

ANNETTE ZASKE, Employee, v. JENNIE-O FOODS, SELF-INSURED/ALEXIS/RSKCO, Employer/Appellant.

WORKERS' COMPENSATION COURT OF APPEALS
JUNE 6, 2001

No. [REDACTED SSN]

HEADNOTES

MEDICAL TREATMENT & EXPENSE; SETTLEMENTS - INTERPRETATION. Where the operative language in the Stipulation for Settlement provided for the parties' mutual selection of the employee's treating physician but was silent as to the method by which agreement to that effect would be reached, the Stipulation was construed against the drafting employer, and the compensation judge's award of payment for treatment expenses to a provider not mutually agreed upon was affirmed as both reasonable and appropriate.

Affirmed.

Determined by Pederson, J., Rykken, J., and Johnson, J.
Compensation Judge: Joan G. Hallock.

OPINION

WILLIAM R. PEDERSON, Judge

The self-insured employer appeals from the compensation judge's award of medical treatment expenses allegedly incurred in violation of the terms of a Stipulation for Settlement and Award on Stipulation. We affirm.

BACKGROUND

On June 30, 1995, Annette Zaske [the employee] sustained an admitted work-related injury to her head and back when she was struck by a frozen turkey part on the base of her neck in the course of her employment with Jennie-O Foods [the employer]. The employer was self-insured against workers' compensation liability, with claims administered by Alexis/RSKCO. The employer admitted liability for the injury and paid various benefits.¹

The employee's treating doctor since the date of her injury has been family practitioner Dr. Stephen Olsen. At the time of her injury, the employee resided in Grove City, Minnesota, and Dr. Olsen's office was located near her home. In late 1996, the employee evidently moved to Prior Lake, Minnesota, a suburb located southwest of the Twin Cities.

¹ This case was the subject of previous litigation and decision in Peterson v. Jennie-O Foods, slip op. (W.C.C.A. June 18, 1997) (the employee's surname was formerly Peterson).

According to medical records from Dr. Olsen's office, after moving to Prior Lake, the employee occasionally returned to see Dr. Olsen as her primary treating physician. On February 1, 1999, the employee saw Dr. Olsen with complaints of increasing discomfort in her shoulders, her neck, and the base of her head. Dr. Olsen prescribed one to two weeks of physical therapy, to be administered at the Burnsville office of the Park Nicollet Medical Center.

At this same time, an Employee's Claim Petition was pending at the Office of Administrative Hearings, with issues scheduled for trial on April 1, 1999. On the morning of trial, the parties reached a compromise. Among the agreements reached was that the parties would mutually select a treating physician or physicians in the Twin Cities metropolitan area and would mutually select a mental health professional to evaluate the employee. The attorney for the employer agreed to draft a stipulation to that effect, and on May 18, 1999, that stipulation was signed by the employee. An Award on Stipulation was issued on June 9, 1999.

On April 29, 1999, the employee had contacted Dr. Olsen's office to obtain a prescription refill for Fiorinal, which she had been taking on a PRN basis for pain. Dr. Olsen required an office visit before refilling the prescription, and the earliest date available for an appointment with Dr. Olsen was July 13, 1999. The employee saw Dr. Olsen on that date, and he recommended that she follow through with a previously prescribed program of physical therapy. The therapy was provided at the Park Nicollet Medical Center in Burnsville on July 22, July 27, August 6, August 12, August 20, and September 9, 1999.

The medical bill for Dr. Olsen's July 13, 1999, office visit and the bills for physical therapy at Park Nicollet were submitted to Alexsis for the first time after the treatment had been provided. Payment was denied by Alexsis on grounds that the treatment was unauthorized and violated the terms of the Stipulation for Settlement approved on June 9, 1999.

On March 14, 2000, the employee filed a Medical Request, seeking payment for the office visit with Dr. Olsen and for the physical therapy. The employer denied liability, asserting that the treatment was contrary to the terms of the Stipulation for Settlement. An administrative conference under Minn. Stat. § 176.106 was held before a mediator/arbitrator at the Department of Labor and Industry on May 10, 2000. In a decision issued May 15, 2000, the medical expenses were denied, and on June 9, 2000, the employee filed a Request for Formal Hearing.

