JOHN DUDER, Employee/Cross-Appellant, v. McGLYNN BAKERIES, INC. and GEN. INS. CO./SAFECO, Employer-Insurer/Appellants, and BLUE CROSS and BLUE SHIELD OF MINN. and BLUE PLUS, PRIMARY BEHAVIORAL HEALTH CLINICS, INC., and MINN. DEP'T OF ECON. SEC., Intervenors, and SPECIAL COMP. FUND.

WORKERS' COMPENSATION COURT OF APPEALS
OCTOBER 17, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - PSYCHOLOGICAL INJURY. Substantial evidence, including the testimony of the employee, found credible by the compensation judge, and the opinions and testimony of the employee's treating psychiatrist, supports the compensation judge's finding that the employee sustained a consequential psychological injury secondary to his August 5, 1991 personal injury.

PERMANENT TOTAL DISABILITY - SUBSTANTIAL EVIDENCE. Substantial evidence, including the opinions of expert witnesses, supports the finding that the employee is permanently and totally disabled.

PERMANENT PARTIAL DISABILITY - LUMBAR SPINE. It is the compensation judge's responsibility as trier of fact to resolve conflicts in expert testimony. The compensation judge did not err in accepting the adequately founded 14 percent rating of Dr. Wengler for the employee's injury to the lumbar spine.

PERMANENT PARTIAL DISABILITY - CERVICAL SPINE. Substantial evidence supports the compensation judge's determination that the employee has spinal stenosis at C5-6 and C6-7 as a result of his personal injury. The compensation judge erred, however, in awarding a 14 percent permanency for each of the two levels as Minn. R. 5223.0070, subp. 2.C., permits a single 14 percent rating only for cervical spinal stenosis whether the stenosis is at a single or at multiple levels. As the compensation judge found the employee sustained compression fractures at C5-6 and C6-7, but did not resolve the employee's alternative claim for permanent partial disability secondary to the fractures, the case is remanded for reconsideration.

MEDICAL TREATMENT & EXPENSE - SUBSTANTIAL EVIDENCE. Substantial evidence supports the compensation judge's findings that medical treatment provided by Primary Behavioral Health Clinics or paid for by Blue Cross and Blue Shield of Minnesota including prescription medication, with the exception of prescriptions disallowed by the compensation judge, was for treatment that was reasonable and necessary and causally related to the employee's personal injury, and the compensation judge's award of reimbursement of the claimed medical expenses to the intervenors.

PERMANENT PARTIAL DISABILITY - PSYCHOLOGICAL CONDITION. Substantial evidence supports the compensation judge's denial of additional permanent partial disability for a brain injury under Minn. R. 5223.0060, subp. 8.D. or subp. 8.F.

Affirmed in part, reversed in part and remanded.

Determined by: Johnson, J., Wilson, J., and Pederson, J.
Compensation Judge: Danny P. Kelly

OPINION

THOMAS L. JOHNSON, Judge

McGlynn Bakeries, Inc., and General Insurance Company/Safeco appeal from the compensation judge's findings that the employee sustained a consequential psychological injury and is permanently and totally disabled, and appeal the compensation judge's award of permanent partial disability benefits for the cervical and lumbar spine and the compensation judge's order that the insurer pay the outstanding medical charges at Primary Behavioral Health Clinics, Inc., and reimburse the Minnesota Department of Economic Security and Blue Cross and Blue Shield of Minnesota. The employee appeals from the compensation judge's denial of permanent partial disability benefits for his depressive condition. We reverse a portion of the judge's award of permanent partial disability benefits and affirm the balance of the judge's findings. We remand the case to the compensation judge for further findings consistent with this opinion.

BACKGROUND

John Duder, the employee, was injured on August 5, 1991 while working for McGlynn Bakeries, Inc., the employer. The employee was struck on the top of his head by a section of an overhead door. The employee's weekly wage was $701.36.

