PATHJAL G. PUOCH, Employee, v. JEROME FOODS, INC., SELF-INSURED/WAUSAU INS. CO., Employer/Appellant.

WORKERS' COMPENSATION COURT OF APPEALS
AUGUST 15, 2001

No. [REDACTED SSN]

HEADNOTES

EVIDENCE - CREDIBILITY. There is no basis in the evidence of record that would require reversal of the compensation judge's specific finding that the employee was a credible witness and that she credibly testified she was physically unable to perform the light-duty job offered to her by the employer.

JOB OFFER - REFUSAL. Substantial evidence, including expert vocational opinion, medical records and employee testimony, supports the compensation judge's conclusion that the employee's refusal of job offer was reasonable.

TEMPORARY TOTAL DISABILITY - SUBSTANTIAL EVIDENCE. Substantial evidence supports the compensation judge's conclusions that the employee's refusal of job offer was reasonable and that such refusal did not bar the employee from temporary total disability pursuant to Minn. Stat. § 176.101, subd. 1(i).

REHABILITATION - ELIGIBILITY. Substantial evidence, including expert vocational opinion, the employee's physical work restrictions, educational background, work experience, and her limited use of the English language, supports the compensation judge's conclusion that the employee is a qualified employee for rehabilitation services pursuant to Minn. R. 5220.0100, subp 22.

Affirmed.

Determined by: Rykken, J., Pederson, J., and Johnson, J.
Compensation Judge: Nancy Olson

OPINION

MIRIAM P. RYKKEN, Judge

The self-insured employer appeals from the compensation judge's determination that the employee did not unreasonably refuse an offer of gainful employment within her restrictions, and the compensation judge's conclusion that the employee is qualified for rehabilitation assistance and entitled to compensation for rehabilitation assistance expenses. We affirm.

BACKGROUND

On August 20, 1999, Ms. Pathjal Puoch, the employee, sustained an admitted injury to her left hand while employed by The Turkey Store Company of Jerome Foods, Inc., the employer, who was self-insured for workers' compensation liability in the state of Minnesota. On that date, the employee was 27 years old and earned a weekly wage of $372.91.

The employee commenced working for the employer in May 1999, processing turkeys. Her job duties included cutting and deboning turkeys. The employee was stabbed in her left hand by a co-worker while both worked on the assembly line. Following her injury, the employee was treated at the emergency room at the Rice County District One Hospital; her wound was bandaged and she was prescribed pain medication.

The employee was released to return to work by the emergency room physician, within restrictions including limited use of her left hand. She returned to work that same day, and was assigned a light-duty position in the laundry. She worked a partial or full day on August 21, was scheduled off work on Sunday, August 22, and returned to work for partial or full days on August 23-26. Following her injury, the employee experienced pain and numbness in her left hand, and pain radiating to her left arm and shoulder. She was referred by emergency room personnel to Dr. William Laney for follow-up medical treatment. On August 24, Dr. Laney examined the employee and diagnosed a laceration of the long extensor tendon of the left ring and small fingers. He performed surgery on the employee's hand on August 26, 1999, to repair the laceration of her long extensor tendons. That surgery did not relieve the employee's symptoms; the employee testified that her pain increased post-surgery. However, on September 2, 1999, approximately one week post-surgery, Dr. Laney installed a short-arm cast and released the employee to return to work, restricting her to right handed work and only light gripping with her left hand.

On September 2, 1999, Ms. Sherry Davis, the employer's nurse consultant, telephoned the employee, asking her to report to work in the laundry on September 3, 1999. The employee met with the nurse, the employee's supervisor, a translator, and one other company representative on September 3, 1999, at which time the employee was offered the same position in the laundry room that she had performed post-injury. Although the employee was not provided a written job offer detailing her duties in the laundry, she understood this was the same job she performed post-injury, which she believed she could not perform with one hand. The employee testified that her light-duty position in the employer's laundry required her to gather and clean dirty gloves turned in by production workers, and to distribute clean gloves to the workers. She testified that each time workers go on break, they turn in their dirty gloves to the laundry room, and pick up clean gloves upon returning after break. She found it impossible to perform this work with only her uninjured right hand, and that she could not keep up with the pace of the work in the laundry room. The employee claimed that because the dirty gloves typically stuck together, she needed to utilize both hands to straighten the fingers on the gloves and to separate and clean the

dirty gloves.[1] The employee also testified that as she stood while working in the laundry, her left hand hung down and was painful.

