DIANE J. HEITZ, Employee/Appellant, v. PAR 30 REST. & LOUNGE, INC., and STATE FUND MUT. INS. CO., Employer-Insurer and BLUE CROSS/BLUE SHIELD OF MINN., Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
JANUARY 24, 2001

No. [REDACTED SSN]

HEADNOTES

GILLETTE INJURY - CAUSATION. Substantial evidence supports the compensation judge's finding that the employee had not proved that her work activities from 1997 to 1998 were causally related to her carpal tunnel syndrome.

EVIDENCE. The compensation judge did not err by disregarding unopposed medical opinion, but relied upon her review of the medical opinions and records in denying the employee's claim.

Affirmed.

Determined by: Rykken, J., Johnson, J., and Wheeler, C.J.
Compensation Judge: Jeanne E. Knight

OPINION

MIRIAM P. RYKKEN, Judge

The employee appeals from the compensation judge's determination that the employee's work activities between February 1997 and March 1998, did not cause, aggravate or accelerate the employee's carpal tunnel condition. We affirm.

BACKGROUND

This case is before the court following an issuance of the compensation judge's findings on remand. Following a hearing held on this matter on June 11, 1999, the compensation judge issued her original Findings and Order on August 10, 1999, in which she determined that the employee's work activities for the employer from February 1997 through March 1998 or through December 31, 1998, were not a substantial contributing factor in her development of carpal tunnel syndrome. The compensation judge denied the employee's claim on two bases. First, the compensation judge agreed with the employer's contention that the employee already had developed carpal tunnel syndrome prior to the insurer being on the risk for the employer. The compensation judge also determined that the medical opinions of Drs. Wilke and Olson, upon whom the employee relied to support her claim, lacked foundation.

This court vacated those findings and remanded the case to the compensation judge for full consideration of the weight to be accorded to the opinions of Dr. Wilke and Dr. Olson.[1] No additional testimony was taken on remand. In a findings and order served and filed on August 24, 2000, the compensation judge again denied the employee's claim, and determined that the employee has not proved by a preponderance of the evidence that her work activities at the employer from February 1997 through March 1998 caused, aggravated or accelerated her carpal tunnel condition.

The employee, Diane J. Heitz, was a preparation cook for Par 30 Restaurant & Lounge, Inc., the employer, between November 1995 and December 31, 1998. She earned an average weekly wage of $275.00 and was 57 years old on the date of her claimed injury, April 20, 1998. The employer was insured for workers' compensation liability by State Fund Mutual Insurance Company, the insurer, from February 1997 until December 31, 1998, when the employer discontinued business. The employee testified that she began noticing pain in her left wrist in June 1996, and consulted Dr. Richard E. Olson, on June 17, 1996. By September 1996, she was diagnosed with DeQuervain's tendinitis, and was prescribed a left arm cast for a three-week period. The employee received ongoing medical treatment in October and November 1996, and was referred to Dr. Mark Friedland for an orthopedic consultation. Dr. Friedland examined the employee on November 13, 1996, and made a preliminary diagnosis of "left wrist DeQuervain's syndrome with somewhat more diffuse extensor tendinitis" and "possible diabetic peripheral neuropathy in the radial nerve distribution," and referred the employee to Dr. Ivan Brodsky for an electromyelogram (EMG). (Resp. Ex. 1.) The EMG, conducted on both arms on November 14, 1996, was positive for bilateral carpal tunnel syndrome, with findings that were "perhaps a little more pronounced on the right than the left." (Resp. Ex. 1.) The employee received cortisone injections in her left hand on June 17, 1996, and November 13, 1996. The employee last consulted Dr. Friedland on November 20, 1996, when he prescribed a removable left thumb spica splint for the employee, prescribed non-steriodal anti-inflammatory medication, and recommended icing. (Resp. Ex. 1.)

