

JOHN FOWLER, JR., Employee, v. CITY OF ST. PAUL, SELF-INSURED/RISK MGMT. DIV.,
Employer/Appellant.

WORKERS' COMPENSATION COURT OF APPEALS
JUNE 27, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL CONTRIBUTING CAUSE. Substantial evidence, including expert opinion, supported the judge's decision that the employee's work-related knee injuries substantially contributed to the employee's need for bilateral total knee replacement surgery.

Affirmed.

Wilson, J., Rykken, J., and Pederson, J.
Compensation Judge: Gary M. Hall

OPINION

DEBRA A. WILSON, Judge

The self-insured employer appeals from the compensation judge's decision that the employee's need for bilateral knee replacement surgery is causally related to the employee's work injuries. We affirm.

BACKGROUND

The employee began working for the City of St. Paul [the employer] water department in 1959, employed initially as a watershed worker, then a ditch digger, and then finally a water serviceman, performing such job activities as repairing broken water mains and installing hydrants. The work was physically strenuous, and much of it was done in wet ditches or trenches, entailing the risk of cave-ins. In about 1961, the employee began working at a second job as a security guard for another employer, and he continued working in that capacity throughout his tenure with the employer.

On July 25, 1977, the employee consulted Dr. Marlen Strefling for complaints of left knee pain, indicating that he could recall no specific injury but that he worked in water and muddy areas and "sometimes has to pull quite hard on the lower extremities, for example, while walking." Dr. Strefling suspected a tear in the medial meniscus and referred the employee for an arthrogram, which was viewed as consistent with the suspected tear. Treatment notes indicate that the employee was reluctant to consider surgery at the time and "would simply like to wait."

Subsequently, the employee sustained several specific work-related injuries to one or both knees. First Reports of Injury and employer accident reports indicated that the employee slipped and fell on his left knee on July 28, 1978, and, later that year, on November 8, 1978, bruised that knee when struck by a falling water main "sleeve." Other incidents reflected in First Reports of Injury include a September 4, 1980, cave-in, in which the employee twisted and bruised both knees; a June 8, 1983, cave-in, in which the employee twisted his right knee; and a November 19, 1984, accident in which the employee injured his right knee, wrist, ankle, elbow, and shoulder when he fell while descending a ladder that was missing a rung. The employee did not seek treatment after all of the incidents noted in the First Reports of Injury; however, after the November 1984 accident, he received medical care and was off work for several weeks. The employee testified that he injured both knees in that incident but that the right knee was worse; contemporaneous records do not mention left knee symptoms or treatment.

On July 31, 1987, the employee underwent right knee surgery in the nature of a partial lateral meniscectomy. He was off work again for several weeks but was then able to return to his job. In a September 1987 report, Dr. Strefling wrote that the employee's prognosis was good but that, "because of the degenerative arthritis found, we still have to be somewhat guarded in terms of whether or not he might require additional surgical procedures in the future." In January of 1988, the employer paid the employee benefits for a 2% whole body impairment related to his right knee condition.

On October 30, 1990, the employee was involved in another work accident when the banks of a trench caved in on his legs, forcing his knees against a pipe. The employee testified that it took 15 to 20 minutes for a coworker to dig him out and that his knee pain was so severe that he wanted to cry. He sought treatment from Dr. Strefling about a week later and was prescribed medication and soft supports for both knees. However, he continued working for the employer, without any formal restrictions relative to his knees, until his retirement in September of 1991. In the meantime, in a report dated May 28, 1991, Dr. Strefling indicated that MRI findings suggested a medial meniscus tear, as well as osteoarthritis, in the employee's left knee, which might necessitate arthroscopic surgery, and that, "based on the arthritic changes anticipated [in] both knees," current permanency ratings would "fall far short of what the actual disability is in either knee." A few months later, in a September 9, 1991, report, Dr. Strefling clarified that he was concerned about "the arthritic process [which] even at the present time is clearly present in the medial compartments of [the employee's] knees" and which, if the employee's symptoms increased, might necessitate total knee replacement. "Given this eventuality certainly the diagnosis of permanency . . . increases significantly."

