CHRISTOPHER GERMAN, Employee, v. IOWA BEEF PRODUCERS, SELF-INSURED/IBP, Employer/Appellant, and BLUE CROSS/BLUE SHIELD OF MINN., Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
JULY 9, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL CONTRIBUTING CAUSE. Where it was supported by the testimony of the employee and by expert medical opinion, the compensation judge's conclusion that the employee's work injury was a substantial contributing "aggravating accelerating cause" of the employee's Charcot's syndrome was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

Determined by Pederson, J., Wilson, J., and Johnson, J.
Compensation Judge: Bernard Dinner

OPINION

WILLIAM R. PEDERSON, Judge

The self-insured employer appeals from the compensation judge's determination that the employee's work-related right foot injury substantially contributed to the development of a Charcot's joint. We affirm.

BACKGROUND

Christopher German sustained an admitted work-related injury to his right foot on January 30, 1997, while working for Iowa Beef Producers [the employer], which was self-insured against workers' compensation liability. Mr. German [the employee] was twenty-six years old at the time and had worked for the employer since July 1993. The employee worked in the employer's plasma room, where he was responsible for processing plasma from the blood of cows.

The employee's job in the plasma room included the tearing down, cleaning, and reassembling of plasma separating machines. In order to perform this job, the employee was required to use a large wrench that was shaped like a tennis racket, with a circular head at the top, measuring approximately one and a half feet in diameter. On January 30, 1997, after the employee had tightened a large nut that fit on the top of the plasma separator, the wrench slipped from the employee's hand and landed on the top mid portion of his right foot. In his later testimony, the employee described the wrench as being made of quarter-inch steel, and he estimated its weight to

be between forty and forty-five pounds.[1] The employee testified that he felt a sharp burning pain in his right foot at the time of the impact. He reported the incident to the plant nurse the following day, and she recommended an ace bandage, Advil, and ice.

The employee's medical and injury history before the January 30, 1997, incident at work is significant. He had been an insulin-dependent diabetic since age seven or eight. The medical records reflect that the employee's diabetes had been poorly controlled and that he had been non-compliant with medical recommendations for management of this condition. The records also reflect a history of delayed healing following a fractured finger in 1994 and symptoms of diabetic neuropathy in 1996. In addition, on December 29, 1996, about a month before his work injury, the employee had been driving an automobile at high speed when it hit a patch of ice. The employee lost control of the vehicle, and it rolled over three times before coming to a rest. The employee was taken to the Luverne Community Hospital, where he was treated for multiple contusions. The employee's chief complaints at that time were anterior chest pain and pain in the right leg. According to a medical record summary later prepared by the employer's medical consultant, Dr. John Kuhnlein, the employee saw endocrinologist Dr. John Jerstad on January 8, 1997.[2] A medical note on that date, possibly by a nurse, indicates that the employee was complaining at that time of right foot pain and swelling. In his testimony at hearing, the employee admitted to having had some difficulty with his right foot prior to January 30, 1997, but not to any pain in the mid portion of the foot. No x-rays of the right foot were taken prior to the work injury of January 30, 1997.

On February 14, 1997, the employee obtained an evaluation of his right foot by Dr. Greg Kuiper at the Luverne Medical Center. Dr. Kuiper noted that the employee was most tender over the second and third proximal metatarsals and had mild soft tissue swelling in the dorsal area of the foot. Neurologically, deep tendon reflexes were absent in the ankle, which the doctor reported to be consistent with diabetic peripheral neuropathy. The employee acknowledged some chronic numbness of the toes. An x-ray of the foot revealed a fracture of the distal right fourth metatarsal. Dr. Kuiper also observed on the x-ray some callus formation and estimated that the fracture was more than two weeks old. The doctor expressed concern that the employee might have a Charcot's joint[3] in the foot, with the right fourth metatarsal fracture being essentially asymptomatic due to diabetic peripheral neuropathy.

The employee continued to treat with Dr. Kuiper, who noted less swelling over the site of the metatarsal fracture but persistent swelling over the dorsal aspect of the foot overlying

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[1] At trial, the parties disputed the weight of the wrench but stipulated that it weighed between 21.7 pounds and 45 pounds.

[2] Dr. Jerstad's records were not offered as an exhibit but were referenced by Dr. Kuhnlein in a letter of February 18, 1998, and by Dr. D. G. MacRandall in a letter of March 13, 1998.

