KIMBERLY J. (HAHN) PETERSON, Employee, v. WEST CENT. TURKEYS and INS. CO. OF THE STATE OF PA., Employer-Insurer/Appellants, and MN DEP'T OF HUM. SERVS., Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
FEBRUARY 28, 2001

No. [REDACTED SSN]

HEADNOTES

MAXIMUM MEDICAL IMPROVEMENT - SUBSTANTIAL EVIDENCE. Substantial evidence did not support the compensation judge's finding as to maximum medical improvement where there was no evidence in the record that reasonably supported the conclusion that any significant lasting improvement in the employee's condition could reasonably be anticipated.

Reversed.

Determined by Wilson, J., Wheeler, C.J., and Johnson, J.
Compensation Judge: John E. Jansen

OPINION

DEBRA A. WILSON, Judge

The employer and insurer appeal from the compensation judge's finding that the employee had not reached maximum medical improvement. We reverse.

BACKGROUND

The employee sustained an admitted work injury to her left hand and wrist on July 18, 1995, while working for West Central Turkeys [the employer]. She subsequently sustained a consequential injury to her right hand and wrist, which the employer admitted was related to the July 18, 1995, injury.

The employee first sought treatment with the Pelican Valley Health Center Clinic, treating with Drs. Roy Cordy and Richard Lysne, who prescribed a wrist splint and medications. In August of 1995, the employee was seen by Dr. Owen Thompson at the Barnsville Area Clinic. X-rays ordered by Dr. Thompson were normal, and he diagnosed "probable tenosynovitis" and referred the employee to Dr. J. D. Opgrande, a hand specialist. Dr. Opgrande examined the employee on September 8, 1995, and noted significant tenderness of the ulnar nerve at the elbow. He in turn referred the employee to Dr. Bonnie Dean for help with dealing with inflammation and discomfort.

Dr. Dean evaluated the employee on October 10, 1995, and ordered an EMG, nerve conduction studies, and a bone scan. When all of the tests were normal, Dr. Dean diagnosed

overuse syndrome with possible left reflex sympathetic dystrophy [RSD] and prescribed medications.

On April 1, 1996, the employee was examined by Dr. James Carpenter, a rheumatologist, who diagnosed post-traumatic bilateral DeQuervains tenosynovitis, injected the right subacromial bursa, and prescribed physical therapy, which the employee participated in from April 1 through April 25, 1996. The employee reported a slight decrease in pain with the physical therapy treatments. Dr. Carpenter continued to follow the employee and prescribed prednisone. X-rays taken on May 23, 1996, revealed no evidence of arthritis.

The employee returned to Dr. Cordy on August 14, 1996. He prescribed occupational therapy/work hardening, which the employee underwent from August 15, 1996, through November 25, 1996.

The employer and insurer had the employee examined by occupational and environmental medicine doctor William Lohman on October 16, 1996. His exam failed "to reveal any underlying pathophysiology which would explain [the employee's] symptoms," and he concluded that further treatments of the type already prescribed would not provide the employee with relief from her symptoms. Dr. Lohman also indicated that the employee had reached maximum medical improvement [MMI] from the effects of the 1995 work injury.

On December 11, 1996, Dr. Lysne diagnosed chronic wrist pain and ordered a "psych evaluation to rule out frank depression and chronic pain syndrome." The employee failed to follow through on that referral. Dr. Lysne continued to follow the employee and, on December 31, 1996, noted that "[t]here is no objective evidence of any pathological process here," but he continued to prescribe medications. On February 3, 1997, Dr. Lysne told the employee that he refused to limit her work activities with the employer and that "she is either going to have to work with these circumstances or if she can't tolerate it, she is going to have to consider finding a different job."

