

MARTIN D. RUHL, Employee, v. TYSON TRUCK LINES and ST. PAUL FIRE & MARINE INS. CO., Employer-Insurer/Appellants.

WORKERS' COMPENSATION COURT OF APPEALS
MARCH 21, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL CONTRIBUTING CAUSE. Substantial evidence, including implications to be drawn from the medical records, supported the compensation judge's conclusion that the employee's temporary disability and need for treatment were causally related to his 1989 work injury.

ATTORNEY FEES. It was premature for the judge to award attorney fees, including Roraff fees, pending resolution of the employer and insurer's timely appeal on the merits of the employee's underlying claim.

Affirmed the findings and order.

Vacated and remanded the award of attorney fees.

Determined by Wilson, J., Wheeler, C.J., and Johnson, J.

Compensation Judge: Bradley J. Behr.

OPINION

DEBRA A. WILSON, Judge

The employer and insurer appeal from the compensation judge's finding that the employee's right leg infection on May 14, 1999, aggravated his work-related venous condition, resulting in compensable wage loss and medical expenses, and from the judge's award of Roraff attorney fees. We affirm in part and vacate and remand in part.

BACKGROUND

The employee was working for Tyson Truck Lines on August 4, 1989, when he sustained a work-related crush-type injury to his right foot. He eventually developed pain and swelling in the right foot and leg and was hospitalized on September 19, 1989, for swelling and tenderness in the right leg and calf. A Doppler scan of the right lower extremity on that date revealed a significant clot in the right popliteal and proximal superficial femoral veins, which the employer and insurer admitted was related to the work injury. The employee was treated with coumadin and a compression stocking. Diagnoses of deep vein thrombosis [DVT] and venous insufficiency were made thereafter.

The employee received further treatment for right leg swelling and pain in 1990, 1991, 1992, 1993, and 1994. He then went without treatment until May 14, 1999, when he experienced a blotchy red rash on his anterior right thigh as well as increased right leg pain. Lab work on that date revealed an infection, and a Doppler scan revealed deep venous thrombosis involving the popliteal and distal superficial femoral veins. The employee was started on cephalexin for the infection and two anticoagulants, including coumadin, for the DVT. The cephalexin was discontinued after a week, and the employee was treated with physical therapy, coumadin, and a compression stocking thereafter. He missed approximately 4.8 weeks of work because of his right leg symptoms.

On October 4, 1999, the employee filed a claim petition, seeking temporary total disability benefits, medical expenses, and medical mileage. He was subsequently examined by independent medical examiner Dr. Ronald Vessey, and, in his report dated February 25, 2000, Dr. Vessey opined that the employee had developed a soft tissue infection in May of 1999 that had resulted in “a hypercoagulable state which appears to have once again caused this patient to develop a pattern of deep venous thrombophlebitis.” Dr. Vessey went on the state that the employee’s DVT in 1989 played “some small role in this patient developing a recurrent pattern of DVT” in May of 1999.

The employee treated with Dr. Richard Kolts on September 9, 1999, September 14, 1999, and July 13, 2000. Dr. Kolts had the employee undergo three studies: duplex scan looking for DVT, an air plethysmographic study looking at global venous function, and a duplex scan for insufficiency. In his office notes of July 13, 2000, Dr. Kolts noted that the combination of those three tests, plus the clinical picture, demonstrated that the employee had some incompetent segments in his deep veins. He further noted that “[t]he distal superficial femoral, popliteal and some of the calf level veins are incompetent. He has some functioning valve in the more proximal superficial femoral, in the profunda femoral and in the common femoral veins.” Dr. Kolts concluded that the employee’s venous insufficiency at that time “appears to be related to his DVT of ten years ago.”

On August 4, 2000, Dr. Kolts wrote a letter to the employee’s attorney, stating,

My impression of this patient is that he has a postphlebotic syndrome. This means that the valves in [the] vein where [the] clot previously was have been destroyed and no longer function. Certainly, this is related to the accident of August 4, 1989 The natural history of deep venous thrombosis is that the valves are damaged in the area where the clot forms and the vein becomes incompetent through that area.

Later in that same report, Dr. Kolts theorized that the employee did not have a new DVT on May 14, 1999, but “simply had an inflammatory or infectious process going on.”

The matter proceeded to hearing on August 11, 2000, and, in findings and order filed on October 10, 2000, the compensation judge found that the employee’s right leg infection on May 14, 1999, aggravated the employee’s preexisting venous injury, causing an acute increase

in right leg pain and swelling. The judge consequently awarded temporary total disability benefits and treatment expenses.

