J P. ROBINSON, Employee, v. UNIV. OF MINN., SELF-INSURED, Employer/Appellant.

WORKERS' COMPENSATION COURT OF APPEALS
JUNE 2, 2001

No. [REDACTED SSN]

HEADNOTES

PERMANENT PARTIAL DISABILITY. Where, in light of the judge's memorandum and the clearly implied stipulation of the parties, the compensation judge's finding clearly involved an inadvertent inversion of ratings for the right and left knees, the compensation judge's finding was modified to reflect the clearly implied purpose of the judge and position of the parties.

PERMANENT PARTIAL DISABILITY - KNEE; CAUSATION - PRE-EXISTING CONDITION; CAUSATION - SUBSTANTIAL CONTRIBUTING CAUSE. Where the compensation judge's finding as to causation of permanency was unrestricted by the court's previous vacation of a finding of permanency, where the principal medical opinion on which the judge relied was not without sufficient foundation or detail to be weighed as evidence, and where the judge's decision was sufficiently based also on the employee's testimony, the medical records in general, and an earlier award of medical benefits, the compensation judge's finding that permanent disability in both the employee's knees was causally related to his work injury was not clearly erroneous and unsupported by substantial evidence.

APPORTIONMENT - PERMANENT PARTIAL DISABILITY. Where it would have been unreasonable to rate the employee's pre-existing condition in reliance on a 30% disability rating by the Veteran's Administration in 1975, given the fact that the parties were in agreement that the employee's current whole-body impairment was 13% and the employee's left-knee condition had been repeatedly aggravated and surgically treated both before and after his 1989 work injury, the compensation judge's reliance on a 1986 20% permanency rating in the employee's earlier workers' compensation action in Iowa, treated as a specific part disability rather than a whole-body impairment, was not clearly erroneous and unsupported by substantial evidence.

Affirmed with modification.

Determined by: Pederson, J., Johnson, J. and Wheeler, C. J.
Compensation Judge: Gary P. Mesna

OPINION

WILLIAM R. PEDERSON, Judge

The self-insured employer appeals from the compensation judge's conclusion that the employee's work injury was a substantial contributing factor in the employee's knee-related permanent partial disability, from the judge's finding as to the extent of that permanency, and from

the judge's rating of the employee's pre-existing permanent partial disability and consequent statutory apportionment. We affirm with modification.

BACKGROUND

Prior to about 1972, J Robinson[1] established a very distinguished career as a wrestler, including two California state high school championships, scholarship competition in the prestigious program at Oklahoma State University, an interservice championship during military service in the Army, and competition in the 1972 Olympics. At least as early as March 1970, in the course of his military wrestling, Mr. Robinson began developing service-related instability in his left knee which, by a Veterans' Administration [VA] rating decision dated May 31, 1973, was rated as a 10% disability, effective December 19, 1972, with improvement "not anticipated." This rating was subsequently increased apparently to 20% and then to 30%, effective September 17, 1975, pursuant to a rating decision dated October 23, 1975.

In 1976, Mr. Robinson began work as an assistant wrestling coach at the University of Iowa. In October of 1982, Mr. Robinson asserted a claim for Iowa workers' compensation, in part for work-related injury to an unspecified knee on September 4, 1982. About a year later, On September 21, 1983, Mr. Robinson underwent surgical removal of a stitch granuloma and a partial medial meniscectomy in his left knee, in a procedure supervised by orthopedic surgeon Dr. John Albright, on the faculty at the University of Iowa Hospitals and Clinics. Liability was apparently being denied by the University of Iowa, and in 1984 Mr. Robinson resigned from his position with that employer. In May of 1985, Mr. Robinson reasserted his claim. About a year later, on May 15, 1986, upon the University of Iowa's continuing denial of liability, Dr. Albright wrote a letter to the Iowa Department of Justice, on which he rated the functional impairment of Mr. Robinson's left knee at 20% and the functional impairment of his right knee at 15%.

At some point in 1986, Mr. Robinson had accepted a position as head wrestling coach at the University of Minnesota. About two years later, in August 1988, Mr. Robinson reasserted his claim against the University of Iowa, now citing injury to both knees, for cumulative trauma from 1973 to 1984. Eventually, in May of 1989, Mr. Robinson settled his Iowa workers' compensation claim for $22,000.00. In August of 1989, about three months after settling his Iowa claim, Mr. Robinson experienced a flare-up of symptoms and a temporary locking-up in his left knee in the course of performing coaching activities in the J Robinson Intensive Camp in Spokane, Washington, a summer wrestling camp incorporated separate from his regular employment with the University.[2] The following month, on September 22, 1989, Mr. Robinson reinjured both of

[1] Contrary to the captions on the compensation judge's Findings and Order and on the appellant's brief, Mr. Robinson's first name is evidently only the single letter "J," not the name "Jay" or the initial "J."