The employer's manager of human resources wrote a letter to the employee on September 14, 1999, advising that the employer had work available within the employee's restrictions. That letter was hand-delivered to the employee by the nurse, and was translated to the employee. (T. III, p. 84.) The letter stated that,

> I have been advised that you came into the office yesterday and said you would not be back at work until September 30, 1999. However we have no doctor's note that releases you from work and are requesting that you provide this doctor's note to us by Friday, Sept. 17, 1999. The latest doctor's note we have returned you to work with restrictions. We have work that meets those restrictions. If you do not return to work by Sept. 17th or provide us with a verification of disability for continued time off, we will conclude that you do not wish to remain employed by the Turkey Store Company.

According to the testimony of the nurse, this letter was translated to the employee on September 15, 1999, when she met with the employee at the plant. However, the employee did not return to work after receiving this letter.

The employee attended a follow-up appointment with Dr. Laney or his nurse on September 30, 1999. On that date, Dr. Laney assigned work restrictions, limiting the employee to right handed work and light gripping with her left hand. (Er. Ex. C.) The employee did not return to work after that appointment, as she believed that her position had been terminated on September 17, 1999. On October 4, 1999, the employer mailed a letter to the employee, advising that her employment was terminated. The employer's letter stated:

> You returned to the doctor on September 30, 1999. However, he again released you to restricted work. Because we have work available that meets your restrictions and because you have failed to return to work we will be terminating your employment status with The Turkey Store Company. Please continue to keep in contact with Sherry Davis, RN regarding treatment and handling of your claim if you have any concerns or questions.[2]

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[1] A representative of the employer testified that this light-duty job was limited to sorting and stacking gloves, and required work with only one hand.

[2] Margaret Nelson, manager of human resources for Minnesota, for the Turkey Store Company, testified at the hearing. When she was asked why the employee's position was not terminated as of the time of the September 14, 1999, letter, she testified that:

(Er. Ex. 3.)

The employee requested a rehabilitation consultation with Marsha Ellingson, QRC, on approximately October 8, 1999. In addition, the employee sought approval for obtaining a second medical opinion from Dr. Allen Van Beek. By October 27, the employer, through its insurance administrator, authorized the QRC to conduct a rehabilitation consultation. The employer apparently authorized the employee to consult Dr. Van Beek for medical treatment and authorized the QRC to attend the employee's initial medical appointment with Dr. Van Beek on October 28, 1999. Also attending that appointment were two translators and the employee's husband. The employee reported persistent numbness and soreness. In his chart note of October 28, 1999, Dr. Van Beek stated that he noted findings of hypesthesia in the distribution of the dorsal sensory branch of the ulnar nerve, and "maybe a deficit in the extensor carpi ulnaris." Dr. Van Beek advised that it was "much too early to judge the outcome" of the employee's surgery, and recommended therapy to desensitize the dorsal aspect and to strengthen the employee's hand. He recommended follow-up in three weeks, and a work restriction until the employee could be "somewhat desensitized." After reviewing the operative report from Dr. Laney, Dr. Van Beek noted that the dorsal sensory branch had not been repaired during surgery. Dr. Van Beek prescribed physical therapy for the employee to desensitize her surgery wound, and advised that in the future he would reassess her work circumstances and her need for additional surgery.

Dr. Van Beek re-examined the employee on December 2, 1999. At that point, he released the employee to return to work within restrictions of no lifting over ten pounds and no repetitive movements in excess of ten movements per minute. In his chart note on that date, Dr. Van Beek addressed the causal relationship between the employee's injury and her current condition and inability to work. Dr. Van Beek stated that "[i]n my view this patient is unable to work because of her injury. She has persistent symptoms, findings and restrictions because of that injury. She is unable to find work because of those restrictions and because of sequella of her injury. . ." (Ee. Ex. A.)

