

TIMOTHY L. VALENTINE, Employee, v. CONSOL. BLDG. CORP. and STATE FUND MUT. COS., Employer-Insurer/Appellants, and CARPENTERS & JOINERS WELFARE FUND, Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
JUNE 5, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL CONTRIBUTING CAUSE. Substantial evidence, including the employee's testimony and the opinion of his treating physician, supported the compensation judge's decision that the employee's work injury was a substantial contributing cause of the employee's neck condition, need for treatment, and related disability.

WAGES - MINORS & APPRENTICES. Substantial evidence, including the employee's testimony and VA records, supported the compensation judge's conclusion that the employee was an apprentice on the date of his work injury.

Affirmed.

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

OPINION

DEBRA A. WILSON, Judge

The employer and insurer appeal from the compensation judge's findings regarding causation and the employee's participation in an apprenticeship. We affirm.

BACKGROUND

The employee served twenty years in the United States Army, during which time he sustained several service-connected injuries, including a neck and left shoulder injury. The neck and shoulder complaints arose in 1993 and caused continuing problems, which resulted in treatment at the VA Medical Center once or twice a year thereafter, the assignment of a service-connected disability rating, and payment of a disability pension following the employee's retirement from military service in October of 1995.

After his retirement from the military, the employee went to work as a corrections officer at the Red Wing Correctional Facility. Then, in September of 1997, he entered Red Wing Technical College to be trained in general carpentry through a program funded by the Veterans Administration [VA]. The employee planned to start up a remodeling business with family members, wherein he would be involved with design, bidding contracts, ordering supplies, and

other office functions. He continued to work at the Red Wing Correctional Facility while attending school, and, in December of 1997, struck the left side of his rib cage and neck on a concrete slab during an altercation with an inmate. Following this incident, he was off work for one month and then returned to work part time for three or four months after that. He treated with Dr. Mark Sprangers for that injury. An MRI scan of the cervical spine was performed on January 9, 1998, and Dr. Sprangers interpreted that test to show “the previously diagnosed service connected degenerative disc bulging at the C5-6 and C6-7 interspaces. There is no evidence for focal disc herniation at those locations.” On May 1, 1998, Dr. Sprangers released the employee to return to his regular job activities without restriction. The employee was to return to the doctor in four weeks, but he did not attend that appointment.

In May or June of 1998, the employee left his employment with the Red Wing Correctional Facility and worked a couple of short-term jobs before beginning work at McConnell Drywall. On August 28, 1998, he entered into a carpentry apprenticeship agreement with the Twin City Area Carpenters Joint Apprenticeship Committee. As an apprentice, the employee was to receive 7,000 hours of on-the-job training [OJT], 40 hours per week, and attend 160 classroom hours per year. In mid September of 1998, he informed the VA that he would not be completing his coursework at Red Wing Technical College but would instead participate in a four-year on-the-job training [OJT] program with his employer’s union. The employee attended orientation for the Apprentice Carpenter Program on September 14, 1998, and his first classroom attendance was on October 1, 1998. Sometime in September of 1998, the employee began work at Consolidated Building Corporation [the employer], continuing his apprenticeship.

On June 11, 1999, the employee informed the VA that “his medical condition was making it difficult to continue” in the apprenticeship program. When he met with Steven Olson, counseling psychologist from the VA, on June 22, 1999, it was agreed that the employee would research other possible training programs but would continue in his existing program until a decision was made. The employee continued to perform his work at the employer.

On August 11, 1999, the employee experienced immediate low back pain when a wall he was lifting at work slipped, and he caught the full weight of it.¹ On Thursday, August 12, the employee noted stiffness in his neck and spasm in his shoulder. He was off work for personal reasons that Friday, and when he returned to work on Monday his neck symptoms were aggravated by his work. On Wednesday, August 18, 1999, the employee was seen at the emergency room of St. John’s Hospital, complaining of worsening neck pain and spasm as well as numbness and tingling in the arms and fingers and shooting pains from the neck to below the shoulder blades. The employee gave a history of having been seen in the past at the VA Hospital for three bulging cervical discs, but he denied having had such significant pain before. An MRI of the cervical spine performed on that date showed an annular tear posteriorly at C5-6, with minimal annular bulge and a mild posterior annular bulge at C6-7. The employee has not worked since August 18, 1999.

