

JOHN ABRAHAMS, Employee, v. UNIV. OF MINN.-DULUTH, SELF-INSURED, admin'd by SEDGWICK CLAIMS MGMT. SERVS., INC., Employer/Appellant.

WORKERS' COMPENSATION COURT OF APPEALS
JANUARY 26, 2001

No. [REDACTED SSN]

HEADNOTES

EVIDENCE - RES JUDICATA. The October 7, 1994 Findings and Order does not bar the employee's current claim for permanent partial disability benefits, on the basis of res judicata, where the claim relates to a different condition, is based on a different diagnosis, and requires different proof.

CAUSATION - SUBSTANTIAL EVIDENCE. The compensation judge did not err in relying on the causation opinion of the employee's expert, Dr. Wengler, and there is sufficient evidence to support the compensation judge's determination that the employee's herniated discs are causally related to his 1988 work-related injury.

Affirmed.

Determined by Johnson, J., Wheeler, C.J., and Wilson, J.
Compensation Judge: Donald C. Erickson

OPINION

THOMAS L. JOHNSON, Judge

The self-insured employer appeals from the compensation judge's determination that the employee's claim for permanent partial disability was not barred by res judicata or collateral estoppel, and the judge's finding of a causal relationship between the employee's herniated discs and his 1988 personal injury. We affirm.

BACKGROUND

John Abrahams, the employee, worked as a recruiter for the University of Minnesota-Duluth, the employer. On November 28, 1988, the employee was involved in a work-related motor vehicle accident. In 1993, the employee filed a claim petition seeking payment of wage loss benefits and seeking payment of a 3.5 percent permanent partial disability of the cervical spine. The self-insured employer denied liability for the claimed benefits. The case was heard by Compensation Judge Bonovetz at the Office of Administrative Hearings on November 29, 1994. In a Findings and Order filed December 7, 1994, the compensation judge found the employee sustained a compensable personal injury to his cervical spine arising out of and in the course of his employment with the employer. With respect to the claim for permanent partial disability benefits, the judge found:

Although subsequent to the automobile accident of November 28, 1988, the employee periodically experienced cervical pain and discomfort and intermittently obtained medical and chiropractic care and treatment, the employee, as a result of the cervical injury of November 28, 1988, does not exhibit a loss of motion or postural abnormality nor chronic muscle spasm. (Finding 20.)

Accordingly, the compensation judge found the employee sustained a zero percent permanent partial disability pursuant to Minn. R. 5223.0070, subp. 2.A.(1).

On November 30, 1995, the employee sought treatment with Christine Audette, D.C. He complained of pain in his neck, between his shoulders and in his low back which he traced to his 1988 car accident. Dr. Audette diagnosed cervical, thoracic and lumbar subluxations and commenced a course of chiropractic treatment. The doctor's records reflect an average of eight treatments a year during 1996 and 1997. The doctor continued to treat the employee through October 21, 1998. On February 8, 1999, Dr. Audette rated a 24.5 percent whole body disability secondary to the employee's November 1988 personal injury.¹ (Pet. Ex. F.)

The employee also received physical therapy at the Center for Muscle and Joint Therapy commencing on July 30, 1997. On that date, the employee complained of left cervical pain with pain into his biceps and anterior arm. He reported the arm symptoms came on approximately one month previously. The physical therapist noted decreased forward bending and posterior cervical pain with active assisted motion. The therapist concluded the employee had possible ligamentous damage and a secondary loss of cervical range of motion, and recommended physical therapy twice a week for two to three weeks. The employee returned to the physical therapy center on March 12, 1998 on referral from Dr. Stephenson. The employee then complained of an increase in neck pain. The therapist noted a limitation of cervical rotation and forward bending with point tenderness over the C6-7 region on the left. Ultrasound and deep tissue mobilization was performed together with passive intervertebral mobilization at C6-7. (Pet. Ex. H.)

On December 18, 1998, Dr. William E. Gatlin obtained a dynamic motion x-ray of the employee's cervical spine. The doctor stated the x-ray showed an anterolisthesis secondary to ligamentous instability at C2-3 through C4-5 with a retrolithesis secondary to ligamentous instability at C4 through C6-7. An MRI scan was taken of the cervical spine by James D. Coughlin, D.O. on December 23, 1998. The scan showed a moderately large central and left posterior disc protrusion at C5-6 and C6-7 with moderate spinal cord compression at those levels. The doctor suspected some compression of the left C6 and C7 nerve roots and suspected a small to moderate-sized posterior osteophyte at C5-6 and C6-7. (Pet. Ex. G.)

Dr. Robert A. Wengler examined the employee at the request of his attorney on March 3, 1999. The doctor concluded the employee had herniated discs at two levels in his cervical

¹ See: Minn. R. 5223.0070, subp. 2.B.(1)(a) - 9 percent;
Minn. R. 5223.0070, subp. 2.B.(5) - 5 percent;
Minn. R. 5223.0070, subp. 2.A.(3)(b) - 10.5 percent.

spine that were potentially symptomatic. Dr. Wengler opined this condition resulted from the employee's personal injury of November 28, 1988, and rated a 19 percent whole body disability under Minn. R. 5223.0070, subp. 2.B.(1)(b) and B.(5). Finally, Dr. Wengler believed cervical disc surgery was a real possibility. (Pet. Ex. I.)

Dr. Michael D. Smith examined the employee on June 8, 1999 at the request of the self-insured employer. The doctor's orthopedic examination of the employee's neck was negative, but his neurological examination was slightly abnormal with trace weakness of the triceps and pronator muscles on the left. Dr. Smith, however, considered it an essentially normal examination. The doctor diagnosed congenital and acquired cervical stenosis. Dr. Smith opined the 1988 personal injury was not a substantial contributing cause of the disc herniations reflected in the 1999 MRI scan. The doctor opined that had the employee sustained herniated discs in the 1988 car accident, he would have demonstrated consistent neurological findings since that date. Rather, the doctor opined the employee's history was consistent with progressive degenerative changes unrelated to any injury, resulting in spinal stenosis. (Resp. Ex. 2.)

