

DALE C. SCHMIDTKE, Employee/Appellant, vs. STERN DRYWALL, INC., and GENERAL CAS. INS. CO., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
APRIL 9, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - TEMPORARY AGGRAVATION. Substantial evidence supports the compensation judge's determination that the employee sustained a temporary aggravation of his pre-existing degenerative cervical spine condition, reasonably relying on the opinions of the independent medical examiner and on his determination that the employee's testimony was not credible.

Affirmed.

Determined by: Johnson, J., Wilson, J., and Pederson, J.
Compensation Judge: Gary M. Hall

OPINION

THOMAS L. JOHNSON, Judge

The employee appeals the compensation judge's decision allowing the employer and insurer to discontinue wage loss benefits. We affirm.

BACKGROUND

Dale C. Schmidtke, the employee, sustained an injury on April 20, 1999, while working for Stern Drywall, Inc., the employer. The employer and General Casualty Insurance Company admitted liability for the employee's personal injury.

On April 23, 1999, the employee sought treatment at Navarro Chiropractic. An intake form was completed in which the employee stated his major complaint was a stiff neck, stated the symptoms appeared a "month ago" and attributed this condition to an "unknown cause." A case history prepared on April 23, 1999, recorded the employee's chief complaint as a cramp in the left side of his neck for over a month, now extending across both shoulders and both sides of his neck. The employee reported that he fell off a stepladder at home two days previously and was now unable to rotate his head to the left without pain. Dr. Selly-Navarro began a program of chiropractic manipulation, trigger point therapy and ultrasound. The employee returned to see Dr. Selly-Navarro on April 24, 1999, and stated his symptoms had decreased. The employee next returned to the clinic on April 30, 1999, and thereafter was treated several times a week.

Dr. Selly-Navarro referred the employee to the Center for Diagnostic Imaging for an MRI scan of the cervical spine which was obtained on May 24, 1999. The scan showed two-level cervical disc degeneration with a small, left posterolateral and left medial foraminal disc herniation with possible compression of the left C7 nerve root, and a lateral C4-5 annular tear and bulge, without herniation, compression or stenosis. (Resp. Ex. G.)

A case update was prepared on May 28, 1999. This history stated the employee fell off a scaffold at work on April 20, 1999, fell two to three feet, struck a steel door frame and then hit his elbow on the floor. The employee further reported a plank came up and hit him on the back/right side of his neck. (Resp. Ex. A.)

On June 18, 1999, the employee was examined by Dr. Mary Chiasson at the Noran Neurological Clinic on referral from Dr. Selly-Navarro. The employee complained of right shoulder and neck pain secondary to a fall at work. The doctor's neurologic examination was normal. The diagnosis was a cervical sprain/strain with upper extremity symptoms. Dr. Chiasson found no evidence of frank radiculopathy and recommended continued conservative care. The employee returned to see Dr. Chiasson on July 27, 1999. The doctor diagnosed persistent neck pain, radiating arm pain and a pressure-type headache. A cervical myelogram on that date showed a mild ventral deformity of the cervical thecal sac at the C6-7 level. (Resp. Ex. G.) A post-myelogram CT scan showed a small disc herniation at C6-7 which effaced the ventral aspect of the thecal sac and a minimal posterior bulging disc at C4-5. Dr. Chiasson ordered a discogram which was done at Abbott Northwestern Hospital on July 29, 1999. The study showed a concordant neck pain pattern produced by injection of the C4-5 disc, a somewhat concordant neck and shoulder pattern produced by injection of the C5-6 disc and concordant left neck and shoulder blade pain pattern produced by injection of the C6-7 disc. (Resp. Ex. G.)

The employee was examined by Dr. Gregg N. Dyste at Metropolitan Neurosurgery, P.A., on August 31, 1999. The employee complained of neck pain aggravated by sitting with radiation into the left arm and some paresthesias in the right arm. On examination, the employee's range of motion was limited in flexion, extension, rotation and lateral bending. The doctor's neurologic examination was essentially normal. Dr. Dyste diagnosed three-level degenerative cervical disc disease with a disc herniation at C6-7. The doctor concluded surgery was not an option and stated he would not recommend a cervical fusion for benign degenerative disc disease in a 34-year-old male.

On December 22, 1999, Dr. K. Stephen Kazi, an orthopedic surgeon, examined the employee at the request of the employer and insurer. The doctor diagnosed C4-5 and C6-7 degenerative disc disease with annular tears and a small disc herniation at C6-7. The doctor further noted evidence of symptom magnification and functional overlay. Dr. Kazi concluded the employee's degenerative disc disease pre-existed and was not caused by the April 20, 1999 personal injury. The doctor opined this injury was a temporary aggravation of the employee's underlying degenerative disc disease that had resolved within three months. Dr. Kazi concluded the employee sustained no permanent partial disability as a result of the April 20, 1999 injury and opined the employee had reached maximum medical improvement (MMI) three months after the injury. (Pet. Ex. 1.)

