VALERIE GIUSTI, Employee/Appellant, v. MICHAEL FOODS, d/b/a KOHLER MIX SPECIALTIES and LIBERTY MUT. INS. CO., Employer-Insurer, and MEDICA CHOICE BY HEALTHCARE RECOVERIES, INC. and MN DEP'T OF HUMAN SERVS., Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
MARCH 1, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL CONTRIBUTING CAUSE; CAUSATION - AGGRAVATION. Substantial evidence, including expert opinion, supported the compensation judge's conclusion that the employee's fall at work caused only temporary injury to her neck and low back.

Affirmed.

Determined by Wilson, J., Wheeler, C.J., and Johnson, J.
Compensation Judge: Gary M. Hall

OPINION

DEBRA A. WILSON, Judge

The employee appeals from the compensation judge's decision as to the nature and extent of her work injury.[1] We affirm.

BACKGROUND

The employee began working for Michael Foods, d/b/a Kohler Mix Specialities [the employer], in about July of 1997. At least some of the time she worked on the creamer line, shrink-wrapping and loading boxes of coffee creamers onto pallets. On August 26, 1997, the employee tripped at work on a forklift, falling backwards and striking her neck and buttocks on the forklift as she fell.[2] Two days later, on August 28, 1997, she sought treatment at the emergency

[1] The employee discharged her attorney shortly after the notice of appeal was filed, and her brief was apparently drafted without assistance from counsel. We tend to give some leeway to appellants proceeding without legal representation; however, we have not considered the arguments or portions of the employee's brief that are inconsistent with or not supported by the hearing record.

[2] The circumstances of the incident were disputed at hearing, with the employer and insurer suggesting that the employee staged her fall. While questioning the employee's credibility in

room at United Hospital, where the examining physician noted a small bruise over C7 but good range of cervical and lumbar motion and no sensory or motor deficits in the extremities. Cervical x-rays revealed slight narrowing at the C4 and 5 disc spaces, with slight reversal of the cervical lordosis. The employee was given medication and minor work restrictions and was told to follow-up with occupational medicine. Between August 28, 1997, and early December 1997, the employee sought treatment primarily for symptoms in the right sacroilliac and sciatic areas. During this period, in mid October of 1997, she was terminated from her job with the employer for unexcused absences.

In early December of 1997, the employee returned to the United Hospital emergency room, complaining of having experienced left arm numbness a few days before, which had resolved, and right hand numbness. Thereafter she was treated or evaluated for neck and/or low back symptoms by numerous physicians,[3] and numerous diagnostic tests were performed, including several lumbar and cervical CTs and MRIs. Ultimately, on December 22, 1999, the employee underwent an anterior cervical decompression with fusion at C4-5.

The employee filed a claim petition alleging entitlement to various benefits as a result of low back and neck injuries allegedly resulting from her August 26, 1997, fall. Several issues, including medical causation, were disputed. Evidence included the employee's extensive medical records, the report of Dr. Paul Wicklund, the employer and insurer's independent examiner, and the testimony of the employee and two coworkers.

In a decision issued on June 26, 2000, the compensation judge concluded in part that the employee's August 26, 1997, injury was a contusion/strain to her neck and low back, which had temporarily aggravated a preexisting condition and which had fully resolved within three months of the injury date. 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

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general, the compensation judge accepted that the fall did in fact occur, essentially as claimed, and the employer and insurer do not contest the judge's conclusion to this effect on appeal.

[3] Including Drs. Joseph Perra, Constantino Iadecola, James Ogilvie, Karen Ryan, Sunny Kim, Joseph Westwater, Austen Indritz, Michael Broderdorf, Vernon Perrigo, Jeffrey Larson, Steven Castle, Vijay Eyunni, Charles Hedenstrom, Scott Resig, and Ensor Transfeldt.

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 gist of the employee's argument is that substantial evidence does not support the compensation judge's conclusion that the employee's August 26, 1997, injury was merely temporary, fully resolving within three months. We acknowledge that a different factfinder might have decided the issue differently. There is, for example, little evidence that the employee had any significant neck or low back symptoms or treatment prior to her fall at work. In addition, several of the employee's physicians treated the employee's low back and neck conditions as work-related, and the employee consistently reported to those physicians that her symptoms began with the August 26, 1997, incident. However, the issue on appeal to this court is not whether the record would have supported some other determination, but whether the judge's decision is supported by evidence that a reasonable mind might accept as adequate. After thorough review of the entire record, we find no basis to reverse.

The compensation judge gave two primary reasons for his decision: his conclusion that the employee was not fully credible, and his acceptance of Dr. Wicklund's causation opinion. With regard to the credibility question, the employee contends that she was in fact truthful in her testimony with regard to her fall at work and her subsequent symptoms. However, we cannot say that the compensation judge erred in characterizing the employee's testimony as, "in general confused, contradictory, and less than credible," in that the employee's deposition testimony varied from her hearing testimony on several pertinent points, including her description of the events surrounding her fall and her answers as to whether she had been involved in any altercations following her work injury.[4] More importantly, credibility assessments are, as a rule, for the compensation judge, not this court, to make. See Even v. Kraft, Inc., 445 N.W.2d 831, 42 W.C.D. 220 (Minn. 1989).

We also find no error in the compensation judge's decision to accept the causation opinion of Dr. Wicklund, who wrote as follows in his December 24, 1999, report:

> Based on my history, physical, and review of the medical records, it's my opinion to a reasonable degree of medical certainty that Ms. Giusti sustained a low back contusion and a cervical contusion when she fell against the forklift. It appears that she already had pre-existing degenerative disk disease in the cervical spine at C4-5, and it's my impression she did not sustain a disk herniation when she feel [sic] but rather had a temporary aggravation of this pre-

[4] The employee was evidently assaulted at least twice after her fall at work, receiving a black eye and neck bruising and necessitating stitches in her head.

> existing problem. That temporary aggravation would have been gone in three months in my opinion. That would be true both for her low back contusion and her cervical contusion. In my opinion she didn't sustain any permanent injury working at Kohler Mix-Michael Foods. In my opinion her neck complaints and arm complaints did not come on for many months after this alleged injury and it appears that these symptoms would be therefore unrelated to her work activities.

A compensation judge's choice of expert opinions is generally upheld unless the facts relied upon by the expert are not supported by the record. See Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985). In the present case, the judge was entitled to accept the opinion of Dr. Wicklund. We would also note that the employee submitted no narrative reports discussing the issue of causation and that her treating physicians' opinions were conclusory at best. Certainly, while the judge could have relied on the treating physicians' records for purposes of deciding causation, he was not required to do so.

Because the record as a whole reasonably supports the compensation judge's conclusion that the August 26, 1997, work incident resulted in only temporary injury to the employee's neck and low back, we affirm his decision in its entirety.