GLORIANN FENSKE, Employee/Appellant, v. MCKECHNIE PLASTIC COMPONENTS, F/K/A MCCOURTNEY PLASTICS, INC., and STATE FUND MUT. INS. CO., Employer-Insurer, and MCKECHNIE PLASTIC COMPONENTS and INS. CO. OF PA/AIG CLAIM SERV., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
JANUARY 23, 2001

No. [REDACTED SSN]

HEADNOTES

PERMANENT PARTIAL DISABILITY - SUBSTANTIAL EVIDENCE; MEDICAL TREATMENT & EXPENSE - CHIROPRACTIC TREATMENT. Where it was supported by properly founded expert medical opinion, the compensation judge's determination that the employee's work injuries were temporary in nature and not causally related to the chiropractic treatment at issue was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

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

OPINION

WILLIAM R. PEDERSON, Judge

The employee appeals from the compensation judge's denial of permanent partial disability benefits and payment of chiropractic expenses. We affirm.

BACKGROUND

Gloriann Fenske [the employee] began working for McKechnie Plastic Components [the employer], formerly known as McCourtney Plastics, Inc., in May of 1983.[1] The employer is engaged in plastic injection molding, producing primarily medical, defense, and motor parts for commercial customers. In 1987, the employee worked as a final document inspector, a job requiring the employee to do a final inspection of products before shipping to a customer, either by naked eye or with the aid of a magnifying glass or microscope.

In April 1987, the employee noted the onset of neck and left upper extremity symptoms, which she associated with viewing parts under a microscope seven hours a day. On April 30, 1987, the employee awoke with a severe pain in her left hand, arm, shoulder, and neck.

[1] McCourtney Plastics, Inc., was apparently purchased by McKechnie Plastic Components in 1989.

She reported her symptoms to her supervisor and sought treatment with chiropractor Dr. Jeffrey Schramm. Dr. Schramm administered acupuncture, soft tissue manipulation, ultrasound, and electrical stimulation, which apparently resulted in gradual improvement in the employee's symptoms. Treatment was provided daily for a week and every other day for about two months after that, before it was tapered down to an as-needed basis. At the onset of this treatment, April 30, 1987, the employer was insured against workers' compensation liability by State Fund Mutual Insurance Company [State Fund], which paid one week of temporary total disability benefits for the period May 4 through May 8, 1997, together with an undisclosed amount of medical expense.

On October 1, 1987, the employee was seen by family practitioner Dr. Walter Krafft. The employee advised Dr. Krafft that she continued to be bothered by numbness in the second, third, and fourth fingers of her left hand. Dr. Krafft agreed with Dr. Schramm that the employee should avoid work with the microscope, and he referred her to a neurologist.

On October 28, 1987, the employee was examined by neurologist Dr. Felix Zwiebel. Dr. Zwiebel noted that the employee's neck and shoulder symptoms were mild and intermittent. He concluded that her sensory symptoms were suggestive of the possibility of left C6-7 cervical radiculopathy, but examination revealed few objective neurologic findings. He also questioned the benefit of additional chiropractic treatment in view of her lack of pain in her back and arm. He recommended that she continue working but that she avoid any work involving sustained posture of the neck in a flexion or extension position. Following receipt of Dr. Zwiebel's report, the employer denied the reasonableness of ongoing chiropractic treatment.[2]

When she returned to work on May 11, 1987, the employee returned to her regular job as a final document inspector. On January 1, 1988, the employee became a line inspector in order to avoid the microscope duties. This job involved inspection of parts as they came off the presses and required considerable walking, standing, and visual scrutiny. The employee subsequently testified that she was physically able to perform this job. On January 1, 1989, the employee became a final inspector, a position involving the auditing of parts before they left the building. The line inspector and final inspector positions did not require the employee to use a microscope. By this time, the employee still had numbness in her fingertips, but her arm was essentially nonsymptomatic. Again, in subsequent testimony, the employee acknowledged that she did not have any limitations on her ability to perform the final inspector job.

