CATHY M. HORMANN, Employee, vs. EVANGELICAL LUTHERAN GOOD SAMARITAN CTR., Self-Insured, admin'd by CONST. STATE SERV., Employer-Insurer/Appellant, and MN DEPT. OF LABOR & INDUS./VRU, BLUE CROSS/BLUE SHIELD OF MINN and CONSULTING RADIOLOGISTS, LTD., Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
FEBRUARY 2, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION. Substantial evidence, including medical opinions, supports the compensation judge's finding that the employee's May 18, 1997, injury arose out of the course and scope of her employment, and that she sustained a cervical strain/sprain and an exacerbation of her degenerative disc disease as a substantial result of that injury.

WEEKLY WAGE. Substantial evidence supports the compensation judge's determination of the employee's weekly wage where the employee was "regularly employed" by a second employer and the compensation judge used the statutory formula to calculate the employee's weekly wage.

MEDICAL TREATMENT & EXPENSE. Substantial evidence supports the compensation judge's finding that the employee's medical treatment including the November 9, 1998, surgery was reasonable and necessary and causally related to the employee's work injury.

Affirmed.

Determined by: Rykken, J., Wheeler, C.J., and Pederson, J.
Compensation Judge: Carol A. Eckersen

OPINION

MIRIAM P. RYKKEN, Judge

The self-insured employer appeals the compensation judge's finding that the employee sustained an injury arising out of and in the course and scope of her employment on May 18, 1997, and accordingly appeals from the compensation judge's award of temporary total disability benefits, permanent partial disability benefits, and payment of medical expenses. The employer also appeals from the compensation judge's determination of the employee's weekly wage as of May 18, 1997. We affirm.

BACKGROUND

Cathy M. Hormann, the employee, has worked for Evangelical Lutheran Good Samaritan Center, the employer, located in Clinton, Minnesota, for three different periods of time

between 1993 and 1997. (T. 29.) This matter involves a claimed injury of May 18, 1997, at which time the employer was self-insured for workers' compensation liability. The employee is a licensed practical nurse, and has worked for the employer as a head nurse, supervising nursing assistants, passing out medications, providing respiratory treatment, transferring patients and preparing chart records of the residents' care. Born on October 27, 1958, the employee was 38 years old on the date of her claimed injury.

From March to May 1997, the employee also worked for Caregivers Network (Caregivers) as a home health care nurse. Although she had originally signed up as of November 1995 to be on call for nursing projects through Caregivers, she only worked one day of orientation in 1995 and did not begin working at her original assignment when her proposed client was hospitalized for an extended period of time. At some point between November 1995 and March 1997, Caregivers offered the employee a position in the Twin Cities metropolitan area, but the employee declined that assignment, as it would have required her to commute on a long-distance basis from her home in western Minnesota. In March 1997, the employee was assigned to provide home nursing to her original patient who since had returned to her local residence. Prior to her injury on May 18, 1997, the employee worked for Caregivers from March 23 through May 16, 1997. During that seven-week period, she worked a total of sixteen days for Caregivers, earning a total of $1,810.75.

The employee claims that on May 18, 1997, while working for the Good Samaritan Center, she was standing near a medical cart and reached over to the left side of the cart, leaning over and turning. The employee reported that she turned her head and felt a burning sensation on the back and right side of her neck, along with a hot dizzy feeling. She reported that she stood still until her symptoms quieted down, and worked four more hours, completing her shift. The burning sensation continued and the stiffness in her neck worsened. The employee worked her next scheduled shift on Tuesday, May 20, 1997, still experiencing a headache, muscle soreness and stiffness, along with a "hot poker" feeling in her neck. She also worked May 21, 22 and 23, and noticed increased pain, headaches and stiffness.

On May 23, 1997, as she passed out medications, the employee noted weakness in her left arm, which caused her to drop the medications. She reported her condition to her supervising nurse, and sought medical attention through a nurse practitioner at Northside Medical Center, her family clinic, where she had treated since April 1994. She reported a one-week history of tightness and pain in the right side of her neck and that it felt like she twisted her neck, after which she had "hot flashes" going up the right side of her neck. She also described her current symptoms "as more of an achey [sic] sensation." The nurse practitioner diagnosed sinusitis, for which the employee had treated at that clinic in January and March 1997, and muscle spasms. The nurse prescribed medications, including Augmentin, Darvocet and Flexeril.

The employee provided the employer with notice of her injury on June 9, 1997, and completed an Employee's Accident Report on June 14, 1997. (ER Ex. 1.) In that report, the employee wrote, in part, in response to the directive to "Explain What Happened," as follows:

> On May 18 I started having hot feeling spasms up the right side of my neck, as well as having a continuous headache. I had been working back-to-back double shifts that weekend and thought I was just overtired. I don't remember any specific task I was doing before this happened . . . .

