STATE OF MINNESOTA

IN SUPREME COURT

A20-0893

Workers' Compensation Court of Appeals — Moore, III, J.

Margaret Leuthard,

Respondent,

vs.

Filed: April 28, 2021
Office of Appellate Courts

Independent School District 912 – Milaca
and Berkley Risk Administrator,

Relators.

Katelyn R. Bounds, Thomas A. Klint, Midwest Disability, P.A., Minneapolis, Minnesota, for respondent.

Timothy P. Jung, Molly de la Vega, João C.J.G. de Medeiros, Lind, Jensen, Sullivan & Peterson, P.A., Minneapolis, Minnesota, for relators.

S Y L L A B U S

1. Substantial evidence in the record supports the decision of the compensation judge that the employee's medical treatment exceeded the treatment parameters and was therefore not reasonable and necessary.

2. The Workers' Compensation Court of Appeals erred in directing the compensation judge to address whether the employee's claim presented a rare exception to

the treatment parameters promulgated by the Department of Labor & Industry when the employee raised that claim for the first time on appeal.

Reversed.

O P I N I O N

MOORE, III, J.

This case asks us to decide whether the rare case exception to the treatment parameters for compensable, work-related injuries, *see Jacka v. Coca-Cola Bottling Co.*, 580 N.W.2d 27, 35–36 (Minn. 1998), can be raised for the first time on appeal. We must also decide whether the Workers' Compensation Court of Appeals (WCCA) erred in vacating factual findings made by the workers' compensation judge regarding the reasonableness and necessity of the employee's medical treatment. Because we conclude that the WCCA erred in vacating the workers' compensation judge's factual findings and that the WCCA erred in directing the compensation judge to consider whether the employee's case presented rare circumstances warranting an exception from the treatment parameters, we reverse the decision of the WCCA and reinstate the decision of the compensation judge.

FACTS

Respondent Margaret Leuthard was hired by relator Independent School District No. 912 (ISD 912) to be a school cafeteria dishwasher. After a year of employment, Leuthard began feeling pain in her neck and reported difficulty looking upward. A medical consultation determined that the repetitive stress of her job had culminated in a *Gillette*-style injury to her neck and upper spine. *Gillette v. Harold, Inc.*, 101 N.W.2d 200,

206–07 (Minn. 1960) (explaining that covered workers' compensation injuries are not exclusively injuries attributable to a single incident, but may also be repetitive stress injuries).[1]

For the next four years, Leuthard underwent multiple diagnostic efforts, including many MRIs, and tried various treatments to resolve her pain and heal the underlying injury. She received multiple courses of physical therapy and was prescribed medication for pain management. These treatments provided little to no long-term relief for Leuthard's pain.

In July 2008, after the other treatments failed, Leuthard was evaluated by Dr. Steven Sabers to determine whether her pain was centered in her facet joints or disc mediated.[2] To complete his diagnosis, Sabers administered facet joint injections between Leuthard's C5, C6, and C7 vertebrae. If the injections successfully blocked Leuthard's pain, the facet joints were the cause of her pain.[3] If the injections were unsuccessful, Leuthard's pain was attributable to her spinal discs. These injections provided partial, short-lived pain relief and no clear answer as to the underlying source of her pain.

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[1] Specifically, Leuthard suffered from degenerative spondylosis and cervical stenosis at the C5-C6 and C6-C7 levels.

[2] Facet joints connect the bones of the spine, thus allowing for bending and twisting within some limits. *See, e.g.*, *Stedman's Medical Dictionary* 309, 610 (2012). The discs in the spine rest between adjacent vertebrae and act as shock absorbers while allowing for some spinal movement. *See id*. at 887.

[3] *See O'Connor v. Jerry's Enters.*, 2000 WL 1860111, at *2 (Minn. WCCA Nov. 27, 2000) (describing another doctor's testimony who explained that facet joint injections can have "both a therapeutic and a diagnostic purpose").

Next, Sabers recommended medial branch blocks to further evaluate Leuthard's pain.[4] If the block relieved the pain, then the facet joints were the source of her pain, which might make surgical treatment viable. The blocks proved unsuccessful, leading Sabers to conclude that the source of her pain was not facet joint based.

