

DIANE M. QUAST, Employee/Appellant, v. PARK MFG. CORP. and STATE FUND MUT. INS. CO., Employer-Insurer, and ALLINA MED. CLINIC, ORTHOPAEDIC PARTNERS, P.A., ADVANCED SPINE ASSOCS., SUBURBAN IMAGING, and MERCY HOSP., Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
APRIL 3, 2001

No. [REDACTED SSN]

HEADNOTES

NOTICE OF INJURY; STATUTES CONSTRUED - MINN. STAT. § 176.141. Where the employee had found full resolution from a similar low back injury in 1992 through physical therapy and prescribed back exercises, where the employee mistakenly presumed that her 1999 low back injury would resolve by the same measures, and where the employer and insurer suffered no prejudice by the employee's delay in giving notice of injury to the employer, the compensation judge erred in denying benefits based on a failure to give notice within thirty days, and the judge's decision to that effect was reversed and remanded for further findings on the merits of the employee's claim.

Reversed and Remanded.

Determined by: Pederson, J., Wilson, J. and Johnson, J.
Compensation Judge: Gary M. Hall

OPINION

WILLIAM R. PEDERSON, Judge

The employee appeals from the compensation judge's denial of benefits on grounds that she did not provide the employer with statutorily timely notice of her injury. We reverse the judge's conclusion as to notice and remand for findings as to the benefits at issue.

BACKGROUND

On Friday July 2, 1999, Diane Quast experienced some sudden stiffness and "heat" across her low back after hurriedly lifting about ten forty-pound boxes at the end of her work shift in the course of her employment as a lead worker with Park Manufacturing Corporation [the employer]. Ms. Quast [the employee] was thirty-nine years old on that date and was earning a weekly wage of \$606.76. Over the course of the long July 4th weekend that followed, during which she participated in activities including a family picnic and some strawberry picking, her back symptoms increased and became intermittently radicular, and when she returned to work the following week she was visibly hampered by her pain. Early in the week, one of the employer's supervisors, Karen Potter, noticed the employee working with her legs propped up on a cart and asked what she was doing, to which the employee responded to the effect that she was taking it

easy because she was stiff. Later the employee's production manager, Jeff Pilon, came past the employee's work station and asked about her activities over the weekend, to which the employee responded that she had gone to a picnic on Saturday and had picked strawberries on Sunday. There were exchanges later in the week between Ms. Potter, Mr. Pilon, and the employee on the topic of the employee's apparent back problems. Among the issues below and also here on appeal is whether the employee's work activities on July 2, 1999, in addition to her weekend activities, were referenced in the course of those exchanges so as to constitute notice of injury.

On Friday July 9, 1999, the employee presented with her symptoms to Dr. Gary Kohls at the Cambridge Medical Center. Dr. Kohls reported that the employee "had been picking strawberries and then did a lot of lifting of heavy boxes at work and the next morning she had severe right sciatica with a burning hot sensation from the right buttock down almost to the posterior right knee." The doctor also noted that the employee had a history of two herniated lumbar discs five or six years earlier, for which she "got PT . . . with quite dramatic resolution of the pain and she has not had a recurrence." Dr. Kohls indicated that the employee was "not claiming work[er]'s compensation at this point, though there was a definite work related factor connected to this injury." Dr. Kohls diagnosed a right sciatica, prescribed medication, a TENS unit, and physical therapy.

On that same date, July 9, 1999, the employee completed a Ham Lake Physical Therapy "Patient Questionnaire," on which she indicated, in description of when and how she was injured, "lifted boxes at work-picked strawberr[ie]s at home-got up next morning-couldn't walk!!!" Physical Therapist Mark Netzinger's treatment records on that same date report a history of the employee "having sustained innocuous injury to the low back over the past two weeks when she [w]as apparently performing some work related tasks. This she reports was exacerbated by a brief period of time picking strawberries when she noted some increased soreness in the low back." Mr. Netzinger's records note also that the employee "reported significant reduction in her acute symptoms immediately following treatment today."

The employee's pain apparently continued to subside with additional therapy on July 12, 15, and 19, 1999, but on July 27, 1999, she was seen in the emergency room at Mercy Hospital with a sudden resurgence of symptoms. Emergency room records report a history of occasional, intermittent radicular low back pain over the course of the past six to eight weeks, and a separate unsigned record on that same date references an injury that occurred "at work" "lifting boxes," for which the patient "doesn't want w/c billed--can't prove."¹ The employee was restricted from working for three days and was discharged with a referral to orthopedic surgeon Dr. Charles Cooley.

