

KAY L. SOULE, Employee/Appellant, v. FOREST LAKE CLINIC d/b/a ALLINA MED. GRP., SELF-INSURED/GALLAGHER BASSET SERVS., Employer, and MEDICA CHOICE FOR HRI, Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS  
JUNE 11, 2001

No. [REDACTED SSN]

HEADNOTES

NOTICE OF INJURY. The compensation judge erred in finding the employee failed to give timely statutory notice where the employee, a licensed practical nurse, told the podiatrist with whom she worked, and who supervised her nursing activities on a daily basis, about her work-related left ankle injury and received treatment from the doctor for her left ankle injury, despite the employer's policy requiring the employee to give notice of work injuries to the employer's clinical services coordinator.

Reversed and remanded.

Determined by Johnson, J., Rykken, J. and Pederson, J.  
Compensation Judge: Jeanne E. Knight

OPINION

THOMAS L. JOHNSON, Judge

The employee appeals from the compensation judge's finding that the employee failed to give statutory notice to the employer of her claimed injury.<sup>1</sup> We reverse.

BACKGROUND

Kay L. Soule, the employee, worked as a licensed practical nurse for Allina Medical Group, Forest Lake Clinic, the self-insured employer. The employee worked with Dr. Sharilyn Moore, a podiatrist. The employee testified she and Dr. Moore were a "two-man team." (T. 18.) The job required the employee to travel with Dr. Moore to the Allina Clinics in Forest Lake, West St. Paul and Roseville. (T. 15-16.)

On about April 6, 1998, the employee was walking from the Forest Lake clinic to her car in the parking lot when she slipped on the sidewalk and fell, injuring her left ankle. The fall occurred at the end of the work day and the employee went home and put ice on her ankle. (T. 19-21, 56-57.) The employee went to work the next day, told Dr. Moore about her fall and complained about pain in her ankle. (T. 22.) Dr. Moore examined the employee's ankle and

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<sup>1</sup> The employee also appealed the compensation judge's findings regarding the applicability of the trivial injury rule. We need not reach this issue.

concluded it was probably a mild sprain. The doctor did not prepare an office chart or make any notation regarding her examination because she thought the injury was only a minor strain. (T. 86-87.) The employee was not billed for the examination. (T. 23.) The following day, the employee's ankle still bothered her so an x-ray was obtained at the West St. Paul clinic. Dr. Moore reviewed the x-ray, told the employee her ankle was not broken and she probably suffered a mild strain which would heal in time. She advised the employee to place ice on her ankle and elevate her ankle and rest it if she could. The employee was not billed for the x-ray. (T. 60, 87-88.)

The employee's ankle continued to bother her, and she had periodic discussions with Dr. Moore about her ankle. (T. 28-29, 31-32, 89.) Initially, the employee placed ice on her ankle and tried to stay off it as much as she could. A couple of months after the injury, the employee began wearing a brace on her ankle. The employee stated she experienced intermittent swelling and pain in her ankle from April to December 1998. (T. 63-65.) The employee did not, however, miss any time from work due to her injury. (T. 30-31.)

In May 1999, when the employee continued to experience ankle pain, Dr. Moore ordered an MRI scan which showed chronic swelling with a tear of the peroneus brevis tendon and two torn ligaments. On June 24, 1999, Dr. Moore referred the employee to Dr. David Neese who performed surgery on January 12, 2000. (Pet. Ex. B.) Following the surgery, the employee was unable to work until February 9, 2000, when she returned to work with restrictions. (Pet. Ex. A.)

Dr. Moore testified the employee traveled with her to different clinics within the Allina system. She described the employee as a "nurse office manager," responsible for getting patients into the examination room, obtaining histories, scheduling and assisting in surgeries, and ordering supplies. Dr. Moore testified she supervised the employee's daily work and had authority to give directions and orders to the employee regarding patient care. (T. 83-84, 101.) Dr. Moore did not have the authority to fire the employee. (T. 54, 99.)

Ms. Gloria LaMere was the clinical services coordinator for the employer at the Forest Lake Clinic. Her job included hiring and firing employees, supervising the nurses, and monitoring and evaluating nursing staff performance. (T. 109-110.) When the position of Dr. Moore's assistant became available, both Ms. LaMere and Dr. Moore interviewed applicants and jointly decided to offer the position to the employee. (T. 112-13.) In her performance evaluations of the employee, Ms. LaMere spoke with Dr. Moore regarding the employee's job performance. (T. 114-15.)

Ms. LaMere was the employee's direct supervisor. (T. 17, 50-51.) She saw the employee about once a week, because Dr. Moore and the employee were in the Forest Lake clinic only two days a week. (T. 51, 71-72, 115.) Ms. LaMere testified she first became aware of the employee's injury in December 1998 or January 1999. She noticed the employee was limping and inquired about her condition and learned about the fall in the parking lot. Despite learning about the injury, Ms. LaMere did not prepare a first report of injury until June 28, 1999. (Resp. Ex. 1.) Ms. LaMere testified her failure to prepare and file a first report was "neglect on my part, and, again, I guess I felt it was a resolving thing." (T. 117-18.)