The employee filed a claim petition seeking payment of permanent partial disability benefits and medical expenses. The case was heard by a compensation judge at the Office of Administrative Hearings on May 18, 2000. In a Findings and Order filed July 31, 2000, the compensation judge found the employee sustained a 19 percent whole body disability as a result of his personal injury of November 28, 1988. The judge further found the December 7, 1994 Findings and Order did not result in res judicata or collateral estoppel precluding the current claim for permanent partial disability benefits. The self-insured employer appeals.

STANDARD OF REVIEW

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, 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). "[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers' Compensation Court of Appeals] may consider de novo." Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

DECISION

Res Judicata

In the December 7, 1994 Findings and Order, Judge Bonovetz found the employee sustained a zero percent permanent partial disability. The self-insured employer argues this finding is res judicata on the issue of permanent partial disability benefits. Accordingly, the appellant argues the compensation judge's July 31, 2000 award of 19 percent permanent partial disability benefits is contrary to law and must be vacated.

Res judicata or claim preclusion is essentially a finality doctrine in which "a final judgment on the merits bars a second suit for the same claim by parties or their privies." Kaiser v. Northern States Power Co., 353 N.W.2d 899, 902 (Minn. 1984). It is well settled that the principles of res judicata are applicable in workers' compensation proceedings. Alexander v. Kenneth R. LaLonde Enters., 288 N.W.2d 18, 31 W.C.D. 407 (Minn. 1980). The doctrine, however, precludes only litigation of issues and claims that were in fact decided in an earlier decision. Fischer v. Saga Corp., 498 N.W.2d 449, 450, 48 W.C.D. 368, 369 (Minn. 1993); Westendorf v. Campbell Soup, 243 N.W.2d 157, 28 W.C.D. 460 (Minn. 1976).

At the 1994 hearing, the issue before the compensation judge was whether the employee proved entitlement to a 3.5 percent whole body disability under Minn. R. 5223.0070, subp. 2.A.(2), for a healed sprain/strain. The compensation judge found the employee demonstrated a zero percent permanent partial disability. The issue at the May 2000 hearing was whether the employee was entitled to permanent partial disability benefits for two herniated discs and degenerative changes. The compensation judge awarded a 19 percent permanent partial disability under Minn. R. 5223.0070, subp. 2.B.(1)(b) and 2.B.(5). The claims asserted in 2000 are different from the claim asserted in 1994. The earlier claim was for rigidity or muscle spasm without associated demonstrable degenerative changes. The claims in the present proceeding are for two adjacent herniated discs. The present claim is for a different condition than that litigated in 1994, is based on a different diagnosis and requires different proof. Accordingly, res judicata does not bar the compensation judge's award of 19 percent permanent partial disability benefits. See Johns v. Modern Tool Co., slip op. (W.C.C.A. February 8, 1994); Kenow v. The King Co., slip op. (W.C.C.A. August 20, 1997).

Causal Connection

The self-insured employer next contends substantial evidence does not support the compensation judge's finding of a causal relationship between the employee's herniated discs and the personal injury of November 28, 1988. The appellant argues the employee's symptoms following his injury were not consistent with herniated discs. The employee sought medical treatment only sporadically after 1993 and engaged in a vigorous athletic lifestyle.² Dr. Smith testified the employee's congenital stenosis made him much more susceptible to normal, age-related degenerative changes. Thus, the appellant argues the employee's herniated discs resulted not from the personal injury but occurred as a result of age and the employee's lifestyle. Accordingly, the appellant contends the testimony and medical evidence do not support the

² Following his personal injury the employee testified he participated in cross country skiing, (T. 33), white water rafting (T. 39), kayaking (T. 53-54), and mountain biking (T. 54). The employee testified that since 1988, these strenuous activities have bothered his neck. (T. 50.)

compensation judge's finding of a causal relationship between the work injury and the cervical herniations diagnosed ten years later.

Certainly, there is evidence which, if accepted by the compensation judge, would support a different result. Findings of fact are not to be disturbed, however, "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., at 521. In this case, the compensation judge's causation finding is supported by the opinion of Dr. Wengler which the compensation judge adopted. 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).

The appellant argues Dr. Wengler's opinion is based on inadequate foundation because the doctor did not have a history of the employee's physical activities following the work injury. Accordingly, the appellant contends the compensation judge improperly relied on Dr. Wengler's opinion. We disagree. Dr. Wengler obtained a history from the employee, reviewed the employee's medical records and examined the employee on March 3, 1999. As a general rule, this level of knowledge establishes a doctor's competence to render an expert opinion. See Grunst v. Immanuel-St. Joseph Hosp., 424 N.W.2d 66, 40 W.C.D. 1130 (Minn. 1988). Minor facts unknown to the doctor will not damage the foundation for the medical opinion as long as the omissions do not mislead the fact-finder. See Scott v. Southview Chevrolet Co., 267 N.W.2d 185, 188, 30 W.C.D. 426, 431 (Minn. 1978). Dr. Wengler's lack of specific knowledge about the employee's activities does not render his opinion without foundation. Rather, such a lack of knowledge goes to the persuasiveness or weight afforded the medical opinion by the compensation judge. The information available to Dr. Wengler was not so inadequate as to demonstrate an inadequate factual foundation. The compensation judge did not err in relying on the causation opinion of Dr. Wengler, and the judge's decision is, accordingly, affirmed.