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which is supported by sufficient evidence.[31] Because the evidence was sufficient to support McGee's conviction, any error at the plea in abatement stage was cured.

[14] McGee assigns that the district court erred in refusing her bond pending her appeal. But this assignment of error is not argued in her brief. Errors that are assigned but not argued will not be addressed by an appellate court.[32] We therefore do not reach this assignment of error.

CONCLUSION

For all of the foregoing reasons, we affirm McGee's conviction and sentence.

AFFIRMED.

HEAVICAN, C.J., not participating.

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[31] *State v. Soukharith*, 253 Neb. 310, 570 N.W.2d 344 (1997).

[32] *State v. Iromuanya*, 272 Neb. 178, 719 N.W.2d 263 (2006); *State v. Conover*, 270 Neb. 446, 703 N.W.2d 898 (2005).

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

803 N.W.2d 489

Filed September 23, 2011. No. S-10-1142.

1. **Workers' Compensation: Appeal and Error.** A judgment, order, or award of the compensation court may be modified, reversed, or set aside only upon the grounds that (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.
2. ____: ____. 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 finding 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. ____: ____. With respect to questions of law in workers' compensation cases, an appellate court is obligated to make its own determination.

4. **Workers' Compensation.** A work-related injury need not result in permanent disability in order for medical treatment to be awarded. The question is simply whether treatment is necessary to relieve or cure the injury.
5. **Final Orders: Intent.** The meaning of a decree as a matter of law is determined only from the four corners of the decree.

Appeal from the Workers' Compensation Court. Affirmed in part, and in part reversed and remanded for further proceedings.

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

Jason A. Kidd and Brynne E. Holsten, of Engles, Ketcham, Olson & Keith, P.C., for appellee.

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

HEAVICAN, C.J.

INTRODUCTION

The appellant, Thomas L. Pearson, was injured in the course of his employment with Archer-Daniels-Midland Milling Company (ADM). The Workers' Compensation Court entered an award granting Pearson, among other benefits, certain future medical expenses. Pearson subsequently had total knee replacement and sought reimbursement from ADM for those expenses as well as for expenses relating to a back injury. ADM declined to pay the expenses. Pearson then filed a motion to compel payment. A further award was entered denying Pearson's motion with respect to the knee replacement, but ordering ADM to pay expenses relating to the treatment of the back injury. The further award applied the Workers' Compensation Court's fee schedule to payments for the back injury, which had previously been paid by Pearson's health insurer. Following affirmance by the Workers' Compensation Court review panel, Pearson filed this appeal. We affirm in part, and in part reverse and remand for further proceedings.

FACTUAL BACKGROUND

Pearson was struck by a forklift while at work at an ADM facility on October 27, 2006. He filed a claim for workers'

compensation. A trial was held on June 16, 2008, with an award entered on August 29.

In the award, the workers' compensation trial court concluded that Pearson suffered an accident arising out of and in the course of his employment with ADM and that Pearson suffered injury to his right knee and lower back. In so finding, the trial court concluded that while there was an aggravation of Pearson's preexisting arthritic condition, such aggravation was not permanent, and that Pearson had reached maximum medical improvement (MMI) on April 14, 2008, for the knee injury. According to the award, MMI was reached on August 22, 2007, regarding the back injury. The award granted both temporary total disability benefits and permanent disability benefits, as well as future medical benefits. Vocational rehabilitation benefits were denied.

Regarding future medical benefits, paragraph V of the August 29, 2008, award stated:

> In reviewing the evidence presented at trial, the Court observes that the parties have not stipulated to an award of future medical benefits. With respect to [Pearson's] right knee injury, the Court is persuaded despite its earlier findings of a lack of permanency, restrictions, or impairment rating that future medical treatment will be reasonably required. In reaching this opinion, the Court rejects the conclusions of Dr. Gammel that no such treatment will be necessary . . . . Rather, the offering by Dr. Bozarth is more persuasive. In a report dated April 14, 2008, and addressed to [Pearson's] counsel, Dr. Bozarth opined that [Pearson] will need future medical treatment to his right knee owing to his injury, degenerative arthrosis, and obesity. Specifically, he indicated that periodic injections of medications to alleviate pain as well as oral anti-inflammatory medications and an unloader brace would likely be required . . . . [The fact that there was no finding of permanent disability does not serve ipso facto to prohibit an award of future medical benefits. See Hand v. Flexcon Co., Inc., No. A-06-709, 2007 Neb. App. Lexis 37 (not designated for publication)].