The employee consulted Dr. Olson, her treating physician, again on January 26, 1998. In his chart note on that date, Dr. Olson quotes the employee as commenting about her left wrist tendinitis by stating "[I] just gave up on, didn't get any better." According to the employee's testimony, she continued to perform her regular job duties for the employer, and was able to do so from November 1996 through March 1998. By March 1998, the employee's hours increased for seasonal reasons. The employee testified that by April 1998, her hands began aching more and locking up more frequently. New symptoms developed, including a locking of her fingers on both hands into a claw-like position during the night. (T. 11-12.) The employee sought follow-up treatment with Dr. Olson. By April 20, 1998, Dr. Olson diagnosed bilateral carpal tunnel syndrome/repetitive use syndrome. He prescribed bilateral splints, restricted the employee from work for five weeks, and restricted her to reduced hours when she returned to work. According to the employee's testimony, her symptoms did not subside. By April 28, 1998, Dr. Olson advised that the employee tested positively for arthritis. An EMG taken on May 6, 1998, evidenced peripheral neuropathy, definite changes in the median nerve bilaterally and in the right ulnar nerve

[1] Heitz v. Par 30 Restaurant, No. [REDACTED SSN], (W.C.C.A. Feb. 3, 2000).

at the elbow. Dr. Olson diagnosed peripheral neuropathy and carpal tunnel syndrome, as well as ulnar nerve entrapment on the right side.

At Dr. Olson's referral, the employee consulted Dr. Robert C. Wilke, orthopedic surgeon. On June 23, 1998, the employee provided a history to Dr. Wilke that she had noted a five-month history of pain in her hands as well as numbness in her fingertips. Dr. Wilke prescribed injections, which did not alleviate her symptoms. He referred the employee to Dr. Frederick Strobl, for a neurological consultation. Dr. Strobl examined the employee on June 30, 1998, and diagnosed diabetes type II, polyneuropathy, and carpal tunnel syndrome. Dr. Strobl stated that "I think she has polyneuropathy, but if one looks at the differences in distal latencies between the ulnar and median nerves, this is definitely suggestive of a mechanical compression." Dr. Strobl also commented that the EMG in 1996 showed no polyneuropathy at that point, but that the employee did have diabetes by the time of that EMG. (Resp. Ex. 1.)

Dr. Strobl recommended surgery; Dr. Wilke concurred with this recommendation. On July 14, 1998, Dr. Wilke conducted carpal tunnel release surgery on the employee's left wrist, together with finger release of her left thumb and left middle finger. The employee testified that the surgery was successful, and she returned to work for the employer by October 2, 1998. The employee also testified that she was right handed, and she tended to favor her left hand and noted persistent symptoms in her right hand. The employer discontinued business as of December 31, 1998; the employee continued to work until that date, but did not search for alternative employment after the business's closure, due to her ongoing right hand symptoms.

At the request of the employer, the employee was examined by Dr. William Call on January 22, 1999. Dr. Call diagnosed diabetic peripheral neuropathy, bilateral diabetic carpal tunnel syndrome and diabetic trigger fingers, unrelated to the employee's work activities and consistent with the employee's diabetic condition. Dr. Call recommended steroid and Xylocaine injections to treat her right trigger fingers, and stated that the employee could try follow-up trigger release surgery if necessary, but stressed that such treatment should not be considered as causally related to any work activities.

At Dr. Wilke's recommendation, the employee underwent carpal tunnel release surgery for her right wrist on March 9, 1999. As of the hearing on June 11, 1999, the employee had not yet been released to return to work by Dr. Wilke due to her ongoing right wrist symptoms. At that hearing, she reported no ongoing symptoms in her left hand.

At the hearing held on June 11, 1999, the sole issue addressed was whether the employee's work activities between February 1997 and March 1998 or until December 31, 1998, represented a substantial contributing factor in the development of the employee's bilateral carpal tunnel syndrome. The compensation judge determined that those activities were not substantial contributing factors in the development of the employee's bilateral carpal tunnel syndrome, and denied the employee's claim for benefits in its entirety.

Upon appeal from the original findings and order by the compensation judge, this court determined that in view of the medical evidence of record, the compensation judge's

conclusion that Dr. Olson's and Dr. Wilke's opinions lacked foundation was erroneous. This court vacated and remanded the case to the compensation judge for full consideration of the weight to be accorded to the opinions of Dr. Olson and Dr. Wilke. On remand, the compensation judge denied the employee's claim, determining that the employee has not proved by a preponderance of the evidence that her work activities at the employer from February 1997 through March 1998 caused, aggravated, or accelerated her carpal tunnel condition. (Finding No. 6.) The employee appeals.

