

OPINION OF THE NEBRASKA COURT OF APPEALS

(Not Designated for Permanent Publication)

Case Title

RAFAEL RAMBLA, APPELLEE,
V.
DRIVERS MANAGEMENT, INC., APPELLANT.

Case Caption

RAMBLA V. DRIVERS MANAGEMENT

Filed June 5, 2001. No. A-00-868.

Appeal from the Nebraska Workers' Compensation Court. Affirmed.

Raymond P. Atwood, Jr., and Ryan C. Holsten, of Atwood & Associates, for appellant.

Martin V. Linscott, of [REDACTED], for appellee.

RAMBLA V. DRIVERS MANAGEMENT

Filed June 5, 2001. No. A-00-868.

HANNON, CARLSON, and MOORE, Judges.

HANNON, Judge.

INTRODUCTION

Rafael Rambla was awarded workers' compensation benefits by the Nebraska Workers' Compensation Court for injuries sustained as a result of an accident occurring in the course of his employment with Drivers Management, Inc. (DMI). Rambla was awarded temporary total disability benefits for disability due to psychiatric injuries caused by the accident and medical expenses for treating his psychiatric condition, both of which the trial court found to have been caused by the accident. The trial court's decision was affirmed by a review panel, and DMI appeals, alleging that there is insufficient evidence to support the trial court's finding that Rambla's psychiatric injuries were caused by the accident. We find sufficient evidence in the record to support all of the findings necessary to uphold the award, and we therefore affirm.

SUMMARY OF EVIDENCE

Rambla filed a petition in the Nebraska Workers' Compensation Court on July 13, 1999, alleging that he had sustained physical and psychological injuries in two accidents arising out of and in the course of his employment with DMI. DMI admitted that it employed Rambla on the alleged dates but denied the remainder of Rambla's allegations.

The matter came on for trial on November 30, 1999. The parties stipulated that Rambla's weekly wage at the time of both accidents was \$566.79. Rambla was 44 years old at the time of trial and testified that he came to the United States from Cuba when he was 16 years old. He completed high school and three semesters of college. He stated that he took business, math, accounting, and English classes but had to quit school to support his family. He also went to a truckdriving school. He stated that he had been a truckdriver for the previous 10 years and that he had worked for a number of different companies.

Rambla testified that he was employed by DMI as an over-the-road truckdriver on December 18, 1997, when he was picking up a trailer in Brunswick, Georgia. He stated that when he attempted to attach the trailer to his tractor, he could not do so because the front of the trailer was sinking in mud. He stated that he attempted to lift the trailer but did not have any leverage because he was standing in mud. He stated that he eventually managed to couple the trailer with the tractor.

Rambla stated that after he attempted to lift the trailer, he began vomiting and felt dizzy. He went to a doctor in Savannah, Georgia, who told him that he had hurt a muscle but that it was nothing to be concerned about. He stated that the doctor prescribed him muscle relaxants and told him to not lift more than 30 pounds.

Rambla testified that 2 days later, on December 20, 1997, he was employed at DMI and was driving a truck in Georgia when he was involved in a multiple-vehicle collision on Interstate 75. Rambla was hit by an out-of-control car, and a number of cars collided on the Interstate. Rambla

stated that he observed several adults and children that were hurt and observed a lot of blood. Rambla testified that after the accident, he was attempting to help people and was not aware of his own injury at the time. We shall hereinafter refer to this accident as "the accident."

Hospital records show that Rambla was admitted to a hospital in Georgia on December 21, 1997, and discharged the same day. Rambla's chief complaint at that time was back pain. The doctor's assessment was (1) "L1 transverse process [lower back] fracture, stable," and (2) cervical sprain. Upon being discharged from the hospital, Rambla was directed to refrain from lifting more than 20 pounds. Rambla was subsequently treated by Dr. Michael Shreeve, a chiropractor; Dr. Lutz Schlicke; and Dr. David Schulak, an orthopedic surgeon, for symptoms resulting from his back injury. All of the doctors identified the same transverse process injury and some type of neck strain or arthritis. The evidence indicates that Rambla's physical impairment, although very real, is not by itself the work-related injury which might have caused him temporary total disability. The dispute in this appeal is whether Rambla's physical injuries were the cause of psychological injuries which in turn caused him disability. Therefore, we do not summarize Rambla's physical injuries or physical condition at the time of trial.

