

RAVIC SWANSON, Employee/Appellant, v. MN DEP'T OF AGRIC., SELF-INSURED, Employer, and MN DEP'T OF HUMAN SERVS., MILLER-DWAN MED. CTR., ST. MARY'S MED. CTR., DULUTH CLINIC, and HEALTHCARE RECOVERIES, INC./MEDICA CHOICE, Intervenor, and SPECIAL COMP. FUND.

WORKERS' COMPENSATION COURT OF APPEALS  
JANUARY 23, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL EVIDENCE. Where the employee's neurosurgeon was unable to state that the employee's 1980 low back injury was a substantial contributing cause of the employee's 1993 disability and the need for surgery in 1997, and the employer's experts stated there was no connection, the compensation judge was supported by substantial evidence in denying liability for the employee's permanent total status and his medical treatment against the 1980 employer.

Affirmed.

Determined by Wheeler, C.J., Wilson, J., and Pederson, J.  
Compensation Judge: Gregory A. Bonovetz.

OPINION

STEVEN D. WHEELER, Judge

The employee appeals from the compensation judge's determination that the December 1, 1980 injury sustained at the employer was not a substantial contributing cause to his need for medical treatment and permanent and total disability status. We affirm.

BACKGROUND

The employee, Ravic Swanson, was born on November 12, 1959, and was 21 years of age when he was injured on December 1, 1980, while working as a grain inspector for the State of Minnesota, Department of Agriculture, the employer. At the time of his injury he had a weekly wage of \$297.44. The employee testified that while attempting to obtain a grain sample he was pulling on a pole and felt a popping sensation in his low back on the left side. On the date of injury, he consulted with his family physician, Dr. H. C. Chapman, D.O., at the Duluth Clinic. Dr. Chapman's notes from December 1, 1980 reflect the following:

He was at work, pulling a 12' brass rod when he felt something pull in his back. He has not had difficulties with his back in the past. He presently notes pain in the lower lumbosacral area. He feels he is unable to work due to the pain.

Exam reveals full flexion to 90 degrees, full extension to 15 degrees, normal right and left bending, normal twisting and flexion. He does move with some hesitancy as the pain is persistent. No pain to palpation or percussion of the back. DTR are intact. Straight leg raising, sitting and lying are neg.

Impression: acute lumbosacral muscle strain, presently no evidence of herniated disc. Presently will have patient see P.T. at St. Mary's Hospital for treatments. Also to use rest and heat at home. He will miss work until he is feeling better.

(Pet. Ex. 3.)

The notes from the employee's initial physical therapy session on December 1, 1980, indicate that the employee's pain complaints were "localized to L paravertebral from T-5 level to T-11." His course of physical therapy was scheduled to be three times per week for two weeks. The notes from the December 10, 1980 session indicate "[g]reat improvement on condition over last week. Minimal discomfort [with] forward bending at limit of range." The notes also indicated that there were no spasms noted and reflected that the employee was making "[s]teady improvement." The final note from physical therapy on December 16, 1980 indicated that the employee's last treatment had been on December 10, 1980. (Pet. Ex. 4.)

On December 15, 1980, the employee returned to work at the employer. (T. 54, 91.) Although the employee had some limitations on his physical activities, he was unable to recall exactly what they were. (T. 55.) In any event, the employee testified that he was expected to do his regular job, which he did. (Id.) He stated that he had some pain when he returned to work and had some low back pain flare-ups while working. (T. 55-56.) The employee testified that the physical limitations or restrictions were temporary in nature and that at least by the summer of 1981 he was no longer under any restrictions or limitations as a result of the low back injury of December 1, 1980. (T. 118-19.) Through August of 1981, the employee was required to perform and did perform his job, which required strenuous activities. After his return in December 1980, he missed no time from work as a result of back problems. (T. 92.) In August of 1981, as a result of a reduction in staff, the employee was laid off by the employer. The employee stated that he was thereafter on "unemployment for awhile." (T. 57.)

Throughout the remainder of 1981 and during 1982 the employee consulted with his family physician for various problems, including the flu and a bruised left ankle, but the medical records of these consultations do not reflect any complaints of low back pain or difficulties. (Pet. Ex. 3.) The employee testified that between December 1980 and July 1983, he did not have any medical treatment concerning his back. (T. 100.)

