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Edward cites no authority for his contention that a juvenile's parent must be present during the State's assessment of the juvenile's treatment needs, and the record shows that Sharon participated telephonically during a clinical evaluation. OJS included her comments in its report. Moreover, the record shows that the professionals evaluating Edward's treatment needs fully considered his psychiatric and intellectual needs during their testing. And Edward fails to identify any statements that he made during the evaluation process that were inaccurate or that would have changed the recommendation in these cases. More important, rehabilitation under any lesser disposition would depend on Edward's compliance with a probation program, which he had already failed.[27] The court did not err in concluding that probation had been inadequate and that Edward's conduct and the public's safety required his treatment in a secure facility.

AFFIRMED.

[27] See § 43-286(1)(a).

THOMAS L. PEARSON, APPELLANT, V. ARCHER-DANIELS-MIDLAND MILLING COMPANY, APPELLEE.

828 N.W.2d 154

Filed March 22, 2013. No. S-12-729.

1. **Workers' Compensation: Appeal and Error.** In determining whether to affirm, modify, reverse, or set aside a judgment of the Workers' Compensation Court review panel, a higher appellate court reviews the findings of the trial judge who conducted the original hearing; the findings of fact of the trial judge will not be disturbed on appeal unless clearly wrong.
2. **Evidence: Words and Phrases.** Competent evidence means evidence that tends to establish the fact in issue.
3. **Workers' Compensation: Evidence: Appeal and Error.** In testing the sufficiency of the evidence to support the findings of fact by the Workers' Compensation Court, the evidence must be considered in the light most favorable to the successful party, every controverted fact must be resolved in favor of the successful party, and the successful party will have the benefit of every inference that is reasonably deducible from the evidence.

4. **Workers' Compensation.** The single judge of the Workers' Compensation Court is the sole judge of the credibility of the witnesses and the weight to be given their testimony, even where the issue is not one of live testimonial credibility.
5. **Workers' Compensation: Evidence: Appeal and Error.** If the record contains evidence to substantiate the factual conclusions reached by the trial judge in workers' compensation cases, an appellate court is precluded from substituting its view of the facts for that of the compensation court.
6. **Appeal and Error.** An appellate court is not obligated to engage in an analysis that is not necessary to adjudicate the case and controversy before it.

Appeal from the Workers' Compensation Court. Affirmed.

Eric B. Brown, of Atwood, Holsten, Brown & Deaver Law Firm, P.C., L.L.O., for appellant.

Brynne E. Holsten, of Engles, Ketcham, Olson & Keith, P.C., for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, MILLER-LERMAN, and CASSEL, JJ.

CASSEL, J.

INTRODUCTION

After Thomas L. Pearson obtained a workers' compensation award that covered future medical treatment "which falls under the provisions of § 48-120" of the Nebraska Revised Statutes, he underwent knee replacement surgery and sought a further award of benefits. A single judge of the Workers' Compensation Court denied his petition, and a divided review panel affirmed. Because there was sufficient evidence to support the single judge's factual finding that the surgery did not result from the work-related injury and because the single judge properly applied the original award, we affirm.

BACKGROUND

Pearson was injured during the course of his employment at Archer-Daniels-Midland Milling Company (ADM) on October 27, 2006, and filed for workers' compensation benefits. At the hearing on Pearson's petition, the parties offered into evidence medical records containing the opinions of several different medical providers who had evaluated or treated Pearson's injuries. To the extent that it is necessary to review the evidence

presented at the various hearings, we do so in the analysis section below.

In August 2008, the Workers' Compensation Court issued an award for injuries to Pearson's lower back and right knee. There was no allegation of any injury to the left knee. The court ordered ADM to pay all of Pearson's outstanding medical bills and temporary total disability benefits for both injuries. In considering permanent disability benefits, the court focused heavily on the right knee injury, noting that

> [t]he need for the particulars surround[ing] the actual injury is driven, in part, by the fact that [Pearson] suffered an injury to that same right knee in 2001 . . . that [Pearson] was diagnosed with osteoarthritis in that knee prior to the subject accident . . . that [Pearson] complained of significant pain in his right knee in the year prior to his accident . . . and, the existence of similarities in the complaints by [Pearson] both pre[-] and post-accident . . . .