But because Leuthard had some temporary pain relief from the facet joint injections, Sabers began administering quarterly injections to her for the next eight years. The degree and duration of relief provided by these injections varied: some provided up to three months of relief, while the relief from others lasted only a week. Leuthard continued to use prescribed pain medication throughout the injection treatments.

In September 2017, Dr. Joel Gedan conducted an independent medical exam at the request of ISD 912 and its insurer. *See* Minn. Stat. § 176.155, subd. 1 (2020) (requiring an injured employee to submit to an examination by the employer's physician). Noting that facet joint injections are not designed for long-term, repeated use, and that there was no clear indication of any objective change in Leuthard's condition from repeated injections, Gedan concluded that continued use of the injections is not reasonable, necessary, or an indicated treatment plan from a medical standpoint. Gedan noted that if relief is obtained from a facet joint injection, the next recommended step would be medial branch blocks. His report did not mention the previous consideration given to that treatment, despite medical records showing that Leuthard had undergone that procedure in 2008.

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[4] This treatment injects an anesthetic near the medial nerves connected to a specific facet joint.

Based on Gedan's examination and opinions, ISD 912, through its insurer, notified Leuthard in November 2017 that it would no longer approve reimbursement for ongoing facet joint injections. In arriving at this decision, ISD 912 also relied on the 3-injection limit established in the treatment parameters promulgated by the Department of Labor & Industry,[5] *see* Minn. R. 5221.6200, subp. 5(A)(3) (2019) (explaining that the "maximum treatment" is "three injections to any one site.").

Leuthard returned to Sabers for further examination in February 2018, after she experienced decreased sensation in her extremities and a grinding sensation in her neck. He ordered an MRI and performed more medial branch blocks. The MRI showed no changes in Leuthard's condition and the medial branch blocks were again unsuccessful. The next report by Sabers acknowledged that facet joint injections are a less than ideal solution for managing Leuthard's pain, but were the only treatment that had significant and reproducible pain relief. He continued to administer quarterly injections to Leuthard until April 2019.

Meanwhile, Leuthard filed a request with the Department of Labor & Industry for authorization of and payment for additional facet joint injections. The Department denied the request based on Gedan's report and ISD 912 stopped paying for the injections.

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[5] These parameters were adopted at the direction of the Legislature, *see* Minn. Stat. § 176.83, subd. 5 (2020), to provide standards for reasonable treatment while also restricting health care providers treating compensable injuries from receiving reimbursement for treatment "deemed excessive, unnecessary, or inappropriate." *See Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 639 (Minn. 2019). The parameters "define the payer's maximum liability for medical services, articles, and supplies." *See* Minn. R. 5221.0300 (2019).

Leuthard then requested a hearing before a compensation judge to determine whether ongoing injections fall within the treatment parameters, whether a rule-based departure from the parameters is warranted, and whether the injections are reasonable and necessary treatment. At the hearing before the compensation judge, Leuthard testified that the ongoing injections provide relief and allow her to do activities that she otherwise would not be able to do. The record before the compensation judge included Leuthard's medical records and Gedan's report from the independent medical exam.

The compensation judge found Leuthard's testimony credible. But based on the preponderance of the evidence, the compensation judge determined that ongoing facet joint injections do not meet the applicable treatment parameter and Leuthard had not met the burden to show that a departure from the parameter's 3-injection limit was warranted, *see* Minn. R. 5221.6050, subp. 8 (2019) (providing the criteria for a "departure from a parameter that limits the duration or type of treatment"). In reaching these conclusions, the judge relied on Leuthard's testimony and medical records which documented little to no reduction in Leuthard's subjective levels of pain, limited improvement in the objective clinical findings, and no change in her functional status. Finally, the compensation judge concluded ongoing injections were neither necessary nor reasonable because that treatment had not provided significant or lasting relief and the evidence showed that Leuthard's symptoms continue to worsen.

Leuthard appealed to the WCCA, asserting in the Notice of Appeal that the compensation judge committed unspecified errors of law and fact. She then filed her brief in the case where, in addition to arguing that the compensation judge's decision was clearly

erroneous and unsupported by substantial evidence, Leuthard asserted for the first time that an exception to the treatment parameters was warranted in her case because no other treatments are available to her and she is not a candidate for surgery.

