LESLIE A. PERRIN, Employee/Appellant, vs. WILLOWS CONVALESCENCE CTR. and LUMBERMEN'S UNDERWRITING ALL., Employer-Insurer and CTR. FOR DIAGNOSTIC IMAGING, Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
AUGUST 6, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL EVIDENCE. Where the compensation judge relied upon a medical opinion which did not address whether the employee's current condition was causally related to her work injury, remand is necessary for reconsideration of the causation issue.

Vacated and remanded.

Determined by: Rykken, J., Pederson, J., and Wheeler, C.J.
Compensation Judge: Rolf G. Hagen

OPINION

MIRIAM P. RYKKEN, Judge

The employee appeals from the compensation judge's finding that her September 8, 1985 work-related injury did not substantially contribute to her need for medical care and treatment since 1998. We vacate and remand.

BACKGROUND

On September 8, 1985, Leslie Perrin, the employee, sustained an admitted work-related injury to her low back while working as a nursing assistant for Willows Convalescent Center, the employer. She injured her low back as she bent over to lift a hamper or bucket of linen. On that date, the employee was 24 years old. As a result of that injury, the employee initially consulted her family physician, Dr. David Grube, who diagnosed a lumbosacral strain and restricted the employee from work. X-rays taken at Dr. Grube's referral were negative. He recommended bed rest, physical therapy and pain medication. Dr. Grube referred the employee to an orthopedic surgeon, Dr. Gordon Aamoth, who first examined the employee on October 8, 1995, and saw the employee on four subsequent occasions. He diagnosed the employee with "acute back strain with myofascitis, possibly disc injury." Dr. Aamoth performed two trigger point steroid injections and referred the employee for a CT scan, which showed a prominent annular bulge at the L5-S1 level, but no herniation. Dr. Aamoth prescribed a body jacket or cast for three weeks "to allow her to be up and about and still rest the back." (ER Ex. 11.)

The employee was last examined by Dr. Aamoth on November 26, 1985. She reported the same low back and leg symptoms she had reported in the past; a straight leg test and

motor and sensory examinations were all normal. According to Dr. Aamoth's chart note on that date, he stated that

> The only possible source of her problem would be a midline disc although the CT scan showed only equivocal disc findings. She is going to see Dr. Strefling. There is nothing more that I can offer her except to have her hospitalized for a myelogram and consider epidural injection. I talked to her about the possibility of this being functional, and she says she has seen a psychiatrist for manic depression, is on Lithium and other medications. This may be the source of her problem....

(ER Ex. 11.)

The employee next treated with Dr. Marlen Strefling between December 1985 and 1991. He initially diagnosed the employee as having a ligamentous strain at both sacroiliac joints, mild central bulge at L5-S1, and greater trochanter bursitis bilaterally. He initially prescribed physical therapy and a TENS unit, and also referred the employee to Dr. Alan Bensman, Minnesota Center for Health and Rehabilitation. The employee consulted with Dr. Bensman and staff at the Minnesota Center between March and June 1986 for a program that included physical conditioning exercises and physical therapy, occupational therapy, and relaxation techniques, provided in part to deal with the emotional stress related to her injury. Dr. Bensman recommended that the employee return to work on a part-time work-hardening basis.

The employee was hospitalized for low back complaints from August 7 through August 15, 1986. While hospitalized, she underwent a second CT scan which was interpreted to show no evidence of pathologic disc bulge or herniation.

At the request of the employer and insurer, the employee was examined by Dr. Mark Dahl on September 16, 1986. Dr. Dahl assessed the employee as having diffuse complaints of low back and bilateral lower extremity pain and weakness, with reports of extreme pain in excess of objective evidence. Dr. Dahl found no permanent musculoskeletal impairment. He recommended discontinuance of narcotic medication and concluded that "judicious use of nonsteroidal anti-inflammatories combined with pain management and evaluation and physiotherapy is appropriate." (ER Ex. 2.)

The employee received follow-up medical treatment from Dr. Strefling and his chart notes reflect periodic orthopedic examinations and neurologic testing, with negative or normal results. Throughout the time he treated the employee, however, she continued to report symptoms of tenderness in her low back, burning in her thighs, and diffuse low back "achiness." He recommended that the employee consider a pain program. He also prescribed physical therapy, which the employee chose to undergo on a periodic basis.

According to Dr. Strefling's chart note of November 3, 1986, the employee reported a major flare-up in her back and lower extremity symptoms. Dr. Strefling wrote in his chart notes that

> [c]learly she was showing signs of improvement and with negative studies that were done in the hospital, I cannot feel that her back complaints are anything other than nondiscogenic in nature. The office visit may have been remarkable in this sequence of events in that during this office visit, her QRC brought up the plans that if she continued to make progress, that on our next office visit we would again be making some work disposition plans. Hence, the flare-up in her back. I would be hesitant to make any direct correlation at this time and would not feel that my duty, however, I am concerned at this time that her psychiatric difficulties are more of a problem than her back problems per se.