On January 24, 2000, the employee was seen by Dr. Matthew A. Eich at Fairview Red Wing Health Services for a second opinion regarding his neck complaints. On examination, Dr. Eich noted limitation of cervical motion. The doctor interpreted the discogram as demonstrating a significant abnormality at the C5-6 level and the myelogram as demonstrating a deformity at C6-7. Dr. Eich diagnosed discogenic neck and left arm pain secondary to the April 20, 1999 personal injury, and recommended a repeat MRI scan and a second discogram to further define the cervical levels causing problems. (Resp. Ex. E.)

The employee was examined by Dr. Timothy A. Garvey on July 6, 2000, for a second opinion for potential surgical options. Following an examination, the doctor concluded the employee had dominant mechanical neck pain involving C4-5, C5-6 and C6-7. Dr. Garvey recommended continued conservative care and stated a fusion surgery should be a last resort. (Resp. Ex. E.)

Dr. Kazi re-examined the employee on July 17, 2000. In preparation for this examination, Dr. Kazi reviewed additional medical records not available to him at the time of his first examination. These medical records reflect cervical injuries and complaints pre-existing the April 20, 1999 work injury. On January 20, 1989, the employee was involved in a car accident when his car slid into a ditch. The employee was seen at the Allina Medical Clinic in Northfield complaining of a headache and stiffness and soreness in his neck. On examination, the doctor noted tenderness in the left cervical muscles without spasm. The diagnosis was neck strain. The employee was re-examined on January 23, 1989 with continued complaints of mild headaches and increased stiffness in his neck. The doctor noted some mild to moderate right cervical muscle tenderness and spasm. The diagnosis remained cervical strain. The employee was allowed to return to work with restrictions on heavy lifting. (Pet. Ex. 4.)

The employee was involved in a second car accident on November 25, 1989, and sought treatment at Erickson Chiropractic complaining of right-sided neck pain and middle and lower back pain. The employee was also seen at the Allina Clinic in Faribault complaining of neck and back pain following the car accident. The doctor diagnosed a sprain of the neck, back and shoulders and a concussion, by history. (Pet. Ex. 3.) The employee was involved in another car accident on March 2, 1990, and returned to Erickson Chiropractic. The employee complained of tremendous headaches, pain on the left side of his neck and pain down his middle and lower back. Dr. Charnstrom diagnosed acute traumatic cervical strain and commenced a course of chiropractic treatment. On June 10, 1991, the employee had another car accident. The employee returned to Erickson Chiropractic complaining of pain in his right shoulder and neck. Records from Erickson Chiropractic in January and February 1993 reflect continuing complaints of cervical pain. (Pet. Ex. 2.)

On April 22, 1994, the employee was seen by Dr. Roy H. Good at the Allina Medical Clinic in Faribault, Minnesota. The employee complained of middle back pain following an earlier car accident which he aggravated two weeks previously. On examination, Dr. Good noted tenderness in the employee's upper back and into his neck. The doctor diagnosed back discomfort due to tenosynovitis and prescribed a shoulder and neck rehabilitation exercise program. On May 11, 1994, the employee returned to see Dr. Good and gave a history of a car accident on April 12, 1994. The employee complained primarily of pain in his lower thoracic and

upper lumbar area. Dr. Good ordered an x-ray of the employee's cervical, thoracic and lumbar spine. The cervical spine study was reported as normal with no fracture, dislocation or soft tissue swelling identified. (Pet. Ex. 3.)

In his report dated July 17, 2000, Dr. Kazi again diagnosed degenerative disc disease at C4-5 and C6-7, chronic, with annular tears and a small herniation at C6-7. The doctor concluded the changes noted on the MRI and CT scans were due to an aging process of the cervical spine accelerated by multiple prior serious injuries as documented in the medical records. Dr. Kazi opined the April 20, 1999, work injury temporarily aggravated the employee's pre-existing condition but this aggravation resolved after two chiropractic treatments. The doctor again stated the employee's injury resolved without permanent partial disability. (Pet. Ex. 1.)

