WILLIAM J. CUMMINGS, Employee/Cross-Appellant, v. ATRIUM CATERING INT'L and ST. PAUL FIRE & MARINE INS. CO., Employer-Insurer/Appellants, and NORTH MEM'L HEALTH CARE, HEALTHPARTNERS, INC., MINN. DEP'T OF HUM. SERVS., METRO. HEALTH PLAN, FAIRVIEW UNIV. MED. CTR., NORAN NEUROLOGICAL CLINIC, AND MED. ADVANCED PAIN SPECIALISTS, Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
JULY 17, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL EVIDENCE. Substantial evidence, including expert medical opinion, supports the compensation judge's determination that the employee's 1992 work-related injuries permanently aggravated his chronic pain syndrome and continued to be a substantial contributing cause of his disability.

MEDICAL TREATMENT & EXPENSE - DIAGNOSTIC TESTS; TEMPORARY TOTAL DISABILITY. Substantial evidence supports the compensation judge's finding that the employee's right femur lesion was not causally related to, and was not contributing to, the employee's right leg and groin pain, and his denial of payment for diagnostic testing, evaluation and treatment of the right femur lesion, as well as the judge's denial of temporary total disability benefits from October 29, 1994 to February 14, 1995, as a result of the November 4, 1994 biopsy of the femur.

MAXIMUM MEDICAL IMPROVEMENT; PRACTICE & PROCEDURE. Where the employer and insurer did not appeal the finding the employer and insurer failed to prove service of an MMI report on the employee on July 19, 1994, this court has no authority to review the compensation judge's decision on this issue. The compensation judge's finding that the employer and insurer failed to prove the employee had reached MMI as of July 19, 1994 must, therefore, be affirmed.

MEDICAL TREATMENT & EXPENSE - REASONABLE & NECESSARY. Substantial evidence, including the opinion of the employer and insurer's independent medical examiner, supports the compensation judge's findings that the February 4, 1999 fusion surgery and the February 8, 2000 intradiscal electrothermal therapy (IDET) procedure were unreasonable and unnecessary to cure and relieve from the effects of the employee's 1992 work-related injuries.

CAUSATION - INTERVENING CAUSE; TEMPORARY TOTAL DISABILITY; PERMANENT PARTIAL DISABILITY. Where two treating physicians, two psychologists and a second opinion sought by the employee recommended or did not oppose the fusion surgery, and the employee's treating physician recommended the IDET procedure and the employee was not aware, at the time, of any controversy with respect to the procedure, the compensation judge's factual finding that the employee's decision to undergo the fusion surgery and IDET procedure was not so unreasonable, negligent, dangerous or abnormal as to constitute a superseding,

intervening cause is supported by substantial evidence and is not clearly erroneous, and the award of temporary total disability and permanent partial disability benefits must be affirmed.

MEDICAL TREATMENT & EXPENSES - SUBSTANTIAL EVIDENCE. Substantial evidence supports the compensation judge's award of payment or reimbursement for medical expenses incurred by the employee after June 13, 1994 including physical therapy at the Anoka Physical Therapy Clinic, PTOSI and the Physician's Neck & Back Clinic; at Hennepin County Medical Center; with Dr. Steven Noran; psychological treatment at North Memorial Medical Center; the MRI scan of April 28, 1995; and with Dr. Schultz and at Medical Advanced Pain Specialists, except the 1998 discogram and injection therapy, through February 4, 1999. The case is remanded for determination of the reasonableness and necessity of the discograms performed by Dr. Wengler on October 17, 1997 and January 19, 1998.

CAUSATION - INTERVENING CAUSE; MEDICAL EXPENSES & TREATMENT. Where the compensation judge found the employee's conduct in proceeding with the fusion surgery and IDET procedure was not so unreasonable, negligent, dangerous or abnormal as to constitute a superseding, intervening cause, the compensation judge erred in denying medical expenses incurred by the employee on the basis that it was "related to" the fusion and IDET procedure. The findings are vacated and remanded for a determination of the reasonableness and necessity of the listed medical expenses.

Affirmed in part, and vacated and remanded in part.

Determined by: Johnson, J., Rykken, J. and Wheeler, C.J.
Compensation Judge: Bradley J. Behr

OPINION

THOMAS L. JOHNSON, Judge

The employer and insurer appeal from the compensation judge's findings that (1) the employee's 1992 work-related injuries permanently aggravated his chronic pain syndrome; (2) the employee had not reached maximum medical improvement (MMI) with service of an MMI report on July 19, 1994; (3) the employee was entitled to temporary total disability benefits, additional permanent partial disability benefits, and rehabilitation assistance following fusion surgery on February 4, 1999; and (4) the employee and/or intervenors were entitled to payment or reimbursement of various medical expenses for treatment provided to the employee after June 13, 1994. The employee cross-appeals from (1) the compensation judge's denial of payment for diagnostic testing and treatment related to the employee's right femur lesion; (2) the judge's denial of temporary total disability benefits from October 29, 1994 through February 14, 1995; (3) the judge's findings that fusion surgery performed on February 4, 1999 and an intradiscal electrothermal (IDET) procedure performed on February 8, 2000 were not reasonable or necessary; and (4) the judge's denial of payment of medical expenses for treatment and/or evaluation provided prior to and after the fusion surgery and the IDET procedure. We affirm in part, and vacate and remand in part.

BACKGROUND

William J. Cummings, the employee, worked as a catering supervisor for Atrium Catering International, the employer, insured by St. Paul Fire & Marine Insurance Company. He sustained admitted personal injuries to his low back on April 2, 1992, April 21, 1992, and September 21, 1992. The employer and insurer initially accepted liability and paid workers' compensation benefits to the employee including wage loss benefits, medical expenses and a 3.5 percent permanent partial disability. The employer and insurer discontinued payment of workers' compensation benefits after October 29, 1994.

The employee first experienced chronic pain following a non-work-related motor vehicle accident on September 15, 1972, resulting in neck, right arm and lumbosacral pain. He receive periodic treatment for the neck and low back through mid-1974. Thereafter, no record was submitted of any treatment for the spine until November 1981, when he was seen at Group Health complaining of chronic neck pain since the motor vehicle accident. The employee received intermittent treatment, primarily for neck pain, through early 1987. Pain clinic treatment was first suggested in 1983 by Dr. Fielden, and in 1984, Dr. Monsein, at the Abbott Northwestern chronic pain program, diagnosed chronic pain syndrome. Dr. Monsein, however, did not believe the employee needed an inpatient pain program, noting the employee was working, was physically active and leading a functional lifestyle, and showed no evidence of drug dependency.

The employee had no treatment for his back from early 1987 until October 22, 1990 when he received four chiropractic treatments for thoracolumbar pain and spasm after prying up old boards to replace a kitchen floor. The records indicate the employee was improved following the treatment.

The employee next received treatment at Park Nicollet Medical Center (PNMC) Urgent Care following his April 2 and April 21, 1992 personal injuries. He missed a few days of work, and then returned to his regular job with the employer. The employee was seen again at PNMC Urgent Care on September 21, 1992, reporting he had reinjured his low back while lifting a large tray loaded with plates and bending and twisting with the tray. The doctor noted marked spasm in the right lumbar region, prescribed anti-inflammatories and medications for pain, and released the employee to return to work with restrictions of no lifting and limited bending.