On April 27, 1989, the employee reported an injury to her neck from lifting boxes. The employer again referred her for medical treatment, and the employee also returned to see Dr. Schramm. The employee did not lose any time from work following this incident, and she later testified that she believed this to be one of the day-to-day and week-to-week exacerbations that she experienced working subsequent to the initial injury. The employee evidently sought no

[2] A dispute arose between the parties regarding chiropractic treatment provided between February 10, 1988, and May 4, 1988. In a Decision and Order issued on August 2, 1988, payment for the treatment was denied as not reasonably required to cure and relieve the effects of the injury.

treatment for her symptoms between November 1990, when she last saw Dr. Schramm, and November 1996, electing to self-treat with ice and ibuprofen during the interim.

The employee testified that her neck and upper extremity symptoms never completely resolved after the 1987 injury and that she continued to experience symptoms between 1989 and 1996, depending on her activity level. In 1996, the employee was again required to use a microscope as part of her inspection duties. On November 12, 1996,[3] the employee awoke with a severe headache and called in sick for work. She returned to Dr. Schramm and reported severe pain at the base of her skull, in her left hand and arm, in her shoulder, and on both sides of her neck. Dr. Schramm treated her with ultrasound, manipulation, and electrical muscle stimulation. Despite symptoms, the employee has continued working full time as a final inspector but has been able to avoid work with a microscope since November 1996. On November 12, 1996, the employer was insured against workers' compensation liability by the Insurance Company of Pennsylvania/AIG Claims Services [AIG], which paid for forty-six chiropractic treatments over twenty-nine weeks, through June 2, 1997.

On March 25, 1997, Dr. Schramm referred the employee for a cervical MRI scan. The radiologist reported that the scan showed evidence of degenerative disc disease at C6-7, with moderate to moderately severe disc space narrowing and dehydration, mild central stenosis without cord impingement, and mild to moderate left sided lateral spinal stenosis. The employee also had moderate lateral spinal stenosis at C5-6 on the left. In April 1997, there was an increase in the employee's workload, and she experienced more symptoms. The employee continued treating during this period with Dr. Schramm, and on April 29, 1997, the doctor restricted her to sedentary work, with no lifting over ten pounds, no microscope work, and no prolonged sitting or standing. These restrictions were to be effective until June 1, 1997. In subsequent testimony, the employee stated that after she completed each treatment with Dr. Schramm she would make an appointment for her next visit. She was not aware of any specific treatment plan by the chiropractor.

On May 1, 1997, the employee was seen in neurological consultation by Dr. Steven Noran. On examination, the doctor found tenderness over the paraspinous cervical muscles on the left side, with mild spasm also in the upper medial trapezius muscle on that side. He also noted some limitation in cervical range of motion. Dr. Noran diagnosed cervical radiculitis with underlying cervical disc injuries and a cervical myoligamentous sprain/strain. He concurred with the restrictions placed on the employee by the chiropractor and concluded that she was not a surgical candidate.

On October 31, 1997, the employee was examined at the request of the employer and AIG by orthopedic surgeon Dr. David Holte. On examination, Dr. Holte found that the employee had normal muscle tone in her trapezius muscles and had full extension and flexion with mild discomfort at the base of her head and upper cervical region. Left to right rotation was full without discomfort, and there was no radiculopathy into the employee's arms or shoulders,

[3] Throughout the judge's findings and order, as well as in appellant's brief, the injury date of November 12, 1996, is often referred to as December 11, 1996. We assume this is simply a typographical error and that the correct injury date is November 12, 1996.

although cervical compression did cause some pain at the base of her neck. Dr. Holte concluded that the employee had suffered a cervical strain with associated muscle tension headaches secondary to her work activity on November 12, 1996. The doctor also opined that the employee's residual left arm radiculopathy was not related to the incident of November 12, 1996, but was probably secondary to the remote injury in 1987. Given the employee's underlying condition, the doctor concurred with the ten-pound lifting restriction and with the recommendation that she avoid use of a microscope to prevent further exacerbations. However, he did not believe that the restrictions were necessitated by the episode of November 12, 1996.