The employee saw Dr. Jean Lundgren on the day of his injury. He gave a history of being hit on the head by a garage door while wearing a safety helmet. Dr. Lundgren noted a shallow three centimeter laceration on the employee's cranium which was not then bleeding. The employee was given a tetanus shot and released to return to work. The employee returned to work on August 5, 1991. On August 16, 1991, the employee saw Dr. Mark Schmidt complaining of headaches, diffuse pain and low back pain since his personal injury. On examination, Dr. Schmidt found a limited range of lumbar motion with normal reflexes and strength in the extremities. The doctor diagnosed a scalp laceration and low back pain and took the employee off work. The employer and its insurer commenced payment of temporary total disability benefits effective August 15, 1991.

On August 21, 1991, the employee saw Dr. Lawrence Farber at the Noran Neurological Clinic. The employee gave a history of his August 5, 1991 injury and stated he was rendered momentarily unconscious from the blow. The employee complained of stiffness and pain in his neck and low back with mild headache. Dr. Farber diagnosed a mild concussion and a

cervical and lumbar strain. An electroencephalogram (EEG) was within normal limits. The doctor continued the employee off work and prescribed physical therapy. A CT scan showed marked degenerative disc disease at C5-6 and C6-7 and a moderate sized right posterolateral disc herniation at L3-4 with associated right L4 nerve root compression. The employee saw Dr. Gaylan Rockswold, a neurosurgeon, on September 18, 1991, on referral from Dr. Schmidt. The doctor diagnosed a substantial disc herniation at L3-4 on the right but noted a fairly marked improvement in the employee's pain and did not recommend surgery for the disc. He stated that if the employee's pain increased, consideration should be given to a microdiscectomy. Dr. Rockswold released the employee to return to very light-duty work, with restrictions. The employee returned to light-duty work on September 19, 1991, and the insurer commenced payment of temporary partial disability benefits and provided rehabilitation assistance.

The employee was examined by Dr. John Davenport on December 14, 1991, at the request of the employer and insurer. The doctor obtained a history from the employee, reviewed his medical records and examined the employee. Dr. Davenport diagnosed multi-level degenerative joint disease with recurrent exercised-induced myalgia and a resolved lumbar radiculopathy due to a prolapsed disc at L3-4 which was then asymptomatic. The doctor concluded both these conditions were substantially caused by the August 5, 1991 injury. Dr. Davenport rated a nine percent permanent disability[1] and opined the employee had reached maximum medical improvement (MMI). The insurer paid the employee for the nine percent permanent disability.

The employee returned to see Dr. Farber on December 20, 1991, and the doctor reported the employee was doing very well. A brain stem auditory evoked response study on January 17, 1992, showed probable abnormal brain stem auditory evoked responses. Following an examination on April 20, 1992, Dr. Farber stated the employee's condition had "stabilized very beautifully" and he could continue working with restrictions. The doctor agreed the employee had a nine percent permanent partial disability due to the L3-4 disc.

The employee saw Dr. Joanne B. Rogin, a neurologist at the Minneapolis Clinic of Neurology, on November 2, 1992, on referral from Dr. Mark Schmidt. The doctor's neurological examination was normal, but she found cervical and lumbar muscle spasm. The doctor reviewed the brain stem auditory evoked response study which she described as "nonspecific." Dr. Rogin opined the employee might be experiencing partial complex or partial simple seizures following his head trauma. She also noted evidence of cervical and lumbar spine sprain and strain with an underlying L3-4 herniated disc secondary to the personal injury. The doctor ordered an EMG of the right arm which showed evidence of carpal tunnel syndrome. A waking EEG was within normal limits with no epileptiform activity present. Dr. Rogin re-examined the employee on December 14, 1992, and again found cervical and lumbar muscle spasm with decreased range of lumbar motion. The doctor opined the employee was somewhat improved and could continue working as tolerated.

[1] See Minn. R. 5223.0070, subp. 1.B.(1)(a).

On June 15, 1993, the employee was seen by Dr. Deane C. Manolis with the Minneapolis Clinic of Psychiatry, on referral from Dr. Schmidt. The doctor administered an MMPI which he interpreted as showing considerable depression but noted the employee did not display much clinically. Dr. Manolis felt the employee's history was consistent with depression and he prescribed Zoloft. The doctor saw the employee five times between June and November 1993.