The WCCA reversed in a 2-1 decision. *Leuthard v. Indep. Sch. Dist. 912*, No. WC19-6290, 2020 WL 3073339 (Minn. WCCA May 26, 2020). The WCCA agreed that Leuthard is not entitled to a departure from the facet joint injection treatment parameter under the criteria set out in Minn. R. 5221.6050, subp. 8. *See id.* at *4. Next, the WCCA concluded that, in light of the record, the compensation judge should have considered whether this was a rare case warranting a departure from the treatment parameters. *Id.* Deciding that this omission was an error of law, and because the WCCA could not otherwise reconcile the findings made regarding the credibility of Leuthard's testimony and the relief provided by the injections, the WCCA concluded that the compensation judge's decision was not supported by substantial evidence in the record.[6] *Id.* at *5.

ISD 912 sought review of the WCCA's decision by writ of certiorari.

ANALYSIS

The Workers' Compensation Act requires an employer to "furnish any medical . . . treatment [to an employee] . . . as may reasonably be required at the time of the injury and any time thereafter to cure and relieve from the effects of the injury." Minn. Stat. § 176.135, subd. 1(a) (2020). This obligation requires the employer to pay for reasonable

[6] The dissenting judge concluded that the compensation judge correctly applied the treatment parameters to the evidence in this case, stating "there is no authority for ignoring the administrative rules." 2020 WL 3073339 at *6 (Stofferahn, J., dissenting).

and necessary treatment to cure and relieve the effects of a compensable injury. *Gamble v. Twin Cities Concrete Prods.*, 852 N.W.2d 245, 248 (Minn. 2014).

ISD 912 argues that the WCCA committed two errors in reviewing the compensation judge's decision. First, the school district asserts that the WCCA erred in vacating the compensation judge's factual findings regarding the reasonableness and necessity of Leuthard's continued facet joint injections. Second, the school district contends that the WCCA erred in remanding the case for consideration of whether Leuthard's circumstances present a rare exception to the treatment parameters when Leuthard raised that issue for the first time on appeal.

Our standard of review on these issues is well established. As to questions of fact, we will reverse the WCCA if we conclude that the court clearly and manifestly erred by rejecting findings supported by substantial evidence. *Gibberd v. Control Data Corp.*, 424 N.W.2d 776, 779 (Minn. 1988). We review questions of law de novo. *Johnson v. Darchuks Fabrication, Inc.*, 926 N.W.2d 414, 419 (Minn. 2019).

I.

We begin with the compensation judge's determination that continued facet joint injections are not reasonable and necessary. The WCCA concluded the findings supporting this decision were not supported by substantial evidence in the record, vacated them, and remanded for additional findings.

When reviewing a compensation judge's decision, the WCCA is required to defer to the compensation judge's findings of fact unless those findings are unsupported "by substantial evidence in view of the entire record as submitted." *Hengemuhle v. Long*

Prairie Jaycees, 358 N.W.2d 54, 59 (Minn. 1984). The compensation judge's findings should be upheld if "they are supported by evidence that a reasonable mind might accept as adequate." *Id.* "In applying this standard, the [WCCA] looks not only at the evidence which supports the compensation judge's findings, but also at the opposing evidence and the evidence from which conflicting inferences might be drawn." *Id.* "[W]here the evidence is conflicting or more than one inference may reasonably be drawn from the evidence, the findings of the compensation judge are to be upheld." *Id.* at 60.

The factual question presented here—are quarterly injections reasonable and necessary to treat the pain resulting from Leuthard's work-related injury—must be considered within the framework of the relevant treatment parameters. The Department of Labor & Industry has adopted standards—parameters—that set forth the reasonably required medical treatment for compensable, work-related injuries. *Johnson*, 926 N.W.2d at 418; *see* Minn. R. 5221.6010–.6600 (2019). These parameters are "based upon accepted medical standards for quality health care and accepted rehabilitation standards." Minn. Stat. § 176.83, subd. 5(a) (2020). They were created "to control costs for compensable medical treatment" and to provide standards for determining if any particular treatment is reasonable or necessary.[7] *Johnson*, 926 N.W.2d at 418–19 ("The treatment parameters function as a 'yardstick by which the treatment offered by the health care provider is measured.' " (quoting *Jacka v. Coca-Cola Bottline Co.*, 580 N.W.2d 27, 35 (Minn. 1998)).