On September 9, 1999, the employee sought care at the Twin Cities Spine Center, treating initially with Dr. Manuel Pinto and then with Dr. Francis Denis. Dr. Pinto diagnosed

¹ The low back injury is not the subject of this appeal and will not be addressed further.

cervical foraminal stenosis/cervical spondylosis and performed a left C6 selective nerve block, which resulted in pain relief.

The employee met with VA psychologist Steven Olson again on September 28, 1999, at which time the employee informed Mr. Olson that he had stopped working in August of 1999. It was decided that the apprenticeship program would be discontinued.

On November 29, 1999, Dr. Denis offered the employee two options for addressing his cervical problem: a two to three-level decompression on the left, or scoliosis surgery below the cervical spine to try to “horizontalize T1.” The employee elected to proceed with the thoracic posterior spinal reconstruction, which was performed on April 6, 2000.² He continued to experience significant radicular symptoms thereafter, and, on July 12, 2000, Dr. Denis performed lower cervical decompressions. By August 28, 2000, the employee was experiencing significant improvement in his symptoms and was started on physical therapy.

On October 12, 1999, the employee filed a claim petition, seeking temporary total disability benefits continuing from August 12, 1999, and rehabilitation benefits as a result of the August 11, 1999, injury to his back and neck. Carpenters and Joiners Welfare Fund eventually intervened for medical and disability benefits paid to or on behalf of the employee. When the claim petition proceeded to hearing on September 27, 2000, issues included whether the employee’s work activities were a substantial contributing cause of his neck condition, whether the neck surgery was reasonable, necessary, and causally connected to his work injuries, and whether the employee was an apprentice at the time of his injury. In findings filed on December 15, 2000, the compensation judge found that the employee was an apprentice on the date of his work injury on August 11, 1999, and that the employee’s work activities, including the injury of August 11, 1999, were a substantial contributing factor in his disability and need for cervical surgery. The employer and insurer appeal.

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.

² The employee made no claims related to the thoracic spine at the time of trial.

DECISION

1. Apprentice

The employer and insurer contend that the judge's finding that the employee was an apprentice at the time of his injury is erroneous and unsupported by substantial evidence. We are not persuaded.

The employee signed an apprenticeship agreement on August 28, 1998. While there is evidence in the VA records that the employee was having difficulty performing his work and wanted to discuss changing his program as early as June 11, 1999, there is **no** evidence that an actual change was ever made before the August 11, 1999, injury. Contrary to the employer and insurer's contention, there is also no evidence that the employee **intended** that his apprenticeship program be discontinued effective June 22, 1999. Steven Olson's notes from that June 22, 1999, meeting reflect that the employee "is going to continue with his OJT program until we decide what are [sic] next step is going to be." In addition, the First Report of Injury, apparently prepared by the employer, indicates that the employee was still an apprentice as of August 18, 1999.³

The employer and insurer also contend that evidence indicating that the employee had not completed the required hours of schooling as of July 1999 establishes that he had "consciously decided to discontinue his apprentice program on or about June 22, 1999." The record, however, does not establish that the employee had not completed the required hours of schooling, and no testimony on that subject was elicited at hearing. In fact, on direct examination, the employee testified that he was still attending the apprenticeship schooling after the date of injury.

The apprenticeship agreement, the First Report of Injury, and the VA rehabilitation records support the compensation judge's finding that the employee was an apprentice on the date of injury, and that finding is therefore affirmed.

2. Causation

The employer and insurer contend that substantial evidence does not support the judge's conclusion that the August 11, 1999, injury was a substantial contributing cause of the employee's present claimed cervical condition, wage loss, and need for medical treatment. In support of this contention, the employer and insurer point to the August 18, 1999, chart note from St. John's Hospital Emergency Room, which indicates that, according to a history given by the employee, the VA Medical Center had recommended cervical spine surgery in the past but the employee had refused it.