The employee continued to experience pain and symptoms in his low back, right hip and buttocks following the September 21, 1992 injury, and in November 1992 was referred to Dr. Anne Brutlag, a rehabilitation medicine specialist at PNMC. Dr. Brutlag diagnosed an acute lumbosacral strain, and provided conservative treatment including physical therapy, a lumbar corset, prescriptions for anti-inflammatories and pain medications, and diagnostic testing. The employee continued to work full-time for the employer, with restrictions. On March 2, 1993, the employee reported his symptoms had not improved and were somewhat worse. An MRI scan on March 19, 1993, however, was unremarkable. The employee completed an aggressive pool exercise program at the Courage Center in early May 1993 and reported some improvement, but expressed frustration with his inability to avoid overexertion at work. On May 17, 1993,

Dr. Brutlag noted the employee had limited his work hours to 25 to 30 hours a week and was complying with his restrictions.

On June 16, 1993, the employee returned to Dr. Brutlag reporting a flare-up of his symptoms. Dr. Brutlag was concerned that the employee's symptoms appeared more severe than would be anticipated based on his objective studies, and requested a bone scan. The bone scan on June 21, 1993 revealed a sclerotic lesion in the right proximal femur. The employee was seen by Dr. John Sherman and Dr. Teynor at Orthopaedic Surgeons, Inc., for follow up in July 1993. Both doctors indicated the employee had two problems: a lumbosacral strain and an unrelated lesion in the right femur, likely benign.

On August 2, 1993, the employee reported to Dr. Brutlag that his symptoms were worse with constant discomfort in the right low back and right buttock, thigh and lateral leg. He was taking an anti-inflammatory and Darvocet on a daily basis. On examination, Dr. Brutlag noted palpable spasm in the lumbar muscles with loss of mobility and suggested the use of a cane to unweight the right leg. The employee then sought an independent consultation from Dr. Thomas, an orthopedist, regarding his low back and femur lesion. Dr. Thomas diagnosed a lumbosacral strain complicated by the lesion and possible dependence on narcotic medicine. On August 23, 1993, Dr. Clohisy at the University of Minnesota opined the right femur lesion represented a benign process and did not account for the employee's low back and leg symptoms. He recommended against a biopsy of the lesion.

The employee's condition did not improve, and on September 14, 1993, Dr. Brutlag referred the employee to Dr. Loren Pilling for a chronic pain evaluation. Dr. Brutlag indicated the employee was quite disabled by his chronic pain and took the employee off work. The employee participated in the pain clinic program for two weeks, but did not complete the treatment.

On November 10, 1993, Dr. Brutlag indicated the employee's condition was unchanged. No further physical therapy was recommended, and the employee was advised to continue his home exercise program. Dr. Brutlag felt the employee needed to return to work and a functional capacities evaluation was completed. The employee was released to a gradual return to work as of December 6, 1993. The employee was to return to Dr. Brutlag as needed.

The employee returned to Dr. Brutlag on April 4, 1994, reporting constant pain that was significantly worse. On examination, Dr. Brutlag noted minimal objective findings with a basically negative examination with multiple pain behaviors. She recommended a trial of acupuncture and work hardening upon completion of the trial.

A job search was initiated and in May 1994, the employee obtained a part-time position as a sales representative with The Gambler, a business selling gambling machines. It was anticipated the employee would be able to move to full-time work. The acupuncture was not successful, and on June 13, 1994, Dr. Brutlag opined the employee had reached maximum medical improvement. The employee participated in a work hardening program in June and July 1994. This was discontinued when no significant progress was made.

In August 1994, the employee transferred his primary care to Group Health. On August 26, the employee was seen at the Group Health clinic reporting a flare-up of his low back pain. He was referred for physical therapy and given an prescription for Tylenol #3. On September 13, 1994, the employee was seen by Dr. Keith Mastin for a second opinion regarding his low back pain. Dr. Mastin encouraged the employee to continue his exercise program and referred the employee to Dr. Aadalen, an orthopedic surgeon, for evaluation of the employee's right femur lesion. Based on the history provided by the employee and his clinical examination, Dr. Aadalen thought that at least some of the employee's symptoms might be related to the lesion. He ordered a repeat bone scan and recommended a surgical decompression and biopsy of the lesion. A biopsy and bone graft were performed on November 4, 1994. The biopsy revealed an asymptomatic, benign fibrous dysplasia unrelated to the employee's symptoms.

Following the biopsy the employee complained of persistent, severe pain. Pain medications were prescribed, including Tylenol #3 and Percocet, and the employee was referred for physical therapy. The employee complained that physical therapy worsened his back pain and was reluctant to participate. Dr. Mastin continued to provide treatment to the employee for his low back and right leg pain, including aggressive physical therapy to recondition and reactivate the employee, anti-depressants, and narcotic pain medication.

Dr. Mastin believed it would be highly desirable for the employee to return to work, even on a very part-time basis with significant restrictions, and released the employee to look for work on February 14, 1995. The job at the Gambler was no longer available, and the employee never returned to work, stating he was unable to follow up on leads due to his back pain. In February 1996, the employee filed for Supplemental Security Income (SSI). He eventually obtained a favorable decision, in November 1997, awarding SSI benefits based on severe depression and pain.

The employee continued to treat with Dr. Mastin throughout 1995. On February 1, 1996, the employee complained of intractable pain in the past few months, and Dr. Mastin observed the employee was visibly agitated, frustrated and depressed. Concerned the employee was in danger of decompensating psychologically, Dr. Mastin referred the employee to Dr. James Smith, at Group Health, for a pain clinic evaluation. Dr. Smith saw the employee on February 9, 1996 and recommended an intensive pain program. The insurer refused to pay for a pain program or further treatment. On March 15, 1996, Dr. Mastin reported the employee was doing very poorly, but was scheduled to begin outpatient pain treatment at the Hennepin County Medical Center (HCMC) on March 25, 1996, which was covered by Medicaid. The pain clinic was closed on March 25 due to a blizzard, and the employee was rescheduled for April.

On March 22, 1996, the employee was seen in the HCMC emergency room, reporting severe back and leg pain following a non-work-related motor vehicle accident in which his car was hit broadside by a pick-up truck in the driver-side door. Following the accident, the employee receive chiropractic treatment from Joel Wulff, D.C., for neck and back pain with symptoms radiating into the right arm and right leg.

An initial evaluation was completed on April 22, 1996, by Dr. Clavel at the Hennepin (HCMC) Pain Clinic. Treatment was commenced, continuing on a periodic basis from April 22, 1996 through May 17, 1997, including relaxation training/biofeedback, physical therapy and pool therapy, medication management (including weaning off narcotic pain medication) and referral to a psychologist for psychotherapy and pain management therapy. The employee was increasingly frustrated with the treatment at the Pain Clinic, and began treatment with an orthopedist, Dr. Wengler, and an anesthesiologist, Dr. Hong, at HCMC in June 1997. This treatment consisted primarily of an orthopedic work-up and evaluation and a series of therapeutic injections. When the injections failed to provide any relief, Dr. Wengler performed two discograms at L2-3 through L5-S1. Dr. Wengler was unable to find any alternative source for the employee's right hip and groin pain.

On November 11, 1997, the employee was seen by Dr. Monsein at Abbott Northwestern for a pain rehabilitation consultation on referral from the HCMC. Dr. Monsein concluded the employee had a chronic pain syndrome with mechanical low back pain and degenerative joint disease, complicated by factors such as depression and anxiety, social isolation, physical deconditioning and dependency on narcotic medications. He recommended a multi-disciplinary approach in an intensive, residential pain program, including weaning the employee off pain medications. The employee was unable to participate in the program due to lack of insurance coverage.

On March 11, 1998, the employee was seen in the emergency room at North Memorial Medical Center (NMMC) stating he was having problems coping with his pain and was feeling suicidal. He was admitted for treatment at North Memorial hospital, through March 16, 1998, including both psychological treatment and a physical work-up and evaluation of his low back symptoms.

