

TAMMY L. ROTH (MILES), Employee, vs. CIRRUS INDUS. and AM. INT'L/AIG CLAIM SERV., Employer-Insurer/Appellants and CLOQUET COMTY. MEM'L HOSP., CTR. FOR DIAGNOSTIC IMAGING, BLUE CROSS/BLUE SHIELD OF MINN., SUBURBAN RADIOLOGIC CONSULTANTS, FORTIS BENEFITS INS. CO., MN DEP'T OF LABOR & INDUS./VRU, NORTHLAND NEUROLOGY & MYOLOGY, P.A. and ST. LUKE'S HOSP.,
Intervenors

WORKERS' COMPENSATION COURT OF APPEALS
NOVEMBER 7, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL CONTRIBUTING CASE; GILLETTE INJURY - SUBSTANTIAL EVIDENCE. Substantial evidence, including expert opinion, adequately supported the compensation judge's decision that the employee sustained a work-related Gillette injury to both upper extremities as a result of her work activities with the employer.

Affirmed in part and remanded in part.

Determined by: Rykken, J., Pederson, J., and Johnson, J.
Compensation Judge: Bernard Dinner

OPINION

MIRIAM P. RYKKEN, Judge

The employer and insurer appeal from the compensation judge's determination that the employee sustained a Gillette-type injury as of March 10, 1999, as a substantial result of her work activities with the employer. We affirm in part and remand in part.

BACKGROUND

Tammy L. Roth, the employee, commenced work with Cirrus Industries, the employer, in July 1998. She claims that as of March 10, 1999, she sustained a Gillette¹ injury in the nature of bilateral carpal tunnel syndrome and bilateral pronator syndrome. On March 10, 1999, the employer was insured for workers' compensation liability in the state of Minnesota by American International/AIG Claims Services, the insurer. On that date, the employee was 40 years old and earned a weekly wage of \$275.89.

The employer is a manufacturer of single-engine fiberglass-body airplanes. When the employee began working for the employer in July 1998, she was hired to work in the

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

subassembly area to perform drilling and riveting such parts as hinge assemblies, seat tracks and consoles. The employee's duties primarily consisted of riveting and drilling through aluminum, hardened steel and fiberglass, although she occasionally worked in other areas, depending on workflow. For example, for approximately two months in 1998, she performed inventory duties. While in the subassembly area, she operated both a table-mounted riveter and a hand-held pneumatic riveter. She also operated a drill press to drill into steel, which, she testified, required her to operate the press with her right hand and hold onto the material and drilling jig with her left hand.

The employee was off work from September 5 through November 7, 1998, as a result of gall bladder surgery. Although the employee testified she returned to work riveting and drilling in November 1998, a co-worker testified that the employee performed inventory control duties after the employee returned to work post-surgery. (T. 128, 130.) The employee testified that she began experiencing "sensitivity" in her wrists beginning in November or December 1998, and described additional symptoms, such as "buzzing" in her fingers, achiness in her forearms, and tingling in her thumb and adjacent three fingers. (T. 62-63.) The employee noted symptoms bilaterally, with worse symptoms on the left side. These symptoms progressively worsened, and, on March 10, 1999, the employee consulted with Dr. Kenneth Ripp at the Raiter Clinic, one of her family physicians. The employee reported complaints of pain in both hands, with coldness in her fingertips. Dr. Ripp diagnosed possible carpal tunnel syndrome and suggested treatment for Raynaud's phenomenon.² (Ee. Ex. A1.) Dr. Ripp prescribed bilateral wrist splints, referred the employee to physical therapy, and scheduled an electromyogram (EMG) and nerve conduction studies, which were conducted on March 23, 1999. That testing was reported as "essentially normal," with borderline findings suggesting early or mild carpal tunnel syndrome affecting the left median nerve at the wrist. (Ee. Ex. A3.)