[2] Mr. Robinson eventually testified on October 22, 1996, at a hearing in an earlier proceeding in this matter, that he and his ex-wife were sole shareholders in the J Robinson Intensive Camp Corporation and that he was paid for his work in the camp by that corporation and not by the University of Minnesota. He also explained, however, that "the camp is also sponsored by the University. It's an accounting situation here."

his knees in the course of his coaching at the University, when two student wrestlers fell on him as he was demonstrating wrestling technique to a third student. Mr. Robinson [the employee] was forty-three years old on that date, and the University of Minnesota [the employer] was self-insured against workers' compensation liability.

About a week after his injury, on September 29, 1989, the employee underwent arthroscopic surgery on both of his knees, performed by orthopedic surgeon Dr. Mark Mysnyk, for what Dr. Mysnyk diagnosed as "[b]ilateral ACL-deficient knee, status-post medial and lateral meniscectomies with secondary degenerative changes." In a report on that same date, Dr. Mysnyk indicated that the employee

> had an injury this summer to his left knee where he could not straighten it out all the way for a few weeks but he has been able to straighten it out completely in the past couple of weeks. He denies any recent locking or catching. Most of his problem is aching after he has been up on his knee for a[]long time or when he wrestles.

In a subsequent letter to the Minnesota Department of Labor and Industry, dated April 25, 1990, Dr. Mysnyk stated as follows:

> I did bilateral knee arthroscopies on J. Robinson 9/29/90. He had first injured his knees in August 1989 and reinjured them September 22, 1989. His left knee actually locked on him where he couldn't straighten it, but after three days he was able to straighten it, but it remained painful. He had had some knee problems in the past, but his symptoms over the previous few weeks prior to surgery the patient felt were definitely new and worse than what he had been having.
>
> On arthroscopy we found some degenerative changes in both knees but also some loose bodies and some tears of his meniscal remnants which, in the case of both knees, certainly could have accounted for the knee symptoms. These were shaved.

The employer apparently declined coverage, and on August 30, 1990, the employee filed a claim petition, asserting entitlement to payment of $5,170 in medical expenses associated with the surgery performed by Dr. Mysnyk, based on a work-related bilateral knee injury with the employer on September 22, 1989.

On November 27, 1990, the employee underwent an independent medical examination by Dr. Mark Engasser. Dr. Engasser diagnosed (1) osteoarthritis in both knees, (2) status-post left knee arthroscopic debridement with septic arthritis, (3) status-post arthroscopic partial lateral and medial meniscectomy left knee with multiple debridement, and (4) status-post medial and lateral meniscectomies right knee with debridement. Acknowledging that he did not have all of the employee's medical records, Dr. Engasser expressed an opinion "that the wrestling incident of September 22, 1989 was a substantial contributing factor in the need for the

[employee's] surgery in September 1989" and "that 60% of the responsibility for need for surgery and subsequent disability is due to the condition which predated the injury in September 1989 and 40% is due to that injury." The doctor opined, "I do not feel that the [employee's] knee problems were a natural progression of his underlying knee ligamentous laxity or degeneration," although "the surgery on the left knee is also related to the injury in August 1989 at the summer wrestling camp where the left knee could not be straightened out for a day or two." Dr. Engasser concluded also that, with respect to the September 1989 injury, the employee had reached maximum medical improvement [MMI] with respect to his right knee condition, the total permanency of which the doctor assessed at 18% of the body as a whole--2% related to the September 1989 work injury and 16% related to the employee's preexisting condition. Dr. Engasser concluded that the employee had not reached MMI with regard to his left knee, which he diagnosed as still infected.

On March 8, 1991, Dr. J. Patrick Smith performed arthroscopic debridement of the employee's left knee, under diagnoses of significant degenerative arthrosis and probable septic arthrosis. Subsequently, on October 5, 1991, Dr. Smith performed another arthroscopic debridement on the employee's left knee . On October 11, 1991, in a letter to the employee's attorney, Dr. Mysnyk confirmed his opinion that injuries seen on the employee's arthroscopy on September 29, 1989,[3] "were contributed to by injuries sustained in 8/89 and again 9/22/89." On March 9, 1992, the parties and an intervenor entered into a stipulation for settlement, in which the employer agreed to pay certain outstanding medical bills, together with "any future medical cost reasonably necessary to cure and relieve the effects of the September 22, 1989 injury." Under terms of that same stipulation, the employee certified understanding "that acceptance and payment of a medical claim does not constitute waiver of any defense employer has or may have to this claim or any other claim employee has or may have" for any other benefits based on the same injury. An award on this stipulation was filed the following day, March 10, 1992.

