GERALD FORCIER, Employee/Petitioner, v. STEVE'S SIDING AND WINDOWS and AM. FAM. INS. CO., admin'd by SEDGWICK CLAIMS MGMT. SERVS., INC., Employer-Insurer/Respondent.

WORKERS' COMPENSATION COURT OF APPEALS
AUGUST 14, 2026
No. WC26-6635

VACATION OF AWARD – SUBSTANTIAL CHANGE IN CONDITION. In petitioning this court to vacate and set aside an award on stipulation, the employee failed to adequately show a change in diagnosis, change in ability to work, or additional permanent partial disability, such that he did not meet his burden of proving a substantial change in medical condition since the time of settlement that was clearly not anticipated and could not reasonably have been anticipated at the time of the award.

Determined by:
Thomas J. Christenson, Judge
Deborah K. Sundquist, Judge
Kathryn H. Carlson, Judge

Attorneys: Mark G. Olive, Michael F. Scully, Marcia K. Miller, and Elizabeth Fleming, SiebenCarey, P.A., Minneapolis, Minnesota, for the Petitioner. Craig B. Nichols, Kristine L. Cook, and Jason Schmickle, Aafedt, Forde, Gray, Monson & Hager, P.A., Minneapolis, Minnesota, for the Respondents.

Petition denied.

OPINION

THOMAS J. CHRISTENSON, Judge

The employee petitions this court to vacate and set aside an Award on Stipulation served and filed on July 25, 2005, based on a substantial change in medical condition. We conclude that the employee has not shown good cause and deny the petition.

BACKGROUND

On December 6, 2004, the employee, Gerald Forcier, was employed by Steve's Siding and Windows when he fell off a ladder. He suffered a fracture and dislocation of his right foot and injuries to his neck, low back, and wrists. He sought care at Regions Hospital that same day and underwent x-rays and a CT scan to evaluate complaints of neck pain. The CT scan revealed vertebral end plate spur formation, disc narrowing at C6-7, cervical spondylosis,[1] and

[1] Spondylosis refers to degenerative changes in the spine due to osteoarthritis. Dorland's

curvature abnormality. The x-ray findings showed degenerated discs at C5-6 and C6-7 with loss of the normal cervical lordotic curvature. On examination, the employee had full range of neck motion. The employee had fractured three metatarsals in his right foot and was diagnosed with compartment syndrome of the dorsal lateral aspect of the right foot, and it was noted that the employee realized he would have permanent problems with his right foot.

The employee underwent an open reduction and internal fixation to repair the right foot fracture and dislocation at Regions Hospital on December 9, 2004. The employee was discharged with restrictions of no weight bearing on the right lower extremity and was to remain off work until March 14, 2005.

On January 7, 2005, the employee sought care for neck pain. He was diagnosed with a cervical sprain/strain and chiropractic care was recommended. The employee was seen in follow up for ongoing cramping of his right foot on March 4, 2005. His work restrictions were extended to May 6, 2005.

The parties entered into a stipulation for settlement resolving the employee's to-date claims. (Ex. A.) Under the agreement, the employee's injuries to his wrists and right foot were admitted. An award on stipulation was issued on April 1, 2005.

Dr. Troy Boffeli evaluated the employee's right foot pain on May 13, 2005, and determined that he had not yet reached maximum medical improvement (MMI). He was restricted to sedentary work with no stair or ladder climbing for four months. Dr. Boffeli also noted that he was uncertain whether the employee could perform standing or laboring jobs in the future.

On May 27, 2005, the employee was seen by Dr. Thomas Kraemer to reassess his cervical and lumbar spine conditions. His headaches, right upper extremity pain, and cervical pain had improved but continued. Dr. Kraemer restricted the employee to occasional bending and squatting, frequent walking and standing with a change of position every twenty minutes, and occasional lifting, carrying, pushing, and pulling of no more than ten pounds until July 15, 2005.

The employee was seen for pain over his lateral right foot on June 24, 2005. A plate and screws over the fourth metatarsal were removed on June 29, 2005. Two weeks later, he had no significant pain, and the incision was well healed. He was told to remain off work for four weeks with no ladder work in the future.

The employee returned for an examination of his cervical and right upper extremity conditions on July 12, 2005. Findings of radiculitis/radiculopathy[2] were noted. An MRI scan revealed mild to moderate multilevel cervical degeneration and straightening of normal cervical

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Illustrated Medical Dictionary 1725 (33rd ed. 2020).

