MAUREEN O'BRIEN AZINGE, Employee/Appellant, v. CCP/ADAPTED LIVING PROGRAMS and MINNESOTA ASSIGNED RISK PLAN/BERKLEY RISK ADMIN'RS., Employer-Insurer, and MEDICA/HEALTHCARE RECOVERIES, INC., Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
DECEMBER 14, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - TEMPORARY AGGRAVATION. Substantial evidence, including the medical records of Dr. Ercolani together with the opinions of Dr. Reese and Dr. Friedland supports the compensation judge's conclusion that the employee's work injury was temporary and had resolved no later than June 1995.

Affirmed.

Determined by: Johnson, J., Wheeler, C.J., and Pederson, J.
Compensation Judge: Kathleen Behounek

OPINION

THOMAS L. JOHNSON, Judge

The employee appeals the compensation judge's finding on remand that her work injury of November 13, 1993, totally resolved no later than June 1995, and the judge's finding that the employee's need for medical treatment after July 1999 was not causally related to her personal injury. We affirm.

BACKGROUND

Maureen O'Brien Azinge, the employee, worked as a Rehabilitation Counselor II for CCP/Adapted Living Programs, the employer. The employee's wage was $210.00 a week. Her job duties included assisting disabled persons in their homes. On November 13, 1993, the employee injured her low back while transferring a quadriplegic patient. The employee did not immediately seek medical attention and continued to work for the employer performing the same duties.

The employee first sought medical treatment on May 31, 1994, with Dr. Robert Ercolani. The employee gave the doctor a history of an injury in November 1993 while she was lifting a large client and noted low back pain the following day. The employee complained of recurrent pain since then, particularly when lifting. On examination, the doctor found full range of lumbar motion with minor pain to palpation in the right sacroiliac region. The doctor prescribed a muscle relaxant and physical therapy and limited the employee's lifting to no more than

35 pounds. On July 20, 1994, Dr. Ercolani noted the employee's back pain was improving but not resolved and he continued her restrictions.

The employee left her job with the employer on July 28, 1994, and went to Germany for six months. While in Germany, the employee studied German for four weeks and then worked as a nanny for a family. The employee testified she continued to have low back problems while in Germany but sought no medical treatment. The employee stated she did, however, perform the home exercises she had been taught in physical therapy. While in Germany, the employee went sledding with friends and aggravated her low back in the same area as her work injury. She testified she did not seek medical treatment because she had no insurance coverage.

Upon her return to the United States, the employee went to work for Dungarvin, where she worked from 1995 to 1997. She testified the job entailed house duties for disabled persons but required less lifting than her job with the employer. The employee conceded she had no work restrictions while working for Dungarvin and missed no time from work because of low back pain. In January 1996, the employee also obtained a job as a reserve teacher with the Minneapolis Public Schools teaching German to middle and high school students.

The employee returned to see Dr. Ercolani on March 20, 1995. The employee told the doctor her low back pain had persisted and stated she had recently moved and was lifting a lot of heavy boxes. The doctor diagnosed chronic low back pain with a normal examination and prescribed further physical therapy. By report dated May 30, 1995, Dr. Ercolani opined the employee had reached maximum medical improvement and had sustained no permanent partial disability. The employee was next examined by Dr. Jerry Reese, an orthopedic surgeon, on referral from Dr. Ercolani. The doctor obtained x-rays and conducted an orthopedic examination, both of which were normal. Dr. Reese diagnosed chronic low back strain, very mild, and recommended the employee stop jogging. The employee last saw Dr. Ercolani on May 6, 1996, with complaints of continued localized low back pain without radiation. On examination, the doctor found a full range of lumbar motion without pain, negative straight leg raising and again diagnosed chronic low back pain. Dr. Ercolani stated the employee reached MMI on May 6, 1996 without any permanent disability. He stated medically he could offer the employee nothing more and recommended she continue her home therapy.

The employee received no further medical treatment for her low back until July 14, 1999. She then sought treatment with Lori Tenenbaum, D.C. The employee gave a history of low back problems since her 1993 injury, but stated her back pain was better during her pregnancy. However, as her child grew, the employee stated that lifting her daughter in and out of her crib caused low back pain. Dr. Tenenbaum commenced a regimen of chiropractic treatment. The employee last saw Dr. Tenenbaum on December 1, 1999.