The employee saw Dr. Cooley two days later, on July 29, 1999. In his office notes on that date, Dr. Cooley reported "a history of prior herniated disc syndrome back in 1992," which "resolved with exercises." He went on to report of a return of pain "on or about July 5th, 1999," which had been preceded a day or two earlier by some lifting of heavy boxes at work. Dr. Cooley

¹ At trial, the employee disputed the contents of this record and stated that she advised emergency room personnel that Medica and Park Manufacturing should both receive a copy of the bill.

noted that the employee “was doing fine the next couple of days until Monday, the 6th of July when she couldn’t get out of bed because of pain.” Dr. Cooley went on to agree with the employee’s “[self-]diagnosis of her herniated disc on the right,” indicating that “[i]ts level is undetermined at this point but may be L5-S1.” In a Report of Work Status completed on that same date, Dr. Cooley refrained from characterizing the employee’s condition as work-related, circling “no” following the form’s query. He prescribed a Medrol Dosepak and Vicodin and restricted the employee from working until further notice. On August 4, 1999, the employee was referred by Dr. Cooley’s associate, Dr. Philip Haley, for a lumbar MRI scan, which was conducted on August 9, 1999. In addition to a small disc bulge at L4-5 without apparent neural compression and some degenerative disc desiccation at L4-5 and L5-S1, the scan was read to reveal a moderate sized disc protrusion and probably some extrusion at L5-S1 that was displacing and compressing the right S1 nerve root and displacing the thecal sac. On August 10, 1999, Dr. Cooley noted that “I have carefully questioned her again with respect to the onset of her problems Although she told me that she was fine for the next couple of days when she was severely painful[, s]he recalls definitely that she did have pain after the lifting of the box incident[.] although she thought the discomfort and pain was simply muscular in nature and would go away. **It would appear, therefore, that this injury is work related.**” (Emphasis in original.)

The employee reported that conclusion to the employer on that same date, August 10, 1999, and the employer completed a First Report of Injury. The report identified July 2, 1999, as the date of injury, July 27, 1999, as the first day of lost work time, and August 10, 1999, as the date on which the employer was first notified of either the injury or the lost time. On September 1, 1999, the employee filed a Claim Petition, alleging entitlement to payment of certain medical expenses, to rehabilitation benefits, and to compensation for unspecified permanent partial disability and for temporary total disability continuing from July 26, 1999, all consequent to a work injury on July 2, 1999. On September 16, 1999, the employer and insurer denied liability, on grounds that the alleged injury was not work related and that the employee had not provided the employer with timely notice of injury. Eventually, on December 27, 1999, the employee underwent a right L5-S1 discectomy to repair her herniated disc at that level. On March 13, 2000, the employee was examined for the employer and insurer by Dr. Larry Stern, who concluded, based on the employee’s own history and a review of her medical records back to 1992, that the employee’s work activity with the employer was a substantial contributing factor in the development of a recurrent herniated disc at L5-S1 of her spine in 1999.

The matter came on for hearing on May 10, 2000. Issues at hearing included whether or not the employee’s alleged injury of July 2, 1999, had arisen out of and in the course of her employment, whether or not the employee had provided timely notice of injury pursuant to Minn. Stat. § 176.141, and various secondary issues pertaining to the employee’s entitlement to temporary total, temporary partial, and medical benefits consequent to the alleged injury. At the hearing, the employee testified in part that, as her low back symptoms became more radicular over the weekend following July 2, 1999, she had compared her symptoms, both in her own mind and to her husband, to symptoms she had experienced following the disc herniation that she had suffered in 1992. She testified that she had recovered from that earlier herniation by means of certain prescribed exercises and other conservative measures and that she had supposed the same sort of recovery was possible in the present instance. The employee testified also that, during a subsequent exchange about Thursday July 8, 1999, between herself, Ms. Potter, and Mr. Pilon

concerning her low back condition, Ms. Potter had stated, “[W]ell, I hope to see you up and running again,” to which the employee said she replied, “[Y]eah,” “but, you know, it really hurt when I was throwing them boxes on Friday.” The employee testified that the employer’s chief operating officer, Kim Johnson, was standing right behind Mr. Pilon at the time that she said that to him. She testified further that she refrained from mentioning her injury until July 8, 1999, because she wanted to make sure that it wasn’t just stiffness--because for a few days she thought, “I’ll work it out. No big deal. I had it before.”

