JEFFREY MICHALS, Employee, v. PARK MFG. CO. and STATE FUND MUT. INS. CO., Employer-Insurer/Appellants, and LIMPRO, INC. and CNA INS. CO., Employer-Insurer, and CTR. FOR DIAGNOSTIC IMAGING, ALLINA MED. CLINIC, INST. FOR LOW BACK & NECK CARE, and CORP. BENEFIT SERVS. OF AM./PREFERRED ONE, Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
NOVEMBER 1, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL CONTRIBUTING CAUSE. Substantial evidence, including expert opinion, minimally but adequately supported the compensation judge's decision that the employee's 1992 low back injury was not a substantial contributing cause of the employee's need for medical treatment following the employee's 1998 low back injury.

MAXIMUM MEDICAL IMPROVEMENT; PRACTICE & PROCEDURE; EVIDENCE - MEDICAL RECORDS. Where the employer and insurer offered no objection or argument at hearing with regard to the relevance of certain medical records to the issue of MMI, the Workers' Compensation Court of Appeals would not consider the issue for the first time on appeal.

Affirmed.

Determined by Wilson, J., Rykken, J., and Johnson, J.
Compensation Judge: Rolf G. Hagen

OPINION

DEBRA A. WILSON, Judge

Park Manufacturing Corporation and its insurer appeal from the compensation judge's decision that Limpro, Inc., and its insurer are not responsible for any medical expenses related to the employee's low back condition and from the judge's finding that the employee has not reached maximum medical improvement. We affirm.

BACKGROUND

On January 17, 1992, the employee sustained a work-related low back injury while employed by Limpro, Inc. [Limpro]. Conservative treatment failed to alleviate his low back and leg pain, and, on March 8, 1994, the employee underwent a fusion procedure at L5-S1. The following year, in December of 1995, the employee and Limpro and its insurer entered into a stipulation for settlement, closing out all claims for benefits related to the employee's January 1992 low back injury, except for medical expense benefits. An award on stipulation was issued on December 14, 1995. The employee was able to return to employment following his fusion surgery, but he continued to treat periodically for low back and leg pain. The employee testified

that his treating surgeon, Dr. Richard Salib, eventually lifted any formal restrictions related to his low back condition, advising instead, "if it hurts, don't do it." The employee also testified that, when his low back symptoms flared up, those symptoms were located below the belt line.

In late 1997, the employee began working for Park Manufacturing Company [Park Manufacturing]. Subsequently, on October 31, 1998, the employee sustained injuries when he was struck, twice, by a closing garage door at work.[1] He was ultimately treated for injuries to his face, head, and neck, and his low back symptoms allegedly increased substantially over time. The employee testified that his low back symptoms following the 1998 incident were located an inch or two above the belt line, although he acknowledged that, when the symptoms were severe, the pain would radiate down into his buttocks and legs. Some physicians suspected a soft tissue injury, others, a disc problem or degenerative changes. Opinions differed as to whether the October 1998 incident caused permanent injury to the employee's low back and whether diagnostic tests showed any significant pathology at L4-5, the level above the employee's prior fusion. The fusion at L5-S1 remained solid.

The employee was eventually able to go on to other employment, some of which, such as mopping floors, caused increased symptoms, again, according to the employee, about one inch above his belt line. In September of 2000, Dr. Salib removed the employee from work because of his symptoms. A few months later, in January of 2001, the employee began receiving treatment at Medical Advanced Pain Specialists [MAPS]. Physicians at that facility implanted a spinal cord stimulator, on a trial basis, in March of 2001. Records indicate that the device produced dramatic improvement with respect to the employee's leg symptoms and that better results as to the employee's low back pain were hoped for after adjustment of the electrode placement.

