

HAROLD REITH, Employee, v. CRESTLINER, INC., and INS. CO. OF PA. admin'd by GALLAGHER BASSETT SERVS., Employer-Insurer/Appellants, and N. MEM'L HEALTH CARE, Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS  
FEBRUARY 5, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL EVIDENCE. Substantial evidence, including the testimony of the employee and the opinions of two treating physicians, supports the compensation judge's finding that the employee sustained a permanent, work-related injury on May 15, 1998 that was a substantial contributing cause of his temporary total disability, permanent partial disability and need for surgery.

Affirmed.

Determined by: Rykken, J., Wheeler, C.J., and Wilson, J.  
Compensation Judge: Harold W. Schultz, II

OPINION

MIRIAM P. RYKKEN, Judge

The employer and insurer appeal from the compensation judge's finding that the employee's May 15, 1998 personal injury was a permanent injury and a substantial contributing cause of the employee's temporary total disability, permanent partial disability and need for surgery. We affirm.

BACKGROUND

Harold Reith, the employee, worked for Crestliner, Inc. as a sander. He earned a weekly wage of \$434.00. At the time of his injury on May 15, 1998, the employee was 51 years old. The employee was part of a five-man crew which sanded approximately ten boats a day. The employee's duties included pulling boats into a stall and grinding out scratches on the boats in preparation for painting. (T. 19.) On May 15, 1998, the employee was instructed by his lead man to bring a boat inside that was sitting outside behind the building. The employee testified this should have been a two or three-person job, but he did the job by himself. The boat was on a four-wheel cart and the employee pushed the boat down a slight grade. As the boat moved slowly down the grade, the employee noticed the boat was in danger of striking a steel jig which would have scratched the boat. The employee ran around to the front of the boat to stop it. He put both hands against the bow of the boat and pushed against the boat. As he did so, he felt a pop in his neck, pain in his back running down to the knees, pain in his right shoulder and numbness in his hand.

The employee told Melvin Ackerson, a co-employee, that he thought he hurt his back. The employee then went home for the weekend. (T. 28-33.) On Monday, May 18, 1998, the employee prepared an accident report describing an injury to his back while pulling a boat. (Resp. Ex. 2.)

The employee sought treatment with Steven D. Hortness, D.C., on May 21, 1998 complaining of pain in his low back and right shoulder. Dr. Hortness provided ten chiropractic treatments through June 11, 1998. (Finding 16; Pet. Ex. 9.) The employee was seen at the Family Medical Center on June 6, 1998 for ear pain, but he made no mention of the May 15, 1998 injury. On June 13, 1998, the employee returned to the medical clinic and saw Dr. Michael Johnson. The employee complained of right shoulder pain with numbness in the fingers of his right hand. Dr. Johnson diagnosed a possible strain of the right arm with a neuralgic component and was concerned about cervical nerve impingement. The doctor prescribed Tylenol and Daypro. (Resp. Ex. 7.) The employee returned to see Dr. Johnson on June 15, 1998, with complaints of persistent right shoulder pain. The employee's examination was unchanged and the doctor ordered MRI scans of the cervical spine and right shoulder. Dr. Johnson noted the employee "has not had an injury in the recent or remote past." (Resp. Ex. 7.)

An MRI scan of the cervical spine, on June 16, 1998, showed a large right lateral recess herniated disc at C6-7 with mild spurring and disc bulging at C5-6. An MRI scan of the right shoulder showed a full thickness tear of the supraspinatus tendon with mild degenerative changes and spurring causing impingement on the supraspinatus musculotendinous junction. (Pet. Ex. A.)

The employee saw Dr. David R. Jorgensen, an orthopedic surgeon, on June 19, 1998. The employee gave a history of right shoulder pain which began about six weeks before while pushing a boat at Crestliner. The doctor diagnosed a herniated nucleus pulposus at C6-7 on the right side and a rotator cuff tear of the right shoulder. The doctor took the employee off work and prescribed physical therapy. The employee returned to see Dr. Jorgensen on July 10, 1998. The doctor noted physical therapy had not provided any significant relief and stated that he was "not convinced that conservative treatment is going to help [the employee] significantly." (Ee. Ex. A.) Dr. Jorgensen opined the employee's problems were related to his personal injury with the employer and referred the employee for a surgical consultation. (Pet. Ex. A.)

On July 22, 1998, the employee was examined by Dr. Garry M. Banks at Advanced Spine Associates. He diagnosed a right C5-6 and C6-7 disc herniation with C6 and C7 nerve root impingement, cervical degenerative disc disease and right shoulder degenerative joint disease. The doctor recommended surgery. On August 31, 1998, Dr. Banks performed anterior discectomies and decompressions at C5-6 and C6-7, an anterior fusion with a plate at C5 to C7 and a left anterior iliac crest bone graft. (Pet. Ex. A.)

