

LAURIE B. VIGOREN, Employee/Appellant, v. U.S. WEST/QWEST CORP. and RELIANCE NAT'L INS. CO./SEDGWICK CLAIMS MGMT., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
DECEMBER 28, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - TEMPORARY AGGRAVATION. Substantial evidence, including expert medical opinion, supports the compensation judge's finding that the employee's work injuries on January 13, 2000 and April 26, 2000 were temporary and resolved by May 17, 2001.

ATTORNEY FEES. The compensation judge properly denied additional attorney fees under Minn. Stat. § 176.081, subd. 1, where fees were withheld from wage loss benefits and paid to the employee's attorney through the date of hearing pursuant to a prior Order filed June 12, 2001.

Affirmed.

Determined by: Johnson, J., Wilson, J., and Pederson, J.
Compensation Judge: Paul V. Rieke

OPINION

THOMAS L. JOHNSON, Judge

The employee appeals from the compensation judge's order granting the petition of U.S. West and Reliance National Insurance Company to discontinue workers' compensation benefits to the employee. We affirm.

BACKGROUND

On January 13, 2000, Laurie B. Vigoren, the employee, injured her neck while working for U.S. West/Qwest Corporation, the employer. On April 26, 2000, the employee sustained a second personal injury to her neck and back while working for the employer. On both dates, the employer was insured by Reliance National Insurance Company/Sedgwick Claims Management. The employee's weekly wage was \$735.00 on both dates of injury. The employer and insurer admitted liability for the employee's injuries and paid medical and wage loss benefits.

The employee acknowledged she had been treating with chiropractors for neck and back problems for 20 years prior to her first personal injury with the employer. On June 18, 1985, the employee first saw Larry Balsimo, D.C. The employee gave a history of a whiplash-type injury following a car accident six years previously for which she received chiropractic treatment but had continuing neck and back pain, headaches and earaches. Dr. Balsimo commenced chiropractic treatment and treated the employee periodically thereafter for neck and low back pain. In a report

dated April 10, 1998, Dr. Balsimo stated the employee's current diagnosis was neck and upper back pain due to a cervical sprain/strain, cervical osteoarthritis and right radiculitis. The doctor stated the employee was then treating one to three times a month. The doctor restricted the employee to working no more than eight hours a day. In a report dated February 19, 1999, Dr. Balsimo stated the employee had recently suffered an exacerbation of her condition and took the employee off work. On November 13, 1999, Dr. Balsimo wrote to the employer stating the employee's condition was permanent and "there may be times when she becomes temporarily disabled." The employee acknowledged that between January and October 1999, she received 52 treatments from Dr. Balsimo. The doctor apparently closed his office in October 1999.

On November 2, 1999, the employee sought treatment from Jason R. Bartlett, D.C. In a patient information form, the employee stated her major symptoms were neck pain and headache which she attributed to the car accident 20 years earlier. The employee further complained of constant flare-ups of her condition with occasional extreme flare-ups. The employee stated excessive typing and phone work made her neck condition worse. Dr. Bartlett commenced chiropractic treatment and treated the employee on 18 occasions prior to her January 13, 2000, work injury.

On January 14, 2000, the employee returned to see Dr. Bartlett complaining of headaches and neck pain after a large block of compacted snow struck her on the head the day before at work. The doctor diagnosed multi-level cervical disc degeneration, headaches, chronic cervical sprain/strain, lumbar disc degeneration and lumbosacral sprain/strain, took the employee off work and commenced chiropractic treatment. The doctor also referred the employee to a neurologist, Dr. Michael P. Sethna, whom she saw on January 26, 2000. The employee gave the doctor a history of a 1979 car accident and the January 2000 work injury. Dr. Sethna opined the employee had pre-existing chronic neck problems which were aggravated by her work injury. The doctor ordered a cervical MRI scan which was done on February 21, 2000. The scan showed moderate degenerative disc disease at C5-6 and C6-7 with small central contained disc herniations at C3-4 and C4-5 with no nerve root compression and mild cervical kyphosis.

