

STEVEN FOLEY, Employee, v. TYLER LTD. P'SHIP and ST. PAUL FIRE & MARINE INS. CO., Employer-Insurer/Appellants, and SPECIAL COMP. FUND.

WORKERS' COMPENSATION COURT OF APPEALS
JUNE 13, 2001

No. [REDACTED SSN]

HEADNOTES

CREDITS & OFFSETS - SUBSTANTIAL EVIDENCE; STATUTES CONSTRUED - MINN. STAT. § 176.101, SUBD. 4. Where the employee's VA disability pension was occasioned by a service-connected injury in 1982 and the employee's permanent total disability benefits were occasioned by a work-related injury in 1988, the compensation judge's denial of an offset and a credit against the VA benefits was not clearly erroneous and unsupported by substantial evidence, notwithstanding the fact that the VA benefits were substantially increased subsequent to and apparently in light of the employee's work-related injury.

Affirmed.

Determined by Pederson, J., Wheeler, C.J., and Wilson, J.
Compensation Judge: Ronald E. Erickson

OPINION

WILLIAM R. PEDERSON, Judge

The employer and insurer appeal from the compensation judge's determination that the employee's Veterans' Administration disability benefits were not occasioned by the same injury or injuries as those that gave rise to his permanent total disability benefits and so may not be offset against those benefits. We affirm.

BACKGROUND

In November of 1982, Steven Foley sustained what was initially diagnosed as a lumbar sprain injury to his back in the course of his military service at Randolph Air Force Base in Texas. Mr. Foley was prescribed medication and physical therapy and eventually, in April of 1983, was discharged from treatment. In March and September of the following year, Mr. Foley was seen at Air Force clinics for complaints of numbness in his left leg, and on October 4, 1984, he underwent x-rays of his low back and left leg, which revealed no significant leg abnormalities, normal spine alignment, mild disc space narrowing at L4-5, multilevel mild Schmorl's nodes, and minimal spurring at L4-5 and L5-S1. These lumbar findings were concluded to constitute very minimal degenerative changes. On February 15, 1985, Mr. Foley was referred by Air Force physicians for a lumbar CT scan, which was read to be normal, with no evidence of either spinal stenosis or disc herniation or protrusion, although the Schmorl's node configuration was noted at

L5 and spina bifida occulta was diagnosed at S1. Mr. Foley was honorably discharged from the military on February 28, 1988, and, in March 1988, he applied to the Veterans Administration [VA] for disability compensation or a pension. Mr. Foley's application was based on alleged left leg and kidney problems and did not include a claim for disability to Mr. Foley's back. On August 25, 1988, Mr. Foley's application for VA benefits was denied, on grounds that his only demonstrated service-connected disability, some scarring, was less than 10% disabling. Mr. Foley submitted a notice of disagreement with this initial decision.

In September of 1988, Mr. Foley became employed as a machinist with Tyler Limited Partnership, and on December 28, 1988, while so employed, he sustained an injury to his lumbar spine in the course of his work. Mr. Foley [the employee] was thirty-six years old on that date and was earning a weekly wage of \$438.63. Following the injury, the employee received treatment from a chiropractor for what was described as a lower back sprain, and Tyler Limited Partnership [the employer] and its insurer admitted liability for a work-related injury and commenced payment of benefits.

On April 25, 1989, the employee underwent another CT scan, which was read to reveal "a high attenuation area at the L5-S1 level on the left side extending laterally at and above the disc space into the lateral recess and neural foramina," which the radiologist believed to be "most consistent with a lateral herniated nucleus pulpos[us]." About a year later, on April 9, 1990, the VA issued a Rating Decision awarding a disability rating of 20% for a back disability. This was subsequently increased to 40% in 1991, retroactive to February 28, 1988, the employee's date of separation from military service.

On December 16, 1992, the employee and the employer and insurer entered into a Stipulation for Settlement, pursuant to which the employee was paid \$10,665.57, representing 56.4 weeks of economic recovery compensation, in full, final, and complete close-out of "any and all claims for economic recovery compensation to the extent of 14% permanent partial disability [related to] the lumbar spine." In addition, the employer and insurer agreed to provide all reasonable and necessary medical treatments for the employee's "lumbar back injury of December 28, 1988." The parties also agreed that, if the employee were to receive Social Security disability benefits, all payments that the employee had received previously would be characterized as permanent total disability benefits, that the date by which \$25,000.00 in such benefits had been paid was September 1, 1991, and that the compensation for the 14% whole body disability would be re-designated as impairment compensation.

On February 10, 1994, the employee was found to have been disabled from work within the meaning of the Social Security Act as of March 15, 1990, with benefits payable from that date. Shortly thereafter, the terms of the parties' December 1992 Stipulation for Settlement were put into effect--the employee was paid the equivalent of impairment compensation for a permanent partial disability to 14% of the body as a whole, and payment of permanent total disability benefits was commenced. The parties subsequently stipulated to an overpayment of benefits due to errors in the calculation of the Social Security offset, and a mechanism to correct the overpayment was established.