The employee further outlined her symptoms and medical treatment received since the injury. In response to the question, "Did Anyone See the Accident Happen?", the employee wrote, "It wasn't an accident. It just started happening." (Resp. Ex. 1.)

The employer denied primary liability and denied that the employee had sustained a work-related injury. In its Notice of Insurer's Primary Liability Determination, dated July 10, 1997, the self-insured employer stated "[l]ack of medical documentation to relate the injury to work activities. A specific work activity cannot be identified which would have caused the alleged injury."

The employee's medical history includes treatment she received for migraine headaches in 1993. In June 1993, she reported to St. Bernard's Providence Hospital for treatment of migraine headaches, which she complained had worsened in the past year. She also complained that her eyes were hurting and her vision was hazy. (Er. Ex. 5.) In October 1994, the employee consulted Northside Medical Center, reporting two episodes of sudden onset of numbness and tingling in her hands and feet with sensation of things "closing in." The employee reported a head injury one month earlier, with no loss of consciousness; there is no further explanation of that injury in the medical records.

The employee again sought medical treatment at Northside Medical Center on June 9, 1997, and was examined by Dr. Bryan Delage. The employee reported to Dr. Delage that since May 18 she had experienced numerous episodes throughout the day which felt like a "heat spasm going up the right side of her neck." For example, once, while taking a break, she developed a sharp, right-sided headache and could not swallow nor move her tongue. She also reported that while at work on June 9, she suddenly developed a tingling sensation down her left arm and dropped the medication cup she was carrying. Twice that day she developed a sudden onset of acute dizziness and nausea which lasted about three to four minutes.

The employee has undergone extensive medical treatment since her claimed May 18, 1997 injury. A June 10, 1997 x-ray revealed a reversal of the normal curvature of the employee's cervical spine consistent with spasm and showed evidence of degenerative disc narrowing at C5-6 and to a lesser degree at C6-7. At the recommendation of Dr. Delage, the employee underwent an MRI scan of her cervical spine and brain on June 11, 1997. That MRI showed disc protrusions with canal narrowing and light encroachment at the C5-6 level and to a lesser degree at the C4-5 and C6-7 levels. The MRI of the brain showed no abnormality. At Dr. Delage's referral, the employee underwent physical therapy between mid June through mid November 1997. She received physical therapy treatments primarily to her cervical spine area, but also initially to her upper thoracic and shoulder areas.

Dr. Delage also referred the employee to Dr. Lawrence Jedlicka, a neurologist, who examined her on July 7, 1997. Dr. Jedlicka diagnosed multiple ruptured cervical discs associated with a left upper extremity radiculopathy and secondary headaches and ataxia. Dr. Jedlicka recommended an EEG, which he interpreted as being moderately abnormal and "suggestive of an underlying cortical abnormality and it could certainly be seen as interictal activity. Clinical correlation suggested." Dr. Jedlicka recommended that the employee be examined by a neurosurgeon.

Dr. Delage referred the employee to Dr. Donald Erickson, a neurosurgeon at the University of Minnesota, who examined the employee on July 8, 1997. Dr. Erickson did not find any evidence of nerve root or spinal cord compression on the MRI that suggested the need for surgical intervention. He stated that "[m]ost of her complaints could be explained on myofascial inflammation and spasm . . . ." Dr. Erickson treated her with an Xylocaine injection in the paraspinous area which reportedly provided the employee with some relief.

On August 4, 1997, Dr. Delage released the employee to return to work, restricting her to lifting no more than one pound and recommending that she either pass out medications or perform paperwork tasks. As of August 14, 1997, Dr. Delage wanted the employee to continue light lifting, with no lifting of anything heavier than her infant child. The employee did work eight or nine work shifts but was unable to continue due to her pain and spasms. The employee continued to note headaches and stiffness in her neck. She experienced numbness on the left side of her face and had difficulty swallowing. She reported feeling pain like a "hot poker" ten to fifteen times a day, felt that her legs were wobbly and felt dizzy.

At Dr. Jedlicka's referral, the employee underwent an examination with Dr. Robert Maxwell, a neurosurgeon at the University of Minnesota, on November 10, 1997. Dr. Maxwell determined the employee had significant neck symptoms associated with a degenerative disc and abnormal spine curvature in her neck. Dr. Maxwell referred the employee for an EMG of her upper extremities. Dr. Maxwell interpreted that EMG, taken on November 14, 1997, as normal and recommended a cervical CT myelogram to better clarify the nature of the employee's neck symptoms. The employee underwent the myelogram and CT scan on December 9, 1997, which showed a mild anterior dural defect at the C2-3, C4-5 and C6-7 levels, along with bulging at C2, C5-6 and C6-7 levels. Although the employee was apparently intending to undergo a follow-up neurosurgical evaluation with Dr. Maxwell, there is no record of any further examination by Dr. Maxwell.