Dr. Ripp restricted the employee from work until a March 31, 1999 appointment with Dr. Steven Vopat, orthopedist. Dr. Vopat referred the employee to Dr. Peter Goldschmidt, orthopedist, who concluded that the EMG findings were unremarkable, with borderline findings consistent with early carpal tunnel syndrome. Dr. Goldschmidt recommended an MRI of the employee's left wrist, which was conducted on April 21, 1999, and was interpreted as showing degenerative changes in the radial scaphoid, with joint effusion and flexor tendon tenosynovitis, and possible carpal tunnel syndrome. Dr. Goldschmidt performed a cortisone injection into the employee's left carpal tunnel on May 17, 1999, but the employee experienced no relief, and experienced numbness in her hand for at least two days following the injection. (T. 79.) Thereafter, Dr. Goldschmidt recommended conservative treatment, and approved the employee's return to work, restricting repetitive use of the rivet gun or other pneumatic tools. (Ee. Ex. A5.) The employee's symptoms persisted, but she returned to work for two days in May 1999, working

² *Raynaud's phenomenon* is defined as intermittent bilateral ischemia of the fingers, toes, and sometimes ears and nose, with severe pallor and often paresthesias and pain, usually brought on by cold or emotional stimuli and relieved by heat; it is usually due to an underlying disease or anatomical abnormality. When it is idiopathic or primary it is called *Raynaud's disease*. Dorland's Illustrated Medical Dictionary, 29th Ed., p.1371. Dr. Call and Dr. Van Heest described Raynaud's syndrome as a condition that shuts down blood flow to the fingers, exacerbated by exposure to cold and nicotine. (Er/Ins. Ex. 1; Ee. Ex. C.)

less than eight hours. The employee reported to Dr. Ripp in June 1999 that her temporary return to work in May aggravated her condition. She underwent four occupational therapy treatments in July 1999, noting a decrease in her overall hand strength and no change in her symptoms.

On September 28, 1999, the employee first consulted Dr. Ann Elizabeth Van Heest, who referred the employee to her colleague, Dr. Edward McElfresh, for a second opinion concerning a potential diagnosis of pronator syndrome. Dr. McElfresh diagnosed a pronator syndrome, and entrapment of the median nerve in the left forearm. On November 10, Dr. McElfresh conducted a left pronator release surgery. The employee continued treating with Dr. Van Heest, who next examined the employee on March 14, 2000. The employee reported that her left forearm symptoms had resolved, but she still noted pain in her left wrist and hand. Dr. Van Heest referred the employee for a bone scan to rule out other conditions which could cause pain, such as arthritis, infection or fracture in bones or joints; that scan was negative. An EMG and nerve conduction study performed on June 5, 2000, was interpreted as “normal,” (Ee. Ex. A8), even though the employee’s symptoms persisted. On June 20, 2000, Dr. Van Heest performed a diagnostic injection into the carpal tunnel on the left side, which provided symptom relief, and which indicated to Dr. Van Heest that a carpal tunnel release should be effective. (Ee. Ex. C, Van Heest Depo., p. 15.) On September 20, 2000, Dr. Van Heest performed a left carpal tunnel release, and, on December 14, 2000, she performed a pronator release and carpal tunnel release on the right side.

Following each of her surgeries, her physicians placed physical work restrictions on the employee. Following her September 20, 2000, surgery, Dr. Van Heest restricted the employee from work for three months, and restricted her from performing heavy repetitive upper extremity tasks as her primary employment. Following the employee’s December 14, 2000, surgery, Dr. Van Heest assigned those same restrictions. Dr. Van Heest testified that a functional capacities evaluation would be helpful to define the employee’s specific activities, and that, generally, she would restrict the employee to no lifting over ten to fifteen pounds on a regular basis, and limitations to lighter or less repetitive activities. (Ee. Ex. C, Van Heest Depo., p. 25.)

On February 1, 2000, Dr. William H. Call examined the employee at the request of the employer and insurer. Dr. Call concluded that the employee did not sustain a Gillette injury to her hands or wrists culminating on or about March 10, 1999. He expressed the opinion that the employee’s symptoms commencing in March 1999 were the “continued evolution of the previous carpal tunnel syndrome which was documented in the past, her continued Raynaud’s phenomenon exacerbated by her continued smoking, and the anatomy at the base of her neck.” Dr. Call concluded that the employee’s work activities did not substantially cause any aggravation of the employee’s pre-existing conditions, but, instead, that the employee’s symptoms were simply continued manifestations of her pre-existing conditions. Dr. Call found that the employee had sustained no work-related permanent partial disability to her bilateral hand and wrists, and recommended no further medical treatment. Dr. Call related the employee’s need for medical treatment since March 1999 to her pre-existing condition. Dr. Call recommended that the employee wear light wrist splints bilaterally, removing those splints to drive, and based the need for these restrictions on the employee’s pre-existing carpal tunnel syndrome. For comfort purposes, he recommended that the employee wear warm mittens at work and minimize over-the-shoulder activities due to her pre-existing neck condition. (Er/Ins. Ex. 1.)

