

LARRY R. BERGLUND, Employee/Appellant, v. ALEXANDRIA EXTRUSION CO., SELF-INSURED/E.C. FACKLER, INC., Employer-Insurer, and MII LIFE, INC., BLUE CROSS/BLUE SHIELD OF MINN., METRO. ORTHOTIC LAB., INC., and ABBOTT NW. HOSP., Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS  
JANUARY 12, 2001

No. [REDACTED SSN]

HEADNOTES

**PRACTICE & PROCEDURE.** Where the compensation judge failed to make a specific finding determining the employee's claim of a Gillette injury culminating on July 13, 1999, the case is remanded for determination of the issue on the existing record.

Remanded.

Determined by: Johnson, J., Wilson, J., and Wheeler, C.J.  
Compensation Judge: Carol A. Eckersen

OPINION

THOMAS L. JOHNSON, Judge

The employee appeals the compensation judge's finding that he did not sustain a Gillette-type<sup>1</sup> personal injury arising out of his employment. We remand the case to the compensation judge for redetermination in accordance with this opinion.

BACKGROUND

Larry R. Berglund, the employee, started working as a press operator for Alexandria Extrusion Company, the employer, in November 1996. The employee's job as a press operator involved the stretching, sawing and checking of aluminum parts. The aluminum parts were extruded from a press and then transferred to a cooling table. The parts ranged in length from six feet to 120 feet and weighed up to 100 pounds. After the parts cooled, two saw operators transferred the parts from the cooling table to a storage table about three feet high and 120 feet long. The employee and a co-worker then clamped the parts into a machine which stretched the parts to straighten them. The employee typically spent not less than two and a half hours each shift pushing and pulling aluminum parts. The parts were then moved from the storage table to the saw and feed table to be cut to order. After cutting, the parts were checked. Checking the parts required the employee to bend at the waist and at times kneel on one knee on the floor. Each part needed to be checked, and the employee performed this function from ten to thirty times each shift.

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<sup>1</sup> Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 32 W.C.D. 105 (1960).

During the six months prior to his injury, the employee worked primarily on stretching and sawing. (Pet. Ex. A; T. 25-35.)

On or about June 1, 1999, the employee was rushing, attempting to get parts onto the saw table, when he felt a jolt or shock of pain running from his mid back to his neck. As he continued working, the employee continued to experience the same shock of pain each time he pushed parts. The employee told his co-worker, Dale Schroeder, about the pain, but the employee kept working thinking the pain would go away. The pain gradually worsened and the employee later developed a stiff neck. (T. 36-37.)

On June 30, 1999, the employee sought treatment from Peter Pfeffer, D.C. The employee complained of frequent moderate upper back symptoms, which he first noticed two months earlier. On examination, Dr. Pfeffer found muscle spasm and tenderness in the cervico/thoracic region with restricted range of motion. The doctor diagnosed cervical somatic dysfunction and commenced chiropractic care. The employee returned to see Dr. Pfeffer on July 2 with continued complaints of bilateral upper back and lower neck pain. Following an examination, the doctor noted the employee's findings were less pronounced and were improving with treatment. The employee last saw Dr. Pfeffer on July 6, 1999. The employee then complained of lower neck pain which radiated into his right shoulder. Dr. Pfeffer concluded the employee's objective findings were decreasing and he stated the employee's response to treatment was favorable. (Pet. Ex. B.)

The employee missed no time from work and continued to perform the same job following the June 1, 1999 incident. The employee testified his symptoms gradually increased, and stated that by the end of his shift he would have sore shoulders and pain around his neck down to his mid back. (T. 39.) On Sunday, July 11, 1999, the employee worked four hours of overtime unloading boxes and cutting parts. The following day, the employee worked his regular eight-hour shift. By the end of the day, the employee noticed he was having a difficult time writing with his right hand and had pain in his back, neck and right arm. On July 13, 1999, the employee awoke and noticed numbness in his right arm into his chest, and testified he was in "excruciating pain." (T. 40-43.)

On July 13, 1999, the employee saw Dr. Robert Telste at the Alexandria Clinic. The employee complained of pain in his neck and right arm, which he stated he initially noticed when he was at work. (Pet. Ex. C.) An MRI scan showed a disc herniation at C6-7 with radiculopathy into the left arm. (Pet. Ex. D.) On July 16, 1999, Dr. Sunny Kim examined the employee and recommended surgery due to progressive weakness and numbness. Dr. Kim performed an anterior cervical decompression and fusion on July 19, 1999. Post-operatively, the employee complained of residual arm pain and was returned to surgery on the evening of July 19, 1999, for re-exploration. Dr. Kim found another fragment of a disc and replaced the bone graft. Dr. Kim reexamined the employee on August 6, 1999, and noted the employee had no right arm pain but had some mild residual numbness. By September 3, 1999, the doctor noted the employee's arm pain was gone and the numbness had mostly dissipated. Dr. Kim released the employee to return to work effective October 20, 1999. (Pet. Ex. A.)