[3] "A joint damaged by injuries that go unnoticed because of a neuropathy (loss of sensation) affecting the joint." The American Medical Association Encyclopedia of Medicine 258 (1st ed. 1989).

the second, third, and fourth metatarsals. On February 24, 1997, the employee was taken off work by Dr. Kuiper, and, at an appointment two weeks later, was advised to elevate the right foot at all times. On March 18, 1997, Dr. Kuiper added a diagnosis of early Charcot foot, secondary to diabetic peripheral neuropathy, and applied a short leg fiberglass walking cast. The cast was removed two weeks later, and, although there was still some swelling of the dorsal right foot, the foot was no longer inflamed or tender to palpation. The doctor concluded the employee's right fourth metatarsal fracture had resolved, but, because of recurrent swelling in the dorsal areas of the foot with increased activity, Dr. Kuiper made a referral to orthopedist Dr. D. G. MacRandall.

The employee began treating with Dr. MacRandall on April 10, 1997. He advised the doctor of the injury at work on January 30, 1997, and described pain on the dorsum of the right foot with ambulation. Dr. MacRandall diagnosed an early onset of Charcot arthropathy of the right forefoot aggravated by the January 30, 1997, injury. On May 22, 1997, the employee reported to Dr. MacRandall that he was no longer having any pain and was doing fairly well. The doctor stressed to the employee, however, the importance of checking his foot on a daily basis, because, "[w]ith his diabetic neuropathy and the like, he is going to be having an increased risk of developing more Charcot changes in his foot with time."

On July 15, 1997, the employee sought a second opinion on his foot condition with podiatrist Dr. David Neese. The employee advised Dr. Neese that he had had swelling and increasing instability in his foot since his injury of January 30, 1997. Dr. Neese obtained x-rays that showed severe joint disruption to the Lisfrancs region, complete compaction with sclerosis of the first cuneiform, complete dislocation with fragmentation of the second metatarsal cuneiform, and loose body formation at the medial naviculocuneiform. Dr. Neese diagnosed Charcot joint arthropathy.

On August 14, 1997, the employee returned to Dr. MacRandall with complaints of a worsening of his right foot symptoms. Dr. MacRandall now diagnosed severe Charcot arthropathy of the right mid foot and referred the employee to orthopedist Dr. Harold Kitaoka at the Mayo Clinic.

Dr. Kitaoka examined the employee on January 20, 1998, and diagnosed neuropathic fractures of the right mid foot and a history of fourth metatarsal fracture. On January 22, 1998, the employee was seen by Dr. Kitaoka's associate, Dr. David Haaland. Dr. Haaland obtained a history of the incident of January 30, 1997, performed a physical examination, and reviewed x-rays. The doctor diagnosed a traumatic incident involving the right foot, with disruption of the Lisfranc's joint and the naviculocuneiform joint in a Charcot's manner. The doctor reported, "It must be mentioned that this process that has occurred secondary to trauma is called a Charcot's joint, and this will result in progressive destruction of this foot. It is possible that amputation such as a Syme's type may be necessary in the future." On January 28, 1998, Dr. Kitaoka recommended serial casting over a period of three months, followed by appropriate footwear.

On February 18, 1998, the employer's corporate medical consultant, Dr. Kuhnlein, prepared a detailed summary of the employee's medical treatment and forwarded his analysis to

Dr. Haaland, along with questions relating to causation as to the employee's Charcot findings. Dr. Kuhnlein also supplied Dr. Haaland with additional medical records regarding the employee's diabetic condition and motor vehicle accident of December 29, 1996.

On March 13, 1998, Dr. MacRandall wrote to the employer in response to a letter of February 18, 1998.[4] Dr. MacRandall opined that the metatarsal fracture identified by Dr. Kuiper on February 14, 1997, was probably related to the automobile accident of December 29, 1996. He based this opinion on the amount of healing that had already taken place by the time of the February 14th visit. The doctor also opined that "The [employee] received the fractured metatarsal in the motor vehicle accident and injured his mid tarsal joint when the wrench dropped on his foot on 1/30/97." Dr. MacRandall concluded that the employee's Charcot findings did not precede the injury of January 30, 1997, but progressed following that injury. He felt that the Charcot findings were accelerated by the wrench falling on the employee's foot and were not due in total to a natural progression of the employee's diabetes.

On April 14, 1998, Dr. Haaland responded to Dr. Kuhnlein's letter by concluding that the incident of January 30, 1997, was merely a contusing injury that would have healed within four to six weeks. Dr. Haaland also felt that the employee's fractured fourth metatarsal most likely occurred in December of 1996, rather than in January of 1997. He related the Charcot findings to the employee's underlying diabetic neuropathy and the automobile accident of December 29, 1996.

