

MARIO THYER, Employee/Appellant, v. DALLAS STARS HOCKEY CLUB and AM. HOME ASSURANCE, Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
DECEMBER 12, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL EVIDENCE; TEMPORARY PARTIAL DISABILITY. Substantial evidence, including the opinion of the independent medical examiner, supports the compensation judge's finding of no causal connection between the employee's admitted February 28, 1992 work injury to his right eye and his later reduction in earnings.

Affirmed.

Determined by: Johnson, J., Wheeler, C.J., and Rykken, J.
Compensation Judge: Paul V. Rieke

OPINION

THOMAS L. JOHNSON, Judge

The employee appeals the compensation judge's denial of his claims for temporary total and temporary partial disability benefits. We affirm.

BACKGROUND

On February 28, 1992, Mario Thyer, the employee, sustained a personal injury to his right eye arising out of and in the course of his employment with the employer, the North Stars Hockey Club (now the Dallas Stars Hockey Club). On that date, the employee's weekly wage was \$2,692.31. The employer and American Home Assurance admitted liability for the employee's personal injury and stipulated the employee sustained a 1.5 percent whole body permanent partial disability due to his right eye injury.

The employee, on June 20, 1989, entered into a four-year contract with the employer to play hockey. The contract covered the period from the fall of 1989 to the spring of 1993. Under the terms of the contract, the employer agreed to pay the employee \$140,000.00 for the 1991-92 hockey season. During the first year of his contract, the employee played hockey for the Kalamazoo Wings, a North Stars farm team in the International Hockey League (IHL). That season, the employee also played five games for the North Stars. Thereafter, the employee played exclusively for Kalamazoo. The employee's injury occurred at Kalamazoo during the third year of his contract with the employer.

Immediately following the February 28, 1992 injury, the employee was seen at the Bronson Methodist Hospital emergency center where he was treated and released. On February 29, 1992, Dr. A.L. Schut, an ophthalmologist at Kalamazoo Ophthalmology, P.C., examined the employee. The doctor diagnosed a traumatic hyphema, a hemorrhage within the anterior chamber of the eye.¹ Dr. Schut took the employee off work. By March 4, 1992, the doctor noted the employee was “doing better” but still had a +4 cellular response. On March 9, 1992, Dr. Schut noted the anterior chamber of the employee’s eye was clear and he stated the employee could “assume his own activity and let his vision be his guide.” By report dated May 28, 1992, Dr. Schut gave a final diagnosis of traumatic hyphema and rated no permanent partial disability. However, the doctor stated the employee should be re-examined and the retina periphery checked, but he was transferred before this could be accomplished.

While the employee was off work following his injury, the North Stars traded him to the New York Rangers. The Rangers assigned the employee to a farm team in the American Hockey League (AHL), the Binghamton Rangers. At the end of the 1992 hockey season, the Rangers traded the employee back to the North Stars. Effective July 17, 1992, the employer purchased the balance of the employee’s contract for \$50,000.00 and released him.² Thereafter, the employee was hired by the Cincinnati Cyclones of the IHL where he played during the 1992-93 hockey season. The employee earned approximately \$35,000.00 for the season. At the end of the 1993 season, the employee’s agent found the employee a position with the Portland Pirates of the AHL. The employee played three games for the Pirates and then left to play for a team in Germany. The employee’s contract with the German team was for approximately \$50,000.00 for the season, but the hockey team missed payroll payments and eventually went bankrupt a few months after the employee arrived. The employee returned to the United States in January 1994, but was unable to find another minor league hockey job.

On May 10, 1994, the employee was examined by Dr. John E. Gaetani. The doctor had first examined the employee in 1988 at which time his vision and ocular health were normal, although the employee was near-sighted. The employee’s eyes continued to be normal through June 4, 1991, the employee’s last exam by Dr. Gaetani before his injury. The doctor obtained a subsequent history of blunt trauma to the employee’s right eye resulting in a hyphema. The employee’s chief complaint was of glare and chronic photophobia, an abnormal visual intolerance of light.³ On examination, Dr. Gaetani noted the employee’s iris was fixed and mid-dilated. The doctor related the employee’s condition to the lack of a normally functioning iris secondary to his work injury. The doctor stated the “tonic pupil of Mr. Thyer’s right eye is a permanent, physical, and cosmetic impairment. Based upon a reasonable degree of certainty, the injury which has rendered the right iris immobile, is permanent.” The doctor stated the employee had no restrictions other than safety concerns, but concluded his right eye would never react normally to light. The doctor further stated that because “a re-bleed may occur, I have strong objections of Mr. Thyer

¹ Dorland’s Illustrated Medical Dictionary, 803 (28th ed. 1994).

² Under the terms of the contract, the employer paid the \$50,000 in equal monthly installments beginning July 20, 1992 and ending June 30, 1993.

³ See Dorland’s, supra, at 1287.

returning to competitive hockey.” Finally, the doctor noted some cataract formation in the right eye which he opined would require surgical correction in the future.