The employee obtained chiropractic treatment from Dr. Lea Mittness, undergoing fifteen treatments between December 19, 1997 and March 6, 1998, including ultrasound and light massage. The employee reported that these treatments helped reduce her symptoms. The employee continued to receive conservative care from Dr. Delage. As of February 10, 1998, Dr. Delage determined that the employee had not yet reached maximum medical improvement (MMI), and rendered a possible diagnosis of fibromyalgia.

According to Dr. Jedlicka's report of March 2, 1998, Dr. Jedlicka noted that the conservative care recommended by Dr. Erickson in June 1997 had been unsuccessful and that

cervical disc repair was recommended. Dr. Jedlicka noted that a final surgical evaluation and opinion was pending. He stated that in his opinion the employee's May 18, 1997 work-related injury was solely responsible for the employee's neck problems and pain, and also determined that the "subsequent Cervical Surgery is also necessary as a consequence of this work injury." Dr. Jedlicka further stated that if surgery is not possible or if conservative therapies are not effective, because of the complexity of the case, a referral to the Mayo Clinic may be appropriate.

Dr. Delage referred the employee to the Mayo Clinic, where she underwent examinations with a neurologist, an endocrinologist and an ENT specialist at the Mayo Spine Center from May 27-29, 1998. The doctors at the Mayo Clinic diagnosed the employee as having complex musculoskeletal neurology pain syndrome and multi-level cervical spondylosis without evidence of myelopathy, radiculopathy or instability.[1] They also diagnosed her as having, among other diagnoses, bilateral carpal tunnel syndrome and autoimmune thyroid disease with associated hypothyroidism. They did not recommend cervical spine surgery, and the employee returned to Dr. Delage for continued care.

On May 13, 1998, the employee filed a claim petition, claiming entitlement to payment of temporary total disability benefits from June 25, 1997 to the present and continuing, payment for medical expenses related to her ongoing medical care, and payment of permanency benefits.

On August 17, 1998, at the request of the self-insured employer, the employee underwent an examination with Dr. Neil Dahlquist. Dr. Dahlquist found no evidence of any significant spine problem, and found that the employee had marked functional overlay with chronic pain syndrome. He determined that the employee had sustained no permanent partial disability related to her neck and complaints and recommended no further treatment nor any physical restrictions on her activities. Dr. Dahlquist stated that "I find no evidence that she sustained any permanent injury related to her alleged incident when she was passing medications." (Ee. Ex. J.)

Dr. Delage referred the employee for an additional MRI of her cervical spine, which she underwent on September 8, 1998. That MRI showed extradural defects at the C5-6 and C6-7 levels, and mild spondylosis at the C4-5 level. Dr. James Jacobs, who interpreted the MRI, stated that "CT myelography might be considered if clinically indicated or if surgical intervention were contemplated." On October 5, 1998, Dr. Delage diagnosed "degen[erative] disc and degen[erative] arthritis cervical spine with exacerbation secondary to work related injury, pain is chronic at this point." He determined that the employee had reached MMI, and assigned a

[1] The Mayo Clinic records reflect that the employee had previously consulted the Mayo Clinic. In 1994, she was examined for evaluation of chronic abdominal pain, dyspareunia, and urinary symptoms. In 1995, she was again examined due to lower abdominal pain of unidentified origin, underwent further diagnostic testing, and was referred to their chronic pain clinic and recommended treatment in the Mayo Pain Management Center. (Ee. Ex. C.) The employee's chronic pelvic pain was documented in her medical records as early as 1991; she has undergone multiple gynecological surgical procedures.

permanency rating of 10.5% permanent partial disability of the body as a whole. He also stated that she "does not have a surgically intervenable prob[lem] in her neck at this time that surg[ery] would be helpful for."[2]

On October 13, 1998, Dr. Delage referred the employee to Dr. Jeffrey Gerdes, apparently after she requested a second neurosurgical opinion. Dr. Gerdes examined the employee on October 30, 1998, and scheduled the employee for a discogram on November 3, 1998. That discogram was interpreted as showing concordant pain with abnormal disc morphology at the C2-3 and C3-4 levels and concordant pain with markedly abnormal disc morphology at the C4-5, C5-6 and C6-7 levels. Dr. Gerdes recommended surgery, and performed a four-level anterior fusion surgery between the C3 and C7 levels on November 9, 1998.