Mr. Johnson and Mr. Pilon subsequently testified for the employer and insurer, controverting the employee’s testimony as to notice of injury on Thursday July 8, 1999. Mr. Johnson testified that he was aware that the employee was seeing a doctor for her low back problems prior to her restriction from work on July 27, 1999, but he indicated that the employee had reported no work-related, or even any other, cause of her condition prior to that date. The employee was subsequently recalled and was asked, “Do you still believe that you told Mr. Pilon that you had hurt your back on the previous Friday moving boxes at work?”, to which the employee replied, “Yes, I told him that Thursday when he was talking about the strawberries and having my feet up on the cart for the third day in a row.”

By Findings and Order filed July 10, 2000, the compensation judge concluded in part that the employee sustained a work-related injury on the date alleged. However, implicitly not crediting the employee’s testimony about the exchange on Thursday July 8, 1999, the judge concluded that the employee had not provided the employer with notice of her injury until August 10, 1999. The judge concluded further that the employee was aware of and trained in “the legal requirements under Minn. Stat. § 176.141,” that her failure to provide timely statutory notice of her injury was “deliberate,” and that she had not shown any of the following: (a) that her failure to provide proper notice was due to any mistake, inability, inadvertence, or ignorance of fact or law to any fraud, misrepresentation, or deceit on the part of the employer; (b) that the employer had any actual knowledge of the work incident; or (c) that the notice period should be tolled based on the “trivial injury” rule. On these findings, the judge denied the benefits at issue without reaching the secondary issues on their merits. The employee appeals.

STANDARD OF REVIEW

In reviewing cases on appeal, the Workers’ Compensation Court of Appeals must determine whether “the findings of fact and order [are] clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted.” Minn. Stat. § 176.421, subd. 1 (1992). Substantial evidence supports the findings if, in the context of the entire record, “they are supported by evidence that a reasonable mind might accept as adequate.” Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, “[f]actfindings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed.” Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). Findings of fact should not be disturbed, even though the reviewing court might disagree with them, “unless they are clearly erroneous in the sense that they are

manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” Id.

DECISION

Essential to proof of a claim under the Workers’ Compensation Act is a showing that the employer had timely notice or knowledge of the employee’s injury within the statutory period. Issacson v. Minnetonka, Inc., 411 N.W.2d 865, 40 W.C.D. 270 (Minn. 1987). It has long been held that the purpose of the statutory notice requirement is “to enable the employer to furnish immediate medical attention in the hope of minimizing the seriousness of the injury as well as to protect the employer by permitting him to investigate the claim soon after the injury.” Kling v. St. Barnabas Hosp., 291 Minn. 257, 261, 190 N.W.2d 674, 677, 26 W.C.D. 53, 56 (1971), citing Pojanowski v. Hart, 288 Minn. 77, 178 N.W.2d 913, 25 W.C.D. 206 (1970). In reviewing the entire record as submitted, this court “looks not only at the evidence which supports the compensation judge’s findings, but also at the opposing evidence and the evidence from which conflicting inferences might be drawn. The evidence in a sense, is weighed to determine its substantiality.” Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984).

In denying benefits to the employee, the compensation judge determined that the employee had not given notice of her injury to the employer within 30 days of the date of the injury. He further found that the employee had failed to prove the applicability of the mitigating factors listed in Minn. Stat. § 176.141, which permit notice to remain proper at a date greater than 30 days, but less than 180 days following the injury.² In a memorandum accompanying his findings and order, the judge explained:

² This subdivision reads, in its entirety:

Unless the employer has actual knowledge of the occurrence of the injury or unless the injured worker, or a dependent or someone in behalf of either, gives written notice thereof to the employer within 14 days after the occurrence of the injury, then no compensation shall be due until the notice is given or knowledge obtained. If the notice is given or the knowledge obtained within 30 days from the occurrence of the injury, no want, failure, or inaccuracy of a notice shall be a bar to obtaining compensation unless the employer shows prejudice by such want, defect, or inaccuracy, and then only to the extent of the prejudice. If the notice is given or the knowledge obtained within 180 days, and if the employee or other beneficiary shows that failure to give prior notice was due to the employee’s or beneficiary’s mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation, or deceit of the employer or agent, then compensation may be allowed, unless the employer shows prejudice by failure to receive the notice, in which case the amount of compensation shall be reduced by a sum which fairly represents the prejudice shown. Unless knowledge is obtained or written notice given within 180 days after the occurrence of the injury no compensation shall be allowed, except that an employee who is unable, because of mental or physical

Looking at the evidence as a whole I have concluded that the employee, who clearly has a strong work ethic and pride in what she does, chose not to report the work injury until August 10, 1999. This choice was made despite her knowledge of the notice requirements and her knowledge of the probable compensability of this condition. Her reasons for failing to give notice were consistent with her strong work ethic. That is, she thought she could “tough it out” as she had in 1992.