[2] Radiculopathy is defined as "a disease of the nerve roots." Dorland's Illustrated Medical Dictionary 1547 (33rd ed. 2020).

lordosis, mild diffuse posterior annular bulging at each level from C3-4 to C6-7 with mild narrowing of the central canal at C3-4 and C4-5, moderate facet arthropathy at C2-3 and C3-4 with associated moderate foraminal stenosis[3] at C2-3, moderate to severe foraminal stenosis on the right at C3-4, and moderately severe foraminal stenosis on the right at C5-6 and C6-7 with neural impingement observed at both sides.

Dr. Kraemer reviewed the MRI findings with the employee on July 19, 2005. Based on the findings, an epidural steroid injection was administered at C5-6 on the right on August 3, 2005.

In July 2005, the parties entered into another settlement, closing out all workers' compensation claims for direct and consequential injuries to the employee's low back, neck, right foot and ankle, and bilateral wrist conditions, on a full, final, and complete basis with medical expenses left open, subject to exceptions, in exchange for $35,000.00. (Ex. B.) The stipulation was signed by the employee on July 19, 2005, the same day he received the results of his cervical MRI. At the time of the settlement, the employee was not working but had been released to work with restrictions for both the right foot and neck injuries. His medical diagnosis for the cervical spine was multilevel cervical disc degeneration, stenosis, lordosis, and nerve impingement, and the for the right foot injury, Lisfranc's fracture/dislocation with metatarsal fractures. (Ex. 5.) The stipulation was approved by a compensation judge, who issued an award on stipulation on July 25, 2005.

Following the award on stipulation, the employee continued to treat for right foot pain, headaches, and thoracic and cervical spine pain. He underwent multiple diagnostic tests which demonstrated cervical spondylosis and loss of cervical lordosis, disc bulge osteophyte complexes associated with mild central canal and moderate bilateral foraminal stenoses at C4-5 and C5-6. There was no electrodiagnostic evidence of right upper extremity radiculopathy.

The employee was seen by Dr. Mark Larkins for chronic neck pain on August 22, 2006. Despite having received conservative care, the employee rated his pain as 7 of 10. No radicular elements were described. On examination, the employee had full range of motion of the cervical spine, no paraspinal spasm, and sensory findings were normal. Dr. Larkins presumed a cervical disc injury and ordered cervical discography.

Cervical discography[4] was performed on August 28, 2006, and the employee

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[3] Spinal stenosis is the narrowing of the spinal vertebral canal, nerve root canals, or intervertebral foramina of the spine caused by encroachment of bone upon the space due to spinal degeneration. Id. at 1740.

[4] In discography, a needle is inserted into the center of the patient's disc. Contrast dye is then injected into the disc. If injecting the dye recreates the patient's normal pain (concordant), it is then inferred that the specific disc is the source of the pain. If the pain is unlike the patient's normal pain (discordant), it can be inferred that even though the disc may look degenerated on a

experienced concordant neck pain at C5-6 and C6-7. Dr. Larkins saw the employee on September 5, 2006, and based on the discography testing, assessed the employee with cervical discogenic disease at C5-6 and C6-7. Dr. Larkins proposed an interbody fusion with an anterior approach.

In a letter dated March 2, 2007, Dr. Larkins provided his opinions regarding the employee's cervical condition. (Ex. D.) It was Dr. Larkins's opinion that the December 6, 2004, work injury caused the employee's discogenic pain, as there was no evidence of any radicular involvement. Because the employee had undergone a long period of conservative care, Dr. Larkins recommended an anterior cervical discectomy at C5-7, interbody fusion, and anterior titanium-plate arthrodesis. He opined that the need for surgery was caused by the work injury.

On March 8, 2007, a hearing was held before a compensation judge to determine whether the surgery proposed by Dr. Larkins was causally related to the work injury. The employee credibly testified that he had neck symptoms and pain since December 2004, with daily intolerable neck pain. He further testified that his activities of daily living had been affected by his neck pain, making it difficult to clean, shop, bathe, do laundry, and be socially active. In a findings and order issued on April 5, 2007, a compensation judge found the employee established by a preponderance of the evidence that his work injury was a substantial contributing factor to his need for the cervical fusion recommended by Dr. Larkins. (Ex. C.) No appeal was taken from this decision.

