

SUPREME COURT OF NORTH DAKOTA

Elshaug v. Workforce Safety and Insurance

Elshaug, 2003 ND 177 (N.D. 2003) · No. No. 20030100 · Decided November 18, 2003

SUMMARY

The North Dakota Supreme Court reversed a district court judgment requiring Workforce Safety and Insurance to provide additional workers’ compensation benefits to Rosella Elshaug. The court held that, regardless of whether multiple chemical sensitivity constituted a disease, a reasoning mind could find that Elshaug failed to prove her condition was fairly traceable to her employment. The matter was remanded for entry of a judgment affirming WSI’s orders denying further benefits.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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| COURT                 | Supreme Court of North Dakota                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| WRITING FOR THE COURT | Gerald W. VandeWalle, Chief Justice; Dale V. Sandstrom, Justice; William A. Neumann, Justice; Mary Muehlen Maring, Justice; James M. Bekken, District Judge                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| JURISDICTION          | North Dakota                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| DECIDED               | November 18, 2003                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| DOCKET                | No. 20030100                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Workforce Safety and Insurance appealed from a district court judgment reversing WSI's final orders denying Rosella Elshaug further workers' compensation benefits and ordering WSI to recognize the compensability of her medical condition and provide benefits.                                                                                                                                                                                                                                                                                                                                      |
| STANDARD OF REVIEW    | The Supreme Court reviews the agency decision rather than the district court's decision and must affirm unless one of the grounds specified in N.D.C.C. §§ 28-32-46 and 28-32-49 is present. The Court exercises restraint in reviewing whether agency findings are supported by a preponderance of the evidence, does not make independent findings or substitute its judgment for the agency's, and asks whether a reasoning mind reasonably could have found the agency's findings proven by the weight of the evidence. Questions of law, including statutory interpretation, are fully reviewable. |
| PRECEDENTIAL VALUE    | Published North Dakota Supreme Court opinion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

## TOPICS

workers compensation

judicial review of agency action

standard of review

administrative law

appellate procedure

## PRACTICE AREAS

workers compensation

administrative law

appellate procedure

## QUESTIONS PRESENTED

1. Whether WSI's denial of further workers' compensation benefits was supported by the evidence and in accordance with North Dakota law.
2. Whether Elshaug proved that her medical condition, including alleged multiple chemical sensitivity, was a disease fairly traceable to her employment and therefore a compensable injury under N.D.C.C. § 65-01-02(9).
3. Whether the district court properly substituted its judgment for WSI's resolution of conflicting expert medical opinions.

## HOLDINGS

1. WSI properly denied Elshaug further workers' compensation benefits because, regardless of the precise nature of her medical condition, she failed to prove by a preponderance of the evidence that the condition was fairly traceable to her employment.
2. WSI was entitled to weigh the credibility and competing opinions of the medical experts, and its choice between those opinions was not subject to reversal where the agency explained its reasoning and did not selectively reject evidence in an unreasoned manner.
3. The district court erred by reversing WSI and ordering benefits because appellate review is directed to the agency decision, and the agency's findings were not properly overturned merely because the district court reached a different factual conclusion.

## KEY QUOTATIONS

*“We decide only whether a reasoning mind reasonably could have decided the agency’s findings were proven by the weight of the evidence from the entire record.” (¶ 12)*

*“We believe the Bureau fairly and reasonably construed the evidence in the record to reach a conclusion which we may not overturn under our standard of review.” (¶ 15)*

## FACTUAL BACKGROUND

Rosella Elshaug claimed injuries from reactions to chemicals encountered while working in the laundry at Ashley Medical Center in 1994 and 1996, and later asserted that repeated exposures caused or worsened

multiple chemical sensitivity. WSI initially awarded benefits for the incidents but later found that she had recovered from the 1996 exposure injury and denied further benefits and her reapplication. The administrative record contained conflicting medical opinions about whether multiple chemical sensitivity was a disease and whether Elshaug's condition was fairly traceable to her employment. WSI ultimately found that Elshaug failed to prove by a preponderance of the evidence that her condition was a compensable injury fairly traceable to her employment.

## PROCEDURAL HISTORY

WSI initially awarded benefits for chemical-exposure incidents but later denied further benefits and denied Elshaug's reapplication. After an earlier appeal concerning improper ex parte contacts, the matter was remanded for reconsideration and rehearing. Following additional administrative proceedings, WSI again denied benefits; the district court reversed and ordered WSI to provide benefits. The Supreme Court of North Dakota reversed the district court and remanded for entry of judgment affirming WSI's orders.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Remand for entry of a judgment affirming WSI's orders of June 28, 2002, and November 16, 2001, which affirmed the earlier orders denying further benefits.

## CASES CITED

- Elshaug v. N.D. Workers Comp. Bureau, 2000 ND 42, ¶¶ 1, 11, 607 N.W.2d 568
- Unser v. N.D. Workers Comp. Bureau, 1999 ND 129, ¶ 22, 598 N.W.2d 89
- Rush v. N.D. Workers Comp. Bureau, 2002 ND 129, ¶¶ 5-6, 649 N.W.2d 207
- Byron v. Gerring Industries, Inc., 328 N.W.2d 819, 822 (N.D. 1982)
- Negaard-Cooley v. N.D. Workers Comp. Bureau, 2000 ND 122, ¶ 19, 611 N.W.2d 898
- Kraft v. State Board of Nursing, 2001 ND 131, ¶ 10, 631 N.W.2d 572
- Barnes v. Workforce Safety and Insurance, 2003 ND 141, ¶ 9, 668 N.W.2d 290
- Otto v. N.D. Workers Comp. Bureau, 533 N.W.2d 703, 707 (N.D. 1995)
- Halseth v. N.D. Workers Comp. Bureau, 514 N.W.2d 371, 374 (N.D. 1994)