Dr. Schulak referred Rambla to Dr. Conrad Weller, a psychiatrist, in March 1998 for a psychiatric evaluation when he noted signs of depression in Rambla. A two-page letter to Rambla's counsel dated November 22, 1999, and a six-page "Psychiatric Status Report" dated July 15, 1999, contain summaries of Dr. Weller's medical opinion. Dr. Weller's medical notes show that Rambla reported pain in his back, legs, feet, and head; sexual impotency; sleep disturbances; and blackout periods. Dr. Weller noted Rambla's diminished self-esteem, depression, excessive worry, and preoccupation with his physical symptoms. Dr. Weller's diagnosis of Rambla at that time was (1) depressive disorder with prominent reactive symptoms, (2) anxiety disorder, and (3) pain disorder associated with both physical and psychological factors. Dr. Weller opined that Rambla's psychiatric problems were caused by the accident and stated that "such disorder is currently interfering with his functional recovery, rendering him unable to cope with everyday demands in a consistent, effective manner." Dr. Weller further opined that as of March 12, 1998, Rambla was temporarily totally disabled on purely psychological grounds.

In April 1998, Rambla attempted suicide by taking an overdose of antidepressants. The medical records establish that the overdose caused "respiratory depression" and caused Rambla to undergo treatment in the intensive care unit at Columbia South Bay Hospital on a ventilator for more than 4 days. The principal diagnosis of Rambla upon his admission was (1) attempted suicide with situational reaction and depression, (2) chronic low back pain, (3) history of depression, (4) pulmonary atelectasis, and (5) cardiac arrhythmia. His prognosis upon discharge from the hospital was "guarded to poor." Rambla testified at trial that he attempted suicide because he was not capable of dealing with his physical and mental problems. He stated that he did not want to be a worthless human being and was not capable of enjoying life anymore. At the start of the trial, DMI objected to exhibit 20, which is a statement of Rambla's medical bills from Columbia South Bay Hospital totaling \$19,647.87. DMI argued that the treatment was not relevant because it was not causally related to the accident.

Dr. Weller again saw Rambla a week after Rambla's suicide attempt and noted that Rambla was disturbed by the "insurance game" and had feelings of hopelessness, loss of control, and disappointment with his condition. Dr. Weller noted that during this session, he "focused on the fact that Mr. Rambla has not yet been able to regain his perspective after his industrial injury of December 20, 1997."

In response to a request from Vincent Naimoli, a DMI claims examiner, Dr. Weller opined in a letter dated May 14, 1998, that Rambla's psychiatric condition was a direct result of the accident and that "[Rambla] should remain on temporary total disability strictly on psychiatric grounds." Dr. Weller cautioned that "continuous care is critical for [Rambla's] stability."

Approximately 2 weeks later, on May 27, 1998, Naimoli informed Rambla by letter that Rambla's workers' compensation benefits were being terminated by DMI effective immediately and that Rambla was being put on personal medical leave status. Naimoli stated that "[a]ccording to the Nebraska Workers' Compensation Act and the opinions of [Rambla's] treating physicians, it has been determined that [Rambla] recovered fully from the injuries sustained from the 12/20/97 accident with no residual impairment."

Dr. Weller saw Rambla three more times in 1998, the last time on June 2. By that time, Rambla had received the letter from Naimoli informing him that his workers' compensation benefits were being terminated, and on June 2, he demanded that Dr. Weller release him to work. Dr. Weller noted that Rambla wanted to return to work and was worried about his finances, yet felt unstable and talked about "ending it all." Dr. Weller stated in an office note that "[Rambla] does not meet psychiatric criteria for being released to work" and refused to release Rambla.

Dr. Weller again evaluated Rambla on July 15, 1999, and determined that Rambla's psychiatric condition had severely deteriorated in the year since he had last seen him. Rambla reported persistent sexual dysfunction; pain in his head, right foot, left hand, and back; and upset stomach. Dr. Weller noted that Rambla appeared tearful, subdued, suicidal, and depressed.