On December 10, 1999, the QRC conducted an initial rehabilitation consultation for the employee. In her initial rehabilitation consultation report, dated January 5, 2000, the QRC outlined the history she obtained from the employee concerning her injury, symptoms, and her post-injury work, and also the employee's conversations with the employer concerning job offers. The QRC summarized the employee's social, education and work history as obtained from the employee. The employee and her family moved to the United States in June 1995, due to the civil war in the Sudan. The employee is a native of Sudan, but her language is a tribal language, Nuer. The employee was not educated in school, but received instruction for approximately five years from a tribal teacher. She attended English as a second language classes since moving to the

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> First of all, it was very important to know that she did indeed understand exactly what the parameters and ramifications and consequences would be of not returning to work. Secondly, we deal with many employees who don't speak English well and we make an extra effort to make sure that they do indeed understand what we are trying to do. Therefore, we would go the extra mile and give the benefit of the doubt and make sure [the letter advising of termination of employment] went in writing and make sure she received it. (T. III, pp. 84-85.)

United States. The employee's work history included various temporary positions since June 1996, performing tasks such as food packaging, sign making, and other production work. In a report dated January 5, 2000,[3] the QRC concluded that the employee was a qualified employee for rehabilitation services.[4] She stated:

> **REHABILITATION CONSULTATION FORM:** Clt. has sustained a work-related injury. Her employer currently has no work for her and has terminated her. She can be expected to be returned to suitable gainful employment through rehabilitation services. While there are circumstances to lead to a conclusion that she is not eligible for services given the job offer for light duty work, Dr. Van Beek has opined that her not being able to work due to the pain from her injury is legitimate regardless of these circumstances. Accordingly, QRC concludes that clt. is eligible for rehabilitation services. Therefore, a rehabilitation plan has been developed. As this is a very unique case, the routine rehabilitation approach is not likely to be successful. With clt.'s current severe physical restrictions to her dominate hand, inability to speak English, lack of any real education, work history of only doing production work, lack of any transferable skills, etc.; the clt. currently really is not employable nor placeable. This clt. has very minimal work history of only very short term work being mostly temporary work performing only production work which necessitates bilateral hand coordination, manual dexterity, finger dexterity, etc. which she really currently cannot do. The severity of her restrictions really preclude her being placeable at this time. Assuming good use of her hands, the clt. would only be selectively placeable into low level unskilled manual work. The only real alternatives vocationally here are to return to the Work Force Center to see if they through their apparent program for foreign born may have something appropriate for the clt. into the future and/or refer the clt. to KCQ which is a CARF traditional rehabilitation facility in Faribault that has community-based work stations with a number of employers for vocational evaluation and training leading to permanent employment. If these resources indicate they have nothing for her currently, then I am not optimistic that this clt. will be employable until she has completed her surgical and medical rehabilitation. Then, I would recommend pursuing rehabilitation services through these same resources.

(Ee. Ex. E.)

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[3] The employer received this consultation report on January 24, 2000.

[4] See Minn. R. 5220.0100, subp. 22.

The QRC provided limited vocational rehabilitation services to the employee from January through July 2000. Her assistance included attending the employee's appointments with Dr. Van Beek and the employee's hand therapist; communicating with the employer, medical personnel, and rehabilitation facilities; and exploring return to work programs available in the employee's home area.

Dr. Van Beek re-examined the employee on February 7, 2000, and released her to work within a 25-pound weight restriction. On February 9, 2000, Dr. William Call examined the employee at the request of the employer. Dr. Call noted a significant droop in the left ring finger, indicative of a stretch or giving-way of the tendon repair. He concluded that the employee had not yet reached maximum medical improvement, and that it was premature to assess permanent partial disability. Dr. call concluded that the employee was capable of work with her left hand, limited to assistive use and no lifting over 10 pounds. He recommended exploratory surgery and repair of the ring finger tendon, post-surgery splinting and hand therapy. Dr. Call also agreed that a one-handed position in the employer's laundry room was appropriate for the employee. (Er. Ex. 1.)

On March 27, 2000, Dr. Van Beek performed surgery on the employee's left hand. He detected and removed a neuroma in the flexion crease of the employee's left hand, which he concluded was likely responsible for her left hand pain. Dr. Van Beek's chart notes and the employee's testimony indicate that the employee made a good recovery from her surgery. In his latest chart note in the hearing record, July 20, 2000, Dr. Van Beek advised that the employee would have restrictions for six to twelve months and that he believed she would reach maximum medical improvement in approximately three to four months. Dr. Van Beek restricted the employee to occasional lifting up to 24 pounds, and no repetitive grasping or fine manipulation of the left hand. (Ee. Ex. A.)

