TERRY RAATZ, Employee, v. UNITOG RENTAL SERVS. and SPECIALTY RISK SERVS., INC., Employer-Insurer/Appellants, and WALGREEN CO., Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
OCTOBER 16, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL CONTRIBUTING CAUSE; CAUSATION - PSYCHOLOGICAL INJURY. Substantial evidence, including adequate medical opinion, supported the compensation judge's decision that the employee's work-related low back injury, and resulting chronic low back and leg pain, substantially contributed to the employee's depressive condition.

Affirmed.

Determined by Wilson, J., Wheeler, C.J., and Rykken, J.
Compensation Judge: Gregory A. Bonovetz.

OPINION

DEBRA A. WILSON, Judge

The employer and insurer appeal from the compensation judge's decision that the employee's work-related low back injury substantially contributed to the employee's development of a major depressive disorder. We affirm.

BACKGROUND

The employee began working for Unitog Rental Services [the employer] in 1992. On December 26, 1996, she sustained a low back injury while unloading a large clothes dryer at work. Physicians initially diagnosed a strain, and, after a short period of light duty, the employee returned to her usual job. Her low back symptoms did not improve, however, and, in February of 1997, she was referred for an MRI scan, which revealed a bulging disc with stenosis and nerve root impingement. On April 15, 1997, the employee underwent a decompressive laminectomy at L4-5 on the right, performed by Dr. Richard Freeman. The employer and insurer admitted liability for the employee's low back condition and paid various benefits.

In early June of 1997, after undergoing a functional capacities evaluation, the employee was released by Dr. Freeman to return to light work. She did attempt to work for a short period but soon began experiencing increased low back pain as well as right leg pain. Physical therapy did not alleviate her symptoms, and an MRI scan performed on July 9, 1997, showed a large right-sided and central recurrent disc herniation at L4-5. As a consequence, the employee

underwent a second low back surgery on July 29, 1997, performed by Dr. Freeman, this time consisting of a decompression at L4 and L5 with the removal of a free disc fragment and a BAK-CLIFF procedure (fusion) at L4-5.

The employee testified that she had continued low back and right leg pain and that she developed a new symptom -- left leg numbness -- after the second surgery. She also testified that she was very upset over the results of the procedure. She tried light duty again with the employer, folding towels, but left that job after only a few weeks because the work required repeated bending, which aggravated her symptoms, and because she was afraid of reinjury. The employee testified that she was "very emotional," irritable, stressed, and very sad and that she did "a lot of crying," going "into [a] depression" because she could not even manage her usual work around the house due to her symptoms and her concern over the possibility of reinjuring herself.

In November of 1997, Dr. Freeman noted that, although the employee was neurologically stable, "she is stressed out emotionally in response to her chronic back pain and has a sleep disturbance as a consequence." Dr. Freeman prescribed pain medication as well as Paxil, an anti-depressant, and provided the employee with a lumbar support. The following month, the doctor prescribed physical therapy for conditioning and continued the employee's prescription for Paxil, noting, "much of her depression is under control." However, in April of 1998, Dr. Freeman increased the employee's Paxil dosage, indicating that the employee had been seen by a psychologist and that she required further referral to a psychiatrist because her "depression needs to be appropriately addressed as well as her fear of reinjury before re-entering the employment arena." Dr. Freeman also observed that the employee's anti-depressant medication should be controlled by a psychiatrist. Subsequently, in a September 1999 letter, Dr. Freeman noted that the employee had been treated by a psychiatrist and/or psychologist for psychological problems associated with her fear of reinjury and that he would leave prescription of psychiatric medications to the employee's psychiatrist because it was "not [his] bailiwick as a neurosurgeon to treat psychiatric disorders." Records from the employee's psychological/psychiatric treatment reflect a diagnosis of major depression or major depressive disorder.

The employee attempted one or two other jobs after leaving the employer but apparently quit those jobs for reasons related to her low back condition. In a September 30, 1999, treatment note, Dr. Freeman indicated that the employee's depression was a "direct outgrowth" of her continued low back and lower extremity discomfort, later reiterating this causation opinion in a September 21, 2000, letter.

The employee was apparently approved for social security disability benefits effective January 2001. The following month, she began seeing a new physician, Dr. Kirkham Wood, for treatment of her low back and radicular symptoms. The employee testified that she has been told that she may need further surgery. As of the hearing date, the employee was 42 years old.

The matter came on for hearing for resolution of the employee's claim that her admitted work-related low back injury had substantially contributed to the development of a major depressive disorder. As support for her claim, the employee relied on the causation opinion of Dr. Freeman. The employer and insurer denied liability for the employee's depression. Evidence

included the deposition testimony and reports of Dr. John Rauenhorst, the employer and insurer's independent examiner, the employee's low back and post-injury psychological treatment records, and records relating to chemical dependency treatment received by the employee in 1985 and 1986. Those chemical dependency treatment records include MMPI results that reference depression.

In a decision issued on May 7, 2001, the compensation judge concluded that the employee's major depressive disorder was causally related to her low back injury. 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 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

According to his treatment notes, Dr. Freeman considered the employee's depression a "direct outgrowth" of the employee's chronic low back and leg pain. Dr. Freeman also predicted that the employee's depressive symptoms would subside if her pain were to be controlled. Eventually, in a September 21, 2000, letter to the employee's attorney, Dr. Freeman wrote as follows:

> [The employee's] ongoing problems with her low back have distressed her to the point of depression. As a consequence, at various times Amitriptyline, Nortriptyline, Paxil, Desipramine and Doxepin have been prescribed in an attempt to control the depression and reduce the need for overall pain medication related to her underlying condition. As far back as November 12, 1997, in my office notes, I documented the fact that her back and leg problems stressed her emotionally and resulted in a chronic sleep disturbance. She had not had any psychiatric problems nor depression by history prior to the onset of her work injury.

