

UMAPATHI REDDY, Employee/Appellant, v. UNISYS, SELF-INSURED/ALEXSIS, Employer, and ITT/HARTFORD GRP. DISABILITY, MN DEP'T OF LABOR & INDUS./VRU, and THE INST. FOR LOW BACK CARE, Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
NOVEMBER 15, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL CONTRIBUTING CAUSE. Substantial evidence, including adequate expert opinion, supported the compensation judge's decision denying the employee's claim that his work activities were a substantial contributing cause of his low back condition and resulting disability and need for treatment.

Affirmed.

Determined by Wilson, J., Rykken, J., and Pederson, J.
Compensation Judge: Carol A. Eckersen.

OPINION

DEBRA A. WILSON, Judge

The employee appeals the compensation judge's finding that the employee's work activities were not a substantial contributing cause of his low back condition.¹ We affirm.

BACKGROUND

The employee began work for Unisys [the employer] in February of 1994. His job duties were to design and build computer software systems. The physical requirements of the job involved traveling to clients' work sites, taking with him documentation for the programs, and, at times, a laptop computer. He then spent extended periods of time working at a computer terminal, and he also attended meetings.

In September of 1994, the employee began work on a specific project for a client in California. The employee flew back and forth to California each week during this project, and, while in California, spent ten to twelve hours per day at a computer terminal. The employee continued to work on this project until September of 1995.

¹ The employee also appealed from numerous other findings that are relevant only if we reverse the judge's finding as to primary liability.

Following the California project, the employee worked for the employer in its Eagan office and then began a project in Chicago. The employee testified that by March of 1996 he was doing a lot of programming work again.

The employee first noticed back soreness sometime between October and December of 1994. He had pain in his low back and occasionally into his buttocks. There was no specific event or trauma that the employee associated with the onset of pain. The employee treated with Dr. Richardson on October 21, 1994, and Dr. Richardson recorded symptoms of nasal congestion associated with a cough for the previous two weeks, along with occasional aching in the employee's hands and feet. Dr. Richardson diagnosed an upper respiratory infection, reflux esophagitis, and arthralgias. The employee returned to Dr. Richardson in December of 1994, at which time the doctor noted that the employee was there for a physical exam and had "no particular concerns."

The employee began to have pain and symptoms in his legs in mid 1995. When the employee was again seen by Dr. Richardson on December 15, 1995, the doctor recorded a history of a syncopal episode two days previous, and the employee complained of fever and nasal congestion. Dr. Richardson diagnosed a viral syndrome.

On April 23, 1996, the employee was seen by Dr. Paul Dondlinger, an associate in Dr. Richardson's office, with complaints of right-sided back pain radiating down his leg to the knee. Dr. Dondlinger recorded a history of pain that had been going on for several months but had been worse in the past week. The doctor noted that the employee "is employed doing computer work where he sits for long periods."

A CT scan performed on April 23, 1996, showed a free disc fragment and possible inflammatory disease or a tumor on the right side of the dural sac. An MRI in May of 1996 also showed a herniated disc at L5-S1, and Dr. Dondlinger referred the employee to Dr. Walter Bailey for a neurosurgical evaluation. On May 7, 1996, Dr. Bailey recorded a history of right low back and bilateral leg pain "of several months duration but it has been much worse over the past 4 weeks." Dr. Bailey referred the employee for a myelogram, which showed a large free disc fragment extending over virtually the entire body of S1. The employee missed little or no time from work because of his back, until he had surgery.

The employee underwent a bilateral hemilaminectomy on May 22, 1996, during which an "extremely large disc" at L5-S1 was removed. When he returned to Dr. Bailey for his one month post op exam, the employee was already back at work doing computer work. On July 1, 1996, Dr. Dondlinger reported that the employee was having "significantly reduced pain and numbness" but still walked with a slight limp and described some numbness in the right foot.

After a short period, the employee's right leg pain returned, and he developed pain in his left leg. On September 3, 1996, a repeat MRI showed a probable recurrent disc at L5 on the right and fibrosis surrounding the right S1 nerve root. Dr. Bailey recommended an epidural steroid injection on September 6, 1996, and on September 9, 1996, Dr. Dondlinger concurred.

The employee quit his job on September 11, 1996, and underwent epidural steroid injections on September 27, 1996, and October 10, 1996. The employee also tried a TENS unit and physical therapy. Since September of 1996, the employee has sought medical attention from more than a dozen doctors in Minnesota, Wisconsin, California, Virginia, and India.² Diagnoses have included residual disc herniation at L5-S1, new disc herniation at L4-5, degenerative disc disease, arachnoiditis, and lateral or foraminal stenosis. Some of the doctors have recommended additional surgery. The employee has not worked since September 11, 1996, and has not had additional surgery.