On July 21, 1993, the employee was fired from his job with the employer. The employee then joined a job club and commenced a job search. He primarily obtained job leads from the newspaper. He continued looking for work, without success, until February 1994. (Pet. Ex. R.) The employee then applied for and received social security disability benefits effective December 1994. Thereafter, the employee focused primarily on obtaining employment at the United States Post Office, making only sporadic attempts to obtain other employment. Eventually, in early 1997, the employee received a rejection letter from the Post Office.

On September 16, 1993, the employee saw Kathleen Garry, a psychologist. The employee gave a history of depression for which he had been taking Zoloft for the past six months which he stated improved his mood and functioning. Ms. Garry diagnosed major depression, single episode, triggered by work-related stressors, including a fair amount of verbal abuse which may have triggered underlying issues of sexual abuse.[2] The employee returned to see Dr. Manolis on November 29, 1993 and stated he felt pretty well.

On December 27, 1993, the employee returned to see Dr. Rogin. The doctor concluded the employee demonstrated a significant change in his behavior, with decreased judgment since the accident and recommended further testing. Following the tests, Dr. Rogin noted the principle irregularity was a consistent pattern of mild slowing of performance on time tasks and some variability on tests of attention-concentration. The abnormalities were felt to be a result of the employee's cautious response style in combination with the effects of depression. Dr. Rogin ordered an MRI scan of the brain which demonstrated cerebral and cerebellar atrophy. Dr. Rogin encouraged the employee to return to Dr. Manolis for treatment of his depression.

In 1994, the employee, on his own, discontinued the Zoloft. He did not receive medical treatment again until February 25, 1997, when he returned to see Dr. Rogin. The employee reported he had not worked for the last three and a half years, but wanted to return to work. He complained of intermittent low back pain with weakness in his left leg. Dr. Rogin ordered a repeat lumbar MRI scan which again showed significant multi-level degenerative disc disease with an annular tear at L3-4 with foraminal compromise. Dr. Rogin then ordered a cervical MRI scan which showed discogenic spurring at C3-4 through C5-6 with foraminal compromise and a questionable left C6 and right C7 radiculopathy.

The employee saw Dr. Mary Louise Stevens, a licensed psychologist, on February 26, March 11 and March 31, 1998. The employee gave a history of his work injury and sexual abuse by a male teacher from grade one through five. Dr. Stevens administered a Beck

[2] The employee reported to Ms. Garry a history of sexual abuse from age 5 through age 11.

Depression Inventory which she concluded placed the employee in the range of severe depression. An MMPI was, the doctor concluded, also consistent with major depression. A Million Personality Test reflected significant anxiety disorder and numerous somatic symptoms and complaints. Dr. Stevens diagnosed general anxiety disorder, major depressive disorder and dysthymic disorder with depressive and paranoid personality traits. The doctor concluded the employee had been suffering from significant symptoms of anxiety and depression for an indefinite period of time. Dr. Stevens concluded the employee was not then capable of maintaining full-time employment in a competitive work environment because the employee would be unable to concentrate on problem solving due to his depression and anxiety symptoms.

Dr. Bruce Van Dyne, a neurologist, examined the employee on April 1, 1998, at the request of the employer and insurer. The doctor obtained a history from the employee, reviewed medical records and conducted a physical examination. Dr. Van Dyne diagnosed a slight closed head injury on August 5, 1991, without any associated significant cognitive impairment, and chronic intermittent neck and low back pain most likely related to underlying degenerative disc disease. The doctor opined the employee could work subject to restrictions.

The employee was examined by Dr. Steven Trobiani, a neurologist, on April 23, 1998. The doctor diagnosed an L3-4 disc herniation without radicular signs or symptoms for which he rated a nine percent whole body disability. Dr. Trobiani also diagnosed compression fractures at C5 and C6 secondary to the work injury, which he rated at six percent for each fracture.[3]

The employee began treating with Dr. John Cronin, a licensed psychologist and clinical director of Primary Behavioral Health Clinics, on May 18, 1998. The doctor obtained a history from the employee, reviewed the employee's medical records and administered a number of standardized tests. Dr. Cronin diagnosed a pain disorder associated with both psychological and general medical condition (chronic pain syndrome) and generalized anxiety or depressive disorder. The doctor stated the employee's prognosis was guarded. The doctor commenced treatment consisting of psychotherapy and medication management.