On April 6, 2001, the matter came on for hearing before a compensation judge for resolution of various claims against Limpro and/or Park Manufacturing, related to the injuries of January 17, 1992, and October 31, 1998. Under the terms of the 1995 stipulation for settlement, Limpro's potential liability was limited to medical expenses. In addition to claims related to the employee's low back condition, primary liability for a cervical injury was also at issue. Specific benefit claims included temporary total and temporary partial disability benefits, permanent partial disability benefits, medical expenses, and a rehabilitation consultation. At the beginning of the hearing, the employee withdrew his claim for medical expenses for treatment at MAPS because he had not secured an opinion as to the reasonableness and necessity of that care. Medical records from the MAPS treatment were, however, offered and admitted into evidence. Other evidence included the remainder of the employee's voluminous treatment records, the deposition testimony and reports of Dr. John Dowdle and Dr. Robert Wengler, and the report of Dr. Robert Hartman.

In a decision issued on June 15, 2001, the compensation judge concluded, in relevant part, that the employee had sustained a permanent injury to his lumbar spine on October 31, 1998, while employed by Park Manufacturing and that the admitted injury on January 17, 1992, while the employee was employed by Limpro, was not a substantial contributing cause of the employee's disability and need for treatment following the October 31, 1998, injury

[1] The employee was knocked to the ground by the door as he walked under it while it was closing. The door then struck him again as he tried to get up.

with Park Manufacturing. Accordingly, Park Manufacturing and its insurer were ordered to pay all benefits related to the employee's low back condition, with no contribution from or apportionment to Limpro. The compensation judge also concluded that the employee had not reached maximum medical improvement [MMI] from the effects of his October 31, 1998, low back injury. Park Manufacturing and its 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

Causation/Liability

As previously noted, Limpro's potential liability is limited, under the terms of the 1995 award on stipulation, to medical expenses. In his decision, the compensation judge concluded that Limpro was not responsible for any benefits because the employee's 1992 low back injury was not a substantial contributing cause of the employee's need for treatment after the employee's October 31, 1998, injury at Park Manufacturing. In his memorandum, the compensation judge explained his decision, in part, by noting that "all [post-October 31, 1998,] treatment was directed to the L4-5 level," and he expressly accepted the opinion of Dr. Wengler as to the nature of the employee's 1998 injury. On appeal, Park Manufacturing and its insurer contend that the judge erred in his findings on causation, arguing that the overwhelming weight of the evidence compels the conclusion that the 1992 injury substantially contributed to the employee's need for ongoing low back care.

We concede that much of the evidence supports Park Manufacturing's position. The employee's 1992 injury at Limpro resulted in fusion surgery at L5-S1, and medical records subsequent to that surgery reflect ongoing treatment for continuing low back and leg complaints through at least early June of 1997. It is also true, as Park Manufacturing points out, that medical records from November 16, 1998, -- less than three weeks after the October 31, 1998, incident at Park Manufacturing -- indicate that the employee reported that his low back condition had been gradually worsening over the previous year. Moreover, even Dr. Hartman, Limpro's own expert

examiner, reported that the employee's October 31, 1998, injury "had nothing whatsoever to do with the development of [the employee's] L4-5 degenerative facet arthrosis," which was "entirely predictable and consequential to the previously performed L5-S1 [fusion]," and Dr. Dowdle essentially concurred with Dr. Hartman's opinion to that effect.[2] However, while this and other evidence might well support a finding imposing at least some liability for the relevant treatment expenses on Limpro, there is also evidence that supports the compensation judge's decision to the contrary.

The employee had not sought treatment for low back or leg symptoms for nearly a year and a half prior to the October 31, 1998, incident at Park Manufacturing, and he testified that, in his view, his low back condition had been improving prior to that date. He also testified that his low back symptoms prior to October 31, 1998, were located below his belt line, while his symptoms thereafter were located an inch or two above. Furthermore, Dr. Robert Jacoby, one of the employee's treating physicians, indicated in a report of April 4, 2001, that all treatment received from his clinic, with the sole exception of a July 2, 2000, MRI scan, was directly related to the October 31, 1998, accident. Similarly, in a letter dated February 23, 2001, Dr. Salib wrote that the October 31, 1998, incident "resulted in the need for further treatment." Finally, the opinion of Dr. Wengler, upon which the compensation judge relied, supports the judge's ultimate conclusions as to liability.