Following his discharge from the hospital, the employee continued pain treatment under the direction of Dr. David Schultz at Medical Advanced Pain Specialists (MAPS). Treatment consisted of a series of diagnostic and therapeutic injections, physical therapy, and prescription of narcotic pain medications, Oxycontin and OxyIR. Neither the injections or physical therapy provided any lasting relief, and on September 8, 1998, Dr. Schultz switched the employee from Oxycontin to methadone for long-term pain management, and referred the employee to Dr. David Kraker, an orthopedic surgeon, for a surgical opinion.

Dr. Kraker saw the employee on September 18, 1998, and referred the employee back to Dr. Schultz for a full discogram from L1 to L5. Dr. Schultz interpreted the September 28, 1998 discogram as demonstrating abnormal morphology in all five lumbar discs with concordant pain at L2-3 and L3-4. Based on the discogram, Dr. Kraker recommended a two-level anterior posterior fusion. Prior to proceeding with the surgery, Dr. Kraker sought psychiatric clearance for the surgery. The employee was seen by a psychologist, John Vancini, and by Dr. Pilling, both of whom indicated there were no psychological contraindications to spinal surgery. The employee then obtained, on his own, a second surgical opinion from Dr. Paul Crowe, an orthopedic surgeon, on December 22, 1998. Dr. Crowe stated he would be willing to do the surgery, but expressed

some reservations about the likelihood of a positive result. The employee underwent the fusion surgery on February 4, 1998 at NMMC.

The employee did not improve following the surgery. Oxycontin was reinitiated for pain control and the employee was referred for physical therapy. He continued to complain of severe pain and was unable to progress with physical therapy which was discontinued. On March 23, 1999, treatment was resumed with Dr. Schultz who continued to prescribe Oxycontin for pain management. The employee was also provided with pool therapy for strengthening and conditioning, with minimal improvement. On November 29, 1999, the employee reported that Dr. Kraker was considering removal of the fusion hardware if symptoms persisted. Dr. Schultz noted the employee was reporting severe, unrelenting pain and was requesting higher doses of Oxycontin. Dr. Schultz discussed several alternatives with the employee, including intradiscal electrothermal therapy (IDET) at L4-5 and L5-S1. The employee elected to proceed with the IDET procedure, which was performed on February 8, 2000 by Dr. Schultz. Following the procedure, the employee received physical therapy at MAPS resulting in a temporary improvement of his strength and endurance. By May 15, 2000, however, the therapy was discontinued due to lack of progress. The employee was last seen prior to the hearing on May 25, 2000. Dr. Schultz recommended psychological counseling for his chronic pain syndrome and weaning the employee off Oxycontin.

On March 29, 1999, the employee filed a claim petition seeking temporary total or permanent total disability benefits from October 29, 1994 to the present, additional permanent partial disability benefits, payment of medical expenses, and rehabilitation assistance. The case was heard on July 6, 2000, by a compensation judge at the Office of Administrative Hearings. In a Findings and Order, served and filed September 21, 2000, the compensation judge denied permanent total disability benefits; denied temporary total disability benefits from October 29, 1994 through February 3, 1999; awarded temporary total disability benefits from February 4, 1999 through the date of hearing; and awarded additional permanent partial disability benefits based on a 22.5 percent whole body rating. The judge found the February 4, 1999 surgery and the February 8, 2000 IDET procedure were not reasonable or necessary, but further found the employee's decision to proceed with the surgery and IDET procedure was not so unreasonable, negligent, dangerous or abnormal as to constitute a superseding, intervening cause of the employee's disability. The compensation judge awarded payment or reimbursement of various medical expenses incurred by the employee for treatment rendered since June 1994, and denied payment for other medical expenses, including medical expenses related to the fusion surgery and IDET procedure. Both the employer and insurer and the employee appeal.

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). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings must be affirmed. Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 60, 37 W.C.D. 235, 240 (Minn. 1984). 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).

DECISION

Substantial Contributing Cause

The employer and insurer appeal from the compensation judge's determination that the employee's admitted personal injuries of April 2, 1992, April 21, 1992 and September 21, 1992 permanently aggravated the employee's chronic pain syndrome. The appellants contend the employee has suffered from chronic pain since at least 1972, or earlier, and argue that his work-related injuries are not a substantial contributing cause of the employee's current chronic pain syndrome. We disagree.

The issue before this court is whether substantial evidence supports the compensation judge's finding of causation. The parties agree the employee has suffered from chronic pain since at least September 1972 when he was injured in a non-work-related motor vehicle accident. However, the medical records and the employee's testimony indicate that, although the employee had some intermittent low back complaints between 1972 and his first work-related low back injury in April 1992, the employee's prior problems involved primarily cervical spine and right arm pain. The employee received treatment irregularly, mainly to the neck and arm, and was able to work in physically demanding jobs during the ensuing twenty years without significant difficulty. In contrast, the medical records following the employee's 1992 work-related injuries demonstrate persistent low back symptoms and a progressively worsening chronic pain syndrome.

The employer and insurer rely upon the report and testimony of their independent medical examiner (IME), Dr. John Sherman, who concluded the employee had a pre-existing chronic pain syndrome. Maintaining there was no physical component or structural damage associated with the employee's low back injuries, Dr. Sherman opined the employee's current symptoms were a manifestation of his pre-existing chronic pain condition, and his 1992 work-related injuries were not a substantial contributing cause of the employee's present chronic pain syndrome. (Resp. Ex. 1, Dep. Ex. 2.)

The employee's treating physician, Dr. Schultz, agreed the employee has multi-factorial chronic pain syndrome that, at least in part, pre-existed his low back injuries. However, in Dr. Schultz's opinion, the 1992 work-related injuries permanently aggravated the employee's underlying psychological and personality disorder and degenerative changes in the spine, and are a substantial contributing factor to his current chronic pain syndrome and disability. (Pet. Ex. 2, Dep. Ex. 2.)

An injury is compensable if the employment is a substantial contributing factor not only to the cause of the employee's disabling condition but also to an aggravation or acceleration

of a pre-existing condition. Wallace v. Hanson Silo Co., 305 Minn. 395, 234 N.W.2d 363, 28 W.C.D. 79 (1975). An employee need not prove the work injury is the sole cause, only a substantial contributing cause of the disability for which benefits are sought. Swanson v. Medtronics, Inc., 443 N.W.2d 534, 536, 42 W.C.D. 91, 94-95 (Minn. 1989). Questions of medical causation fall within the province of the compensation judge. Felton v. Anton Chevrolet, 513 N.W.2d 457, 50 W.C.D. 181 (Minn. 1994). Moreover, it is compensation judge's responsibility, as trier of fact, to resolve conflicts in expert testimony. A compensation judge's choice between experts will not be reversed by this court so long as there is adequate foundation for the expert's opinion. See Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985).

Having thoroughly reviewed the extensive medical evidence in this case, we conclude there is ample evidence to support the compensation judge's determination that the 1992 work-related injuries permanently aggravated the employee's chronic pain syndrome and have continued to be a substantial contributing cause of his disability. We, accordingly, affirm.

Right Proximal Femur - Medical Expenses - Diagnostic Testing and Treatment

The compensation judge found the employee's right femur lesion was not related to his 1992 low back work injuries, and denied payment for diagnostic testing and treatment related to the lesion. The employee appeals, contending that medical care provided after discovery of the lesion through the biopsy surgery on November 4, 1994, represents diagnostic testing necessary to rule out the lesion as a source of his persistent leg and groin pain and is, therefore, compensable.