In contrast, Dr. Rauenhorst, the employer and insurer's examiner, testified that the employee's low back injury was not a substantial contributing cause of her psychological condition, explaining that the employee was predisposed to depression by a number of other circumstances. Relevant predisposing factors listed by Dr. Rauenhorst include the fact that the employee's mother has a psychiatric disorder, apparently schizophrenia; that the employee's father has a history of chemical dependency; that the employee herself has had chemical dependency problems; and that the employee had experienced "sexual, emotional, and physical abuse" in foster placement as a child. Dr. Rauenhorst also noted that the employee had recently separated from her husband and that depression had been diagnosed in the past. While acknowledging that the back injury was a "stressor," Dr. Rauenhorst essentially considered the injury minor in view of the employee's history.

In his decision, the compensation judge acknowledged Dr. Rauenhorst's testimony about the other factors that may have contributed to or predisposed the employee to depression. However, in the end, the compensation judge concluded that, given the timing of the employee's depressive symptoms and the employee's lack of any significant treatment for depression prior to the injury, the work injury was a substantial contributing cause of the employee's depressive condition. In doing so, the compensation judge apparently relied in part on the causation opinion of Dr. Freeman as well as the employee's own testimony about her reaction to her chronic low back and leg pain.

On appeal, the employer and insurer argue that the compensation judge erred in relying on Dr. Freeman's opinion because Dr. Freeman is a neurosurgeon, not a psychiatrist, and therefore unqualified to render expert opinion "regarding the diagnosis or causation of psychiatric conditions." In fact, the employer and insurer argue, Dr. Freeman disqualified himself from rendering a causation opinion by repeatedly indicating that the employee's psychiatric condition, including her need for medications, should be dealt with by a psychiatrist. The employer and insurer also contend that Dr. Freeman's opinion lacks foundation because the doctor erroneously assumed that the employee had no history of depression, whereas records from her chemical dependency treatment from the mid 1980s indicate otherwise. As such, the employer and insurer maintain, the employee failed to meet her burden of proof, because she offered no competent expert medical opinion on the issue of causation, as required by Rindahl v. Brighton Woods Farms, Inc., 382 N.W.2d 855, 38 W.C.D. 473 (Minn. 1986).[1]

We flatly reject the argument that Dr. Freeman is unqualified to render a causation opinion because he is not a psychiatrist. As a medical doctor and the employee's treating physician, Dr. Freeman was clearly qualified to render an expert opinion as to cause; the fact that he may not specialize in psychiatric disorders goes to weight, not competency, and was for the compensation judge to consider. Similarly, the fact that Dr. Freeman preferred to have the

[1] The employer and insurer also cite this court's decision in Childers v. Honeywell, Inc., 49 W.C.D. 219 (W.C.C.A. 1993), as support for their argument that the compensation judge's decision should be reversed on foundation grounds. However, we would point out that the Minnesota Supreme Court reversed this court's decision, on the merits, on appeal. Childers v. Honeywell, Inc., 505 N.W.2d 611, 49 W.C.D. 230 (Minn. 1993).

employee's psychiatric disorder treated by a specialist does not automatically negate the validity of his opinion regarding the cause of that condition.

The employer and insurer's argument regarding the factual foundation for Dr. Freeman's opinion has only slightly more merit. It is true, as the employer and insurer allege, that Dr. Freeman apparently believed that the employee had no history of depression before her work injury, whereas records from the employee's chemical dependency treatment from 1985 and 1986 suggest otherwise. However, despite MMPI findings consistent with depression, there is little evidence that the employee's treatment at the time focused on depression, as opposed to chemical dependency, and the discharge summary from the employee's 1986 treatment specifically indicates that "[t]here appeared to be no major psychological or psychiatric problems and none developed during this course of treatment." We also note that there is absolutely no evidence that the employee ever received any treatment for depression, outside of her chemical dependency treatment, or that the employee ever displayed any depressive symptoms in the ten years between that treatment and her work-related low back injury. Finally, we would point out that, while the employee's post-injury psychological and psychiatric treatment records contain no express causation opinions, those records are replete with references to the employee's response to her injury and her difficulty dealing with the pain and disability resulting from her chronic low back condition. Specifically, the employee's psychologist, Peggy Marrin, noted in her reports that the employee's low back injury was a "significant" "other issue"; that the employee had been referred to her "to help [the employee] work with the present pain, stressors and management of depression"; that the employee "struggles with the anxiety of the future and fears about not getting well and being able to work"; that the employee was to "work on issues regarding fears/anxieties of recent trauma with back injury and surgeries"; and that the employee was exhibiting an "unsettled restlessness specific to the anxiety of living day to day with the pain and [with regard to] future employment."

Because the record as a whole easily supports the compensation judge's decision that the employee's work-related chronic low back and leg pain substantially contributed to her depression, and because Dr. Freeman's opinion adequately meets the requirements of Rindahl under the circumstances of this case, especially when considered in conjunction with the employee's psychiatric treatment records, we affirm the judge's decision in its entirety.