On April 11, 1997, the employee, who was then represented by an attorney, filed a claim petition seeking temporary total disability benefits continuing from September 11, 1996, permanent partial disability benefits, medical expenses, and rehabilitation benefits as a result of injuries to his low back and right leg alleged to have occurred on January 1, 1995, and September 11, 1996. The employer and insurer denied primary liability and timely notice of injury.

After two or more pre-trials, the matter came on for hearing on November 21 and November 22, 2000, with the employee representing himself. At hearing, the employee claimed various benefits relating to a Gillette³ injury or injuries allegedly occurring on December 16, 1994, December 15, 1995, April 20, 1996, May 22, 1996, and September 11, 1996.⁴ In a decision served and filed March 6, 2001, the compensation judge found, in relevant part, that the employee did not meet his burden of proving a Gillette injury on any of the claimed dates of injury, and she denied the employee's claims in their entirety. 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

² They included Drs. Maxwell, Shelerud, Wegner, Danoff, Reddy, Trobiani, Hartleban, Hemmy, Foreman, Chakravarty, Burton, Jones and Peven. In addition, the employee was examined by two independent medical examiners.

³ See Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 21 W.C.D. 105 (1960).

⁴ The employee claimed entitlement to temporary total disability benefits, reimbursement of medical expenses, and reimbursement of health insurance premiums.

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

As explained above, this court’s standard of review is to determine whether substantial evidence supports the judge’s findings. The employee was claiming a Gillette injury or injuries. The Minnesota Supreme Court has said that the question of a Gillette injury depends primarily on medical evidence. Steffen v. Target Stores, 517 N.W.2d 579, 50 W.C.D. 464 (Minn. 1994).

The employee submitted two medical opinions that specifically support his position that his work activities contributed to his herniated disc. The first is that of Dr. R. D. Chakravarty, an orthopedic surgeon in India. Dr. Chakravarty examined the employee on July 23, 1998, and in a report of that date opined that,

Based on the review of Mr. Reddy’s employment and medical history, the following conclusions can be drawn within a reasonable degree of medical certainty. It is my opinion that Mr. Reddy’s long hours at his workstation predisposed to his back pain and also aggravated it. The gradual onset of his symptoms and their progression are briefly documented in the chart notes of his three visits with his then family physician Dr. Richardson and finally things progressed to a stage when Dr. Dondlinger diagnosed it to be a disc prolapse at the L5-S1 level.

The only “employment history” documented in that report is contained on the first page, where Dr. Chakravarty explained that “Mr. Reddy has worked in various engineering and research laboratories in the United States and is employed by Unisys as a Software Consultant,” and that, “As a computer programmer, Mr. Reddy was spending long hours at his work station and found little time to exercise.” Dr. Chakravarty also referenced Dr. Richardson’s chart notes as documenting the gradual onset of the employee’s symptoms and their progression. Dr. Richardson’s chart notes, however, only document treatment for an upper respiratory infection, a physical examination, and a viral syndrome.

The second supporting report was that of Dr. G. V. Reddy, from Doran, Virginia. Dr. Reddy, a relative of the employee’s, apparently reviewed the employee’s medical records, and in a letter dated August 11, 1999, he stated,

It is my opinion within reasonable degree of medical certainty that Mr. Umaphathi Reddy developed the back problem because of long hours of work at the computer without taking frequent breaks and without proper job site comforts and privileges, and without job site exercises to reduce the stress in his back. Patient’s problems with his back and disability he is having is caused from his work

Dr. Reddy subsequently examined the employee on June 9, 2000, and recorded the following work history:

In 1994 while he was working long hours for Unisys, he developed tingling and numbness in his fingers and toes. He developed burning in his eyes and eyestrain. He gradually noticed increasing pain in his back. He complained to his superiors regarding bad equipment, his work schedule and unreasonable demands to complete programs at a record pace. His supervisors did not make any changes and he continued to work in the same set of circumstances. His back pain became worse and he started developing increasing leg pains.

Mr. Umapathy Reddy worked as a Computer Software Programmer for Unisys Corporation. He lived in Minneapolis and he had to travel to LA to work every week. The company to achieve over optimistic and unreasonable goals placed him under a lot of pressure. As a result he was made to work hours at a stretch without breaks, without proper seating, and without rest and exercise. He has worked 10 to 12 hours a day. Earlier on he developed vision problems with burning. When he complained to his superiors of the problems he was having, of the bad equipment and the environment, he did not get any help. In these unfavorable conditions he continued to work as his back continued to become worse.