Procedural History

On September 10 and October 29, 1999, the employer and insurer filed a Notice of Intention to Discontinue (NOID) temporary total disability benefits, alleging that the employer had offered the employee work within her restrictions and that the employee had refused that work. Following an administrative conference held on November 12, 1999, a compensation judge issued an Order on Discontinuance Pursuant to Minn. Stat. § 176.239, allowing discontinuance of temporary total disability benefits effective October 29, 1999. The employee objected to the discontinuance. On March 22, 2000, the employee filed a rehabilitation request, in which the employee claimed payment of bills for the qualified rehabilitation consultant services and rehabilitation consultation. The Objection to Discontinuance and Rehabilitation Request were consolidated and a hearing on the matter was held on March 23, August 8, and September 1, 2000.

By Findings and Order served and filed October 2, 2000, the compensation judge concluded that the employee did not unreasonably refuse light-duty employment with the employer when she refused offers to return to work in the laundry room on September 3 and September 15, 1999, and that her refusal did not bar her entitlement to temporary total disability benefits pursuant to Minn. Stat. § 176.101, subd. 1(i). The compensation judge also concluded that the rehabilitation consultation conducted by the QRC was reasonable and compensable. She concluded that the delays in this consultation and related report were reasonable, did not cause any

delay in returning the employee to work and did not prejudice the employer. The compensation judge also found that the employee was a qualified employee for rehabilitation services.[5] The compensation judge ordered payment of temporary total disability benefits from October 30, 1999 through September 1, 2000 and continuing, and ordered payment of the outstanding QRC bill and provision of ongoing rehabilitation services. The self-insured 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.

"[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers' Compensation Court of Appeals] may consider de novo." Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

DECISION

Refusal of Job Offers

The compensation judge found that the employee did not unreasonably refuse light-duty employment with the employer by refusing job offers present to her on September 3 and 15, 1999. The self-insured employer appeals, arguing that the employer offered the employee gainful employment in the laundry room, that the offered position was within the employee's physical work restrictions, and that the employee fully understood that this offer was for continued employment.

Pursuant to Minn. Stat. § 176.101, subd. 1(i),

> Temporary total disability compensation shall cease if the employee refuses an offer of work that is consistent with a plan of rehabilitation . . . or, if no plan has been filed, the employee refuses

[5] See Minn. R. 5220.0100, subp. 22.

> an offer of gainful employment that the employee can do in the employee's physical condition.

The employer argues that it properly ceased payment of temporary total disability benefits because the employee refused at least two employment offers for light-duty, one-handed work in its laundry room which the employee was physically capable of performing. The employer argues that the employee is barred from receiving temporary total disability benefits pursuant to the statute. We are not persuaded.

The compensation judge outlined the employee's testimony concerning her specific left hand symptoms following her August 20, 1999, injury and her August 26, 1999, surgery. The employee claimed that her symptoms persisted since her injury, and that her pain worsened after her initial surgery. Although the employer claimed that the laundry work did not require the employee to use her left hand, the employee testified that it was not possible to perform those work duties with solely her right hand, due to the nature of the work, and that she was unable to keep up with those work tasks due to the speed with which she needed to clean and replace gloves for co-workers. The employee claimed she was not physically capable of performing the light-duty position offered to her in the employer's laundry room due to her ongoing symptoms.[6] The compensation judge concluded that the employee credibly testified that she believed the employer was offering the same job in the laundry that the employee had performed in August of 1999, and which she knew she could not perform with one hand.

The compensation judge also stated that she "believes it is very likely that there were considerable problems with the employee and the employer representatives understanding what each other were saying" at both meetings on September 3 and 15, 1999, when two different interpreters were present. (Finding No. 12.) In addition, the employee testified about a letter sent to her by the employer, dated September 14, 1999, that stated that the employer had work within her restrictions and that her position would be terminated if she did not return to work by September 17, 1999. (Er. Ex. 3.) The compensation judge found the employee credible when she testified that she believed this letter referred to the same light-duty work she performed prior to surgery.[7] The compensation judge found that the employer's videotape of the laundry job (Exhibit

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[6] There were discrepancies between the employee's and the employer's descriptions of the laundry room job. The employer's nurse consultant testified that the employee was not required to clean the gloves, and therefore simply needed to sort and distribute clean gloves, and that she could rest whenever needed. The nurse also testified that the job was explained to the employee and the lead person in the laundry room so that the employee would not have to perform any duties she should not do. The nurse testified that the employee advised her, on September 3, that she was not experiencing pain since the medication relieved her pain. (T. III, pp. 69-70, 73.)

