

THOMAS KAPAUN, Employee, vs. FARMSTEAD FOODS and ITT SPECIALTY RISK SERVS., Employer-Insurer, and FAIRVIEW RIDGES HOSP., ORTHOPEDIC LABS and CEDAR RIDGE CLINIC, DIVISION OF FAIRVIEW HEALTH SERV., ABBOTT NW. HOSP., Intervenor, and TWIN CITIES SPINE CTR., Intervenor/Appellant.

WORKERS' COMPENSATION COURT OF APPEALS
JUNE 4, 2001

No. [REDACTED SSN]

HEADNOTES

MEDICAL TREATMENT & EXPENSE—REASONABLE & NECESSARY. Substantial evidence supports the compensation judge's finding that the IDET procedure was not reasonable and necessary medical treatment for the employee in this case.

Affirmed.

Determined by: Rykken, J., Wilson, J., and Johnson, J.
Compensation Judge: Gary P. Mesna

OPINION

Miriam P. Rykken, Judge

The intervenor, Twin Cities Spine Center, appeals the compensation judge's finding that the IDET procedure was not reasonable and necessary medical treatment for the employee's condition. We affirm.

BACKGROUND

On November 28, 1992, Thomas Kapaun, the employee, sustained a work-related low back injury while working for Farmstead Foods, the employer, which was insured for workers' compensation liability by ITT Specialty Risk Services, the insurer. Following that injury, the employee noted a sudden onset of low back pain and pain radiating into his right leg, and was diagnosed as having sustained a herniated disc at the L5-S1 level. Born in 1973, the employee was 19 at the time of his injury. The employer and insurer admitted liability for this injury, and paid various workers' compensation benefits to and on behalf of the employee.

In January 1993, the employee underwent a laminectomy at L5-S1 performed by Dr. Charles Ray. In March 1998, the employee underwent a second laminectomy at L5-S1 performed by Dr. Richard Hadley. The employee's right leg pain improved somewhat following this surgery, but his low back pain persisted. The employee consulted Dr. James Ogilvie in November 1999 due to continued pain. At that time, he reported that he was undergoing conservative treatment, including physical therapy, pool therapy and weights, use of a T.E.N.S. unit, hot baths, biofeedback, acupuncture, chronic pain management and breathing exercises.

Dr. Ogilvie recommended fusion and decompression surgery at L4-5 and L5-S1. By January 2000, he referred the employee to Dr. Joseph Perra for consideration of an intradiscal electrothermal (IDET) procedure as an option to surgery. In February 2000, the employee was seen by Dr. Perra for evaluation of a possible IDET procedure. Dr. Perra reviewed the employee's MRI and discography, which indicated a posterior annular tear at L4-5, and modic changes, disc height collapse of about 50% of normal at L5-S1, and a high intensity zone posterior annular tear. Dr. Perra concluded that the employee's options included chronic pain therapy, a spinal fusion of L4-5 and L5-S1, or a trial of an IDET procedure, which he believed was reasonable and appropriate with a likelihood of good outcome, "meaning decreased pain level, improved quality of life, and hopefully the avoidance of a spinal fusion at approximately 60-80%, according to prior studies." Dr. Perra indicated that the IDET procedure would not address the employee's neuropathic pain, but may address his discogenic pain.

On March 29, 2000, Dr. John Dowdle examined the employee at the request of the employer and insurer. At the time of that examination, the employee reported constant low back pain between the levels of 7 - 12, on a 10-point scale. Dr. Dowdle found degenerative disc disease at the L4-5 and L5-S1 levels, S1 radiculitis on the right, subjective complaints in excess of objective findings, and chronic pain syndrome. Dr. Dowdle opined that the IDET procedure would not be successful due to significant functional components of the employee's illness. In his report, Dr. Dowdle stated that "I believe the IDET procedure is not predictable based upon the functional components of Mr. Kapaun's illness. I have the same opinion relative to a fusion." Dr. Dowdle explained that the employee's pain behavior reduced the likelihood of a predictable result from any intervention.

In his report of May 17, 2000, Dr. Ogilvie stated that he found Dr. Perra's recommendation to perform an IDET procedure to be an "excellent option," and also concluded that a lumbar fusion could be elected in the future, depending on whether the employee noted a significant decrease in pain from the IDET procedure. On May 24, 2000, relying on the opinions of Drs. Perra and Ogilvie, the employee filed a medical request for medical expenses, including the IDET procedure. On June 1, 2000, Dr. Perra performed the IDET procedure on the employee, which provided some minimal relief. The employee continued to have pain radiating down his right leg. Later, the employee was again treated for ongoing low back pain and Dr. Ogilvie again recommended a fusion surgery.

