

LORI L. VON HOLDT/GERADS, Employee/Appellant, v. FED. EXPRESS and GAB ROBINS, Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
SEPTEMBER 14, 2001

No. [REDACTED SSN]

HEADNOTES

PERMANENT PARTIAL DISABILITY - WEBER RATING. Although the compensation judge may have been overly strict in his application of the rule cited by the employee as the most similar scheduled rating for the purposes of a Weber rating, the testimony and opinion of the independent medical examiner substantially supports the compensation judge's award of a 3.5 percent permanency, rather than the claimed seven percent permanency, on the facts of this case.

MEDICAL TREATMENT & EXPENSE. The compensation judge erred in concluding there was insufficient evidence to determine whether the claimed medical expense was compensable in the absence of an itemized bill, and the matter is remanded for determination.

Affirmed in part and remanded in part.

Determined by: Johnson, J., Wilson, J., and Wheeler, C.J.
Compensation Judge: Gary P. Mesna

OPINION

THOMAS L. JOHNSON, Judge

The employee appeals from the compensation judge's denial of her claim for additional permanent partial disability benefits and the judge's denial of payment of a hospital bill. We affirm the denial of permanency benefits, and remand the case to the compensation judge to reconsider the denied medical expense.

FACTS

Lori L. Von Holdt/Gerads, the employee, injured her low back and left sacroiliac (SI) joint on February 9, 1987, while lifting a heavy package at work. Federal Express, the employer, and its insurer, GAB Robins, admitted liability and paid to the employee various workers' compensation benefits. The employee's sacroiliac pain has never completely resolved. The employee also has instability of the left sacroiliac joint which, on occasion, requires popping the joint back in place.

An MRI scan of the employee's left hip was obtained on October 12, 1995. The radiologist reported: "The left SI joint is abnormal with edema in the sacral and iliac side much greater on the sacral side with dense sclerosis in this region as well. The sclerosis is greater on the

iliac side. Findings suggestive of either previous sacroiliac injury or possibly sacroiliitis which is longstanding. No evidence of displacement is seen.” (Pet. Ex. C-6.)

Dr. Brian C. Aamlid, the employee’s treating physician, diagnosed the employee’s condition as post-traumatic left sacroiliac joint arthritis. The doctor rated a seven percent whole body disability under Minn. R. 5223.0070, subp. 1.A.(3)(a). Dr. Aamlid stated this rating was appropriate because the MRI report showed evidence of sclerosis around the SI joint which he interpreted as demonstrable degenerative changes.

Dr. John A. Dowdle examined the employee on behalf of the employer and insurer. Dr. Dowdle diagnosed mechanical low back pain and sacroiliac joint inflammation on the left. Dr. Dowdle reviewed the October 12, 1995 MRI scan. It was his opinion that inflammation in the sacroiliac joint is not a degenerative change. The doctor explained “[t]here’s no narrowing of the joint which is consistent -- which would be consistent with degenerative changes. It’s merely an inflammatory change where there’s inflammation of the joint, so it’s not degenerative but inflammatory.” (Resp. Ex. 1 at 14.) Dr. Dowdle rated a 3.5 percent permanent partial disability under Minn. R. 5223.0070, subp. 1.A.(2), which he believed most accurately represented the employee’s condition.

The employee filed a claim petition seeking payment of medical expenses and permanent partial disability benefits. The employer initially denied liability for any further benefits. At the start of the hearing, the employer and insurer admitted liability for a 3.5 percent permanent partial disability related to a left sacroiliac joint injury under Minn. R. 5223.0070, subp. 1.A.(2). In a Findings and Order filed March 23, 2001, the court found (1) there was no category of the permanency schedules that specifically covered a sacroiliac joint; (2) the employee did not establish any objective clinical findings substantiating rigidity or chronic muscle spasm; and (3) the degenerative changes in the employee’s left sacroiliac joint did not meet the definition of degenerative changes contained in Minn. R. 5223.0020, subp. 11. The compensation judge further found Minn. R. 5223.0070, subp. 1.A.(3)(a), was not the closest category in the permanency schedules for the purpose of rating the employee’s condition, and denied the employee’s claim for additional permanent partial disability benefits. Finally, the compensation judge denied payment to Sioux Valley Hospital based on a bill from Allied Collection Service. The employee appeals the judge’s denial of benefits.