This case represents a harsh application of Minn. Stat. § 176.141 - - where the delay in reporting is minimal and the statute does not require the employer to show any prejudice. Unfortunately, under these facts, the claim must be denied.

In Wood v. Airco Industrial Gases, 45 W.C.D. 342 (W.C.C.A. 1991), summarily aff’d, Oct. 30, 1991, this court affirmed a finding that notice after 30 days but within 180 days was inadequate where the employer and insurer established that the employee had specifically chosen to apply for private disability insurance rather than workers’ compensation benefits, and where the employee failed to accurately apprise his treating physicians of the origin of his symptoms until some two months later. This court observed that the notice statute provides a number of circumstances which allow an employee to be excused for failure to give notice within 30 days as long as the notice does take place within 180 days. The scope of the circumstances, especially “mistake or inadvertence,” is quite broad, and it allows an employee wide latitude in showing why notice was not given within 30 days.

In the case before us, the judge apparently concluded that the employee chose not to provide notice to her employer within 30 days because she believed she would be able to work through her injury without the necessity of filing a workers’ compensation claim. He expressly determined that her actions were “consistent with her strong work ethic” and her past experience in 1992. This assessment of the employee’s course of action by the judge is supported by the evidence.³ For example, on cross-examination during her deposition, the employee testified:

My mistake was I was going to play hero. I thought I could cure this myself, and I didn’t realize I knew it didn’t feel good, and

incapacity, to give notice to the employer within 180 days from the injury shall give the prescribed notice within 180 days from the time the incapacity ceases.

³ We find employee’s deliberation in this case, particularly based as it was on her experience with a former low back injury, distinguishable from the facts in the supreme court’s decision in Freyholtz v. Blackduck Sch. Dis. #32, 613 N.W.2d 757, 60 W.C.D. 219 (Minn. 2000), in which that court affirmed an affirmance by this court of a denial of benefits by a compensation judge who had expressly indicated in his Memorandum that “[t]here was no evidence presented to show that the failure to give prior notice was the result of mistake.”

I thought, well, physical therapy works, I'll get physical therapy, I'll be fine.

Unlike the facts in Wood, there is no evidence here that the employee attempted to conceal her condition from her employer, or that she failed to accurately apprise her treating physicians of the origin of her symptoms. The medical records confirm that the employee did alert Dr. Kohls on July 9, 1999, Physical Therapist Netzinger on that same date, and Dr. Cooley on July 29, 1999, of the potential work-relatedness of the condition for which she was being treated.

We believe the compensation judge's determination that the employee deliberately chose not to report her injury neither supports nor compels a conclusion that the employee's claim is barred by failure to give statutory notice. Rather, the issue is whether the employee's failure to provide notice within 30 days was due to mistake or inadvertence. In his Findings and Order, the judge simply concluded that the employee did not establish that her failure to provide notice was due to mistake or inadvertence. Viewing the record as a whole, we do not find substantial evidentiary support for the judge's conclusion.

In 1992, the employee sought medical care for a low back injury. She received some physical therapy and did back exercises which enabled her condition to fully resolve. Similarly in 1999, the employee initially believed her condition would resolve just as it had in 1992. In this belief, the employee was clearly mistaken. When she felt back pain, the employee did back exercises and obtained physical therapy resulting in a significant reduction in her symptoms. Unfortunately, on July 27, 1999, she experienced an increase in symptoms and was seen in the emergency room at Mercy Hospital. The employee's condition had by then worsened to the extent that she was unable to work and was referred to Dr. Cooley. An MRI scan reflected a herniated disc, and the employee then immediately gave notice to the employer. Finally, there is no evidence that the employer was at all prejudiced by not receiving notice until August 10, 1999. In fact, the employer was aware before July 27 that the employee was being treated for back problems. By August 19, 1999, a claims representative of the insurer had obtained a recorded statement from the employee.

Under the facts presented here, we conclude that the evidence establishes that the employee's delay in providing notice was due to a mistaken belief that her condition would resolve as it had in 1992. No consequential prejudice to the employer and insurer has resulted from the employee's failure to give notice. In this case, the compensation judge's narrow application of the notice statute is contrary to the judicially interpreted intent and purpose of the statute. See Kling v. St. Barnabas Hosp., 291 Minn. 157, 190 N.W.2d 674, 26 W.C.D. 53. That is, instead of protecting the employer from an illegitimate claim, the judge's decision only penalizes the employee for her "strong work ethic." We therefore reverse the judge's denial of benefits based on untimely notice of injury and remand the matter to the judge for further findings and order on the specific benefit issues not addressed in the Findings and Order before us.