

ALICE J. MORRIS, Employee, v. PARK NICOLLET MED. CTR. and BERKLEY RISK ADM'RS CO., Employer-Insurer/Appellants, and FAIRVIEW HEALTH SERV., Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
SEPTEMBER 25, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL CONTRIBUTING CAUSE; GILLETTE INJURY - SUBSTANTIAL EVIDENCE. Substantial evidence, including expert opinion, adequately supported the compensation judge's decision that the employee sustained a work-related Gillette injury to her cervical spine as a result of her work activities as a triage nurse.

Affirmed.

Determined by Wilson, J., Pederson, J., Rykken, J.
Compensation Judge: Paul V. Rieke

OPINION

DEBRA A. WILSON, Judge

The self-insured employer appeals from the compensation judge's decision that the employee sustained a work-related Gillette-type injury¹ to her cervical spine. We affirm.

BACKGROUND

In 1997, the employee began working as the triage nurse in the obstetrics/gynecology [OB/GYN] department of Park Nicollet Medical Center [the employer]. In this capacity, the employee took essentially all incoming calls from patients to the OB/GYN department, on several telephone lines, as well as monitoring the "stat" phone -- a phone for emergencies located behind the employee's desk -- and the pharmacy phone line for calls concerning prescription refills. While consulting with patients by phone, the employee cradled the phone between her head and shoulder, often simultaneously writing notes, using her computer to retrieve information, or turning to pull a chart behind her and to the right. The employee testified that she handled up to 300 calls per shift² and that she also performed a triage function for walk-in patients. A brief attempt by the employee to use a telephone headset was unsuccessful.

¹ Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 21 W.C.D. 105 (1960).

² A survey performed by the employer indicates that the OB/GYN department received about 75 calls per shift; the employee testified, however, that that survey reflected only calls coming directly to the employee on her line and did not include calls transferred from the receptionist or operator, calls on the pharmacy line, or calls on the "stat" phone.

The employee seldom had help in her job and often worked without breaks, other than for lunch. She testified that, as the work day progressed, she often developed tension and tightness in her neck and shoulder area and that coworkers would rub her shoulders for her at work. Some time in 1998, the employee cut her work week from five days to four because the job was so stressful.

The employee underwent a routine yearly physical on February 8, 2000. No complaints of neck or shoulder symptoms were noted in the office notes from this examination. However, about two weeks later, on February 21, 2000, the employee was seen by Dr. Larik Woronzoff-Dashkoff for left shoulder pain. The doctor's notes from the examination indicate that the employee had developed left shoulder pain the month before while traveling and that the pain had improved but then recurred "last week." "She says it hurts sleeping overnight and with overhead type activity, especially when she does aerobics." The employee later testified that the doctor's reference to symptoms during aerobics was simply incorrect.

Dr. Woronzoff-Dashkoff diagnosed rotator cuff tendinitis and referred the employee for physical therapy. However, the employee's symptoms worsened, and, on February 24, 2000, the doctor noted that the employee's complaints of numbness and tingling in the fingers were not consistent with tendinitis, and he began treating the employee "presumptively for a radiculopathy." A cervical MRI scan performed on March 2, 2000, disclosed a "posterior osteophytic riding/broad-based disc bulge, eccentric to the left, with a superimposed left paracentral/neural foraminal disc protrusion which may impinge the left C7 nerve root." In a work ability report completed on March 6, 2000, Dr. Woronzoff-Dashkoff indicated that the employee's diagnosis was C7 radiculopathy, that the employee should observe restrictions on work hours until a neurosurgical assessment, and that the work relatedness of the employee's condition was yet "to be determined."

Two days later, on March 8, 2000, the employee was seen by Dr. Mary Ann Ryken, whose assessment was cervical disc herniation with possible radiculitis. Dr. Ryken prescribed an epidural injection, acupuncture, and additional physical therapy, and she cautioned the employee about work ergonomics. In a report of work ability completed on that date, Dr. Ryken indicated that the employee should continue working part time only, and she checked "yes" under a form heading asking whether the employee's condition was work-related. However, later, Dr. Ryken declined a request to provide a causation opinion, noting that she had only seen the employee once and that,

[i]n my note I do not make reference to the cause of her injury and so really am not able to comment on that at this time. She is a triage nurse in the OB/GYN Department and told me at the visit that she does quite a bit of computer work. Other than this I would not have any opinion on her case and feel that I should see her back for reevaluation if you would like any further information.

On April 18, 2000, the employee was evaluated by Dr. Andrew Smith, who indicated that the employee's neck condition was work related. On June 19, 2000, Dr. Smith

performed surgery in the nature of a cervical hemilaminectomy with foraminotomy and decompression of the C6 nerve root.

The employee returned to work as a triage nurse, half time, on about August 7, 2000. She gradually increased her hours over time but then decreased them again when her symptoms flared up. In January of 2001, her treating physician took her off work entirely due to her symptoms.

On April 11, 2001, the matter came on for hearing on the employee's claim that she had sustained a Gillette-type cervical injury in the course and scope of her employment. Evidence included the employee's medical records and the deposition testimony and report of Dr. Michael Smith, the employer's independent examiner. During the course of the hearing, the compensation judge asked some questions of the employee, the only witness to testify. In a decision issued on April 16, 2001, the judge resolved the primary liability issue in the employee's favor and ordered the employer to pay certain benefits. 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

Conduct of the Compensation Judge

The employer argues in part that the compensation judge exceeded his authority under Minn. Stat. § 176.411³ "by conducting inquiries that were prejudicial to the employer."