DMI requested that Rambla see Dr. John Sapoznikoff for an evaluation of his psychiatric problems. Dr. Sapoznikoff saw Rambla in October 1999, and his 19-page opinion contains a report of his examination of Rambla and subsequent findings. He diagnosed Rambla with (1) adjustment disorder with mixed anxiety and depression; (2) daily excessive alcohol intake; (3) schizoid and histrionic personality traits, marked somatization, and symptom magnification; and (4) "Status Post Neck and Back Injury" with claimed chronic pain syndrome. Dr. Sapoznikoff opined that Rambla's work-related accidents did not cause or aggravate Rambla's psychological problems, but that underlying personality traits, "psychosocial stressors," and anger were the major contributing causes of Rambla's emotional problems. He opined that Rambla had met maximum medical improvement psychiatrically "months after his work-related accident," but then stated that Rambla was experiencing "some degree of emotional turmoil which could probably benefit from psychiatric care."

In his November 22, 1999, letter, Dr. Weller stated that he found Dr. Sapoznikoff's "professional opinion both objectionable and invalid on two counts." Dr. Weller stated that the evidence indicated that Rambla had been perfectly functional prior to the accident and that Dr. Sapoznikoff "ignore[d] the clinical history and the established" facts, because there was "no evidence of clinical or functional decompensation prior to the industrial injury" which could explain Rambla's psychiatric condition. Dr. Weller also took issue with Dr. Sapoznikoff's opinion, stated in his report, that Dr. Weller could not perform an objective evaluation of Rambla because he was Rambla's clinical therapist. Dr. Sapoznikoff had opined that Dr. Weller should have refused to do a subsequent evaluation of Rambla for that reason.

Rambla stated that the thing that most made him incapable of working at the time of trial was his mind. He stated that he had been hallucinating and that his mental faculties were diminishing. He stated that while he was testifying, his head and his entire back hurt and that in the previous month, he had had foot pain and pain in both arms. He stated that he was not in constant

pain, but that the pain became worse when he worked and worse with cold weather and that he sometimes gets "needle pain" in his feet. He stated that he had had no problems before the accident and that the pain in question resulted from the accident. He stated that he sometimes has anxiety attacks and that he is "really not in control of everything." He further testified that he has blackouts wherein he loses control of his muscles. Rambla stated that before the accident, he was in good health, had never had any medical problems, and had never seen a psychiatrist. He stated that before the accident, he was "walking on air" and was just glad to be in the United States enjoying his freedom. Rambla had a son who was born approximately 2 months before Rambla began working for DMI.

Rambla stated that after he attempted suicide, he became homeless and had to work for food. Rambla stated he had received medical bills resulting from his suicide attempt for "more than \$20 or 30,000" that DMI would not pay. He testified that he has been unable to maintain a job since the December 1997 accidents because of his medical condition. He stated that after the accident, he tried to drive a truck for Bynum Transportation for approximately 5 weeks but experienced blackouts while he was driving and quit because it was unsafe to continue. He stated that at the time of trial, he had worked off and on for various temporary employment agencies, doing manual labor. He testified that he could not physically perform the work required of him at the temporary jobs, but withstood the pain of trying in order to survive. Rambla testified that at the time of trial, he worked approximately 10 to 15 days a month for temporary employment agencies and that he earned minimum wage at most of the jobs. He stated that he picked up garbage, cleaned, painted, loaded and unloaded at a warehouse, and moved furniture. He stated that none of the jobs he did required any skill or "brainpower" and that he had worked for temporary employment agencies from approximately May 1998 until the time of trial, with the exception of the trucking job he attempted with Bynum Transportation. He stated that his condition was worsening and that he had not yet recovered from his injuries. He also asked the court to allow him to continue seeking treatment from Dr. Weller.

Rambla stated on cross-examination that he had a good understanding of English and Spanish but that he would not want to be an interpreter because he loved truckdriving. He testified that he also had approximately 10 years' experience in the field of printing, but that it had been 10 years ago when he was a successful printer and that he believed his knowledge was now obsolete due in part to the advent of computers in that industry. He stated that he believes his intelligence has deteriorated since the December 1997 accidents.

