RUSSULL SCHWARTZ, Employee/Appellant, v. MORELL SERVS., INC., and MID-CENTURY INS. CO., Employer-Insurer, and ST. PAUL PAINTING INDUS. HEALTH AND WELFARE FUND, Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
JANUARY 8, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - GILLETTE INJURY. Substantial evidence, including expert medical opinion, supports the compensation judge's determination that the employee failed to prove he sustained a Gillette injury arising out of his employment duties with this employer.

Affirmed.

Determined by Johnson, J., Wilson, J., and Pederson, J.
Compensation Judge: Bonnie A. Peterson

OPINION

THOMAS L. JOHNSON, Judge

The employee appeals the compensation judge's finding that he failed to prove he sustained a Gillette-type[1] personal injury arising out of his employment with Morell Services, Inc. We affirm the finding that the employee did not sustain a compensable personal injury.[2]

BACKGROUND

Russull Schwartz, the employee, left school in the tenth grade. He attended an apprenticeship program for the Plasterers' Union at St. Paul Vo-Tech from 1963 to 1967, and then worked through the Plasterers' Union Local 20 until 1969 or 1970. (T. 13, 15.) The employee worked on apartment buildings, commercial structures and homes, both interior and exterior. (T. 15-16.) By 1969 or 1970, drywall (sheetrock) was replacing plaster for use on the interior of buildings. The employee then transferred to the Painters' Union and began doing drywall and construction repair. (T. 36-37.) The employee testified he worked for Complete Drywall from

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

[2] The employee also appealed the compensation judge's finding that he failed to give statutory notice of his injury, and the judge's finding regarding the amount of the employee's weekly wage. Based on our affirmance of the judge's finding that the employee did not prove he sustained a personal injury, we do not address these issues.

1977 through 1994, doing drywall work.[3] (T. 104-107.) Thereafter, the employee worked for a number of companies, always doing drywall work. (T. 109-110.)

The installation of sheetrock on to walls was typically done by sheetrockers or carpenters. After the sheetrock was hung, the employee's job was to apply a joint compound to fill the space between abutting pieces of sheetrock and fill screw holes. The employee used a putty knife to apply the joint compound. After the compound dried, the employee applied perfotape over the joints. This work typically involved repetitive use of both arms. (T. 56-70.) In addition, the employee frequently worked with his arms and hands above chest level. (T. 72-73.) The employee testified the drywall taping business was very competitive and required him to work at a fast pace. (T. 75.)

On July 29, 1968, the employee sought treatment at the Rice Street Clinic complaining of pain in his elbows, wrists and shoulder joints. The doctor noted the employee was a plasterer and used his arms considerably. The employee returned to the clinic on December 9, 1975, with right shoulder complaints. The diagnosis was acute tendinitis. On October 8, 1979, the employee was seen at the clinic complaining of a painful right elbow which the doctor thought was probably secondary to the employee's work. On October 30, 1979, a doctor at the clinic diagnosed bilateral epicondylitis and recommended anti-inflammatory medication. The employee had a physical at the Rice Street Clinic on October 30, 1996. He complained of elbow pain which he related to lifting heavy sheets of drywall at work. On December 3, 1998, the employee gave a history of continued problems with arthritis and elbow pain and reported that he took six ibuprofen tablets a day.

In 1995, the employee began wearing tennis elbow straps on both arms which helped the burning sensations he experienced in both elbows. By 1998, the employee testified the pain in his arms, back, elbows and neck had reached a level of ten on a scale of one to ten. (T. 113.) He stated that before he started work for Morell, he felt drywall work was too much for him physically and he just could not do it anymore. The employee testified the pain caused him to be unable to keep up with other workers, and believed he had been laid off by his most recent employers because he was unable to keep up with the other employees. (T. 117-122.)

The employee decided to give the drywall business "one more shot" because he had financial problems. (T. 123.) In January 1999, the employee was hired by the employer. He worked for the employer until February 12, 1999, doing primarily drywall work similar to the work he had been doing for many years. (T. 135-136.) During his employment, the employee worked the following number of days and hours:

Week Ending	Days Worked	Total Hours
1-06-99	2 days	16.0 hours
1-13-99	5 days	37.0 hours

[3] The employee's social security records, Respondent Exhibit 10, indicate the employee was self-employed from 1979 through 1994. The employee's employment status during this period of time is not relevant to this appeal.

1-20-99	5 days	36.0 hours
1-27-99	5 days	36.5 hours
2-3-99	5 days	40.0 hours
2-10-99	4 days	21.0 hours
2-17-99	2 days	11.0 hours
TOTALS:	28 Days	**197.5 Hours**

(Resp. Ex. 4.) After working for approximately eight days, the employee told Greg Morell he was going to retire. (T. 123-124.)

The employee returned to the Rice Street Clinic on January 18, 1999, with continuing complaints of pain in both elbows, his right shoulder and both wrists and hands. The doctor recorded the employee stated he was "unable to keep up his pace of work as he used to. He continues to work in drywall and does all of the heavy lifting himself. He says he has worked for six different contractors in the last few months because he can't keep up with what their demands are." On examination, the doctor noted tenderness in the subdeltoid area which he injected with Aristospan. The doctor told the employee that given the extent of his problems, "he may have to look at disability, since he is not able to keep up with the heavy work." The employee returned to the clinic on January 27, 1999, and stated he was unimproved. The doctor again noted the employee "obviously can't do any of the hard and heavy work he needs to do for the drywall contracting he has been doing. He has been layed off a couple jobs because he couldn't keep up. I think with the amount of muscle and joint soreness that he has he should apply for disability as he can't do that occupation gainfully anymore." (Pet. Ex. H; Resp. Ex. 2.)

