

ALLEN D. MERSY, Employee, v. MORRISON CNTY. and MINN. COUNTIES TRUST/PREFERRED WORKS, Employer-Insurer/Appellants, and PEAK ADMIN. SERVS., Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
MARCH 2, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - PEACE OFFICER PRESUMPTION. The compensation judge's determination that the employer and insurer failed to make the requisite strong showing of recognized, non-occupational causative factors, is adequately supported by the evidence and is not clearly erroneous.

Affirmed.

Determined by Wheeler, C.J., Johnson, J., and Rykken, J.
Compensation Judge: Harold W. Schultz II

OPINION

STEVEN D. WHEELER, Judge

The employer and insurer appeal from the compensation judge's determination that they failed to rebut the statutory presumption that the employee's coronary condition was causally related to his work as a sheriff's officer. We affirm.

BACKGROUND

The employee, Allen Mersy, was born in 1947 and is 53 years old. After graduating from Jefferson High School in Alexandria, Minnesota, the employee attended the Alexandria Vocational School, where he received a diploma in accounting, and then attended the Fergus Falls Junior College for two years, where he majored in business administration and also took a basic course in police science. The employee next worked for about three and one-half years as an assistant office manager and assistant cost accountant for the GAF Corporation in Minneapolis. In the winter of 1970 the employee moved to Little Falls, Minnesota, to accept employment as an office manager for the local school district. After about one and one-half years in this job, the employee became a salesman for the Victor Clothing Company. (T. 22-24; Finding 2 [unappealed].)

In 1973 the employee began working part-time for the Morrison County Sheriff's Department while simultaneously continuing in his sales job. In 1975 the employee became a full-time officer for the Sheriff's Department. In conjunction with the start of his full-time job for the Sheriff's Department the employee underwent physical examinations on October 15, 1975 and

October 6, 1976. Dr. Allan Solum, M.D., the doctor performing the 1976 physical examination, indicated that the employee's cardiac condition was then normal. The employee testified that prior to beginning full-time work for the Sheriff's Department in 1975 he had never been diagnosed with or treated for high blood pressure, diabetes or high cholesterol. He testified that his weight was about 175 pounds when he started as a road patrol officer and that he was not overweight for his height of 5' 10". (T. 24-26, 65; Exhs. B, E; Findings 2, 3 [unappealed].)

The employee worked as a road patrol officer from about 1975 until the spring of 1996. In this job, the employee performed a wide range of law enforcement duties, including responding to domestic calls, dealing with murders, assaults and lesser crimes and conducting traffic stops. He also responded to reports of accidents and suicides and served legal papers. Throughout the time he worked as a road patrol officer he worked rotating shifts, rotating between day, evening and night shifts on about a weekly basis. The employee testified in detail about the stress he experienced in association with performing various aspects of this work. He also testified that the shift work made it very difficult to relax, exercise, or eat healthy or regular meals. (T. 27-42, 54-56, 74; Findings 6-8 [unappealed].)

During the 1980's, the employee's medical records begin to indicate that blood test results showed that the employee was exhibiting high triglycerides, low HDL cholesterol and high blood pressure, and that the employee began treating with medication for the high blood pressure. The employee testified that in conjunction with his work as a road patrol officer, he increased his use of cigarettes so that by the mid-1980s he was smoking two and a half packs per day, up from the one and a half packs he smoked in 1976. He testified that during the same period he gained seventy-five pounds. (T. 65-73; Exh. E; Findings 9-11, 16 [unappealed].)

During his work as a road patrol officer, the employee sustained various back injuries, including one to his upper back in an automobile accident on February 22, 1996 which was diagnosed as a cervical strain. On or about May 28, 1996 the employer transferred the employee to work as an armed bailiff in the Morrison County Courthouse, on a five-day-per week day schedule. The employee testified that this transfer was made because the employee's back problems were interfering with the performance of his duties as a road patrol officer. (T. 41-42; Exh. E; Findings 12, 13 [unappealed].)

The employee testified that he did continue to experience some stress in the bailiff job, particularly because of being responsible for the safety and security of the court staff and the public and the need to deal with prisoners and with unruly or angry members of the public. He also testified that there was a high level of interpersonal tension between some of the staff which was also stressful for him. (T. 43-52; Finding 14 [unappealed].) In June 1997 the employee was first diagnosed with diabetes mellitus, type II, and was placed on medications for this condition. (T. 78-79; Finding 15 [unappealed].)