An employer and insurer are required to furnish medical treatment reasonably required to cure or relieve an employee from the effects of a personal injury. Minn. Stat. § 176.135, subd. 1. Diagnostic treatment or evaluation to rule out alternative diagnoses for an employee's symptoms may be compensable, even though the ultimate diagnosis is of a condition later determined to be non-work-related. Sether v. Wherley Motors, Inc., slip op. (W.C.C.A. Dec. 30, 1999) (and cases cited therein); Bracewell v. St. John's Hosp, slip op. (W.C.C.A. Oct. 15, 1997). However, to be compensable, medical expenses must be causally related to an employee's work-related injuries. Sether, id.

On June 16, 1993, the employee returned to Dr. Brutlag reporting a flare-up of his low back symptoms. Expressing concern because the employee's symptoms appeared more severe than she would anticipate given the employee's objective studies, Dr. Brutlag ordered a bone scan of the lumbar spine. The June 21, 1993 bone scan was normal with the exception of a minimal but definite focal area of increased uptake in the right proximal femur. A follow-up x-ray was interpreted as showing a benign sclerotic lesion.

The employee was seen by Dr. Sherman on July 1, 1993, for a second opinion regarding his low back. Dr. Sherman opined the employee's back symptoms represented a lumbosacral strain. The doctor suspected a benign lesion in the femur, not related to the employee's low back problems, and referred the employee to Dr. Teynor for further consultation. Dr. Teynor examined the employee on July 6, 1993. He agreed the employee had two separate problems: his low back condition and a benign femur lesion. Dr. Teynor concluded the bone scan

findings were "incidental" and that the lesion was *not* a source of the employee's buttock and groin pain. Further testing and evaluation confirmed the conclusion that the employee's right femur lesion was not causally related to, and was not contributing to, the employee's leg and groin pain. There is substantial evidence to support the compensation judge's finding that the right femur lesion was not causally related to the employee's 1992 personal injuries. We accordingly, affirm the judge's determination that diagnostic testing, evaluation and treatment of the right femur lesion, as listed by the employer and insurer, was not compensable.

Temporary Total Disability - October 1994 to February 1995

The employee claimed total disability from October 29, 1994 to February 14, 1995 as the result of the right femur biopsy performed on November 4, 1994. The employee argues the biopsy was performed to rule out the right femur lesion as a cause of his pain and symptoms, and the period of disability resulting from the biopsy is, accordingly, compensable. Having affirmed the compensation judge's finding that the right femur lesion was not causally related to his 1992 low back work injuries and that medical care related to the lesion was not compensable, including the November 4, 1994 biopsy, we also affirm the denial of temporary total disability benefits from October 29, 1994 through February 14, 1995.

Maximum Medical Improvement

The employer and insurer contend the employee reached maximum medical improvement (MMI) effective July 19, 1994, with service of the June 14, 1994 MMI report of Dr. Brutlag. They assert the employee's symptoms have not improved and have continued to worsen since that time.

The compensation judge found the employer and insurer failed to prove that Dr. Brutlag's report was served on the employee. (Finding 1.) The employer and insurer did not appeal this finding in their notice of appeal. As a result, this court has no authority to review the judge's decision on this issue. Minn. Stat. § 176.421, subd. 6 ("On an appeal taken under this section, the workers' compensation court of appeals' review is limited to the issues raised by the parties in the notice of appeal. . ."); see, e.g., Blom v. Single Source Transp., slip op. (W.C.C.A. June 14, 2001).

MMI is not legally effective until the employer or insurer serves on the employee a copy of a written medical report stating MMI has been reached. Minn. Stat. § 176.101, subd. 3e(c)(1992); Bushaw v. Geo. A. Hormel Co., 39 W.C.D. 397 (W.C.C.A. 1987). The appellants neither alleged nor offered evidence of service of an MMI report on some other date or any action equivalent to service of an MMI report on the employee after July 19, 1994. Since the compensation judge's finding that the employer and insurer failed to prove service of Dr. Brutlag's report on the employee on July 19, 1994 is final and binding, the compensation judge correctly determined the employer and insurer failed to prove the employee had reached MMI as of that date. We affirm.

Fusion Surgery and IDET Procedure - Reasonableness and Necessity

The compensation judge found the fusion surgery performed on February 4, 1999 and the IDET procedure performed on February 8, 2000 were not reasonable or necessary to cure or relieve from the effects of the employee's admitted, work-related low back injuries. The employee appeals.

Fusion Surgery

In September 1998, Dr. Schultz discussed the option of surgery with the employee, referring him to Dr. Kraker for a surgical consultation. Dr. Kraker initially saw the employee on September 18, 1999. The doctor diagnosed chronic pain syndrome, requested the employee obtain his treatment records from HCMC, and asked Dr. Schultz to perform a lumbar discogram. Although noting the employee had significant difficulty describing his pain responses and was somewhat difficult to assess in "his rather varied and noncommittal responses," Dr. Schultz concluded the discogram demonstrated abnormal morphology of all five lumbar discs with concordant pain at L2-3 and L3-4. (Jt. Ex. HH, 9/28/98.) After receiving the discogram results, Dr. Kraker concluded the employee might benefit from a two-level fusion. He again requested the employee obtain a copy of the HCMC treatment notes as well as an MMPI report from North Memorial, and recommended psychiatric clearance before proceeding with surgery. It is unclear whether Dr. Kraker ever obtained the employee's HCMC treatment records.

The employee returned to John Vancini, Ph.D., L.P., who had administered the MMPI at North Memorial. A new MMPI was completed. Dr. Vancini observed the new MMPI showed a much higher "defensiveness" score suggesting denial of psychological/emotional factors, and that the profile was consistent with the employee's report of somatic symptoms. Dr. Vancini nonetheless stated the employee did not impress him as exaggerating or malingering, and saw no reason to suggest there were any "secondary gains" involved regarding the surgery. (Jt. Ex. II, 10/20/98.)

The employee then was seen by Dr. Pilling at the request of Dr. Kraker. By report dated December 10, 1998, Dr. Pilling noted the employee has a hysteroid personality type, but based on his 1993 treatment of the employee, a review of the medical records and MMPI, and his examination of the employee on that date, he saw no psychological contraindications to the proposed surgery.

On December 18, 1998, Dr. Kraker recommended an anterior posterior fusion at L2-3 and L3-4. The employee then sought a second opinion from Dr. Crowe, an orthopedic surgeon. Dr. Crowe told the employee he "would be willing to perform . . . [a] decompression and fusion from L2 to L4," but "the abnormal discs at L1-2, L4-5 and L5-S1 I feel would compromise his ultimate result, and I just would have him more likely to live with this pain. I get the feeling he could significantly be worse certainly in the long run if not in the short run." (Jt. Ex. GG.) Dr. Crowe noted the employee would return to Dr. Kraker to have the surgery done, and wished him good luck.

The surgery was performed on February 4, 1999 by Dr. Kraker. The fusion did not relieve the employee's pain or result in any improvement in the employee's symptoms. The employee was seen on August 25, 1999 by Dr. Sherman at the request of the employer and insurer. Based on his examination of the employee and review of the employee's medical records, Dr. Sherman opined the fusion surgery was "nonsensical" and "ill-conceived at best." He noted the employee's diagnosis of non-physiologic chronic pain syndrome with four out of five positive Waddell's signs. The doctor questioned the reliability of the discogram results, citing a high incidence of false positives in individuals with chronic pain syndrome. Dr. Sherman concluded "The likelihood of [the employee] responding to any type of surgical procedure in a positive fashion, i.e., improvement of his symptoms and improvement of his level of function, is less than that of a placebo and certainly does not validate the incumbent risk of undergoing an anterior posterior fusion." (Resp. Ex. at 9, 20-21, Dep. Ex. 2.)