By report dated April 26, 1999, Dr. Timothy F. Lane at the Rice Street Clinic responded to an inquiry from the employee's attorney. The doctor stated the employee "has had long-term pain in his elbows, shoulders, wrists, hands, back and neck. I believe you have my office records that reflect this. I believe all of these pains are the result of Russull's heavy work as a drywall taper and plasterer for the last 35 years and that his problems are certainly caused and aggravated by this employment. It is this condition of chronic pain and inability to perform his duties subsequent to the pain that are the total cause of his disability." Dr. Lane further stated the employee demonstrated no evidence of rheumatoid disease or other inflammatory condition. Rather, the doctor believed the employee's condition was caused by his employment. (Pet. Ex. E.)

On August 10, 1999, Dr. Bruce Van Dyne examined the employee at the request of the employer and insurer. The doctor felt the employee's joint pain was consistent with possible inflammatory arthritis with mild degenerative arthritis of the shoulders and a mechanical low back pain syndrome. Dr. Van Dyne stated the employee's work for Morell Services was not a substantial contributing cause of his present medical situation. (Pet. Ex. G; Resp. Ex. 1.)

On November 10, 1999, the employee was examined by Dr. Peter J. Daly. The doctor diagnosed right greater than left shoulder rotator cuff tendinitis, impingement, AC degenerative joint disease, bilateral elbow epicondylitis, bilateral knee chondromalacia patella and probable medial meniscal degenerative changes. Dr. Daly opined the employee's repetitive

activities at work contributed substantially to his shoulder, elbow and knee diagnoses. (Pet. Ex. I.) By report dated April 7, 2000, Dr. Daly opined the employee's recurrent rotator cuff tendinitis and lateral epicondylitis were caused by his repetitive work activities and constituted a Gillette-type personal injury. (Pet. Ex. F.)

The employee filed a claim petition alleging an injury on February 4, 1999, to his neck, back, shoulders, arms and knees and seeking benefits. The employer and insurer denied the employee sustained either a specific or Gillette-type injury arising out of the employee's work for the employer. The case was heard by a compensation judge at the Office of Administrative Hearings on April 20, 2000. In a findings and order filed June 27, 2000, the compensation judge found the employee failed to prove that his work activities for the employer caused, aggravated or accelerated the employee's physical complaints. The compensation judge further found the employee failed to give statutory notice of any injury with the employer. Accordingly, the compensation judge denied the employee's claims for 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 compensation judge found the employee did not prove he sustained a personal injury while working for the employer. The employee contends this finding is unsupported by substantial evidence, and argues the record contains ample medical evidence to support a Gillette injury. Specifically, the employee points to the Rice Street Clinic records which demonstrate a long history of complaints related to the employee's work activities. The employee also points to the medical opinions of Dr. Lane and Dr. Daly that the employee's heavy work as a drywall taper caused and aggravated his problems. Accordingly, the employee argues the compensation judge's finding must be reversed. We disagree.

An injury is compensable if the employment is a substantial contributing factor either to the cause of the condition or to an aggravation or acceleration of a pre-existing condition. Wallace v. Hanson Silo Co., 305 Minn. 395, 235 N.W.2d 363, 28 W.C.D. 79 (1975). An employee need not prove the employment was the sole cause, only a substantial contributing cause of the disability for which benefits are sought. Swanson v. Medtronics, Inc., 443 N.W.2d 534, 42 W.C.D.

91 (Minn. 1989). However, "imposition of liability on the last insurer is not automatic but must rest on proof connecting the employee's disability to the employee's job duties during that insurer's period of coverage." Crimmins v. NACM No. Central Corp., 45 W.C.D. 435, 439 (W.C.C.A. 1991), summarily aff'd (Minn. Nov. 26, 1991). Thus, to prevail in this case the employee must prove that his work duties during his period of employment with Morell Services were a substantial contributing cause of his disability. See also, Tannahill v. Mid-American Lines, Inc., 40 W.C.D. 726 (W.C.C.A. 1987).

The medical records and the employee's testimony demonstrate the employee had significant wrist, elbow and shoulder problems before he started work for Morell Services. The employee worked for Morell Services for only 28 days, and after only eight days the employee stated he was going to retire. The Rice Street Clinic records from January 1999 do not reflect any significant change in symptoms, complaints or diagnosis compared to prior examinations. Dr. Van Dyne testified the employee's work with the employer was not a substantial contributing cause of his disability. Although both Dr. Lane and Dr. Daly opined the employee sustained a Gillette injury caused by his employment as a plasterer and taper, neither doctor stated the employee's work with Morell was a substantial contributing cause of his disability. Whether a particular period of employment is a substantial contributing cause of an employee's condition is generally a question of fact for the compensation judge. Because substantial evidence supports the compensation judge's determination, it must be affirmed.