The employee saw Dr. Joseph Cove, an orthopedic surgeon, on September 9, 1999, complaining of low back pain since November 1993, which significantly worsened in July 1999. The employee reported her back pain had resolved during her pregnancy but was now aggravated by lifting her daughter in and out of the crib. An MRI scan showed a mild broad-based disc bulge at L5-S1, which Dr. Cove described as "essentially unremarkable" with "a hint of dehydration at L4-5 but nothing that indicates an annular tear." Dr. Cove recommended a more vigorous exercise

program, anti-inflammatory medication and physical therapy. The employee received four physical therapy sessions at NovaCare in October 1999. The discharge summary noted the employee's symptoms were still present on the right side of her back, but they were mild.

The employee was in a car accident on December 11, 1999. On December 13, 1999, the employee saw Peter Kelzenberg, D.C., at the Osseo Chiropractic Clinic complaining of cervical and thoracic pain. Dr. Kelzenberg commenced chiropractic treatment for a cervical-thoracic strain/sprain. The employee also saw a doctor at Camden Physicians on December 30, 1999, complaining of low back pain aggravated by her car accident as well as upper neck and shoulder pain. The doctor diagnosed lower lumbar pain which possibly reoccurred following the car accident.

On June 2, 2000, the employee saw Dr. John Levitt at the Park Nicollet Clinic complaining of chronic low back pain. Dr. Levitt suggested the employee see Dr. Rimando, a physical medicine specialist. On June 27, 2000, Dr. Rimando diagnosed a work injury in 1993 aggravated by the December 1999 car accident. The doctor recommended the employee obtain MedX treatment at Physicians Diagnostics and Rehabilitation Services. The employee did obtain therapy at Physicians Diagnostics and Rehabilitation Services in June and July 2000.

On June 6, 2000, the employee was examined by Dr. Mark Friedland at the request of the employer and insurer. The doctor diagnosed complaints of low back pain without objective corroborative findings on examination or radiographic studies. The doctor opined the employee did not injure her low back in November 1993. Assuming, however, the employee did sustain an injury the doctor opined the employee reached maximum medical improvement by May 6, 1996, and stated the employee sustained no permanent partial disability. The doctor opined the employee was capable of working on a full-time basis without physical restriction. Finally, the doctor opined the employee's treatment subsequent to her December 1999 car accident was attributable solely to the car accident and not to the 1993 personal injury.

The employee was evaluated by Dr. Michael Davis on September 11, 2000, on referral by her attorney. The doctor obtained a history from the employee, reviewed her medical records and conducted an orthopedic examination. Dr. Davis concluded the employee sustained a lumbosacral strain on November 13, 1993, and rated a 3.5 percent permanent partial disability secondary to that injury.[1] The doctor recommended the employee avoid repetitive bending, twisting and heavy lifting. Dr. Davis further opined the December 11, 1999 car accident aggravated the employee's low back condition and caused a soft tissue injury to the cervical spine. The doctor apportioned 60 percent of the responsibility for the medical treatment after the car accident to the 1993 work injury and 40 percent to the car accident. The doctor stated that eight to ten weeks of conservative care was reasonable following the car accident.

The employee filed a claim petition seeking permanent partial disability benefits and payment of medical expenses as a result of a personal injury on November 13, 1993. The employer and insurer initially denied primary liability. The case was heard by a compensation judge at the Office of Administrative Hearings on October 3, 2000. The employer and insurer

[1] See Minn. R. 5223.0390, subp. 3.B.

accepted liability for a temporary injury to the employee's lumbar spine on November 13, 1993. In a Findings and Order issued on November 27, 2000, the judge found the employee's work injury of November 13, 1993 resulted in a temporary aggravation of her low back, found the employee sustained no permanent partial disability as a result of her personal injury, and found the employee's need for treatment from and after July 1999 was related to superseding, intervening injuries or activities and was not causally related to the employee's work injury of November 13, 1993. Accordingly, the compensation judge denied the employee's claims.

