

TIMOTHY M. MICKLOS, Employee/Appellant, vs. MONSON & SONS TRUCKING and TRI-STATE INS. CO./BERKLEY ADMIN'RS, Employer-Insurer and BLUE CROSS/BLUE SHIELD OF MINN. and SPIRIT LAKE MED. CTR., Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS  
DECEMBER 14, 2001

No. [REDACTED SSN]

HEADNOTES

APPEALS; CAUSATION. Where the compensation judge did not make specific findings regarding the issue of whether the employee's reactive airways dysfunction syndrome arose out of and in the course and cope of his employment sufficient for this court to review, we vacate the compensation judge's findings and order and remand for additional findings and reconsideration.

Vacated and remanded.

Determined by: Rykken, J., Wilson, J., and Wheeler, C.J.  
Compensation Judge: Gary M. Hall

OPINION

MIRIAM P. RYKKEN, Judge

The employee appeals from the compensation judge's determination that the employee did not sustain an injury or disease culminating on or about April 12, 1999, which arose out of and in the course and scope of his employment with the employer. We vacate and remand for additional factual findings.

BACKGROUND

This claim arises from an injury Timothy Micklos, the employee, claims to have sustained on or about April 12, 1999. The employee claims that he sustained an injury in the nature of reactive airways dysfunction syndrome (RADS), as a result of his employment with Monson & Sons Trucking, the employer. On that date, the employer was insured for workers' compensation liability by Tri-State Insurance Company. At the time of the employee's claimed injury, he was 38 years old and worked for the employer as a mechanic, earning a weekly wage of \$458.19; he was also self-employed on a part-time basis as a farmer.<sup>1</sup>

The employee began working for Monson & Sons Trucking, the employer, in April 1986, and continued working there until May 1999. As a mechanic, the employee maintained the

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<sup>1</sup> At hearing, the parties stipulated that the employee's weekly wage on April 12, 1999, was \$458.19. The parties raised no issue at hearing as to whether any wages the employee earned from farming should be included in calculating his weekly wage.

employer's vehicles, working on semi trailer trucks, personal vehicles, refrigeration units, lawn mowers and small engines. The employee performed maintenance work, including working on electrical systems; changing wheel seals, brakes and clutches; changing oil and lubricating; overhauling motors; replacing radiators and compressors; and changing fuel and air filters. (T. 28-32.) The employee worked in the employer's shop that had doors on both ends, open in the summer but closed during cold weather in the winter. The shop also had one fan on one gable end of the roof for ventilation use during the winter months, plus a partially-operative exhaust system installed in approximately 1995.

The employee testified that while working in the garage he was exposed to a variety of fumes, including diesel fumes and Freon, and was exposed to various chemicals, including the engine cleaning product called "Gunk" (which contains perchlorethylene), brake cleaner, grease, oil, diesel fuel, polyurethane stains, asbestos, antifreeze, welding fumes and paint fumes. (T. 33, 50, 57-58.) He testified that while working for the employer, he noticed a gradual onset of symptoms and bronchitis during winter months along with chest pains and a productive cough. These symptoms subsided in the springtime when the shop doors could be opened. By 1998, these symptoms no longer subsided over the summer. The employee testified that by approximately 1995, he told one of the employer's owners that he was having trouble breathing and that he could not stand the sooty work environment. He also advised one of the owners in 1998 and 1999 that his symptoms were not improving during the summer months as they had in the past. (T. 43-44.)

The employee first sought medical treatment for his breathing problems on April 8, 1999. The employee reported to Dr. David Goerss, Spirit Lake Medical Center, that he was concerned about his breathing. According to Dr. Goerss's chart note, the employee reported no coughing, wheezing, no heartburn or major sinus troubles and no chest pains. He also reported that he had gained about 40-50 pounds over the last couple of years and that he had quit smoking over the last year. Dr. Goerss's chart note states that the employee reported working "in an unventilated mechanic garage-type area with a lot of fumes. He is primarily concerned he has some sort of lung cancer or serious lung problem." Chest x-rays taken on April 8, 1999, were negative. Dr. Goerss diagnosed him as having "dyspnea,<sup>2</sup> probably related to weight and some general anxiety associated with this." Dr. Goerss recommended a pulmonary function test. According to Dr. Goerss's chart note of April 12, 1999, the pulmonary function testing was "normal except for the expiratory flow which is slightly on the upper end of normal." (Er. Ex. 3.) Dr. Goerss indicated that the employee's condition could be due to early emphysema problems and that quitting smoking would be of some benefit to him, as would weight loss.