DECISION

1. Permanent Partial Disability Benefits

The employee sustained a permanent injury to her left sacroiliac joint. The parties agree the employee’s injury is not rated under the permanent partial disability schedule. Accordingly, “the unrated injury must be assigned and compensated for at the rating for the most similar condition that is rated.” Minn. Stat. § 176.105, subd. 1(c). The employee contends the appropriate rating is contained in Minn. R. 5223.0070, subp. 1.A.(3)(a).¹ The compensation judge

¹ Minn. R. 5223.0070, subp. 1.A.(3)(a), provides a seven percent rating for pain associated with rigidity (loss of motion or postural abnormality) or chronic muscle spasm at a single vertebral

found the employee failed to prove objective clinical findings substantiating rigidity or chronic muscle spasm in the sacroiliac joint. The judge further found the changes in the SI joint did not meet the definition for demonstrable degenerative changes contained in Minn. R. 5223.0020, subp. 11.² Accordingly, the compensation judge denied the employee's claim for a seven percent whole body disability. On appeal, the employee argues she proved a demonstrable degenerative change in her sacroiliac joint by virtue of the sclerotic changes documented on the MRI scan. Accordingly, the employee asserts the compensation judge's denial of the requested permanency must be reversed.

In Weber v. City of Inver Grove Heights, 461 N.W.2d 918, 43 W.C.D. 471 (Minn. 1990), the Supreme Court emphasized that the fundamental purpose of permanent partial disability benefits is to compensate the employee for functional impairment. "The purpose of a Weber rating is to approximate the functional loss suffered by the employee by comparing the disability to similar losses included in the schedule. Since a non-scheduled injury, by definition, falls outside the schedule, there is no requirement that any particular category in the schedule be applied, or that the injury meet the specific requirements of any given category. Rather, the permanency schedule provides a point of reference, for the purpose of comparison, to ensure some objectivity and consistency in the permanency ratings made." Crain v. Riverview Healthcare Ass'n, slip op. (W.C.C.A. Nov. 9, 1998). Minn. R. 5223.0020, subp. 11, defining demonstrable degenerative changes refers to intervertebral disc or facet joint abnormalities, not the functional impairment caused by an SI joint dysfunction. We are, therefore, troubled by the compensation judge's strict application of that rule in this case.

However, Dr. Dowdle testified a 3.5 percent disability rating under Minn. R. 5223.0070, subp. 1.A.(2), correlated with the level of SI joint inflammation which the employee demonstrated. The doctor testified this rating most closely approximated the level of the employee's functional impairment. Dr. Dowdle's testimony meets the purpose of a Weber rating and provides substantial evidentiary support for the compensation judge's award of a 3.5 percent whole body disability. The judge's award is, therefore, affirmed on this basis.

2. Sioux Valley Hospital Medical Bill

The employee sought payment of a medical expense incurred at the Sioux Valley Hospital in the amount of \$116.68. In support of this claim, the employee submitted a bill from Allied Collection Service showing an outstanding balance of \$116.68 at Sioux Valley Hospital. The compensation judge found, since there was not an itemized bill from Sioux Valley Hospital, he could not determine the date of the claimed service, whether the service was necessitated by the injury, or whether the service was reasonable and necessary. The compensation judge concluded

level. "The chronic muscle spasm or rigidity is substantiated by objective clinical findings and is associated with demonstrable degenerative changes."

² Minn. R. 5223.0020, subp. 11, defines demonstrable degenerative changes as "radiographic findings demonstrating the presence of degeneration of intervertebral disc or facet joints. Examples of demonstrable degenerative changes are disc space narrowing, small osteophytes, and facet joint hypertrophic changes."

the employee failed to prove the bill was compensable and denied the claim. The employee appeals this finding contending it is unsupported by substantial evidence.

The bill from Allied Collection Service reflects an outstanding balance of \$116.68 at Sioux Valley Hospital. Petitioner Exhibit B³ reflects a date of service for this charge of December 20, 1995. The employee testified the service was for a cortisone injection at the Sioux Valley Hospital Pain Clinic. The records from the Sioux Valley Hospital (Pet. Ex. C-6) show that on December 20, 1995, Dr. Kevin P. Ronan provided the employee with a left sacroiliac joint injection. Dr. Aamlid was provided with a copy of the report of the procedure. Dr. Aamlid testified that because the October 1995 MRI scan demonstrated an SI joint arthritic change, he sent the employee to the pain clinic at the Sioux Valley Hospital for several injections of the SI joint region. (See Pet. Ex. F at 17.)

We conclude there was sufficient evidence before the compensation judge to resolve the issue of whether the \$116.68 bill from Allied Collection Service was compensable. We remand the case to the compensation judge to determine whether the service at Sioux Valley Hospital was reasonable and necessary and causally related to the employee's personal injury.

³ Petitioner Exhibit B is a summary of the medical expenses prepared by the employee or her counsel.