From 1992 until 1994, the employee underwent several arthroscopic debridement and other surgeries on both of his knees. These surgeries included surgery to his right knee in June of 1992, performed by Dr. Lonnie Paulos, for medial and lateral meniscal resection, chondroplasty, bone graft, loose body removal, limited synovectomy, and patellar realignment, under a diagnosis including osteoarthritis, anterior cruciate ligament deficiency, lateral petellar compression syndrome, and medial and lateral meniscal tear. On April 1, 1993, Dr. Paulos performed surgery also on the employee's left knee, including arthrotomy, debridement, osteotomy, corner reconstruction, and placement of a pin between the femur and tibia.

Eventually, on July 14, 1994, the employee underwent a total left knee replacement, performed by orthopedic surgeon Dr. Richard Kyle, on referral from Dr. Smith. The employee filed medical requests on November 21, 1994, and July 14, 1995, seeking payment of various treatment expenses, and the matter eventually went to hearing on July 16, 1996, subsequent to which the record was temporarily left open, apparently in part to permit settlement negotiations. On that same date, July 16, 1996, Dr. Kyle wrote to the employee's attorney, reporting on the employee's knee condition. Dr. Kyle's report references the employee's "knee problems dating back to 1970," his having "undergone multiple surgeries on [the left] knee," his having developed

[3] Dr. Mysnyk's reference in his letter to the date of surgery as being September 29, 1990, is clearly a typographical error.

a chronic staph infection following one of these in 1974, his reinjury of the knee while wrestling on September 22, 1989, his subsequent related symptomology and treatment by Dr. Smith, and his eventual total knee replacement on July 14, 1994. On this history, Dr. Kyle rendered an opinion that the employee's "knee problems are as a result of his wrestling activities. In addition, the early staph infection contributed to the septic arthritis which precipitated the need for total knee replacement."

On July 31, 1996, the employer and an intervenor entered into a stipulation for full and complete settlement of all claims by the intervenor for reimbursement based on the September 22, 1989, work injury, and on September 9, 1996, an Award was issued on that stipulation. By Findings and Order filed on that same date, Compensation Judge Kathleen Behounek determined that the expenses at issue before her, for treatment to the employee's knees from 1989 though 1994, were causally related to the employee's September 1989 work injury and therefore payable by the employer. Judge Behounek also concluded, in Finding 7, that the employee's "September 22, 1989, work injury substantially and permanently aggravated the pre-existing condition of his knees." The employer appealed from Judge Behounek's decision, and on April 4, 1997, this court filed a decision affirming the judge's decision in part but vacating Finding 7, on grounds that the permanency of the employee's September 1989 aggravation was not at issue before the judge and that the judge therefore lacked authority to make the finding.

On September 22, 1999, the employee filed a Claim Petition, alleging entitlement to benefits for a 13% permanent partial disability [PPD] of the body as a whole related to his right knee and a 13% PPD of the body as a whole related to his left knee, both consequent to his work injury of September 22, 1989. In its Answer on October 21, 1999, the employer denied liability for the benefits claimed, contending that the work injury was not a substantial contributing cause of the disability alleged and affirmatively asserting that the employer is entitled to an offset for pre-existing disability pursuant to Minn. Stat. § 176.101, subd. 4a.

The matter came on for hearing on October 27, 2000, before Compensation Judge Gary Mesna. At the outset of the hearing, the employee indicated that his claim was based on a post-injury whole-body PPD of 13% related to the left leg and a post-injury whole-body PPD of 11% related to the right leg, the latter claim having been amended since the Claim Petition. Issues at hearing included the causal relationship of the September 1989 work injury to any current PPD, the extent of the employee's pre-existing PPD, and the employee's consequent entitlement to PPD benefits after statutory apportionment for that pre-existing PPD. By Findings and Order filed November 15, 2000, the compensation judge concluded in part the following: (1) that, pre-existing his work injury, the employee had been subject to 20% PPD of the left knee and 15% PPD of the right knee, pursuant to the 1986 ratings of Dr. Albright; (2) that the 20% rating of the left knee converted to an 8% whole-body impairment and the 15% rating of the right knee converted to a 6% whole-body impairment; (3) that the employee's September 1989 work injury was a substantial contributing cause of current PPD in both of the employee's knees; and (4) that "[r]educing the current PPD ratings by the converted pre-existing PPD ratings[] gives a [currently compensable] rating of 5 percent to the left knee and a rating of 5 percent to the right knee." Notwithstanding implications in the latter finding that the employee's current and unapportioned post-injury whole-body impairments in his separate knees were 13% on the left and 11% on the right, as the employee had claimed, the judge also found, in Finding 4, without explanation, that, "[f]or the <u>right</u> knee,

