was not related to the December 26, 1997, incident but could logically have occurred back on December 15, 1997, when she first went back to see Dr. Youngquist because of severe pain and left lower leg pain. The March 24, 1998, incident may have been the time that she actually had the large extruded disc occur that ultimately showed up on April 8, 1998. It is my judgement that she did not have a direct causal relationship from either the December 26, 1997, or the March 28, 1998, incidents that one could substantially say was the contributing factor to her ultimate surgery on April 27, 1998.

In an addendum report dated June 8, 1999, written in response to a letter sent by counsel for the employer and Farm Bureau, Dr. Galbraith wrote that he reviewed his examination of the employee, and that the "following is a clarification of my answer" to an earlier question concerning causation:

It is my belief, to a reasonable degree of medical certainty, that the injury that the patient sustained on March 24, 1998, while working was the incident that caused the ultimate herniated disc that was found on April 8, 1998, which led to surgical intervention and removal of that herniated on April 27, 1998. (Pet. Ex. H.)

On October 7, 1999, the employee underwent a medical evaluation with Dr. Nolan Segal, at the request of the employer and State Fund. Dr. Segal concluded that "[w]hen looking at the overall picture, Ms. Knudson-Lee clearly had evidence to suggest some left radiculopathy prior to the December 26, 1997 work-related injury." He also stated that, in his opinion, the employee had a disc herniation prior to her December 26, 1997, injury and even alluded that "continuing chiropractic adjustments to the L5 level would have had the potential of making the problem

worse.” Dr. Segal further concluded that the December 1997 and March 1998 incidents were not substantial contributing factors to the employee’s condition and subsequent need for surgery, and that the employee’s disc herniation existed prior to the December 26, 1997 work injury based on her prior symptoms. (State Fund Exh. 1.)

The employee underwent a follow-up appointment with Dr. Charles Burton on December 3, 1999, who limited the employee to light-duty work for an indefinite period of time. (Pet. Ex. A.)

A hearing was held on December 7, 1999. The compensation judge found that the employee’s December 26, 1997, work injury was a temporary aggravation of the employee’s pre-existing low back and left leg condition which had resolved by March 30, 1998, and that the December 26, 1997, and March 24, 1998, work injuries were not substantial contributing causes of the employee’s L5-S1 disc herniations and resulting disability and need for surgery. The compensation judge also concluded that the employee did not sustain a Gillette injury as a result of her work activities. The compensation judge, however, found that the chiropractic treatment provided by Dr. Youngquist from December 29, 1997 through March 30, 1998 was reasonable and necessary to cure or relieve from the effects of the employee’s work injury of December 26, 1997. The employee appeals.

STANDARD OF REVIEW

On appeal, this court must determine whether the compensation judge's findings and order are "clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1(3) (1998). Substantial evidence supports the findings if, in the context of the record as a whole, 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 the evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings must 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). Factfindings may not be disturbed, even though this 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

Temporary Aggravation

The compensation judge found that the employee had sustained a temporary aggravation of her pre-existing condition on December 26, 1997, which resolved by at least March 30, 1998. The employee argues that she sustained a permanent aggravation. Several factors may be considered when determining whether an aggravation of a pre-existing condition is

temporary or permanent, including: (1) the nature and severity of the pre-existing condition and the extent of restrictions and disability resulting therefrom; (2) the nature of the symptoms and extent of medical treatment prior to the aggravating incident; (3) the nature and severity of the aggravating incident and the extent of restrictions and disability resulting therefrom; (4) the nature of the symptoms and extent of medical treatment following the aggravating incident; (5) the nature and extent of the employee's work duties and non-work activities during the relevant period; and (6) medical opinions on the issue. "Which of these factors are significant in a particular case and the weight to be given to any factor is generally a question of fact for the compensation judge." Wold v. Olinger Trucking, Inc., slip op. (W.C.C.A. Aug. 29, 1994).

The compensation judge acknowledged that the employee's pre-existing condition was aggravated by the December 26, 1997 work injury, but concluded that the aggravation was temporary. The compensation judge noted that the employee improved with treatment and returned to work with restrictions in early January 1998, and continued to improve. On March 24, 1998, the employee had a flare-up as the result of another work injury, but was released to work without restrictions on March 30, 1998 by Dr. Youngquist. The compensation judge emphasized the significant symptoms which the employee experienced in her low back and left leg shortly before the December 26, 1997 work injury, which symptoms are outlined in Dr. Youngquist's records.

Medical opinions in the record diverge greatly on the issues of causation and the duration of the effects of the employee's injuries. The employee's treating chiropractor, Dr. Youngquist, determined that the employee's condition and symptoms were causally related to her work injury on December 26, 1997. In Dr. Segal's opinion, the employee's disc herniation existed prior to the December 26, 1997 work injury, based on her prior symptoms. Although Dr. Galbraith determined that both the employee's December 26, 1997, and March 24, 1998, work injuries were temporary aggravations of her pre-existing condition unrelated to her work, he later concluded that the employee's March 24, 1998, injury resulted in a herniated disc.

Admittedly, the employee's testimony together with the chiropractic reports of Dr. Youngquist would support a finding that the December 26, 1997, low back injury was permanent rather than temporary. In addition, Dr. Galbraith's addendum report could be regarded as supporting a finding that the March 24, 1998, low back injury was permanent in nature. Whether the record might support a different conclusion is not, however, the issue on appeal. 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, findings of fact should not be disturbed, even though the reviewing court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." Northern States Power Co. v.

Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). In addition, it is the compensation judge's responsibility, as trier of fact, to resolve conflicts in expert testimony. Nord v. City of Cook, 360 N.W.2d 337, 342, 37 W.C.D. 364, 372 (Minn. 1985). As there is evidence that a reasonable mind might accept as adequate to support the compensation judge's finding of a temporary aggravation, and to support his finding that neither the admitted injury of December 26, 1997, nor the alleged injury of March 24, 1998, was a substantial contributing cause to the employee's disability after March 30, 1998, those findings must be affirmed.

Gillette Injury

The employee also appeals the compensation judge's finding that the employee did not sustain a Gillette-type injury. A Gillette injury is a result of repeated trauma or aggravation of a pre-existing 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). The question of a Gillette injury primarily depends on medical evidence. Marose v. Maislin Transport, 413 N.W.2d 507, 512, 40 W.C.D. 175 (Minn. 1987). The employee "must prove a causal connection between her ordinary work and ensuing disability. . . . Whether given by testimony or written report, an opinion by a medical expert as to the causal link between the claimant's disability and the job must be based on adequate foundation." Steffen v. Target Stores, 517 N.W.2d 579, 582, 50 W.C.D. 464, 467 (Minn. 1994).

In this case, the employee alleged an alternative claim of a Gillette injury occurring as a result of almost ten years of employment for this employer, culminating on either December 26, 1997 or March 24, 1998. The employee did not present a doctor's opinion as to causation of a Gillette injury, but simply points to the employee's testimony that work activities increased her pain and her chiropractor's notes that work activities aggravated her pre-existing low back condition. The compensation judge noted in his memorandum that "some of her work activities had the potential for causing or contributing to a gradual-onset Gillette-type injury to the low back." The compensation judge further stated, however, that "the mere potential for such an injury is not a sufficient basis for finding that such an injury did, in fact, occur." He concluded that there was insufficient evidence to support a finding that the employee sustained a Gillette injury or aggravation as a result of her work activities, given the lack of medical evidence. We agree, and affirm.