

SANDY T. VILLELLA, Employee/Appellant, v. THE BEDROOM and GENERAL CAS. COS., Employer-Insurer, and SHEFFIELD, OLSON & McQUEEN, Inc. and HEALTHCARE RECOVERIES, INC., Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS  
NOVEMBER 1, 2001

No. [REDACTED SSN]

HEADNOTES

CAUSATION - SUBSTANTIAL CONTRIBUTING CAUSE. Substantial evidence, including expert opinion, supported the compensation judge's decision that the employee did not injure his low back during an incident at work.

Affirmed.

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

OPINION

DEBRA A. WILSON, Judge

The employee appeals from the compensation judge's finding that the employee did not sustain a back injury at the time of his admitted left hand injury. We affirm.

BACKGROUND

The employee sustained a low back injury in May of 1995, after which he treated with Dr. Erik Linck, who noted the presence of low back pain with numbness and tingling down the employee's right leg. Medical records dated May 10, 1995, indicate that, fifteen years previously, the employee had a possible "slipped disk." A lumbar CT scan performed on May 18, 1995, was interpreted as showing "a moderate central disc protrusion which effaces the anterior thecal sac" at L5-S1. Dr. Linck diagnosed a herniated disc at L5-S1 and took the employee off work from May 10, to May 23, 1995. On June 7, 1995, Dr. Linck indicated that he had discussed a lumbar support for the employee and advised him to continue with Motrin and low back exercises but that he had placed no restrictions on the employee's activities.

The employee returned to Dr. Linck on September 29, 1995, complaining of "some ongoing discomfort," but he denied any numbness or weakness into the extremities. The employee declined physical therapy at that time. When the employee was seen by Dr. Linck on December 6, 1996, the doctor gave him some samples of a medication to use "with some of his ongoing back problems, which are chronic . . . ."

The employee was working for The Bedroom [the employer] on September 29, 1999, when a table saw threw a wooden board out in his direction. After the incident, he was taken to Unity Hospital, where he treated for a laceration to his left hand. Hospital records reflect that “[t]he patient reports he was at work planing a piece of wood, when the piece of wood was knocked out of place by the equipment, hitting his hand between the thumb and index finger in the web space . . . . The patient complained of pain in his hand, wrist and forearm.” A First Report of Injury was completed and received by the insurer on October 4, 1999, describing the injury as “Using table saw. Board kick back in my hand.” The employer and its insurer admitted liability for this hand injury.

The employee went on a duck hunting trip to northern Minnesota two days after this injury. When he returned to work, he resumed his regular duties for the employer, which required bending and lifting of heavy weights. The employee also went on a deer hunting trip in early November of 1999.

On October 13, 1999, and November 16, 1999, the employee was seen by Dr. Linck. No low back complaints were noted in the doctor’s records for those dates, but, on December 16, 1999, the employee was seen at the emergency room at St. John’s Hospital complaining of “increasing right sciatic symptoms with low back pain over the past 2 weeks.” At that time, he reported that he had initially injured his back at work in the table saw incident. The next day, on December 17, 1999, the employee was seen again by Dr. Linck, whose history indicates that the employee “initially injured his back at work in October ‘99 when he was at a table saw and he was twisting to get out of the way when the board kicked back hitting him.” The doctor reported paraspinal muscle tenderness in the lumbar spine, positive straight leg raising on the right, and decreased sensation in the right thigh and calf. Dr. Linck ordered an MRI of the lumbar spine and took the employee off work. A First Report of Injury was completed on December 20, 1999, indicating that, on September 29, 1999, the employee had turned to avoid being hit by a wood board and fell down to the floor, injuring his back. Dr. Linck ultimately referred the employee to neurosurgeon Dr. Walter Bailey.

An MRI performed on December 26, 1999, was interpreted to reveal “degenerative disease lumbosacral spine with focal right paracentral disc protrusion at L5-S1 which contacts the descending nerve root on the right and may account for the patient’s symptoms.” The employee was then seen by Dr. Bailey on January 4, 2000. The employee related to Dr. Bailey that, at the time of his September 29, 1999, left hand injury, he “found himself on the floor and because of the hand pain and the medications he was on, he did not notice back pain very much until a few weeks later.” Dr. Bailey also noted that the employee’s pain had become significantly worse in the last month. The doctor opined that the employee had a S1 radiculopathy on the right side, secondary to the September 1999 work injury, and recommended a right L5-S1 hemilaminectomy, which was performed on January 13, 2000. In his operative report, Dr. Bailey indicated that “we found a large bulging disc [at L5-S1] immediately underneath the S1 nerve root,” and that “it almost looked like a traumatic disc . . . .”

On February 23, 2000, the employee filed a claim petition, seeking temporary total and temporary partial disability benefits and medical expenses as a result of an alleged work-

related injury to his back occurring on September 29, 1999. The employer and insurer answered, denying an injury to the employee's low back on that date.

The employer and insurer had the employee examined by Dr. Mark Engasser on May 23, 2000. In his report of that date, Dr. Engasser noted that there was no medical documentation of a back injury when the employee received treatment in September of 1999 and that, "[b]ecause of the patient's previous low back problems, one would expect the patient at least to have mentioned back or leg symptoms when he was seen by Dr. Linck in October and November." Dr. Engasser further noted that the employee had been diagnosed with a central herniated disc in 1995 and that, "[o]nce a patient has a disk herniation at L5-S1, his symptoms could increase for almost any reason including long periods of driving and the presence of a free fragment herniation could have occurred at any time." It was this doctor's opinion that the employee did not sustain a low back injury at the time of the left hand laceration.