Based on his review of the medical records and the testimony presented, the compensation judge found Dr. Sherman's opinion more persuasive, concluding the fusion surgery was unreasonable and unnecessary. It is the province of the compensation judge to choose between conflicting medical expert opinions. So long as there is adequate foundation for an expert's opinion, this court will not reverse a decision based on the judge's choice between experts. See Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985). There is ample evidence to support the compensation judge's finding that the February 4, 1999 fusion surgery was unreasonable and unnecessary in this case, and we, therefore, affirm.

IDET Procedure

When the employee failed to improve following the fusion surgery, Dr. Schultz suggested intradiscal electrothermal therapy (IDET) of the L4-5 and L5-S1 discs below the fusion.[1] Dr. Schultz testified the discogram demonstrated pain from all five lumbar discs, indicating that each of the discs is injured, degenerative and painful. He explained that normally fusions are not performed at more than two levels, thus the IDET procedure provides a nonsurgical means of treating additional degenerative levels. The IDET procedure was performed on February 8, 2000. The employee reported no improvement following the procedure.

Dr. Sherman opined the IDET procedure was "completely unreasonable." He asserted the procedure has not been validated histologically or in animal studies, and reported the physicians who developed the procedure had met with "universal failure in the use of IDET procedures when trying to be performed against levels transitional against fusions," which is the case here. (Resp. Ex. 1 at 23-25.)

The compensation judge noted the employee's long history of chronic pain and narcotic dependence, the lack of significant findings on MRI scan, the failure of the fusion surgery

[1] IDET involves placing a needle catheter into a damaged disc and threading a wire through the catheter. The wire is then heated. According to Dr. Schultz, the heat contracts the collagen in the annulus and seals any tears, as well as destroying pain-sensing nerves in the disc ring. (Pet. Ex. 2 at 11-12; Resp. Ex. 1 at 23.)

and the opinion of Dr. Sherman, and concluded that the IDET procedure was unreasonable and unnecessary to cure or relieve the employee's pain. (Mem. at 18.) There is substantial evidence to support the compensation judge's decision, and we must, therefore, affirm.

Temporary Total Disability; Permanent Partial Disability - Stipulation

The compensation judge found that "By stipulation, the employee has been temporarily totally disabled from 2/4/99 through the date of hearing. . ." (Finding 7.) The employer and insurer appeal, asserting they stipulated only that the employee was "disabled" following the February 4, 1999 fusion surgery, but they continued to deny any causal relationship to the employee's work-related injuries.

At the hearing, the compensation judge asked counsel for the employer and insurer whether they could "stipulate that [the employee] has been disabled for any particular period of time and that we're only arguing about causation." Appellants agreed the employee was disabled after February 4, 1999, but reiterated their position that the disability was not causally related to the employee's 1992 work injuries. (T. 11-14, 16.) The compensation judge accurately restated the appellant's position in his memorandum. (Mem. at 11-12.) There does not appear to have been any misunderstanding or misstatement of the employer and insurer's stipulation on the part of the compensation judge. We, accordingly, find no basis for a reversal or remand based on the judge's characterization of the stipulation.

Intervening, Superseding Cause.[2]

The employer and insurer assert the employee unreasonably proceeded with the fusion surgery and IDET procedure, and argue the compensation judge, therefore, erred in awarding temporary total disability from February 4, 1999 through the date of hearing and additional permanent partial disability as a result of the fusion surgery.

As a general rule, when an injury or condition is found to be work-related, an employer and insurer are liable for every natural consequence that flows from the injury or condition. Nelson v. American Lutheran Church, 420 N.W.2d 588, 590, 40 W.C.D. 849, 851 (Minn. 1988). However, the chain of causation between the work injury and a subsequent aggravation may be broken if the aggravation is the result of "unreasonable, negligent, dangerous or abnormal" activity or conduct on the part of the employee. Eide v. Whirlpool Seeger Corp., 260 Minn. 98, 102, 109 N.W.2d 47, 49-50, 21 W.C.D. 437, 441 (1961).

[2] The employee contends the appellants failed to raise, as an affirmative defense, the argument that the fusion surgery and IDET procedure were an intervening cause of the employee's subsequent disability. The employee argues that it was inappropriate for the compensation judge to consider the defense and the employer and insurer should not be able to raise the defense on appeal. We disagree. The employer and insurer clearly asserted the employee's total disability following the fusion surgery was not causally related to his work injuries. The compensation judge properly analyzed the legal issues raised by this defense.

A finding that medical treatment was unreasonable and unnecessary does *not* automatically preclude an award of wage loss or permanent partial disability benefits resulting from the treatment. The question is not whether the *treatment* was unreasonable or unnecessary, but whether the *employee's conduct*, that is, the decision to proceed with the treatment, was "so unreasonable, negligent, dangerous or abnormal" as to constitute a superseding, intervening cause of the disability resulting from the treatment. Each case must be decided on its own particular facts. Rude v. Halstad Lutheran Memorial Home, 52 W.C.D. 293 (W.C.C.A. 1994); Smith v. Becklund Home Health Care, slip op. (W.C.C.A. Nov. 17, 1997); Minke v. St. Paul Ramsey Medical Ctr., slip op. (W.C.C.A. Oct. 14, 1997).

The two-level fusion was recommended by Dr. Kraker, an orthopedic surgeon, to whom the employee had been referred by his treating physician, Dr. Schultz. At Dr. Kraker's request, Dr. Schultz performed a discogram which he interpreted as showing concordant pain at L2-3 and L3-4. Dr. Schultz testified that he believes diagnostic discography is appropriate for identifying pain-generating discs in patients with chronic pain syndrome. (Pet. Ex. 2 at 55, 60.) Because of the employee's chronic pain diagnosis, Dr. Kraker required psychological approval for the surgery. Both Dr. Vancini and Dr. Pilling saw no psychological contraindications to spinal surgery. Finally, although Dr. Crowe's statement is less than clear, the employee testified he was left with the impression that Dr. Crowe felt it was "ok" to have the surgery. (T.111-12.)

Similarly, Dr. Schultz offered the IDET procedure to the employee as a less intrusive procedure than surgical removal of the fusion hardware or implantation of a spinal cord stimulator or a morphine pump. There was no evidence the employee was aware there was any controversy with respect to the discogram performed by Dr. Schultz or the IDET procedure, or that there was any reason to question Dr. Schultz's motive or competency.

On these facts, the compensation judge's factual determination that the employee's decision to undergo the fusion surgery and IDET procedure was not so unreasonable, negligent, dangerous or abnormal as to constitute a superseding, intervening cause is supported by substantial evidence and is not clearly erroneous. We, accordingly, affirm the judge's award of temporary total disability benefits from February 4, 1999 and continuing and additional permanent partial disability benefits.[3]

Medical Expenses Prior to Fusion Surgery

The employer and insurer appeal from the compensation judge's award of various medical expenses incurred after June 13, 1994. The appellants assert that all treatment after that date was excessive, unreasonable and unnecessary. In this regard, the appellants rely solely on the opinion of Dr. Sherman, their IME. Dr. Sherman maintained the 1992 work injuries produced no physical or structural damage and the only significant diagnosis was a pre-existing chronic pain syndrome. Dr. Sherman, accordingly, opined the employee required no further treatment after

[3] The employer and insurer also appealed from the compensation judge's award of a rehabilitation consultation "for the same reasons." Having affirmed the award of temporary total disability benefits, we also affirm the award of a rehabilitation consultation.