The employer and insurer denied primary liability for the employee's claimed Gillette injury. On November 1, 1999, the employee filed a claim petition, alleging entitlement to temporary total disability benefits from March 19, 1999 to the present and continuing, as well as payment for medical expenses and related Roraff³ attorney fees. In their answer, the employer and insurer maintained their denial of primary liability for the employee's bilateral hand and wrist injury, and alleged that the claimed disability was not causally related to a work-related injury.

A hearing was held before a compensation judge on February 6, 2001. In Findings and Order served and filed March 15, 2001, the compensation judge found that the employee had sustained a Gillette injury on or about March 10, 1999. The compensation judge found that the employee was temporarily totally disabled from March 31 through May 3, 1999, and again between her first surgery on November 10, 1999 through mid-March 2001. The compensation judge denied a portion of the employee's claim, finding that she was not temporarily totally disabled between May 3 and November 10, 1999. The compensation judge also found that the employee's claimed medical expenses for her bilateral upper extremity injuries were reasonable and necessary to cure or relieve the employee from the effects of the March 10, 1999 injury, and therefore ordered payment of medical expenses and various medical intervention claims. In addition, the compensation judge awarded reimbursement to Fortis Benefits Insurance Company, who had paid short-term disability benefits between March 26 and September 26, 1999. 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

The compensation judge concluded that as a substantial result of her work activities with the employer, the employee sustained a Gillette injury which culminated on or about March 10, 1999. As a result, the compensation judge awarded temporary total disability benefits

³ Roraff v. State of Minnesota, 288 N.W.2d 15, 32 W.C.D. 297 (Minn. 1980).

for certain periods of time following that injury, and also awarded payment for medical expenses related to that injury, as well as provision of rehabilitation assistance. The employer and insurer appeal, arguing that the compensation judge erred by misinterpreting the medical evidence regarding the employee's pre-existing condition, by relying on the employee's inconsistent testimony regarding her work activities, and by relying on an improperly founded opinion rendered by Dr. Van Heest. We affirm in part and remand in part.

1. Gillette Injury

A Gillette injury is a result of repeated trauma or aggravation of a pre-existing condition which results in a compensable injury when the cumulative effect is sufficiently serious to disable an employee from further work. Gillette v. Harold, Inc., 257 Minn. 313, 321-22, 101 N.W.2d 200, 205-06, 21 W.C.D. 105, 111-13 (1960); Carlson v. Flour City Brush Co., 305 N.W.2d 347, 350, 33 W.C.D. 594, 598 (Minn. 1981). The question of a Gillette injury primarily depends on medical evidence. Marose v. Maislin Transport, 413 N.W.2d 507, 512, 40 W.C.D. 175 (Minn. 1987), and questions of medical causation fall within the province of the compensation judge. Felton v. Anton Chevrolet, 513 N.W.2d 457, 50 W.C.D. 181 (Minn. 1994). The employee "must prove a causal connection between her ordinary work and ensuing disability. . . . Whether given by testimony or written report, an opinion by a medical expert as to the causal link between the claimant's disability and the job must be based on adequate foundation." Steffen v. Target Stores, 517 N.W.2d 579, 582, 50 W.C.D. 464, 467 (Minn. 1994).

(a) Effect of Pre-Existing Condition

The employer and insurer contend that the compensation judge's finding that the employee sustained a Gillette injury is not supported by substantial evidence. In support of this contention, the employer and insurer argue that the employee did not sustain her burden of proof concerning causation of the injury and that the compensation judge ignored or misinterpreted records documenting the employee's pre-existing medical condition. We do not agree. Although the employee had previously treated for bilateral symptoms in her upper extremities, there are limited medical records documenting such treatment. The employee's medical records include an entry on March 19, 1996 documenting ulnar nerve conduction studies done bilaterally. The results were within the normal limits, "making the ulnar neuropathy or entrapment unlikely." Dr. Peter Hindle stated in his report that, "I am unable to diagnose the presence of any carpal tunnel syndrome or delay through the carpal canal" and that both the right and left median nerve conduction studies were within normal limits. The doctor's report indicates that the study results were compatible with a borderline to very mild left carpal tunnel syndrome. (Ee. Ex. A9.) The record contains no medical reports documenting further treatment for the employee's upper extremities until March 1999.