On June 25, 1997, the employee's attorney wrote a six-page letter to Dr. Lysne, providing additional information and asking the doctor, in part, what further treatment he would recommend and whether the employee had reached MMI from the effects of her injury. In that letter, the employee's attorney wrote, "as you have indicated, it would certainly be appropriate it seems to me for a pain clinic evaluation to take place as part of the overall treatment program to at least get the benefit of the opinion of the experts in the diagnosis and treatment of chronic pain." Dr. Lysne responded by letter dated July 24, 1997, writing, "I feel that a Pain Clinic evaluation may be of some benefit only in that it allows her to learn how to deal and control her subjective pain symptoms, not that it would validate any pathological diagnosis." Later in his letter, Dr. Lysne opined, "I feel that Kim has in fact reached her Maximum Medical Improvement," and "I would not recommend at this time that any further physical therapy, further activity modification, any further home exercise, or any further evaluation for chronic pain (unless it be at a chronic pain clinic to help her live with her chronic pain with less emotional distress)."

The employee was examined by independent medical examiner Dr. Gary Wyard on April 17, 1998. Dr. Wyard's impression was that the employee suffered from upper extremity

complaints without objective clinical or radiographic findings. It was his opinion, based on her history, that the employee had sustained a sprain/strain in July of 1995 and a consequential injury of the same nature in September of 1995, and that both injuries were temporary and had healed within three months. It was, therefore, Dr. Wyard's opinion that the employee had reached MMI.

The employee did not seek treatment between February 3, 1997,[1] and May 6, 1998, when she was seen by Tina Lundeen, R.N., C.S., F.N.P., at the Pelican Valley Clinic for an acute flare-up of symptoms that the employee related to carrying her child. Ms. Lundeen prescribed medications and splints and referred the employee to Dr. Carpenter.

When the employee returned to Dr. Carpenter on May 20, 1998, his impression was "myofascial pain, shoulder, upper back, with nonspecific upper extremity arthralgias/myalgias-severe," and he prescribed medications and aerobic exercise. The employee subsequently went without treatment from October 2, 1998, to April 16, 1999, when she returned to Dr. Carpenter. At that time, the doctor noted that the employee had been off prednisone for two weeks and that her symptoms had worsened. The doctor's impression at that time was fibromyalgia, and he restarted the employee on prednisone.

On March 3, 1997, the employee filed a claim petition, seeking temporary total disability benefits continuing from February 10, 1997,[2] undetermined permanent partial disability, and payment of medical expenses.[3] The claim petition came on for hearing on February 23, 1999, and May 30, 2000,[4] before a compensation judge at the Office of Administrative Hearings. In a decision filed on August 25, 2000, the compensation judge found, in part, that, as of May 30, 2000, the employee had not yet reached MMI. The employer and 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

[1] The employee returned to see Dr. Lysne on April 1, 1997, but his office notes do not reflect any examination or treatment; rather, it appears that the employee wanted to discuss a disability form that the doctor had completed.

[2] At hearing, the employee was claiming temporary total and temporary partial disability benefits but had been working at Fingerhut, at no wage loss, since approximately September of 1999.

[3] At the time of trial, the employee made no claim for permanent partial disability benefits.

[4] The hearing was set for one day, on February 23, 1999, in Bemidji, but the parties were unable to put in all their evidence and requested an additional hearing date.

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

Minn. Stat. §176.021, subd. 25, defines MMI as "the date after which no further significant recovery from or significant lasting improvement to a personal injury can reasonably be anticipated, based upon reasonable medical probability." The employer and insurer contend that the compensation judge's finding that the employee had not reached MMI was clearly erroneous and not supported by substantial evidence. We agree.

The compensation judge offered no explanation, in his memorandum, for his finding that the employee had not reached MMI by time of trial, other than to state that the employee "may, in the future, need further and additional care and treatment to cure and relieve her from the effects of the personal injury of July 18, 1995, including but not limited to participation in a pain management clinic program." However, the fact that an employee may need additional treatment in the future does not mandate a finding that the employee has not reached MMI, unless significant recovery or significant lasting improvement may reasonably be anticipated from that treatment.