The employee appealed the compensation judge's denial of her claim for benefits. In a decision served and filed April 25, 2001, this court affirmed the compensation judge's denial of the employee's claim for permanent partial disability benefits. The court concluded, however, the compensation judge's finding that the employee's injury was a temporary aggravation was inconsistent with the judge's finding of a superseding, intervening injury. Accordingly, the court vacated certain findings and remanded the case to the compensation judge for further findings on the existing record. In a Findings on Remand filed August 1, 2001, the compensation judge found the employee's work injury of November 13, 1993 was a temporary injury which totally resolved no later than June 1995. The judge further found the employee's need for medical treatment after July of 1999 was not causally related to the November 13, 1993 injury. The employee again appeals.

DECISION

Temporary Injury

The employee first argues the compensation judge's finding that the employee's injury totally resolved no later than June 1995 is unsupported by substantial evidence and clearly erroneous. Accordingly, the employee asks this court to reverse the compensation judge's denial of her claims for benefits. We are unpersuaded.

The employee injured her back on November 13, 1993, but did not seek any medical treatment until May 31, 1994, when she saw Dr. Ercolani. On examination, the doctor noted the employee had full range of lumbar motion with only minor pain to palpation in the right sacroiliac region. On June 27 and July 20, 1994, Dr. Ercolani again found the employee had full range of motion. The employee had no further medical care until March 20, 1995, when she returned to see Dr. Ercolani. The doctor's examination was normal with full range of motion and no pain on resisted abduction or adduction. By report dated May 30, 1995, Dr. Ercolani opined the employee had reached maximum medical improvement and had sustained no permanent partial disability. Dr. Jerry Reese examined the employee on June 8, 1995. His examination was entirely normal with no tenderness or muscle spasm. He diagnosed a very mild chronic low back strain and opined the employee could work with no restrictions. The employee returned to see Dr. Ercolani on May 6, 1996, and had no further medical treatment for her low back until July 14, 1999. On June 6, 2000, the employee was examined by Dr. Mark E. Friedland, who concluded the employee did not injure her low back in November 1993. The doctor further opined the employee was capable of working on a full-time basis without physical restrictions. He based his conclusion on his normal physical examination as well as normal examinations by the employee's treating physicians.

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). 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). The medical records of Dr. Ercolani together with the opinions of Dr. Reese and Dr. Friedland provide substantial evidentiary support for the compensation judge's conclusion that the employee's work injury totally resolved no later than June 1995. Accordingly, that decision must be affirmed.

In the Findings and Order filed November 27, 2000, the compensation judge made the following finding:

> 8. After Dr. Reese's evaluation, the employee again treated with Dr. Ercolani on several occasions. She last treated with Dr. Ercolani on May 6, 1996. The employee had normal lumbar findings at all examinations during her course of treatment with Dr. Ercolani. She had full range of motion of the lumbar spine, negative straight leg raising findings, normal muscle strength and was normal neurologically. As of May 6, 1996, Dr. Ercolani found the employee at maximum medical improvement with respect to her low back, advised the employee to continue with home therapy and to return to the clinic as needed.

The employee contends the finding that as of May 6, 1996, the employee should "continue with home therapy and return to the clinic as needed" is inconsistent and irreconcilable with the finding that the employee's injury resolved by June 1995. The employee argues the later inconsistent finding must, therefore, be reversed. We disagree. The above quoted finding is a recitation of the evidence rather than a finding of fact. The finding merely summarizes Dr. Ercolani's examination findings and his recommendations. The finding does not conflict with the judge's finding that the employee's injury resolved by June 1995. The compensation judge's finding is affirmed.

Superseding Intervening Cause

The employee contends the compensation judge erred in the interpretation and application of the law of superseding, intervening cause. We disagree. The compensation judge found the employee's temporary injury resolved by June 1995. Where the effects of an employee's personal injury totally resolve without residual disability, restrictions or need for medical care, the employer and insurer have no further liability for benefits. Kautz v. Setterlin, 410 N.W.2d 843, 40 W.C.D. 206 (Minn. 1986). Thus, the issue of whether any events subsequent to June 1995 were

a superseding intervening cause is irrelevant. The compensation judge's decision is therefore affirmed.