In July 1998, the employee filed a claim petition contending he sustained neck and low back injuries on August 5, 1991 with a consequential psychological condition. The employee sought temporary total and/or permanent total disability benefits from July 22, 1993, permanent partial disability benefits for the cervical spine and payment of medical expenses at Primary Behavioral Health Clinics. In their answer, the employer and insurer admitted the employee sustained neck and back injuries but denied any psychological injury and denied liability for further benefits. The employee's claim petition was later amended to include claims for permanent partial disability benefits for the lumbar spine and permanent partial disability for a psychological injury. Blue Cross and Blue Shield, Primary Behavioral Health Clinics and the Minnesota Department of Economic Security all intervened in the case.

The employee was examined by Dr. Charles McCafferty, a psychiatrist, on December 9, 1998, at the request of the employer and insurer. The doctor administered an MMPI,

[3] Minn. R. 5223.0070, subp. 2.E.(1).

took a history from the employee, reviewed his medical records and conducted a psychiatric evaluation. Dr. McCafferty concluded the employee demonstrated no clear-cut criteria for significant depression despite the MMPI results. The doctor found no evidence the employee's physical injury was a contributing factor to his present psychological condition and found no evidence the employee was totally disabled from a psychiatric standpoint.

On February 5, 1999, the employee called the Vocational Rehabilitation Unit at the Minnesota Department of Labor and Industry requesting rehabilitation services. The case was assigned to Mic Sellner a qualified rehabilitation consultant [QRC]. Mr. Sellner reviewed the prior rehabilitation records, reviewed the employee's medical records and met with the employee on May 5, 1999. Ms. Sellner concluded that due to the severity of the employee's overall health, until improvement was noted, it was unlikely the employee would obtain suitable gainful employment. Accordingly, rehabilitation efforts were not instituted.

Dr. Van Dyne re-examined the employee on July 6, 2000, and his deposition was taken on October 2, 2000. As a part of his second examination, the doctor was provided with the employee's current medical records. Dr. Van Dyne reviewed the employee's cervical x-rays taken on August 21, 1991 and July 1, 1996, and concluded they showed no evidence of compression fractures at C5-6 or C6-7. He reviewed the 1993 MRI scan of the brain which, he stated, showed no evidence of an organic brain injury as a result of the August 5, 1991 injury. Dr. Van Dyne rated a 10.5 percent permanent partial disability due to multi-level cervical degenerative disc disease[4] and nine percent permanent partial disability for the lumbar spine.[5] Dr. Van Dyne restricted the employee from repetitive head movements, frequent overhead work with neck hyperextension or static neck flexion, frequent stooping or bending or lifting over 25 pounds. Finally, the doctor opined the employee did not exhibit any behavior which would lead the doctor to believe he had any significant psychiatric diagnosis on the two occasions Dr. Van Dyne examined him.

Dr. Robert Wengler examined the employee on November 4, 1999 and again on September 5, 2000. The doctor's deposition was taken on September 26, 2000. The doctor diagnosed advanced degenerative disc disease of the cervical spine with compression fractures at C-5 and C-6. The doctor further diagnosed low back pain and radicular phenomenon secondary to a spinal stenosis. The doctor opined the employee had advanced degenerative disc disease at multiple levels of the spine prior to the August 5, 1991 injury. However, Dr. Wengler stated the personal injury materially aggravated these conditions. The doctor stated the February 26, 1997 MRI scan documented a symptomatic lesion at L3-4 on the right which was best characterized as stenosis rather than a disc herniation. Dr. Wengler accordingly rated a fourteen percent whole body impairment for a single-level lumbar spinal stenosis.[6] The doctor testified the x-ray studies documented a 21 percent loss of the anterior height of C-5 and a 42 percent loss of the height of

[4] Minn. R. 5223.0070, subp. 2.A.(3)(b).