In January of 1992, the parties entered into a stipulation for settlement, pursuant to which the employee was compensated for a 2% whole body impairment related to his left knee condition. That settlement also covered permanency for a low back injury not at issue in these proceedings. In the settlement agreement, the employer agreed that the employee had sustained a 2% whole body impairment, relative to his left knee. An award on stipulation was issued on February 10, 1992.

The employee continued to work as a security guard following his retirement from the employer in 1991. He testified that, although the security work was light or sedentary, his knee symptoms continued to increase over time. In 1999, Dr. John Wilson¹ recommended bilateral knee replacement surgery when treatment with Synvisc injections proved unsuccessful. Dr. Wilson later reported that the employee's need for total knee replacement surgery was causally related to the employee's work injuries. Dr. Mark Thomas, the employer's independent examiner, disagreed, reporting that the employee's knee condition had been aggravated by the employee's longstanding obesity and that the employee's work injuries "played no significant role in the progression of his degenerative arthritis."

The matter came on for hearing on December 15, 2000, for resolution of the employee's request for bilateral knee replacement surgery. The sole issue was medical causation. In a decision issued on January 23, 2001, the compensation judge ruled in the employee's favor, ordering the employer to pay for the requested procedure. The employer 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

In findings relevant to this appeal, the compensation judge determined as follows:

3. The employee's work activities while employed for more than 30 years by the City of St. Paul were sufficiently strenuous to cause the severe bilateral knee condition he has today.

* * *

¹ Dr. Wilson took over the employee's care when Dr. Strefling retired.

5. The lack of significant time loss and minimal medical treatment related to the above incidents are due to the employee's strong work ethic and stoic personality rather than a measure of the insignificance of the medical conditions.

6. The September 4, 1980, November 19, 1984, and October 30, 1990 work injuries are each substantial contributing factors in the employee's current need for bilateral knee replacement.

7. The causation opinions of Marlen Strefling, M.D., and Dr. Wilson are more persuasive than that of Mark Thomas, M.D. in his June 14, 2000 and December 12, 2000 reports.

* * *

13. The employee's testimony was credible regarding his work activities and the significance of the injuries over time.^[2]

On appeal, the employer argues in part that the judge erred in finding a Gillette injury,³ as reflected in Finding 3, in that no Gillette injury was claimed or litigated. We concede that the employee made no claim of injury caused by repetitive minute trauma. It seems probable, however, that Finding 3 simply represents an acknowledgment by the judge of the demanding and somewhat hazardous nature of the employee's job. More importantly, in his ultimate causation finding, Finding 6, the judge tied the employee's need for surgery to specific injuries, not to minute trauma caused by work activities. Under these circumstances, we see no need to address this argument further, except to note that Finding 3 should not be taken as a Gillette injury determination.

The employer also contends that the judge's credibility finding is unsupported by the record because the employee's testimony on several points was inconsistent. However, credibility assessments are for the judge to make, and, generally, a judge is entitled to accept all or any part of a witness's testimony. See, e.g., Proffit v. Minnesota Harvest Apple Orchard, 48 W.C.D. 215, 219-20 (W.C.C.A. 1992), quoting City of Minnetonka v. Carlson, 298 N.W.2d

² The compensation judge also determined that the employee's testimony about some journals kept by him was confused but not deceptive regarding which journals were thrown away and when. The employee testified that the journals contained information as to what kind of work he was doing on a daily basis. He was able to produce only a partial journal from 1984, and his testimony as to what happened to the other journals is, as the judge noted, confusing. The employee's wife testified that she threw them away, after the employee's retirement, during a remodeling project.

³ See Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 32 W.C.D. 105 (1960).

763, 767 (Minn. 1980). Inconsistencies in the employee's testimony notwithstanding, we find no reversible error in the judge's credibility determination here.

