RONALD C. MUNN, Employee, vs. TRAVEL HOST HOTEL and CAS. RECIPROCAL EXCH., Employer-Insurer/Appellants, and BLUE CROSS/BLUE SHIELD OF MINN., PRO. CREDIT CONSULTANTS, MEDICARE/PART B, UNITED HOSP., ASSOCIATED ANESTHESIOLOGISTS, and ST. PAUL NURSE ANESTHESIA, Intervenors..

WORKERS' COMPENSATION COURT OF APPEALS
MARCH 15, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION–SUBSTANTIAL CONTRIBUTING CAUSE. Where the compensation judge outlined the medical opinions on which he based his determination of causation, and where those opinions provide medical support for a conclusion that the employee's original low back injury substantially contributed to the employee's neurogenic bladder condition, the compensation judge's conclusion is adequately supported by substantial evidence of record and must be affirmed.

CAUSATION–SUBSTANTIAL CONTRIBUTING CAUSE. Where a work-related injury has created a permanently weakened physical condition which an employee's subsequent normal physical activities may aggravate to the extent of requiring additional medical or hospital care, such additional care is compensable.

EVIDENCE–EXPERT MEDICAL OPINION. The compensation judge's determination was based upon the opinion of the employee's treating urologist and another treating physician, and was also based, in part, upon portions of the deposition testimony presented by two experts retained by the employer and insurer. A compensation judge is free to reject or accept all or a portion of a medical expert's opinion.

Affirmed.

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

OPINION

MIRIAM P. RYKKEN, Judge

The employer and insurer appeal from the compensation judge's determination that the employee's work-related low back injury on August 8, 1985, represents a substantial contributing cause of the employee's bladder incontinence and bladder condition and of his need for medical treatment for those conditions. We affirm.

BACKGROUND

On August 8, 1985, Ronald C. Munn, the employee, was employed by Travel Host Hotel, the employer. On that date, the employer was insured for workers' compensation liability in the state of Minnesota by Casualty Reciprocal Exchange, the insurer. On August 8, 1985, the employee injured his low back and sustained a left-sided inguinal hernia while lifting a commercial dryer. The employer admitted primary liability for both injuries. The employee was 35 years old when injured, earning a weekly wage of $160.00, and has been unable to return to work since this injury. He has received ongoing treatment to his low back since his 1985 injury, has experienced falls and consequential injury to his cervical spine, and has also developed a neurogenic bladder condition, which the employee claims is secondary to his work-related injury and subsequent low back surgeries.

Following his injury on August 8, 1985, the employee underwent surgery for repair of a left inguinal hernia on August 18, 1985. He also received chiropractic and medical treatment for his low back symptoms. As a result of his injury in 1985, the employee has undergone six surgeries to his lumbar spine, as outlined below:

- June 15, 1986: lumbar laminectomy at the L4 level and a partial laminectomy at the L3 level;
- February 23, 1988: left sacroiliac fusion surgery;
- July 19, 1989: laminectomy at the L4 level on the left side, in addition to removal of scar tissue and foraminotomy;
- March 8, 1990: laminectomy at the L4 level on the left side with debridement of scar tissue on the lateral recess, in addition to a lumbar fusion at the L4-5 level;
- March 18, 1990: surgery for relief of a hematoma at the site of the previous lumbar laminectomy;
- December 12, 1991: surgery for a dorsal column stimulator implantation for pain control.

The employee's medical records contain intermittent although numerous references to the development of bladder symptoms, and also contain periodic reports by the employee that he had no ongoing bladder or bowel symptoms. On February 28, 1986, the employee first reported incontinence to his treating chiropractor, Dr. Daniel Dock, from whom he received treatment for continued groin pain, hip pain, and low back pain. The employee also reported intermittent urinary frequency during a nursing assessment at the Mayo Clinic in March 1986. In a report dated November 19, 1988, Dr. Mark Gregerson, who examined the employee at the request of the employer and insurer, stated that the employee "had no bowel change, but had some increase in urgency and problems initiating urination. Symptoms are increased when he coughs or does any lifting or bending." (Er. Ex. 1.) According to a neurological evaluation at the Duluth Clinic on July 8, 1991, the employee reported no bowel or bladder difficulty.