1994 when Dr. Brutlag opined the employee had reached MMI from his work injuries. The compensation judge rejected Dr. Sherman's causation opinion, and we have affirmed the judge's finding that the employee's 1992 work injuries permanently aggravated his chronic pain syndrome. We do not, therefore, find any basis for reversal of the compensation judge's determinations regarding the compensability of medical expenses on this basis.

In the alternative, the employer and insurer specifically dispute the compensability of all physical therapy provided to the employee after June 13, 1994; treatment with Dr. Keith Mastin at Group Health/HealthPartners between September 9, 1994 to August 27, 1996;[4] "pain clinic" treatment, including treatment at Hennepin County Medical Center (HCMC), North Memorial Medical Center (NMMC) and Medical Advanced Pain Specialists (Dr. Schultz); treatment with Joel Wulff, D.C., and Dr. Steven Noran in 1996; and all MRI scans and discograms after 1993.

Physical Therapy After June 13, 1994

The employer and insurer contend that physical therapy received by the employee at the Anoka Physical Therapy Clinic between August 30, 1994 and March 6, 1995, at PTOSI on January 11, 1995, and at the Physician's Neck & Back Clinic from April 7 to December 7, 1995 was unreasonable and unnecessary. The compensation judge found that, although prior attempts at physical therapy had failed, the disputed therapy was reasonable and necessary to increase the employee's level of activity and function.

On August 26, 1994, the employee was seen by Dr. Griffith, at Group Health, reporting a flare-up of his back pain. The doctor noted spasm in the lumbar muscles and referred the employee for physical therapy. The employee completed 10 sessions at Anoka Physical Therapy, including range of motion, strengthening and stabilization exercises. The treatment records reflect some improvement of the employee's back pain as a result of the therapy. On November 28, 1994, Dr. Mastin again referred the employee for physical therapy due to low back pain. The employee was seen at Anoka Physical Therapy for two sessions on November 29 and December 19, 1994, and received instruction in range of motion exercises and massage to decrease his pain. The therapy was discontinued to request clarification from the doctor due to the employee's severe pain.

On December 22, 1994, Dr. Mastin recommended aggressive physical therapy to address deconditioning and reactivate the employee. The doctor referred the employee to PTOSI for a physical therapy evaluation and recommendations. By report dated January 11, 1995, the therapist concluded there were no contraindications to manual therapy, and recommended work on soft tissue extensibility and therapy to improve mobility in the thoracic spine to reduce stress in the low back region, as well as mobilization of the right hip. The employee returned to Anoka Physical Therapy on January 23, 1995 and participated in six sessions through February 13, 1995,

[4] The compensation judge refers to treatment with Dr. Mastin through August 27, 19**97**. This is clearly a clerical error as the medical records reflect no treatment by Dr. Mastin after August 27, 19**96**.

with heavy emphasis on exercise, especially range of motion and stretching tight lumbosacral and hip muscles.

We acknowledge there is evidence in the record that might have supported a denial of these treatment expenses, and that another fact finder might have reached a different result. However, the issue on appeal to this court is whether the compensation judge's decision is clearly erroneous and unsupported by substantial evidence in the record as a whole. The compensation judge could conclude the treatment was a reasonable attempt to reduce the employee's pain and loss of mobility and to improve his general functioning. We therefore affirm the award of medical expenses for the evaluation at PTOSI, and the employee's treatment at Anoka Physical Therapy between August 30, 1994 and February 13, 1995.[5]

On March 29, 1995, the employee was referred by Dr. Mastin to the Physician's Neck & Back Clinic (PNBC) for an evaluation. The evaluation was completed by Dr. Hergott on April 7, 1995. The doctor diagnosed a lumbosacral strain with deconditioning syndrome, and recommended an active rehabilitation program of progressive exercises, instruction in body mechanics and aerobic conditioning. The employee did not begin the program until July 14, 1995. The treatment records reflect objective progress with improved strength, flexibility and range of motion. By October 12, 1995, the employee reported improvement in his functional and subjective pain complaints, but was still not at optimal level. Unfortunately, on October 26, 1995, the employee returned to Dr. Mastin complaining of increased pain with increasing loads in the therapy program. Dr. Mastin did, however, observe the employee was in far better shape than he had been six months previously. On November 2, 1995, the therapy was placed on hold for 10 days due to the employee's increasing symptoms. Therapy was appropriately discontinued and the employee discharged from the PNBC on December 7, 1995, when the initial improvement failed to continue. There is substantial evidence to support the conclusion that the PNBC program was reasonable and necessary, and we affirm the award of medical expenses for this treatment.

Treatment With Dr. Mastin

The employee received treatment from Dr. Keith Mastin at Group Health/Health Partners from September 13, 1994 through August 27, 1996. The compensation judge found the treatment provided by Dr. Mastin was reasonable and necessary. The employer and insurer appeal, asserting the employee began treating with Dr. Mastin while he continued to treat with Dr. Brutlag. They assert both doctors diagnosed chronic pain, and contend that Dr. Mastin's treatment was duplicative and unnecessary.

After November 1993, the focus of Dr. Brutlag's care became returning the employee to work, including obtaining a functional capacities evaluation (FCE) and work hardening. A brief trial of acupuncture was abandoned as the employee obtained no relief. On

[5] There are no treatment notes or any other evidence describing the treatment rendered by Anoka Physical Therapy, if any, between February 14 and March 6, 1995 and we modify the award of medical expenses accordingly.

June 13, 1994, Dr. Brutlag opined the employee had reached MMI, and no further treatment was contemplated other than a work hardening program.

The employee was dissatisfied with the results of Dr. Brutlag's treatment and sought a second opinion from Dr. Mastin at his primary care clinic, Group Health, on September 13, 1994. No new treatment was initiated by Dr. Mastin on this date. Dr. Mastin then referred the employee to Dr. Aadelen, an orthopedic surgeon, for evaluation of his femur lesion and low back pain. Dr. Mastin anticipated the employee would return to PNMC following the second opinion. Dr. Brutlag continued to coordinate the employee's return to work and restrictions.

The next contact with Dr. Mastin was on November 28, 1994, when the doctor prescribed physical therapy at Anoka Physical Therapy for the employee's low back and right hip pain. (See above.) On December 22, 1994, the doctor anticipated returning the employee to PNMC, having exhausted his usefulness in providing a second opinion. On January 19, 1995, the employee returned to Dr. Mastin stating he did not want to return to his physiatrist, Dr. Brutlag, at PNMC.

Dr. Mastin continued to see the employee about once or twice a month between February 14, 1995 and March 15, 1996, providing conservative care including pain, anti-inflammatory and anti-depressant medications, referrals for physical therapy, referrals to specialists (including neurology and urology evaluations) and for diagnostic tests, coordination with the employee's disability case manager, and referral to a pain clinic. Dr. Mastin saw the employee one last time on August 27, 1996, when he noted the employee was attending the Hennepin County Medical Center pain program and was starting to improve.[6]

Given this record, the compensation judge could reasonably conclude the treatment provided by Dr. Mastin was not duplicative. Although the employee sustained little long-lasting improvement as a result of Dr. Mastin's treatment, the evidence does minimally but adequately support the conclusion that the medical care provided by Dr. Mastin was reasonable and necessary to *relieve* the employee from the effects of his 1992 work injuries. We therefore affirm the award of reimbursement to the intervenor, HealthPartners, for treatment provided to the employee from September 13, 1994 through August 27, 1996 (see ftnt. 4) for his low back and right leg pain.