Dr. Reddy then opined, “[i]t is my opinion that Mr. Umapathy Reddy has suffered permanent damage to his spine and has permanent disability directly related to unergonomic conditions at work,” and “Mr. Reddy’s unsafe working conditions and environment, without prophylactic and therapeutic remedial measures, caused the Occupational disease, resulting in unendurable suffering and disability.”

At hearing, the employee testified that he was claiming a Gillette-type injury from sitting at a computer -- specifically, the ten- to twelve-hour days he had worked in California. The employee also testified that he had experienced increased back pain while sitting on the long plane flights to and from Los Angeles and while carrying his luggage on those flights. The employee did not provide any specifics as to the layout of his work station, or the degree of bending, twisting, or reaching required by his work.⁵ The employee did not testify to “unergonomic conditions,” “unsafe conditions,” or bad equipment, except to mention that he was given a bad computer monitor in Los Angeles, which he admitted was not relevant to his claim of a back injury.

⁵ The employee did testify that, “when I sit in front of a computer, I’m not just sitting in one position. I’m bending, I’m turning to look at documents. And even on the screen when I’m doing different things, you know, in the seated position, it’s a fixed position, so I’m doing all these things.”

The only other medical evidence that supports the employee's claim is a healthcare provider report dated September 12, 2000, wherein Dr. Dondlinger answered "yes" to the question of whether the employee's condition was caused, aggravated, or accelerated by employment. However, at no point did Dr. Dondlinger explain that opinion.

The compensation judge accepted the opinions of Drs. Mark Friedland and David Boxall over those of Drs. Dondlinger, Chakravarty, and Reddy. A trier of fact's choice between experts whose testimony conflicts is usually upheld unless the facts assumed by the expert in rendering his opinion are not supported by the evidence. Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985). Where evidence is conflicting or more than one inference may reasonably be drawn from the evidence, the findings of the compensation judge are to be upheld. Redgate v. Sroga's Standard Serv., 421 N.W.2d 729, 734, 40 W.C.D. 948, 957 (Minn. 1988).

Dr. Friedland examined the employee on July 9, 1997, and December 17, 1998, issued two reports, and had his deposition taken on November 16, 2000, and December 21, 2000. It was Dr. Friedland's opinion that "merely sitting at a desk doing sedentary work is not a mechanism to produce a free fragment disc herniation and not something that I believe based on medical grounds would be a method or a mechanism of producing this herniation." On cross examination, the employee asked Dr. Friedland whether it was important to know how the employee sat and worked at the computer. However, the employee never offered testimony as to how he sat and worked at the computer, and Dr. Friedland testified that, "I do not believe that sitting in a chair at a computer is causative of a disc herniation; whether you sat in one position or another would not cause a disc herniation." The employee also attempted to introduce a medical journal article through Dr. Friedland, but the doctor testified that he did not consider the article to be authoritative.

The compensation judge found that Dr. Friedland had a complete factual history and all relevant medical records.⁶ Substantial evidence supports that conclusion. The employee contends that the compensation judge should not have accepted Dr. Friedland's opinion that sitting does not cause a disc herniation, because the doctor could not cite to any scientific studies to support his position. There has never been a requirement, in Minnesota workers' compensation

⁶ At oral argument, the employee contended that certain statements contained in Dr. Friedland's reports and in his deposition are inaccurate. For example, the employee contends that, in his report of July 9, 1997, Dr. Friedland inaccurately stated that the employee "was seen on 3/14/97 [at the Mayo Clinic] and related a history of recent problems with his back related to job travel." The employee contends that he had related his high blood pressure to job travel. The employee also contends that the deposition of Dr. Friedland was altered, and he demands the tapes that were created in conjunction with that deposition. Specifically, the employee claims that, at pages 179 through 181 of volume II of the deposition, Dr. Friedland "had described 'Arachnoiditis' as 'epidural fibrosis'. This is a wrong answer. Further, he describes 'arachnoiditis' as 'inflammation of the Dura' on Page 180, Line 24. This is also not correct." After reviewing all of the medical evidence in this matter, we find that, even if there were some inaccurate or incorrect statements in Dr. Friedland's reports or deposition, those inaccuracies would not undermine the doctor's ultimate conclusions. The employee's demand for the production of the deposition tapes is denied.

matters, that a doctor's opinion be based on specific scientific studies. Rather, what is required is that the opinion be based on proper foundation. Dr. Friedland testified that he is a board certified orthopedic surgeon, that he has practiced in that field since 1985, that he examined the employee on two occasions, and that he had reviewed the employee's medical records and a summary of the employee's deposition. Clearly there was adequate foundation for Dr. Friedland's opinions.