After reviewing the evidence, the court found "a causal link between [Pearson's] knee complaints and the subject accident" and that he had reached maximum medical improvement. Nonetheless, the court also concluded that this "aggravation or exacerbation of [Pearson's] pre-existing arthritic condition was not persuasively established as permanent in nature." The court did not identify any permanent restrictions or permanent medical impairment ratings resulting from the knee injury. Given these conclusions, the court awarded permanent disability benefits for the low-back injury only.

Despite finding that the evidence did not establish permanency of the right knee injury, the Workers' Compensation Court awarded Pearson future medical expenses for the injury because it was persuaded that "future medical treatment will be reasonably required." Specifically, the court ordered that "[a]ny future medical treatment received by [Pearson] which falls under the provisions of § 48-120, and which otherwise satisfies all necessary foundational elements thereto, should be provided at the expense of [ADM]."

Following the award, Pearson had further difficulties with his right knee and eventually had total knee replacement surgery. After this surgery, Pearson filed an application for

modification of the original award. He alleged that the surgery resulted in "a material and substantial change in his physical condition and an increase in disability since [the original award]." In considering Pearson's request for modification, the Workers' Compensation Court reviewed all evidence previously admitted in the case and received additional evidence as to the surgery.

After a hearing, a single judge of the Workers' Compensation Court denied Pearson's request for compensation of his right knee replacement surgery and for indemnity benefits. The court explained that "[t]he issue of [Pearson's] entitlement to knee replacement surgery was presented . . . at the time of the original trial held on June 16, 2008," and that "[w]hile [Pearson's] request for right knee replacement surgery was not expressly denied [in the original award], it most assuredly was implied." On appeal, the review panel of the compensation court affirmed.

On further appeal, however, this court reversed that part of the compensation court's decision denying Pearson's knee replacement surgery and remanded the cause "for a factual determination as to whether Pearson's knee replacement falls under the provisions of § 48-120."[1] In reaching this conclusion, we specifically considered and rejected the review panel's conclusion that the compensability of knee replacement surgery was implicitly denied in the original award, holding that "there was no basis at [the time of the original award] for the court to rule one way or the other" on the issue of knee replacement and that "a work-related injury need not result in permanent disability in order for medical treatment to be awarded."[2]

On remand, a single judge of the Workers' Compensation Court found that Pearson's right knee replacement surgery "does not fall under the provisions of § 48-120 and, thus, is not the responsibility of [ADM]." Relying upon the opinions of two doctors and rejecting that of a third, the court concluded

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[1] *Pearson v. Archer-Daniels-Midland Milling Co.*, 282 Neb. 400, 408, 803 N.W.2d 489, 495 (2011).

[2] *Id.* at 406, 803 N.W.2d at 494.

that (1) Pearson "did not sustain any permanent impairment as a result of the injury to his right knee," (2) Pearson's knee injury "is best described as a temporary exacerbation of a pre-existing knee condition," and (3) Pearson's knee replacement surgery "was not persuasively established to be the product of the subject accident but, rather, prompted by [his] pre-existing degenerative knee condition." Pearson appealed to a review panel.

On appeal, two judges of the review panel affirmed, with the third judge dissenting. In affirming, the two-judge majority reasoned:

> While it is true that there was evidence in the record which the trial judge could have relied upon in finding for [Pearson], [the single judge of the Workers' Compensation Court] found that evidence unpersuasive. When read in its entirety, the deposition of Dr. David J. Clare . . . contains numerous qualified answers which a finder of fact could reasonably question.
>
> It is the role of the trial judge to determine which, if any, expert witnesses to believe. The review panel cannot reweigh the evidence and substitute its judgment for that of the trial court.