The employer further argues that the judge failed to comply with Minn. Stat. § 176.371,⁴ because the judge did not explain why he found the causation opinions of Drs. Strefling and Wilson to be more persuasive than the opinion of Dr. Thomas, and because the judge's findings do not demonstrate the judge's reasoning. We are not persuaded. The judge's rationale is amply evident from his decision as a whole, and nothing in Minn. Stat. § 176.371 necessarily mandates any explanation by the judge as to his basis for choosing one expert over another. Case law authority⁵ cited by the employer relative to this issue is not dispositive because, in the present case, the judge's findings and memorandum provide sufficient basis for our review, and the judge did not neglect to rule on any claims or defenses presented by the parties.

Finally, the employer argues that the judge's causation decision is not supported by substantial evidence in light of the minor nature of the work injuries, the employee's lack of treatment after most of the injuries, and the fact that Dr. Strefling's opinion, accepted by the judge, does not directly link the employee's degenerative arthritis to those work injuries. Furthermore, according to the employer, Dr. Wilson's opinion, also accepted by the judge, "does not indicate

⁴ Minn. Stat. § 176.371 provides as follows:

The compensation judge to whom a petition has been assigned for hearing, shall hear all competent, relevant evidence produced at the hearing. All questions of fact and law submitted to a compensation judge at the hearing shall be disposed of and the judge's decision shall be filed with the commissioner, except where expedited procedures require a shorter time, within 60 days after the submission, unless sickness or casualty prevents a timely filing, or the chief administrative law judge extends the time for good cause. The compensation judge's decision shall include a determination of all contested issues of fact and law and an award or disallowance of compensation or other order as the pleadings, evidence, this chapter and rule require. A compensation judge's decision shall include a memorandum only if necessary to delineate the reasons for the decision or to discuss the credibility of witnesses. A memorandum shall not contain a recitation of the evidence presented at the hearing but shall be limited to the compensation judge's basis for the decision.

⁵ Olson v. Menasha Corp., 59 W.C.D. 14 (W.C.C.A. 1998); Fox v. Micro Machine, Inc., slip op. (W.C.C.A. May 1, 1986). In cases involving complex legal issues, a detailed explanation by the judge is sometimes necessary to allow for adequate appellate review. See LaBrocca v. Children's Health Care, slip op. (W.C.C.A. Mar. 4, 1997). However, the present case involves purely factual issues that are not particularly complicated.

what left knee injury is a substantial contributing cause of the need for left knee replacement surgery” and fails to set forth any rationale for his opinion.

The compensation judge’s decision to discount the seemingly minor nature of some of the employee’s work injuries can be explained by evidence indicating that the employee did not like to complain, seek treatment, or take time off work unless his injuries were severe. As for the judge’s decision to rely on the opinions of the employee’s treating physicians, we would point out that Dr. Strefling’s reports clearly suggest that he viewed the employee’s degenerative arthritis as work-related, in that the doctor indicated that the employee’s permanency ratings would increase substantially should the employee go on to require knee replacement surgery. Moreover, contrary to the employer’s allegation, Dr. Wilson did offer some explanation for his causation opinion, writing as follows:

[I]t is my impression in light of the established work-related nature of his problem of earlier years that there is a distinct causal relationship between his work injuries and his need to have knee replacements at this relatively young age of 67; he has continued to work at the same physical job and has reported having no new injuries.

While further explanation might have been helpful, Dr. Wilson was a treating physician, and we cannot conclude, as a matter of law, that the judge erred in relying on his opinion regarding causation of the employee’s condition.

The employee sustained several injuries to one or both knees over the years of his employment by the employer, several of the injuries being twisting injuries. He received intermittent treatment for knee pain after 1977. That his symptoms worsened over time, ultimately necessitating total knee replacement surgery, was essentially predicted by Dr. Strefling as early as 1991. It was not unreasonable for the judge to choose the opinions of the employee’s treating physicians over the opinion of the employer’s expert examiner, see Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985), and those opinions, in conjunction with the remainder of the record, adequately support the judge’s decision requiring the employer to pay for the proposed bilateral knee replacement surgery. We therefore affirm that decision.