³ Minn. Stat. § 176.411, subd. 1, provides in part as follows:

Subdivision 1. Conduct of hearings and investigations. Except as otherwise provided by this chapter, when a compensation judge makes an investigation or conducts a hearing, the compensation judge is bound neither by the common law or statutory rules of evidence nor by technical

While acknowledging that Minn. Stat. § 176.391, subd. 1,⁴ allows a compensation judge to make an independent investigation of the facts, the employer contends, in essence, that, through his questioning, the judge unfairly assisted the employee in proving her claim by soliciting answers to questions that the employee's attorney neglected or chose not to ask. Certainly judges should conduct hearings in an evenhanded manner. However, having carefully examined the transcript, we cannot conclude that the compensation judge crossed the line here in view of the authority granted by Minn. Stat. § 176.391 or even that the answers he solicited from the employee affected his decision. We would also note that the employer has not asked this court for any particular relief relative to the judge's alleged improper conduct. Under these circumstances, we decline to consider the argument further.

Gillette Injury

In opposition to the employee's claim, the employer submitted the report and deposition testimony of Dr. Michael Smith, a cervical spine specialist. Dr. Smith testified that the employee's work activities did not substantially contribute to her neck condition or need for treatment, because there was nothing in medical literature indicating that those activities were "definitely a risk factor." According to Dr. Smith, "It is really hard to segregate that out from any of the usual activities of daily living." Dr. Smith did agree, however, that certain working conditions could aggravate cervical degenerative changes, such as the chronic low-frequency vibration experienced by truck drivers or the need for ceiling painters to assume a forced, prolonged vertical gaze. In resolving the causation issue, the compensation judge rejected Dr. Michael Smith's opinion, writing in his memorandum as follows:

Independent medical examiner, Dr. Michael Smith, agrees that where there is a work task of a particular nature that was sufficiently repetitive an employee's underlying degenerative disc disease could be aggravated by such work activity. In this instance he opines that the employee's work cannot be found to result in such an aggravation. The court concludes that the preponderance of the evidence results in a contrary determination and such a finding is supported by the employee's essentially unrefuted testimony concerning her work tasks and the medical reports and notations of Dr. Andrew Smith. Certainly, the extent of the daily repetitive side to side and up and down head and neck movements required by the

or formal rules of pleading or procedure. Hearsay evidence which is reliable is admissible. The investigation or hearing shall be conducted in a manner to ascertain the substantial rights of the parties.

(Emphasis added.)

⁴ Minn. Stat. § 176.391, subd. 1, provides, "Before, during, or after any hearing, the commissioner or a compensation judge may make an independent investigation of the facts alleged in the petition or answer."

employee to fully perform her work duties are not those experienced in the normal course of one's life.

On appeal, the employer argues in part that the judge erred in relying on Dr. Andrew Smith, because Dr. Andrew Smith never issued an opinion to a "reasonable medical certainty" and because his notations concerning causation are speculative. We are not persuaded.

In his office notes of April 18, 2000, Dr. Andrew Smith wrote as follows:

This patient is a pleasant woman of 47 years of age who works as a receptionist and doing other duties for the Park Nicollet Clinic in Burnsville. She has what she considers to be work-related injuries to her neck and to her left upper extremity. She has numbness in the thumb, index, and middle fingers of the left hand. They are aggravated by driving, by repetitive use of the hands and she also clearly has suboccipital neck pain, shoulder pain, and this is aggravated by position and by function, and so there is an element of both neck and possible carpal tunnel related problems. . . . The patient has no specific date of injury of which I am aware, but rather the work activities appear to be a substantial contributing factor to her symptoms insofar as she goes to work, she uses her hands, she types and inputs into a terminal and after a few hours of this type of work the symptoms of neck pain, spine pain, left arm pain, and numbness all grow so much worse that she cannot continue. So there appears to be a relationship there. . . . She is a telephone triage nurse for Park Nicollet Clinic Health Systems, Minnesota.

We concede that this entry is not as definite as it could be, but we find it minimally adequate to support the judge's decision. Moreover, we reject the employer's repeated assertion that the employee's claim is dependent on a finding that the employee developed a Gillette injury in just 14 days. It is true that the employee made no complaint of neck or shoulder symptoms when she underwent her yearly physical on February 8, 2000, and that she then sought medical treatment for such symptoms on February 21, 2000, two weeks later. These facts, however, do not mean that the employee developed the condition solely in this 14-day interval, especially given that the employee testified that she had been experiencing symptoms intermittently for months. We also think, contrary to the employer's assertion, that the judge was entitled to conclude that the employee's work activities as a triage nurse were sufficiently distinguishable from the ordinary activities of daily living so as to allow a finding of causation.

The compensation judge did not clearly err in accepting the opinion of Dr. Andrew Smith, the employee's treating physician, over the opinion of Dr. Michael Smith, the employer's independent examiner. See Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985). Because the record as a whole reasonably supports the compensation judge's decision that the employee sustained a Gillette-type injury to her cervical spine as a substantial result of her work as a triage nurse for the employer, we affirm the judge's decision in its entirety.