

NEBRASKA SUPREME COURT

Barbara L. Potter v. Patrick S. McCulla, Hartford Underwriters Insurance Company, Tracy N. Garcia, D.D.S., L.L.C., and First Comp Insurance Company

288 Neb. 741 (2014) · No. No. S-13-944 · Decided August 1, 2014

SUMMARY

The Nebraska Supreme Court affirmed a Workers’ Compensation Court decision awarding Barbara Potter benefits for a repetitive trauma neck injury sustained during her career as a dental hygienist. The court held that competent evidence connected the injury to her employment, including employment with the appellant employer, and that the injury manifested on February 11, 2009, when Potter first missed work and sought medical treatment. The court declined to overrule its precedent defining when a repetitive trauma injury occurs “suddenly and violently.”

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Stephan, J.; Wright, J.; Connolly, J.; McCormack, J.; Miller-Lerman, J.; Cassel, J.
JURISDICTION	Nebraska
DECIDED	August 1, 2014
DOCKET	No. S-13-944
DISPOSITION	affirmed
PROCEDURAL POSTURE	Garcia and FirstComp appealed a Nebraska Workers' Compensation Court award holding that Potter's repetitive trauma injury manifested on February 11, 2009, and imposing liability for her medical expenses and compensation benefits on Garcia and FirstComp. The Nebraska Supreme Court granted the petition to bypass the Nebraska Court of Appeals and affirmed.
STANDARD OF REVIEW	A Workers' Compensation Court judgment, order, or award may be modified, reversed, or set aside only on specified statutory grounds. The appellate court reviews the findings of the trial judge who conducted the original hearing and will not disturb factual findings unless clearly wrong.

PRECEDENTIAL VALUE	published and precedential
PARTIES	Tracy N. Garcia, D.D.S., L.L.C., First Comp Insurance Company v. Barbara L. Potter, Patrick S. McCulla, Hartford Underwriters Insurance Company

TOPICS

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appellate procedure

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Potter proved a causal connection between her repetitive trauma injury and her employment as a dental hygienist, including her employment with Garcia.
2. Whether the date of Potter's repetitive trauma injury was February 11, 2009, when she first missed work because of the injury.
3. Whether the Nebraska Supreme Court should reconsider or overrule its precedent defining when a repetitive trauma injury manifests under the statutory requirement that an accident happen suddenly and violently.

HOLDINGS

1. Potter proved by competent evidence that her repetitive trauma injury arose from the risks within the scope or sphere of her employment as a dental hygienist, and she was not required to prove that the injury arose specifically from employment with Garcia.
2. Under Nebraska law, a repetitive trauma injury manifests at an identifiable point in time when the employee has both sought medical treatment and missed or discontinued work because of the injury.
3. The court declined to overrule its precedent requiring both medical treatment and missed or discontinued work to identify the manifestation date of a repetitive trauma injury.

KEY QUOTATIONS

"We have thus reasoned that the phrase "'suddenly and violently'" as used in § 48-151(2) does not mean "instantaneously and with force," but, rather, requires only that the injury manifest at an identifiable point in time." (748)

"The test we have adopted, that a repetitive trauma injury manifests on the date that the employee has both sought medical treatment and missed work due to the injury, has certain advantages." (751)

"We therefore decline Garcia and FirstComp's invitation to overrule our precedent." (753)

FACTUAL BACKGROUND

Barbara Potter worked as a dental hygienist for more than 30 years and developed neck pain associated with the repetitive postures and duties of that work. She first sought medical treatment in October 2008 while working for Patrick McCulla, but continued working and did not miss work until February 11, 2009, after McCulla had sold the practice to Tracy Garcia; her duties and hours remained the same. Medical evidence indicated that her cervical condition was aggravated by repetitive work, and the compensation court awarded benefits based on a 40-percent loss of earning capacity, assigning liability to Garcia and FirstComp because February 11, 2009, was the date she first missed work due to the injury.

PROCEDURAL HISTORY

Potter petitioned the Nebraska Workers' Compensation Court for benefits. The compensation court found that preexisting neck conditions were aggravated by her work as a dental hygienist, awarded benefits based on a 40-percent loss of earning capacity, determined that February 11, 2009, was the date of injury, and held Garcia and FirstComp liable. Garcia and FirstComp timely appealed, and the Nebraska Supreme Court moved the case to its docket after granting bypass.

DISPOSITION

affirmed

CASES CITED

- Hynes v. Good Samaritan Hospital, 285 Neb. 985, 830 N.W.2d 499 (2013)
- Smith v. Mark Chrisman Trucking, 285 Neb. 826, 829 N.W.2d 717 (2013)
- Pearson v. Archer-Daniels-Midland Milling Co., 285 Neb. 568, 828 N.W.2d 154 (2013)
- Risor v. Nebraska Boiler, 277 Neb. 679, 765 N.W.2d 170 (2009)
- Miner v. Robertson Home Furnishing, 239 Neb. 525, 476 N.W.2d 854 (1991)
- Money v. Tyrrell Flowers, 275 Neb. 602, 748 N.W.2d 49 (2008)
- Owen v. American Hydraulics, 254 Neb. 685, 578 N.W.2d 57 (1998)
- Green v. Drivers Management, Inc., 263 Neb. 197, 639 N.W.2d 94 (2002)
- Liberty v. Colonial Acres Nursing Home, 240 Neb. 189, 481 N.W.2d 189 (1992)
- Zoucha v. Touch of Class Lounge, 269 Neb. 89, 690 N.W.2d 610 (2005)
- Tomlin v. Densberger Drywall, 14 Neb. Ct. App. 288, 706 N.W.2d 595 (2005)
- Swoboda v. Volkman Plumbing, 269 Neb. 20, 690 N.W.2d 166 (2004)
- Sandel v. Packaging Co. of America, 211 Neb. 149, 317 N.W.2d 910 (1982)
- Jordan v. Morrill County, 258 Neb. 380, 603 N.W.2d 411 (1999)
- Fay v. Dowding, Dowding, 261 Neb. 216, 623 N.W.2d 287 (2001)
- Vonderschmidt v. Sur-Gro, 262 Neb. 551, 635 N.W.2d 405 (2001)
- Dawes v. Wittrock Sandblasting & Painting, 266 Neb. 526, 667 N.W.2d 167 (2003)
- Kimminau v. Uribe Refuse Service, 270 Neb. 682, 707 N.W.2d 229 (2005)
- Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001)

- Meyer v. IBP, Inc., 710 N.W.2d 213 (Iowa 2006)
- Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992)
- Centrilift v. Evans, 915 P.2d 391 (Okla. App. 1995)
- Brummitt v. Southeastern Kentucky Rehabilitation, 156 S.W.3d 276 (Ky. 2005)
- Piad Corp. v. W.C.A.B. (Moskyok), 761 A.2d 640 (Pa. Commw. 2000)
- Oscar Mayer & Co. v. Industrial Commission, 176 Ill. App. 3d 607, 531 N.E.2d 174 (1988)
- Treaster v. Dillon Companies, Inc., 267 Kan. 610, 987 P.2d 325 (1999)
- Vencil v. Valmont Industries, 239 Neb. 31, 473 N.W.2d 409 (1991)

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