Park Manufacturing contends that Dr. Wengler's opinion actually supports their position, and we concede that the issue bears some discussion. In a December 8, 2000, letter, Dr. Wengler wrote that "[t]he care and treatment to the spine that [the employee] has received since the October 31, 1998 injury should be consequential to the injury itself," because "[t]here are sufficient time hiatuses between previous treatment and the October 1998 incident to suggest that his orthopedic spine status was reasonably stable and not in need of ongoing treatment." However, in his January 3, 2001, deposition testimony, Dr. Wengler indicated, at least initially, that the employee's 1992 injury was a substantial contributing cause of the employee's need for treatment after October 31, 1998, because the L5-S1 fusion added stress to the L4-5 disc, and the doctor went on to apportion responsibility between the 1992 and 1998 injuries on a 50/50 basis. Then, shortly thereafter, Dr. Wengler explained that he had "misspoke[n]" and that, while ratable permanency was apportionable, "care and treatment to the lumbar spine . . . should be considered the responsibility of the '98 injury."

As illustrated above, Dr. Wengler's deposition testimony is somewhat confusing. However, none of the attorneys followed up to clarify, and it would not have been unreasonable for the compensation judge to view Dr. Wengler's last testimony as a mere correction of a previous error, rather than an "unexplained" change in opinion. In any event, we cannot conclude that the judge erred by accepting the corrected version of Dr. Wengler's opinion, which was, after all, consistent with his earlier written report. See Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985).

[2] Dr. Dowdle indicated that the employee may have aggravated his low back condition in the 1998 accident, but only temporarily, and he testified that the employee had no additional permanency or need for restrictions due to that injury. He also testified that any degenerative changes at L4-5 were related either to normal aging or to the L5-S1 fusion.

Given the severity of the 1992 injury, this is an extraordinarily close case. However, having carefully reviewed the extensive record, we are compelled to conclude that the evidence minimally but adequately supports the compensation judge's conclusion that the 1992 injury was not a substantial contributing factor in the employee's need for low back treatment after October 31, 1998, through the date of hearing.[3] That we might have decided the matter differently is irrelevant. We therefore affirm the judge's decision on this issue.

MMI

The compensation judge concluded that the employee had not reached MMI from the effects of his injury as of the date of hearing, explaining, in his memorandum, that "additional medical care and treatment (and more particularly chronic pain therapy) may result in significant improvement in his overall condition." In reaching this conclusion, the judge relied on the records from MAPS, noting, however, that, because the claims for that treatment had been withdrawn, he was making no determination as to the reasonableness and necessity of that treatment.[4]

Park Manufacturing and its insurer argue that the "MAPS records were completely without foundation," in that there was no corresponding medical expense claim and no expert opinion as to reasonableness and necessity. We note, however, that the MAPS records were offered by the employee "for purposes of showing [the judge] what treatment [the employee is] presently getting relative to his low back," and the judge admitted the records into evidence without objection from any party. Furthermore, Park Manufacturing never argued to the judge that the MAPS records should not be considered, with regard to MMI, in the absence of a claim or supporting medical opinion. Under these circumstances, and in view of the fact that Park Manufacturing and its insurer do not challenge the judge's MMI decision on any other basis, we will not consider the matter further. See, e.g., Moreno v. Advertising Unlimited, slip op. (W.C.C.A. Jan. 3, 2001) (issue not raised at the hearing level may not be raised for the first time on appeal). The judge's decision is affirmed in its entirety.

[3] In so holding, we would note that our decision has no necessary implications as to liability for treatment rendered after the hearing date.

[4] As such, the compensation judge did not, contrary to Park Manufacturing's assertion, find the MAPS treatment reasonable and necessary.