

ELAINE M. JOSEPHSON, Employee, v. WAL-MART STORES, INC. and INS. CO. OF THE STATE OF PA./CLAIMS MGMT., INC., Employer-Insurer/Appellants.

WORKERS' COMPENSATION COURT OF APPEALS  
APRIL 26, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL CONTRIBUTING CAUSE. Substantial evidence, including the opinion of the employee's treating physician, supported the compensation judge's decision that the employee's admitted knee injury substantially contributed to her need for total knee replacement surgery.

Affirmed.

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

OPINION

WILLIAM R. PEDERSON, Judge

The employer and insurer appeal from the compensation judge's decision that the employee's March 16, 1999, work-related knee injury is a substantial contributing cause of her need for total knee replacement surgery. We affirm.

BACKGROUND

On March 16, 1999, Elaine Josephson [the employee] sustained an injury to her right knee while stocking shelves in her job with Wal-Mart Stores, Inc. [the employer]. She sought treatment the following day and was advised to take a pain reliever for what was diagnosed as a "strain, probable medial collateral ligament, with some underlying degenerative arthritis." When her symptoms failed to improve, her treating physician, Dr. Paul A. Dale, referred her for an MRI scan. That test, performed on April 16, 1999, disclosed "moderate severe degenerative change medial compartment with degenerative fraying and tearing mid body medial meniscus," as well as significant medial tibial plateau marrow edema, joint effusion, and significant diffuse patellar cartilage thinning. A few weeks later, on May 7, 1999, Dr. Dale performed a right knee arthroscopy with partial medial meniscectomy and debridement. The employer and insurer admitted liability for a knee injury and paid benefits related to that surgery.

The employee returned to modified work with the employer in late June of 1999. Within a month, she reported to Dr. Dale that her right knee pain had been steadily increasing, and, by late August of 1999, the employer had placed the employee on medical leave due to continuing severe symptoms. X-rays taken in December of 1999 showed the complete loss of the

medial compartment, as well as erosion into the posteromedial tibial plateau, flattening of the medial aspect of the medial femoral condyle, significant lateral patellar maltracking, and significant narrowing of the lateral patellofemoral articular compartment. Based on test and examination results, as well as the progressive and debilitating nature of the employee's knee pain, Dr. Dale advised the employee to consider having a total knee replacement. His opinion to this effect was confirmed by Dr. Joseph Nessler. Dr. Dale reported on several occasions that the employee's ongoing problems and need for additional surgery were causally related to her work injury; Dr. Nessler did not address causation.

On July 7, 2000, the employee filed a medical request, seeking approval for a total knee arthroplasty, and the matter came on for hearing before a compensation judge on October 6, 2000. The sole issue at hearing was medical causation. Relying primarily on the reports of Dr. Dale, the employee alleged that her need for total knee replacement surgery was a compensable consequence of her work injury. The employer and insurer, on the other hand, relied on the opinion of Dr. Sheldon Segal, who took the position that the employee's need for the proposed surgery was related solely to her underlying, preexisting degenerative joint disease. In a decision issued on October 24, 2000, the compensation judge resolved the issue in the employee's favor, ordering the employer and insurer to pay for the requested procedure. 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 affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, "[f]actfindings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). Findings of fact should not be disturbed, even though the reviewing court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." Id.

## DECISION

The compensation judge wrote a three-page memorandum discussing the opinions of Dr. Dale, the employee's treating physician, and Dr. Segal, the employer and insurer's examiner. Quoting at length from both doctors' opinions, the compensation judge ultimately accepted the opinion of Dr. Dale. The judge also noted, however, that Dr. Segal seemed to agree that the employee's work injury -- the meniscus tear -- "exacerbated" the employee's preexisting degenerative joint disease. On appeal, the employer and insurer argue that the judge misinterpreted the opinion of Dr. Segal and erred in accepting the opinion of Dr. Dale. We are not persuaded that the judge's decision is clearly erroneous or unsupported by the record as a whole.