[5] Minn. R. 5223.0070, subp. 1.B.(1)(a).

[6] Minn. R. 5223.0070, subp. 1.C.(1).

C-6. Accordingly, Dr. Wengler rated a fourteen percent permanent disability for the C-5 fracture and nineteen percent for the C-6 fracture.[7] In addition, the doctor testified the July 1997 cervical MRI scan showed lateral spinal stenosis at C5-6 on the left and stenosis at C6-7 on the right. On examination, Dr. Wengler testified he found loss of sensation over the dorsal aspect of the employee's left hand and forearm and absent reflexes and radiating pain into both arms. The doctor opined the employee qualified for a 28 percent whole body disability for cervical spinal stenosis at two levels.[8] The doctor stated the cervical stenosis was consequential to and inseparable from the compression fractures. Thus, one condition or the other must be considered a lesser included category. Dr. Wengler opined the employee was unable to do any lifting, bending, stooping or tolerating positions of prolonged postural stress. Given these restrictions, the doctor opined the employee was permanently and totally disabled.

Richard Van Wagner, a QRC, conducted a vocational evaluation of the employee on August 1, 2000, at the request of the employer and insurer. As part of his evaluation, Mr. Van Wagner reviewed the employee's medical and job search records, interviewed the employee and gave the employee a series of vocational tests. Mr. Van Wagner concluded the employee was not permanently or totally disabled and opined he was capable of performing a number of jobs within his physical restrictions. Mr. Van Wagner identified jobs as a security officer, parking ramp cashier and pull tab operator which were currently available to the employee and within his physical restrictions.

The employee had continued to receive psychological treatment from Dr. Cronin. At the October 2000 hearing, Dr. Cronin testified he last examined the employee approximately two weeks previously. His diagnosis remained chronic pain syndrome and a dysthymic disorder, a long-term depressive disorder. Dr. Cronin opined the employee's work injury was a substantial contributing factor in the employee's chronic pain and depression. The doctor was aware of the employee's prior history of sexual abuse and depression but denied that either was a factor in the employee's current diagnosis. As a result of his psychological injury, Dr. Cronin said the employee has problems with attention, concentration, depression and difficulty being around other people. Due to these restrictions, the doctor opined the employee was not capable of sustained gainful employment. The doctor testified the employee could not work as a security officer, parking ramp cashier or pull tab operator. He opined the employee would not recover from his current condition. Dr. Cronin rated the employee as having a 50 percent whole body disability for emotional disturbances and personality changes and 40 percent whole body disability for consciousness disturbances.[9] Finally, the doctor testified the bill from Primary Behavioral Clinics was reasonable and necessary to cure and relieve the employee from the effects of the August 5, 1991 injury.

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[7] Minn. R. 5223.0070, subp. 2.E.(2) and (3).

[8] Minn. R. 5223.0070, subp. 2.C.(1).

[9] The doctor provided his rating, pursuant to Minn. Stat. § 176.105, subd. 1(c), based on Minn. R. 5223.0060, subp. 8.D.(2) and (3), and Minn. R. 5223.0060, subp. 8.F.(1).

The case was tried by a compensation judge at the Office of Administrative Hearings on October 3, 2000 and December 26, 2000. In a Findings and Order filed March 23, 2001, the compensation judge found the employee sustained an injury to his head, neck and low back on August 5, 1991. The judge found the employee was entitled to a 14 percent whole body disability for lumbar stenosis at L3-4 under Minn. R. 5223.0070, subp. 1.C., and a 14 percent disability for spinal stenosis at C5-6, and 14 percent for spinal stenosis at C6-7 under Minn. R. 5223.0070, subp. 2.C.(1). The judge found the employee sustained a consequential psychological injury as a result of the August 5, 1991 injury and suffers from a chronic pain condition and a dysthymic disorder. The compensation judge found the employee was permanently and totally disabled effective July 22, 1993. The judge found the treatment at Primary Behavioral Health Clinics and the medical expenses paid by Blue Cross and Blue Shield of Minnesota were reasonable, necessary and causally related to the employee's personal injury and ordered them paid by the employer and insurer. The employer and insurer appeal the compensation judge's finding that the employee sustained a consequential psychological injury, the award of permanent total disability benefits, the award of permanent partial disability benefits, and the order to reimburse the intervenors. The employee appeals the compensation judge's denial of permanent partial disability benefits for the psychological injury.