(ER Ex. 6.)

Dr. Strefling determined that the employee reached maximum medical improvement (MMI) as of September 15, 1987. Dr. Strefling assigned a permanency rating of 3.5 percent permanent partial disability of the body as a whole.[1] On August 4, 1988, the employee underwent a CT scan of her sacrum, pelvis and hips, at the referral of Dr. Strefling. That scan also extended to the employee's low back at the L4-5 and L5-S1 levels. The results of that CT scan were normal, and showed no pathologic disc protrusion or bony stenosis at the L4-5 or L5-S1 levels.

At the request of the employer and insurer, the employee was also examined by Dr. Gary Wyard on October 19, 1988. Dr. Wyard diagnosed back pain without objective clinical or radiographic findings and found that the employee was neurologically intact, with no evidence of physical impairment or loss of physical function. Dr. Wyard concluded that the employee had significant and considerable functional overlay and that she was capable of sustained gainful employment, with no specific work restrictions or limitations, due to the absence of objective findings. Dr. Wyard did not recommend any specific future care or treatment related to her low back, other than conditioning, exercise, supervision and reassurance. Dr. Wyard determined that the employee had reached maximum medical improvement, and that she had sustained no permanent partial disability as a result of her September 8, 1985 work-related injury.

The employer and insurer paid intermittent temporary total and temporary partial disability benefits between September 8, 1985, and October 31, 1988. The parties also reached a settlement in 1989 under which the employer and insurer paid a lump sum payment that settled the employee's claims to-date and that closed out her future claims to the extent of 4.33% permanent partial disability of the whole body.

The employee received continued intermittent treatment from Dr. Strefling through November 1991. Throughout his treatment of the employee, Dr. Strefling maintained the same opinion concerning the employee's diagnosis, that she had sustained a soft tissue injury in the nature of a low back strain/sprain. On September 25, 1990, Dr. Strefling stated that, "I think there

[1] See, Minn. R. 5223.0070, subp. 1A(2).

is really very little different to do. She should remain at restricted activities. Light duties were encouraged. She will be seen in general follow-up sometime later in the fall, sooner if any problems occur." By April 1991, Dr. Strefling stated that

> I would feel that a continued nonsurgical conservative program is the only alternative. From the list of nonhelpful modalities that have been used in the past, about the only thing that I can think of as we discuss that has not been tried and may be of some help is that home Cotrell traction unit. We will be trying this on a trial basis.

(ER Ex. 6.)

Dr. Strefling next examined the employee on November 13, 1991. The employee reported that she was taking no pain medication for her low back as she had an ulcer and was unable to take NSAID's. She also reported that the TENS unit had been of no help, that she did not like using physical therapy, that she was not working, and that any bending activities aggravated her symptoms.

On November 13, 1991, Dr. Strefling prescribed soma. He also stated "If we do not get any result from this it may be worthwhile to still try some limited outpatient physical therapy although she is not anxious to do so. She may be active with light activities." (ER Ex. 6.)

The employee discontinued treating with Dr. Strefling when he moved out of state in 1991. The employee testified that from November 1991 to October 1998, she consulted her family physician periodically due to ongoing low back and lower extremity symptoms. During this seven-year period of time, her treatment for low back symptoms was limited to prescription medication; she continued to note low back pain and bilateral leg radiculopathy at varying intensity levels. (T. 46, 49-50, 70.) During this period of time, she also continued to receive periodic psychiatric treatment for unrelated conditions for which she had treated since approximately 1981. (T. 47, 70; ER Ex. 12.)[2]

At the referral of Dr. Strefling, the employee began treating with Dr. Mark Engasser in October 1998. At her initial consultation with him on October 12, 1998, the employee reported daily pain in her low back with radiation into her right calf, some weakness, and some left lateral thigh numbness. Dr. Engasser diagnosed the employee as having a lumbar disc syndrome, and prescribed Prednisone; he advised the employee on the use of proper body mechanics. Dr. Engasser examined the employee again in November 1998 and February 1999. She continued to report low back pain and pain extending into her buttock area.

[2] The record does not contain any medical records documenting treatment between November 1991 and October 1998 for the employee's low back or lower extremity symptoms. The employee argues that Dr. Strefling did not notify her of his intention to move to Texas, and in his absence, she did not know where to turn for treatment. She therefore discussed her ongoing symptoms and complaints with her family doctors and ultimately sought additional orthopedic treatment in 1998 when her symptoms worsened.