STANDARD OF REVIEW

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, 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." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

DECISION

Causation

The compensation judge reviewed the various medical opinions and records to determine whether the employee developed a Gillette[2]-type injury as a result of her employment with the employer, and specifically to determine whether the employee's work activities between February 1997 and March or July 1998 caused, aggravated, or accelerated the employee's carpal tunnel syndrome. The compensation judge's findings and order and memorandum outlined her further review of Dr. Wilke's and Dr. Olson's medical reports on remand. After further review, the compensation judge concluded that the opinions of Dr. Olson and Dr. Wilke "while not lacking foundation, are not to be granted much weight." Based upon that conclusion, the compensation judge determined that the employee had failed to prove by a preponderance of the evidence that her work activities between February of 1997 and March or July 1998 caused, aggravated, or accelerated her carpal tunnel syndrome.

In her memorandum, the compensation judge outlined the two separate processes the employee experiences with her hands and wrists, carpal tunnel syndrome and diabetic neuropathy. The compensation judge cited to the second EMG taken in 1998, which showed both carpal tunnel syndrome and diabetic neuropathy. She also referred to Dr. Strobl's opinion that this

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

surgery might not relieve the employee's symptoms if those symptoms were the result of the diabetic neuropathy. Since the employee testified that in fact the surgery improved the symptoms in her left hand and wrist, the compensation judge accepted that testimony from the employee, and determined that the need for surgery was attributable to her carpal tunnel syndrome, and was not attributable to the diabetic neuropathy as earlier asserted by Dr. Call. Assessment of witness credibility is the unique function of the factfinder. Tews. Geo. A. Hormel & Co., 430 N.W.2d 178, 180, 41 W.C.D. 410, 412 (Minn. 1988). In spite of this determination, however, the compensation judge found no causal link between the employee's work activities from February 1997 to March or July 1998.

The question of a Gillette-type injury primarily depends on medical evidence. Marose v. Maislin Transport, 413 N.W.2d 507, 512, 40 W.C.D. 175 (Minn. 1987). The employee "must prove a causal connection between her ordinary work and ensuing disability. . . . Whether given by testimony or written report, an opinion by a medical expert as to the causal link between the claimant's disability and the job must be based on adequate foundation." Steffen v. Target Stores, 517 N.W.2d 579, 582, 50 W.C.D. 464, 467 (Minn. 1994). Questions of medical causation fall within the province of the compensation judge. Felton v. Anton Chevrolet, 513 N.W.2d 457, 50 W.C.D. 181 (Minn. 1994).

On remand, the compensation judge found that the only causation opinion presented on behalf of the employee was the August 31, 1998 report of Dr. Olson, which states, "the constant repetitive hand work that was required at her job was a significant contributing factor to the development of her symptoms and accelerated her need for surgery." (Finding No. 4.) In her memorandum, the compensation judge cites to that report and states that "no further explanation is given" by Dr. Olson and that Dr. Olson "does not discuss the fact that he had treated the employee for carpal tunnel since 1996." The compensation judge cites to Dr. Olson's report as not clarifying whether the employee developed carpal tunnel syndrome in 1996 as a result of work activities or whether he regarded the carpal tunnel condition as a pre-existing condition which her work between February 1997 and March 1998 aggravated. The compensation judge also states that Dr. Olson did not explain whether the employee's work between March and July 1998, when her first surgery was performed, was a contributing factor, nor does he discuss whether the employee's underlying condition was worse in 1998 as compared to 1996.

In her memorandum, the compensation judge also refers to Dr. Wilke's report of May 28, 1999, (Pet. Ex. C) which she determined merely addressed the issue of whether the surgery was a result of carpal tunnel syndrome or diabetic neuropathy, and does not address the issue of causation of the employee's carpal tunnel syndrome. "To sustain a finding of causal relation[,] it is not enough that there is medical testimony that the injury might have caused the subsequent condition or could have caused that condition[,] but there must be medical testimony that the injury did cause that condition." Holmlund v. Standard Constr. Co., 307 Minn. 383, 389, 240 N.W.2d 521, 525, 28 W.C.D. 317, 324 (1976) (emphasis in original). Our review of Dr. Wilke's May 28, 1999 report shows that he did not specifically address the period of time in question, February 1997 through March 1998 or through December 21, 1998, and whether the work activities during that period of time caused the employee's condition of carpal tunnel syndrome. The history obtained by Dr. Wilke from the employee indicates that the employee's

bilateral hand symptoms had been progressive for approximately five months prior to that consultation.[3] In his report of May 28, 1999, Dr. Wilke refers to the employee's bilateral hand symptoms becoming progressively severe, and stated as follows:

> In regard to the cause of the patient's initial symptoms, these are clearly what would be termed repetitive-use syndrome. Carpal tunnel syndrome and stenosing tenosynovitis or trigger fingers are very common maladies which generally afflict people who tend to use their hands frequently with repetitive motion.