DECISION

Consequential Psychological Injury

The employer and insurer first argue the preponderance of the evidence establishes the employee did not sustain a consequential psychological injury as a result of the August 5, 1991 work injury. They contend any psychological condition the employee now has is causally related not to his personal injury but to a pre-existing condition. Further, they argue any psychological condition resulted not from the physical aspects of the employee's injury but from his perceived harassment from his supervisors and other work and non-work stressors. In their brief, the appellants summarize at length the testimony which supports their arguments, assert the compensation judge's decision is unsupported by a preponderance of the substantial evidence and ask this court to reverse the judge's finding.

There is evidence in the record to support the position of the employer and insurer. The issue is not, however, whether the evidence will support alternative findings, but whether the compensation judge's findings 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 is conflicting or more than one inference may reasonably be drawn from the evidence, the compensation judge's findings are to be affirmed. Redgate v. Sroga's Standard Serv., 421 N.W.2d 729, 734, 40 W.C.D. 948, 957 (Minn. 1988).

In this case, the testimony of the employee and Dr. Cronin supports the compensation judge's finding that the employee sustained a consequential psychological injury as a direct result of the August 5, 1991 personal injury. The appellants argue, however, that Dr. Cronin's opinions lack foundation because some facts upon which Dr. Cronin relied are inconsistent with the employee's testimony. Specifically, the appellants contend Dr. Cronin

erroneously assumed the employee's appetite for food was reduced, his social activities were constricted, that the employee could pursue his hobbies only for limited periods of time and that the employee took naps during the day. Dr. Cronin stated these factors were evidence of depression. The appellants contend these assumptions are not supported by substantial evidence and render Dr. Cronin's opinions without foundation. They further argue Dr. Cronin's opinions are inconsistent with the weight of the other evidence presented. We are not persuaded.

Dr. Manolis, Dr. Morgan, Dr. Stevens and Ms. Gary, as well as Dr. Cronin, all diagnosed the employee with depression. The appellants do not assert all the expert witnesses who diagnosed depression lacked foundation. The employee testified his energy level was low, that he slept too much and avoided things that made him anxious. He stated he was better since beginning medication. The compensation judge found the employee a credible witness. Dr. Cronin treated the employee for over two years and was aware of the employee's prior history of sexual abuse and depression. Prior to being asked his opinions on causation, the doctor was given a lengthy hypothetical reviewing the employee's work and medical history, his physical injury and his activities following the injury. Considering the record as a whole, there is ample foundation for the opinions of Dr. Cronin and the compensation judge could reasonably rely upon those opinions. The compensation judge's finding that the employee sustained a consequential psychological injury secondary to his work injury is, therefore, affirmed.

Permanent Total Disability

The employer and insurer appeal the compensation judge's finding that the employee is permanently and totally disabled. They argue the preponderance of the evidence establishes the employee is not permanently and totally disabled as a result of either his physical or psychological injury.

Again, there is evidence in the record supporting the appellants' position that the employee is not permanently and totally disabled. There is also, however, evidence to the contrary. Dr. Wengler, Dr. Cronin and Mr. Sellner opined the employee was permanently and totally disabled. The opinions of these expert witnesses were adequately founded. Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings of the compensation judge are to be upheld. Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). The compensation judge's finding of permanent total disability is affirmed.

Permanent Partial Disability - Lumbar Spine

The employer and insurer appeal the compensation judge's award of a 14 percent whole body disability for the employee's lumbar spine injury. They assert the correct rating is nine percent as rated by Dr. Rockswold, Dr. Farber, Dr. Rogin, Dr. Trobiani and Dr. Van Dyne. Since only Dr. Wengler rated 14 percent, the appellants contend the compensation judge's finding is unsupported by the weight of the evidence and must be reversed.