In March of 1996, the employee's VA disability rating was increased to 60%, again retroactive to February 1988. Some three years later, on September 16, 1999, the employer and insurer filed a Petition for Determination of Overpayment and Credit Pursuant to Minn. Stat. § 176.179, and on May 31, 2000, they amended that petition, with the Special Compensation Fund [the Fund] now joined as a party. The amended petition alleged that, pursuant to their December 16, 1992, Stipulation for Settlement with the employee and to Minn. Stat. § 176.101, subd. 4, the employer and insurer were entitled to an offset based on the employee's receipt of his Social Security and VA disability benefits and to a credit against future disability benefits payable to the employee. The employer and insurer contended that the employee had been overpaid benefits for permanent total disability due to various mistakes and errors, including a failure to offset with respect to the employee's receipt of VA disability benefits.

The matter came on for hearing on August 16, 2000. At hearing, the employee contended in part (1) that his VA benefits were not products of a "government disability benefit program" within the meaning of Minn. Stat. § 176.101, subd. 4, which provides for the offset here at issue; (2) that his VA benefits were not "occasioned by the same injury or injuries" as those giving rise to his workers' compensation benefits, as is also required for the offset; and (3) that, even if his VA benefits were paid under such a "government disability benefit program" and were "occasioned by the same injury or injuries," the VA benefits were in actuality the equivalent of permanent partial disability benefits and so were not subject to the offset for permanent total disability benefits. By Findings and Order filed October 27, 2000, the compensation judge concluded in part that the VA benefits being paid to the employee did constitute "disability benefits being paid by any government disability benefit program" for purposes of Minn. Stat. § 176.101, subd. 4, but he found also that those benefits had not been shown to have been occasioned by the same injury or injuries as those that had given rise to the employee's workers' compensation benefits. The employer and insurer's petition for a credit based on an offset for the VA benefits that the employee had received was, therefore, not allowed. The employer and insurer appeal.

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

Minnesota law allows an employer and insurer to offset against their liability for permanent total disability benefits the amount of “any disability benefits being paid by any government disability benefit program if the disability benefits are occasioned by the same injury or injuries which give rise to payments under this subdivision.” Minn. Stat. § 176.101, subd. 4 (emphasis added). The compensation judge concluded that the VA payments made to the employee in this case did constitute “any disability benefits being paid by any government disability program.”¹ But he further determined that those benefits had not been shown to be benefits “occasioned by the same injury or injuries” as those giving rise to the employee’s workers’ compensation benefits. The judge concluded that the employee’s VA benefits were “being paid for thoracic and lumbar degenerative disc disease and osteoarthritis,” implying in his Memorandum that the essential nature of the employee’s work injury was a herniated disc. Because the employee was receiving VA and workers’ compensation benefits for different conditions, the judge denied the insurer’s request for an offset. The employer and insurer contend that, without the employee’s work injury of December 28, 1988, and its sequelae, as documented in the medical records, the employee would not have been successful in obtaining VA benefits. Under these circumstances, they argue, the VA and workers’ compensation benefits were occasioned by the same injury, that of December 28, 1988, and that the judge’s decision was therefore clearly erroneous and unsupported by substantial evidence. We agree with the compensation judge, that the employee’s VA benefits were not occasioned by the same injury or injuries that gave rise to the employee’s workers’ compensation benefits.

In Hill v. Ed Lutz Constr., 39 W.C.D. 111 (W.C.C.A. 1986), this court addressed the issue of whether an employee’s social security disability benefits and workers’ compensation benefits were occasioned by the same injury. The court concluded that it was necessary for the compensation judge to examine the social security records in order to determine the basis of the social security benefits award. The compensation judge’s denial of the offset was affirmed by this court, based on the judge’s factual determination that the employee’s award of social security benefits was based on a nonwork-related kidney condition and not on the employee’s work-related injury.

In the instant case, the compensation judge concluded that, in order to resolve the legal issue, it was necessary for him to review the VA records to determine the basis of the VA’s award of benefits, just as it was necessary for the judge in Hill to review the social security records. Based on that review, the judge determined that the VA and the workers’ compensation insurer were paying for different conditions. Contrary to the parallel in Hill, however, the medical basis underlying the employee’s award of VA benefits is in this case, we believe, irrelevant. The issue is whether the

¹ This finding of the compensation judge was not appealed. See also Minn. R. 5222.0100, subp. 4, wherein “government disability benefits” are defined as

benefits paid by any government disability program within the meaning of *Minnesota Statutes*, section 176.101, subdivision 4. It includes, but is not limited to, social security disability benefits, old age and survivor benefits, fire relief association benefits, police relief association benefits, and public employee’s retirement benefits.

employee's entitlement to VA benefits was occasioned by the same injury or injuries that gave rise to his workers' compensation benefits. We think the answer to that question is clearly, no.

The employee's entitlement to his VA disability pension is based on his service-connected injury while in the Air Force in 1982. Title 38, section 1131, of the United States Code establishes the basic entitlement and provides in part "[f]or disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty . . . , the United States will pay" In the absence of the employee's service-connected injury in 1982, the employee would not be eligible for a VA disability benefit. Unlike social security disability benefits, which may be premised on a work-related injury, VA benefits require an injury "in the line of duty." The employee's entitlement to workers' compensation benefits is based on his injury with the employer herein on December 28, 1988. While both programs are paying benefits for a disability to the employee's back, and while there is undoubtedly some overlapping of the disability, the benefits paid to the employee here by the two programs arise from two separate and distinct injuries. Under the facts presented here, the benefits paid to the employee were not occasioned by the same injury or injuries as required by the statute. Accordingly, on the foregoing basis, the decision of the compensation judge is affirmed. Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239.