Dr. Larkins performed an anterior cervical discectomy C5-7 interbody fusion on July 11, 2007. (Ex. E.) Following the surgery, the employee continued to complain of headaches and neck pain, though different than the pain he had experienced prior to the surgery.

On February 14, 2008, Dr. Larkins recommended that the employee undergo discography and injections at C3-4 and C4-5. The discogram was positive at both levels. The employee was reluctant to proceed with an extension of his fusion and instead underwent facet injections, which were not successful. Dr. Larkins recommended the employee seek a second opinion.

The employee saw Dr. Timothy Garvey for a second opinion on August 15, 2008. Dr. Garvey recommended non-operative strategies until the employee's symptoms became intolerable. If further surgery were required, the fusion would be extended to the C3 level.

On February 5, 2013, the employee saw Dr. Matthew Kang with complaints of left shoulder and bicep pain. An MRI scan showed degenerative changes at C4-5 had progressed since the 2010 MRI scan. The employee had also developed a central disc protrusion with loss of interspace height and posterior annular bulging. By letter dated October 23, 2013, Dr. Kang

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scan, it is not the source of the patient's normal pain. Peter F. Ullrich, M.D., Discogram to Diagnose Low Back Pain, http://www.spine-health.com/treatment/diagnostic-tests/discogram-diagnose-low-back-pain.

diagnosed the employee with left-sided C5 radiculopathy due to a left paracentral herniated disc at C4-5 above the previous C5-7 fusion. (Ex. G.) Dr. Kang recommended an open anterior C4-5, C5-7 plate removal and anterior cervical discectomy and fusion.

The employee filed a claim petition seeking various workers' compensation benefits, including cervical surgery. His claim that the surgery proposed by Dr. Kang was causally related to his December 6, 2004, work injury was heard by a compensation judge on October 24, 2013. In an unappealed findings and order of January 7, 2014, the compensation judge determined the employee had established that the open anterior C4-5, C5-7 plate removal, anterior cervical discectomy and fusion surgery recommended by Dr. Kang, was causally related to the work injury. (Ex. F.) On March 17, 2014, the employee underwent an open anterior cervical discectomy and fusion with bilateral foraminotomies at C4-5. The prior fusion at C5-7 was solid. (Ex. H.)

The employee saw Mark Stock, NP-C, at Premier Pain Care on August 3, 2021, for a medication assessment. The employee had been taking buprenorphine for a few years. (Ex. 1.) The employee's primary complaint was chronic neck pain. On examination, his cervical range of motion was mildly restricted and the cervical paraspinal muscles were tender. Mr. Stock assessed the employee with chronic pain syndrome, cervicalgia, and cervical radiculopathy. The employee continued taking buprenorphine and was monitored on a periodic basis through 2025. In a consultation on November 30, 2023, Mr. Stock noted the employee's use of buprenorphine with no side effects which allowed him to perform independent activities of daily living and household duties.

The employee retained Dr. Robert Wengler for an expert medical opinion. Dr. Wengler reviewed medical records, took a medical history from the employee, and performed an examination. In his report of September 25, 2024, Dr. Wengler diagnosed the employee with "chronic cervical spine pain residual to multiple level disc injuries that occurred at the time of the December 6, 2004 fall from a ladder." (Ex. I.) Dr. Wengler concluded the persistent cervical spine symptoms resulted in the employee being permanently and totally disabled from sustained physical employment following the July 2007 surgery. Further, it was Dr. Wengler's opinion that the employee damaged the annular fibers of multiple intervertebral discs due to the work injury. He opined that the employee's discogenic injuries were not recognized at the time of the July 2005 settlement.

On February 11, 2026, the employee filed a petition to vacate and set aside the July 25, 2005, award on stipulation pursuant to Minn. Stat. § 176.461, on the basis that he had suffered a substantial change in medical condition. The employer and insurer object to the petition.

DECISION

Under Minn. Stat. §§ 176.461 and 176.521, subd. 3, this court has authority to vacate an award. A petitioning party must show good cause for this court to vacate an award. Minn. Stat. § 176.461; Stewart v. Rahr Malting Co., 435 N.W.2d 538, 41 W.C.D. 648 (Minn. 1989). The burden of proof is on the party seeking to vacate the settlement. Groshong v. The

Light Depot, 65 W.C.D. 349 (W.C.C.A. 2005).