While at work as a bailiff on November 23, 1998 the employee was preparing to take some documents to the county jail when he experienced a sudden onset of chest pains, together with pain radiating down the inside of his left arm. He was taken by ambulance to St. Gabriel's Hospital in Little Falls, Minnesota, and was later sent to St. Cloud Hospital where he was diagnosed with significant multivessel coronary artery disease and global hypokinesia with

moderately severe decreased left ventricular ejection fraction. He underwent a percutaneous transluminal coronary angioplasty of the right coronary artery on November 26, 1998 and was discharged from St. Cloud Hospital on the following day. (T. 56-58; Exh. D; Findings 17-19 [unappealed].) The employee was released to return to work in his job as a bailiff on December 7, 1998. (T. 58; Finding 20 [unappealed].)

On February 5, 1999 the employee filed a claim petition seeking various workers' compensation benefits associated with his coronary condition. The employer and insurer answered by denying liability and alleging that the employee's disability and need for medical treatment were the result of disease processes unrelated to his employment. (Judgment Roll.)

Subsequently, on February 24, 1999 the employee sustained an acute inferior wall myocardial infarct while off duty. He was treated by coronary artery bypass surgery on March 1, 1999, and remained medically off work until June 1, 1999, when he returned to his duties as a bailiff. On November 27, 1999 the employee was reassigned to road patrol duties at the request of the employer. (T. 59-60, 82; Findings 21-32 [unappealed].)

The employee's claim for workers' compensation benefits came on for hearing before a compensation judge of the Office of Administrative Hearings on March 31, 2000. Following the hearing, the judge found that the stress associated with the employee's work duties as a peace officer was a substantially contributing factor to the employee's coronary artery disease. The judge determined that the employee was entitled to the application of the statutory presumption of causation under Minn. Stat. §176.011, subd. 15 (b), and that the employer and insurer failed to rebut the presumption. The employer and insurer appeal. (Judgment Roll.)

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) (1992). 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, "[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). 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 sole issue presented in this appeal is one of the applicability of the peace officer presumption contained in Minn. Stat. § 176.011, subd. 15(b), under which certain diseases,

including coronary sclerosis, are presumed to be work-related when suffered by an active duty peace officer or firefighter. This subdivision provides, in pertinent part, that

[i]f immediately preceding the date of disablement or death, an employee was employed on active duty . . . as a member of the Minnesota state patrol . . . , and the disease is that of myocarditis, coronary sclerosis . . . or its sequel, and at the time of employment such employee was given a thorough physical examination by a licensed doctor of medicine, . . . which examination . . . negated any evidence of myocarditis, coronary sclerosis . . . or its sequel, the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of employment.

In order for the presumption to apply, the employee must first show substantial compliance with the requirement of a pre-employment physical negative for the specific conditions listed in the statute. See, e.g., Burda v. Clay County, Minnesota, 455 N.W.2d 748, 42 W.C.D. 802 (Minn. 1989)(memorandum opinion). The employee must also show that he or she was employed as an active duty peace officer or firefighter immediately preceding the date of disablement. Compare Burda v. Clay County, Minnesota, 42 W.C.D. 793 (W.C.C.A. 1989); Bergeman v. Carlton County, 45 W.C.D. 445 (W.C.C.A. 1991). The appellants do not dispute that the employee met these requirements.

Our supreme court has held that this presumption “is something more than a procedural device initially relieving the employee of proving causal relationship between the stress of his occupation and the disease which results in his disability,” so that once the prerequisites for the attachment of this presumption have been shown, it may only be rebutted by “. . . a strong showing either that the particular claimant’s duties were significantly less stressful than those of most employees in his occupation or that his disease and disability were the result of recognized causative factors which are not related to his employment.” Linnell v. City of St. Louis Park, 305 N.W.2d 599, 33 W.C.D. 602 (Minn. 1981).

