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STATE OF MINNESOTA
Workers' Compensation Court of Appeals
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No. WC16-5990

PROOF OF SERVICE

STATE OF MINNESOTA)
COUNTY OF RAMSEY) SS

Donna Odegaard certifies that as an employee of the Minnesota Workers' Compensation Court of Appeals s/he served a true and correct copy of the attached **Decision**, by placing it in a properly addressed envelope delivered to the Department of Administration Central Mail service for deposit in the U.S. Mail in the City of St. Paul, Minnesota, in accordance with Minn. Stat. § 16B.49, on **January 19, 2017**, addressed as follows:

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RECEIVED
JAN 25 2017
Brown & Carlson P.A.

Signed Donna Odegaard
Donna Odegaard

STATE OF MINNESOTA

WORKERS' COMPENSATION COURT OF APPEALS

No. WC16-5990

Christopher J. Siedow,

Appellant,

David W. Blaeser
Tamarack Hills
539 Bielenberg Drive
Suite 200
Woodbury, Minnesota 55125

v.

Gruber Pallets, Inc., Self-Insured/The Builders Group and Meadowbrook Claims Services,

Respondents.

Brown & Carlson
Darren B. Glur
5411 Circle Down Avenue
Suite 100
Minneapolis, Minnesota 55416

The employee's appeal, filed August 3, 2016, from the Findings and Order of Compensation Judge Kirsten M. Tate, served and filed July 20, 2016, was considered without oral argument by Judge Deborah K. Sundquist, Chief Judge Patricia J. Milun, and Judge David A. Stofferahn, of the Workers' Compensation Court of Appeals.

Based on the pleadings in the case, the transcript of evidence taken before the compensation judge, the exhibits admitted into evidence, and the briefs and arguments of counsel, the court is of the opinion that the Findings and Order of the compensation judge are in accord with the evidence and law in the case.

NOW, THEREFORE, this court AFFIRMS the Findings and Order of Compensation Judge Kirsten M. Tate, served and filed July 20, 2016.

BY THE COURT:

DEBORAH K. SUNDQUIST, Judge

OPINION

DEBORAH K. SUNDQUIST, Judge

The employee has appealed from the compensation judge's finding that he sustained a temporary injury that resolved without any ongoing disability or need for restrictions.

Substantial evidence in the record as a whole supports the compensation judge's order granting the employer's petition to discontinue benefits, and we affirm.

BACKGROUND

The employee, Christopher Siedow, worked for the employer, Gruber Pallets, Inc., driving an 18-wheeler semi-truck delivering pallets weighing between 20 to 200 pounds to customers. The employee used a hand dolly or pallet jack to load and unload the pallets when necessary.

On the morning of August 20, 2015, while driving westbound near Windom, Minnesota, traveling at 57 miles per hour, an oncoming car crossed into his lane and struck the carriage of the trailer. On impact, the employee was thrown into his seatbelt. He hit the brakes, was again thrown into his seatbelt, and pulled off the road. He suffered no loss of consciousness, but felt confused. The self-insured employer admitted liability and paid wage loss and medical benefits.

Four days after the accident, on August 24, 2015, the employee was seen by Sara Robinson, a certified nurse practitioner (CNP) at North Suburban Family Physicians, complaining of left shoulder, neck, and low back pain. On examination, cervical, shoulder, and lumbar range of motion were within normal limits. The diagnosis was left shoulder pain and low back strain. Ms. Robinson referred the employee for physical therapy and to Dr. Steven Greer, an orthopedist, for evaluation of the left shoulder. MRI scans of the left shoulder and the lumbar spine were ordered. The September 14, 2015, shoulder MRI was unremarkable. The lumbar spine MRI of November 2, 2015, showed degenerative disc disease at the L4-5 level. The employee's qualified rehabilitation consultant (QRC), Michael Anderson, attended the November 4, 2015, appointment with CNP Robinson, and reported that Ms. Robinson indicated the MRI as a whole was relatively unremarkable, and she was at a loss to explain the employee's radicular symptoms and intense lumbar pain symptoms. Physical therapy was discontinued and the employee was referred to Dr. Mark Agre, a physical medicine and rehabilitation specialist at IMPACT Physical Medicine and Aquatic Center (IMPACT). Dr. Agre noted cervical, thoracic, lumbosacral, and shoulder pain and restrictions and recommended physical, pool, and massage therapy at IMPACT.

The employee was off work from August 21, 2015, until November 11, 2015, when Dr. Agre released the employee to return to light-duty work three hours a day gradually increasing by one hour a day five days a week. The employee experienced flare-ups of low back pain and on December 18, 2015, was again taken off work. On February 25, 2016, Dr. Agre concluded the employee had plateaued with physical and massage therapy and recommended a trial of MedX therapy. The employee was released to return to light duty work on February 29, 2016, three hours a day gradually increasing to 4 hours per day.

On his first day back at work, the employee reported to the therapist that his pain got worse with increased physical work. On March 9, 2016, he reported to the MedX therapist

that he was "doing horrible" and that "everything is flaring back up since going back to work." On March 11, 2016, he reported being sore and in a lot of pain. (Ex. I.)