On May 14, 1983, the employee was involved in a motorcycle accident when his vehicle went into a ditch and he flipped over the handlebars and he struck a tree.<sup>1</sup> X-rays were

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<sup>1</sup> The emergency room record indicates that the employee was unemployed at the time.

taken of the employee's ribs and cervical spine. The employee was diagnosed as having suffered a neck strain and concussion. The medical records do not indicate that the employee made any complaints of low back symptoms. (Pet. Ex. 6; T. 99-100.)

In July 1983 the employee consulted with Dr. Edward J. Lally, D.C., complaining of low back pain. (T. 58.) The employee advised Dr. Lally that he associated the pain with his December 1980 work injury. The employee testified that he had low back problems at the time of his layoff from the employer in 1981 and that they had never gone away. (*Id.*) Dr. Lally diagnosed a “[p]ersistent mechanical back strain associated with spinal scoliosis, lumbosacral defect and tropism.” He opined that the employee's condition was related to the December 1980 work injury. (Pet. Ex. 7.) The employee continued to intermittently obtain chiropractic care and treatment between July and December 1983.

In November 1983, the employee was seen by Dr. W. S. Pollard, a neurosurgeon, on referral from Dr. Lally. Based on this examination, in which the physician found near normal range of back flexion, knee and ankle reflexes intact, and no gross restriction in straight leg raising, he opined that the employee had a permanent partial disability rating of his spine of 10%. (Pet. Ex. 8, report of 11/16/83.)

On December 20, 1983, the employee was examined by Dr. John W. Hammond, D.C., at the request of the employer. The history Dr. Hammond recorded indicated that the employee indicated that he had injured his low back on December 1, 1980, in the motorcycle accident of May 14, 1983, and in December 1983, while lifting a feed sack. Like Dr. Lally, Dr. Hammond found that the employee had a pre-existing postural and structural lumbar defect, in the nature of left scoliosis, facet anomalies at L5-S1 and “Schmorl's-like deformities” from L3 through L5. He opined that this preexisting condition had been temporarily aggravated by the December 1, 1980 incident. He stated that the low back problems the employee complained of in July 1983 were related to the May 1983 accident. He found no permanent impairment related to the 1980 injury. He also stated that because of the employee's underlying postural and structural lumbar defects that he would continue to experience exacerbations if exposed to heavy lifting. (Pet. Ex. 9.)

Dr. Lally saw the employee again on August 10, 1984 for an evaluation. At that time he reported that since his last visit on December 14, 1984 [sic] the employee reported that he had “recurrent episodes of low back pain and stiffness.” In a report dated August 10, 1984, Dr. Lally stated that the employee's permanent partial disability rating should be 10% of the spine. (Pet. Ex. 7.)

The employee made a claim for a 15% permanent partial disability rating and medical and chiropractic treatment expenses related to the December 1, 1980 injury. In a stipulation for settlement entered into in October 1984, the self-insured employer agreed to pay an amount equivalent to 7-1/2% permanent partial disability of the back to close out a claim for 15% permanent partial disability of the back. The self-insured employer also agreed to pay a portion of Dr. Lally's bill and all of several medical bills. All future chiropractic expenses were closed out. Temporary total disability, temporary partial disability and rehabilitation claims were closed out through January 1, 1986. (Pet. Ex. 1.)

In 1984, after having completed a welding course, the employee moved to Rhode Island where he worked as a welder building ships until 1987. This work involved heavy physical labor, including carrying substantial weights and doing extensive welding in awkward positions. (T. 93.) While working in this job, the employee experienced low back pain and discomfort associated with his welding activities. (T. 61-62.) In February 1986, while in Rhode Island, he consulted with Gregg Oehler, a physician's assistant concerning low back pain which was described in his notes as follows:

He states that he was in a motorcycle accident back in 1982 [sic] and he occasionally has some low back problem. He has recently been having a low back problem where he notes some stiffness to the lower back at the end of his working day, but also he notes some decreased range of motion on occasion and some stiffness and pain to the neck.

(Pet. Ex. 10.) The medical records from this visit make no reference to a history of the December 1, 1980 incident. (Id.)

On April 5, 1986, the employee was involved in a motor vehicle accident when the vehicle that he was operating slid under a tractor/trailer, ripping off the top of the vehicle. The employee was able to slide across the front seat of the vehicle and sustained injuries to his cervical spine. (Pet. Ex. 10; T. 63, 95.) He was treated with physical therapy and returned to work as a welder in June 1986. The following the month, while serving as a welder, he fell approximately eight feet off scaffolding and complained of intermittent headaches. (T. 94.) The employee testified that he did not injure his low back in any of these incidents. In late 1986, the employee sought medical assistance with complaints of knee pain. (Id.)