The only mention of chronic pain/pain clinic in a medical record is found in the records of Dr. Lysne. That doctor's office note of October 30, 1996, indicates that the employee's "affect seems somewhat inappropriate with the severity of her symptoms, bringing up the possibility of some psychiatric etiology, possibly depression." At that time, Dr. Lysne noted that he would wait to review Dr. Lohman's report before making a referral. Subsequently, on December 11, 1996, Dr. Lysne raised the question of whether the employee was suffering from chronic pain syndrome, and he referred her for "a psych evaluation to rule out frank depression and chronic pain syndrome." Months later, in his letter of July 24, 1997, Dr. Lysne explained that "I feel that a Pain Clinic evaluation may be of some benefit only in that it allows her to learn how to deal and control her subjective pain symptoms, not that it would validate any pathological diagnosis." That portion of Dr. Lysne's letter was written in response to the employee's attorney's request for Dr. Lysne's treatment recommendations. Later in that report, Dr. Lysne stated, "I would not recommend at this time that any further physical therapy, further activity modification, any further home exercise, or any further evaluation for chronic pain (unless it be at a chronic pain clinic to help her live with her chronic pain with less emotional distress)." Dr. Lysne noted further in this letter that, of all the referrals he had made for the employee in the past, the referral for the psychological evaluation was the one that she did not follow through with.

In his letter to Dr. Lysne of June 25, 1997, requesting treatment recommendations, the employee's attorney wrote,

> I also need to obtain from you the benefit of your opinion concerning whether or not the employee is at maximum medical improvement which is defined under the Minnesota Workers' Compensation Statute as being that point in time after which no further lasting improvement can reasonably be anticipated. Obviously, in this particular case, it would appear that the employee's treatment recommendations have not been followed by virtue of the premature termination of all treatment by the insurer and I find it difficult to understand how anyone could say that the employee has reached maximum medical improvement other than of course the insurance company doctor, Dr. Lohman. Nevertheless, I would appreciate it if you could give us the benefit of your opinion concerning whether or not she is at maximum medical improvement given what you would recommend for further treatment such as further therapy, further activity modification, further home exercise, further evaluation and possible treatment for chronic pain, and further functional capacity evaluation to further define on an updated basis her restrictions.

In response to counsel's inquiry, Dr. Lysne wrote, "I feel that Kim has in fact reached her Maximum Medical Improvement."

The only other opinions regarding MMI are those of Drs. Lohman and Wyard, who both opined that the employee is at MMI. We are aware that MMI is not a purely medical conclusion, but a finding of ultimate fact. Hammer v. Mark Hagen Plumbing & Heating, 435 N.W.2d 525, 41 W.C.D. 634 (Minn. 1989). However, no doctor has prescribed any additional treatment for the employee. In fact, as of May of 2000, the employee had not seen any doctor for more than a year, since April of 1999. The employee testified that her symptoms have been the same since the date of injury, that none of the treatment she has received has provided any significant improvement in her symptoms, and that, as of the May 30, 2000, hearing, her only treatment was occasional use of over-the-counter Tylenol.

We are extremely hesitant to overturn a compensation judge's factual determination. However, there is simply no evidence in the record that reasonably supports the judge's finding that the employee had not reached MMI by the time of trial. The only actual referral for evaluation of chronic pain syndrome was made in December of 1996, and the employee did not follow up on that referral. Dr. Lysne's mention of a pain clinic evaluation in 1997 was made in response to a question regarding future medical treatment, and, in spite of that notation, he went on to opine that the employee had reached that point after which no further lasting significant improvement could reasonably be anticipated. No doctor has subsequently opined that the employee could expect further significant lasting improvement with any evaluation or additional care. Accordingly, we reverse the judge's finding as to MMI and substitute a finding that the employee reached MMI from the effects of her work injury no later than the May 30, 2000, hearing date.