

NANCY GRIEGER, Employee, v. VIKING COLLECTIONS and ST. PAUL FIRE & MARINE INS. CO., Employer-Insurer/Appellants, and MEDICA CHOICE/HRI and TWIN CITIES ORTHOPEDICS, P.A., Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
OCTOBER 8, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL EVIDENCE; EVIDENCE - EXPERT MEDICAL OPINION. Where there was inadequate foundation for the medical opinion on which the judge relied in finding a Gillette-type thumb injury on the date alleged, and where the judge's finding of certain consequential injuries was also unsupportable in its own right, the compensation judge's award of benefits for both the thumb injury and the consequential injuries was clearly erroneous and unsupported by substantial evidence.

Reversed.

Determined by Pederson, J., Wheeler, C.J., and Johnson, J.
Compensation Judge: Peggy A. Brenden

OPINION

WILLIAM R. PEDERSON, Judge

The employer and insurer appeal from the compensation judge's determination that the employee sustained a Gillette-type injury¹ to her left thumb on May 24, 1999, and consequential injuries in the nature of bilateral extensor and flexor carpi ulnaris tendinitis, bilateral carpal tunnel syndrome, and bilateral forearm cysts. We reverse.

BACKGROUND

On May 24, 1999, Nancy Grieger [the employee] was employed as a "skip tracer" by Viking Collections [the employer], in which capacity she had been working since September 1996. The employee was thirty-two years old on that date and was earning a weekly wage of \$762.38. She worked a forty-hour work week, normally in four ten-hour days, with occasional overtime. About a year after that date, on June 7, 2000, the employee filed a claim petition for workers' compensation benefits, in which she alleged a work-related injury arising out of and in the course of her employment with the employer on May 24, 1999. The nature of the claimed injury was carpometacarpal [CMC] joint arthritis, bilateral extensor and flexor carpi ulnaris tendinitis, and bilateral carpal tunnel syndrome. The employee alleged entitlement to temporary

¹ See Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 21 W.C.D. 105 (1960).

partial disability benefits continuing from April 14, 2000, based on a weekly wage of \$1,465.37.² The employer and insurer filed an answer to the employee's claim petition on June 28, 2000, denying that the employee sustained an injury arising out of and in the course of her employment on May 24, 1999.

The employee's workday at the employer was spent seated at a computer terminal. Her duties as a "skip tracer" required use of a computer to access credit bureau reports and other information online. The employee also entered into the computer her findings from these searches and from telephone calls during the day. She usually performed this data entry during the last hour or so of her workday and on Saturdays. The employee described her online activities, especially those in which she accessed new accounts and credit bureau reports, as requiring the repetitive pressing of the function keys F1, F3, and F4. In pressing these keys, the employee used the index and middle fingers of her left hand. She also used her left hand to dial the telephone, making up to 150 calls a day. She utilized a headset for her phone tasks and used her right hand throughout the day to write. The employee took three breaks during the day, a ten- to fifteen-minute break in the morning and in the afternoon and a half-hour lunch break.

In about March of 1999, the employee began to experience some problems with her left thumb. She first consulted a doctor regarding her complaints on May 12, 1999, when she saw Dr. Paul Kaldor at the Eden Prairie Clinic. Dr. Kaldor diagnosed tendinitis of the left thumb and referred the employee to occupational therapy for a splint, therapy, and a workplace evaluation.

The employee did not improve and was referred to orthopedic specialist Dr. Clare McCarthy, whom she saw on July 15, 1999. Dr. McCarthy noted that the employee was a "right hand dominant female who works at Viking doing office type work four days a week, 10 hours a day." On physical examination, the doctor recorded that the employee was tender along the volar aspect of her thumb CMC joint. She also had a positive "grind test." X-rays were taken, and Dr. McCarthy diagnosed mild CMC arthritis and prescribed splinting and anti-inflammatories. No restrictions were given, and the employee was to return on a p.r.n. basis.

On August 5, 1999, the employee returned to Dr. McCarthy's office with continued pain along the base of her thumb and also along the lateral aspect of the elbow extending into the forearm. The physician's assistant concluded that the employee was "symptomatic primarily from an extensor tendinitis and she may be getting a mild lateral epicondylitis as well." The employee was given a different splint to "quiet down her thumb as well as her extensor muscles" and instructed in exercises to stretch the extensor muscles of the forearm and wrist. Again, no restrictions were placed on the employee's ability to work.

On October 14, 1999, Dr. McCarthy noted complaints of left-side carpal tunnel symptoms. The doctor reported that the employee got numbness and tingling after forty-five seconds of compression on the Phalen's Maneuver. The employee also continued to complain of

² This claimed wage included earnings also from a second job at which the employee was allegedly regularly employed at the time of the alleged injury. The second job earnings claim was withdrawn following the hearing before the compensation judge on January 4, 2001.

some extensor tendinitis. Dr. McCarthy recommended that the employer implement occupational therapy recommendations and that the employee minimize repetitive work with her left hand.

