TIMOTHY W. MAGGI, Employee, v. CITY OF ST. PAUL, SELF-INSURED, Employer/Appellant.

WORKERS' COMPENSATION COURT OF APPEALS
DECEMBER 4, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL CONTRIBUTING CAUSE. Substantial evidence, including expert opinion, supported the compensation judge's finding that the employee's 1994 work-related low back injury was a substantial contributing cause of the employee's disability and need for medical treatment following a May 2000 exacerbation.

Affirmed.

Determined by Wilson, J., Rykken, J., and Wheeler, C.J.
Compensation Judge: Ronald E. Erickson

OPINION

DEBRA A. WILSON, Judge

The self-insured employer appeals from the compensation judge's decision that the employee's 1994 work-related low back injury was a substantial contributing cause of the employee's disability and need for medical care from and after May of 2000. We affirm.

BACKGROUND

The employee has worked for the Park and Recreation Department of the City of St. Paul [the employer] since about 1984. On September 28, 1994, he sustained a work-related low back injury while pulling a starter cord to start the motor of a painting machine. The employee's low back pain was so severe that he was taken by ambulance to United Hospital, and he was subsequently off work for about five and one-half months. During this period, the employee underwent physical therapy for what physicians initially diagnosed as mechanical low back strain. The radiologist's report from a January 1995 lumbar MRI scan includes the following findings:

> 1. Moderate to marked central stenosis at L3-4 due to a combination of a small central canal and high intensity signal zone annular tear and disc herniation. The disc herniation is central and left-sided in location.

> 2. High intensity signal zone annular tear and small focal central disc herniation at L2-3 indenting the CSF without nerve root impingement.
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> 3. Central-right and right posterolateral annular tear with high intensity signal zone at L1-2 without nerve root impingement.
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> 4. L4-5: Circumferential annular bulging associated with very small high intensity signal zone and a very small central disc herniation. This produces mild central stenosis.

In a February 1995 report, Dr. Stephen Kuslich wrote that "the main pathology here is a long series of sprains which have resulted in some . . . arthritic changes," with "[t]he most significant sprain" at L3-4, along "with a small disc protrusion [at that level] posteriorly," which was "most likely the site of [the employee's] current pain problem." According to the doctor, "[i]t is both an inflammatory and mechanical problem which tends to resolve given sufficient time."

The employee returned to work for the employer in April of 1995 with a 50-pound lifting limit. The self-insured employer apparently paid him benefits for wage loss, medical expenses, and a 10% whole body impairment. Following his return to work, the employee experienced sporadic flare-ups of low back pain, most of which resolved without formal care. However, in December of 1996, the employee suffered an exacerbation requiring additional physical therapy and some time off work. In late January of 1997, the employee again returned to his job, and he continued to limit himself to 50 pounds lifting.

On about May 22, 2000, the employee experienced another episode of low back pain while moving a 30-pound ladder at home. The employee testified that the pain was located in the same area as his previous flare-ups. He sought treatment the following day from Dr. Michael Rethwill, who imposed bending and lifting restrictions and eventually referred him for physical therapy. The employee testified that, after commencing this round of physical therapy, he began for the first time to experience pain, numbness, and tingling down his left leg into his foot. Physical therapy was discontinued and the employee was referred for a lumbar CT scan, which was performed in July of 2000. The radiologist's report from that test contains the following findings:

> 1. At L2-3, there is mild central canal stenosis due to mild degenerative change in a tiny midline disc protrusion. This does not appear to be causing any nerve impingement. No change since 1995 MRI.
>
> 2. At L3-4, there is moderate to severe central canal stenosis, primarily due to generalized degenerative change with disc bulging and facet hypertrophy and mild degenerative changes in the facet joints as well as some superimposed midline disc protrusion and left lateral disc protrusion which are mild. This has slightly progressed since the 1995 MRI.