In 1987, the employee returned to the northern Minnesota area. (T. 96.) From 1987 through the early 1990's, he worked as a welder or a laborer for Barko Hydraulics, Hallet Dock, Frazier Shipyards, Miller Hill Steel and Superior Steel. The employee testified that the work performed at these locations was very physical in nature. He also testified that while working at these various places of employment, his back "hurt like hell" at the end of the workday. (T. 66.) During this period, however, the employee did not seek any medical care or treatment for low back difficulties. (Id.; T. 101-02.) The records from Dr. Christine Audette, D.C., however, indicated that the employee sought chiropractic care for back and neck symptoms. He was seen on February 14, 1990, when the diagnosis was primarily related to cervical and thoracic problems. The initial history form indicated that he "sometimes" had lower back pain. (Pet. Ex. 11.)

On January 31, 1992, the employee was involved in a snowmobile accident. While traveling approximately 45 to 50 miles per hour, the employee "wrapped himself around a tree." (Pet. Ex. 11; T. 66-67, 104-06.) In this incident, the employee sustained head, neck and hip injuries and had low back pain. After this incident, the employee described his low back pain as "bad" and that he was experiencing radiating pain into the left leg. (Pet. Exs. 11 (Dr. Audette, 4/17/92) and 12 (Ashland Memorial Hospital, 1/31/92); unappealed Finding 46; T. 74, 106.) During February 1992 the employee had ongoing low back complaints and underwent a series of x-rays

of the lumbar spine. (Pet. Ex. 13.) On March 11, 1992, the employee went to the emergency room at St. Luke's Hospital in Duluth with complaints of low back pain and radiation down the left leg and up into the mid back. The emergency room records reflect that the history given by him at that time was that these symptoms had begun with the snowmobile injury in January 1992. (Pet. Ex. 14.) The employee again consulted with Dr. Audette on April 17, 1992, for treatment of his low back because of "shooting pains down left leg" which were attributed to the January 1992 snowmobile accident. In the history provided, the only past traumas listed were the automobile accidents in 1978 and 1985, a dirtbike incident in 1981, and the 1992 snowmobile accident. (Pet. Ex. 11.)

Again, on May 9, 1992, while traveling at approximately 30 miles per hour on a dirt bike, the employee flipped over the handlebars and landed on his feet before falling backwards. He stated that he experienced pain and symptomology in the left pelvic area as well as the low back. (T. 68-69, 107.) In November 1992, the employee was assaulted by three persons as he exited a local bar and was knocked unconscious and taken to a local hospital. The employee recalls additional low back pain as a result of that incident. (T. 69, 107.) In April 1993, the employee moved to the state of Georgia, where he had an opportunity to work overhauling a plant. The employee attempted this work but found that it aggravated his back and he voluntarily quit the position after five days. (T. 71.) The only other work activity the employee did after the work in Georgia was intermittent house painting over a one-month period during the summer of 1993 or 1994. (T. 72.)

In February 1994, the employee slipped on ice, landing flat on his back. (T. 70, 74, 109.) The hospital records from February 16, 1994, reflect that "[o]ver the ensuing 24 to 48 hours he developed increasing low back discomfort. He has some discomfort down the left lateral thigh to about the level of the knee." (Pet. Ex. 14.) The employee was diagnosed as having a low back strain with findings of mild to moderate degenerative changes in the lumbar spine with mild left convexity scoliosis and disc space narrowing at L3-4 and L4-5." (Unpeeled Finding 53.)

Throughout the period from 1994 through 1997, the employee experienced a number of reasons to consult with his physician, including ankle, sinus, throat and ear surgery. (T. 77-78, 101-114.) During this same period the employee testified that, especially after the slip and fall in February 1994, he experienced ongoing low back pain and discomfort. He obtained very little medical care or treatment for his low back problems. (T. 79; unappealed Finding 54.)

On July 22, 1997, the employee consulted with Dr. Warren A. Monson, M.D., at the Spirit Valley Medical Center, primarily complaining of bilateral knee pain, but also describing pain in his right ankle, left shoulder, both wrists and low back. (Pet. Ex. 15.)