The employer and insurer requested Dr. Lawrence Blumberg, orthopedic surgeon, to conduct a "physician advisor review" in order to provide an opinion regarding the causation of the employee's condition commencing in 1998, and her need for medical treatment and prescriptions since 1998. Dr. Blumberg issued a report dated March 12, 1999, in which he outlined a summary of the employee's injury and her post-injury treatment and test results. He also provided the following information, apparently in response to questions posed to him:

> ISSUES/CONCERNS TO BE ADDRESSED:
>
> 1) Do you feel her current symptoms beginning with the treatment in October 1998 appear to be causally related to the injury of September 8, 1985?
>
> A: No. She was fully recovered as of October, 1988 as per the IME.[3]
>
> 2) Is there evidence of unrelated factors that may be contributing to her symptoms?
>
> A: Yes. She is under psychiatric treatment. It has been noted on several examinations that her subjective complaints far exceed any objective physical findings.
>
> 3) If this is related to her injury of 1985, what treatment do you feel is appropriate at this time?
>
> A: I do not feel that her present problems are related to the injury of 1985. It is doubtful if any treatment is appropriate at this time for the injury of September 8, 1985.

(ER Ex. 3.)

The employee treated periodically with Dr. Engasser until at least July 2000. Dr. Engasser's records reflect that the employee continued to note pain in her lumbar area throughout that period of time. At Dr. Engasser's referral, the employee underwent an MRI scan on March 31, 2000. That MRI was interpreted to indicate mild degenerative disc and degenerative facet disease at L5-S1, mild bilateral L5-S1 foraminal stenosis, but no evidence of disc herniation or nerve root compression.

On April 14, 2000, the employee reported to Dr. Engasser that her pain was worsening, and that she had activity-related pain and also pain at rest, extending from her low back into her legs. The employee reported that she was recently hospitalized through the emergency

[3] When referring to the "IME," Dr. Blumberg apparently was referring to the report of Dr. Gary Wyard, dated October 19, 1988, issued following Dr. Wyard's examination of the employee.

room due to severe pain,[4] and was given pain medication as well as a corticosteroid. Dr. Engasser diagnosed the employee as having lumbar disc degeneration at the L5-S1 level. Dr. Engasser referred the employee for epidural blocks, which she underwent in April and May 2000. The employee noted significant relief of her leg pain from the epidural blocks but little, if any, relief of her low back pain. On July 28, 2000, the employee reported continued severe pain. She reported that she continued to take pain medication, but was on a weaning program for narcotic medication. Dr. Engasser suggested that she might need to undergo a pain management program such as the one at Abbott Northwestern Hospital and asserted that she needed to stay off narcotic medication in the future.

By report dated October 13, 2000, Dr. Engasser stated that he had reviewed Dr. Strefling's medical records, and concluded that the employee had discogenic pain which had caused radicular symptoms. Dr. Engasser stated that

> [c]ertainly the fact that she did improve with her epidural block would suggest that there is a discogenic component to her problem. Certainly it appears that based on the ongoing nature of her complaints, the problem she currently has is an extension of her previous injury in 1985. As you know, MRI studies were not in common use in the mid 1980s and certainly we know that an MRI gives better detail, especially with respect to the disc. Overall I feel that the patient does exhibit a permanent impairment of 7 percent of the body as a whole as found in section 5223.0070, subp. 1A(3)(a).

(EE Ex. A.)

The employee initially filed a medical request on March 27, 2000, requesting payment of expenses related to treatment with Dr. Engasser and reimbursement of her out-of-pocket expenses for prescription medication. In their medical response, the employer and insurer denied liability for the expenses, asserting that they were not causally related to the employee's 1985 work injury. Following an administrative conference held on May 5, 2000, the employee requested a formal hearing; a hearing de novo was held on October 19, 2000. The compensation judge issued a findings and order on December 7, 2000, in which he concluded that the employee's September 8, 1985 injury was a musculoligamentous strain/sprain of the low back and was non-discogenic in nature. He also found that the employee's medical treatment since 1998 was for a discogenic condition that was not causally related to her 1985 injury. The compensation judge therefore concluded that the employee had failed to prove, by a preponderance of the evidence, that her work-related injury was a substantial contributing factor in her need for medical care and treatment provided by Dr. Mark Engasser and CDI since 1998, and in her need for prescription medication since 1998. The compensation judge denied the employee's claim in its entirety; the employee appeals.

[4] The record does not contain any medical records from this emergency room visit or hospitalization.

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 found that the employee's injury of September 8, 1985, does not represent a substantial contributing factor in her need for medical treatment since 1998. The employee appeals, arguing that her condition and need for medical treatment is a natural consequence flowing from, and causally related to, her September 8, 1985 injury.