Pain Clinic Treatment

The employer and insurer again assert the treatment rendered was unreasonable, unnecessary and duplicative. They note the employee participated in, but failed to complete, Dr. Pilling's pain management program in October 1993. By letter dated November 4, 1993, Dr. Pilling wrote that "secondary gain is a major factor in [the employee's] continued complaints of pain," opining the employee would not make progress until the secondary gain issues were

[6] The employer and insurer contend that much of the treatment by Dr. Mastin resulted from the motor vehicle accident on March 22, 1996. There is, however, no evidence of treatment by Dr. Mastin following or related to this accident.

resolved. (Jt. Ex. R.) The employer and insurer argue that secondary gain continued to be the major motivating force of the employee, and that additional pain clinic treatment was therefore unreasonable and unnecessary. We are not persuaded.

The compensation judge found chronic pain treatment provided to the employee at Hennepin County Medical Center (HCMC), including psychological counseling and injection therapy, was reasonable and necessary. In January 1996, Dr. Mastin recommended referral to a pain program. On February 1, 1996, the doctor noted intractable pain for the past few months, and observed the employee was visibly agitated, frustrated and depressed and appeared to be in danger of decompensating psychologically. On February 9, 1996, the employee was seen by Dr. Smith at the Group Health pain clinic. Dr. Smith opined the employee was habituated to narcotic pain medications and needed psychosocial help with his chronic pain. He recommended an intensive outpatient or inpatient pain program.

The employee began outpatient treatment at the Hennepin Pain Clinic on April 22, 1996. Dr. Clavel noted the employee had a very complex pain problem, and recommended a multidisciplinary approach. Treatment included relaxation training/ biofeedback, physical therapy and pool therapy, medication management (including weaning off narcotic pain medication) and referral to a psychologist for psychotherapy and pain management therapy. The employee continued to participate in the HCMC pain clinic program on a periodic basis through May 14, 1997. The treatment records of Dr. Mastin, Dr. Noran, Dr. Clavel, and the employee's psychologist, Dr. Wagner, reflect some improvement, although the employee continued to exhibit significant pain behavior. The clinic notes on May 14, 1997 indicate the employee was angry about the tapering off of his narcotic medications, and had expressed increasing distress that medical interventions such as surgery or anesthetic blocks were not an option at the pain clinic.

The employee was then referred to the HCMC Clinics where he received pain treatment from Dr. Wengler and Dr. Hong between June 18 and October 23, 1997, consisting largely of an orthopedic diagnostic evaluation and a series of sympathetic blocks and epidural steroid injections. The injections ultimately provided no relief, and Dr. Wengler concluded he could find no alternative, organic source for the employee's right hip and groin pain. The employee was then seen on October 27 and 30, 1997 at Hennepin Clinic concerned about withdrawal symptoms, and seeking comprehensive evaluation and treatment. The employee was referred to Dr. Monsein at Abbott Northwestern who concluded the employee needed an intensive, residential pain program. The employee was unable to participate in the Abbott Northwestern program due to lack of insurance coverage, and continued to receive treatment at HCMC through January 19, 1998.

Although the HCMC treatment was not ultimately helpful to the employee, the compensation judge could reasonably include that the pain clinic program and injection therapy were reasonable and necessary attempts to treat the employee's chronic pain problems, and we therefore affirm the compensation judge's award of payment for these treatments at HCMC.

On March 11, 1998, the employee was seen in the North Memorial Medical Center (NMMC) emergency room stating he was unable to cope with his pain and describing suicidal

feelings. The employee was felt to need psychiatric care and was admitted to the hospital. Treatment in the hospital included both psychological treatment and a work up of his physical complaints by orthopedic and other medical specialists. Upon discharge from the hospital on March 16, 1998, the employee was noted to be less depressed and more hopeful as a plan for continuing outpatient treatment was devised.

The compensation judge concluded the psychological component of the employee's treatment at NMMC was reasonable and necessary. The judge denied the physical component of the employee's care at NMMC, concluding the treatment duplicated the evaluation and treatment of the employee's condition over the previous five years at PNMC, HealthPartners and the HCMC. The employee did not appeal this finding. The compensation judge's determination is not unreasonable and is supported by the evidence. We, accordingly, affirm.

After his hospitalization at NMMC, the employee began treating with Dr. Schultz at Medical Advance Pain Specialists (MAPS). The employee continued to receive treatment at MAPS through the date of hearing. The employer and insurer argue that all of the treatment provided by Dr. Schultz and MAPS duplicated treatment previously provided at PNMC, HealthPartners and HCMC and was unreasonable and unnecessary.

Between March 24 and April 23, 1998, Dr. Schultz administered a series of diagnostic and therapeutic lumbar sympathetic blocks and epidural injections. The employee did not obtain significant relief from the injections. The compensation judge agreed the injections duplicated injection therapy previously attempted at HCMC without success and denied payment for this treatment. The employee did not appeal this finding.

Beginning on March 24, 1998, Dr. Schultz also prescribed Oxycontin, a narcotic medication, for pain control. On September 8, 1998, when it was apparent the employee had not obtained any significant improvement in his symptoms with other treatment, Dr. Schultz advised the employee he was unwilling to maintain him on Oxycontin and OxyIR, and prescribed methadone for ongoing pain medication management. The employee complained of nausea and sedation with methadone, and on October 13, 1998, requested a return to Oxycontin prior to and after the fusion surgery scheduled for February 1999. Dr. Schultz refused, stating he did not believe Oxycontin was a reasonable drug for long term pain management. MAPS continued to monitor the employee's use of methadone through the date of the fusion surgery on February 4, 1999, providing support and prescriptions for medications to reduce side effects.

The employee also received physical therapy at MAPS from April 21 to August 17, 1998, and on December 7 and 15, 1998. At the initial evaluation, the therapist reported active trigger points in the muscles along with muscle weakness from disuse and movement pattern changes associated with the employee's long-standing chronic pain syndrome. A self-management program was initiated with the goal of restoring muscle strength and flexibility and walking without crutches or a limp. The employee completed eight sessions through August 4, 1998. He continued to complain that the exercises caused his pain to flare up, and on August 17, 1998, called the clinic stating he wanted to continue on his own without the help of a therapist.

The employee also received ultrasound treatments on December 7 and 15, 1998 as an adjunct to his self-managed exercise program.

On September 8, 1998, Dr. Schultz discussed options other than long-term pain medication with the employee, including spinal cord stimulation, an implanted intrathecal pump, or spinal surgery. He referred the employee to Dr. Kraker, an orthopedic surgeon, for a surgical consultation.

Although the medical care at MAPS did not produce long-lasting results, the compensation judge could reasonably conclude, given the employee's significant pain and loss of muscle strength, flexibility and mobility due to his chronic pain syndrome, that pain medications, a trial of physical therapy, and referral to an orthopedic surgeon for consideration of other options were reasonable and necessary treatment. Multiple doctors had diagnosed dependence on narcotic pain medication over the years, and several previous attempts had been made to wean the employee from these drugs. The compensation judge appropriately concluded the attempt to wean the employee off Oxycontin by switching the employee to methadone was reasonable and necessary treatment. We therefore affirm the compensation judge's award of compensation for medical treatment at MAPS to the date of the fusion surgery.

Dr. Noran

The employer and insurer contend that treatment provided by Dr. Steven Noran was due solely to injuries sustained in a non-work-related motor vehicle accident on March 22, 1996, and is not compensable.[7] The compensation judge found the employee's 1992 work injuries continued to be a substantial contributing cause of his symptoms at the time of Dr. Noran's treatment, and the treatment was reasonable and necessary.