On September 21, 1997, while at home, the employee bent over to pick up a small piece of wood and immediately felt low back pain which he described as like "someone stuck a knife" in his back. (T. 75.) He went to the urgent care clinic at St. Luke's Medical Center where he was seen by Dr. Lisa D. Stuber, M.D. He was diagnosed as having suffered a thoracic/lumbar strain. (Pet. Ex. 15.) The employee returned to urgent care on October 12, 1997. He was given medication and advised to see his primary physician. (*Id.*) He consulted with Dr. Monson on October 14 and 21, 1997 indicating that although he had made some improvement from the

September 1997 incident, approximately four or five days before he had a spontaneous onset of low back pain again. Dr. Monson referred the employee to Dr. James Mataczynski, M.D., an orthopedic surgeon, at the Duluth Clinic. He first saw the employee on October 27, 1997, who then complained of “low back pain predominately left lumbar with radiation into the buttocks and left lateral thigh.” The employee gave a history of first injuring his low back in 1980. The further history reflects that the employee indicated that after the 1980 work injury his symptoms “resolved within the course of two months.” He also noted the 1992 snowmobile accident but indicated that the symptoms from that incident “resolved over a period of 3-4 months.” Dr. Mataczynski referred the employee to Dr. Richard Freeman, a neurosurgeon, for a surgical consultation. (Pet. Ex. 3; T.19, medical summary.)

On November 3, 1997, the employee underwent a lumbar MRI. This test reflected L3-4 and L4-5 degenerative disc disease with central to left disc bulge and a small area of focal prolapse at L3-4, creating some lateral recess narrowing. Based on a diagnosis of left L3-4 and right L4-5 paracentral disc herniation with associated radiculopathy, the employee underwent laser assisted spinal endoscopic discectomy surgery on December 23, 1997, performed by Dr. Richard E. Freeman, M.D. (Pet. Ex. 17-18.) The surgery alleviated the sharp pain on the left side of the employee’s lower back, but he continued to experience low back pain with shooting pain to the right. (T. 81-82.) An MRI of February 26, 1998, reflected a slight improvement in the degree of the broad-based disc protrusions at L3-4 and L4-5. Because of continued low back pain and discomfort, in March 1998 the employee underwent a left L3-4 and L5-S1 facet block procedure. Throughout 1998, in addition to his low back complaints, the employee suffered a shoulder strain, continued to experience bilateral knee pain and head and neck pain.

On June 26, 1998, the employee’s attorney wrote to Dr. Freeman requesting his opinion concerning several aspects of the employee’s case. Among other questions, Dr. Freeman was asked whether “[i]t is more probable than not that the injury he sustained on December 1, 1980, that initiated lumbar pain, spasm, stiffness, flare-ups, and leg pain constituted a substantial cause of the ultimate need for surgery that [he] performed on this man for his lumbar spine?” In a September 28, 1998 report, in response to the letter from the employee’s attorney, Dr. Freeman’s response, in its entirety, was as follows:

Mr. Ravic Swanson has an extensive history of injuries to his neck and back as documented in my November 14, 1997, note. According to the information provided by your office, Dr. Pollard apparently provided Mr. Swanson with a 10% disability for his 1980 injury to his low back. As indicated in that November 14, 1997, note the numerous injuries since 1980 would suggest that it is more probable than not that the subsequent injuries sustained by this individual had more to do with his ongoing current problems than the initial 1980 injury. I would therefore not assign increased disability on the basis of the 1980 injury.

By a letter of October 15, 1998, the employee’s attorney requested that Dr. Duane F. Person, M.D., perform an evaluation of the employee and to give an opinion concerning several matters, including whether the employee’s injury of December 1, 1980 was a substantial

contributing cause of his need for surgery by Dr. Freeman in December 1997, an increase in the employee's permanent partial disability and the employee's current level of work restrictions. (Pet. Ex. 21.) The employee's attorney's letter briefly explained the employee's history and attached copies of many medical records concerning the employee's medical treatment from 1980 to 1998. On October 26, 1998, Dr. Person examined the employee and issued a report of the same date. In his report, Dr. Person traced the employee's medical history from the initial injury on December 1, 1980 through the December 27, 1997 surgery by Dr. Freeman. Dr. Person's report describes the employee's symptomology at the time of the examination as follows:

He has back pain. The back pain is steady. It is aching and burning in character. It goes across the low back. It is not one sided, but it does alternate from side to side. Bending and lifting are painful. Sitting for any period of time causes pain. Automobile riding is painful. Lying down does not cause him pain. Standing for a long period of time is painful. Twisting is painful. Coughing and sneezing causes pain. Buttock pain is present bilaterally, with the left side being worse. Leg pain is present. This is on the left. It is intermittent. It radiates down to his knee. He occasionally has some right sided pain, but it is not as severe as the pain on the left. He has no numbness or tingling in his legs or feet, no weakness. The pain that he has in his low back will from time to time radiate up into the thoracic spine, especially if he stands for too long of a period of time.