[the employee] qualifies for a rating of 13 percent of the whole body" and "[f]or the left knee, he qualifies for a rating of 11 percent of the body" (sic; emphases added). After combining the two 5% results using the formula provided for in Minn. Stat. § 176.105, subd. 4, the compensation judge awarded the employee PPD benefits for a 9.75% whole-body impairment related to both knees. The 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.

DECISION

1. Extent of PPD

In Finding 4, the compensation judge found in part, "For the right knee, [the employee] qualifies for a rating of 13 percent of the whole body, under Minn. Rule 5223.0170, subp. 5 B. (17). For the left knee, he qualifies for a rating of 11 percent of the body, under Minn. Rule 5223.0170, subp., 5. B. (1), (4)(a), and (20)" (underscoring added). In his memorandum, however, the judge expressly indicated that "[t]here is no dispute over the permanent partial disability (PPD) ratings. Both parties agree that current PPD ratings are 13 percent to the body related to the left knee and 11 percent of the body related to the right knee. The dispute is over apportionment of the pre-existing PPD." The employer contests the statement in Finding 4 as to the extent of the employee's current PPD on grounds that it is inconsistent with other aspects of the judge's decision and contrary to the evidence. Concluding that it is very clearly an inadvertent inversion of the words "right" and "left," we modify Finding 4 to reflect reversed ratings–i.e., that the employee's current total whole-body impairment related to his left knee is 13% and his current total whole-body impairment related to his right knee is 11%.

2. Causation

The employer also contests the judge's finding of a causal relationship between the employee's September 1989 work injury and his current PPD, arguing initially from this court's earlier decision in this matter, filed April 4, 1997. In that decision, this court vacated Finding 7 of Compensation Judge Behounek's September 9, 1996, Findings and Order, concluding that "[i]t was not necessary for the compensation judge to conclude that the September 22, 1989 injury permanently aggravated the employee's underlying condition in order for her to find a causal relationship between the injury and the subsequent medical treatment at issue." J. P. Robinson v. University of Minnesota, slip op. (W.C.C.A. Apr. 4, 1997). In the Findings and Order here at issue, Compensation Judge Mesna indicated that he had "a great deal of difficulty understanding" that statement by this court. The employer asserts initially that the decision of Judge Behounek[4] awarding medical expenses "[d]oes [n]ot [e]stablish" that the September 22, 1989, work injury caused any permanent partial disability, arguing that Judge Mesna "appears to have given little weight to" this court's vacation of Judge Behounek's finding as to the permanency of the work injury. We would emphasize in this regard that this court's holding that Judge Behounek was without authority to make a finding on the issue of permanency does not in any way affect the merits of the employee's claim for permanency. Our decision was a vacation of Judge Behounek's finding in that regard on essentially jurisdictional grounds; it was not a reversal of that finding on any factual basis. After proper identification and litigation of the issue at hearing, the judge was free to find the September 1989 aggravation either permanent or temporary as he saw appropriate under the evidence.

The employer contends secondly that Dr. Kyle's July 16, 1996, medical opinion, which the employer asserts was "the only medical opinion attributing the employee's permanent partial disability to the employee's personal injury of September 22, 1989," is legally insufficient to support the judge's decision, both in specificity and in foundation. The employer suggests that, although Dr. Kyle's report references an injury while wrestling on September 22, 1989, Dr. Kyle's later conclusion in that report that the employee's "knee problems are as a result of his wrestling activities" does not sufficiently distinguish the September 1989 injury from other wrestling trauma over the years as a direct cause of the employee's bilateral PPD, the claim in this case being "of a specific injury . . . , not a Gillette-type injury." With regard to foundation, the employer argues that Dr. Kyle's one-page report "demonstrates little knowledge of the long and complicated history of [the employee's] knee problems." The employer argues that Dr. Kyle was not deposed and that there is no evidence that he was ever provided with a hypothetical, that he was aware of the employee's VA rating or Iowa workers' compensation claim, or that he was aware of the employee's September 1989 surgery or even that the employee's complaints were bilateral. We are not persuaded.