The employee had a history of right arm and shoulder problems which predated his May 15, 1998 personal injury. On September 10, 1981, the employee was seen at the Family Medical Center complaining of numbness in his right arm which he stated began two weeks previously. The employee complained that he was hardly able to move his right arm. The diagnosis was bursitis. (Resp. Ex. 7.) On June 11, 1985, the employee was seen at the VA Medical Center complaining of headaches over the past three weeks due to neck pain. (T. 22; Resp. Ex. 8.)

A March 26, 1986 x-ray of the employee's right shoulder was normal. The employee was referred to Dr. Rosalinda S. Icsas, whom the employee saw on September 24, 1986. The employee gave a history of constant right shoulder pain over the last year. Dr. Icsas felt the employee's pain could be secondary to a mild tear of the rotator cuff although a cervical root lesion or a carpal tunnel on the right had to be ruled out. The employee saw Dr. Nguyen, a physiatrist, at the VA Medical Center on October 27, 1986, with complaints of right shoulder pain since January of 1985. The doctor referred the employee to the orthopedic surgery department for an evaluation of right shoulder pain not responding to conservative therapy. (Resp. Ex. 8.)

On February 13, 1997, the employee was seen at the Family Medical Center complaining of numbness and tingling in his right hand which he traced to a right wrist injury in September 1995. The employee complained of intermittent problems since then. The doctor diagnosed probable bilateral carpal tunnel syndrome, right greater than left. (Resp. Ex. 7.) On March 4, 1998, the employee was involved in a roll-over car accident. (T. 25.) He was seen in the emergency room at St. Gabriel's Hospital. The doctor noted a cut on the forehead and neck tenderness. The employee was restricted to light-duty work for a one-week period due to shoulder and neck pain. (Resp. Ex. 10.)

On April 7, 1998, the employee had been seen by Dr. Michael Johnson at the Family Medical Center. The employee's chief complaint was neck and shoulder pain which he described as being "above the rt shoulder, extending somewhat into the neck but more down over the shoulder and into the arms and fingers." The employee reported he had similar problems intermittently for many years but stated the pain was getting unbearable. On examination, Dr. Johnson noted marked focal tenderness at the insertion of the levator scapula on the right and pain at the insertion of the short head of the biceps tendon. The doctor diagnosed a mild arthralgia, right shoulder strain and bicipital tendinitis. (Resp. Ex. 7.)

By letter dated February 20, 1999, the employee's surgeon, Dr. Banks, opined the employee's work injury of May 15, 1998, was a primary cause of his right C5-6 and C6-7 disc herniations and of the need for the surgery. The doctor noted that although the employee likely had some pre-existing degenerative problems in his neck, based on the information available, these were asymptomatic prior to his work injury. Dr. Banks rated a 14 percent whole body disability due to the work injury. (Pet. Ex. A.)

On June 23, 1999, the employee was examined by Dr. Jack A. Droggt at the request of counsel for the employer and insurer. Dr. Droggt reported that he obtained a history from the employee in which the employee denied any neck, right shoulder or right arm pain prior to the May 1998 work injury and denied the March 4, 1998 car accident caused any increase in his symptoms. The doctor opined the employee sustained a lumbosacral strain and sprain of mild degree as a result of the work injury. Dr. Droggt opined the employee had chronic degenerative changes in his neck with C5-6 and C6-7 herniated discs causing right upper arm radicular symptoms for which he underwent surgery. The doctor noted the employee's shoulder condition remained untreated but would probably warrant surgery in the future. In Dr. Droggt's opinion, the employee's neck, right shoulder and right arm symptoms predated the work injury, extending back to 1981. The doctor stated the May 15, 1998 injury was not a substantial contributing, aggravating or accelerating cause of the employee's cervical spine or right shoulder condition. Finally,

Dr. Drogdt rated a 14 percent permanent partial disability secondary to the cervical surgery which he opined was unrelated to the work injury. (Resp. Ex. 5.)

On April 1, 1999, the employee filed a claim petition seeking payment of temporary total disability benefits, permanent partial disability benefits and medical expenses. The employer and insurer denied liability for the claimed benefits. The case was heard by a compensation judge at the Office of Administrative Hearings on March 29, 2000. In a Findings and Order served and filed May 30, 2000, the compensation judge found the employee sustained a permanent injury on May 15, 1998 arising out of his employment. The judge also found the employee's personal injury was a substantial contributing cause of the employee's wage loss and need for surgery. Accordingly, the compensation judge ordered the employer and insurer to pay the claimed medical expenses, temporary total disability benefits and a 14 percent whole body permanent disability. The employer and insurer appeal.