The employee reported that her symptoms of left-sided numbness in her face and the "hot poker" pain on the right side of her neck were relieved after the surgery, and also reported an elimination of her sharp pain and that her headaches were not as severe. In late January 1999, the employee jarred herself and noted an increase in headaches, left arm pain and neck pain. She underwent physical therapy from February until April 1999. In March 1999, the employee apparently experienced another sharp movement and exacerbated her symptoms of left upper extremity numbness and headaches. The employee's physical therapist recommended that the physical therapy cease, however, because her symptoms were worsening. She underwent seven treatments of massage therapy between April and June 1999. Dr. Gerdes continued to treat the employee and to prescribe pain medication.

On August 12, 1999, at the request of the employer, Dr. Michael Smith examined the employee. The employee reported to Dr. Smith that post-operatively, she had no headache for six weeks and then things "got worse." She complained of a constant headache. In his report dated August 17, 1999, Dr. Smith stated that

> The long term benefit of the surgery that she could clearly identify was that the "shooting pains" are gone only when her head is held very still. Other than that, the operation unfortunately did not provide any of the pain relief for which she had hoped.

(Resp. Ex. 3.) Dr. Smith diagnosed a cervical strain and degenerative disc disease and chronic pain syndrome and depression. In his opinion, the employee sustained no injury on May 18, 1997, her current complaints were unrelated to the work incident on May 18, 1997, and the employee had sustained no permanent partial disability. Dr. Smith determined that the employee could work in a light to moderate duty job on a full-time basis, lifting up to thirty pounds, but that she should avoid a repetitive vertical gaze and activities over her shoulders. In his report, Dr. Smith stated that he would not have recommended the discography or surgery. However, at his deposition taken on October 15, 1999, he admitted that the employee had axial cervical spine pain that defied

[2] In an addendum report of October 12, 1998, Dr. Delage revised his opinion to assign a 10% permanent partial disability of the body as a whole, pursuant to Minn. R. 5223.0370, subp. 4C.

diagnosis and that on the date the discogram was conducted the employee was an appropriate candidate for that testing.

In a report dated October 19, 1999, Dr. Gerdes diagnosed cervical discogenic pain based on degenerative changes detected on the employee's MRI scan and based on significant findings on her discogram. Dr. Gerdes stated his opinion that the fusion surgery on November 9, 1998, was necessitated by the work injury because the employee had been asymptomatic before her 1997 work injury and had noted significant symptoms following that incident. Dr. Gerdes released the employee to return to work with permanent lifting restrictions of twenty pounds. He determined that the employee had reached MMI and had sustained 15% permanent partial disability of the body as a whole.[3]

According to testimony presented at the hearing by Jim Sewick, administrator for the employer, the employer could work with the employee to accommodate her work restrictions, and would be able to accommodate the employee with a twenty-pound restriction. At the time of the hearing, however, the employer had not yet provided the employee with a job offer, but the employer had not fired the employee nor had she quit. The employee has not yet returned to work. On October 22, 1998, the employee underwent a rehabilitation consultation with a qualified rehabilitation consultant (QRC) at the Department of Labor and Industry Vocational Rehabilitation Unit. The QRC determined that the employee is qualified for rehabilitation assistance. The employer continues to deny liability for the employee's claim.

On October 27, 1999, a hearing was held to address the employee's claims, in addition to intervention claims brought by Blue Cross and Blue Shield for medical and prescription expenses paid on behalf of the employee in the amount of $37,891.71, and payment of interest through July 1999 totaling $3,236.70. In addition, Consulting Radiologists, Ltd., intervened for reimbursement of $1,042.60 for medical services provided to the employee in 1997. At hearing, the parties stipulated that if the compensation judge found that the employee's condition was causally related and that the surgery was reasonable and necessary, the employee's extent of permanent partial disability is 15% of the body as a whole. (Finding No. 1.)

In Findings and Order served and filed January 18, 2000, the compensation judge found that the employee sustained an injury arising out of and in the course and scope of her employment with the self-insured employer on May 18, 1997, and that as a result of the injury she sustained a cervical strain/sprain and exacerbation of her degenerative disc disease. The compensation judge determined that the employee's weekly wage at the time of her injury was $486.54, including her stipulated wage earned with the employer of $227.86 and her wage earned from a second employer, Caregivers, in the amount of $258.68.

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[3] Dr. Gerdes's report of October 19, 1999, does not identify which section of the permanency schedule applies to this permanency rating. In his deposition, Dr. Smith testified that if the employee's injury were to be determined as work-related, she then would have a ratable permanency of 15% permanent partial disability of the body as a whole, pursuant to Minn. R. 5223.0370, subp. 3C(2) and subp. 5. (Er. Ex. 3, p. 41-42.)