(Pet. Ex. 21.) On examination, Dr. Person found tenderness bilaterally in the paravertebral muscles, with a muscle spasm on the left side and tenderness in the sacroiliac joint on the left. He noted that the employee had limitations on his range of motion in his low back. Straight leg raising was positive bilaterally, he had decreased sensation in his right lower extremity, extensor weakness on the right and diminished ankle jerk on the right. Based on a review of the employee's x-rays, he found that the employee had degenerative disc disease at L3-4 and L4-5. His diagnosis of the employee's condition was "herniated intervertebral disc at L3-4 and at L4-5" which had necessitated laser discectomies at both levels.

It was his opinion that the December 1, 1980 injury was a substantial cause of the surgery that was performed by Dr. Freeman in December 1997. He found that the employee's current permanent partial disability rating should be 30% of the spine, of which 20% would be "due to his 12-1-80 injury, and 10% or one-third, would be due to the subsequent injuries." The injuries he cited in that respect were "primarily the two injuries he sustained, one on the motor bike and one on the snowmobile, in 1992." In addition, Dr. Person stated that it was his opinion that the December 1980 injury was a substantial cause of the employee's current level of work restrictions. He also provided a list of restrictions the employee should follow, which included not lifting over ten pounds, no repetitive lifting, no repetitive flexion, extension, lateral bending or rotating motions of his lumbar spine, no crouching, cramping or unusual positions, and no climbing on ladders. He stated that the employee should have the ability to change positions depending upon his symptoms. He further stated that the employee was permanently and totally disabled as

a result of his lumbar spine condition in that he is unable to work on any type of sustained competitive basis. (Pet. Ex. 21.)<sup>2</sup>

On June 11, 1999, the employee was examined by Dr. Larry S. Stern, an orthopedic surgeon, at the request of the self-insured employer. Dr. Stern issued a report on June 11, 1999, and provided testimony in the form of a deposition, taken February 16, 2000. Dr. Stern indicated that the employee advised him that he was injured in December 1980 while working for the self-insured employer and that “ever since that episode, he has had low back pain.” (Resp. Ex. 1, deposition exhibit 1.) Further history provided by the employee was that he was involved in heavy work from 1984 through 1992 which caused him back pain, was involved in a motorcycle accident in May 1983 which caused low back pain and a snowmobile accident in 1992 which increased his low back pain.

Based on his examination of the employee, his review of multiple medical records and the history provided by the employee, he provided the following diagnosis: right L4-5 disc herniation, left L3-4 disc herniation, mild central stenosis at L3-4, facet arthropathy at L3 to the sacrum, and status post left L3-4 and L4-5 laser-assisted endoscopic discectomies. He further stated that the employee’s “current disability is in no way causally related to the December 1980 low back injury.” He further indicated that the employee’s “current back disability is related to his multiple significant motor vehicle accidents over the years, as well as his heavy labor activities over the years, including welding, lifting heavy railroad ties, etc.” He further stated that “the medical records document that the 1980 ‘accident’ was a very limited event. Mr. Swanson apparently only required two physical therapy treatments for it and did not require treatment until he was involved in a significant motorcycle accident when he went off a ditch and hit a tree. I note that the chiropractic evaluation in 1984 did not find any objective findings on examination to support a permanent disability or injury as a result of the 1980 event.” He further stated as follows:

Clearly, Mr. Swanson’s back was good enough following the 1980 injury that he was able to work in many different areas over the years requiring heavy use of his low back, including a job such as welding and lifting 200-pound railroad ties. In addition, he has had multiple significant motor vehicle accidents, including car accidents, snowmobile accidents, and motorcycle accidents in which he was thrown off his bike or snowmobile at high speeds. I agree with Dr. Freeman that these events are far more likely to explain his current back condition than a relatively trivial injury in 1980, which did not require more than two physical therapy sessions.