On January 13, 2000, Dr. McCarthy diagnosed extensor tendinitis, as well as some flexor carpi ulnaris tendinitis. Upon return to Dr. McCarthy's office on March 9, 2000, the employee reported an exacerbation of her symptoms associated with her work activity. Upon examination, the doctor reported a positive Tinel's sign, a positive Phalen's test, and the appearance of multiple cysts along the employee's flexor tendons. An MRI scan to evaluate the origin of the cysts was performed on March 28, 2000, and interpreted as normal.

On April 4, 2000, the employee reported to Dr. McCarthy that she had done a lot of typing over the past week, and again she presented with cysts along her flexor tendons. She also complained of some numbness and tingling in her left hand, especially at night time. Dr. McCarthy diagnosed "flexor tendinitis with visible and significant swelling exacerbated by her typing 8 hours a day," and she permanently restricted the employee from typing and anything more than light duty work.

The employer was unable to accommodate the employee's restrictions, and the employee ceased work. On May 12, 2000, the employee was seen at Dr. McCarthy's office with complaints of bilateral thumb, index, and middle finger numbness, along with tenderness along the volar aspect of the wrist. The office note indicates that the employee had recently discontinued her therapy at Novacare Hand Therapy for bilateral carpal tunnel syndrome and volar flexor tendinitis. The employee continued to have a positive Tinel's sign and Phelan's test, and she underwent a diagnostic and therapeutic injection of the right carpal tunnel.

The following week, in a letter to the workers' compensation insurer dated May 17, 2000, Dr. McCarthy recounted that, while the employee was initially diagnosed with left CMC arthritis, her current diagnoses also included bilateral extensor and flexor carpi ulnaris tendinitis and bilateral carpal tunnel syndrome. The doctor related these conditions to the repetitive nature of the employee's job, indicating that the "cysts" along the employee's tendon sheaths were also related to the employee's work, in that they were "more readily apparent after she has been doing prolonged periods of work with her hands." Dr. McCarthy noted that the employee's CMC arthritis had remained stable and that MMI for this condition had been reached as of September 9, 1999. The doctor concluded by recommending that the employee do no typing, as "[s]he does develop increased swelling and pain with any type of repetitive activity, including keyboarding and mousing."

The employee experienced excellent relief of her symptoms of numbness and tingling for a good month following her diagnostic and therapeutic injection of May 12, 2000, and therefore elected to proceed with an endoscopic carpal tunnel release on June 26, 2000. In a report of that same date, Dr. McCarthy opined that the employee's "carpal tunnel syndrome is related to her flexor tendinitis and upper extremity symptoms which are aggravated by her work duty of typing for an eight hour day. . . This is indeed a Gillette type injury."

Dr. William Call, a hand and upper extremity surgeon, examined the employee on August 2, 2000, at the request of the employer and insurer. Dr. Call concluded that the employee's history, physical examination, and record review were consistent with purely subjective hand and wrist complaints and that there was no objective evidence that she had ever had carpal tunnel syndrome. He did not believe that the employee's right carpal tunnel procedure was consequent to any work injury and did not believe the employee required any similar procedure on the left side. He did not find any disability, nor could he relate the employee's work activities to any specific injury.

On September 25, 2000, Dr. McCarthy performed an endoscopic carpal tunnel release on the employee's left wrist and a flexor tenosynovectomy of the distal forearm. On November 2, 2000, Dr. McCarthy recommended therapy on the left side to work on stretching, strengthening, scar massage, and management.

In a letter to the employee's attorney apparently issued about October 31, 2000, Dr. McCarthy summarized her treatment of the employee from July 15, 1999, through September 25, 2000.³ The doctor noted that the initial symptoms of CMC arthritis had resolved. The doctor further noted that, "[i]n terms of [the employee's] work, 10 hours of typing per day at a computer is equivalent to running a marathon on a daily basis. She was not allowed to give her hands and forearm a break and therefore developed swelling, carpal tunnel, extensor and flexor tendinitis."

The issue of whether the employee sustained an injury or injuries as a result of her work activity with the employer on or about May 24, 1999, came on for hearing on January 4, 2001. In Findings and Order served and filed February 14, 2001, the compensation judge concluded in part that the employee developed pain in her left thumb as a result of her work activities at the employer, culminating as a Gillette injury on May 24, 1999, in the nature of mild left CMC arthritis. The judge then reasoned that, because of the treatment provided for her left thumb condition and modifications that were made in her work station, the employee also sustained consequential injuries in the nature of bilateral extensor and flexor carpi ulnaris tendinitis, bilateral carpal tunnel syndrome, and forearm cysts. 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

³ The letter is actually dated August 31, 2000; this is apparently a typographical error, given the dates of the treatment being summarized and the fact that the letter was received by the employee's attorney on November 2, 2000.

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.

“[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers’ Compensation Court of Appeals] may consider de novo.” Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

DECISION

We note, first of all, that the only claimed injury date alleged by the employee was May 24, 1999. In her Findings and Order, the compensation judge stated the primary issue as whether the employee sustained an injury on or about May 24, 1999, resulting from her work activities with the employer. It is clear from a review of the medical records that, on that date, the employee had not yet been diagnosed with bilateral extensor and flexor carpi ulnaris tendinitis, bilateral carpal tunnel syndrome, or bilateral forearm cysts. There is simply no medical evidence of the existence of these conditions on May 24, 1999, and, as such, no basis for the assertion of a Gillette injury claim for these conditions on or before May 24, 1999.