About the same time, the self-insured employer retained a private investigator. On March 12, 2016, the employee was observed and video-taped working underneath a jacked-up vehicle outside his home. The ten-minute surveillance video shows the employee lying on a creeper on his back under the car, using an impact wrench and hammer to work on a part, crawling on and off the creeper, working partially raised with his back twisted, bending forward and sideways, crouching down and kneeling under the car, and getting on and off the ground without apparent effort.

On April 4, 2016, Dr. Agre continued the employee's light-duty restrictions, four hours a day. The doctor noted he received a copy of the surveillance video but did not watch it. Dr. Agre opined that working on his personal vehicle at home was the same as the light-duty diesel maintenance the employee was successfully doing at work. On May 5, Dr. Agre indicated the employee had plateaued, was not progressing with MedX, and recommended referral for medial branch block injections.

On May 24, 2016, Dr. Paul Wicklund, an orthopedic surgeon, examined the employee at the request of the self-insured employer. On examination, the employee had essentially normal cervical, shoulder, and low back findings. The doctor noted a surveillance video showed the employee was able to work with an impact wrench underneath a car, and could lie on his back, crouch, and kneel under the vehicle without any signs of difficulty. Dr. Wicklund concluded the employee had resolved left shoulder pain and subjective back pain with minimal degenerative changes, and opined the employee had no objective physical findings to support any ongoing injury to his neck, shoulder, or low back. Dr. Wicklund maintained the employee had reached maximum medical improvement (MMI), there was no need for further medical treatment, and the employee could return to full-time work without restrictions.

By report dated June 7, 2016, Dr. Agre disagreed, stating the employee had persistent left cervical and left lumbar pain and left shoulder symptoms, attributable to persisting small joint/facet residual pain as a result of the whiplash mechanism of the employee's injury. In Dr. Agre's opinion the employee would likely benefit from a trial of medial branch blocks and continued to need work restrictions.

The self-insured employer filed a petition to discontinue benefits. Following a hearing, the compensation judge found that the employee's injury was temporary in nature and had resolved without any ongoing disability or need for restrictions. The employee has appealed.

DECISION

The compensation judge concluded the employee sustained a strain/sprain to his neck, low back, and left shoulder as a result of the August 20, 2015, accident, but determined the

medical record, including minimal objective findings by CNP Robinson following the accident, the surveillance video showing the employee performing physical work on a motor vehicle in March 2016, and the lack of objective findings on examination and the opinions of Dr. Wicklund in May 2016, demonstrated the employee's injuries were temporary and had resolved.

The employee argues that substantial evidence fails to support the compensation judge's finding. He asserts that from the very beginning, the employer believed that the employee was exaggerating his claims and minimized the effects of the accident and the seriousness of his injuries. The appellant maintains there is overwhelming evidence of his credibility and the ongoing effects of his injuries.

Substantial evidence supports the compensation judge's 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). Upon careful review, the medical records show little in the way of objective findings on examination. The employee's neck, low back, and shoulder range of motion were essentially normal from the initial post-injury medical appointment. In an independent medical examination (IME) report dated December 6, 2015, Dr. Wicklund recommended that the employee complete physical therapy with Dr. Agre, and opined the employee would be at MMI within six weeks. The medical records reflect little significant change in the employee's condition after mid-April 2016.

The employee, however, argues the judge erred in relying on the March 2016 surveillance video as it shows only 10 to 12 minutes of activity on a Saturday morning, that the activities were within his light-duty restrictions, and the video contains nothing of any significance relative to his condition. The employer acknowledges the work the employee is seen doing in the video is similar to the light-duty work he was performing for the employer. The relevance of the video, they assert, is the questions it raises about the nature and extent of the employee's disability at that time. Upon careful review of the video, we agree the compensation judge could reasonably conclude the employee's complaints of pain and inability to perform work activities were not reliable in light of the physical activities shown on the surveillance video.

The employee also argues the compensation judge erred in adopting the opinions of Dr. Wicklund. The appellant asserts the employee's treating doctor, Dr. Agre, is a specialist in the treatment of soft tissue injuries and, accordingly, has a better perspective, experience, and opinions with respect to the nature and extent of the employee's disability, with the implication that Dr. Agre's opinion should have been given more weight than Dr. Wicklund's. There is nothing in the law that requires a judge to give greater weight to an employee's physician over that of an IME. Brustad v. Healtheast/St. Joseph's Hosp., 70 W.C.D. 291 (W.C.C.A. 2010)(citing Caven v. Ag-Chem Equip. Co., Inc., slip op. (W.C.C.A. Sept. 14, 1993) (while a finder of fact may choose to afford greater weight to the opinion of a treating doctor, he or she is not required to do so.) Moreover, this court has long given substantial deference to a compensation judge's decision to accept and rely on the opinion of one medical expert over that of another, provided the facts assumed by the expert are supported by the evidence in the case. See Nord v. City of Cook,

360 N.W.2d 337, 342-43, 37 W.C.D. 364, 372-73 (Minn. 1985). Dr. Wicklund reviewed the employee's medical records and the surveillance video, took a history from the employee, and conducted a physical examination. As an orthopedic surgeon, Dr. Wicklund has sufficient education and experience to provide a medical opinion based on the medical record. The compensation judge did not err in adopting the opinion of Dr. Wicklund.

Substantial evidence supports the compensation judge's finding that the employee's injury was temporary in nature and has resolved without any ongoing disability or need for restrictions. Accordingly, we affirm.