In an office note of August 11, 1998, Dr. Schramm noted that the employee continued to work with permanent lifting restrictions and a recommendation to avoid microscope work. In a report dated December 12, 1998, he related the employee's injuries to her work at the employer. He found that the employee had neck and upper back pain, headaches, spasms, and upper extremity neuritis, greater on the right than the left. The doctor opined that chiropractic care had helped the employee to function at work. He opined that the employee had sustained a permanent injury as a result of her work-related responsibilities with the employer. He assigned a 10% whole body permanent partial impairment rating to the cervical spine, pursuant to Minn. R. 5223.0370, subp. 3C(2), and a 2.5% whole body permanent partial impairment rating to the thoracic spine, pursuant to Minn. R. 5223.0380, subp. 3B.

On January 19, 1999, the employee filed a claim petition seeking payment of benefits for a 12.5% permanent partial disability, as well as payment of the outstanding balance on Dr. Schramm's chiropractic bill, as a result of the injury of November 12, 1996. The petition was subsequently amended to include State Fund Mutual Insurance Company [State Fund] for the April 30, 1987 injury. The employer and both insurers subsequently admitted that the employee sustained temporary injuries to her cervical spine as a result of her work activities, but they both denied liability for any permanent partial disability and chiropractic treatment beyond June 2, 1997.

On April 20, 1999, the employer and AIG arranged for an evaluation by orthopedist Dr. Mark Engasser. Dr. Engasser obtained a history from the employee and reviewed the pertinent medical records. On examination, Dr. Engasser found a full range of motion without spasm or tightness. He found no sensory loss in either upper extremity. Dr. Engasser also reviewed the MRI scan performed on March 25, 1997. He noted that the scan did show degenerative disc disease at C6-7 but no evidence of any herniation. Dr. Engasser concluded that the employee sustained a temporary injury to her cervical spine in 1996. He opined that the employee's underlying pathologic condition predated any work activity and was a result of the degenerative process versus the nature of her work. He indicated that the employee did not sustain any permanent partial disability to the body as a whole due to her neck or thoracic spine condition. From a prophylactic standpoint, he also recommended that she avoid microscope work.

The employee's claims came on for hearing before a compensation judge at the Office of Administrative Hearing on March 3, 2000. Prior to trial, the employee withdrew her claim for permanent partial disability benefits related to the thoracic spine. In her Findings of Fact, Conclusions of Law and Order issued May 5, 2000, the compensation judge determined that the

injuries of April 30, 1987, and November 12, 1996, resulted in temporary cervical spine strains/sprains. She determined that the employee had a zero percent permanent partial disability and that any permanent partial disability was not causally related to the claimed injuries. She further denied the outstanding chiropractic bill, concluding that the treatment was not causally related to the claimed injuries. The employee appeals.

STANDARD OF REVIEW

In reviewing cases on appeal, the Workers' Compensation Court of Appeals must determine whether "the findings of fact and order [are] clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1 (1992). Substantial evidence supports the findings if, in the context of the entire record, "they are supported by evidence that a reasonable mind might accept as adequate." Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, "[f]actfindings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). Findings of fact should not be disturbed, even though the reviewing court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." Id.