Cause to vacate an award includes "a substantial change in medical condition since the time of the award that was clearly not anticipated and could not reasonably have been anticipated at the time of the award." Minn. Stat. § 176.461(b)(4). This court analyzes the totality of relevant circumstances when evaluating whether there has been a substantial change in the employee's medical condition, including a change in diagnosis, a change in the employee's ability to work, additional permanent partial disability, the necessity of more costly and extensive medical care than initially anticipated, the causal relationship between the work injury covered by the settlement and the employee's current worsened condition, and the contemplation of the parties at the time of the settlement. Fodness v. Standard Cafe, 41 W.C.D. 1054, 1060-61 (W.C.C.A. 1989). All Fodness factors need not be met for an award to be vacated. Blomme v. Indep. Sch. Dist. No. 413, 76 W.C.D. 971, 982 (W.C.C.A. 2016); Timmerman v. George A. Hormel & Co., 54 W.C.D. 299, 302 (W.C.C.A. 1996), summarily aff'd (Minn. Apr. 29, 1996).

When interpreting and applying the Fodness factors in this case, the employee's condition as it was at the time of the award is compared with the employee's condition at the time the petition to vacate was filed. See Davis v. Scott Moeller Co., 524 N.W.2d 464, 466-67, 51 W.C.D. 472, 475 (Minn. 1994). While the Fodness factors are a useful guide in our review of petitions to vacate, we remain cognizant that the primary purpose of vacating an award is to assure compensation proportionate to the degree and duration of the employee's disability. Monson v. White Bear Mitsubishi, 663 N.W.2d 534, 63 W.C.D. 337 (Minn. 2003).

1. Change in Diagnosis

The employee contends that the change in diagnosis factor supports vacation as the employee has, since the settlement, undergone two cervical fusion surgeries. The employer and insurer argue that the employee's worsened cervical spine condition was reasonably anticipated at the time of settlement and therefore is not sufficient to meet the change in diagnosis factor.

At the time of the settlement, the employee had undergone only right foot surgery and there were no medical opinions, including that of the employee's treating physicians, that indicated cervical spine surgery would be needed in the future. Based upon the record, the employee had received treatment for a diagnosed degenerative condition to his cervical spine from the date of the injury to the date of the award. The subsequent need for cervical fusion surgeries constitutes a change in the type of care the employee required to treat his diagnosed cervical degenerative condition after the 2005 settlement. As the employee has not experienced a change in his diagnosis, but instead a worsening of his degenerative cervical condition leading to additional treatment, we cannot conclude that he has met the burden of proving a change in diagnosis. Additional procedures, such as the cervical fusion surgeries involved here, do not "compel the conclusion" that there has been a change in diagnosis or medical condition. Sondrol v. Del Hayes & Sons, Inc., 43 W.C.D. 367, 368-69 (W.C.C.A. 1990). This factor does not support vacating the award.

2. Change in Ability to Work

At the time of the 2005 settlement, the employee was not working following right foot surgery and was being paid ongoing wage loss benefits. At some point in time, the employee recovered from the right foot surgery and may have been able to return to light-duty work.[5] The record shows the employee underwent cervical fusion surgeries, during which time he was unable to work. Here, our inquiry is not whether there may have been intermittent periods of total disability associated with the need for surgical treatment, but whether there has been a change in the employee's ability to work on a continuing basis.[6] Based on the evidence before us, the employee has not established a change in his ability to work. See Moulds v. WCI Freezer Div., slip op. (W.C.C.A. Dec. 10, 2001) (when an employee was not working at the time of settlement and has not returned to work since that time, he or she has not established a change in ability to work). This factor does not support vacating the award.

3. Additional Permanent Partial Disability

Given the cervical fusion surgeries undergone by the employee, he likely has a ratable condition for purposes of permanent partial disability benefits. However, the record before this court contains no medical opinion or rating of permanent partial disability due to the work injury or medical evidence to demonstrate the employee's PPD rating has increased since the 2005 settlement. This factor does not support vacating the award.

4. More Costly Medical Care

At the time of the employee's filing of his petition to vacate, twelve years had passed since his second cervical fusion surgery. The employee's cervical condition is alleged to contribute to his ongoing chronic neck pain and headaches for which he takes prescribed opioid medication. Since 2004, the employee has undergone considerable conservative medical care and two fusion surgeries to treat his persistent cervical spine symptoms. When medical benefits are left open in a settlement, however, the additional medical treatment factor carries less weight. Burke v. F-M Asphalt, 54 W.C.D. 363, 368 (W.C.C.A. 1996), summarily aff'd (Minn. May 30,

[5] Declaration of Mark Olive at ¶ 3. The employee did not provide an affidavit in support of the petition to vacate.