The employee testified the employer's policies and procedures required employees to report work injuries to their supervisor. (T. 49-51.) Ms. LaMere testified Dr. Moore was not the employee's supervisor nor was she part of management for the employer. (T. 126-29.) Ms. LaMere acknowledged, however, that the employee took directions from Dr. Moore on a daily basis, and conceded that Dr. Moore did supervise the employee's daily nursing activities and was responsible for giving orders and directing the employee's job performance. (T. 115-16, 131.)

In November 1999, the employee filed a claim petition seeking temporary total and temporary partial disability benefits, together with medical expenses. The employer denied the claim, contending the employee failed to give notice within 180 days of her injury. The case was heard by a compensation judge at the Office of Administrative Hearings on October 12, 2000. In a Findings and Order filed December 11, 2000, the compensation judge found the employee failed to give statutory notice of her injury to the employer and denied the employee's claims. The employee appeals.

## DECISION

The employee contends she gave timely notice of her injury to her employer under Minn. Stat. § 176.141. In her memorandum, the compensation judge explained her decision, stating the employee knew she was to report any injury to Ms. LaMere and her failure to do so bars the employee's claim. The employee argues this conclusion is legally erroneous. She argues Dr. Moore had actual knowledge of her injury, and because Dr. Moore was her supervisor, the doctor's knowledge must be imputed to the employer.

The self-insured employer responds that Ms. LaMere was the employee's direct supervisor, not Dr. Moore. Ms. LaMere was in charge of the nursing department, hired the employee, and monitored her performance. The employee knew she was to give notice of any injury to Ms. LaMere. The appellant concedes Dr. Moore did provide the employee with instructions and directions regarding patients, but points out she was required to do so because the employee had no authority or ability to prescribe medication, treat patients or diagnose conditions. (T. 101.) The employer argues Dr. Moore exercised no supervisory control over the employee so her knowledge cannot be imputed to the employer. Accordingly, the employer asks this court to affirm the compensation judge's findings.

Minn. Stat. § 176.141 sets forth the notice requirements for injuries other than occupational diseases. The statute states "unless knowledge is obtained or written notice given within 180 days after the occurrence of the injury, no compensation shall be allowed." The statute is clear that an injured employee is required to provide written notice of the injury to the employer unless the employer has actual knowledge of the injury. Actual knowledge is defined as knowledge of such information of the disability or the injury as would put a reasonable person on inquiry that the disability was work-related. Pojanowski v. Hart, 288 Minn. 77, 178 N.W.2d 913, 25 W.C.D. 206 (1970). There is no dispute that only Dr. Moore had actual knowledge of the employee's injury within the time limitations set forth by Minn. Stat. § 176.141. Thus, the issue in this case is whether Dr. Moore's knowledge may be imputed to the employer.

The employee argues that Dr. Moore supervised her work on a daily basis, and her actual knowledge of the employee's injury must, therefore, be imputed to the employer. "It is well settled that knowledge of an injury to an employee gained by a foreman or a superintendent of the employer is imputed to the employer." O'Brien v. H & M Asphalt Co., 224 N.W.2d 510, 511, 27 W.C.D. 659 (Minn. 1974). In O'Brien, the supreme court held the employer had statutory notice, noting "the foreman of the area in the plant in which the injury occurred, was also immediately responsible to the employer for the work in which the employee was engaged when injured, [and] had actual knowledge." In Yerhart v. Geo. A. Hormel & Co., 225 N.W.2d 851, 27 W.C.D. 780 (Minn. 1975), the supreme court again held that actual knowledge of the employee's foreman was imputed to the employer. Similarly, in Livgard v. Cornelius Co., 243 N.W.2d 309, 28 W.C.D. 413 (Minn. 1976), the court affirmed a factual finding that the employee's lead man on the shift and the company nurse had actual knowledge of the employee's injury.

There is no dispute that Dr. Moore directed and supervised the employee on a daily basis in the performance of her job as a nurse. Dr. Moore was, therefore, more than just a co-employee. Granted, Ms. LaMere was the employee's "direct supervisor" with more authority over the employee than that of Dr. Moore. We fail, however, to see any significant difference between the type of supervision performed by Dr. Moore and the supervision of a foreman or lead man as in the O'Brien and Yerhart cases.

The employer argues that these cases are distinguishable because, in this case, the employer had specific rules for reporting work injuries, and the employee failed to comply with the employer's reporting procedures. While an employer is entitled to establish rules for reporting work injuries, "an employer's rules as to notice are entirely irrelevant to the issue of whether the requirements of the [notice] statute have been satisfied." Philip v. Ford Motor Co., No. [REDACTED SSN] (W.C.C.A. Nov. 27, 2000) (employer had actual knowledge where employee was treated by in-house medical personnel even though union or plant rules required employees to report work-related injuries to employer's worker's compensation department.)

The evidence establishes that Dr. Moore was the employee's supervisor, and her actual knowledge of the employee's injury is imputed to the employer. The compensation judge's finding that the employee failed to give statutory notice is, accordingly, reversed.

Prior to the commencement of the hearing, the parties and the judge reviewed the issues. Counsel for the employer and insurer stated the only issue for the court to decide was statutory notice. The employer and insurer stipulated to the claims for temporary total and temporary partial disability, medical care and the claim of the intervenor. Counsel, however, reserved the right to review the employee's calculation of benefits. (T. 7-8.) We remand the case to the compensation judge to make appropriate findings and issue an order regarding the employee's claims for benefits. The compensation judge may request additional submissions from the parties and/or receive additional evidence at a hearing as appropriate.