

TERESA J. ROQUETTE, Employee/Appellant, v. KNUTE NELSON MEM’L HOME, SELF-INSURED/BERKLEY RISK SERVS., Employer-Insurer.

WORKERS’ COMPENSATION COURT OF APPEALS
DECEMBER 20, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL CONTRIBUTING CAUSE; EVIDENCE - RES JUDICATA. Under the particular circumstances of this case, res judicata did not bar the compensation judge’s denial of temporary partial disability benefits after October 18, 2000, despite a prior compensation judge’s award of benefits prior thereto, and despite the fact that the employee’s condition has arguably not changed in the interim.

Affirmed in part and vacated in part.

Determined by Wilson, J., Rykken, J., and Wheeler, C.J.
Compensation Judge: William R. Johnson.

OPINION

DEBRA A. WILSON, Judge

The employee appeals from the compensation judge’s denial of temporary partial disability benefits. We affirm in part and vacate in part.

BACKGROUND

The employee initially underwent thoracic outlet syndrome surgery in 1983, well prior to beginning work as a housekeeping aide for Knute Nelson Memorial Home [the employer] in 1992. At some point after starting that job, she developed left arm/shoulder pain and swelling, and in early 1996 she underwent a second thoracic outlet surgery, performed by Dr. J. Ernesto Molina. Following this procedure, the employee continued to receive extensive treatment for numerous complaints, including shoulder and neck pain and swelling.

This matter originally came on for hearing on March 27, 1997, before Compensation Judge Cheryl LeClair-Sommer, to resolve the employee’s claim for various benefits resulting from a Gillette-type¹ injury allegedly occurring on about December 29, 1995. In a decision issued on May 12, 1997, Judge LeClair-Sommer determined in relevant part that the employee had sustained a work injury in the nature of an aggravation of her pre-existing thoracic outlet syndrome “and, as a result of the aggravation . . . swelling of the left shoulder.” The judge

¹ See Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 21 W.C.D. 105 (1960).

also determined that the employee had reached maximum medical improvement [MMI] from the aggravation on December 10, 1996, and from the consequential shoulder swelling on March 26, 1997. The employer and its insurer were ordered to pay medical expense benefits and wage loss benefits for various periods through the date of hearing. Neither party appealed from this decision.

Following Judge LeClair-Sommer's decision, the employee obtained part-time work selling pull tabs, consistent with the recommended restrictions of one of her treating physicians. The employee continued to receive ongoing treatment and tests, from a variety of providers, for numerous and seemingly unrelated complaints. From the beginning, suggested diagnoses have varied.

On July 25, 2000, the matter came on for hearing again, this time before Judge Bernard Dinner, to determine the employee's entitlement to benefits for permanent partial disability, treatment expenses incurred following the hearing before Judge LeClair-Sommer, and payment for durable medical equipment. In his decision issued on October 10, 2000, Judge Dinner denied all of the employee's claims, largely on medical causation grounds, relying on the opinion of Dr. Molina to conclude that the employee had fully recovered from her thoracic outlet syndrome surgery, and had been able to work full time with respect to that condition, as of May 1, 1996. Judge Dinner also concluded that a number of the employee's symptoms, including her chronic neck pain, were not causally related to her work injury.

The employee appealed from Judge Dinner's decision to this court. In our decision, issued on March 15, 2001, we affirmed Judge Dinner's denial of benefits for permanent partial disability, for the requested medical equipment, and for treatment expenses for the care rendered after the hearing before Judge LeClair-Sommer. We did, however, vacate a portion of Judge Dinner's decision to the extent that it could be read to be inconsistent with Judge LeClair-Sommer's MMI decisions and her award of benefits through March 27, 1997, the date of the hearing before her. Neither party appealed from our decision to the Minnesota Supreme Court.

The hearing that gave rise to the current appeal was held on June 12, 2001, before Judge William Johnson, to determine the employee's entitlement to temporary partial disability benefits from and after October 18, 2000, based on the employee's earnings from part-time employment selling pull tabs. In his decision, issued July 11, 2001, Judge Johnson denied the employee's claim, finding that the employee's ongoing complaints were not related to her work injury. Judge Johnson also determined that, even assuming that the employee had some minor restrictions related to her work injury, she had not established entitlement to temporary partial disability benefits because she had been released to work full time but was working only "very, very limited hours" and had not looked for any other employment. 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.