The employee played roller hockey during the summer of 1994. His agent continued to look for employment opportunities as an ice hockey player. The employee was offered positions with several teams in the East Coast Hockey League, but he declined due to the low pay. In 1995, the employee returned to the University of Maine to obtain his undergraduate degree. He completed a degree in business and finance in December 1995. During the summer of 1995, the employee worked at a hockey school for two weeks and earned approximately \$1,000.00. In the fall of 1995, the employee accepted a job as an assistant hockey coach for the University of Maine. The employee was paid approximately \$30,000.00. He continued in this position until the end of the 1998 college hockey season. In November 1998, the employee began working as a sales and service representative for Fleet Bank. He has obtained an insurance license and is able to sell annuities. The employee plans to pursue the licensing necessary to become an investment specialist. The employee’s salary with Fleet Bank is approximately \$25,000.00 per year.

The employee was examined by Dr. Steven J. Grosser on June 11, 1999, at the request of his attorney. The employee reported three symptoms which started right after the injury: photophobia in the right eye in bright lights, difficulty focusing up close with the right eye and bitemporal headaches when in the sun for more than four to five hours. When asked by the doctor if his visual symptoms caused him to stop playing professionally, the employee stated “he was not sure.” The employee reported, however, his symptoms interfered with playing hockey, especially in bright arenas. On examination, the employee’s right pupil was slightly irregular and less reactive than the left pupil. The inferior half of the right pupil did not react to light and was larger in the light than the left pupil. In the dark, the pupils were symmetrical in diameter. In the light, the right pupil was one millimeter larger. The doctor also noted a cortical cataract in the right eye. The doctor related these conditions and abnormal findings to the February 28, 1992 injury. Dr. Grosser diagnosed permanent photophobia, post-traumatic mydriasis/anisocoria,⁴ permanent post-traumatic cataract, permanent headache and a suspicion of glaucoma. Dr. Grosser stated the employee should wear appropriate eye protection if engaging in any activity that might reinjure his right eye. Further, he opined the employee’s photophobia would interfere with prolonged activity in bright light, especially if sunglasses could not be worn. The doctor opined the employee’s injuries diminished his ability as a hockey player.

Dr. James S. Allen, an ophthalmologist, was retained by the employer and insurer to review the employee’s medical records and render opinions. Dr. Allen reviewed the records of Kalamazoo Ophthalmology, Bronson Methodist Hospital, Gaetani Eye Care, Dr. Richard Simon and Dr. Steven Grosser. By report dated July 27, 1999, Dr. Allen diagnosed post-traumatic mydriasis/ anisocoria, permanent; post-traumatic cataract, permanent; photophobia secondary to post-traumatic mydriasis/anisocoria, permanent; glaucoma suspect, permanent; and headaches of unknown etiology. The doctor stated that generally patients with one millimeter of anisocoria function well without any symptoms and patients with light sensitivity due to anisocoria can be

⁴ Mydriasis is a physiologic or morbid dilation of the pupil; anisocoria is an inequality in the diameter of the pupils. Dorland’s, supra, at 85, 1088.

treated with dark glasses or contact lenses. Dr. Allen opined the employee's photophobia was not disabling, and his cataract was minor and did not affect his vision at the time the employee decided to retire from professional hockey. Further, the doctor stated the employee's photophobia caused by the anisocoria was very minor. Dr. Allen opined the employee had a very low risk of developing glaucoma in the future, and concluded the employee's headaches were not related to his February 28, 1992 injury. The doctor stated the employee did not have work-related restrictions and opined the employee's injuries did not prevent his playing professional hockey. The doctor opined the employee's symptoms could be easily treated and would not prohibit the employee from his work duties or activities of daily living. Dr. Allen rated 2 percent permanent disability under Minn. R. 5223.0320, subp. 3.D.(2).⁵ Using subpart 3.E. of the rule, Dr. Allen calculated a 0.5 percent disability of the employee's visual system which, rounded up, yields a 1 percent whole body disability. (Resp. Ex. 1-8.)

By report dated August 13, 1999, Dr. Grosser rated a 2 percent disability under Minn. R. 5223.0030, subp. 5, for loss of adaptation to light and dark and 2 percent for visual disability due to a cataract. The doctor stated this translated to a 2 percent whole body disability. Dr. Grosser then commented on Dr. Allen's report and disagreed with Dr. Allen's conclusion that one millimeter of anisocoria would cause only a minor degree of photophobia. He opined the employee could have a large degree of photophobia with a small amount of anisocoria. The doctor further noted the halogen lighting in arenas and reflection off an ice surface resulted in brighter conditions than the doctor's examining room. The brighter lights make a normal pupil constrict even further, thus increasing the employee's anisocoria and photophobia. Finally, the doctor opined the employee's ability to play hockey was reduced as a result of his injury due to light sensitivity and poor pupil function. The doctor opined the employee would have a decreased ability to see a fast-moving puck, see a teammate requiring right peripheral vision and maintain depth perception. The doctor opined these difficulties would increase depending on the amount of glare off the ice or from the overhead lights which could momentarily blur the employee's vision.