The employee returned to see Dr. Bartlett shortly after her April 26, 2000, personal injury. She reported she had slipped on construction debris and twisted her back and jarred her shoulder as she fell. The doctor opined this whiplash-type injury aggravated the employee's neck and low back condition. Dr. Bartlett referred the employee to Dr. John A. Dowdle, whom she saw on May 10, 2000. On examination, range of cervical motion was full with complaints of pain. The doctor diagnosed cervical degenerative disc disease and recommended anti-inflammatory medication. Thereafter, the employee continued treatment with Dr. Bartlett.

On August 22, 2000, the employee began treating with Dr. Todd Hess at the United Pain Center. The employee gave the doctor a history of her January and April injuries. Dr. Hess diagnosed neck trauma with ongoing headaches and shoulder muscle pain which he believed was secondary to her work-related injury, superimposed on the employee's pre-existing neck injury. The doctor told the employee she was not disabled but could work six hours a day, five days a week and recommended a pool exercise and rehabilitation program. Dr. Hess re-examined the employee on November 16, 2000, and found tenderness over the employee's occipital nerves and areas of spasticity in the trapezius and rhomboid muscles with a normal neurologic examination.

The doctor's assessment remained pain exacerbated by a work-related injury with known disc protrusions at C3, 4 and 5.

On December 7, 2000, the employee was examined by Dr. Michael D. Smith at the request of the insurer. The doctor obtained a history from the employee, reviewed the employee's medical records, reviewed the 1993 CT and the 2000 MRI scans, and conducted a physical examination. Dr. Smith diagnosed cervical degenerative disc disease, lumbar pain, bilateral restricted shoulder motion, obesity and chronic pain syndrome. The doctor opined the January 13 and April 26, 2000 injuries were a cervical sprain/strain and a lumbar sprain/strain, which were temporary aggravations of the employee's pre-existing degenerative disc disease. Dr. Smith opined the employee had reached maximum medical improvement no later than three months after the April 26, 2000 injury.

In February 2001, Dr. William Ford reviewed the employee's February 21, 2001 open-sided MRI scan. The doctor interpreted the scan as showing some reversal of the normal cervical lordosis and mild compression of the C6 vertebral body. The doctor found evidence on the scan for degenerative disc changes throughout the cervical spine which he stated were old and chronic. The scan further demonstrated a tiny disc herniation at C3-4 with no stenosis, a calcified uncinat spur at C5-6 with mild to moderate foraminal compromise and a partially calcified herniated disc at C6-7 causing canal compromise and associated deformity of the spinal cord. Dr. Ford opined all of the findings on the MRI scan predated the January 13 and April 26, 2000 injuries.

Dr. Hess re-examined the employee on May 17, 2001. The employee complained of continuing pain and an inability to work more than six hours a day. The doctor concluded he had no further treatment to offer the employee, opined she had reached maximum medical improvement and stated the employee was able to work eight hours a day.

Dr. Bartlett's deposition was taken on June 12, 2001. The doctor opined the January 13, 2000 injury to the employee's cervical spine was a permanent injury. The doctor further opined the April 26, 2000 injury was a temporary aggravation of the employee's neck condition but permanently aggravated her pre-existing low back condition. In Dr. Bartlett's opinion, the employee's personal injuries were substantial contributing causes of her inability to work more than six hours a day. Finally, Dr. Bartlett believed the employee sustained permanent disability in both the cervical and lumbar spine as a result of her personal injuries.