> With respect to [Pearson's] low back injury, the Court is similarly persuaded by the evidence. Dr. Gammel indicated that . . . Pearson would likely need to continue to take over the counter anti-inflammatory medications and engage in home physical therapy . . . . Dr. Bozarth also indicated his belief that medications would be necessary for the treatment of [Pearson's] low back injury as well as conditioning programs to maintain his fitness . . . .
>
> Thus, the Court is satisfied that [Pearson] has carried his burden of proof and persuasion and is, thus, entitled to an award of future medical benefits. Any 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].

The award then ordered the continued payment of "future medical care and treatment as may be reasonably necessary as a result of the accident and injuries sustained as memorialized in paragraph V" of the award. There was no appeal from this award.

On June 19, 2009, Pearson underwent total right knee replacement. Following that surgery, he was assigned a 37-percent impairment rating. Pearson also underwent several spinal injections for his low-back injury. Pearson submitted all of these medical bills to ADM, which declined to pay them. Pearson then moved to compel payment, and asked also that the award be modified to reflect the 37-percent impairment to the right knee.

The trial court entered a further award that denied the motion to compel payment with respect to the knee injury and consequently declined Pearson's motion to modify the award to reflect any impairment. The trial court concluded that the issue of knee replacement was known at the time of the original trial:

> Having made that determination, the Court observes further that it did, indeed, find that [Pearson's] knee injury was a temporary exacerbation of a pre-existing knee condition . . . . [MMI] was found and no award

> of permanent disability benefits was provided as to the right knee injury. While the Court did award certain future medical expenses for the temporary aggravation of [Pearson's] right knee, it cannot be denied that MMI was also declared. While [Pearson's] request for right knee replacement surgery was not expressly denied, it most assuredly was implied. Otherwise, there would be no consistency of thought in declaring [Pearson] to have reached MMI with no resulting permanent impairment. Restated, if the Court had meant to award [Pearson] knee replacement surgery in its award of future medical benefits, there would have been no need to address the subject of permanency of that injury in its original Award. Consequently, to the extent that [Pearson] argues that the original Award served to provide a basis for the compensability of the knee replacement surgery he underwent in June of 2009, the Court rejects [Pearson's] contention.

While the knee replacement was not found to be compensable, the trial court did order that ADM pay for the spinal injections, because they were part of "reasonable and necessary" future medical treatment.

Finally, the further award addressed a "dispute over whether or not the fee schedule audits submitted by [ADM] ought to be applied to any outstanding medical bills deemed compensable." The trial court cited Neb. Rev. Stat. § 48-120(1)(e) (Reissue 2010) and concluded that outstanding amounts should be reimbursed with all applicable fee schedule reductions. The trial court therefore ordered ADM to "pay" certain medical expenses. The further award then specifically listed the provider or supplier and the expense that needed to be paid.

Pearson appealed the trial court's further award. The review panel affirmed the award, and Pearson appeals to this court.

ASSIGNMENTS OF ERROR

On appeal, Pearson assigns, restated and consolidated, that the review panel erred in (1) affirming the trial court's conclusion that the original award did not provide for reimbursement of Pearson's knee replacement surgery and associated expenses and (2) failing to hold that ADM should be ordered

to directly reimburse third-party payors without fee schedule reduction.

STANDARD OF REVIEW

[1] A judgment, order, or award of the compensation court may be modified, reversed, or set aside only upon the grounds that (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.[1]

[2] 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 finding 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]

[3] With respect to questions of law in workers' compensation cases, an appellate court is obligated to make its own determination.[3]

ANALYSIS

Did Original Award Deny Knee Replacement?

Pearson first argues that the original award's provision for future medical expenses should include his total right knee replacement surgery. The trial court disagreed, and the review panel affirmed the award. We reverse the decision of the trial court.

In this case, the original award entered by the trial judge provided that

> [Pearson] has carried his burden of proof and persuasion and is, thus, entitled to an award of future medical benefits. Any future medical treatment received by [Pearson] which falls under the provisions of § 48-120, and which

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[1] Neb. Rev. Stat. § 48-185 (Reissue 2010).