The employee was initially seen by Dr. Noran on July 23, 1996. The employee had been injured four months earlier, on March 22, 1996, when his car was hit broadside by a pickup truck. Following the accident, he receive chiropractic and other medical treatment, but continued to complain of radiating symptoms into his right leg, resulting in the referral for a neurological evaluation. Dr. Noran noted the employee had an "incredibly long, complex history of problems" and evidenced a great deal of pain behavior. (Jt. Ex. CC.) The doctor saw the employee four times, obtaining and reviewing outside diagnostic tests and the employee's treatment records. He noted the employee was receiving treatment at the HCMC pain clinic, and continued to have low back symptoms similar to those he had before the accident. On September 13, 1996, Dr. Noran diagnosed lumbar disc injury and myoligamentous strain syndrome and chronic pain syndrome. He discharged the employee stating he had nothing to offer from a neurological standpoint.

We acknowledge a different result could be reached on these facts. Our role, however, is solely to determine whether there is substantial evidence to support the compensation

[7] The employer and insurer also appear to dispute the compensation judge's decision regarding chiropractic treatment provided by Joel Wulff, D.C. The compensation *denied* payment for Dr. Wulff's treatment, finding it unreasonable and unnecessary. The employee did not appeal.

judge's factual finding. Based on the medical records and evidence before us, we cannot conclude that the compensation judge's finding is clearly erroneous and unsupported by substantial evidence of record and must, therefore, affirm.

MRI Scans and Discograms

The employer and insurer contend that repeat MRI scans of the lumbar spine after March 19, 1993, and the employee's discograms were duplicative, unreasonable and unnecessary, and are not compensable. The compensation judge awarded payment for the MRI scan of April 28, 1995, but denied payment for MRI scans of the lumbar spine performed on January 25, 1996, August 29, 1996 and February 21, 1997. The employee did not appeal from the denial of these scans.

In March 1993, Dr. Brutlag requested an MRI scan to rule out an annular tear in a disc. The scan, taken on March 19, 1993, was unremarkable. Approximately two years later, in April 1995, Dr. Mastin, concerned by the employee's failure to improve, referred the employee for a neurology evaluation. The employee reported symptoms of decreased sexual function and increased urinary frequency to the neurologist, Dr. David Webster. Although Dr. Webster thought a neurologic condition was unlikely, he requested an MRI scan to make sure the employee did not have some kind of cauda equina lesion given the employee's new symptoms. He recommended no further neurological work up if the scan was negative. The scan, taken on April 28, 1995, revealed mild dehydration at L2-3 and L3-4 and was normal at all other levels. The radiologist noted no change from the 1993 scan. The compensation judge reasonably concluded the repeat MRI scan on April 28, 1995 was reasonable to rule out a more serious condition in view of the employee's continuing symptoms and new complaints at that point. We affirm.

The employee was seen by Dr. Wengler at HCMC in mid-1997 for evaluation of his condition from an orthopedic standpoint. On October 10, 1997, Dr. Wengler noted the employee continued to experience intractable pain and had not responded to various blocks and injections, and recommended a lumbar discogram at L2-3 and L3-4. The discogram was performed by Dr. Wengler on October 17, 1997. A second discogram at L4-5 and L5-S1 was performed on January 19, 1998. Although the employer and insurer clearly disputed the reasonableness and necessity of the discograms performed by Dr. Wengler, the compensation judge failed to make a specific finding awarding or denying payment for this treatment. We, accordingly, remand the issue to the compensation judge for determination. The compensation judge did find the full lumbar discogram performed by Dr. Schultz on September 28, 1998, unreasonable and unnecessary in view of the discograms performed at the same levels by Dr. Wengler less than a year previously. The employee did not appeal the denial of payment for the September 28, 1998 discogram.

Medical Expenses Related to Fusion Surgery and IDET Procedure

The compensation judge denied payment for various medical evaluations and treatment prior to and following the fusion surgery and IDET procedure. The employee appeals, arguing the compensation judge erred, as a matter of law, in denying compensation for physical

therapy at the Institute for Athletic Medicine between March 9 and March 16, 1999; clinic visits, injections and therapy provided at MAPS after the fusion surgery and after the IDET procedure; charges for a psychological evaluation by Dr. Vancini dated October 14 and 19, 1998; treatment by Dr. Kraker after October 9, 1998; a charge from Unity Hospital dated February 26, 1999; charges from WestHealth on March 19, 1999 and May 28, 1999; and charges from the North Clinic dated January 29, 1999, February 4, 1999 and February 6, 1999. The compensation judge denied compensation for the post-surgery medical expenses at issue on the basis that since the fusion surgery and IDET procedure were not reasonable and necessary, medical expenses "related to" the fusion and IDET procedure must also be denied. We disagree.

As discussed previously, an employer is liable for every natural consequence that flows from a compensable personal injury unless it is the result of an independent, intervening cause attributable to the employee's own intentional conduct. Nelson at 590, 40 W.C.D. at 851. The compensation judge found the employee's decision to undergo fusion surgery and the IDET procedure was not so unreasonable, negligent, dangerous or abnormal as to break the chain of causation, and the treatment did not constitute a superseding or intervening cause of the employee's disability. This finding of a continuing causal relationship applies equally to the employee's need for medical treatment. Compare, e.g., Nelson, id.; Eide at 47, 21 W.C.D. 437 (both cases involved substantially or primarily claims for payment of medical expenses). Thus, (with the exception of charges for the fusion surgery, including physician, nursing, anesthesia and radiology services during the surgery and during the employee's hospital stay for the surgery, and charges for the IDET procedure) the issue to be determined is not whether any specific disputed treatment was "related to" the fusion surgery, but whether the employee proved the specific treatment at issue was reasonable and necessary to cure or relieve the employee from the effects of his work injury.

It is apparent from the compensation judge's findings and memorandum that, with two exceptions, the treatment listed by the employee was denied, at least in part, because it was "related to" or an adjunct to the unreasonable and unnecessary fusion surgery or IDET procedure. We, therefore, vacate the compensation judge's denial of payment or reimbursement for these charges (finding 16, in part, finding 17, in part, and finding 30) and remand to the compensation judge for redetermination of the compensability of the above-listed treatment on the existing record, except as discussed below.

First, the compensation judge denied the claim for reimbursement for services provided at Unity Hospital on February 26, 1999 on the basis that no treatment records were submitted for the visit. In the absence of any testimony or documentation describing the purpose of the visit or the treatment provided, the compensation judge properly denied reimbursement for this charge, and we affirm. Wright v. Kimro, Inc., 34 W.C.D. 702 (W.C.C.A 1981)(compensability of medical treatment may not be assumed just because services were rendered).

Second, the compensation judge found the treatment provided to the employee at MAPS through the date of hearing was reasonable and necessary, with the exception of the discogram, IDET procedure and injection therapy. (Finding 23.) Following the fusion surgery,

the employee participated in pool therapy with instruction from a physical therapist to address the employee's extreme deconditioning, and to increase his strength, endurance and flexibility. The employee found it difficult to travel to the clinic on a regular basis and the therapy was eventually discontinued. The compensation judge concluded the pool therapy was reasonable on a trial basis. We affirm.

The employee returned to see Dr. Schultz on March 23, 1999. The doctor prescribed Oxycontin and OxyIR for pain control following the fusion surgery. Dr. Schultz continued to prescribe narcotic medication through the date of hearing. In his memorandum, the compensation judge "found" the continued prescription of narcotic pain medications after March 23, 1999 was not reasonable or necessary. (Mem. at 21, 24.) However, the judge's memorandum is inconsistent with finding 23 which states generally that the treatment provided to the employee at MAPS through the date of hearing was reasonable and necessary. We accordingly vacate finding 23, in part, for treatment after February 4, 1999 to the date of hearing, and remand for clarification or redetermination as is necessary.