On August 13, 1991, the employee was hospitalized at St. Luke's Hospital, complaining of increased back pain, bilateral leg weakness and an onset of urinary symptoms, including incomplete voiding, intermittent dribbling and problems with controlling his urine, and

urinary retention. The employee reported that he had fallen in February 1991, due to weakness in his legs, and had chronic headaches since that injury. The employee underwent a urological consultation, and reported that he had difficulty with incontinence approximately three months earlier, when he first noticed dribbling with coughing or sneezing, and after a fall approximately eleven days earlier, he had noted precipitate urination without any sensation of voiding. He also reported that prior to three months earlier, he had no problems with incontinence. According to the discharge summary on August 17, 1991, the employee was diagnosed with "unclassifiable neurogenic voiding disability." The employee received follow-up treatment at St. Luke's for this condition, and on August 26, 1991, underwent a lumbar myelogram and CT scan, which showed, among other findings, possible distortion of lumbo-sacral nerve roots secondary to a possible recurrent disc herniation. The employee also received medical treatment in October 1991 for recurrent ulcers.

By stipulation for settlement entered into in November 1991, the parties stipulated that the employee has been permanently and totally disabled since February 23, 1988. Under the terms of that agreement, the employer and insurer issued a lump sum payment to the employee in settlement of the employee's claims on a full, final and complete basis, and agreed that the employee's claim for payment of future medical expenses remained open.

The employee has received medical treatment in the past for multiple medical conditions, including ulcers, migraine headaches, elevated triglycerides, gastric problems, bladder irritability and spasticity. His medical records refer to a history of chest discomfort, possibly related to esophageal spasm. His records also refer to multiple motor vehicle accidents, and back and neck symptoms after he was hit by an automobile while walking across a city street. In the past, the employee has experienced periodic seizures, diagnosed as both grand mal and petit mal seizures, and as a result has also undergone various testing to rule out a possible diagnosis of multiple sclerosis. Although physicians have suggested that the employee's neurogenic bladder condition was caused by an upper motor neuron lesion, such as could be related to multiple sclerosis, and even though there are references in various records to a multiple sclerosis diagnosis in 1994 or 1995, test results did not support a diagnosis of multiple sclerosis. To evaluate the employee's seizures, the employee underwent neuropsychometric testing at the Noran Neurological Clinic in December 1992, which had abnormal results, most of which related to attentional problems which Dr. Richard Golden stated could be caused by excessive medication.

According to a chart note dated January 20, 1992, the employee reported to Dr. Richard Freeman, Superior Neurosurgery, that he had fallen often during the past month due to leg weakness, that his neck was sore and he had headaches as a result of these falls, and that "his bladder ha[d] been acting up more as well." (Ee. Ex. B.) The employee reported in mid August and September 1992 that he was having more problems with urinary and bowel incontinence.

On June 4, 1996, the employee was residing near Spooner, Wisconsin, and assisted neighbors in adjusting a tractor blade which had become caught in a muddy field. He attempted to push a small two-inch by four-inch board under the tractor blade, and experienced numbness in his left leg and was unable to move his left leg. At the time of this incident, the employee had regularly used a brace on his left leg, and was regularly using crutches due to chronic left lower

extremity nerve damage. He consulted a doctor at the community hospital that same day in Spooner, and reported considerable lumbar pain and difficulty voiding. He was provided with a Foley catheter, and was transferred by ambulance to St. Mary's Hospital in Duluth, Minnesota. At a neurological consultation with Dr. Steven Erlemeier n June 5, 1996, the employee reported a history of urinary urgency, for which he was being prescribed Ditropan. Dr. Erlemeier noted a history of seizures, migraine headaches, spastic ataxia, psychosocial stress factors, left ulnar neurapraxia and neuropathy. Dr. Erlemeier also felt that there was a non-physiologic sensory examination with some give-way weakness. The employee was discharged from the hospital on June 7, with a diagnosis of status post multiple back operations, lumbar laminectomies, four occasions with a L4-5 fusion and residual left lower extremity paralysis. By June 17, 1996, the employer reported a four-day history of constipation and some difficulty in urination; a catheterization was performed. The employee also reported intermittent paresthesias and numbness in his leg following the June incident.