At issue at the hearing was the nature and extent of the employee's admitted September 8, 1985, work injury and whether that injury represents a substantial contributing factor in the employee's need for medical treatment since 1998. To resolve the issue concerning the nature of the employee's work injury, the compensation judge relied on the medical opinion of Dr. Strefling and found that the employee's injury in 1985 was a musculoligamentous strain/sprain of her low back, non-discogenic in nature. (Finding No. 3.) To resolve the issue of causal relationship between the employee's injury and her current medical treatment, the compensation judge focused on the employee's diagnosis between 1985-1991 and her diagnosis in 1998. He apparently concluded that, because the employee's diagnosis was initially nondiscogenic, her 1998 treatment for a discogenic condition was not causally related to her 1985 injury. Although it is obvious from the compensation judge's memorandum that he very carefully considered the evidence of record, it is unclear, from the analysis outlined by the compensation judge, as to his basis for resolving the issues presented at hearing. Under the circumstances of this case, further findings are necessary.

When the effects of an employee's personal injury totally resolve without residual disability, restrictions, or need for medical care, the employer and insurer have no further liability for benefits. Kautz v. Setterlin, 410 N.W.2d 843, 40 W.C.D. 206 (Minn. 1986). A determination regarding the extent of the injury must be made in order to decide whether that injury remains a substantial contributing factor in the employee's need for medical treatment. Drs. Strefling, Wyard, and Dahl each addressed the extent of the employee's injury and whether that injury had resolved. Dr. Strefling, the employee's treating physician between 1986–1991, determined that the employee sustained a 3.5% permanent partial disability of the body as a whole, as a result of her 1985 injury. When he last examined the employee in 1991, he continued to restrict the

employee to light activities and prescribed follow-up medical treatment. In 1986, Dr. Dahl concluded that the employee had sustained no permanent impairment and that, with appropriate treatment, the employee's symptoms should subside completely. In 1988, Dr. Wyard concluded that the employee had sustained no physical impairment or loss of physical function and that the employee did not require any specific work restrictions or future care or treatment.

The compensation judge adopted the opinion of Dr. Strefling as to his diagnosis of the employee's non-discogenic condition. However, the compensation judge did not determine whether the employee's personal injury had resolved, and it is not clear whether the compensation judge also adopted Dr. Strefling's opinion concerning the employee's ongoing restrictions and the permanent nature of her injury; the compensation judge admittedly was not asked to address those specific issues at hearing. Dr. Strefling had not suggested that the employee has no residuals from her injury, but he had not treated the employee since 1991 and had not been asked for his opinion on whether the 1985 injury continued to substantially contribute to the employee's need for medical treatment since 1998.

As for the opinions of Drs. Wyard and Dahl, who earlier concluded that the employee's injury had resolved without residual work restrictions and permanent partial disability, it is not clear whether the compensation judge rejected those opinions when he adopted Dr. Strefling's opinion. It also is not clear whether the compensation judge rejected Dr. Blumberg's opinion. However, rejection of Dr. Wyard's opinion could be tantamount to rejection of Dr. Blumberg's opinion, as Dr. Blumberg stated in his report that, based on "the IME," the employee's current symptoms were not related to the employee's 1985 work injury. (ER Ex. 3.) If Dr. Blumberg's opinion was rejected by the compensation judge, the only remaining medical opinion that addressed the issue of causal connection was that of Dr. Engasser, who concluded that the employee's current need for medical treatment relates back to her 1985 work injury, and that the employee's injury was discogenic in nature. The compensation judge chose not to rely on that opinion. Instead, the compensation judge found that the employee "failed to prove, by a preponderance of evidence, that the September 8, 1985 work injury was a substantial contributing factor in the need for medical care and treatment provided to employee by Dr. Mark C. Engasser, and by CDI, as claimed." (Finding No. 5.)

While it may be that the employee's injury in 1985 was non-discogenic in nature, as determined by Dr. Strefling, and contrary to Dr. Engasser's opinion, the issue remains whether the compensation judge could reasonably conclude that the employee's injury of September 8, 1985, did not substantially contribute to her need for medical care and treatment since 1998. The employee need not prove that her work-related injury was the sole cause for the need for subsequent medical treatment; she only needs to prove that the injury remains a substantial contributing cause of the disability for which benefits, such as medical expenses, are sought. Swanson v. Medtronics, Inc., 443 N.W.2d 534, 536, 42 W.C.D. 91, 94-95 (Minn. 1989). Based on our review of the record, including medical records and hearing testimony, we conclude that the matter must be remanded to the compensation judge for further findings of fact, and for explanation of the basis for his conclusions, as to whether the effects of the employee's 1985 work injury have resolved, and as to whether that injury represents a substantial contributing factor to the employee's need for medical treatment between 1998 and 2000. The compensation judge shall

make such findings on the existing record. Either party may appeal from the judge's decision on remand.