[2] *Tapia-Reyes v. Excel Corp.*, 281 Neb. 15, 793 N.W.2d 319 (2011).

[3] *Id.*

> otherwise satisfies all necessary foundational elements thereto, should be provided at the expense of [ADM].

Under the plain language of this award, Pearson is entitled to "[a]ny future medical treatment . . . which falls under the provisions of § 48-120." Thus, if Pearson's knee replacement was due to his compensable injury, then it should be provided at ADM's expense. But in this case, Pearson was not permitted to present any evidence that might support his assertion that the knee replacement was due to his compensable injury.

The trial judge concluded that the original award impliedly rejected knee replacement, because the necessity of such replacement had been presented at the time of that award and because the original award found that MMI had been reached and no permanent disability suffered. We are not persuaded by these contentions, however.

With respect to the former, we note that the trial judge stated in the original award that Pearson's treating physician said that a knee replacement would be "'indicated.'" We read this as suggesting that knee replacement was a possibility for Pearson after weight loss, including possible bariatric surgery. Thus, while Pearson might eventually benefit from knee replacement, he was not yet ready for it. In other words, the evidence was insufficient to establish *at the time of the award* that knee replacement would *at that time* "relieve pain or promote and hasten the employee's restoration to health and employment" within the meaning of § 48-120(1)(a). But, there was no basis at that time for the court to rule one way or the other.

[4] As for the fact that Pearson had reached MMI and was not found to have suffered a permanent injury, such is also not persuasive. Obviously, a work-related injury need not result in permanent disability in order for medical treatment to be awarded. The question is simply whether treatment is necessary to relieve or cure the injury.[4] An injury could cause disfigurement or pain and require medical treatment, yet produce no permanent loss of function or earning capacity. Relief from the

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[4] See *Spiker v. John Day Co.*, 201 Neb. 503, 270 N.W.2d 300 (1978) (superseded by statute on other grounds as stated in *Koterzina v. Copple Chevrolet*, 1 Neb. App. 1000, 510 N.W.2d 467 (1993)).

symptoms of an injury is compensable under § 48-120(1)(a), regardless of whether those symptoms produce a permanent physical impairment or disability.

Nor are we convinced that the fact that the same judge entered both the original order and the further award is in any way relevant to this court's ultimate determination. We have explained:

> "If a judgment can mean one thing one day and something else on another day, there would be no reason to suppose that the litigation had been set at rest. The same must be said if the judgment can mean one thing to one judge and something else to another judge. All are bound by the original language used, and all ought to interpret the language the same way. . . . The judge who tried the case and who ought to know what he meant to say, after the time for appeal, etc., has passed cannot any more change or cancel one word of the judgment than can any other judge."[5]

[5] So, we have repeatedly held that

> neither what the parties thought the judge meant nor what the judge thought he or she meant, after time for appeal has passed, is of any relevance. What the decree, as it became final, means as a matter of law as determined from the four corners of the decree is what is relevant.[6]

In this case, it does not matter that the judge who entered the "further award" of April 26, 2010, was the same judge who had entered the August 29, 2008, award. We are required to determine the effect of the August 29 award as a matter of law from its four corners, and the judge's belief about what he

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[5] *Neujahr v. Neujahr*, 223 Neb. 722, 726, 393 N.W.2d 47, 49 (1986). Accord *Kerndt v. Ronan*, 236 Neb. 26, 458 N.W.2d 466 (1990).

[6] *Neujahr, supra* note 5, 223 Neb. at 728, 393 N.W.2d at 51. Accord, *Universal Assurors Life Ins. Co. v. Hohnstein*, 243 Neb. 359, 500 N.W.2d 811 (1993); *Metropolitan Life Ins. Co. v. Beaty*, 242 Neb. 169, 493 N.W.2d 627 (1993); *Kerndt, supra* note 5. See, also, *Klinginsmith v. Wichmann*, 252 Neb. 889, 567 N.W.2d 172 (1997), *overruled on other grounds, Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010); *Bokelman v. Bokelman*, 202 Neb. 17, 272 N.W.2d 916 (1979).