Dr. Boxall examined the employee on May 18, 2000. He also is a board certified orthopedic surgeon, practicing in that specialty since 1978, and he reviewed the employee's medical records and a summary of the employee's deposition, issued a report, and testified by deposition on November 16, 2000. Dr. Boxall testified that, "[t]o develop a Gillette injury in the low back area, you need some type of physical stress to the spine. In this case, Mr. Reddy's job presents no stress to his spine whatsoever His job was sitting without any physical aspect to the job." The employee again contends that Dr. Boxall's opinions should not be accepted because they are not based on scientific studies and because Dr. Boxall only saw the reports of his x-rays and scans and not the x-rays and scans themselves. As stated above, there is no requirement that a doctor's opinion be based on scientific studies, and neither is there a requirement that a doctor review actual x-rays and scans rather than reports of those tests. In fact, a medical opinion may be based solely on a paper review of an employee's medical records. Thyer v. Dallas Stars Hockey Club, slip op. (W.C.C.A. Aug. 4, 2000). The employee's argument as to the x-rays and scans is particularly unpersuasive since Dr. Boxall's opinion as to causation is based on his understanding that the employee suffered a herniated disc at L5-S1, a diagnosis that no doctor disputes.⁷

As it was within the discretion of the compensation judge to choose between expert opinions, and the opinions of Drs. Friedland and Boxall have adequate foundation in the record, we affirm the judge's decision to accept their opinions over those of Dr. Chakravarty and Dr. Reddy.

The employee makes numerous other arguments on appeal,⁸ but, at oral argument, he argued only that the compensation judge erred in not allowing the admission of numerous medical articles. The employee contends that all medical articles should have been allowed "because they help understand the problems I had." We are not persuaded.

Compensation judges are not bound by the common law or statutory rules of evidence. Minn. Stat. §176.411, subd. 1. The employee offered two exhibits at the time of trial (Petitioner's Exhibits B and C), which included numerous medical journal articles. The exhibits

⁷ The employee offered no evidence, and did not appear to argue, that his work activities after the May 1996 surgery caused, aggravated, or accelerated his condition thereafter.

⁸ Including, in part, violations of a constitutional right to a free and fair trial, violation of the Fifth, Sixth, and Fourteen Amendments, violation of the Minnesota Constitution, misconduct by the compensation judge and defense counsel, tampering with evidence, and the employer's failure to provide work injury guidelines and safety information regarding occupational hazards of the job. This court does not have jurisdiction to hear or decide constitutional issues. Schmidt v. Modern Metals Foundry, Inc., 424 N.W.2d 538, 40 W.C.D. 1140 (Minn. 1988); Weber v. City of Inver Grove Heights, 461 N.W.2d 918, 43 W.C.D. 471 (Minn. 1990).

themselves were statements of complaint that the employee had filed against the independent medical examiners. Counsel for the employer and insurer objected to the admission of those articles on hearsay grounds as the employee had not established that the journal articles qualified as reliable authority, and counsel also provided the court with a memorandum of law on that issue. The compensation judge provided the memorandum of law to the employee, along with copies of all the cases cited therein. The compensation judge also attended the second day of Dr. Friedland's deposition, where the employee again attempted to introduce a medical article. By separate order dated December 22, 2000, the compensation judge ordered that the medical journal articles in Exhibits B and C would not be received into evidence, as the employee had not laid foundation for the articles.

In Dodge v. Farmstead Foods, Inc., slip op. (W.C.C.A. Mar. 12, 1992), this court held that a compensation judge erred in relying on a medical journal article where there was no testimony by any medical expert to qualify the article as an accepted medical authority or treatise. In the instant case, the employee did not lay proper foundation for admission of the articles he sought to introduce into evidence. Specifically, he did not seek to introduce the articles through the testimony of any of his treating doctors, and, on cross-examination, Dr. Friedland testified that he did not consider the article before him to be a reliable authority. Under these circumstances, the judge did not err in excluding the disputed medical journal articles.

We find no evidence of misconduct by the compensation judge, misconduct by defense counsel, or evidence tampering. We further conclude that the employer's alleged failure to provide work injury guidelines is irrelevant to the issues before us. For these reasons, and because substantial evidence supports the compensation judge's findings and order, we affirm the judge's decision in its entirety.