(Resp. Ex. 1, report of 6/11/99.)

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<sup>2</sup> Subsequently, Dr. Person’s deposition was taken. In his deposition he explained the basis for his conclusion that the employee’s 1980 injury was a substantial contributing cause of his need for surgery, increased permanent partial disability and his permanent total disability status. (Pet. Ex. 22.)

In January of 2000, the employee underwent a discogram which revealed a full thickness posterior tear of the disc structure at L3-4, L4-5 and L5-S1. (Pet. Ex. 20) As of the date of hearing before the compensation judge on March 31, 2000, the employee was considering various options, including several different types of surgical procedures.

The employee filed a claim petition on January 11, 1999, seeking permanent total disability status from April 1993, an increase in his permanent partial disability rating and the payment of medical expenses as a result of the injury sustained on December 1, 1980. The matter came on for hearing before a compensation judge at the Office of Administrative Hearings on March 31, 2000. The compensation judge found that the employee had been permanently and totally disabled since April 1993, but that the December 1, 1980 injury at the employer was not a substantial contributing cause of his permanent total disability status. The compensation judge also indicated that as a result of the surgical procedure performed on the employee's back, that he would have a permanent partial disability rating of 30% of the low back, but that the December 1980 injury was not a substantial contributing cause of the additional permanent partial disability. The compensation judge also found that the December 1, 1980 injury was not a substantial contributing cause of the medical treatment claimed, including the 1997 lumbar surgery performed by Dr. Freeman. The employee appeals from the findings that the December 1, 1980 injury was found not to be a substantial contributing cause of his need for medical treatment and his permanent total disability from April 1993 forward. No appeal was taken from the finding that the employee's increased permanent partial disability was not causally related to the December 1, 1980 injury. (Findings 72, 73.)

#### 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, in determining the employee's December 1, 1980 injury was not a substantial contributing cause of the employee's permanent total disability status after April 1993 or his need for medical treatment, made the following findings and order:

66. On December 1, 1980 the employee sustained at most a lumbosacral muscle strain from which the employee effectively recovered.
67. Subsequent to the work injury of December 1, 1980 the employee has suffered specific, traumatic injuries to his low back which injuries constitute substantial, permanent aggravations of any prior low back condition, including the low back strain of December 1980, from which he had recovered.
68. In addition to specific, traumatic injuries suffered to the low back subsequent to December 1980, which specific, traumatic injuries substantially and permanently aggravated and affected the employee's low back, the employee also suffered from extensive periods of minute trauma to the low back, which minute trauma occurred while performing the physically strenuous duties at various places of employment as reflected in the findings above. These ongoing, minute trauma to the employee's low back substantially and permanently aggravated any preexisting low back condition.
69. No loss of time from work which the employee may have experienced since April 1993 is in any way attributable to nor substantially caused as a result of the lumbosacral strain of December 1, 1980.
70. None of the medical care and treatment provided to the employee and which is subject to the various claims of the intervenors was necessitated as a result of the lumbosacral strain of December 1, 1980.
71. Since April 1993, as a result of the myriad of physical injuries and conditions from which he suffers, including his low back condition, the employee has been permanently totally disabled. None of this permanent total disability is attributable to the lumbosacral strain of December 1, 1980, from which he had recovered.

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**ORDER**

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- I. Having determined that the lumbosacral strain of December 1, 1980 is not a cause of the employee's loss of

time from work subsequent to April 1993, is not a cause of the need for the claimed medical care and treatment and is not a cause of any claimed additional permanent partial disability and having determined that since December 1, 1980 the employee has suffered substantial, permanent, superceding injuries to his low back which are the sole cause of the employee's claims, the employee is entitled to none of the benefits claimed under the provisions of the Minnesota Workers' Compensation Act.