TRIAL COURT'S FINDINGS AND AWARD

The trial court found that Rambla suffered injuries as a result of an accident arising out of and in the course of his employment with DMI when he was involved in the accident on December 20, 1997. The court found that Rambla initially suffered an L1 transverse process fracture and cervical strain but subsequently suffered psychiatric injuries as a result of the accident. The court found that Rambla was temporarily totally disabled due to psychiatric conditions resulting from his physical injuries caused by the accident and cited Dr. Weller's causation opinion. The court noted that there were no sufficient causation opinions regarding the December 18 accident and injury.

The court further found that Rambla was unable to maintain regular employment since his injuries except for the period when he drove for Bynum Transportation. The court found that Rambla was therefore temporarily totally disabled from December 22, 1997, through December 9, 1999, except from July 1 through August 31, 1998, and was entitled to compensation from DMI for that period of disability and for so long as he shall remain temporarily totally disabled. The court further found that Rambla's "suicide attempt was a consequence of his depression, secondary to

his back injury and inability to return to work, and utter frustration with the claims process" and ordered DMI to pay for Rambla's hospitalization following the suicide attempt and any further reasonably necessary medical bills resulting from the accident. The court further found that Rambla had not met maximum medical improvement of his psychiatric injuries.

DMI's counsel took exception to the trial court's comments about Dr. Sapoznikoff in its order by assigning such comments as error to the review panel and to this court. On the basis of the comments, DMI argues that the trial judge erred by failing to issue an unbiased and reasoned decision. The parts of the order which give rise to that alleged error will be summarized when that error is discussed below.

DMI appealed the trial court's decision to the Workers' Compensation Court review panel, and Rambla cross-appealed on the issue of attorney fees only. The review panel noted in its written opinion that DMI had assigned 14 errors by the trial court but that its main argument was that the trial court was clearly wrong in finding that Rambla had sustained a psychiatric injury as a result of the accident. The review panel cited Dr. Weller's findings in detail and concluded that there was ample evidence to support the trial court's finding that Rambla sustained a "psychological component to his accident and injury of December 20, 1997," and that the trial court was not clearly wrong. The review panel noted that the same evidence supported the trial court's finding that Rambla had not met maximum medical improvement and that he was entitled to temporary total disability until such time as he does reach maximum medical improvement.

The review panel further found that (1) the expenses listed in exhibit 20 were incurred for the treatment of Rambla's psychiatric condition and related suicide attempt and were thus compensable pursuant to the Nebraska Workers' Compensation Act, (2) Dr. Sapoznikoff's opinion created a reasonable controversy within the evidence and that the court was thus correct in not awarding Rambla attorney fees, and (3) Rambla was entitled to \$1,000 in attorney fees before the review panel. The review panel concluded that the trial court's judgment was based on findings of fact which were not clearly wrong and affirmed the award of the trial court. DMI now appeals.

ASSIGNMENTS OF ERROR

DMI assigns, restated and summarized, that the trial court erred in (1) finding that Rambla was totally disabled from December 22, 1997, through December 9, 1999, and for so long as he remains temporarily totally disabled thereafter, (2) finding that Rambla's psychiatric disorders were caused by the accident, (3) admitting medical bills related to Rambla's suicide attempt and ordering DMI to pay the medical expenses therein, (4) failing to "issue an unbiased and reasoned decision under [Worker's Comp. Ct. R. of Proc.] 11 [(1998)]," (5) failing to find that Rambla had not met maximum medical improvement on his physical injuries, and (6) implying in its order that Rambla's mental reactions to the claims process "constitute a compensable legal cause [of] psychiatric injuries . . . under the Nebraska Workers' Compensation Act." DMI's assignments of error in this court are virtually identical to the errors it assigned before the review panel.

STANDARD OF REVIEW

All of DMI's assignments of error pertain to findings of fact made by the trial court. Upon appellate review, the findings of fact made by the trial judge of the Workers' Compensation Court have the effect of a jury verdict and will not be disturbed unless clearly wrong. *Collins v. General Casualty*, 258 Neb. 852, 606 N.W.2d 93 (2000); *Frank v. A & L Insulation*, 256 Neb. 898, 594 N.W.2d 586 (1999). If the record contains evidence to substantiate the factual conclusions reached

by the compensation court, an appellate court is precluded from substituting its view of the facts for that of the compensation court. *Id.*

An appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only when (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court do not support the order or award. Neb. Rev. Stat. § 48-185 (Reissue 1998); *Owen v. American Hydraulics*, 258 Neb. 881, 606 N.W.2d 470 (2000); *Torres v. Aulick Leasing*, 258 Neb. 859, 606 N.W.2d 98 (2000).