The employee testified that Dr. Goerss advised him to try to work in clean air. He also testified that the employer was unable to provide a work environment with clean air, yet he tried to continue working there for an additional month after his April 1999 examination with Dr. Goerss. He testified that he asked his employer to not run the trucks' engines inside the shop, yet they did not stop doing so. (T. 49.) According to the employee's testimony, as he was working on an air conditioning unit on a tractor in mid-May 1999, one of his employers pulled a valve cord out of a high pressure manifold on the air conditioning unit and discharged the Freon charge into

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<sup>2</sup> According to Dorland's Illustrated Medical Dictionary, 558 (29<sup>th</sup> ed. 2000), dyspnea is defined as "breathlessness or shortness of breath; difficult or labored breathing."

the shop. The employee left the shop that day, advising his employer that he “couldn’t stand to be in that environment.” (T. 47-48.) As of the time of the hearing on August 10, 2000, the employee had not returned to work.

On May 26, 1999, the employee consulted Dr. Hany Hanna, Jackson Medical Center, reporting chest tightness and rattling, non-productive cough, fatigue and mild sore throat. Dr. Hanna diagnosed bronchitis and prescribed antibiotics. On June 2, 1999, Dr. David Bonham, Pulmonary and Critical Care Associates, examined the employee. In his notes on that date, Dr. Bonham noted that the employee was a smoker and had smoked until May 1999. Dr. Bonham’s report of June 2, 1999, provides the following assessment:

1. Significant exposure to multiple respiratory irritants during this employment with some sputum production and dyspnea associated, improving away from the work exposures.
2. Significant rhinitis, possibly allergic plus irritant induced, causing significant nasal obstruction.
3. Possible obstructive sleep apnea.

(Ee. Ex. C.)

At Dr. Bonham’s recommendation, the employee underwent a spirometry test which had normal results. Dr. Bonham recommended nasal medication, avoidance of respiratory irritants, and consideration of a formal sleep study, and advised the employee to return on an as-needed basis.

Dr. Bonham continued to periodically treat the employee through at least July 2000. Dr. Bonham also referred the employee for a methacholine inhalation challenge test. During that test, performed in September 1999, the employee experienced a syncopal episode with brief loss of consciousness, rhythmic jerking of his arms and feet with some motion of his head and unresponsiveness for about ten seconds. That test was therefore discontinued. (Ee. Ex. C., Er. Ex. 8.) On September 17, 1999, Dr. Bonham concluded that the employee should not yet return to work because he was still undergoing evaluation, and signed a Report of Work Ability indicating that the employee had been unable to work since May 12, 1999.

The employee consulted Dr. Craig Malvey, Jackson Medical Center, on August 12, 1999, for epigastric pain and occasional “panic attacks” consisting of a sensation of shortness of breath associated with tingling in the fingertips and a sense of a racing heart. The employee reported episodes occurring a few times per month, but at a decreased frequency since stopping work at a “stressful work situation.” Dr. Malvey recommended follow-up treatment for the gastrointestinal complaints and also medication for depression and panic attacks. The employee declined that medication, but followed up with the gastrointestinal treatment.

According to Dr. Malvey’s chart note dated September 23, 1999, the employee’s abdominal pain had improved with use of medication. He reported ongoing respiratory symptoms. The employee reported to Dr. Malvey that he had worked around a number of chemicals while working for the employer, and that he stopped working there after developing shortness of breath on exertion. The employee reported a cough productive of blackish sputum while working there

as well, and that since stopping work his symptoms have improved “though he does still get dyspneic on exertion.” Dr. Malvey’s chart note also reflects a telephone conversation he conducted with Dr. Bonham, in which Dr. Bonham provided recommendations for additional testing and treatment. Dr. Malvey re-examined the employee on December 9, 1999, primarily due to his burning epigastric pain. On that date, the employee reported overall improvement in his respiratory status; the chart note states that “he does still have days where he feels quite rundown and feels his breathing is more difficult again.”

Dr. Bonham prepared a report dated February 2, 2000, in which he stated that “it seems more likely than not that the patient’s exposure to various respiratory irritants and other chemicals in his work environment were a contributing factor to at least some of his respiratory symptoms.” On February 24, 2000, the employee reported to Dr. Malvey that he had ongoing difficulty breathing with exertion and was generally fatigued and noticed chronic low thoracic back pain.