Though brief and relatively undetailed, Dr. Kyle's report does survey the essential and full length of the employee's treatment history, and it does imply familiarity with the employee's medical treatment records. Any brevity or lack of detail in Dr. Kyle's report goes to its evidentiary weight, not to its foundation. See Bossey v. Parker Hannifin, slip op. (W.C.C.A. Mar. 14, 1994) (while adequate foundation is necessary for a medical opinion to be afforded evidentiary value, the expert need not be made aware of every relevant fact). Moreover, while

[4] The employer's recollection of the judge as having been Judge Dallner is clearly a mistake.

medical opinion evidence as to causation is desirable, it is not essential where there is other reliable evidence on the issue. Reimer v. Minnit Tool/M.I.T. Tool Corp., 520 N.W.2d 397, 51 W.C.D. 153 (Minn. 1994). See also Burth v. St. Paul Collision Ctr., slip op. [REDACTED SSN] (W.C.C.A. Nov. 23, 1994) (medical opinions are only one factor to consider in determining whether aggravation of a pre-existing condition is temporary or permanent[5]). Judge Mesna was free to attribute evidentiary weight to the opinion of Dr. Kyle, see Nord v. City of Cook, 360 N.W.2d 337, 342-43, 37 W.C.D. 364, 372-73 (Minn. 1985) (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), and to consider it in the context of other evidence, and we will not reverse on the basis of any inadequacy in Dr. Kyle's opinion alone.

The employer contends finally that Judge Mesna's findings of causation with regard to the permanency of the employee's right and left knee conditions are unsupported by substantial evidence in general. The employer argues first, with regard to the employee's right knee condition, that "[t]here is absolutely no evidence that the employee permanently aggravated his *right knee* during the incident on September 22, 1989" (emphasis in original). The employer notes that the employee testified to having no right knee symptoms following his September 29, 1989, surgery and "no problems with the right knee" at the time of a November 1990 deposition in this matter. The employer argues further that neither Dr. Mysnyk nor Dr. Kyle even addressed the question of the employee's right knee condition, and that "the employee's 15% 'whole body impairment' rating found by Dr. Albright on May 15, 1996 [sic] is actually greater than his current 11% whole body impairment rating." With regard to the left knee, the employer argues that the employee's medical records, particularly those generated for his VA rating decisions, demonstrate "significant pathology" and as much as 30% disability in the left knee well prior to the September 1989 work injury, "[d]espite [the employee's] testimony that he was able to return to his [pre]-operative status following each of his many surgeries" prior to that injury. The employer argues that Dr. Albright's 20% PPD rating in May 1986 in the employee's Iowa claim was based on a diagnosis similar to that of Dr. Kyle in July 1996 and "appear[s] to be" a whole body impairment rating as opposed to a specific body part rating.[6] Like the VA rating, the employer argues, this rating, is higher that the employee's current whole-body rating under Minnesota law. The employer contends with some emphasis that arthroscopic findings at the time of the employee's September 29, 1989, surgery "were indicative of a long-standing degenerative condition, but no recent acute trauma"–that they revealed, in effect, "a total knee arthroplasty waiting to happen." The employer asserts that there

[5] Others factors include (1) the nature and severity of the pre-existing condition and the extent of restrictions and disability resulting therefrom; (2) the nature of the symptoms and the extent of medical treatment prior to the aggravating incident; (3) the nature and severity of the aggravating incident and the extent of the restrictions and disability resulting therefrom; (4) the nature of the symptoms and extent of medical treatment following the aggravating incident; and (5) the nature and extent of the employee's work duties and non-work activities during the relevant period. Id.

[6] The employer cites the fact that the employee's Original Notice and Petition, filed in the Iowa matter on August 20, 1988, sought "whole body impairment" and the fact that Dr. Albright's report itself also references what the employer describes as "an aggregate" whole body impairment.

is overwhelming evidence "that the total knee replacement of the left knee would have naturally and inevitably resulted from the advanced, irreversible and extraordinary pathology of the employee's left knee even without the personal injury of September 22, 1989." Finally, the employer argues, "There is absolutely no indication in the record that Dr. Kyle *even considered* the issues of pre-existing disability or apportionment of responsibility for permanent partial disability." Again, in light of the whole record, we are not persuaded.