[7] Medical treatment that provides "for the diagnosis and cure or significant relief of a condition" consistent with the treatment parameters is reasonable and necessary. Minn. R. 5221.6040, subp. 10 (2019).

The parameters are not intended to prohibit treatment; rather, the parameters suggest when a different treatment approach might be needed. *Jacka*, 580 N.W.2d at 35 (explaining, in the context of treatment for a back injury, that the parameters "do not prohibit treatment" to relieve pain after the parameters "are no longer met," but instead "simply require a change from" the treatment that is no longer deemed reasonable to another form of treatment).

The facet joint injections Leuthard has received are a form of therapeutic treatment. Minn. R. 5221.6040, subp. 13 (2019) (defining "therapeutic injection"). The treatment parameters for therapeutic facet joint injections are set forth in Minnesota Rule 5221.6205, subpart 5(A)(2). These injections "can only be given in conjunction with active treatment modalities directed to the same anatomical site," *id.*, subp. 5(A), and the maximum number of facet joint injections "to any one site" that an individual can receive is three, *id.*, subp. 5(A)(2)(c). When "subsequent injections . . . demonstrate diminishing control of symptoms or fail to facilitate objective functional gains, then injections . . . should be discontinued." *Id.*, subp. 5(A)(2)(b).

It is undisputed that Leuthard received over twenty facet joint injections between 2008 and 2019. Based on the evidence in the record from medical providers, the compensation judge found Leuthard's "response" to the injections was "variable" and several of the injections "have not resulted in significant or lasting pain relief." Further, Leuthard's "subjective symptoms have worsened over time," and she continues to manage the pain with medications. No evidence suggested that Leuthard's objective clinical findings were improving, nor did the more recent MRI scans show changes from prior

scans. Based on this evidence, the compensation judge found ongoing quarterly facet joint injections did not comply with the treatment parameters, and there was no evidence to support a departure from those parameters under Rule 5221.6050, subpart 8.

The WCCA acknowledged that Leuthard's quarterly injections had "exceeded" the limit established by the treatment parameters and agreed with the compensation judge that she "did not meet the required criteria for a departure from the treatment parameters to apply." *Leuthard*, 2020 WL 3073339, at *4.[8] But the WCCA concluded that the compensation judge's decision was unsupported by substantial evidence because the judge found Leuthard's testimony credible while also noting Leuthard's testimony that the injections helped her be more functional in some daily activities. *Id.* at *5. Additionally, the WCCA noted that Gedan's report from the independent medical exam did not "address the reasonableness of continuing facet joint injections" given that the medial branch blocks "failed to provide relief." *Id*.

ISD 912 argues the WCCA erred for two reasons. First, the school district asserts that the WCCA misunderstood the compensation judge's findings regarding Gedan's

[8] The treatment parameters are intended to be "flexible," and thus the rules establish exceptions from parameters that limit the duration or type of treatment. *See Jacka*, 580 N.W.2d at 35–36 (recognizing that a departure from the parameters reflected "the flexibility inherent in the permanent rules"). A departure may be warranted if subjective complaints of pain, objective clinical findings, or functional status are progressively improving. Minn. R. 5221.6050, subp. 1(B). Documentation in the medical records must demonstrate that at least two of these standards are met for the treatment that does not comply with the parameters to continue. *Id*. Leuthard did not appeal from the WCCA's decision upholding the compensation judge's conclusion that she did not demonstrate that a departure from the treatment parameters under this rule was warranted in her case, and thus we do not address this portion of the WCCA's decision.

opinion. According to ISD 912, the compensation judge relied on multiple factors in determining that ongoing facet joint injections were not reasonable or necessary, while the WCCA relied too heavily on the conclusions from the independent medical exam. Second, ISD 912 argues that the alleged inconsistency the WCCA saw between the compensation judge's findings and the conclusion that the injections are unreasonable and unnecessary is reconcilable. According to ISD 912, the WCCA failed to fully consider the compensation judge's findings regarding the variable, "short-lived," and lack of significant pain relief from the injections, which are not contradicted by the single finding acknowledging Leuthard's testimony that the injections gave her *some* relief. Conversely, Leuthard urges us to affirm the WCCA, asserting that the compensation judge's findings are contradictory in light of the totality of the evidence.