In a letter dated May 16, 2000, directed to Dr. Bonham, Dr. Malvey summarized the follow-up medical treatment and testing he conducted. By May 19, 2000, Dr. Bonham diagnosed the employee with a “[p]robable reactive airways dysfunction syndrome (RADS) associated with inhalation of respiratory irritants at work with some improvement being reported.” Dr. Bonham recommended medication by inhaler, and a CT scan of the employee’s chest. On July 21, 2000, Dr. Bonham diagnosed RADS, but noted that the employee had significant improvement after inhaling bronchodilators. Dr. Bonham recommended that the employee return for follow-up evaluation in six months.

The employee’s medical history includes previous treatment for respiratory symptoms, prior to his employment with the employer. The employee was diagnosed with bronchitis in April 1991, October 1992, January 1993, and November 1995. The employee was also diagnosed with acute sinusitis in November 1995. In September 1997, the employee was diagnosed with acute bronchitis and Nicotine dependence. In 1996, the employee was diagnosed with toxic poisoning.<sup>3</sup> In September 1997, he was hospitalized for two nights for evaluation of chest pain, gastritis, intestinal problems and dehydration.

The employee has smoked cigarettes off and on since his mid 20s, and smoked until approximately March 1999. (T. 23.) The employee testified that he had been told off and on throughout the years to quit smoking due to his respiratory problems.

The employee filed a claim petition on January 14, 2000, claiming entitlement to temporary total disability benefits from April 12, 1999 to the present and continuing, in addition to payment for medical expenses. The employer and insurer denied primary liability for the employee’s April 12, 1999 injury.

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<sup>3</sup> There is a reference to this history in chart notes prepared by Matthew D. Wasmund, D.C., dated December 3, 1998, but there are no medical records in evidence that directly document this 1996 treatment. The employee testified that he became quite ill after servicing two Thermo King refrigeration units at work, but that the toxin was never identified. (T. 91-92.)

On April 25, 2000, Dr. Ronald Vessey conducted a medical examination of the employee at the request of the employer and insurer. Dr. Vessey reviewed the employee's previous medical records and lung x-rays and performed a pulmonary function study in conjunction with that examination. In Dr. Vessey's report dated May 26, 2000, he concluded that the employee's work for the employer was not a substantial contributing factor to his mild respiratory abnormalities and recommended that the employee lose weight and quit smoking. Dr. Vessey found no objective evidence that the employee had a significant pattern of adult asthma onset. He did note findings on the employee's pulmonary function studies, but related those to either the employee's pattern of obesity or "extra thoracic or upper airway obstructive phenomenon which also would not be a work related phenomenon." However, Dr. Vessey concluded that the employee's pulmonary function studies in 1999 were entirely within normal limits and reflected no significant pattern of pulmonary disease or dysfunction during or following the time that he worked for the employer. Dr. Vessey determined that the employee was capable of sustained gainful employment without any significant work restrictions.

On June 21, 2000, a representative of the Institute for Environmental Assessment conducted an air sampling at the employer's location. The company tested for specific volatile organic compounds and airborne elemental carbon (diesel exhaust), specifically testing for chemicals in products used by the employee: methyl chloroform, perchlorethylene and Stoddard solvent, found in "Gunk" cleaner, mineral spirits found in parts cleaners, and elemental carbon. According to the report dated July 17, 2000, prepared by the testing company, all of the air sampling results were below the threshold limit values required by the American Conference of Governmental Industrial Hygienists (ACGIH) and below the permissible exposure levels required by the Minnesota Occupational Safety and Health Administration (MNOSHA). Based on the sampling methods, their attempts to simulate normal work activities, and the air sampling results, the testing company determined that it was unlikely that the chemicals would exceed acceptable limits during normal work activities.<sup>4</sup> The testing company recommended additional exhaust ventilation and use of a floor fan to improve the air quality conditions at the Monson Trucking garage.

Dr. Bonham reviewed the environmental assessment report, and concluded that the level of chemical exposure delineated by the testing was consistent with his opinion that the employee's work significantly contributed to at least to some of the employee's respiratory symptoms. Dr. Vessey also reviewed the report, and concluded that

Basically, this environmental study was within normal limits, and certainly does not do anything but point out that the air quality, at Monson & Sons Trucking, most probably did not cause Mr. Micklos any significant pattern of pulmonary distress.

(Er. Ex. 1.)

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<sup>4</sup> When referring to the level of perchlorethylene, the report stated that it was possible that the permissible exposure levels for perchlorethylene "could be exceeded if the brake cleaner can ["Gunk"] was emptied over the 15-minute [short term exposure limit] sampling period." (Ee. Ex. E.)