The compensation judge awarded temporary total disability benefits from June 25 through August 3, 1997, and from October 22, 1998 through October 27, 1999, and continuing. The judge determined that the employee did not diligently seek work between August 4, 1997 through October 21, 1998, and therefore denied temporary total disability benefits for that period of time. The judge determined that the employee became medically unable to continue working from the date of her surgery, November 9, 1998, through October 19, 1999, when she was released to return to work by Dr. Gerdes.

The compensation judge also determined that the surgery which the employee underwent on November 9, 1998, was causally related and reasonable and necessary, and therefore ordered payment of medical expenses related to that surgery, as well as medical expenses incurred by the employee for other treatment received following her injury on May 18, 1997. The judge also awarded payment of permanency benefits based upon 15% permanent partial disability of the body as whole.

The self-insured employer appeals the compensation judge's finding that the employee sustained a work-related injury on May 18, 1997, and therefore appeals from the judge's related award of temporary total disability benefits, permanent partial disability benefits, and payment of medical expenses. The employer also appeals from the compensation judge's determination of the employee's weekly wage earned at her second employer, Caregivers, as of May 18, 1997.

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

Causation

The self-insured employer appeals from the compensation judge's determination that the employee's May 18, 1997 injury arose out of and in the course and scope of her

employment, and that she sustained a cervical strain/sprain and an exacerbation of her degenerative disc disease as a substantial result of that injury. The issue before this court is whether the compensation judge's determination that there was a causal relationship is supported by substantial evidence in the record and is not clearly erroneous.

The self-insured employer contends that both the workers' compensation statutes and interpretative cases require that in a medically complicated case, such as this one, the employee must provide a medical opinion that includes a rationale and explanation, in order to meet her burden of proving her claims for compensation and medical expenses. The self-insured employer argues that there is no explanation provided in the primary medical opinion upon which the employee relies, as outlined in Dr. Jeffrey Gerdes's October 19, 1999 report, and thus the employee has failed to meet her burden of proof.

The compensation judge, in explaining her finding of causal relationship, stated that she found the employee's testimony credible, that she had felt severe neck pain on May 18, 1997. The compensation judge stated that the medical opinions on which the employee relies in support of her contention that the work incident of May 18, 1997 was the cause of her cervical spine condition are based on a factual history consistent with the employee's testimony describing the May 18, 1997 incident.

The employee relies upon the medical opinions of three doctors, her treating physician, Dr. Delage, a consulting neurologist, Dr. Jedlicka, and Dr. Gerdes, who performed surgery on the employee on November 9, 1998. The employee was seen by Dr. Delage, her treating physician, between June 9, 1997 and at least December 7, 1998.[4] The history that the employee provided to Dr. Delage at her initial examination on June 9, 1997 is consistent with the testimony presented at the hearing, which testimony the judge found to be credible. Dr. Delage's first opinion concerning causation is in his chart note of February 10, 1998, which reported the employee's symptoms as being neck pain, arm tingling, pain and discomfort. He stated that, "I think her symptoms are from the muscle spasm and I do, indeed, feel that the initial event was her work." In his chart note of October 5, 1998, Dr. Delage reported the employee's diagnosis as being "cervical spine, degenerative arthritis, DDD,[5] severe neck pain, and muscle spasm secondary to degenerative arthritis." Her symptoms and physical limitations persisted, and Dr. Delage stated that "this all started after her acute injury at work. It is obviously a contributing factor to her disease." Dr. Delage also stated his diagnosis as being degenerative disc and degenerative arthritis of the cervical spine with exacerbations secondary to the work-related injury, and that the pain was chronic at that point. In his chart note of October 13, 1998, Dr. Delage states that, "I am under the opinion that her work exacerbated her underlying disease, that she was previously healthy prior to that. Exacerbation now has made her quite dysfunctional. She may be developing an element of fibromyalgia and that is my working [diagnosis] at this point."

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[4] The last narrative chart note written by Dr. Delage is dated December 7, 1998. The hearing record includes a chart indicating that Dr. Delage continued to monitor Dr. Gerdes's reports and prescriptions through at least August 3, 1999.

[5] The abbreviation "DDD" presumably refers to degenerative disc disease.

Dr. Jedlicka, a neurologist, examined the employee on July 7, 1997, at the referral of Dr. Delage. The history that the employee provided to Dr. Jedlicka on that date is consistent with that testified to by the employee at the hearing. In a report dated March 2, 1998, Dr. Jedlicka stated that he reviewed the employee's medical records dating back to January 13, 1988, and outlined his opinion concerning causation. Dr. Jedlicka stated, in part, the following:

> Ms. Hormann was in good health without any cervical problems when she developed severe neck pain while working May 18, 1997. She was seen by me July 7, 1997. Diagnoses included multiple ruptured cervical discs associated with a left upper extremity Radiculopathy and secondary Headaches and Ataxia. . . In my opinion the work injury sustained May 18, 1997 is solely responsible for her neck problems and pain. The evaluations to date have been reasonable and necessary and are directly related to the work injury. The subsequent [prospective] Cervical Surgery is also necessary as a consequence of this work injury.