All disputed issues of fact under chapter 176 shall be determined by a preponderance of the evidence. Preponderance of the evidence means "evidence produced in substantiation of a fact which, when weighed against the evidence opposing the fact, has more convincing force and greater probability of truth." Minn. Stat. § 176.021, subd. 1a. On appellate review, this court does not weigh the evidence. Rather, the court looks to the record for evidence which reasonably supports the findings of the compensation judge. The opinions of Dr. Wengler do so. It is the compensation judge's responsibility, as trier of fact, to resolve conflicts in expert testimony. See Nord v. City of Cook, 360 N.W.2d 337, 342, 37 W.C.D. 364, 372 (Minn. 1985). The compensation judge's award of 14 percent permanent partial disability for the lumbar spine is affirmed.

Permanent Partial Disability - Cervical Spine

The compensation judge found the employee has spinal stenosis at C5-6 and C6-7 and awarded a 28 percent permanent partial disability. The appellants contend the finding of spinal stenosis lacks evidentiary support. They further argue the award of a 28 percent permanent partial disability is legally erroneous.

Dr. Wengler examined the employee on two occasions and reviewed the July 1997 cervical MRI scan. The doctor concluded the employee developed spinal stenosis at C5-6 and C6-7 as a result of his personal injury. The compensation judge adopted Dr. Wengler's opinion and found the employee has lateral spinal stenosis at C5-6 on the left and stenosis at C6-7 centrally on the right. This finding is supported by Dr. Wengler's well-founded opinion and it is affirmed.

Minn. R. 5223.0070, subp. 2.C., provides:

> Spinal stenosis, proven by computerized axial tomography or myelogram.
> (1) With myelopathy verified by objective neurologic findings, no loss of function, 14 percent.
> (2) Loss of function: The rate provided in part 5223.0060, subp. 7.

The rule in question provides a single rating for spinal stenosis and does not provide an additional rating for spinal stenosis at adjacent levels. Rather, any additional rating for cervical spinal stenosis must be based on loss of function under the section relating to spinal cord injuries.[10] We conclude the rule is clear and allows a single 14 percent rating whether the spinal stenosis is at a single or at multiple levels. Accordingly, we reverse the compensation judge's finding that the employee is entitled to 14 percent permanent partial disability for each of two cervical spine levels.

[10] Minn. R. 5223.0060, subp. 7, rates spinal cord injuries based upon the employee's score on the Kenny Scale, a self-care evaluation system.

The employee further claims permanent partial disability for cervical fractures at C5 and C6 which Dr. Wengler rated at 14 percent and 19 percent, respectively. The employee contends he is entitled to compensation for his permanent disability of the cervical spine under the spinal stenosis section or the cervical fracture section, whichever provides the larger rating. The compensation judge found the employee sustained anterior compression fractures of C-5 and C-6 as a result of the August 5, 1991 injury. The judge, however, made no findings with respect to the employee's claims for permanent partial disability benefits secondary to these fractures. The employee argues that if this court concludes the employee is entitled to a maximum of 14 percent permanent disability secondary to the cervical spinal stenosis, the court should remand the case to the compensation judge to reconsider his claim for permanent partial disability benefits for the compression fractures. We agree. We remand the case to the compensation judge to reconsider the employee's claim for permanent partial disability benefits to the cervical spine. The compensation judge should make these further findings on the existing record.

Primary Behavioral Health Clinics, Inc.

Primary Behavioral Health Clinics intervened in this proceeding seeking payment of its medical expenses for treating the employee. The compensation judge found the treatment was reasonable and necessary and ordered the employer and insurer to pay the claimed expenses. The appellants contend this finding is unsupported by substantial evidence. They argue that under the criteria established by this court in Horst v. Perkins Restaurant, 45 W.C.D. 9 (W.C.C.A. February 25, 1991), the treatment was not reasonable.

Dr. Cronin testified at the hearing, describing his care and treatment of the employee. The doctor identified the nature of his treatment as psychotherapy and medication management and stated the employee improved under his care. The employee also testified he improved with Dr. Cronin's treatment. Finally, Dr. Cronin testified the medical care provided at Primary Behavioral Health Clinics was reasonable and necessary to treat the employee's psychological injury. As there is evidence of record to support the compensation judge's award it must be affirmed.