As we indicated above, medical opinions are only one factor to consider in determining whether aggravation of a pre-existing condition is temporary or permanent. Burth. In his Memorandum, Judge Mesna indicated expressly that, in addition to the opinion of Dr. Kyle, his decision was based on "the employee's testimony that his knees have never been as good since the 1989 work injury," on "the medical records, especially as they relate to the considerable difficulties that he had from 1989 to 1994," and on "the decision of Judge Behounek that the medical treatment, including the knee replacement surgery in 19[9]4, was causally related to the 1989 work injury" (underscoring added).

The employee's 1990 deposition in this matter is not in evidence, and the context of his apparent statement in that deposition as to having "no problems with the right knee," quoted by the employer's attorney during cross-examination at the October 1996 hearing before Judge Behounek, is unclear. In his 1996 testimony, in actual evidence before Judge Mesna, the employee testified clearly that both of his knees deteriorated subsequent to his 1989 work injury and surgery and that eventually he agreed with Dr. Paulos to have surgery on "my right knee first, see how it did, and then if it worked then possibly try something on my left." At the hearing before Judge Mesna, the employee testified regarding his right knee that, although the result with regard to his right knee was better than that with regard to his left, with respect to either of his knees he "never got back to where I was post or pre '89." Whatever might have been the employee's testimony in 1990, it would not have been unreasonable for Judge Mesna to consider the latter testimony, available in fuller context, to be the best evidence in this case and to find it material evidence that the employee's September 1989 injury constituted a permanent aggravation of the employee's condition. Moreover, reviewed as a whole, the medical records of the several different physicians of record, including those of Drs. Albright, Mysnyk, Engasser, Smith, and Paulos, in addition to those of those of Dr. Kyle, implicitly support that conclusion, even without express causation opinions. See Burth (factors to be considered in addition to expert medical opinion in determining whether an aggravation is temporary or permanent include the nature of the symptoms and extent of medical treatment following the aggravating incident).

While there might well also be evidence that would have substantially supported a decision contrary to that reached by the compensation judge, we conclude the cumulative effect of the evidence referenced by Judge Mesna is substantial, and we cannot conclude that the judge's decision on the causation issue was unreasonable. Therefore we affirm it. See Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239.

3. Preexisting Permanency

The employer contends finally that the judge was without substantial evidentiary support in concluding that the employee was subject prior to his work injury to only a 20% PPD of his left knee, convertible to an 8% whole-body impairment under the statute. The employer argues that the judge's rating of the knee's preexisting condition should have been based on the VA's 1975 rating of a 30% disability. We conclude that the judge's decision was not unreasonable.

In his Memorandum, the compensation judge indicated that he did "not believe that it makes sense to simply use the highest (or lowest) prior rating for purposes of apportioning out the pre-existing PPD." The judge indicated that "[i]n this case, the 1986 ratings by Dr. Albright most accurately reflect the disability to the employee's knees prior to the 1989 work injury." In refusing to adopt the employee's 1975 30% rating by the VA, the judge reasoned as follows:

> The employee had additional injuries to his knees from 1975 to 1986, causing the knees to get worse. The knees got even worse after the 1989 work injury. If the Court were to find that the [VA's] 30 percent PPD rating was accurate in 1975, [the employee's] PPD rating would have been higher [than 30%] in 1986 and even higher today. But the PPD schedule in effect in 1989 provides PPD ratings of 13 percent of the body for the left knee . . . . Clearly, the employee did not have 30 percent PPD to the left knee in 1975.

As the judge's reasoning implies, it is hardly tenable that the employee could have had the equivalent of a 12% whole-body impairment twenty-five years ago and then today, after twenty-five years of very evident deterioration and repeated surgery, have only a 13% impairment rating today. Even more untenable, the judge notes, would be adopting the VA's 30% rating as a whole-body rating.[7] The same rationale supports the judge's evident understanding of Dr. Albright's ratings to be ratings of disability relative to only the separate body parts, not whole-body impairment ratings.[8] Because it was not unreasonable, we affirm the judge's conclusion as to the employee's pre-existing permanent partial disability. See Hengemuhle, 358 N.W.2d at 59, 37 W.C.D. at 239.

[7] Indeed, there is no evidence that VA ratings are comparable to either whole-body ratings or part-specific ratings under Minnesota workers' compensation law.

[8] We note in this regard that the sum of Dr. Albright's May 15, 1986, ratings for particular body parts is substantially greater than his separate rating of the employee's "Whole Body," which the employer has characterized as an "aggregate" rating.