[7] The compensation judge found that the employee was never given a written job offer setting forth in detail what her job duties would be in the laundry. The employer argues that the compensation judge's reliance on this factor constitutes an error of law. Minn. Stat. § 176.101 (3)(e), which previously required an effective suitable job offer to be described in writing, was repealed in 1995. No such requirement exists in current law, and the lack of a written job offer is not dispositive; the compensation judge lists numerous other factors for her basis for concluding

4), which showed a worker performing the light-duty job with only one hand, did not accurately reflect the job the employee performed in August of 1999. As it is not the role of this court to make an evaluation of the credibility and probative value of witness testimony, we affirm that finding. Redgate v. Sroga's Standard Serv., 421 N.W.2d 729, 734, 40 W.C.D. 948, 957 (Minn. 1988).

Assessment of the credibility of a witness is the unique function of the trier of fact. Brennan v. Joseph G. Brennan, M.D., P.A., 425 N.W.2d 837, 839-40, 41 W.C.D. 79, 82 (Minn. 1988). A finding based on credibility of a witness will not be disturbed on appeal unless there is clear evidence to the contrary. See Even v. Kraft, Inc., 445 N.W.2d 831, 835, 42 W.C.D. 220, 225-26 (Minn. 1989). The employee's testimony concerning the nature of the light-duty job offered to her, and her understanding of the subsequent job offers, in addition to the employee's medical records, provide substantial evidence to support the compensation judge's conclusion that the employee reasonably refused to return to work in the laundry room. Accordingly, we affirm.

Employee's Entitlement to Rehabilitation Consultation

The compensation judge found that the rehabilitation consultation performed by Ms. Ellingson, QRC, was reasonable, and that the employer is required to pay the related expenses for that consultation. The self-insured employer argues that the QRC is not entitled to full compensation for her consultation, as the QRC's consultation and report were not completed within the statutory time requirements. The employer further argues that the unreasonable delay in the finalization of the consultation and report was prejudicial to the self-insured employer. We are not persuaded.

The Department of Labor and Industry rehabilitation and compensation rules allow an employee, employer or the commissioner to request a consultation. The rules state that:

> **5220.0130. Rehabilitation Consultation**
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> **Subpart 1. Purpose**. A rehabilitation consultation is used to determine whether an employee is a qualified employee for rehabilitation services. An employee must be a qualified employee as defined in part 5220.0100, subpart 22, before a rehabilitation plan is implemented.
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> **Subp. 2. Criteria.** If the employer requests a rehabilitation consultation or receives a request for a rehabilitation consultation from the commissioner, the insurer shall arrange for a rehabilitation consultation by a qualified rehabilitation consultant to take place within 15 calendar days of the receipt of the request.

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that it was reasonable for the employee to refuse this job offer, including communication difficulties. Therefore the compensation judge's reference to no written job offer does not constitute an error of law.

> **Subp. 3. Consultation.** The procedure and documentation for a rehabilitation consultation are contained in items A to E.
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> * * *
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> B. Actions. During the first in-person meeting with the employee for purposes of conducting a rehabilitation consultation, the assigned qualified rehabilitation consultant shall:
> (1) meet with the employee and, including those items in part 5220.1803, subparts 1 and 1a, explain the employee's rights and responsibilities regarding rehabilitation, including the employee's right to choose a qualified rehabilitation consultant; and
> (2) gather information which will permit a determination of the employee's eligibility for rehabilitation.
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> * * *
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> D. Time for filing. A rehabilitation consultation report shall be completed by the assigned qualified rehabilitation consultant in all cases. The assigned qualified rehabilitation consultant shall file the rehabilitation consultation report within seven days of the first in-person meeting with the employee and concurrently mail a copy to the employer, the employee, and the insurer.