On June 26, 1996, he was examined at the Duluth Clinic, reporting an inability to urinate. On October 25, 1996, he underwent a placement of suprapubic catheter and cystoscopy, to allow for permanent drainage. Pre-operative notes report that the employee had experienced intermittent bladder symptoms since his work-related injury. Following surgery, the employee reported difficulty with self-catheterizations. The physician's post-surgery chart notes indicate urinary retention secondary to a back problem. The employee received follow-up treatment with both the Duluth Clinic and the clinic in Spooner, and reported ongoing symptoms. According to a letter dated January 9, 1997, Dr. Bruce Bray determined that the employee's neurogenic bladder and related medical treatment were "all directly related to his neurogenic problems from his back."

In March 1997, the employee underwent recurrent left inguinal hernia repair. He received follow-up treatment for his bladder condition, including periodic examinations and change of his catheter. By August 1997, the employee began treating with Steven Siegel, M.D., Metropolitan Urologic Specialists. Dr. Siegel recommended a bladder augmentation surgery with catheterizable stoma, to increase bladder capacity and to enable the employee to perform intermittent catheterization through an abdominal site. Dr. Siegel performed this surgery on February 5, 1998. The employee was hospitalized for approximately one month, due to post-surgical infection and complications. The medical records in later 1998 note periodic incontinence problems.

In July and August 1998, the employee underwent treatment at the pain center at United Hospital. He underwent a neurological examination on April 1, 1999, for examination of his seizures. He was prescribed Dilantin for his seizures and also Neurontin for his back pain. His chronic symptoms have continued; the employee has been prescribed various medications for his conditions. He also has continued to follow-up with the United Hospital pain center.

On March 1, 1999, the employee filed a Medical Request, claiming entitlement to payment of medical expenses related to his bladder augmentation surgery on February 5, 1998, his post-surgical home nursing care, and his medical treatment received from Dr. Siegel. On May 3, 1999, the employee filed a second Medical Request, for payment of medical supplies, prescription medications, and additional expenses related to surgery. The employer and insurer denied liability

for the claimed charges, although they continued to pay for prescription medication specifically related to the employee's low back condition.

On June 2, 1999, at the request of the employer and insurer, the employee underwent an examination with Joel Gedan, M.D., neurologist. Dr. Gedan's initial report of June 2, 1999 outlines his opinion that the employee's bladder symptoms did not manifest themselves until 1991. Dr. Gedan recommended somatosensory evoked potentials tests and an MRI imaging of the brain, to rule out significant upper motor dysfunction or disseminated central nervous system disease as seen in multiple sclerosis. Dr. Gedan did not find conclusive evidence of a lower motor neuron cause of bladder dysfunction involving multiple nerve roots injured in the lumbosacral region. However, he further stated that in the absence of central nervous system disease, or if testing did not show evidence of demylenating disease, then most likely the lower motor neuron bladder dysfunction was caused by the employee's multiple back surgeries and sacral root dysfunction.

The employee underwent the recommended sensory evoked potential testing and MRI of his brain, with normal results. Dr. Gedan reviewed those test results, and explained that he found no basis in the medical records for a diagnosis of multiple sclerosis, which is a very frequent or common cause of bladder dysfunction. After reviewing records surrounding the June 4, 1996 incident, Dr. Gedan issued a supplemental report, dated January 11, 2000, in which he determined that the employee's June 4, 1996 incident was a significant contributing factor to the employee's bladder dysfunction, and that his 1985 low back injury and subsequent surgeries did not substantially contribute to the employee's bladder dysfunction. He based that opinion on the acute change in symptoms which developed after the employee's incident or injury in June 1996.

On October 15, 1999, Lyle Lundblad, D.O., examined the employee on behalf of the employer and insurer. Dr. Lundblad diagnosed the employee as having a neurogenic bladder. In his report of October 15, 1999, Dr. Lundblad stated that the June 1996 incident was the most significant contributing factor of the employee's bladder dysfunction. Dr. Lundblad issued a supplemental report on January 17, 2000. He concurred with Dr. Gedan that the results of the MRI and tibial sensory evoked response did not support a diagnosis of multiple sclerosis. He also concurred with Dr. Gedan that the employee's injury in 1985 and subsequent back surgeries did not substantially contribute to the employee's bladder dysfunction. Instead, he again determined that the incident of June 4, 1996, was a significant contributing factor to the employee's bladder dysfunction.