On October 19, 2000, the employee's attorney filed a statement of attorney fees, seeking contingent fees for recovery of temporary total disability benefits and \$9,252.93 in Roraff fees¹ for services rendered in securing payment of medical expenses. When the compensation judge did not receive an objection to that fee request, he signed an order granting attorney fees on November 8, 2000, which was filed on November 9, 2000. Also on November 9, 2000, the employer and insurer filed an appeal from the judge's findings and order on the merits of the employee's claim. On November 27, 2000, the employer and insurer filed an objection to attorney fees. Subsequently, on December 8, 2000, the employer and insurer appealed from the order for attorney fees. The two appeals were consolidated.

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. Medical Causation

The employer and insurer contend that substantial evidence does not support the compensation judge's causation finding. After thorough review of the record, we are not persuaded.

The employee's work injury in August of 1989 was a crush injury to his right foot. He was ultimately determined to have DVT in the right lower extremity, which the employer and insurer concede was related to the work injury. The employee was treated with coumadin and an elastic stocking, and he sought medical care for right leg swelling in each of the years from 1990 through 1994. The employee testified that he continued to experience swelling and soreness of his right lower leg thereafter.

¹ See Roraff v. State of Minn., 288 N.W.2d 15, 32 W.C.D. 297 (Minn. 1980).

Medical records reflect that the employee was seen on May 14, 1999, for two conditions: an infection in his right leg, and what was believed to be a fresh DVT of the right leg. The employee testified that the infection cleared in a week, which is confirmed by medical records that indicate that the medication for the infection was administered for only one week. Thereafter, however, the employee continued to experience pain and swelling of the right leg, and he missed time from work. Treatment consisted of coumadin, a compression stocking, and some physical therapy.

The compensation judge apparently accepted Dr. Kolts' opinion that the employee did not suffer a new DVT in May of 1999 but rather had an infection (cellulitis), which led to a rash and increased swelling (edema).² Dr. Kolts' opinion, in that regard, was given in response to an inquiry as to whether the employee would be required to take coumadin for the rest of his life. Dr. Kolts responded that the employee would not. However, in the same report of August 4, 2000, Dr. Kolts also opined that the employee suffered from post phlebotic syndrome, which he related to the 1989 work injury. It was Dr. Kolts' opinion that "[t]here is a natural history for deep venous disease to get worse over time so the patient may very well be worse in ten years than he is now. . . ." Dr. Kolts also stated that the employee would need a compression stocking, weight control, and physical activity to prevent a worsening of the work-related deep venous disease. Those statements, coupled with his statement that "[a]nytime this patient gets a cellulitis, the edema is likely to get worse in the leg" [emphasis added], provide substantial support for the judge's finding that the 1989 injury was a substantial contributing cause of the employee's disability and need for medical care after May 14, 1999.

We see this as a very close case, in that the medical issues are complex, and the expert opinions are less than definitive. However, both Drs. Kolts and Vessey agreed that the 1989 injury resulted in some permanent damage to the veins of the employee's right leg. The compensation judge accepted as credible the employee's testimony that he had pain and swelling in the right leg off and on from 1989 until May 14, 1999. In addition, Dr. Kolts' records reasonably imply that the infection in May of 1999 was the triggering episode in the flare-up of the employee's preexisting post phlebotic syndrome but that the underlying, substantial contributing cause of the employee's problem was that post phlebotic syndrome, which the doctor related to the 1989 injury. Therefore, while another factfinder might have decided the issue differently, we affirm the judge's decision as to causation.

2. Roraff Fees

The compensation judge issued his order on attorney fees on November 9, 2000, the 30th day after the filing of the findings and order. Apparently, unbeknownst to him, the

² The compensation never actually stated that he adopted the opinion of Dr. Kolts. In fact, in his memorandum, the judge indicated that Dr. Kolts "did not state this as an opinion based upon a reasonable degree of medical certainty." However, the judge did find that the employee had a right leg infection on May 14, 1999, which aggravated his preexisting venous injury, causing an acute increase in right leg pain and swelling. We find that Dr. Kolts' records and reports, taken as a whole, support that finding.

employer and insurer timely filed an appeal on that same date. As such, it was premature for the judge to issue an award on attorney fees pending resolution of the appeal. The November 9, 2000, order granting attorney fees is therefore vacated and the matter remanded to the compensation judge for reconsideration of the employee's fee claim in light of the employer and insurer's objection.