On September 2, 1999, the employee's attorney wrote a letter to Dr. Kim describing, in detail, the employee's job duties with the employer and asking Dr. Kim to respond to a number of questions. Dr. Kim opined the employee's work activities and the injury he sustained on June 1, 1999, were substantial contributing factors to the employee's current condition. Dr. Kim further stated that the employee sustained a Gillette injury to his cervical spine as a result of his work activities with the employer. (Pet. Ex. A.)

Dr. Paul T. Wicklund, an orthopedic surgeon, examined the employee on March 18, 2000, at the request of the self-insured employer. The doctor obtained a history from the employee, reviewed his medical records, and reviewed a copy of the job description previously provided to Dr. Kim. (Pet. Ex. A.) On May 2, 2000, Dr. Wicklund's deposition was taken. Dr. Wicklund diagnosed a C6-7 anterior disc fusion with a good result. The doctor opined the employee had an 11 percent permanent partial disability.<sup>2</sup> Dr. Wicklund opined the employee did not sustain a personal injury on or around the middle of May 1999. He testified the employee's description of a shock-like pain in the mid-scapular area of his back was unrelated to the disc herniation at C6-7. In his opinion, the C6-7 disc herniation did not occur in mid-May because the employee did not then demonstrate symptoms consistent with a disc herniation. He did not believe the employee sustained a Gillette injury arising out of his employment activities with the employer. Dr. Wicklund further opined the employee's symptoms prior to July 13, 1999 were not consistent with a C6-7 disc herniation. He believed the employee's symptoms on the morning of July 13, 1999 were, however, consistent with a herniated disc. The doctor testified the disc herniation caused entrapment of the seventh cervical nerve root causing the severe pain, numbness, weakness and decreased strength in the entire right arm the employee demonstrated on July 13, 1999. This disc herniation, Dr. Wicklund testified, was unrelated to the employee's work activities. Dr. Wicklund stated it was possible the employee's cervical disc herniated spontaneously and that it was not uncommon for patients to give a history of sleeping with the wrong posture as the cause of a disc herniation. (Resp. Ex. 1.)

The employee filed a claim petition seeking workers' compensation benefits for a claimed Gillette injury on June 1, 1999. The claim petition was later amended to claim a specific injury on May 15, 1999 and a Gillette injury on July 13, 1999. The case was heard by a compensation judge at the Office of Administrative Hearings on May 19, 2000. The employee then asserted a specific injury on June 1, 1999, and a Gillette injury on July 13, 1999. (T. 11, 14-17.) In a Findings and Order filed July 25, 2000, the compensation judge concluded the employee did not sustain a personal injury on June 1, 1999. The employee does not appeal this determination. The compensation judge further concluded the employee's work activities were not a substantial contributing cause of a personal injury. The employee 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

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<sup>2</sup> See Minn. R. 5223.0370, subp. 4.B(2).

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 employee contends the compensation judge failed to make a factual finding determining whether the employee sustained a Gillette injury arising out of his employment. We are compelled to agree.

In the Statement of Issues, the compensation judge identified the following issues:

1. Did the employee sustain an injury arising out of and in the course and scope of his employment on June 1, 1999?
  - A. Were the employee’s work activities a substantial contributing cause of the employee’s injury?

In her Conclusions of Law, the compensation judge stated:

1. The employee did not sustain an injury arising out of and in the course and scope of his employment on June 1, 1999.
  - A. The employee’s work activities were not a substantial contributing cause of the employee’s injury.

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- C. The employee did not sustain a work injury.

In this case, the employee claimed he sustained a specific injury on June 1, 1999, and a Gillette injury culminating on July 13, 1999. The compensation judge made no specific finding of fact regarding the claimed July 13, 1999 Gillette injury. “The compensation judge’s decision shall include a determination of all contested issues of fact and law . . . .” Minn. Stat. § 176.371. We acknowledge an expansive reading of the compensation judge’s findings and order might permit a conclusion that the judge did resolve the Gillette injury issue. We conclude, however, the interests of justice are best served by a specific determination of the issue.

Accordingly, we remand the case to the compensation judge to make further findings consistent with this opinion. Such findings shall be made on the existing record.