By letter of February 20, 2001, Dr. Bailey again opined that the September 29, 1999, work injury<sup>1</sup> "is 100% of the cause of the herniated disc."

The matter proceeded to hearing on March 23, 2001. At hearing, the employee testified that, during the September 29, 1999, incident, he twisted and hit his back on the wall behind him. The employee further testified that, by that evening, he had begun to notice a pull in his back and that he noted leg pain while driving to go duck hunting two days later. In findings and order filed on March 28, 2001, the compensation judge determined that the evidence did not support the employee's claim that he had sustained a back injury at the time of the September 1999 left hand injury, and he expressly accepted the opinion of Dr. Engasser over that of Dr. Bailey. The employee appeals.

## 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.

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<sup>1</sup> In an obvious typographical error, Dr. Bailey actually referred to an injury date of September 29, 2000.

## DECISION

The employee specifically appeals from the compensation judge's finding that a preponderance of the evidence does not support the employee's claim that he sustained a back injury at the time of his September 1999 work-related left hand injury. In that finding, and in his memorandum, the compensation judge spelled out his reasons for reaching that conclusion.<sup>2</sup> The employee attacks each reason individually.

We first note that any one of the reasons given by the judge in denying the employee's claim might have been inadequate, standing alone, to support the judge's denial of the employee's claim.<sup>3</sup> However, taken together, the reasons given by the judge reasonably support his ultimate decision in this case.

Substantial evidence does support the compensation judge's finding that "[t]he employee has a documented history of significant prior low back problems and medical treatment. Prior to 1999, the employee's back condition had been described as chronic." Specifically, Dr. Linck had diagnosed the employee as having a herniated disc at L5-S1 in 1995, and, in his December 6, 1996, office note, he referred to the employee's ongoing back problems as "chronic."

Substantial evidence also supports the judge's finding that the employee had made no connection between his work injury and his back problems for over two months. Support for that conclusion may be found in the First Reports of Injury. The report completed in October of 1999 mentioned only a left hand injury; the report completed in December of 1999, again relating to the September 1999 injury, details a back injury.

Substantial evidence further supports the judge's notation in his memorandum that the employee did not have acute back symptoms immediately following the left hand injury. The employee received medical treatment on September 29, October 13, and November 16, 1999, and never complained of back or leg pain. As Dr. Engasser noted, one would have expected the

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<sup>2</sup> Those reasons included the fact that the employee had a pre-existing back condition that had been described as chronic; that the employee did not connect his symptoms to his work injury until two months later; that contemporaneous medical records following the work injury did not support the employee's claim that he had the onset of low back pain on the evening of the injury and leg pain two days later; that the records from the December 1999 emergency room visit contain a history of severe pain for two weeks before that visit; and that Dr. Engasser opined that he would have expected acute onset of symptoms with the work injury if it had led to the findings that were present at the January 2000 surgery.

<sup>3</sup> For example, the judge's finding that the employee had made no connection between his work injury and his back problems until two months later would not, alone, be a basis for denying the employee's claim.

employee to mention his back or leg symptoms to Dr. Linck when he was seen in October and November of 1999, since he had previously treated with Dr. Linck for a herniated disc.<sup>4</sup>

Substantial evidence also supports the judge's finding that the employee had severe symptoms approximately two weeks prior to the December 1999 visit to the emergency room. The emergency room treatment record dated December 16, 1999, states, "Last 2 wks constant [no] relief [with] frequent Motrin." In addition, Dr. Linck's office note of December 17, 1999, states that the employee "[h]as had increasing right sciatic symptoms with low back pain over the past 2 weeks." Clearly, one inference that could be drawn from this evidence is that the employee had severe symptoms for the two weeks leading up to his trip to the hospital. Where more than one inference may reasonably be drawn from the evidence, the judge's findings are to be affirmed. Hengemuhle at 60, 37 W.C.D. at 240.

The compensation judge adopted the opinion of Dr. Engasser in finding that the employee did not establish an injury to his back as a result of the September 1999 incident with the table saw. A judge's choice between expert opinions 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 employee appears to contend that Dr. Engasser's opinion is lacking in foundation because he opined that the back injury was not caused by the 1999 incident as the employee had not experienced right leg/back pain immediately following the accident. The employee argues that he did have right leg pain approximately two to three days after the incident after driving to a hunting trip. It was Dr. Engasser's opinion, however, that after the employee had sustained a herniated disc in 1995, "his symptoms could increase for almost any reason including long periods of driving and the presence of a free fragment herniation could have occurred at any time." That is to say, Dr. Engasser connected the employee's history of leg pain in October of 1999 to the driving itself and not to the September 29, 1999, incident.<sup>5</sup>

Because the compensation judge's findings are supported by substantial evidence of record, and because Dr. Engasser relied on facts supported by the evidence in rendering his opinion, the compensation judge's decision is affirmed in its entirety.

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<sup>4</sup> The employee argues that "acute" can mean "sudden onset" and that, because the employee had low back symptoms the day of the work injury, those symptoms were by definition acute. We are not persuaded. The compensation judge adopted the language used by Dr. Engasser to characterize the employee's symptoms, and it was not unreasonable for him to do so.

<sup>5</sup> Contrary to the employee's assertions, the compensation judge did not find that the employee had twisted his body and hit his back on the wall on the day of the left hand injury; rather, the judge merely found that the employee "testified" that that is what happened.