The employer and insurer filed a Notice of Intention to Discontinue Benefits (NOID) on January 22, 2001, contending the employee could return to work on a full-time basis and any current physical restrictions were due to pre-existing medical conditions and not the work injuries. They further alleged the employee's work injuries were temporary aggravations of a pre-existing condition. The NOID indicated the employee had been paid temporary partial disability benefits from January 16, 2000 through January 5, 2001. An administrative conference was held on the NOID on February 21, 2001. In an Order on Discontinuance filed March 5, 2001, a compensation judge determined that reasonable grounds did not exist to discontinue temporary partial disability benefits. The employer and insurer were ordered to pay temporary partial disability benefits from and after January 5, 2001. By Order filed June 12, 2001, a compensation

judge at the Office of Administrative Hearings ordered statutory attorney fees withheld from any wage loss benefits paid the employee from and after January 5, 2001 and ordered the same paid to the employee's attorney together with partial reimbursement of attorney fees under Minn. Stat. § 176.081, subd. 7(a).

On April 2, 2001, the employer and insurer filed a Petition to Discontinue Benefits. The petition was heard by a compensation judge at the Office of Administrative Hearings on June 14, 2001. In a Findings and Order served and filed June 20, 2001, the compensation judge found the employee's personal injuries of January 13, 2000 and April 26, 2000, were temporary in nature and resolved by May 17, 2001. Accordingly, the compensation judge granted the employer and insurer's petition to discontinue benefits effective May 17, 2001. The employee appeals.

DECISION

1. Temporary Injuries

The employee contends the compensation judge's determination that the employee's work injuries were temporary and resolved by May 17, 2001, is contrary to the evidence. The employee points to the testimony of Dr. Sethna, Dr. Bartlett and Dr. Hess, all of whom document the employee's worsening condition after her injuries. In his report of May 17, 2001, Dr. Hess stated the employee would be "looking at a permanent partial disability in the near future." Dr. Bartlett rated permanent partial disability and opined the employee's injuries were permanent aggravations of a pre-existing condition. This evidence, the employee contends, establishes that the compensation judge's conclusion is contrary to the evidence and must be reversed. We disagree.

There is evidence in the record to support the employee's position that her work injuries permanently aggravated her underlying condition and her benefits should not have been discontinued. Under this court's standard of review, however, the issue is not whether the evidence will support alternative findings, but whether substantial evidence supports the compensation judge's findings. 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). Findings of fact may not be disturbed unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole. Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

The medical records reflect the employee had a significant injury in 1979 which resulted in continuing chiropractic treatment for twenty years thereafter. On November 2, 1991, the employee complained to Dr. Bartlett of constant flare-ups of her neck condition, some of which were extreme. The employee was off work shortly prior to her first personal injury due to her long-standing cervical problems. Dr. Ford concluded the conditions shown on the February 2000 MRI scan all predated the employee's work-related injuries. Dr. Smith opined the employee's injuries were temporary and that she had reached maximum medical improvement by July 2000. Dr. Hess released the employee to return to work on a full-time basis on May 17, 2001, and

concluded he could provide no further treatment for her. The foregoing evidence amply supports the compensation judge's determination that the employee's personal injuries were temporary and resolved by May 17, 2001. The findings of the compensation judge are, therefore, affirmed.

2. Attorney Fees

The employee further appeals the compensation judge's denial of attorney fees under Minn. Stat. § 176.081, subd. 1. The appellant contends attorney fees are appropriate because the employer and insurer were liable for and paid wage loss benefits to the employee to the date of the hearing. We disagree.

The employer and insurer filed a NOID on January 22, 2001. In an Order on Discontinuance filed May 5, 2001, a compensation judge denied the request to discontinue benefits. By Order filed June 12, 2001, a compensation judge at the Office of Administrative Hearings ordered statutory attorney fees withheld from any wage loss benefits paid the employee from and after January 5, 2001, and ordered the same paid to the employee's attorney. Mr. Blaeser has, therefore, been paid statutory attorney fees on the benefits paid the employee up to the date of the hearing, June 14, 2001. Thereafter, no benefits were awarded the employee so no attorney fees are due. The compensation judge's order denying additional attorney fees to the employee's attorney is affirmed.