(Pet. Ex. C.) Dr. Wilke further explains that the preoperative nerve conduction EMG studies confirmed that the employee's primary problem was nerve compression rather than polyneuropathy, and also stated that the fact that she sustained substantial improvement in her numbness from her carpal tunnel release surgeries indicated that the employee's symptoms were due to nerve compression as opposed to a diabetic polyneuropathy. However, neither Dr. Wilke nor Dr. Olson specifically address the period of time in question and whether the work activities during that period of time caused the employee's condition of carpal tunnel syndrome. As a result, it was not erroneous for the compensation judge to conclude that the employee had not sustained her burden of proving causal relationship between the employee's work activities from 1997 to 1998 and her carpal tunnel syndrome by a preponderance of the evidence.

The employee argues that Dr. Wilke's opinion should be accorded greater weight by the compensation judge. She argues that it is not a requirement that a medical expert be able to pinpoint the exact etiology of a disease or a condition for the resulting disability to be compensable. She also argues that the reasonable probability of a medical opinion is to be determined by consideration of the surrounding facts and circumstances and the substance of the testimony of the expert witness and should not turn on the semantics or any particular term or phrase used by this expert witness. See, Mallick v. McPhillips Brothers Roofing, No. [REDACTED SSN] (W.C.C.A. Aug. 3, 1994) (citing Pommeranz v. State Department of Public Welfare, 261 N.W.2d 90, 30 W.C.D. 174 (Minn. 1997)).

The employee also argues that even though the compensation judge stated that the only causation opinion presented on behalf of the employee was the report of Dr. Olson, when determining whether a Gillette-type injury has occurred all of the facts and circumstances must be considered. Friedrich v. First Band Systems, No. [REDACTED SSN] (W.C.C.A. 1999). The employee argues that the employee's testimony concerning her development of symptoms and ability to perform her job duties must be examined when determining whether she sustained a Gillette-type injury as a result of her work activities for the employer.

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[3] In the compensation judge's memorandum in her findings served and filed August 10, 1999, the compensation judge stated that "the other problem is that the doctors who support the employee's claim that her work activities lead to her disability do not appear to have a complete history of her symptoms and complaints. The records for example of Dr. Wilke report in June 1998 that the employee had a five month history of complaints. A more accurate history should have been that she had a close to two year history of complaints." (Judgment Roll.)

Finally, the employee argues that since the compensation judge did not rely on Dr. Call's opinion, the employee's treating physicians'opinions therefore were uncontroverted. The employee argues that the compensation judge is not normally free to disregard unopposed medical testimony, citing Ruther v. State, 455 N.W.2d 475, 42 W.C.D. 1118 (Minn. 1990). In her initial findings and order, and again on remand, the compensation judge made no finding concerning the medical opinion of Dr. Call. Instead, she denied the employee's claim based upon the lack of weight she grants to the medical opinions of the treating physicians, Dr. Olson and Dr. Wilke.

"[T]here is a difference between disregarding unopposed medical opinion and rejecting it on the basis of other evidence." Clark v. Archer Daniels Midland, file no. [REDACTED SSN], slip op. at 6 (W.C.C.A. Feb. 14, 1994). In making factual determinations, a compensation judge is not bound by medical opinion. Tuomela v. Reserve Mining Co., 299 Minn. 203, 204, 216 N.W.2d 638, 639, 27 W.C.D. 312, 313 (1974) (per curiam). Even though a medical opinion does not have to express absolute certainty, the employee must still sustain his or her burden of proving causal relationship by a preponderance of the evidence. See Schopf v. Red Owl Stores, Inc., 323 N.W.2d 801, 803, 35 W.C.D. 216, 220 (Minn. 1982). In this case, the compensation did not ignore uncontroverted medical testimony. The compensation judge reviewed the medical records from the employee's treating physicians as well as the employee's testimony and other documents in the record, and determined that the medical opinions on which the employee relied did not support a conclusion that the employee's work activities between February 1997 and March 1998 caused, aggravated or accelerated her carpal tunnel condition.

In view of the medical evidence of record, and in view of the compensation judge's further evaluation of the medical opinions issued by Dr. Olson and Dr. Wilke and her determination as to the level of weight to grant those opinions, we believe that the compensation judge's determinations and denial of the employee's claim are not clearly erroneous. As the compensation judge's decision is adequately supported by the record and is not clearly erroneous, we must affirm.