

CLARENCE FEIST, Employee, v. PACKAGING OF AM./TENNECO and ACE USA, f/k/a AS CIGNA, Employer-Insurer/Appellants.

WORKERS' COMPENSATION COURT OF APPEALS  
JANUARY 29, 2001

No. [REDACTED SSN]

HEADNOTES

MEDICAL TREATMENT AND EXPENSE—Substantial evidence supports the compensation judge's determination that a morphine pump is a reasonable treatment option which should be explored, since it was clear that the appropriateness of this form of treatment could not be fully evaluated until after completion of a trial screening.

Affirmed.

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

OPINION

MIRIAM P. RYKKEN, Judge

The employer and insurer appeal the compensation judge's finding that a trial period of spinal medication infusion was consistent with Minn. R. 5221.6210, subp. 6C(2). We affirm.

BACKGROUND

On April 8, 1986, Clarence Feist, the employee, sustained an admitted work-related injury to his thoracic spine while working for Northwest Corrugated Box Company/Packaging Corporation of America (now known as Tenneco), the employer, which was insured for workers' compensation liability by Travelers Insurance Company. The employee remained off work for one week following this injury. On March 9, 1987, the employee sustained an admitted work-related injury to his cervical and thoracic spine moving a desk while working for the employer, which was then insured by CIGNA Insurance Company (now known as ACE USA). Post-injury, the employee continued at his position of maintenance mechanic until his symptoms worsened to the point that he was taken off work. He remained off work from August through December 1987, and returned to work in December 1987, working in a "miscellaneous" job category until mid-March 1991 when he became unable to work due to chronic pain. Thereafter, the employer and ACE USA (then named CIGNA Insurance) paid temporary total disability benefits to the employee through June 24, 1992, when benefits were discontinued on the basis of service of notice of maximum medical improvement on March 25, 1992.

The employee filed a claim petition on October 18, 1992, alleging that he had sustained a psychological injury as a result of his 1986 and 1987 injuries, and claiming entitlement to permanent partial disability and permanent total disability benefits. In unappealed Findings and Order served and filed May 30, 1997, the compensation judge denied the employee's permanent total disability claim, awarded 3.5% permanent partial disability benefits related to the employee's 1986 thoracic spine injury, and found that the employee had been suffering from chronic pain and sustained a depressive disorder as a substantial result of both of his work-related injuries. Pursuant to a stipulation for settlement entered into in April 1998, the insurers agreed that ACE USA would act as paying agent for future medical treatment expenses causally related to the 1986 and 1987 injuries, and that Travelers Insurance Company would reimburse ACE USA for 47.5 percent of medical expenses paid.

In 1998, the employee's family physician referred the employee to Dr. David Schultz. Dr. Schultz treated the employee with a variety of conservative treatment modalities, including costotransverse joint injections, cervical and thoracic epidural injections, physical therapy, trigger point injections, cervical and thoracic facet joint blocks, diagnostic medial branch facet joint nerve blocks, transforaminal epidural steroid injections, costotransverse intraarticular joint injection, thoracic radiofrequency facet joint denervation and cervical radiofrequency neuroablation. Dr. Schultz recommended a peripheral nerve stimulator implant device, physical therapy, and warm pool aerobics.

On November 11, 1999, the employee filed a medical request for a peripheral nerve stimulator implant device, physical therapy, and warm pool aerobics as recommended by Dr. Schultz. The employer and insurer objected to the implant device. On February 23, 2000, the employer and insurer received an updated opinion from Dr. Schultz which indicated that he was recommending a implantation of a morphine pump instead of a nerve stimulator implant device. Dr. Schultz indicated that in view of the employee's long-standing history of chronic pain and disability, his long-term prognosis for complete recovery was poor. He noted that the employee's pain was reduced by the facet neuroablation procedures that were performed, but he continued to have ongoing pain and disability. Dr. Schultz determined that the employee was not a candidate for further injections, and that surgery was not indicated. Dr. Schultz also concluded that the employee could be managed with implantable pain control therapy and that the employee would experience reduced pain and improved functional ability with ongoing, specialized medical management.

On March 15, 2000, the employee underwent a medical evaluation with Dr. Loren Pilling. Dr. Pilling had the employee complete a Minnesota Multiphasic Personality Inventory (MMPI), which he interpreted as valid and showing marked elevation of hypochondriasis, depression and hysteria and lesser evaluations of psychasthenia and schizophrenia. Based upon his clinical examination and the results of the MMPI, Dr. Pilling concluded that the employee would not be a good candidate for the morphine pump or any other invasive procedure because of the severity of his mental illness since not only would the procedure most likely fail to assist the employee, but it might provoke a worsening of his mental illness.