Blue Cross and Blue Shield of Minnesota

Blue Cross and Blue Shield of Minnesota [BCBS] also intervened in this proceeding seeking payment of medical expenses for treatment provided to the employee. The compensation judge found the treatment was reasonable and necessary to cure and relieve the effects of the employee's personal injury, with the exception of charges for certain prescription drugs which the judge found unrelated. The employer and insurer appeal the judge's order requiring them to reimburse the intervenor for reasonable and necessary medical expenses.

BCBS made payments to Dr. Deane Manolis, Behavioral Health Services, Consulting Radiologists, Limited, Minneapolis Clinic of Neurology, Dr. Mary Stevens and paid for prescription medication. The payment summary, BCBS Exhibit 1, lists the name of each medical provider, the service date and a diagnosis for each provider payment. We have carefully reviewed this exhibit and conclude that all the provider payments were for treatment of depression

and for treatment of the cervical and lumbar spinal injuries. Accordingly, we affirm the compensation judge's order that the employer and insurer reimburse BCBS for these payments. Counsel for the employer and insurer objected to four specific medications listed in BCBS Exhibit 1, asserting they are unrelated to the employee's injury.[11] The compensation judge specifically found these four medications were unrelated to the employee's personal injuries. The judge's order that the employer and insurer reimburse BCBS for the balance of the prescription medication is affirmed.

Permanent Partial Disability - Psychological Condition

The employee appeals the compensation judge's denial of permanent partial disability benefits for his psychological condition. The employee contends the compensation judge's decision is unsupported by substantial evidence.

Dr. Cronin first opined the employee had a 50 percent permanent partial disability rating under Minn. R. 5223.0060, subp. 8.D.(2) and (3), which provides:

> **Brain injury.** Supporting objective evidence of structural injury, neurological deficit, or psychomotor findings is required to substantiate the permanent partial disability. Permanent partial disability of the brain is a disability of the whole body as follows:
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> * * *
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> D. Emotional disturbances and personality changes must be substantiated by medical observation and by organic dysfunction supported by psychometric testing. Permanent partial disability is a disability of the whole body as follows:
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> * * *
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> (2) present at all times but not significantly impairing ability to relate to others, to live with others, or to perform self cares, 30 percent;
>
> (3) present all times in moderate to severe degree, minimal ability to live with others, some supervision required, 65 percent; or . . .

The doctor testified the employee's condition fell between parts (2) and (3) and provided a Weber[12] rating of 50 percent.

[11] Inbomathacin, Betamethasone, Desoximetas and Sulindac.

[12] Weber v. City of Inver Grove Heights, 461 N.W.2d 918, 43 W.C.D. 471 (Minn. 1990).

The employee testified he performs work in and around his home, including changing the oil in his cars and doing other light mechanical work. The employee owned investment property in Nebraska which he rented out and drove to the farm three to four times a year to check on it. In addition, he stated he had an investment interest in a limited partnership in Wisconsin which he managed. The employee testified he reads on a daily basis, does gardening and gets out on a weekly basis and socializes. The compensation judge found the employee was fully capable of performing his own self cares, was capable of traveling frequently to different states to check on his investment properties, occasionally traveling by himself, and found the employee had a variety of interests and hobbies, was married and socialized with friends. These findings are fully supported by the record. The compensation judge's denial of a 50 percent whole body disability is affirmed.

Dr. Cronin also rated a 40 percent permanent partial disability under Minn. R. 5223.0060, subp. 8.F.(1), brain injury, which provides:

> F. Consciousness disturbances; permanent partial disability of the body is as follows:
>
> (1) mild or intermittent decreased level of consciousness manifested by periodic mild confusion or lethargy, a score of 16 to 28 on the Kenny scale, 40 percent.

The compensation judge denied benefits under this rule finding there was no evidence of a rating on the Kenny scale. We find no such evidence. To qualify for permanent partial disability benefits under a rule, the employee must prove he meets all the requirements of the rule. The compensation judge's denial of permanent disability benefits is affirmed.