DECISION

The compensation judge determined that the employee's work injuries of April 30, 1987, and November 12, 1996, were temporary strains/sprains of the cervical spine. So finding, the judge concluded that any permanent partial disability claimed by the employee was not causally related to either injury. She further determined that chiropractic treatment beyond that already paid by the employer and AIG was not causally related to the work injuries. In support of her conclusions, the judge accepted Dr. Engasser's opinion that the employee's condition was a result of a developmental process, not her work activities. She stated that, "Dr. Engasser's evaluation was the more persuasive and credible of the expert opinions offered in this matter." On appeal, the employee argues that the compensation judge either mistakenly overlooked or erroneously disregarded the causation opinions of Dr. Schramm. Specifically, she argues that the judge's rejection of Dr. Schramm's opinions, which were based on a thorough understanding of the employee's work duties and treatment of the employee since 1987, was manifestly contrary to the weight of the evidence. We do not agree.

We find no evidence that the compensation judge overlooked or omitted the causation opinions of Dr. Schramm in arriving at her decision. Dr. Schramm's opinions as to causation and permanency are noted in detail at "Finding 15." In her memorandum, the judge commented on the opinions of the several doctors and provided her rationale for accepting the opinions of Dr. Engasser. 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, 37 W.C.D. 364 (Minn.

1985). In this case, the judge felt that Dr. Engasser had the most complete history of the employee's complaints and most thoroughly explained his opinions. It is not the role of the reviewing court to make its own evaluation of the credibility or probative value of conflicting testimony or to choose from among possible inferences different from those drawn by the compensation judge. Krotzer v. Browing-Ferris Woodlake Sanitation, 459 N.W.2d 509, 43 W.C.D. 254 (Minn. 1990). "The point is not whether [the reviewing court] might have viewed the evidence differently, but whether the findings of the compensation judge are supported by evidence that a reasonable mind might accept as adequate." Redgate v. Sroga's Standard Serv., 421 N.W.2d 729, 734, 40 W.C.D. 948, 957 (Minn. 1988). Because the conclusion of the compensation judge was not unreasonable, we affirm. Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 37 W.C.D. 235 (Minn. 1984).

In her brief, the employee also argues that the judge committed legal error by finding that the employee did not meet her burden of proof by a preponderance of the evidence and by finding that Dr. Schramm did not have an adequate history to support his conclusions. The judge's decision contains no such findings. The judge's findings and order are based exclusively on her resolution of the conflict in expert testimony. The employee is presumably referring to the judge's memorandum, in which the judge states, "The employee has not shown by a preponderance of the evidence that she has a permanent partial disability as a result of the work injuries." The employee essentially argues that a preponderance of the evidence does support her claim and that the judge's conclusion to the contrary is unsupported by substantial evidence. On factual matters such as this one, however, although we are not to look only at the evidence that supports the compensation judge's findings, see Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239, it is the task of this court not to assess the substantiality of evidence that would have supported a contrary decision but to assess the substantiality of evidence supporting the decision of the judge. As we have indicated above in our standard of review, supportive evidence is substantial if it is, in light of the record as a whole, "evidence that a reasonable mind might accept as adequate," granting "due weight to the opportunity of the Compensation Judge to evaluate the credibility of witnesses appearing before the judge." Id., 358 N.W.2d at 59-60, 37 W.C.D. at 239-40. Moreover, as we have indicated above, "where the evidence is conflicting or more than one inference may reasonably be drawn from the evidence, the findings of the Compensation Judge are to be upheld." Id., 358 N.W.2d at 60, 37 W.C.D. at 240. Concluding that the judge's decision in this case was not unreasonable and is adequately supported by the evidence, we affirm.

The employee also appealed from the judge's denial of payment of the outstanding chiropractic bill relating to the treatment provided by Dr. Schramm after June 2, 1997. The compensation judge also concluded that the chiropractic care in question was not causally related to the injuries. This determination is consistent with her conclusion that the work injuries were temporary in nature. Because we have affirmed the judge's determination on the nature and extent of the injuries, we also affirm her determination that the care was not causally related to the injuries. Therefore, we will not address the employee's arguments relative to the reasonableness and necessity of the treatment at issue or the application of the treatment parameters. Accordingly, we affirm the judge's denial of chiropractic care.