"impliedly rejected" in the August 29 award cannot change the fact that the award expressly did not reject it.

Given the broad provision for future medical treatment in the original award, and the complete absence of any language in the award denying knee replacement, the original award simply cannot be read as denying Pearson's knee replacement. 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 . . . ." We therefore reverse the decision of the Workers' Compensation Court insofar as it found that the original order denied knee replacement, and we remand this cause for a factual determination as to whether Pearson's knee replacement falls under the provisions of § 48-120.

Is Reimbursement to Third-Party Payor Subject to Fee Schedule?

In addition to arguing that his knee replacement was compensable, Pearson also argues that the trial court and review panel erred in finding that the fee schedule should be applicable to medical expenses already paid by his health insurer.

We begin with some background. In addition to the knee replacement, Pearson had steroid spinal injections for pain management with regard to his low-back injury, which was ruled compensable in the original award. ADM refused to pay for those injections. The trial court, in its further award, found that the injections were compensable and ordered ADM to pay for them. Pearson argues that because those bills have already been paid by his health insurer, that insurer should be entitled to reimbursement for the full amount it paid without application of the fee schedule. The trial court disagreed and found that the fee schedule was applicable.

Subsections (1) and (8) of § 48-120 are both relevant to this discussion. Section 48-120(1)(a) provides that an "employer is liable for all reasonable medical, surgical, and hospital services." Subsection (1)(b) requires the compensation court to

establish a schedule of fees for the services from (1)(a). And § 48-120(1)(e) provides:

> The provider or supplier of such services shall not collect or attempt to collect from any employer, insurer, government, or injured employee or dependent or the estate of any injured or deceased employee any amount in excess of (i) the fee established by the compensation court for any such service . . . .

Finally, § 48-120(8) provides:

> The compensation court shall order the employer to make payment directly to the supplier of any services provided for in this section *or reimbursement to anyone who has made any payment to the supplier* for services provided in this section. No such supplier or payor may be made or become a party to any action before the compensation court.

(Emphasis supplied.)

In its further award, the trial court concluded that § 48-120(1)(e) plainly requires the use of the fee schedule and that there was no conflict between it and § 48-120(8). The review panel affirmed, but noted that the trial court did not actually order payment to the third-party insurer. Instead, according to the review panel, the trial court simply ordered ADM to pay certain medical expenses. As such, the review panel noted that after receiving payment from ADM, the medical provider or supplier should then reimburse the insurance company. And because the trial court ordered payment and not reimbursement, the distinction raised by Pearson is not at issue.

We agree with the trial court that subsections (1)(e) and (8) of § 48-120 are not inconsistent. Pearson is correct that § 48-120(1)(e) does not mention such third parties, while § 48-120(8) does. But the purpose behind § 48-120(1)(e) is to prohibit a supplier or provider from charging more than the fee schedule permits. Because a third party in this instance is not providing or supplying services and thus is not charging for them, it is unnecessary to prohibit one from charging *more* than the fee schedule, and thus unnecessary to include third parties in that subsection.

And § 48-120(8) mentions third parties only insofar as it gives the compensation court the power to order a third party to be reimbursed if it pays a provider or supplier. Pearson expresses concern that a third party might pay an amount higher than the fee schedule initially and, if reimbursed only according to the fee schedule, might not be reimbursed for the full amount paid. We find this possibility mitigated by the prohibition in § 48-120(1)(e) against providers or suppliers charging more than the fee schedule allows.

Because we conclude that § 48-120(1)(e) and (8) can be read consistently, we conclude that the trial court did not err in applying the fee schedule to any reimbursement to a third party. We therefore find Pearson's second assignment of error to be without merit.

CONCLUSION

The decision of the review panel is affirmed in part, and in part reversed and remanded for further proceedings.

AFFIRMED IN PART, AND IN PART REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

STATE OF NEBRASKA EX REL. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, RELATOR, V. ROBERT J. REMACK, RESPONDENT.

802 N.W.2d 887

Filed September 23, 2011. No. S-11-551.

Original action. Judgment of disbarment.

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

PER CURIAM.

INTRODUCTION

This case is before the court on the voluntary surrender of license filed by respondent, Robert J. Remack, on July 1, 2011. The court accepts respondent's surrender of his license and enters an order of disbarment.