> 3. At L4-5, there is mild central canal stenosis and mild bilateral neural foraminal stenosis due to generalized degenerative change.
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> 4. At L5-S1, there is a small, shallow right posterolateral disc protrusion which does not appear to be causing any nerve impingement and may be new since the 1995 MRI. Moderately severe degenerative changes in the right L5-S1 facet joint.

In another portion of the report, the radiologist indicated again that the pathology at L5-S1 "was not definitely present on the previous MRI."

The employee was ultimately referred to Dr. Timothy Garvey for an opinion as to the advisability of surgery. In an August 21, 2000, report, Dr. Garvey noted that the employee had given a history consistent with an acute herniation at L5-S1. The doctor also indicated, however, that the employee's physical exam did "not match that history well." Two months later, after reviewing the CT scan, Dr. Garvey proposed a left L4 hemilaminectomy with decompression at L3-4 and L4-5. The employee, however, wanted to avoid surgery if possible and continued instead with conservative care, including physical therapy and exercise training. He testified that, by the spring of 2001, his low back condition had returned to pre-May 2000 status. In about April of 2001, he again returned to his job with a 50-pound lifting limit.

The matter came on for hearing before a compensation judge on June 5, 2001, for determination of the employee's entitlement to wage loss and medical expense benefits from and after May 2000. Relying largely on the opinion of their independent examiner, Dr. Michael Smith, the employer took the position that the May 2000 incident resulted in a new injury unrelated to the employee's previous work-related low back condition.

In a decision issued on July 5, 2001, the compensation judge resolved the issue in the employee's favor, concluding that the employee's disability and need for treatment from and after May of 2000 was causally related to the employee's 1994 work injury. The employer appeals.

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 employer contends that substantial evidence does not support the compensation judge's decision concerning medical causation for the employee's disability and need for treatment following the May 2000 exacerbation.[1] In support of this argument, the employer points out that the employee's symptoms were different after the May 2000 incident and that the July 2000 CT scan disclosed new findings at L5-S1 that were not present following the 1994 work injury. As such, the employer maintains that the judge's decision must be reversed in that "[t]he injury of May 22, 2000 could not have been a continuation of the September 28, 1994 injury because [the employee's] primary symptoms were left leg symptoms," and because the employee "did not present medical evidence explaining how the injury of 1994 could have been a substantial contributing cause to the changes at the L5-S1 level." These arguments are not persuasive.

The fact that the employee never experienced any leg symptoms until after the May 2000 incident is not necessarily determinative as to whether the employee's work injury contributed to his disability and need for treatment after that date. As for the 2000 CT findings at L5-S1, the employer's argument misses the point. It is true that Dr. Garvey and other physicians initially suspected that the pathology at the L5-S1 level might be the source of the employee's symptoms. However, Dr. Garvey subsequently indicated that the L5-S1 disc was well hydrated, and he proposed surgery to treat the stenosis and herniations at L3-4 and L4-5, disc levels already shown to be abnormal following the employee's 1994 work injury.[2] And, while the employer's independent examiner did conclude that the employee had sustained a new injury in May of 2000, he did not suggest that the "new" findings at L5-S1 were producing the employee's symptoms. Finally, the employer's argument completely fails to address the fact that Dr. Rethwill, one of the employee's treating physicians, reported in August of 2000 that the employee's "prior injury dating back to [September] of 1994 is a substantial contributing factor to the present problem with his back."

The compensation judge did not find the employer responsible for the employee's disc herniation at L5-S1, and his award of benefits is not dependent on any such conclusion. Rather, the compensation judge simply determined that the employee's post May 2000 disability and need for medical treatment was causally related to the 1994 work injury. The judge's finding to that effect is amply supported by the medical records, including the opinion of Dr. Rethwill. See Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985). We therefore affirm the judge's decision in its entirety.

[1] There is no argument that the May 2000 incident constituted a superceding, intervening cause.

[2] And, as previously indicated, a medical report from February of 1995 indicates that the L3-4 level was viewed as the probable source of the employee's symptoms at that time.