In his memorandum, the compensation judge makes the following observations:

Although the evidence establishes that the employee in fact did sustain a lumbosacral strain arising out of his employment in December 1980, a preponderance of the evidence also clearly establishes that the employee in fact recovered from the effects of that injury. The evidence clearly establishes that within a short period of time the employee returned to his physically taxing employment with this employer and was able to perform his assigned duties. The evidence also establishes that in August 1981 he ceased employment with this employer not because of any ongoing low back complaints but because of a general lay off. Further the evidence clearly establishes that throughout the 1980's and into the 1990's the employee was physically able to and did in fact perform substantial, heavy physical labor. This evidence reveals that as the employee indicated, at times at the end of the strenuous work days he was experiencing low back pain and discomfort. Finally the evidence clearly establishes that subsequent to December 1980 the employee suffered a myriad of dramatic, traumatic injuries affecting all parts of his body, including his low back. In addition the employee testified and the medical records confirmed that the employee also experienced traumatic injuries directly affecting and directly injuring his low back. Clearly the employee has suffered substantial, permanent, superseding injuries to his low back. It is because of those injuries and not the muscle strain of December 1980 that the employee is unable to work and has needed ongoing medical care and treatment.

In arriving at this conclusion the Court, of a necessity, has reviewed the rather substantial medical records, the employee's testimony and the depositions submitted into evidence. Although Dr. Duane F. Person, examining on behalf of the employee, was of the opinion the December 1980 injury was a substantial contributing cause of the employee's ongoing low back complaints, the need for additional treatment and the loss of time from work, the Court has not adopted Dr. Person's opinion. The Court does not find persuasive

Dr. Person's rational [sic] as to how he arrived at his opinion. Dr. Person appears to tie in the December 1980 injury because that was the first time the employee had had back difficulties. The Court does not find this persuasive. Neither does the Court find Dr. Person's more speculative opinion concerning the possible effects of the December 1980 injury. Dr. Person testified that the December 1980 event "could cause a real substantial jerking stress on the low back and when he heard it pop, he could have injured the disc at that time." However the fact that the incident of December 1, 1980 "could have" caused a real substantial injury does not constitute sufficient evidence to attribute any of the employee's claim to the injury of December 1980.

In reviewing all of the evidence presented the Court concludes, as did Dr. Richard E. Freeman, the employee's treating neurosurgeon, that the numerous subsequent injuries sustained by the employee really are the cause of the employee's present ongoing complaints.

On appeal, the employee argues that the compensation judge's finding that the December 1, 1980 injury was not a substantial contributing cause of his permanent total status or his need for medical treatment was not supported by substantial evidence and was clearly erroneous. The employee argues that the compensation judge's finding that the employee's December 1, 1980 injury was only a low back strain from which he completely recovered is clearly erroneous in light of the fact that the employee sustained a permanent injury, as evidenced by the medical evidence and the 1984 stipulation for settlement. In addition, the employee argues that having found that injuries following the December 1, 1980 injury were "superseding injuries," it is necessary to find that the 1980 injury must have played a part in the employee's current condition and therefore must be considered a substantial contributing cause, although not the only cause, of the employee's disability and need for medical treatment.

The issue before us is whether there is sufficient evidence in the record to support the compensation judge's determination that the employee's 1980 injury was not a substantial contributing cause to his need for surgery and his permanent total disability status. It is clear that the compensation judge found that the employee had not satisfied his burden of proving that a causal relationship existed between the 1980 injury and his claimed benefits. The compensation judge specifically rejected the medical opinion upon which the employee relied on this factual question. In his memorandum he stated that he specifically did not adopt the opinion of Dr. Person because he did not find his rationale persuasive. There was no other medical evidence offered by the employee to support his contention that the 1980 injury was a substantial contributing cause of his current difficulties. There was, however, substantial evidence in the record which would support the conclusion that the 1980 injury was not a substantial contributing cause of the employee's current difficulties. First, the opinion of Dr. Hammond from 1984 indicated that the 1980 injury was a temporary strain and was not permanent in nature. Second, the employee's treating neurosurgeon in 1997, when requested to do so by employee's counsel, refused to state that the 1980 injury was a substantial contributing cause of his need for surgery and restrictions on his ability to work. We note that Dr. Freeman stated as follows:

[T]he numerous injuries since 1980 would suggest that it is more probable than not that the subsequent injuries sustained by this individual had more to do with his ongoing current problems than the initial 1980 injury.