The employee provided a history to Dr. Van Heest of her previous diagnosis of carpal tunnel syndrome that had resolved. However, Dr. Van Heest did not specifically provide an opinion as to whether the employee's work activities aggravated a pre-existing condition. Although Dr. Call originally concluded that the employee's condition is due to her pre-existing medical condition, at his deposition he acknowledged that the employee received no further medical treatment related to her upper extremities between the evaluations in June 1996 and March

1999. However, Dr. Call concluded that the employee's condition since 1999 is a continuation or manifestation of her pre-existing condition, and specifically concluded that none of the employee's recent symptoms represented aggravations of pre-existing conditions.

In his findings, the compensation judge referred to the employee's previous medical treatment in 1996, and concluded that the employee's pre-existing condition did not substantially contribute to the employee's current symptoms. (Finding No. 30.) Questions of medical causation fall within the province of the compensation judge. Felton, 513 N.W.2d at 457, 50 W.C.D. at 181. Substantial evidence of record, including the absence of medical treatment for the employee's upper extremities between June 1996 and March 1999, supports the compensation judge's finding that the employee's pre-existing condition did not substantially contribute to the employee's symptomology, disability and need for medical treatment following her Gillette injury on March 10, 1999.

(b) Alleged Inconsistencies in Witness Testimony

The employer and insurer also argue that the compensation judge erred in relying upon the inconsistent testimony presented by the employee. The employer and insurer contrasted the employee's testimony concerning the nature of her job duties with testimony presented by a co-worker and a supervisor. The employer and insurer stressed that the employee was unable to estimate the number of hours she performed her drilling or riveting duties; the employee testified she never drilled or riveted for a whole day, and that there was a lot of "down time" in the subassembly area. (T. 60, 94.) The employee also admitted that she performed inventory control functions for several months prior to her alleged injury in March 1999, and this testimony was corroborated by that of a co-worker. (T. 61.) A supervisor testified that the employee performed inventory control duties and no riveting or drilling since at least early February 1999. The supervisor also testified that the drill press required "a minimum of pressure" to operate (T. 116, 121), even though the employee testified that she was required to hold onto a part of the machine as she operated the drill press. The employer and insurer argue that the judge erred in relying on these and other inconsistencies in witness testimony when concluding that the employee's work activities resulted in a Gillette injury.

Although the trial witnesses varied in their descriptions of the specific job duties the employee performed, it is not the role of this court to evaluate the credibility and probative value of witness testimony and to choose different inferences from the evidence than the compensation judge. Krotzer v. Browning-Ferris/Woodlake Sanitation Serv., 459 N.W.2d 509, 513, 43 W.C.D. 254, 260-61 (Minn. 1990). Instead, "[a]ssessment of witness credibility is the unique function of the factfinder." Tews v. Geo. A. Hormel & Co., 430 N.W.2d 178, 180, 41 W.C.D. 410, 412 (Minn. 1988). The employee's testimony was consistent with the general history she provided to treating and consulting physicians. The record contains sufficient information gleaned from the employee's testimony, as well as testimony by a co-worker and a supervisor, on which the compensation judge could base his finding that the employee's work activities substantially contributed to the employee's condition. It was reasonable for the judge to rely, in part, on the employee's testimony when concluding that the employee sustained a Gillette injury as a result of her work duties, and we find that the compensation judge did not err in doing so.

(c) Foundation for Medical Opinions

Dr. Van Heest determined that the employee's normal work activities with the employer resulted in a Gillette injury. The compensation judge based his conclusions on this causation opinion, specifically citing in his memorandum to Dr. Van Heest's deposition testimony. The employer and insurer argue that the compensation judge erred in relying upon the medical opinion of Dr. Van Heest, and they challenge the foundation for Dr. Van Heest's opinions, asserting that she relied on an incorrect history and description of job duties provided by the employee, and that she did not review any of the employee's prior medical records before issuing an opinion on causation.

