

DAVID I. BECKMAN, Employee/Petitioner, v. NORTHSIDE CONSTR. and AM. STATES INS. CO., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
NOVEMBER 28, 2001

No. [REDACTED SSN]

HEADNOTES

VACATION OF AWARD - SUBSTANTIAL CHANGE IN CONDITION. Where the record was inadequate to determine whether there had been a change of diagnosis since the issuance of the award on stipulation, and where there was no evidence of a change in ability to work, additional permanent partial disability, or unpaid medical expenses, the employee had not established good cause to vacate the award on stipulation.

Petition to vacate award denied.

Determined by Wilson, J., Wheeler, C.J., and Pederson, J.

OPINION

DEBRA A. WILSON, Judge

The employee petitions to vacate an award on stipulation based on substantial change in condition. Finding no basis to vacate the award, we deny the petition.

BACKGROUND

The employee sustained an injury to his head on April 22, 1987, while working for Northside Construction [the employer]. At that time, the employee sustained a left supra-orbital skull fracture and had headaches and vision and sinus problems thereafter. In 1989, the employee entered into a full, final, and complete settlement with the employer and its workers' compensation insurer. In the stipulation for settlement, the employee contended that "his injuries involved more than just the head and more than just the eye, but involve[d] damage to the brain and eye" The employee was paid \$11,000 for a close-out of all past, present, and future claims, with the exception of "future medical expenses for any organic-related treatment which is causally related to the personal injury" The stipulation specifically foreclosed "medical treatment not related to organic problems, i.e., treatment by osteopathy, or chiropractors, any mental or emotional, psychological or psychiatric-type treatment (including any pain clinics)." An award on stipulation was filed on January 5, 1990.

Sometime before January of 1995, the employee commenced family therapy with Judith Lamp, a mental health practitioner. In October of 1995, Ms. Lamp referred the employee to Dr. Patrick Stokes, who conducted a psychiatric evaluation on October 9, 1995. Dr. Stokes diagnosed major depressive disorder, pain disorder associated with a medical condition,

personality disorder, chronic headaches, and psychosocial stressors. He recommended that the employee continue counseling and prescribed Paxil.

The employee continued in therapy, and a neuropsychological evaluation was performed by Dr. Thomas Will on December 4, 2000. Dr. Will opined that the employee's "difficulties with anger control, as well as personality changes and mood swings, may be secondary to a prefrontal lobe syndrome," and that "[the employee's] most problematic difficulties, which are behavioral in nature, may be the results of a prefrontal lobe syndrome as a consequence of his traumatic brain injury."

On February 28, 2001, the employee filed a petition to vacate the 1990 award on stipulation based on a substantial change in condition. The employer and insurer filed an objection to the petition and had the employee examined by licensed psychologist Dr. Thomas Beniak. Dr. Beniak diagnosed mild closed-head injury, with some continuing manifestations of orbitofrontal involvement, including both cognitive and personality features. The doctor further opined that the etiology of those features was the head injury sustained in April of 1987. Dr. Beniak did not believe, however, that there had been a significant change in the employee's diagnosis subsequent to December 21, 1989, as "the possibility of frontal lobe involvement is intrinsic to any significant head injury."

DECISION

For awards issued prior to July 1, 1992, cause for vacation includes substantial change in condition, with the inquiry limited to the extent of improvement or worsening of the injury; a change in condition need not be unanticipated. Franke v. Fabcon, Inc., 509 N.W.2d 373, 49 W.C.D. 520 (Minn. 1993). A number of factors may be considered in determining whether an award should be vacated based on a substantial change in condition, including:

- I. a change in diagnosis;
- II. a change in the employee's ability to work;
- III. additional permanent partial disability;
- IV. necessity of more costly and extensive medical care/nursing services than initially anticipated;
- V. causal relationship between the injury covered by the settlement and the employee's current worsened condition.

Fodness v. Standard Café, 41 W.C.D. 1054, 1060-61 (W.C.C.A. 1989).

In his memorandum in support of the petition to vacate, the employee addressed only a change in diagnosis, contending that he has only recently been diagnosed with prefrontal lobe syndrome as a result of the injury in 1987. The employee argues that, prior to the award on stipulation, he had only been diagnosed with an organic sinus injury and that the parties had not contemplated a "closed head/brain injury" at that time.

The employer and insurer contend that Dr. Will's diagnosis of prefrontal lobe syndrome was not made within a reasonable degree of medical certainty, in that he said that the

employee's difficulties "may be secondary to a prefrontal lobe syndrome" (emphasis added). In addition, they point out that Dr. Beniak opined that a diagnosis of prefrontal lobe syndrome does not represent a change in the employee's diagnosis.

The current record is inadequate for us to determine whether there has been a change in diagnosis since the issuance of the award on stipulation. Had there also been evidence of a change in ability to work,¹ increased permanent partial disability, and/or increased medical expenses, we might have remanded the matter to the Office of Administrative Hearings for findings on the change in diagnosis issue. However, while the employee's attorney's alleged in the petition to vacate that the employee has been unemployed since May of 2000, and represented at oral argument that his client does have a current claim for wage loss, permanent partial disability benefits, and medical expenses, there is no evidence before us of wage loss, additional permanent partial disability, or unpaid medical expenses that are causally related to the employee's work injury.² We will not vacate an award on stipulation unless there is a reason to do so. We therefore decline to consider the matter further at this time. The employee's petition to vacate is denied.

¹ We note that, in his affidavit, the employee's attorney stated that the employee is unemployable; however, in their supplemental memorandum of law, the employer and insurer alleged that the employee is currently working at a wage in excess of his average weekly wage on the date of injury.

² Such evidence might include an affidavit from the employee, a medical report addressing the employee's inability to work or work restrictions, a doctor's rating of permanent partial disability, and copies of medical bills.