The employee requested a rehabilitation consultation on approximately October 8, 1999, after receiving a termination letter from the employer. The self-insured employer approved the rehabilitation consultation on October 27, 1999. On October 28, 1999, the QRC met with the employee at her appointment with Dr. Van Beek, and she met with the employee again on December 2. The QRC did not complete the initial rehabilitation consultation until December 10, 1999, and prepared her consultation report by January 5, 2000.[8]

The self-insured employer argues that the QRC's rehabilitation consultation report was untimely. The employer argues that the rules governing rehabilitation consultation require that the report shall be completed and filed within seven days of the first in-person meeting with the employee, which was the employee's appointment with Dr. Van Beek on October 28, 1999. The employer argues that had the consultation occurred during this first in-person meeting, none of the problems cited by the QRC would have interfered with her preparation of the report.

The QRC testified that at her first in-person meeting with the employee, during Dr. Van Beek's examination on October 28, 1999, she focused on helping the employee provide information to the doctor concerning her health history. The QRC testified about various difficulties she later experienced with scheduling an initial rehabilitation consultation, due to difficulties with communications with the employee and translators. The QRC also outlined her

[8] The employer argues in its brief that it received the rehabilitation consultation report, the proposed rehabilitation plan and bill on January 24, 2000. The record contains no explanation for this delay. In the upper right-hand corner of page 1 of the report, there is a hand-written date of January 24, 2000. (Ee. Ex. E.)

office's scheduling problems resulting from the resignation of one of her firm's QRC's and the death of another QRC, computer equipment problems, and accounting and support service delays, all of which apparently complicated arrangements for the consultation. The compensation judge reviewed the QRC's deposition testimony and her explanations for the delay. The compensation judge found that the consultation was not done within the time limits required by the rules, and that the related report was not provided within the required time limits. However, the compensation judge found that the "reasons the consultation and report were delayed were reasonable and did not result in any delay in returning the employee to work. The employer was not prejudiced by the delay." (Finding No. 28.)

The employer argues that the delay indeed prejudiced the employer because the consultation report classifying the employee as a qualified employee for rehabilitation assistance was filed on the same day as the rehabilitation plan, thereby denying the self-insured employer its right to contest the rehabilitation consultation report before additional rehabilitation expenses were incurred to develop a rehabilitation plan. The employer argues that an employer and insurer have a general right to contest a finding by a QRC that an employee is qualified prior to the filing of a rehabilitation plan. Lange v. Long Prairie Packing, 51 W.C.D. 495 (W.C.C.A. 1994).

The employee, on the other hand, argues that no prejudice resulted for the employer, and that the development of the rehabilitation plan itself, was a limited portion of the QRC's billing. The employee also argues that the employer never filed a rehabilitation request objecting to the QRC's conclusion that the employee was a qualified employee, or objecting to the proposed rehabilitation plan. Instead, the employee argues, the employer maintained its position that because the employee refused its job offer, she was not entitled to any rehabilitation services.

Upon review of the testimony presented by the QRC, her rehabilitation reports and the testimony of the employee concerning these rehabilitation issues, we conclude that the record adequately supports the compensation judge's findings that the consultation and report were reasonably delayed, and that such delay neither resulted in any delay in returning the employee to work nor prejudiced the employer. Hengemuhle, 358 N.W.2d at 60, 37 W.C.D. at 240. The compensation judge could reasonably conclude that the employer is required to pay for the rehabilitation consultation, and we affirm.

Employee's Entitlement to Rehabilitation Assistance

The compensation judge found that the employee is a "qualified employee" for rehabilitation services. The employer and insurer appeal, arguing that insufficient evidence exists to illustrate that the objective factors required by the rehabilitation rules exist. We disagree.

A "qualified employee" is an employee, who, because of the effects of a work-related injury:

> a. is permanently precluded or is likely to be permanently precluded from engaging in the employee's usual and customary occupation or from engaging in the job the employee held at the time of injury;

> b. cannot reasonably be expected to return to suitable gainful employment with the date-of-injury employer; and
>
> c. can reasonably be expected to return to suitable gainful employment through the provisions of rehabilitation services, considering the treating physician's opinion of the employee's work ability.

(Minn. R. 5220.0100, subp. 22.)