On December 3, 1999, the employee filed a claim petition requesting payment of an unspecified sum for medical expenses incurred in connection with his right foot injury of January 30, 1997. The self-insured employer filed an answer to the petition on December 16, 1999, asserting that all medical benefits due and owing as a result of the claimed injury had been properly paid and that any unpaid expenses were due to a nonwork-related automobile accident.

The issue of causation of the employee's right foot Charcot syndrome came on for hearing before a compensation judge on October 18, 2000. In a Findings and Order issued November 27, 2000, the judge concluded that the injury of January 30, 1997, was a substantial contributing aggravating and accelerating cause of the employee's right foot Charcot syndrome. 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

[4] Although not entirely clear from the record, it appears that the medical records and Dr. Kuhnlein's letter were also sent to Dr. MacRandall.

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 employer contends that the determination of the compensation judge, that the employee's work-related injury of January 30, 1997, is a substantial contributing factor in the employee's Charcot syndrome, is clearly erroneous and unsupported by substantial evidence. It argues that, since the doctors agree that the employee's right fourth metatarsal fracture was due to the motor vehicle accident of December 29, 1996, and since the fracture continued to cause problems for the employee after January 30, 1997, it is reasonable to conclude that the 1996 motor vehicle accident, and not the 1997 work injury is the cause of the employee's Charcot's syndrome. This is especially true, it argues, given the employee's long history of diabetes mellitus, his poor compliance with medical management of this condition, medical evidence of pre-existing peripheral neuropathy, and the well-founded opinion expressed by Dr. Haaland on April 14, 1998. We are not persuaded.

There is evidence in the record to support the employer's position that the work injury was not a substantial contributing factor leading to the employee's joint degeneration in his right foot. Pursuant to this court's standard of review, however, the issue is not whether the evidence will support alternative findings but whether substantial evidence supports the judge's findings. Where evidence conflicts or more than one inference can be drawn from the evidence, the judge's findings are to be affirmed. Hengemuhle, 358 N.W.2d at 60, 37 W.C.D. at 240. In the present case, there is substantial evidence in the record to support the judge's decision on this issue.

First, the employee's testimony, found by the judge to be credible, supports the judge's findings. The employee denied having any mid foot pain prior to January 30, 1997. The employee testified that the fracture of his right fourth metatarsal was in an area different from where the wrench struck his foot at work. He indicated that the pain resulting from the dropped wrench was located toward the middle of his foot, whereas the pain associated with the metatarsal fracture was toward the front end of his foot. At trial, the employee removed his shoe and specifically pointed to the areas in question.

Second, the judge accepted the opinion of Dr. MacRandall, that the employee's Charcot findings were accelerated by the injury of January 30, 1997. In his report of March 13, 1998, Dr. MacRandall opined that the development of the Charcot findings was consistent with the employee's injury and not due simply to a natural progression of the employee's diabetes. He noted that the Charcot findings did not precede the work injury but instead appeared only after it

and appeared to progress from it, that the December motor vehicle injury was a fracture of a "metatarsal" bone, whereas the work injury was an injury to the employee's "mid tarsal joint" (emphasis added). In offering his opinion regarding causation, Dr. MacRandall was fully aware of the employee's long history of insulin dependent diabetes mellitus, often poorly managed. He also acknowledged that he was aware of the employee's motor vehicle accident of December 29, 1996. A judge's choice between expert opinions is generally upheld, unless the facts assumed by the expert in rendering his opinion are not supported by the evidence. Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985). The employer does not contend that the facts assumed by Dr. MacRandall in rendering his opinion are unsupported by the evidence.

It is well settled that injuries are compensable if the employment is a substantial contributing factor, not only in the condition but also in any aggravation or acceleration of a pre-existing condition. Wallace v. Hanson Silo Co., 305 Minn. 395, 235 N.W.2d 363, 28 W.C.D. 79 (1975). An employee need not prove that the employment was the sole cause, only a substantial contributing cause of the disability for which benefits are sought. Swanson v. Medtronics, Inc., 443 N.W.2d 534, 536, 42 W.C.D. 91, 94-95 (Minn. 1989). Because substantial evidence supports the judge's findings that the employee's 1997 work injury was a substantial contributing "aggravating accelerating cause" of the employee's Charcot syndrome, we affirm the judge's findings in their entirety.