A hearing was held on this matter on August 10, 2000. Issues to be addressed at the hearing included whether the employee sustained an injury or disease culminating on April 12, 1999, which arose out of and in the course and scope of his employment with the employer; the nature and extent of such an injury or disease; whether the employer had statutory notice of the alleged injury or disease; whether the employee was entitled to ongoing temporary total disability benefits since April 12, 1999; whether the employee conducted a diligent job search since April 12, 1999; and whether the employee's medical treatment was causally related to his alleged injury or disease. In his Findings and Order served and filed November 13, 2000, the compensation judge found that the employee sustained no injury or disease culminating on April 12, 1999, as a result of his employment with the employer. The compensation judge did not address any additional issues beyond that of causation, as those were rendered moot by his conclusion that the employee sustained no work-related injury. The employee 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 compensation judge found that the employee did not sustain a work-related injury or disease culminating on April 12, 1999. The employee appeals, arguing that the decision was incorrect and unjust, and was based on a consultant's opinion that was not thoroughly researched and investigated.

The evidence as to causation is conflicting. In reaching his conclusion that the employee's respiratory condition is not work-related, the compensation judge relied, in part, upon the opinion of Ronald Vessey, M.D. Following his examination of the employee on April 25, 2000, Dr. Vessey concluded that the employee's work activities for the employer did not constitute a substantial contributing factor to his respiratory condition. In contrast, Dr. Bonham, who examined the employee on four occasions between June 1999 and July 2000, concluded that the employee's exposure to various respiratory irritants and other chemicals while working significantly contributed to at least some of his respiratory symptoms.

The employee argues that he was seen only one time in Dr. Vessey's office for approximately 30 minutes, and that he was not called back to Dr. Vessey's office following the spirometry test conducted that same day at Abbott Northwestern Hospital. In his brief, the employee outlines the questions posed by Dr. Vessey during his examination, and alleges that Dr. Vessey "tried to manipulate his questions and confuse Mr. Micklos" so that the employee's responses would be favorable for the employer and insurer. The employee also argues in his brief that he was seen by Dr. David Bonham, who conducted many thorough tests "clearly showing a respiratory condition that was attributed by the environment that the Employee was subjected to for the years of his employment" with the employer. The employee also argues that the air quality testing that was performed was conducted at a time of year when the doors could be open for ventilation, as opposed to during the winter months when doors were closed and the shop would be unventilated. The employee also argues that the air quality test was too short to test the normal environment to which the employee was typically subjected, and that the chemicals routinely used by the employee were not totally represented in the air quality test either as to type or concentration amount.

The employer and insurer argue that the compensation judge's conclusion was supported by substantial evidence, including Dr. Vessey's report, the results of the air quality testing, and the pulmonary function testing conducted on the employee at Abbott Northwestern Hospital.

The compensation judge's sole finding on the causation issue states, as follows:

- A. A preponderance of the credible evidence does not support a Finding that the employee sustained an injury/disease culminating on April 12, 1999 which arose out of, and in the course and scope of, his employment with Monson and Sons Trucking.

(Finding No. 1.) The compensation judge's finding does not outline any factual basis on which he based his conclusion. In his memorandum, the compensation judge addressed some of the grounds for his conclusion. He stated that the employee "has shown a history of exposure to respiratory irritants and chemicals at work," but that in view of the air quality testing and tests performed on the employee, and in consideration of Dr. Vessey's opinion, he was "not convinced that the exposure was a significant factor in his respiratory complaints." However, there are no factual findings for this court to review in order to determine if the compensation judge's findings are supported by substantial evidence and are not clearly erroneous.

Given the conflicting evidence, adequate review is not possible without specific findings on the employee's medical history, his work exposure, the development and nature of the employee's condition and the causation of the employee's condition. It is this court's role and responsibility to review the record and the findings of fact to determine whether substantial evidence supports the compensation judge's conclusions. Minn. Stat. § 176.421, subd. 1 (1992). For those reasons, we are compelled to vacate the judge's decision as to the causal relationship between the employee's work for the employer and his medical condition, and remand the matter for reconsideration and additional findings. On remand, the judge should make findings that are

adequate to resolve the dispute and to provide a reasonable basis for review in the event of another appeal. Depending upon the compensation judge's conclusion on the causation issue, he should also address the additional issues outlined at hearing. The judge should base his decision on the current record.