The third judge of the review panel disagreed, citing to evidence in the record which he believed established that knee replacement surgery was causally related to the work-related accident. He explained: "The denial of [Pearson's] request for benefits for the total knee arth[r]oplasty is based upon the argument that the sole proximate cause of the need for surgery was the preexisting arthritic condition. Dr. [David] Clare's deposition, which is the only evidence on the issue, proves otherwise."

Pearson timely appeals.

ASSIGNMENTS OF ERROR

Pearson argues, restated, that the review panel erred in affirming the single judge's order finding that his knee replacement surgery was not compensable, because such finding is not supported by the medical records received into evidence and is "legally inconsistent" with the original award. Pearson

also argues that the compensation court should have awarded Pearson additional indemnity benefits stemming from the knee replacement surgery.

STANDARD OF REVIEW

[1] In determining whether to affirm, modify, reverse, or set aside a judgment of the Workers' Compensation Court review panel, a higher appellate court reviews the findings of the trial judge who conducted the original hearing; the findings of fact of the trial judge will not be disturbed on appeal unless clearly wrong.[3]

ANALYSIS

Sufficiency of Evidence

[2] Pearson's first assignment of error alleges that the medical records received into evidence did not support a finding that his right knee replacement surgery was not compensable. More specifically, he alleges that the review panel had cause to reverse the decision of the single judge of the Workers' Compensation Court under Neb. Rev. Stat. § 48-185 (Cum. Supp. 2012). Section 48-185 allows a judgment of the compensation court to be modified, reversed, or set aside based on the ground that "there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award." Competent evidence means evidence that tends to establish the fact in issue.[4]

According to Pearson, the review panel should have reversed the trial court's finding that his knee replacement surgery did not fall under Neb. Rev. Stat. § 48-120(1)(a) (Cum. Supp. 2012) on the ground of insufficient evidence. Section 48-120(1)(a) states that medical, surgical, or hospital services are compensable if they (1) are reasonable, (2) are required by the work injury, and (3) "will relieve pain or promote and hasten the employee's restoration to health and employment." As we decided on the last appeal of this case, the compensation

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[3] *Lovelace v. City of Lincoln*, 283 Neb. 12, 809 N.W.2d 505 (2012).

[4] *Ahmann v. Nebraska Dept. of Corr. Servs.*, 278 Neb. 29, 767 N.W.2d 104 (2009).

court did not rule "one way or the other" on the compensability of possible knee replacement surgery under § 48-120(1)(a) in the original award.[5]

Of the three factors in § 48-120(1)(a), only the second one was contested—whether Pearson's knee replacement surgery was required by the work-related injury. Because the trial court found that Pearson's knee surgery was *not* required by the work-related injury and therefore was not compensable under § 48-120(1)(a), the exact question before the review panel was whether there was sufficient competent evidence to conclude that Pearson's knee surgery was not required by the work-related injury to his right knee.

[3] In testing the sufficiency of the evidence to support the findings of fact by the Workers' Compensation Court, the evidence must be considered in the light most favorable to the successful party, every controverted fact must be resolved in favor of the successful party, and the successful party will have the benefit of every inference that is reasonably deducible from the evidence.[6] In this case, ADM—the employer—was the successful party. Thus, we view the evidence in its favor and give it the benefit of all favorable inferences.

Contrary to Pearson's assertion, there was competent evidence to support the finding of the single judge of the Workers' Compensation Court that the knee replacement surgery "was not persuasively established to be the product of the subject accident but, rather, prompted by [his] preexisting degenerative knee condition." The medical records received into evidence included the expert medical opinions of Dr. D.M. Gammel, which opinions directly supported the conclusion that Pearson's knee replacement surgery was necessitated by a preexisting condition and not the work-related accident. About 1 year after the work-related accident, Gammel examined Pearson's right knee and made the following findings: (1) that Pearson "sustained a temporary exacerbation of a pre-existing knee condition," (2) that Pearson "sustained a

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[5] *Pearson v. Archer-Daniels-Midland Milling Co., supra* note 1, 282 Neb. at 406, 803 N.W.2d at 494.