(Pet. Ex. M.)

In addition, Dr. Gerdes, the surgeon who conducted the employee's surgery on November 9, 1998, rendered the following opinion in a letter dated October 19, 1999:

> My diagnosis is one of cervical discogenic pain. This is based on degenerative changes on her MRI and the significant findings on discography. By [the employee's] report, she had no significant neck pain until the incident at work in May 1997. Following this, she had ongoing significant pain. As such, her surgery was therefore necessitated by her work injury. At this time I would continue with a 20 pound weight restriction indefinitely. She is now far enough out from surgery that I think her MMI has been reached. I feel 15 percent is appropriate.

(Pet. Ex. B.)

By contrast, the employer relies upon the medical opinions of Drs. Dahlquist, Erickson, Maxwell, Smith and the doctors at the Mayo Clinic. Dr. Dahlquist, who examined the employee on August 17, 1998, stated that he found no evidence that the employee sustained any permanent injury related to her alleged incident while passing medications for the employer. Dr. Dahlquist referred to the employee's chronic pain and medical problems over the years and stated that the employee "more than likely does have a significant functional problem with somatoform disorder." Dr. Dahlquist determined that the employee had no permanent disability relating to her neck complaints, no need for further treatment and no need for physical restrictions. Drs. Erickson and Maxwell, neurosurgeons at the University of Minnesota examined the employee at the referral of Dr. Delage. Dr. Erickson examined the employee on July 9, 1997, and could not

detect any specific neurologic deficit. He felt that most of the employee's complaints were explained by myofascial inflammation and spasm. He also referred to anxiety as being a substantial factor contributing to the employee's symptoms. Dr. Maxwell, who examined the employee on November 10, 1997, recommended an electromyelogram, which he interpreted as being normal, and recommended a cervical CT myelogram to clarify the nature of the employee's neck symptoms. No further follow-up was done through Dr. Maxwell, so there is no further opinion from him concerning causation of the employee's problems or recommendations or rejection of the option of cervical spine surgery.

Dr. Michael Smith examined the employee on August 12, 1999, at the request of the employer. Dr. Smith stated that he did not believe that the employee sustained a work injury of any significance on May 18, 1997, but, assuming that the alleged sprain/strain syndrome occurred on that date, there was no resulting permanency. Dr. Smith also stated that he personally would not have recommended surgery in this setting, because the employee had five levels of painful degenerative disc disease present on the discography and surgery would not, under generally accepted medical practices, be indicated. Specifically, Dr. Smith stated that based on the employee's description of her injury, such an injury would not have caused four levels of cervical degenerative disc disease and the need for such an extensive fusion.

Finally, the employee underwent extensive evaluations at the Mayo Clinic from May 27-29, 1998. The doctors there diagnosed the employee with chronic pain syndrome, musculoskeletal neck pain, fascial paresthesias of unknown etiology, bilateral median neuropathy at the wrists, and hypothyroidism which may relate to some of the other diagnoses.

The question of whether there was a causal relationship between the employee's May 18, 1997 work injury and her cervical and related symptoms is a question of fact. 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). A trier of fact's choice between experts whose testimony conflicts is usually 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, 342-43, 37 W.C.D. 364, 372-73 (Minn. 1985). In this case, the facts assumed by Drs. Delage, Jedlicka and Gerdes were also ones in evidence and presented through the employee's history and direct testimony, expressly credited by the compensation judge, and we defer to the judge's unique discretion to credit that evidence. Moreover, a compensation judge has considerable discretion in choosing among conflicting expert opinions. Jacobowitch v. Bell & Howell, 404 N.W.2d 270, 39 W.C.D. 771 (Minn. 1987). The compensation judge accepted the opinions of Drs. Delage, Jedlicka and Gerdes over those relied upon by the employer. The judge further stated her conclusion that although Dr. Smith, one of the doctors upon whom the self-insured employer relies, argued that the mechanism of injury alleged sounded rather trivial, just barely turning her head, the employee had described a more awkward position than just turning her head, and "her treating doctors found it was a sufficiently significant incident taken with the employee's history that she was asymptomatic before May 18, 1997." As their medical opinions were properly founded, that resolution of the conflict between the various medical opinions will not be disturbed. Nord v. City of Cook, 360 N.W.2d at 342-43, 37 W.C.D. at 372-73. In addition, the compensation judge's decision was supported by the testimony of the employee. As a result, the compensation judge's

determination that the employee sustained a work-related injury to her cervical spine on May 18, 1997, is affirmed. Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d at 59, 37 W.C.D. at 239.