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 single judge who conducted the original hearing. *Bottolfson v. Bag 'N Save*, 259 Neb. 124, 608 N.W.2d 171 (2000); *American Hydraulics*, *supra*. When testing the sufficiency of the evidence to support findings of fact made by the Workers' Compensation Court, the evidence must be considered in a light most favorable to the successful party and the successful party will have the benefit of every inference reasonably deducible from the evidence. *American Hydraulics*, *supra*; *Frank*, *supra*.

ANALYSIS

Causation of Psychiatric Injury.

DMI argues that Rambla's erectile dysfunction was the "primary causative factor of his alleged difficulty with depression and anxiety." Brief for appellant at 22. DMI argues that "Dr. Weller's opinions . . . lack proper and sufficient factual basis and are not supported by the record," based on the fact that Dr. Weller's causation conclusion "is not supported by any of the orthopedic doctors who treated and released" Rambla. *Id.* We note that none of Rambla's orthopedic doctors opined as to the causation of his psychiatric problems or even diagnosed his psychiatric problems.

In addition to physical work-related impairments, psychological work-related injuries are compensable in Nebraska workers' compensation cases. *Kraft v. Paul Reed Constr. & Supply*, 239 Neb. 257, 475 N.W.2d 513 (1991); *Cummings v. Omaha Public Schools*, 6 Neb. App. 478, 574 N.W.2d 533 (1998). The burden to prove that a psychological disability is a result of a work-related accident is on the claimant. *Kraft*, *supra*; *Cummings*, *supra*. Where the evidence is sufficient to permit the trier of fact to find that the psychological injury is directly related to the accident and the employee is unable to work, the employee is entitled to be compensated. *Kraft*, *supra*; *Johnston v. State*, 219 Neb. 457, 364 N.W.2d 1 (1985).

In the case at hand, Dr. Weller unequivocally opined a number of times in his medical notes and various letters that he believed Rambla's psychiatric problems were caused by the accident. Dr. Weller opined in March 1998 that "[a]ll the indications are that Mr. Rambla's current psychiatric difficulties are causally related to his industrial injury of 12/20/97" and commented in his notes that "Mr. Rambla is fixated on his anxiety-laden experience during and immediately after his December 1997 accident." Against the advice of its own recommended physician, DMI discontinued Rambla's workers' compensation benefits in May 1998. Further, Dr. Weller again opined, after evaluating Rambla in July 1999, that Rambla's psychiatric impairment was causally related to the accident and was the "major contributing cause of his psychiatric condition." Dr. Weller further opined that "Rambla is significantly impaired psychiatrically" and that "[Rambla] is in need of immediate psychiatric intervention." Dr. Weller explained that Rambla's "mental problems, in particular, his depression, anxiety, and somatization, significantly compound his perception of and reaction to

physical pain. His psychiatric condition needs to be specifically addressed as a precondition for effective pain management."

In a letter to Rambla's attorney dated November 22, 1999, Dr. Weller stated:

The facts actually show a sequence of events that clearly point to the December 1997 industrial injury as the major contributing cause of Mr. Rambla's psychiatric decompensation. *There is no evidence of clinical or functional decompensation prior to the industrial injury.* . . . The fact is that there is not one single iota of evidence on which to pin the causation of Mr. Rambla's psychiatric deterioration except for the industrial injury of 12/20/97.

. . . .

. . . In sum, the incontrovertible fact is that Mr. Rambla's injury-related psychiatric condition has deteriorated further as a result of his being denied necessary treatment. In contrast, Dr. Sapoznikoff opined that Rambla's psychiatric problems were a result of underlying personality traits and were not caused by the accident.