## STANDARD OF REVIEW

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, 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." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

## DECISION

The employer and insurer appeal the compensation judge's finding that the employee sustained a personal injury on May 15, 1998, that was a substantial contributing cause of the employee's need for surgery. The compensation judge noted in his memorandum that he accepted the testimony of the employee as credible, as well as the opinions rendered by Dr. Banks. The appellants, however, contend the compensation judge erroneously relied on the causation opinion of Dr. Banks, asserting the opinion lacks adequate foundation. Specifically, the appellants contend Dr. Banks did not have a history of the employee's prior neck pain and radicular symptoms and did not review the prior medical records dating back to 1985. They argue only Dr. Drogdt had a complete history and access to all the employee's medical records. Thus, the appellants assert, Dr. Drogdt's opinion is the only opinion with proper foundation. Accordingly, the employer and insurer ask this court to reverse the compensation judge's finding of causation. We decline to do so.

The employee testified that, after his personal injury, he felt like somebody hit his shoulder with a sledgehammer it was so painful. He also noted his hand was numb and testified

this was different from the pain he had experienced previously. (T. 33.) The employee stated that over the next two to three weeks his neck and hand got worse to the point where he could no longer stand the pain and decided to go see Dr. Johnson. (T. 35-36.) Patricia Reith, the employee's spouse, testified she observed the employee's condition progressively worsen after May 15, 1998. At times, she observed her husband lying on the living room floor because he was unable to sit or stand for any length of time. Mrs. Reith testified the employee's condition after May 15<sup>th</sup> was much different than it was before. (T. 96-97.)

When the employee saw Dr. Banks on July 22, 1998, he provided a history of the May 15, 1998 injury and reported an immediate onset of right-sided neck pain, shoulder pain and arm pain with numbness and tingling. The employee denied any prior neck problems but did give Dr. Banks a history of right shoulder problems. On examination, the doctor noted tenderness from C5 to C7 with diminished right lateral bending and extension, diminished right triceps and wrist extension strength and an absent right triceps reflex. Based on the records he reviewed, the doctor acknowledged the employee likely had pre-existing degenerative problems in his neck. Dr. Banks, however, related the majority of the employee's neck and right arm problems to the C5-6 and C6-7 disc herniations shown on the June 16, 1998 MRI scan, which he opined were substantially caused by the employee's work injury.

We have carefully reviewed the employee's medical records prior to May 15, 1998. These records principally report complaints by the employee of right shoulder and arm pain and problems. These records do not document that any of the objective findings reported by Dr. Banks pre-existed the May 15, 1998 personal injury. On April 7, 1998, the employee was examined by Dr. Johnson for neck and right shoulder pain which the employee described as "being above the rt shoulder, extending somewhat into the neck but more down over the shoulder and into the arms and fingers." (Resp. Ex. 7.) The employee gave Dr. Johnson a history of similar problems intermittently for many years. The employee did not report, nor did Dr. Johnson record, any symptoms or findings consistent with cervical disc herniations. It was not until July 13, 1998, that Dr. Johnson first suspected some cervical nerve impingement. The doctor repeated that concern when he re-examined the employee on June 15, 1998 and ordered a cervical MRI scan which showed C5-6 and C6-7 disc herniations.

The competence of a witness to render expert medical testimony depends upon both the degree of the witness's scientific knowledge and the extent of the witness's practical experience with the matter at issue. Reinhardt v. Colton, 337 N.W.2d 88, 93 (Minn. 1983). To establish an adequate foundation, the facts upon which an expert relies must be supported by the evidence. McDonald v. MTS Sys. Corp., 43 W.C.D. 83 (W.C.C.A. 1990).

The appellants do not contend the incident on May 15, 1998 did not occur. Rather, they argue the employee's need for surgery was caused by a pre-existing condition unrelated to any work injury. We acknowledge Dr. Banks could have been provided a more complete history. Given the evidence in this case, however, we cannot conclude his causation opinion lacks adequate foundation. A comparison of the recorded complaints and findings on examination before and after the May 15, 1998 injury, together with the employee's testimony, provide substantial support for Dr. Banks's opinions. (See Pet. Ex. A.) Further, Dr. Jorgensen also opined a causal connection between the work injury and the cervical disc herniations. Dr. Jorgensen had the employee's

records from the Family Medical Center dating back to May 13, 1997. We conclude the expert opinions of Dr. Banks and Dr. Jorgensen were adequately founded. These opinions support the findings of the compensation judge, and they are affirmed.