In her Findings and Order, the compensation judge found that these requisite factors exist in the record to support her conclusion that the employee is qualified for rehabilitation assistance. In her findings and order, the compensation judge stated that she accepted the QRC's opinion that:

> . . . the employee was a "qualified employee" for rehabilitation service. Under the provisions of Minn. Rules 5220.0100, subp. 22, the employee is a qualified employee. Because the employee has been terminated she is permanently precluded from returning to her date of injury employer. At the time Ms. Ellingson completed her consultation, January, of 2000, it appeared likely that the employee's hand condition would preclude her return to repetitive factory work requiring extensive hand use. Finally, the compensation judge accepted Ms. Ellingson's opinion that the employee could reasonably be expected to return to suitable gainful employment through the provision of rehabilitation services.

(Finding No. 30.)

Based on the evidence of record, the compensation judge could reasonably conclude that the employee is a "qualified employee" for rehabilitation services. First, as outlined in Dr. Van Beek's chart notes of July 20, 2000, Dr. Van Beek restricted the employee to no repetitive simple or firm grasping or fine manipulation with her left hand due to her dorsal sensory branch injury. Dr. Van Beek stated that these restrictions would be reviewed in six to twelve months. The compensation judge referred to Dr. Van Beek's examinations of the employee and his opinion that the employee had been entirely restricted from any work through February 7, 2000.

Dr. William Call also confirmed that the employee was still restricted due to her left hand injury. Although Dr. Laney had originally released the employee to return to work with limited restrictions, Drs. Call and Van Beek imposed even stricter work restrictions on the employee. The compensation judge also concluded that it appeared likely that the employee's hand condition would preclude her return to repetitive factory work requiring extensive hand use. We note that it is the compensation judge's responsibility, as trier of fact, to resolve conflicts in expert testimony. Nord v. City of Cook, 360 N.W.2d 337, 342, 37 W.C.D. 364, 372 (Minn. 1985). Adequate evidence supports that conclusion that the employee was precluded from the repetitive job she performed when injured. We therefore affirm that conclusion.

Concerning the second factor, the compensation judge also concluded that the employee could not reasonably be expected to return to suitable gainful employment with the employer. Her position with the employer had been terminated, as outlined by the October 4, 1999 letter sent to the employee by the employer. The employer has not offered the employee replacement employment. (T. III, pp. 100, 102.)

As to the third factor, the QRC concluded that the employee could reasonably be expected to return to suitable gainful employment through the provision of rehabilitation services. Between January and July 2000, the QRC provided limited rehabilitation services, primarily attending medical appointments with the employee and exploring return-to-work programs available in the employee's geographical area. During that period of time, the two return-to-work programs, the Workforce Center[9] and KCQ,[10] were not yet willing to place the employee, in part because she continued to be restricted from repetitive use of her hand, in part due to her limited educational and employment background, and in part because the issue of funding had not been resolved.

The compensation judge concluded that the employee had cooperated with medical care and with rehabilitation assistance. She noted that "[b]esides the employee's language problems the employee is also quite unsophisticated. It would be unrealistic to expect this employee to obtain the type of detailed information necessary to begin job placement from her physician." The compensation judge found the QRC's services to be reasonable given the fact that she was not being paid for her rehabilitation services and the employer was not willing to pay for the KCQ program she had recommended. The compensation judge also directed that the "employee will be expected to fully cooperate with Ms. Ellingson to return to work as quickly as possible." (Memo at p. 11.)

The compensation judge could reasonably conclude that the rehabilitation services provided by the QRC thus far, on a limited basis, represent reasonable vocational rehabilitation assistance, and that the employer should pay the outstanding rehabilitation bill and provide ongoing rehabilitation services with the QRC. Adequate evidence of record supports these conclusions, and accordingly we affirm.

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[9] According to the QRC, the Workforce Center, a branch of the Minnesota Department of Economic Security, works through the Private Industry Council to coordinate job placement with employers. The employee obtained her original position with the employer after working with a consultant in the Private Industry Council.

[10] The KCQ program is a transitional work program and a traditional vocational rehabilitation center in Faribault, Minnesota, that conducts vocational evaluations and coordinates job placement with employers by training workers, modifying jobs, assisting with language barriers and providing other support services. (Ellingson Depo., Ee. Ex. G., pp. 30-32.)