A hearing was held on June 2, 2000. In Findings and Order served and filed July 26, 2000, the compensation judge determined that the employee's bladder incontinence and conditions were causally related to the employee's August 8, 1985 injury, and awarded payment for expenses related to the employee's related medical treatment and surgeries, totaling approximately $140,000.00. The employer and insurer appeal.

STANDARD OF REVIEW

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, 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." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

DECISION

The compensation judge determined that the "employee has established by a preponderance of the evidence that his bladder incontinence and bladder problems are secondary to the work injury of August 8, 1985 and the treatment and surgeries secondary to the back injury." (Finding No. 27.) He also found that the employee's involvement in the tractor incident of June 4, 1996, was "normal every day activity and not high risk or unusual activity." (Finding No. 16.) The compensation judge therefore awarded the employee his claimed medical expenses, and awarded reimbursement to the various medical and insurance intervenors for medical expenses incurred by the employee relative to his neurogenic bladder condition.

The employer and insurer argue that the employee's low back injury of August 8, 1985, did not substantially contribute to the employee's neurogenic bladder condition. Instead, they argue that the employee's injury of June 4, 1996, represents a superseding, intervening cause

In his Findings and Order and memorandum, the compensation judge referred to specific medical treatment the employee has undergone for his bladder condition. He also referred to the various medical opinions which have been rendered concerning diagnosis and causation. The compensation judge relied upon the medical opinion of Dr. Siegel, the employee's treating urologist, and upon the medical opinion of Dr. Bruce Bray, one of his treating physicians at the Spooner clinic, in reaching his conclusion concerning causation.

In his report dated January 9, 1997, Dr. Bray related the employee's bladder difficulties to his 1985 back injury. In Dr. Siegel's initial report dated May 6, 1999, Dr. Siegel determined that the employee's neurological malfunction of his bladder was consistent with the injuries to his sacral nerves. In a report issued May 31, 2000, Dr. Siegel instead stated a determination that the employee's bladder complaints alternatively could be explained by pelvic floor muscle dysfunction, compounded by his chronic Foley catheter management.

The employer and insurer argue that Dr. Siegel, although providing possible explanations for symptoms and treatment of symptoms, failed to explain the etiology of the

underlying condition, the neurogenic bladder, and therefore his opinion cannot provide medical support for the employee's claim. However, Dr. Siegel explained his opinion and interpretation of the development of the employee's symptoms, as follows:

> My take on Mr. Munn's problems, which are admittedly complex, is the following:
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> He sustained the initial injury in 1985. This resulted in symptoms of voiding dysfunction which were NOT related to a neurologic cause, but instead due to the musculoskeletal injuries which were documented. In other words, if his sacroiliac joint was wrenched and his back and pelvic muscles were sore and spastic as a result of the accident, he easily could experience voiding complaints on that basis. Since the issue of pelvic floor muscle dysfunction as a cause of his complaints was never identified or treated, those symptoms were likely to wax and wane, related to the degree of muscle spasticity he was experiencing over a given period of time. He was clearly subject to exacerbations of the underlying pelvic floor muscle dysfunction, and intensification of his voiding complaints, as occurred with his fall and accident documented in 1991 and 1996. The back surgeries could have contributed to the problem , but certainly would not have specifically helped it anyway.
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> I may have erred, in retrospect, after reviewing all of the pertinent information you have recently provided, in the interpretation of his urodynamic exam of 1998. I attributed his voiding complaints to sacral arc denervation, which is a lower motor neuron lesion. I could alternatively explain his symptoms on the basis of pelvic floor muscle dysfunction, compounded by his chronic foley catheter management (suprapubic tube). The treatment would not necessarily have differed at that point, in view of this recognition.
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> If Mr. Munn had not suffered the accident in 1985, and subsequent problems of voiding difficulty due to pelvic floor muscle dysfunction documented from that date on, it is unlikely that the tractor blade accident occurring in 1996 would have had the same effect on his voiding symptoms. In any case, I do not believe that the accident in 1996 was the beginning of this man's bladder problems. I believe that the accident in 1985 was a substantial contributing cause of the need for additional urologic treatment in his case.