In addition, the self-insured employer's expert, Dr. Stern, specifically stated that the 1980 injury was not a substantial contributing cause of the employee's current difficulties. It also appears, from the medical records, that the employee failed to note the significance of the 1980 injury on a number of occasions when he was being treated by various medical providers. Specifically, in November of 1997 the medical records from Dr. Mataczynski indicate that the employee's difficulties in 1980 resolved within a relatively short period of time. The chiropractic records from Dr. Audette indicate that the employee did not list the 1980 injury as a significant trauma contributing to his low back problems. The notes from the 1986 visit to physician's assistant Oehler indicated that the employee provided a history of low back pain but attributed it as starting with a 1982 motorcycle accident and not the 1980 incident. In addition, as noted by the compensation judge, the employee did sustain significant injuries to his low back in other traumatic situations and as a result of his work activities. Dr. Hammond opined that the employee injured his low back in May 1983 as a result of a motorcycle accident. Even Dr. Person attributed some of the employee's present problems to the 1983 accident. The employee admitted that he sustained low back injuries as a result of the 1992 snowmobile accident, the 1994 slip and fall, the 1992 motorcycle accident and as a result of at least one of his physical altercations. In addition, there is evidence in the record, including the employee's testimony and the medical records from the physician's assistant in Rhode Island in 1986, that the employee was engaged in heavy strenuous physical work activities from 1984 to 1992 which caused him pain.

We note from Dr. Lally's 1983-84 records and from Dr. Hammond's 1984 report that the employee had a postural and structural defect in the nature of scoliosis, which Dr. Hammond indicated would be exacerbated and aggravated by heavy physical activity. We also note that the employee sought little medical attention for his low back injury after the 1980 incident, not seeing a doctor until July of 1983. The employee returned to his regular duties after the 1980 injury after only two physical therapy sessions and was working without restrictions when he was laid off in August of 1981. In addition, throughout the years between 1983 and 1992 the employee received very little medical attention for problems with his low back. We recognize that the employee testified that he had chronic low back problems which he treated without medical assistance, but the issue is whether there is substantial evidence in the record to support the compensation judge's conclusion. We recognize that there is some evidence in the record to support the employee's position, but the compensation judge rejected that evidence and was not persuaded that there was a connection between the 1980 injury and the employee's current difficulties. As the dispute was principally a factual question of causation, and the interpretation of medical expert opinions, this court will not overturn the compensation judge's factual determination. Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985); Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 37 W.C.D. 235 (Minn. 1984).

The employee's argument with respect to the compensation judge's comments concerning superseding injuries and the fact that the employee may or may not have had a

permanent injury in 1980 are not persuasive. First, even if the employee did have a permanent injury in 1980, the compensation judge could find that it was so relatively minor that for all practical purposes it had no effect on the ability of the employee to continue working after 1993 or his need for medical treatment after 1997. Such a finding would be supported by the employee's ability to continue to work in heavy labor jobs without seeking any medical attention, except on those occasions when he had specific traumatic incidents or was engaged in heavy work activities which specifically caused complaints. Even though an employee may have a minor permanent injury, this fact does not mean that all subsequent injuries or disabilities thereafter were substantially caused by the original minor permanent injury. There is, however, evidence in the record to support the conclusion that the employee's injury was not permanent in nature. Although the self-insured employer agreed to pay the employee permanent partial disability in the amount of 7-1/2% of his back, such a payment was not an admission that the employee had sustained a permanent injury but was the settlement and compromise of a claim for a 15% disability. At the time of that settlement, the self-insured employer's chiropractic expert was opining that the employee had no permanent disability to his back, and there is no indication in the stipulation that they did not rely on that opinion and admitted that the employee had sustained a permanent injury. That being the case, the compensation judge would be free to make a determination of whether the employee had sustained a permanent injury in 1980. As pointed out above, even if he had sustained a permanent injury, that fact alone would not support a finding that that injury was a substantial contributing cause of subsequent need for medical attention and restrictions on ability to work.

The compensation judge's use of the term "superseding" injuries does not mean that the 1980 injury was somehow underlying all of the employee's difficulties or that it was still playing a substantial role in the employee's current situation. The compensation judge's determination of his belief of what was causing the employee's difficulties is not important in this case because it was not necessary for the compensation judge to determine what was the cause of the employee's difficulties. The compensation judge was merely responsible for determining whether the 1980 injury was a substantial contributing cause of the employee's current difficulties. We need not review the question of whether the compensation judge was right in determining that subsequent injuries were the sole cause of his need for treatment and disability. It does appear, however, that there is some substantial support for that conclusion in the record, namely the medical records and opinions cited above.

As the compensation judge's determination that the employee's 1980 injury was not a substantial contributing cause of the employee's current need for medical treatment and restrictions on his ability to work, were supported by substantial evidence in the record and were not clearly erroneous, we affirm.