If the record in a workers' compensation case presents conflicting medical reports and testimony, an appellate court will not substitute its judgment for that of the compensation court regarding which medical evidence to rely upon. *Kerkman v. Weidner Williams Roofing Co.*, 250 Neb. 70, 547 N.W.2d 152 (1996); *Cummings, supra*. Although DMI argues that Rambla's psychiatric injuries were caused by his erectile dysfunction, no doctor or anyone else opined that the erectile dysfunction caused his psychiatric injuries. The trial court chose to rely on the medical testimony of Dr. Weller, and we will not substitute our judgment for that of the trial court.

DMI further argues that the trial court "acted in excess of its powers," brief for appellant at 26, by implicitly finding in its order that Rambla's mental reactions to the claims process caused his psychiatric disorder. The court stated, "The medical evidence as a whole indicates that Mr. Rambla's suicide attempt was a consequence of his depression, secondary to his back injury and inability to return to work, and utter frustration with the claims process." We find no such finding implicit in the trial court's order. The court's order is clear that Rambla's psychiatric injuries "resulted from the accident and physical injuries of December 20, 1997." There is ample evidence in the record upon which the court could find that the accident caused Rambla's psychiatric injuries. Therefore, we cannot say that the trial court was clearly wrong in its finding that Rambla suffered psychiatric injury as a result of the accident.

Extent of Disability.

DMI argues that Rambla "offered no probative testimony as to how or why he has been or is now physically or psychologically disabled from gainful employment," brief for appellant at 13, and that "Dr. Weller offered no rationale or psychiatric restriction to support disability," *id.* at 14. In this area, DMI argues that the orthopedic doctors treated and released Rambla without restriction. While this position overstates that evidence in DMI's favor, there is no dispute that Rambla suffered a genuine physical injury in the accident. Assuming that the physical injury has been cured, there is evidence that the accident and Rambla's physical injury therein resulted in Rambla's presently existing psychiatric injuries. Dr. Weller stated in a letter to Naimoli dated May 14, 1998, "At present [Rambla] remains unstable and, in my professional opinion, he should remain on Temporary Total Disability strictly on psychiatric grounds. He may need three to six months of psychiatric treatment for stabilizing and becoming employable again." Further, Dr. Weller's "psychiatric status report" dated July 15, 1999, clearly states that on that date, Rambla was "constantly suicidal," out of touch with reality, and "significantly impaired psychiatrically." In that report, Dr. Weller goes on to state, "Because of [Rambla's] injury-related psychiatric condition, he is functionally impaired and he

cannot be expected to be able to sustain competitive employment on a regular, continuous, and uninterrupted basis."

Further, Rambla testified that he has been unable to maintain a stable job since the December 1997 accidents. He stated that he works 10 to 15 days a month, from 2 to 8 hours a day. He works for temporary employment agencies essentially as a means of survival, but does not feel he is in touch with reality. He testified that he rarely makes more than minimum wage at the temporary jobs. He stated that he did attempt to drive a truck for a short time, but quit because he was having blackouts and felt that he was an unsafe driver. He stated that he currently has anxiety attacks and hallucinations.

While expert witness testimony may be necessary to establish the cause of a claimed injury, the Workers' Compensation Court does not need to depend on expert testimony to determine the degree of disability but instead may rely on the testimony of the claimant. *Cords v. City of Lincoln*, 249 Neb. 748, 545 N.W.2d 112 (1996). Therefore, even in the absence of Dr. Weller's testimony, the trial court could have relied on Rambla's testimony to determine the degree of his disability.

DMI argues that the fact that Rambla (1) drove a truck for approximately 2 months after the December 1997 accidents and (2) worked for temporary employment agencies from June 1998 until the time of trial shows that he was not disabled from truckdriving or other work and that such evidence precludes the court's award of total temporary disability. We have stated that for workers' compensation purposes, total disability does not mean a state of absolute helplessness, but means disablement of an employee to earn wages in the same kind of work, or work of a similar nature, that he or she was trained for or accustomed to perform, or any other kind of work which a person of his or her mentality and attainments could do. *Willuhn v. Omaha Box Co.*, 240 Neb. 571, 483 N.W.2d 130 (1992); *Xayaseng v. Chief Indus.*, 7 Neb. App. 911, 586 N.W.2d 472 (1998). Total and permanent disability contemplates the inability of the worker to perform any work which he or she has the experience or capacity to perform. *Krijan v. Mainelli Constr. Co.*, 216 Neb. 186, 342 N.W.2d 662 (1984); *Xayaseng, supra*. Further, the Nebraska Supreme Court has stated:

"[A]n employee may be totally disabled for all practical purposes and yet be able to obtain trivial occasional employment under rare conditions at small remuneration. The claimant's status in such respect remains unaffected thereby unless the claimant is able to get, hold, or do any substantial amount of remunerative work either in his previous occupation or any other established field of employment for which he is fitted."