(Pet. Ex. D.)

In his memorandum, the compensation judge addressed the opinions rendered by Drs. Lundblad and Gedan. Dr. Lundblad testified in his deposition that he saw no report of

significant bladder problems until after the June 4, 1996 incident. He focused on the lifting injury of 1996 because it was at that point when the employee's bladder symptoms occurred, and testified that he was unable to determine, from the medical records, as to what caused the bladder symptoms prior to 1996. The compensation judge found "some confusion in the medical records" concerning the employee's involvement in the June 1996 incident. Dr. Lundblad's medical report refers to the employee attempting to lift a tractor blade; however, the compensation judge stated that this "does not seem to be a likely version of the facts" since the employee was using crutches at the time and was not likely to attempt to do any heavy lifting. (Memo p. 6.)[1] The compensation judge also refers to the testimony of the tractor driver, Earnest Davison, that the employee did not do any pushing or pulling on the tractor but attempted to slide a board under the tractor blade.

The compensation judge also refers to the medical opinion rendered by Dr. Gedan, and Dr. Gedan's acknowledgment during his deposition testimony that the 1996 incident possibly caused the employee's bladder dysfunction, and his concession that nerve damage could have occurred as a result of the surgeries which could in turn have contributed to bladder dysfunction.

Finally, the compensation judge considered the employee's activity at the time of the June 1996 incident to be considered as "normal activity," therefore compensable as was held in Eide v. Whirlpool, 260 Minn. 98, 109 N.W.2d 47, 21 W.C.D. 437 (Minn. 1961). Where a work-related injury has created a permanently weakened physical condition which an employee's subsequent normal physical activities may aggravate to the extent of requiring additional medical or hospital care, such additional care is compensable. Nelson v. American Lutheran Church, 420 N.W.2d 588, 40 W.C.D. 849, 851 (Minn. 1988). The compensation judge stated in his memorandum that "[i]t is important to remember that the work injury does not have to be the sole cause of the employee's bladder problems. The issue is whether or not the work injury and treatment was a significant contributing cause of the employee's bladder problems." (Memo at 7.)

Conflicting medical opinions exist as to the causation of the employee's neurogenic bladder condition. However, the compensation judge's determination was based upon the opinion

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[1] The various histories in the medical records diverge from the employee's testimony. The reported history in the June 5, 1996 chart note from St. Mary's Hospital states that

> The patient states that his responsibility was to slide a board under the wheel which would then be used for traction; however, clearance was insufficient to place the board and he attempted to assist in lifting on the blade of the tractor and experienced the immediate exacerbation of low back and left lower extremity pain of such severity that it caused him to drop to the ground.

(Er. Ex. 4h.)

At the hearing, the employee testified that "I point my hand on [the three point hitch], bent down on the ground, I put the board underneath, and grabbed a hold of the crutch and the blade of the tractor when it was up....so I just pushed myself up, I got part way up, the pain hit and I went back down,....I couldn't get up." (T. 57.)

of the employee's treating urologist and the physician who treated him immediately following the June 1996 incident, and was also based, in part, upon portions of the deposition testimony presented by both Drs. Gedan and Lundblad. A compensation judge is free to reject or accept all or a portion of a medical expert's opinion. Klasen v. American Linen, 52 W.C.D. 284 (W.C.C.A. 1994). In addition, a conflict in the opinions of expert medical witnesses is to be resolved by the trier of fact. Ruether v. State of Minnesota, 455 N.W.2d 475, 478, 42 W.C.D. 1118, 1122-23 (Minn. 1990), citing Olson v. Midwest Printing Co., 347 N.W.2d 43, 46, 36 W.C.D. 623, 627 (Minn. 1984) and Fryhling v. Acrometal Products, Inc., 269 N.W.2d 744, 31 W.C.D. 85 (Minn. 1978).

In this case, the compensation judge outlined the medical opinions on which he based his determination of causation, and his conclusion is adequately supported by substantial evidence of record. Accordingly, we affirm.