Dr. Segal examined the employee in November of 1999 and issued a narrative report as well as testifying by deposition. It is clear, especially from his deposition testimony, that Dr. Segal did not intend to concede any causal connection between the employee's March 16, 1999, work injury and her need for a total knee replacement, maintaining that the employee's continuing severe symptoms were caused solely by her underlying degenerative joint disease. At the same time, however, Dr. Segal indicated in his November 11, 1999, report that the employee's "work injury does represent a significant contributing cause to [the employee's] problems," because of "her history of having not had any prior knee injuries or any prior knee problems." Similarly, in his deposition, Dr. Segal acknowledged that the employee's initial pain complaints were "precipitated" by her work injury and that the employee never again returned to her preinjury status. He also conceded that the meniscus tear "may" have caused some additional degeneration in the medial compartment of the employee's right knee. Therefore, while the employer and insurer may be correct in characterizing Dr. Segal's overall opinion as supporting their position on causation, there are, nevertheless, elements of that opinion that at least arguably suggest a connection between the employee's right knee injury and her need for knee replacement surgery. Perhaps more importantly, we find no error in the compensation judge's decision to accept the opinion of Dr. Dale.

As early as September 9, 1999, only six months after the employee's work injury, Dr. Dale indicated that, "because of [the employee's work-related] meniscus tear, she has gone on to experience increase[d] symptoms secondary to her underlying osteoarthritis." In an October 21, 2000, treatment note, Dr. Dale reiterated that he "continue[d] to feel that the right knee symptoms are a direct result of [the employee's] original work injury," explaining as follows:

She was in no way symptomatic in the right knee prior to that although she may have had some pre-existing osteoarthritis. Her meniscus tear suffered at the time of her work injury resulted in pain both from the meniscus tear itself but also exacerbated the pre-existing asymptomatic osteoarthritic condition. Unfortunately, the natural history following a meniscus tear is that of accelerated articular cartilage wear and that has occurred in Ms. Josephson's knee.

Finally, in a short narrative report issued on October 4, 2000, Dr. Dale explained his opinion in more detail, writing,

As described in my phone conversation with you on 10-4-00, I believe Ms. Josephson's right knee [degenerative joint disease] is related to her work injury which resulted in her meniscal tear. As you are aware, the patient was completely asymptomatic with respect to her right knee prior to this injury. The mechanism of injury was quite consistent with generation of her meniscus tear which necessitated the arthroscopy and partial meniscectomy. At the time of the surgery, she was noted to have evidence of degenerative joint disease showing both articular cartilage

degeneration as well as some peri-articular osteophytes or bone spurs. She again was not symptomatic prior to the meniscus tear even though she certainly had some degree of degenerative changes present in the knee prior to the accident. Chances are she would have eventually become symptomatic from these degenerative changes, however, the incident resulting in the meniscus tear substantially accelerated this process.

It is my opinion that the incident resulting in the meniscus tear exacerbated a previously asymptomatic pre-existing condition. It is unpredictable how long she may have gone on without noticeable symptoms from her degenerative joint disease had the accident not occurred. She is now at a point where she will require total knee arthroplasty for adequate pain relief.

The employer and insurer argue in part that the compensation judge erred in accepting Dr. Dale's opinion, because, in an April 20, 1999, treatment note, prior to the initial arthroscopic surgery, Dr. Dale predicted that the employee would likely need a total knee replacement eventually, due to her underlying degenerative joint disease. However, nothing in Dr. Dale's statement to that effect is inconsistent with his later opinion that the employee's work injury exacerbated her underlying condition and accelerated her symptoms and need for additional surgery. We also note that there are other factors that may have influenced the judge's causation decision, including the employee's history of long hours working on her feet, without any evidence of knee symptoms prior to the March 1999 injury, and the fact that the employee received treatment over the years for several conditions without ever apparently mentioning any knee symptoms whatsoever.

Physicians agree that the employee had underlying degenerative joint disease in her right knee prior to her work injury. However, that fact "does not disqualify a claim if the employment aggravated, accelerated or combined with the [preexisting] infirmity to produce the disability for which compensation is sought." Bender v. Dongo Tool Co., 509 N.W.2d 366, 367, 49 W.C.D. 511, 513 (Minn. 1993). Because the opinion of Dr. Dale amply supports the conclusion that the employee's admitted knee injury aggravated or accelerated the employee's underlying condition, substantially contributing to her need for total knee replacement surgery, and because the judge was entitled to rely on that opinion in reaching his decision, see Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985), we affirm the judge's decision in its entirety.