Adequate foundation is necessary for a medical opinion to be afforded evidentiary value. Winkles v. Independent Sch. Dist. No. 625, 46 W.C.D. 44, 58 (W.C.C.A. 1991). To be of evidentiary value, a medical opinion must rest on a factual basis. Zappa v. Charles Mfg. Co., 260 Minn. 217, 224, 109 N.W.2d 420, 424, 21 W.C.D. 459, 467 (1961). Furthermore, the facts upon which the expert relies for his or her opinions must be supported by the evidence. McDonald v MTS Sys. Corp., 43 W.C.D. 83 (W.C.C.A. 1990), summarily aff'd (Minn. July 13, 1990). In a report dated November 2, 2000, Dr. Van Heest outlined her opinion concerning the causation of the employee's condition. She expanded upon that opinion at her deposition, outlining the history that she had obtained from the employee concerning her job activities and referring to the medical reports she had reviewed by then. That history, as described by Dr. Van Heest, is relatively consistent with the testimony presented by the employee at the hearing. As we have concluded that the judge did not err by relying on the employee's testimony, and as we have concluded that the employee's testimony contained substantial evidence to support the compensation judge's finding of a Gillette injury, we also conclude that it was reasonable for the compensation judge to conclude that Dr. Van Heest's opinion was adequately founded. As adequate foundation existed for Dr. Van Heest's opinion, the compensation judge did not clearly err in accepting that opinion over the opinion of Dr. Call, the employer and insurer's independent medical examiner. See Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985). Because the record as a whole reasonably supports the compensation judge's decision that the employee sustained a Gillette-type injury to both upper extremities as a substantial result of her work for the employer, we affirm the compensation judge's decision in its entirety.

2. Claim for Medical Treatment

The compensation judge determined that the employee's need for bilateral carpal tunnel and pronator surgeries substantially resulted from her claimed March 10, 1999 work injury. The judge relied upon the opinion of Dr. Van Heest in reaching these conclusions. The employer and insurer rely upon Dr. Call's opinion in arguing that the surgeries performed on the employee were not reasonable or necessary.

The record contains medical records from Drs. McElfresh and Van Heest, and testimony by Dr. Van Heest, concerning diagnoses of the employee's condition, recommendations for the three surgeries and the basis for those recommendations. The record also contains testimony presented by the employee and Dr. Van Heest as to the outcome of those surgeries.

Based upon our review of the extensive medical records and medical testimony, we find that substantial medical evidence of record supports the compensation judge's conclusion that the three surgeries the employee underwent were reasonable and necessary to cure or relieve the effects of the employee's Gillette injury. As we have found that Dr. Van Heest's medical opinion was adequately founded, we conclude that the judge did not err in relying upon Dr. Van Heest's opinion concerning the reasonableness and necessity of the medical treatment, and therefore affirm that conclusion as well.

3. Temporary Total Disability Claim

The compensation judge awarded temporary total disability benefits to the employee for certain periods of time. The various findings and order outlining those periods of time are contradictory, and we therefore remand that portion of the findings and order to the compensation judge for clarification.

In Finding No. 14, the compensation judge found that the "employee continued to be temporarily and totally disabled as a result of the effects of the personal injury from November 10, 1999, up to second surgical procedure" on September 20, 2000. By contrast, in Finding No. 18, the compensation judge found that the employee was temporarily totally disabled for a three-month period "from and after each surgical procedure." However, in Finding No. 20, the compensation judge found that the employee has not proven that she was temporarily and totally disabled "from and after three months following the last surgical procedure on December 14, 2000 through date of hearing, February 6, 2001."

In Finding No. 22, the compensation judge addressed this same period of time following the third surgery, and found as follows:

That as of the date of hearing employee has not proven by a preponderance of the evidence a reasonable diligent effort to obtain employment within the physical restrictions as noted by Dr. Van Heest approximately three months following the last surgical procedure through date of hearing.

Only Finding No. 14 was appealed; no appeal was taken from Findings Nos. 18, 20 and 22. However, all these findings are contradictory as to the benefits awarded following the employee's first surgery on November 10, 1999, and following her third surgery on December 14, 2000. It is not clear from these findings for what duration the compensation judge awarded benefits. In addition, Order No. 4 requires payment of temporary total disability benefits for three-month periods following each of the employee's three surgeries, which is inconsistent with Finding No. 14, which delineates an award of temporary total disability benefits between November 10, 1999, and September 20, 2000.

We therefore affirm the award of temporary total disability benefits from September 20, 2000, through the next surgery date of December 14, 2000, dates which are uncontradicted in the findings. We remand this matter to the compensation judge for clarification of the temporary total disability benefits owed to the employee for two other time periods:

(1) November 10, 1999, through September 20, 2000, and (2) December 14, 2000, through March 14, 2001.