Dr. Allen prepared a supplemental report dated October 13, 1999, after review of Dr. Grosser's medical reports. Dr. Allen stated the disability schedules provide no rating for glaucoma suspect or cataract. The doctor further opined that people with far greater degrees of anisocoria than the employee "are able to function quite normally, even in extremely bright outdoor conditions."

The employee's claim for temporary total and temporary partial disability benefits was heard by a compensation judge at the Office of Administrative Hearings on October 15, 1999. In a Findings and Order served and filed November 29, 1999, the compensation judge found the employee's current earnings were representative of his earning capacity. The compensation judge further found the evidence did not support a conclusion that the employee would have eventually played in the National Hockey League. The judge found the employee did not sustain a reduction in earnings as a hockey player and concluded the employee failed to prove his February 28, 1992, injury was a substantial contributing cause to his loss of earnings thereafter.

⁵ Minn. R. 5223.0320, subp. 3.D.(2), provides for a two percent permanent partial disability for loss of adaptation to light and dark.

The employee appealed to the Workers' Compensation Court of Appeals. In a decision filed August 4, 2000, the Workers' Compensation Court of Appeals reversed the findings of the compensation judge and remanded the case for further findings. This court directed the compensation judge to make findings whether the employee's personal injury caused any physical impairment or limitation of function and, if so, whether same was a substantial contributing cause of the employee's wage loss. In a Findings and Order on Remand, the compensation judge found the employee's photophobia caused by his injury was very minor. The judge further found the employee's ability to earn was not impaired by his work injury and found no causal relationship between the employee's work injury and his subsequent wage loss. Accordingly, the compensation judge denied the employee's claims for benefits. The employee again appeals.

DECISION

On remand, the compensation judge adopted Dr. Allen's opinion that the degree of the employee's photophobia was very minor and found the employee's injury did not impair his ability to earn. On appeal, the employee contends this conclusion is legally erroneous. He argues that any physical impairment, medical restriction or limitation of function mandates an award of wage loss benefits. Citing Kautz v. Setterlin Co., 410 N.W.2d 843, 845, 40 W.C.D. 206, 208 (Minn. 1987), the employee argues the employer is relieved of its obligation to pay wage loss benefits only if the employee is "medically able to return to work without restrictions, having suffered no residual disability from his work injury . . ." The parties here stipulated the employee sustained a 1.5 percent whole body disability secondary to his eye injury. Further, the employee asserts he has at least some minor limitation of function as a result of photophobia as opined by Dr. Allen. Accordingly, the employee argues he has established his right to wage loss benefits as a matter of law. We disagree.

The fact that the employee was entitled to permanent partial disability benefits does not automatically entitle the employee to temporary partial disability benefits. An employee may sustain a rateable permanent partial disability and yet not be disabled in the sense of being restricted in his work activities. See Schwan v. Fabcon, 45 W.C.D. 209 (W.C.C.A. 1991). Rather, the presence of physical restrictions and the effect of such restrictions on an employee's ability to work are the central considerations in determining entitlement to wage loss benefits. In order to be eligible for temporary benefits, an employee must establish a reduction in earning capacity which is causally related to the work injury. Morehouse v. Geo. A. Hormel & Co., 313 N.W.2d 8, 34 W.C.D. 34 (Minn. 1981). Whether the requisite causal connection exists is a fact issue to be resolved by the compensation judge.

The compensation judge found no causal relationship between the employee's work injury and his subsequent reduction in earnings. The employee argues this finding is unsupported by substantial evidence. Specifically, the employee points to the testimony of Dr. Gaetani who opined the employee should not return to competitive hockey because of the possibility of further injury. Dr. Grosser diagnosed a permanent photophobia which he opined would interfere with the employee's activity in bright light and opined the employee's injury diminished his ability as a hockey player. Even Dr. Allen, the appellant points out, concluded the employee had some physical impairment although minor. The employee testified the injury reduced his ability to play

hockey which assertion, the employee argues, was supported by the testimony of William Inglis, Les Jackson, Jack Ferreira and Neil Sheehy. The employee asserts the evidence compels a conclusion that his personal injury impaired his earning capacity and asks this court to reverse the compensation judge's denial of benefits.

We acknowledge this is a close and difficult case. As we stated in our prior decision, claims by injured professional athletes for wage benefits present unique problems in resolving issues of causation between the injury and any wage loss. Certainly, an injury which causes disability or loss of function might have a more profound impact on a professional athlete than it would on another worker. Ultimately, whether an injury caused a disability or physical impairment which causes wage loss is primarily a factual question to be resolved by the compensation judge. On review, it is this court's function to determine whether the judge's decision is supported by substantial evidence. Minn. Stat. § 176.421, subd. 1 (1992).

In this case, Dr. Allen's opinions support a conclusion that the employee's injury was minor and did not cause any physical impairment or restriction on the employee's ability to play hockey or on his current ability to earn. The compensation judge accepted Dr. Allen's opinions and found no causal connection between the employee's work injury and his later reduction in earnings. On this record, we cannot conclude the findings of the compensation judge are clearly erroneous or unsupported by substantial evidence. Accordingly, the judge's decision must be affirmed.