“[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers’ Compensation Court of Appeals] may consider de novo.” Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

DECISION

In denying the employee’s claim for temporary partial disability benefits, Judge Johnson wrote in part as follows:

The Compensation Judge has reviewed the voluminous medical records in this case and finds that the employee was not temporarily partially disabled as of May 1, 1996. In so finding the Compensation Judge adopts the opinions of Dr. Paul Wickland. Also Dr. Molina, the treating thoracic surgeon who performed the employee’s most recent thoracic outlet surgery, has repeatedly expressed the opinion that the employee’s complaints are not related to the thoracic outlet syndrome.

From a purely factual standpoint, Judge Johnson’s decision is easily supported by substantial evidence in the record as a whole, and the employee does not really argue otherwise.² The employee maintains, however, that, in reaching his decision, Judge Johnson impermissibly relied on findings by Judge Dinner that were vacated by this court, and that Judge Johnson also erroneously reached conclusions contrary to the unappealed findings and order of Judge LeClair-Sommer. As was the case in her appeal of Judge Dinner’s decision to this court, the employee takes the position that, since her condition has not really changed since the hearing before Judge LeClair-Sommer, application of res judicata compels the conclusion that the employee’s ongoing disability -- including her wage loss and need for restrictions -- is causally related to her work injury.

² Dr. Molina indicated on several occasions that the employee’s ongoing complaints were unrelated to her thoracic outlet syndrome condition and that the employee had no need for restrictions due to that condition. Dr. Wicklund testified extensively on the same issue, and he stated that, with respect to her thoracic outlet condition, the employee need only avoid using her arm in a motion similar to a quarterback throwing a football. Dr. Wicklund also indicated that the employee needed no restrictions with regard to the swelling near her shoulder.

When addressing the employee's res judicata argument in the prior appeal from Judge Dinner's decision, this court wrote as follows:

[T]he sheer complexity of this case renders it an unlikely candidate for application of res judicata with respect to the employee's most recent medical expense claims. The employee has received an immense amount of treatment for symptoms including nausea, chest pain, headaches, dizziness, left arm pain, left hand numbness and burning, ear pain, upper back pain, elbow pain, right upper extremity pain, blurred vision, and throat sores. Diagnoses have included not only thoracic outlet syndrome, scoliosis, spondylosis, and myofascial pain but also cervicgia of unknown etiology, impingement syndrome, myalgia, myositis, sympathetically mediated pain, ulnar neuropathy, brachial plexopathy, and brachial plexus lesions. The fact that the employer failed to contest Judge LeClair-Sommer's treatment award in 1997 should not, under these circumstances, preclude them from contesting liability for treatment rendered thereafter.[]

Judge LeClair-Sommer found that the employee had sustained a work-related injury on December 29, 1995, in the nature of an aggravation of her preexisting thoracic outlet syndrome, and a consequential injury in the nature of "swelling of the left shoulder." That finding is res judicata as to the nature of the work injury. However, the employer was not precluded from litigating the issue of whether the employee's subsequent medical care was causally related to the employee's work-related condition.

Roquette v. Knute Nelson Memorial Home, slip op. (W.C.C.A. Mar. 15, 2001) (footnote omitted). The same rationale applies in the present case. That is, under the circumstances, Judge LeClair-Sommer's award of wage loss benefits in 1997 does not compel an award of temporary partial disability benefits beginning in October 2000, the claim period at issue here. See Fischer v. Saga Corp., 498 N.W.2d 449, 48 W.C.D. 368 (Minn. 1993), citing 3 Larson, The Law of Workmen's Compensation § 79.72(f) at 15-426, 272 (100) (1992) ("res judicata does not apply if the issue at stake was not specifically decided in the prior proceedings . . ."); Westendorf v. Campbell Soup Co., 243 N.W.2d 157, 158, 28 W.C.D. 460, 460 (Minn. 1976) (while the principles of res judicata do apply to decisions of the Workers' Compensation Board in some instances, they do not bar further proceedings to determine claims not litigated in the prior hearing). And, while we acknowledge that Judge Johnson cited a finding by Judge Dinner that was vacated by this court in the prior appeal, we are not persuaded that Judge Johnson relied on that finding in making his decision. As such, we find no grounds to reverse on that basis. We do, however, agree with the employee that Judge Johnson erred in finding that the employee was not temporarily partially disabled as of May 1, 1996, as that conclusion conflicts with Judge LeClair-Sommer's award of benefits through March 27, 1997. That conclusion by Judge Johnson is therefore vacated, and his decision should be read to apply only to the employee's claim for temporary partial disability

benefits from October 18, 2000, through the date of hearing.³ In all other respects, Judge Johnson's decision is affirmed.

³ In fact, in his order, Judge Johnson limited his decision to that period.