[6] No evidence has been submitted to this court to establish the employee's work restrictions, work activities, or earnings after the 2005 settlement. In support of his claim, the employee has presented an opinion from Dr. Wengler. In a letter dated September 25, 2024, Dr. Wengler concluded that the employee is permanently and totally disabled. The opinion of Dr. Wengler is made without addressing the employee's work restrictions and without providing an explanation or analysis of the medical and factual support for his opinion that the employee is no longer able to work. Without an explanation of the facts or reasoning underlying his opinion, Dr. Wengler's opinion lacks adequate foundation. Hudson v. Trillium Staffing Sols., 896 N.W.2d 536, 540, 77 W.C.D. 437, 442 (Minn. 2017).

1996). We have previously determined that additional surgeries, standing alone, do not justify vacation of an award. See Miedma v. Brown Group, Inc., slip op. (W.C.C.A. Apr. 22, 1986). Under the 2005 settlement, payment for medical treatment was left open. This court has been provided with medical expense payment information for a three-year period, which does not include the 2007 or 2014 surgeries.[7] Given the dearth of information related to the employee's medical treatment expenses following the 2005 settlement, this factor is neutral and does not support vacating the award.

5. Causal Connection

In response to the employee's petition, the employer and insurer acknowledge that there may well be a causal relationship between the employee's work injury and his current degenerative spinal condition. The employer and insurer contend that the employee's age, degenerating spinal condition, and cigarette smoking are contributing co-morbidity factors to his present degenerative spinal condition and pain symptoms. In a findings and order dated January 7, 2014, a decision which was not appealed, a compensation judge concluded that the employee's need for cervical fusion surgery was causally related to the work injury. This factor supports vacating the award.

6. Contemplation of the Parties at the Time of the Settlement

On the date of injury, the employee suffered from a degenerative condition of the cervical spine, as was evidenced by CT scan. By the time of the 2005 settlement, that condition had progressed. The employee was aware of the cervical MRI findings when he signed the stipulation on July 19, 2005.

According to the stipulation, the employee alleged entitlement to ongoing temporary total disability benefits and possible future claims for temporary partial disability, permanent partial disability, permanent total disability, and retraining benefits. No medical or vocational reports were attached evidencing the employee's permanent work restrictions, listing permanent partial disability ratings, or opining the employee was permanently and totally disabled. He had been off work at the time of settlement following his hardware removal surgery and asserts a return to work after the settlement. The employer and insurer disputed the nature and extent of the injury and asserted the employee would have no loss of earning capacity in the stipulation. Under the agreement, the employer and insurer reserved all defenses to future claims of the employee except primary liability, statute of limitations, and notice. While the employer and insurer may have contemplated that the employee would return to work, the employee indicated he would be entitled to future wage loss benefits. This factor is neutral.

7. Reasonable Anticipation

[7] Medical expense payment information was provided for the period of February 5, 2021, to February 5, 2024, totaling $22,356.59. (Ex. 3.)

The employer and insurer dispute whether the employee's current cervical spine condition and claimed inability to work and disability are causally related to the 2004 work injury. They also dispute whether the employee reasonably anticipated his current situation at the time of the settlement. In general, this court requires that any change in an employee's ability to work must be related to the settled work injury. Schueler v. William Miller Scrap Iron & Metal, slip op. (W.C.C.A. Mar. 3, 2000).

This court has wide discretion in considering petitions to vacate settlements and in weighing the Fodness factors according to the circumstances of each case. See Krebsbach v. Lake Lillian Coop. Creamery Ass'n, 350 N.W.2d 349, 354, 36 W.C.D. 796, 802 (Minn. 1984) (this court is accorded wide, though not unlimited, discretion in determining whether to vacate an award). We conclude that the employee failed to adequately show a change in diagnosis, change in ability to work, or additional permanent partial disability, such that he did not meet his burden of proving a substantial change in medical condition since the time of settlement that was clearly not anticipated and could not reasonably have been anticipated at the time of the award. Because the employee did not meet his burden to establish good cause to set aside the award under Minn. Stat. § 176.461, the petition is denied.