Here, the employer and insurer contend that there was a sufficiently strong showing that the employee’s disease and disability resulted from recognized causative factors unrelated to the employment to require a finding that the presumption was rebutted. Specifically, they point to the employee’s medical records which disclose that the employee exhibited a great many medically-recognized “risk factors” for the development of coronary artery disease, including a (1) history of high blood pressure, (2) an extensive and protracted history of cigarette smoking, (3) a history of elevated serum cholesterol and abnormal reduction of HDL cholesterol, (4) marked elevation of serum triglycerides, (5) obesity and (6) diabetes mellitus. Both the employee’s treating physician, Dr. Heidi Gunn, M.D., and the employer and insurer’s medical expert, Dr. Jack Shronts, M.D., agreed that there was a substantial causal relationship between at least some of these factors and the development of the employee’s coronary sclerosis. (Exh. A; Exh. 1.) The appellants argue that the compensation judge should have found the statutory presumption to have been rebutted.

In Worden v. County of Houston, 356 N.W.2d 693, 37 W.C.D. 189 (Minn. 1984), our supreme court reversed a determination that the presumption applied. There, the supreme court stated that

On the causation issue, . . . the medical evidence directly contradicts the statutory presumption. The parties offered into evidence, not medical expert testimony, but only the medical reports of the two examining physicians. Both reports attribute Worden’s myocardial infarction and arterial sclerosis to his heavy cigarette smoking, his positive family history of coronary artery disease, and his hypertension which was documented before Worden ever began law enforcement work. Each of these is a recognized causative factor unrelated to Worden’s employment. Additionally, both reports state unequivocally that there is no evidence that Worden’s work caused or contributed to his myocardial infarction or to the underlying arteriosclerotic disease.

When faced with a record containing such specific and uncontroverted medical evidence, we are compelled to reverse the findings to the contrary. Had there been expert testimony on this issue, the opinions expressed in the reports could have been explicated, tested, and perhaps qualified. And, had there been such testimony, we would defer to the factfinder’s unique opportunity to scrutinize the witnesses and judge their credibility. But where only documentary evidence is before us on an issue and that evidence is entirely contrary to a factual finding, we must vacate that finding as lacking foundation in the record.

356 N.W.2d at 696 (emphasis added; citations omitted).¹

However, in Moes v. City of St. Paul, 402 N.W.2d 520, 39 W.C.D. 675 (Minn. 1987), the supreme court upheld a lower court finding that the presumption was not rebutted, despite the undisputed presence of significant “risk factors” in the employee’s medical history. The court specifically distinguished its holding in Worden, pointing out that “In Worden, both experts agreed that the cause of Worden’s heart condition was not work related. In contrast, the expert medical reports on employee Moes disagree as to the cause of his condition; Dr. Karlen concluded the disease was occupationally related, while Dr. Vessey determined the disease was due to employee’s background factors.” 402 N.W. 2d at 525. Accordingly, the court concluded that the question was one of fact, and deferred to the lower court’s factual findings as adequately

¹ Similarly, in Swanson v. City of St. Paul, 49 W.C.D. 19 (W.C.C.A. 1993), *summarily aff’d*. July 2, 1993, we reversed a compensation judge’s application of the presumption where it was undisputed that the employee’s history contained multiple strong non-occupational risk factors for the development of coronary artery disease, and no medical expert had offered an opinion that the employee’s work activities had causally contributed to his condition.

supported in the record. See also Linstrom v. City of Wilmar, 52 W.C.D. 527 (W.C.C.A. 1995); Priebe v. State, Dep't of Pub. Safety, slip op. (W.C.C.A. Mar. 2, 1994)

In the present case, Dr. Gunn testified that it was her opinion that the employee's work activities as a road patrol officer and bailiff "had a substantial role to play in his development of heart disease." She opined that the employee's job stress in his job for the sheriff's department accelerated the progression of his heart disease and may have contributed to the triggering of his February 24, 1999 heart attack. She also noted that the employee's relatively young age and fact that most of his risk factors did not develop until a few years before his heart attack, long after he started working as a peace officer.

The medical experts in this case disagreed whether the employee's work duties for the sheriff's department were a substantial contributing cause to the development of his coronary artery sclerosis and the onset of his heart attack. Since there was well-founded medical opinion supporting causation, the evidence in this case does not so much resemble that in Worden or Christianson as it does the evidence in Moes. As such, the question of whether the employer and insurer had made a sufficiently strong showing to rebut the presumption was a matter for *factual* determination by the compensation judge. As the compensation judge noted in his memorandum, this was a close case. However, we must affirm unless the determination was "clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1(3) (1992). We conclude that there was adequate evidence to support the judge's determination that the employer and insurer did not make the requisite strong showing that the employee's coronary disease was the result of recognized causative factors unrelated to his employment.