Craig v. American Community Stores Corp., 205 Neb. 286, 291, 287 N.W.2d 426, 429 (1980) (quoting *Crable v. Great Western Sugar Co.*, 166 Neb. 795, 90 N.W.2d 805 (1958)). In *Craig*, the claimant was able to work various short-term jobs for short periods of time, but the trial court found him to be totally disabled. The Nebraska Supreme Court stated:

If this court applied the rule as set out by the compensation court in this case, it would prove to be counterproductive, for any person who was disabled dare not attempt employment for fear if he found he was physically incapable of performing the duties of the employment, he would find that he had lost all benefits under the Work[ers'] Compensation Law.

Craig, 205 Neb. at 291, 287 N.W.2d at 429.

Similarly, the fact that Rambla was able to support himself by working for temporary employment agencies does not preclude a finding of total disability. We conclude that there is sufficient evidence in the record upon which the trial court could conclude that Rambla was unable to work at a job similar in nature to his position before the accident and is temporarily totally disabled. Whether a workers' compensation claimant has sustained disability which is total or partial and which is temporary or permanent is a question of fact to be determined by the trial court.

Harmon v. Irby Constr. Co., 258 Neb. 420, 604 N.W.2d 813 (1999); *Schlup v. Auburn Needleworks*, 239 Neb. 854, 479 N.W.2d 440 (1992). Finding sufficient evidence of Rambla's total disability in the record, we cannot say that the trial court was clearly wrong in making such a finding.

Exhibit 20.

DMI argues that because it was clear error for the court to find that Rambla's psychiatric problems were caused by the accident, the medical bills contained in exhibit 20 were irrelevant and inadmissible. Exhibit 20 is a computerized statement which states, "Bad Debt Account Information" and "Resp Prty: Rambla Rafael." The top of the statement lists, "ADM: 04/10/98 and DIS: 4/14/98." The bottom of the statement lists, "Current Bal: 19,647.87." The statement was offered by Rambla as evidence of medical bills incurred at Columbia South Bay Hospital following his suicide attempt. There is no indication on the statement as to whom the statement was from or to whom the debt is owed. We have determined that there was sufficient evidence in the record for the trial court to determine causation.

As the review panel noted, Neb. Rev. Stat. § 48-120(1) (Reissue 1998) provides, "The employer shall be liable for all reasonable medical, surgical, and hospital services . . . which are required by the nature of the injury and which will relieve pain or promote and hasten the employee's restoration to health and employment" An employer is liable for only those reasonable medical expenses incurred as a result of a compensable accident. § 48-120; *Hare v. Watts Trucking Service*, 220 Neb. 403, 370 N.W.2d 143 (1985). In his office note of April 17, 1998, 7 days after Rambla's suicide attempt, Dr. Weller notes:

I focused on the fact that Mr. Rambla has not yet been able to regain his perspective after his industrial injury of December 20, 1997. His attitude towards himself and towards society has been severely challenged and he has not yet been able to get over his feelings of abandonment and disappointment.

Rambla testified at trial that he attempted suicide because he was incapable of dealing with his physical and mental problems. He stated, "I serve no purpose" and "I don't perceive myself trying to commit suicide before this." Further, the "Consultation Record" from Columbia South Bay Hospital shows that 3 days after his suicide attempt, while still in the hospital, Rambla stated his "problems started after he hurt his back while working on a job in Georgia" and that the consulting doctor noted, "Ax: I mood disorder, depressed 2' back injury II: - III: work related accident, impotence"

There is evidence that Rambla's psychiatric injury resulted from the accident and evidence that Rambla's suicide attempt resulted from his psychiatric injury. We conclude that there is sufficient evidence in the record that the medical expenses related to Rambla's suicide attempt were reasonable and were required by the nature of his psychiatric injury, and thus sufficient evidence to warrant the trial court's finding that Rambla's suicide attempt was a consequence of his depression, secondary to his back injury and inability to return to work. Therefore, we cannot say that the trial court was clearly wrong in admitting exhibit 20 and ordering DMI to pay the medical expenses listed therein.