[6] *Straub v. City of Scottsbluff*, 280 Neb. 163, 784 N.W.2d 886 (2010).

right knee strain as a result of the work[-]related injury on 27 October 2006 and his present condition . . . is due to the pre-existing osteoarthritis," (3) that Pearson's knee condition "is a natural progression of [t]he pre-existing condition," (4) that Pearson reached maximum medical improvement in April 2007, (5) that there were no permanent restrictions as a result of the work-related injury, (6) that "any restriction regarding the right knee is related to a pre-existing condition," and (7) that "any further right knee treatment is necessary as a result of the pre-existing condition." Given Gammel's expert medical opinions, the compensation court could reasonably conclude that Pearson's knee replacement surgery was required not by the work-related accident, but, rather, by the preexisting arthritis.

The medical records provide further support for this conclusion. Two other doctors had diagnosed Pearson with arthritis in both knees prior to the work-related injury, although the condition was worse in the right knee than in the left knee. And well after the work-related accident but prior to the knee replacement surgery, Pearson began experiencing symptoms in his left knee that were identical to the symptoms in his right knee. Because Pearson was experiencing identical symptoms in both knees and both knees were affected by arthritis but only one knee was injured in the work-related accident, the Workers' Compensation Court could reasonably infer that the bilateral symptoms persisting long after the accident and up to the time of surgery were caused by the condition affecting both knees—the arthritis—and not by the condition affecting only one of the knees—the injury at work. If the symptoms necessitating surgery were caused by arthritis and not the work-related injury, it necessarily follows that the need for surgery did not result from the work-related injury.

This evidence, when considered in the light most favorable to ADM, tends to establish that Pearson's continuing knee problems following the accident and the symptoms meant to be alleviated by knee replacement surgery were the result of preexisting arthritis and not the work-related injury. Under § 48-120(1)(a), the trial judge of the Workers' Compensation Court could find that Pearson's knee replacement surgery

was compensable only if the procedure was required by the work-related accident. Therefore, there was sufficient competent evidence to support a finding that the surgery did not fall under § 48-120(1)(a), because it was not the result of the work-related injury. The review panel did not err in so concluding.

Pearson spends much of his brief detailing the opinions of other doctors that could support a finding that his right knee replacement surgery *was* a result of the work-related injury. We do not dispute that the opinions of Drs. David Clare and Dennis Bozarth, although less definitive than that of Gammel, could support such a finding. But that is not the proper question before us. We are required to determine whether the evidence was sufficient to support the single judge's decision, not whether the judge could reasonably have decided differently. Pearson argues in effect that the review panel should have reweighed the evidence and that we should do so as well. We decline the invitation.

[4] Our case law is clear that "[t]he single judge of the Workers' Compensation Court is the sole judge of the credibility of the witnesses and the weight to be given their testimony, even where the issue is not one of live testimonial credibility."[7] Additionally, a trial judge of the compensation court is "entitled to accept the opinion of one expert over another"[8] and is "not required to take an expert's opinion as binding," but may "either accept or reject such an opinion."[9]

Under these well-established principles, the single judge of the Workers' Compensation Court was not required to accept the testimony of Clare and Bozarth but was free to accept Gammel's opinions. And Gammel's opinions, along with other evidence, provided sufficient competent evidence to support a finding that Pearson's knee replacement surgery was not the

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[7] *Swanson v. Park Place Automotive*, 267 Neb. 133, 141-42, 672 N.W.2d 405, 413 (2003).

[8] *Lowe v. Drivers Mgmt., Inc.*, 274 Neb. 732, 739, 743 N.W.2d 82, 89 (2007).

[9] *Brandt v. Leon Plastics, Inc.*, 240 Neb. 517, 520, 483 N.W.2d 523, 525 (1992).

result of the work-related accident. Because the court found that the surgery did not result from the work-related accident, the surgery was not compensable under § 48-120(1)(a).