Calculation of Weekly Wage

The compensation judge determined that the employee's total weekly wage on May 18, 1997, was $486.54, based on wages earned from both the self-insured employer and Caregivers. The parties stipulated that the employee's weekly wage earned at the Good Samaritan Center was $227.86. The compensation judge determined that the employee's weekly wage earned at Caregivers was $258.68, which, combined with the stipulated weekly wage at Good Samaritan, resulted in a total weekly wage of $486.54. The self-insured employer appeals from this wage calculation, arguing that the method of calculation used by the compensation judge resulted in a date-of-injury wage grossly out of proportion to the employee's demonstrated earning capacity.

Minn. Stat. § 176.011, subd. 3, provides that "[i]f, at the time of injury, the employee was regularly employed by two or more employers, the employee's earnings in all such employments shall be included in the computation of the daily wage" (emphasis added). The employer argues that the employee's work at Caregivers should not be considered "regular" as she worked only one day in 1995 and 16 days in 1997. The employer also argues that there is no indication that the employee's future work with Caregivers would have continued as it did for the brief period prior to the employee's injury. However, the compensation judge included these wages in the employee's weekly wage, by inference concluding that the employee was regularly employed by Caregivers at the time of her May 18, 1997 injury.

The employee testified that she was listed on the Caregivers' network of on-call nurses from November 1995 through her injury date of May 18, 1997. However, but for one day of orientation in November 1995, the employee was not actually employed again by Caregivers until March 1997. According to wage records in the hearing record, the employee worked a total of sixteen days for Caregivers over a seven-week period between March 23 and May 16, 1997. She worked during four two-week periods prior to the injury date of May 18, 1997. She worked one day in the first two-week period, seven days in the next two-week period, and four days in each of the two final two-week periods. (Pet. Ex. O.) The employer argues that this schedule does not fit the definition of "regularly employed" as referred to in Minn. Stat. § 176.011, subd. 3. We disagree. Substantial evidence of record, including wage records from Caregivers and the employee's testimony, supports the conclusion that the employee was regularly employed by Caregivers at the time of the May 18, 1997, injury and therefore that those wages must be included in calculation of the employee's weekly wage.

At issue, then, is whether the compensation judge's method of calculating the employee's weekly wage is supported by evidence of record and is not clearly erroneous. Minn. Stat. § 176.011, subds. 3 and 18, provide a formula to calculate weekly wage in cases of "irregular employment."[6] The compensation judge utilized these statutory calculation methods in

[6] Minn. Stat. § 176.011, subd. 3, states, in part:

determining the employee's weekly wage, using the 16 days worked over a 7-week period of time, by calculating the employee's average daily wage and multiplying that by the average days worked per week to arrive at the weekly wage figure of $258.68.

The employer concedes that the employee's wage earned from Caregivers can be classified as "irregular" under these statutory sections. However, the employer argues that the judge's method of calculation provides an unrealistic outcome, and argues that deviation from strict application of the statutory formula would be appropriate in this case. The employer argues that there is no indication that the employee's future work with Caregivers would have continued as it did for the brief period prior to the date of injury. As a result, the employer argues that the utilization of the statutory formula overstates the employee's future earning power and that "there are various circumstances which make the claimant's actual earnings during a particular period an unreliable measure of [her] earning power . . . [and] 'sometimes it is as important to reject as it is to accept a brief recent-wage experience, if a realistic approximation of future wage loss is to be obtained.' " Bradley v. Vic's Welding, 405 N.W.2d 243, 246, 39 W.C.D. 921, 924 (Minn. 1987), citing 2 A. Larson, The Law of Workers' Compensation § 60.21(c) (1987). See also Laroue v. Waste Control, No. [REDACTED SSN] (W.C.C.A. March 9, 1998). The employer therefore argues that a more reasonable weekly wage would be arrived at by using the 26-week period of time prior to the claimed injury, and by dividing the employee's total earnings at Caregivers over that entire period of time ($1,810.75 divided by 26 weeks), which would result in a weekly wage figure of $69.64 for the employee's second, part-time job. We disagree.