On March 6, 2000, the employer and insurer filed a Petition to Discontinue Benefits alleging the employee had recovered from the effects of his personal injury, had reached maximum medical improvement on January 11, 2000, and was not entitled to ongoing temporary total disability benefits. The case was tried before Compensation Judge Gary M. Hall on October 5, 2000. At the hearing, the employee testified he sustained an injury on April 20, 1999, while working for the employer. The employee stated he fell off a scaffolding and hit his neck on a door frame and then slid down and landed on his left elbow. A plank from the scaffolding then hit the employee somewhere in the right side of his neck and shoulder. The scaffolding was three to three and a half feet off the ground. Immediately after the fall, the employee thought he had broken his left elbow. (T. 17-18.) On Friday, April 23, 1999, the employee testified he woke up with a muscle spasm in his right shoulder and neck area causing him to seek treatment at Navarro Chiropractic. The employee testified he purposely did not give Navarro Chiropractic a history of a work injury because he felt the injury was not serious and he didn't want to claim workers' compensation benefits. (T. 20-21.) The employee testified Dr. Navarro treated him on Friday and Saturday and his symptoms abated. On April 30, however, the employee experienced what he described as major muscle spasms in his neck and arm and he returned for further treatment. At some point thereafter, the employee told Dr. Navarro about the injury at work on April 20, 1999. (T. 21-23.)

In a Findings and Order filed October 10, 2000, the compensation judge found the April 20, 1999 work injury resulted in a temporary aggravation of the employee's pre-existing cervical condition that resolved after two chiropractic visits. The judge found the April 20, 1999 work injury was not a substantial contributing factor in the employee's present complaints. The compensation judge adopted the opinions of Dr. Kazi, found the employee's testimony regarding the nature and extent of his injury was not credible and found the medical support provided by the employee lacked adequate foundation due to incomplete and sometimes inaccurate information provided to his treating doctors. Based on these findings, the compensation judge granted the employer and insurer's petition to discontinue benefits. The employee appeals.

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 employee asserts the compensation judge's conclusion that the employee lacked credibility and his finding that the employee's medical evidence lacked foundation are unsupported by substantial evidence. Further, the employee argues the compensation judge erroneously relied on Dr. Kazi's opinion that the employee had a pre-existing cervical condition that was the substantial cause of his ongoing problems. The employee argues there are no facts to support the doctor's conclusions, and the compensation judge's decision must, therefore, be reversed. We disagree.

The medical opinions of Dr. Selly-Navarro, Dr. Chaisson and Dr. Eich support the employee's contention that his work injury of April 20, 1999, was permanent and the employee continues to be totally disabled. Dr. Kazi, on the other hand, opined the employee's injury was a temporary aggravation of a pre-existing condition which resolved after two chiropractic treatments. The compensation judge specifically adopted the opinions of Dr. Kazi. It is the compensation judge's responsibility, as trier of fact, to resolve conflicts in expert testimony. See Nord v. City of Cook, 360 N.W.2d 337, 342, 37 W.C.D. 364, 372 (Minn. 1985).

The employee argues Dr. Kazi lacked foundation for his opinions and the compensation judge improperly relied upon them. Medical opinions which lack foundation may not be relied upon by the compensation judge. 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). The employee argues the facts do not support Dr. Kazi's opinion that the employee's pre-existing cervical condition is the substantial cause of his ongoing cervical complaints. The employee contends he had no cervical symptoms for five years prior to his April 20, 1999 injury. The employee also points to what he erroneously describes as an MRI scan in 1994 which he asserts was "completely negative, without herniations, annular tears, disc bulging or nerve compression." (Ee Brief p. 6.) The May 24, 1999 MRI scan, in contrast, showed a disc herniation and annular tears at C6-7 with bulging and compression of the C7 nerve root. Since this condition did not exist in 1994, the employee argues Dr. Kazi erroneously attributed the employee's current condition to his prior car accidents. We are not persuaded.

The employee testified he did not sustain any significant injury or have any lasting symptoms as a result of his car accidents. (T. 34-40.) The employee further testified the April 20, 1999 personal injury caused the onset of his cervical and arm symptoms. The compensation judge, however, specifically found the employee's testimony regarding the nature and extent of his injury

and the history of his other injuries was not reliable, credible or convincing. (Finding 5.) "Assessment 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 gave Dr. Navarro two different histories, one work-related and one not. On cross-examination, the employee repeatedly denied recollection of the physical complaints he presented to the treating doctors following his car accidents. The evidence reasonably supports the compensation judge's finding on credibility.

On May 11, 1994, the employee was treated at the Faribault Clinic for injuries sustained in the April 12, 1994 car accident. Dr. Good ordered an x-ray of the cervical, thoracic and lumbar spine. The cervical spine x-ray reflected no fracture, dislocation or soft tissue swelling. (Pet. Ex. 3.) This x-ray, standing alone, does not, as the employee contends, render Dr. Kazi's opinions without foundation. This was an x-ray study, not an MRI scan as the employee contends. Further, this x-ray, standing alone, does not negate Dr. Kazi's opinion that the employee had an early onset of degenerative disease because of his many accidents. In any event, Dr. Kazi was aware of the x-ray study and considered it in rendering his opinions. We conclude Dr. Kazi's causation opinions are adequately founded and the compensation judge reasonably relied upon them. The findings and order of the compensation judge are, accordingly, affirmed.