[5] The review panel was bound by the well-established rule requiring its deference to the factual findings of the single judge. "If the record contains evidence to substantiate the factual conclusions reached by the trial judge in workers' compensation cases, an appellate court is precluded from substituting its view of the facts for that of the compensation court."[10] The review panel correctly declined to substitute its view of the evidence and did not err in affirming the trial court's order denying Pearson compensation for his knee replacement surgery.

Consistency With Original Award

Like the previous assignment of error, Pearson's second assignment of error alleges that the review panel erred in affirming the decision of the single judge of the Workers' Compensation Court that the knee replacement surgery was not compensable. Under this assignment of error, however, he argues that it was error to affirm a finding that the surgery was not compensable, because such finding is "contrary to the law in that it is legally inconsistent . . . with the findings of the original decree"[11] and "glosses over the fact that future medical care *has already been awarded*, and [cannot] be read to preclude any type of medical care based on a determination that [Pearson's] injury was a temporary exacerbation."[12]

This argument asks us to contradict the holding of this court in the previous appeal of Pearson's workers' compensation case. In that appeal, we held that Pearson's knee replacement surgery "should be provided at ADM's expense" only "if [the surgery] was due to his compensable injury."[13] In remanding

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[10] *Manchester v. Drivers Mgmt.*, 278 Neb. 776, 783, 775 N.W.2d 179, 185 (2009).

[11] Brief for appellant at 8.

[12] *Id.* at 25 (emphasis in original).

[13] *Pearson v. Archer-Daniels-Midland Milling Co., supra* note 1, 282 Neb. at 406, 803 N.W.2d at 494.

the cause for a determination about Pearson's knee replacement surgery, we also stated:

> This is not to say that the knee replacement is necessarily compensable. Rather, the award should be enforced according to its terms—Pearson was awarded "[a]ny future medical treatment received by [Pearson] which falls under the provisions of § 48-120, and which otherwise satisfies all necessary foundational elements thereto . . . ."[14]

Given our previous holdings, the Workers' Compensation Court was not acting contrary to the original award when it determined that the knee replacement surgery was not compensable under § 48-120 but was actually enforcing the plain language of the original award. Under the original award as interpreted by this court, Pearson was entitled to compensation for future medical treatment only if the treatment met the requirements of § 48-120. Pearson has not asked us to reconsider this holding, nor could we do so under the law-of-the-case doctrine without proof of a material and substantial difference in facts.[15] Thus, it was completely consistent with the original award for the compensation court to conclude that Pearson's knee replacement surgery was not required by the work-related injury and consequently was not compensable under § 48-120.

The original award may have awarded Pearson future medical expenses, but this award was not without restriction and did not entitle Pearson to reimbursement for any expense without question, as he seems to argue. This assignment of error has no merit.

Remaining Assignment of Error

[6] Because we find that there was no error in concluding that the knee replacement surgery was not compensable under § 48-120, there is no need to address Pearson's third assignment of error, which alleges error in failing to award additional indemnity benefits for his right knee surgery in addition

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[14] *Id.* at 408, 803 N.W.2d at 495.

[15] See *Schuelke v. Wilson*, 255 Neb. 726, 587 N.W.2d 369 (1998).

to reimbursement for the expense of the surgery itself. An appellate court is not obligated to engage in an analysis that is not necessary to adjudicate the case and controversy before it.[16]

CONCLUSION

Because Gammel's opinions, along with other evidence, provided sufficient competent evidence to support a finding that Pearson's knee replacement surgery was not the result of the work-related accident, the Workers' Compensation Court did not err in finding that Pearson's surgery was not compensable under § 48-120. In so holding, the compensation court was not acting contrary to the original award but was enforcing the award's plain language. Finding no error, we affirm the order of the review panel affirming the denial of compensation for Pearson's knee replacement surgery.

AFFIRMED.

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[16] *Selma Development v. Great Western Bank, ante* p. 37, 825 N.W.2d 215 (2013).