The matter came on for a hearing before a compensation judge at the Office of Administrative Hearings on November 22, 2000. The specific issue presented to the compensation judge was whether the Stipulation for Settlement and Award on Stipulation dated June 9, 1999, precluded payment of the medical bills from Dr. Olsen and Park Nicollet. In a Findings and Order issued December 21, 2000, the judge concluded that payment of the medical bills was not precluded by the Stipulation and Award. The employer 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.

DECISION

The provision in the settlement agreement giving rise to controversy in this case is Paragraph VII, 7, which reads as follows:

The parties have agreed to mutually select treating physicians for the employee as part of their agreement. The employee shall be entitled to obtain medical treatment in the Twin City metropolitan area, as mutually agreeable to the parties. Similarly, the parties shall mutually agree to an evaluation by a mental health professional. All rights and defenses are preserved by the parties as to any future treatment recommendations.

The compensation judge agreed with the employee that these terms of the Stipulation for Settlement do not preclude payment of the disputed bills. The judge reasoned that neither party had met its obligation under the Stipulation to find a mutually agreeable doctor in the Twin Cities. Until the parties reached that agreement, she concluded, the employee could continue to seek reasonable and necessary treatment with Dr. Olsen. To hold otherwise, she reasoned, would leave the employee without access to medical care for her work-related injury, a result that was clearly not intended by the Stipulation.

The employer argues that, because the parties did not mutually agree to the employee’s treatment on the disputed dates, the judge erred in her interpretation of the Stipulation and in her award of the treatment expenses. The whole purpose behind the settlement, it argues, was to insure that the employee did not continue to treat with Dr. Olsen and that she find a doctor in the Twin Cities. The employer argues that the employee made no effort to seek permission from the employer for the disputed treatment and therefore knowingly violated the terms of the agreement. To hold, as did the compensation judge, that the employee could continue to treat with Dr. Olsen until the parties mutually agree upon a doctor would, the employer argues, allow the employee to continue to reject potential providers indefinitely and to simply continue to treat with Dr. Olsen.

We agree with the reasoning advanced by the compensation judge. We note, first of all, that there is no contention that the treatment was not reasonable and necessary. Nor did the employer argue that the treatment provided was inconsistent with the medical treatment parameters. The employer's denial was entirely based on its interpretation of Paragraph VII, 7, of the stipulation. The language in the Stipulation simply states that the parties have agreed to mutually select treating physicians for the employee. The Stipulation does not indicate how this is to be done or which party is to initiate the selection process. It does not establish parameters as to when this should be done, or, if the parties cannot agree, how they intend to arrive at a mutually agreeable physician. It is interesting that both the employee and the employer essentially have the same objection to the language of the Stipulation. In its brief, the employer argues that under the interpretation of the compensation judge, the employee could continue to reject potential providers indefinitely and simply continue to treat with Dr. Olsen. Similarly, the employee argues that the employer could refuse to agree to any and all doctors proposed by the employee, which would, in effect, preclude all ongoing medical treatment. The judge recognized the difficulty with the language contained in the Stipulation and reasonably concluded that it would deny the employee access to medical care until the parties arrive at a mutually agreeable treating doctor.

The Stipulation for Settlement does not specifically preclude treatment with Dr. Olsen. In fact, Dr. Olsen is not even referenced in the Stipulation. This court has no way of knowing the basis for the purported agreement. Any ambiguity in the Stipulation should be construed against the drafter, in this case the employer.²

The provision in dispute is essentially dependent on the good faith of the parties. The employer argues that a reasonable person in the employee's position would have contacted the employer before undergoing the treatment in dispute. The fact remains, however, that the Stipulation is silent as to how the parties are to go about mutually selecting the employee's treating physician. Under the circumstances of this case, and construing the Stipulation in a manner most favorable to the non-drafting party, we conclude that the compensation judge's resolution of the issue was both reasonable and appropriate. Accordingly, we affirm the decision of the compensation judge.

² See, e.g., McLaughlin v. Crenlo, Inc., slip op. (W.C.C.A. Oct. 8, 1992).