Finding as to Maximum Medical Improvement.

DMI argues that the trial court committed clear error by "failing to find that [Rambla] had reached maximum medical improvement and suffered from no permanent physical impairment . . . from physical injuries caused by his accidents of 12/18/97 and 12/20/97." Brief for appellant at 26. The trial court stated, in its written opinion, "I make no findings regarding [Rambla's] entitlement, if any, to permanent indemnity or vocational rehabilitation, as he has not yet [attained] maximum

medical improvement on his psychiatric diagnoses." Regardless of whether Rambla has reached maximum medical improvement on his physical injuries, he is still temporarily totally disabled and has not met maximum medical improvement on his psychiatric injuries. Rambla correctly asserts that the Nebraska Workers' Compensation Act makes no distinction between temporary total disability for physical injuries and temporary total disability for psychiatric injuries. We find that the court's failure to make a finding as to Rambla's physical injuries was not error given that he remains temporarily totally disabled because of his psychiatric injuries. Therefore, this assignment of error is equally without merit.

Trial Court's Order.

DMI argues that the trial court failed to issue an unbiased and reasoned decision. It bases that position on the following passage from the trial court's order: "[DMI's] claims adjuster next referred [Rambla] to a second psychiatrist of [DMI's] selection who predictably refuted the evaluation and opinions of the first psychiatrist defendant selected. Dr. Weller ably addresses Dr. John Sapoznikoff's *independent medical evaluation* by his letter on November 22, 1999." (Emphasis supplied.)

In making the above statement, the court was relating a chronology of events regarding DMI's selection of experts and was alluding to the italicized title Dr. Sapoznikoff himself placed at the head of his opinion letter to DMI's adjuster and again placed in the first line of the letter, as well as alluding to DMI's refutation of that opinion. DMI argues that the court's use of the word "predictably" and use of quotation marks around the term "independent medical evaluation" show clear bias. Brief for appellant at 24. DMI also argues that because the above passage is the court's only reference to Dr. Sapoznikoff's opinion, the court failed to comply with rule 11.

A reading of Dr. Sapoznikoff's 19-page opinion, particularly those portions he chose to put in boldfaced type and his attack on Dr. Weller, would leave almost any trier of fact with the impression that Dr. Sapoznikoff was an expert with a mission. His credibility could suffer somewhat from that impression, and Dr. Weller's refutation of that opinion was on point in that regard. The appraisal of the evidence is a matter for the trial court. We think the above-quoted passage from the trial court's order merely discloses some of the elements which the trial court used to evaluate the opinion evidence. Such matters are regularly and properly considered by triers of fact. We realize the trial court would have been wiser to have stated something like "On the whole, I find Dr. Weller's opinion to be more convincing than Dr. Sapoznikoff's," but the statement the court made conveyed the same opinion, more colorfully and convincingly.

The trial court's order was a well-reasoned decision which contained findings of fact and conclusions of law and which clearly and concisely stated and explained the rationale for the decision as required by rule 11. We find nothing wrong with the form or substance of that order.

CONCLUSION

DMI prays that we "reverse and remand the lower court's decision with instructions to enter findings as follows," brief for appellant at 29, and lists various findings of fact that we should instruct the trial court to enter. Pursuant to our standard of review, we do not make findings of fact; nor do we substitute our view of the facts for that of the trial court regarding which evidence to rely upon. We conclude upon our review of the record, resolving every fact in Rambla's favor and giving him the benefit of every inference, as we must do, that there is sufficient evidence to substantiate the trial court's finding that Rambla's psychiatric injuries were caused by the accident while Rambla

was employed by DMI. DMI's remaining assignments of error are equally without merit. Accordingly, we affirm the award of the trial court.

AFFIRMED.