The object in calculating a work-injured employee's weekly wage on the date of injury is to arrive at a fair approximation of what would probably have been the employee's future earning power had that earning power not been impaired by the injury. Bradley v. Vic's Welding, 405 N.W.2d 243, 245-46, 39 W.C.D. 921, 924 (Minn. 1987); Knotz v. Viking Carpet, 361 N.W.2d 872, 87a4, 37 W.C.D. 452, 455 (Minn. 1985); and Sawczuk v. Special School Dist. 1, 312 N.W.2d 435, 437-38, 34 W.C.D. 282, 287 (Minn. 1981). The employee was "regularly employed" by

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Subd. 3. Daily wage. . .If the amount of the daily wage received or to be received by the employee in the employment engaged in at the time of injury was irregular or difficult to determine, or if the employment was part time, the daily wage shall be computed by dividing the total amount the employee actually earned in such employment in the last 26 weeks, by the total number of days in which the employee actually performed any of the duties of such employment. . .

Minn. Stat. § 176.011, subd. 18, states, in part:

Subd. 18. Weekly Wage. "Weekly wage" is arrived at by multiplying the daily wage by the number of days and fractional days normally worked in the business of the employee for the employment involved. If the employee normally works less than five days per week or works an irregular number of days per week, the number of days normally worked shall be computed by dividing the total number of days in which the employee actually performed any of the duties of employment in the last 26 weeks by the number of weeks in which the employee actually performed such duties...

Caregivers on the date of injury. No evidence was presented to support the self-insured employer's argument that the employee's employment with Caregivers might not have continued as it did from March to May 1997. Since the employee's wage earned from Caregivers was "irregular," the method of calculation utilized by the compensation judge and outlined in Conclusion of Law No. 2 was accurate under the formula outlined in the statute and under the specific circumstances of this case. We therefore affirm the compensation judge's determination that the employee earned a weekly wage of $258.68 while employed at Caregivers as of May 18, 1997, and earned a total weekly wage of $486.54 when combined with the wages earned from the self-insured employer.

Medical Treatment and Surgery Expenses

The compensation judge determined that the employee's medical care and treatment was causally related to her work injury, and that the employee's medical treatment after July 1997, including the November 9, 1998, surgery was reasonable and necessary. The self-insured employer argues that the judge's award of treatment expenses related to the employee's cervical spine surgery is not supported by the record. Specifically, the employer and insurer argue that there is no medical opinion, with explanation, supporting the compensability of the multitude of medical providers and medical expenses, and explaining why the employee needed the medical treatment she received and how the treatment is related to the incident of May 18, 1997. The employer also argues that neither the employee nor the intervenor, Blue Cross Blue Shield, presented a medical opinion outlining and explaining the extent of the employee's injury, why the specific multiple tests, evaluations and treatments were ordered and performed and how those treatments and tests related to the employee's work injury.

Again, however, the record reasonably supports the conclusion that the employee developed neck and upper extremity pain as a result of the May 18, 1997 incident. In addition, the opinions of Drs. Delage, Jedlicka and Gerdes provide evidence as to causation. In fact, much of the same evidence supporting the judge's decision that the employee's neck condition was caused or at least aggravated by the May 18, 1997 incident supports her decision on the causation of the employee's need for treatment, including surgery. As for reasonableness and necessity of the surgery, that determination is supported by Dr. Gerdes's opinion provided in his report dated October 19, 1999, in which he states that the surgery was necessitated by the work injury.

Upon review of the claim itemization submitted by intervenor Blue Cross/Blue Shield of Minnesota, we note that it identifies the various medical providers, date of service, brief description of diagnosis for each treatment date, charges and payment issued by the intervenor. This information, read in tandem with the medical records included in evidence, adequately supports the judge's conclusion that the treatment paid for by the intervenor was reasonable, necessary and causally related to the employee's injury of May 18, 1997.

In her memorandum, the compensation judge stated that the employee had an extensive course of conservative care and diagnostic testing but had not improved. The judge also stated that she found the employee's treating doctors' opinions more persuasive that the surgery was causally related to the work injury and was reasonable and necessary. As the compensation judge's conclusion is reasonably supported by the medical and documentary evidence of record,

and as it is the compensation judge's responsibility to resolve conflicts in expert testimony, Nord v. City of Cook, 360 N.W.2d at 342-343, 37 W.C.D. at 372-73, we affirm her findings that the employee's medical treatment, including surgery, was causally related to the May 18, 1997 incident and was reasonable and necessary to cure or relieve the effects of that injury.

Temporary Total and Permanent Partial Disability Benefits

Since we have affirmed the compensation judge's determination that the employee sustained an injury arising out of and in the course and scope of her employment on May 18, 1997, we accordingly affirm the judge's award of temporary total disability benefits. In addition, as outlined in the hearing transcript and in Findings of Fact No. 1, the parties stipulated that if the compensation judge found that the employee's condition was causally related and the surgery was reasonable and necessary, the employee's extent of permanent partial disability is 15% permanent partial disability of the body as a whole. Based upon this stipulation by the parties, we also affirm the judge's award of permanency benefits.