There is no question that the employee had a longstanding preexisting cervical spine condition. Medical records introduced at hearing included x-rays of the cervical spine taken on February 16, 1995, at the VA Medical Center. At that time, the intervertebral disc spaces were

³ August 18, 1999, is the listed date of injury on the First Report of Injury.

preserved, although there was mild osteophytic spurring anteriorly at C6-7. In December of 1996, an MRI of the cervical spine, performed at the VA Medical Center, was interpreted as showing central disc protrusion at C5-6 with secondary central spinal canal stenosis and some central disc bulging at C6-7. A myelogram of the cervical spine performed on April 30, 1997, revealed anterior indentation upon the thecal sac at the C5-6 level, consistent with disc bulge, and an MRI performed at the VA Medical Center on June 28, 1999, revealed degenerative disc disease without central spinal canal or neural foraminal stenosis at the levels of C4 to T1, with specific disc protrusion at C5-6 and C6-7.⁴

There is also other evidence that would support an alternative finding that the work injury was not a substantial contributing factor in the employee's cervical condition after August 11, 1999. In addition to the August 18, 1999, chart note from St. John's Hospital emergency room, there is the September 9, 1999, progress report from the VA Medical Center, which indicates that the "C6 distribution numbness and pain symptoms" had been occurring for "several years." And, in a January 4, 2000, report, Dr. Mark Engasser, the employer and insurer's expert examiner, opined that the employee had sustained, at most, a temporary injury to his neck, which was not a substantial contributing factor in his need for surgery to the cervical spine. Pursuant to this court's standard of review, however, the issue is not whether the evidence will support alternative findings but whether substantial evidence supports the judge's findings. Where the evidence conflicts or more than one inference can be drawn from the evidence, the judge's findings are to be affirmed. Hengemuhle, 358 N.W.2d at 60, 37 W.C.D. at 240. In the present case, there is substantial evidence in the record to support the judge's decision on this issue.

First, the employee's testimony supports the judge's findings. The employee testified that his symptoms were different after the August 11, 1999, injury than they had been before. After the injury, he had constant numbness in the left hand and searing, stabbing pain in his neck and shoulder blade, which was unrelenting. The employee testified that before August of 1999, he had only occasional symptoms that were controlled by Tylenol #3. The employee also testified that he never gave the doctors at St. John's Hospital any history that neck surgery had been recommended in the past. In fact, the employee testified that the doctors at the VA Medical Center had specifically told him in 1997 that surgery was not necessary, and a review of the VA records does not reveal any recommendations for surgery to the employee's cervical spine.

Second, a cervical MRI performed on August 18, 1999, supports the judge's findings, as that MRI was interpreted as being "consistent with annular tear posteriorly at C5-6 . . .," a finding that had not shown up on prior radiological studies.

Third, Dr. Francis Denis, who was the employee's treating doctor for his neck in 2000, opined in a letter dated September 21, 2000, that the employee had sustained a "substantial aggravation of his pre-existing condition of the cervical spine" in the August 11, 1999, incident. Dr. Denis reasoned that the employee had been able to work full time in a highly physical capacity before the injury but that the 1999 injury had caused severe neck symptoms that did not improve until a selective nerve block and subsequent surgery. A judge's choice between expert opinions

⁴ There was no progress note for this date that would indicate why the June 1999 MRI was performed.

is generally upheld, unless the facts assumed by the expert in rendering his opinion are not supported by the evidence. Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985).

The employer and insurer do not specifically contend in their brief that the facts assumed by Dr. Denis are not supported by the evidence. They do argue, however, that the employee's preexisting cervical spine disability "resulted in physical limitations which prevented him from participating in previous carpentry work and work as a corrections officer long before he went to work for the employer." The record indicates, however, that the employee discontinued work as a corrections officer to pursue a career in carpentry and that he did not discontinue work in carpentry until after the 1999 work injury.

Because substantial evidence supports the judge's findings that the employee's 1999 work injury was a substantial contributing factor in the employee's cervical condition thereafter, we affirm the judge's findings in their entirety.⁵

⁵ The employer and insurer do not address in their brief the issues of whether the cervical surgery was reasonable and necessary, whether the employee was temporarily totally disabled from work after August 19, 1999, or whether the intervenor was entitled to reimbursement for medical expenses, other than to argue that the employee's current cervical condition is not causally related to the August 11, 1999, work injury. Issues raised on appeal but not briefed are deemed waived. Minn. R. 9800.0900, subp. 1.