A hearing was held on May 10, 2000. The issues at the hearing were whether a trial period of spinal infusion was reasonable and necessary, whether a permanent implantation of a morphine pump was reasonable and necessary, and whether both were consistent with the relevant treatment parameters under Minn. R. 5221.6210, subp. 6C(2). The compensation judge found that the employee suffers from chronic pain and is not a candidate for surgery other than implantation of a morphine pump or peripheral nerve stimulator, that conservative treatment modalities had been unsuccessful in relieving the employee's pain, and that a trial period of spinal medication infusion was reasonable and necessary and was consistent with Minn. R. 5221.6210, subp. 6C(2).<sup>1</sup> The compensation judge denied the employee's claim for a permanent implantation as premature. The employer and insurer appeal the compensation judge's determination that the trial period was consistent with Minn. R. 5221.6210, subp. 6C(2).

## 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 (1998). Substantial evidence supports the findings if, in the context of the entire record, "they are supported by evidence that a reasonable mind might accept as adequate." Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, 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

### Treatment Parameters

The employer and insurer argue that the compensation judge's award of a trial period of spinal medication infusion is contrary to the treatment parameters for treatment of thoracic back pain. Minn. R. 5221.6210, subp. 6C provides:

The surgical therapies in subitems (1) and (2) have very limited application and require a second opinion which confirms that the treatment is indicated and within the parameters listed, and a personality or psychosocial evaluation which indicates that the patient is likely to benefit from the treatment.

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<sup>1</sup> The Findings and Order lists the applicable rule as Minn. R. 5223.6210, subp. 6C. This is a typographical error. The applicable rule is Minn. R. 5221.6210, subp. 6C.

(1) Dorsal column stimulator is indicated for a patient who has neuropathic pain, and is not a candidate for any other invasive therapy, and has had a favorable response to a trial screening period.

(2) Morphine pump is indicated for a patient who has somatic pain, and is not a candidate for any other invasive therapy, and has had a favorable response to a trial screening period.

Minn. R. 5221.6210, subp. 7 states that chronic management of thoracic back pain must be provided according to the parameters of Minn. R. 5221.6600, which indicates that chronic pain management includes consideration of the patient's personality or psychological evaluation.

The employer and insurer argue that these treatment parameters require both a second opinion to confirm that the treatment is indicated and a personality or psychosocial evaluation which indicates that the patient is likely to benefit from the treatment, and that neither criteria were met in this case. The compensation judge disagreed, concluding that the treatment parameters do not contain prerequisites for the "trial screening period" which is required prior to implantation of a morphine pump. We agree with the compensation judge. Minn. R. 5221.6210, subp. 6C(2) states that a morphine pump is indicated for a patient who has somatic pain, is not a candidate for any other invasive therapy, and has had a favorable response to a trial screening period. Subp. 6C also requires a second opinion and a personality or psychosocial evaluation before implantation of a morphine pump, but does not indicate that these requirements are necessary prior to the "trial screening period." There are no prerequisites for the trial screening period in the treatment parameters.

The employer and insurer also cite Blackmon v. Twin City Mold Eng'g, No. [REDACTED SSN] (W.C.C.A. Oct. 11, 1996), where this court affirmed a compensation judge's denial of a request for implantation of a morphine pump based upon a medical opinion that the use of morphine was not advisable because of his history of chemical dependency. Given this court's standard of review, however, cases affirmed on substantial evidence grounds have little or no precedential value. See, e.g., Carlson v. Nabisco Brands, No. [REDACTED SSN] (W.C.C.A. May 2, 1994). Further, in Blackmon, the employee had undergone a trial screening with a "temporary epidural catheter for the purpose of continuous epidural morphine analgesia" before the hearing.

In this case, the compensation judge noted that the employee has suffered from chronic pain for over 13 years, and has undergone numerous forms of treatment through Dr. Schultz, including costotransverse joint injections, cervical and thoracic epidural injections, physical therapy, trigger point injections, cervical and thoracic facet joint blocks, diagnostic medial branch facet joint nerve blocks, transforaminal epidural steroid injections, costotransverse intraarticular joint injection, thoracic radiofrequency facet joint denervation and cervical radiofrequency neuroablation. In addition, the employee treated for 12 years prior to treating with Dr. Schultz without significant relief. The option of cervical surgery was explored but rejected,

and there is no other current surgical recommendation other than Dr. Schultz's proposal of a trial period of continuous spinal morphine delivery. If successful, Dr. Schultz would recommend implantation of a morphine pump. The compensation judge concluded that the morphine pump is a reasonable treatment option which should be explored, and since it was clear that the appropriateness of this form of treatment could not be fully evaluated until after completion of a trial screening, a trial screening was reasonable under the circumstances. Substantial evidence supports this determination, and we affirm.