On June 5, 2000, the employer and insurer filed a medical response denying payment for the IDET procedure. On September 11, 2000, the compensation judge ordered the intervention of Fairview Health Services, Abbott Northwestern Hospital, and Twin Cities Spine Center. A hearing was held on October 4, 2000 to address the employee's medical request. In Findings and Order served and filed October 18, 2000, the compensation judge found that all the of claimed treatment for the employee's low back pain, including the IDET procedure, was causally related to the employee's work injury, but that the IDET procedure was not reasonable and necessary. The IDET provider, Dr. Perra at Twin Cities Spine Center, intervenor, appeals.

STANDARD OF REVIEW

On appeal, this court must determine whether the compensation judge's findings and order are "clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1(3) (2000). Substantial evidence supports the findings if, in the context of the record as a whole, 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 the evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings must be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, "[factfindings 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). Factfindings may not be disturbed, even though this 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 found that the IDET procedure was not reasonable and necessary medical treatment. Minn. Stat. § 176.135, subd. 1(a) provides: "The employer shall furnish any medical . . . treatment . . . as may reasonably be required at the time of the injury and any time thereafter to cure and relieve from the effects of the injury." The reasonableness and necessity of medical treatment under Minn. Stat. § 176.135 is a question of fact for the compensation judge. See Hopp v. Grist Mill, 499 N.W.2d 812, 48 W.C.D. 450 (Minn. 1993).

IDET is a relatively new procedure for treating discogenic back pain, which involves inserting a catheter into the disc space and heating it, contracting and thickening the collagen fibers of the disc wall and promoting closure of tears and cracks. According to medical literature provided by the employee at the hearing, candidates for the procedure include patients with small herniations, internal disc tears, and mild disc degeneration limited to one or two levels. The IDET procedure is contraindicated by severe disc degeneration, spinal stenosis, neurological symptoms such as leg weakness, and large disc herniations.

Approval of an IDET procedure has been addressed in other cases by this court. In Orenstein v. Dayton Hudson Corp., (W.C.C.A. Dec. 5, 2000), this court affirmed a compensation judge's approval of a proposed IDET procedure, based upon substantial evidence, including a doctor's opinion. Given this court's standard of review, cases affirmed on substantial evidence grounds have little or no precedential value. See, e.g., Carlson v. Nabisco Brands, (W.C.C.A. May 2, 1994). In this case, the compensation judge recognized that the IDET procedure is less expensive and less invasive than alternative treatments, and that in appropriate cases, it could be a reasonable treatment option. However, the compensation judge considered the factors listed in the medical literature provided, and found that the employee was not a suitable candidate for the IDET procedure "since he has a moderate rather than small disc herniation, he has severe disc degeneration at L5-S1 and mild to moderate disc degeneration at more than two other levels, and he has objective neurological symptoms in his right leg including decreased sensation and muscle weakness."

In his memorandum, the compensation judge referred to Dr. Dowdle's opinion that the IDET procedure was not reasonable "simply because of functional overlay." The compensation judge concluded that the employee's primary pain complaints were not functional in nature, that he had significant organic problems in his low back and had testified in a credible manner, and that at most "there might be support for finding that [the employee] has a low pain tolerance, but it is not a sufficient basis to rule out an IDET procedure." Instead, the compensation judge focused on the appropriateness of the IDET procedure in light of the employee's significant objective findings and two prior surgeries, referred to the medical evidence and the literature describing IDET, and concluded that the IDET procedure was not reasonable and necessary in this particular case.

On appeal, the intervenor argues that the compensation judge misinterpreted the evidence as contraindicating the IDET procedure. Dr. Perra claims that the severe degeneration contemplated by the medical literature is a disc space which has collapsed more than 50% of normal, precluding the passage of the catheter for the procedure. Dr. Perra's evaluation in February 2000 indicated that the employee's L5-S1 had a disc height collapse of 50% of normal. Dr. Perra also interpreted the employee's MRI scan to indicate that the employee did not have a moderate disc herniation at the L4-5 level, but instead had a broad based bulge from degeneration. The employee's August 23, 1999, MRI report indicates that the employee has a small to moderate sized central and right sided disc herniation at L4-5. Based upon the radiologist's interpretation of the MRI scan, the compensation judge could reasonably conclude that the employee had a moderate sized herniation, one of the contraindications for the IDET procedure.

In addition, Dr. Perra claims that the employee's objective neurological symptoms were not caused by the disc protrusion, but resulted from his prior surgery, and that only a person with a medical background can interpret the information presented. However, until medical knowledge "has progressed to such a point that experts in the field of medicine can agree," determining the reasonableness and necessity of medical treatment remains the province of the compensation judge. See Golob v. Buckingham Hotel, 244 Minn. 301, 304-05, 69 N.W.2d 636, 639, 18 W.C.D. 275, 278 (1955) quoted in Ruether v. State, 455 N.W.2d 475, 478-79, 42 W.C.D. 1118, 1123-24 (Minn. 1990). Substantial evidence supports the compensation judge's finding that the IDET procedure was not reasonable and necessary medical treatment in this case. Accordingly, we affirm.