In Findings 5 and 11, the compensation judge determined that the employee developed pain in her left thumb as a result of her work activities at the employer and that she sustained a work-related Gillette injury in the nature of left mild CMC arthritis on May 24, 1999. A Gillette injury is a personal injury caused not by a specific event but by the effects of minute trauma over time. In order to establish a Gillette injury, it is the employee’s burden to “prove a causal connection between [his or her] ordinary work and ensuing disability.” Steffen v. Target Stores, 517 N.W.2d 579, 581, 50 W.C.D. 464, 467 (Minn. 1994). A determination of a Gillette injury “primarily depends on medical evidence.” Id.

On appeal, the employer and insurer contend that the employee failed to sustain her burden of proof that she sustained a Gillette injury to her left thumb as a result of her work duties with the employer. They argue that there is no properly founded medical opinion causally relating the employee’s job duties to an injury. We agree.

In order for there to be adequate foundation, the facts upon which an expert relies for his or her opinions must be supported by the evidence. McDonald v. M.T.S. Sys. Corp., 43 W.C.D. 83 (W.C.C.A. 1990), *summarily aff’d* (Minn. July 13, 1990). Where a compensation judge has relied on medical opinion testimony that is based on an inadequate or insufficient foundation, the resulting findings will not be considered to have been based on substantial evidence and shall not be affirmed. Boike v. St. Cloud Hosp., 39 W.C.D. 515 (W.C.C.A. 1986); Winkles v. Independent Sch. Dist. No. 625, 46 W.C.D. 44 (W.C.C.A. 1991), citing Holmlund v. Standard

Constr. Co., 240 N.W.2d 521, 28 W.C.D. 317 (Minn. 1976). While we would ordinarily defer to the compensation judge's choice between conflicting medical testimony, we need not uphold such a choice if the accepted opinion lacks adequate foundation. Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985).

In their brief, the employer and insurer point out that the employee did not testify as to any work activities performed repetitively with her left thumb that would have caused the diagnosed CMC arthritis. The employee testified in detail as to her use of her left index and middle fingers, but she offered no testimony as to how, if at all, she used her left thumb. Nor does Dr. McCarthy, upon whom the employee relies, offer any explanation as to how the employee's work activities caused this specific thumb condition to develop. In her letter to the insurer on May 17, 2000, Dr. McCarthy simply states that the employee's various diagnoses are related to the repetitive nature of her work. The employer and insurer contend that Dr. McCarthy was laboring under a false impression that the employee was engaged in continuous data entry typing activities throughout the entire day. We note that there is no indication that Dr. McCarthy was ever informed, by the employee or by anyone else, as to the extent to which the employee used her left thumb in performing her job. The evidentiary record does not include any testimony from the employee as to what she may have told her doctor about her work duties. Dr. McCarthy's deposition was not taken, nor does the record reflect that any summary of the employee's work activities was provided to the doctor. Dr. McCarthy likened the employee's "10 hours of typing per day at a computer . . . to running a marathon on a daily basis." This assumption by the doctor is not supported by the testimony of the employee in terms of her actual work duties, and it is not adequate support for a finding of causation. Accordingly, the judge's determination that the employee sustained a work-related Gillette injury on May 24, 1999, in the nature of left mild CMC arthritis is reversed.

After determining that the employee sustained a work-related injury to her left thumb on May 24, 1999, the compensation judge went on to conclude that the employee also sustained bilateral extensor and flexor carpi ulnaris tendinitis, bilateral carpal tunnel syndrome, and bilateral forearm cysts as a consequence of the May 24, 1999, thumb injury. Because we have concluded that there was inadequate foundation for the judge's finding of the thumb injury and so have reversed that finding, we also reverse the judge's determination that the employee sustained consequential injuries as a result of the May 24, 1999, injury. We would note additionally, however, that, even if the employee's mild left CMC arthritis were determined to be related to her employment, the judge's finding of consequential injuries would require reversal. There is absolutely no medical support in the record for the compensation judge's determination that the employee's use of the left thumb splint was a significant contributing factor in either causing or aggravating, especially bilaterally, the subsequently diagnosed tendinitis. Although the employee testified that she had to alter how she depressed the function keys on her computer whenever she was wearing her splint, there is no basis to conclude that wearing a splint substantially contributed in causing the employee's subsequent diagnoses. This is especially true given the complexity of the employee's medical condition and multiple diagnoses.

Because the record as a whole does not reasonably support the compensation judge's conclusion that the employee sustained a Gillette injury in the nature of mild left CMC arthritis on May 24, 1999, we reverse the judge's decision in its entirety.⁴

⁴ Our decision relates solely to the compensation judge's finding of a left thumb injury on May 24, 1999. We take no position on whether the employee sustained work-related injuries following that date.