The WCCA must "give due weight to the compensation judge's opportunity to judge the credibility of the witnesses" and affirm findings supported by substantial evidence, even if "based on conflicting evidence or evidence from which more than one inference might reasonably be drawn." *Even v. Kraft, Inc.*, 445 N.W.2d 831, 834 (Minn. 1989). The WCCA cannot evaluate the probative value of evidence to draw a different inference from the facts. *Pelowski v. K-Mart Corp.*, 627 N.W.2d 89, 93–94 (Minn. 2001) (affirming a decision to deny medical treatment that did not comply with parameters, which was based on "inconsistencies" in the employee's testimony, the medical records, and the independent medical exam).

We conclude that the compensation judge's findings and decision were based on substantially more than just Gedan's opinion and conclusions. Further, we see no

contradiction between the compensation judge's finding that Leuthard's testimony was credible and the conclusions that the judge drew from evidence in the medical records. It is undisputed that the relief Leuthard received from the injections was mixed, "variable," or "varied." She steadily used pain medication throughout her injection treatment, her treating physician's original opinion was that her pain is disc mediated, which would not be treated by facet joint injections, and the medical records showed a lack of any progressive, objective, clinical improvement over several years of injections. Considering all of these facts, we conclude that the compensation judge's decision is "supported by evidence that a reasonable mind might accept as adequate," *Hengemuhle*, 358 N.W.2d at 61, and the WCCA erred by concluding otherwise. Accordingly, we reverse the decision of the WCCA to vacate the compensation judge's findings on the reasonableness and necessity of ongoing facet joint injections.

II.

The WCCA also concluded that the compensation judge erred as a matter of law in failing to consider whether Leuthard's case presents a rare exception to the treatment parameters. In light of evidence showing that facet joint injections relieved Leuthard's credible complaints of pain, and because Gedan "did not know that medial branch blocks had already been tried but had proven ineffective," the WCCA concluded that the compensation judge should have considered whether this is a rare case that warrants an exception to the treatment limits imposed by the parameters. *Leuthard*, 2020 WL 3073339, at *4.

The treatment parameters are intended to provide standards to determine reasonable and necessary treatment for a compensable injury. *See Jacka*, 580 N.W.2d at 34 (explaining the statutory requirement to pay for medical treatment has "never been interpreted to obligate the employer to pay for all treatment which cures or relieves," and the parameters establish "standards of reasonable treatment"). Because the parameters are intended to "provid[e] a large measure of uniformity and certainty," yet remain flexible in application, *id*. at 35, there are two possible departures from the treatment parameters.

First, the Department of Labor & Industry has established criteria on which a departure from parameters that limit the duration or type of treatment can be based. Minn. R. 5221.6050, subp. 1(B) (2019); *see Jacka*, 580 N.W.2d at 35 (recognizing "the flexibility inherent in the permanent rules"). Second, we have acknowledged that the treatment parameters "cannot anticipate every exceptional circumstance" and thus, we have said the compensation judge may depart from the parameters in a rare case. *Jacka*, 580 N.W.2d at 35–36.

We first mentioned what has become known as the rare case exception in *Jacka v. Coca-Cola Bottling Co.* 580 N.W.2d at 35–36. There, we were asked to address, among other issues, how compensation judges should apply the treatment parameters. *Id.* at 35. After explaining the "variability and flexibility" built into the parameters alongside "a large measure of uniformity and certainty as to compensable treatment," we noted that the parameters "cannot anticipate every exceptional circumstance." *Id.* Thus, we recognized there may be "rare cases" where a compensation judge can deviate from the treatment parameters when "departure is necessary to obtain proper treatment." *Id.* at 35–36; *see Asti*

v. Nw. Airlines, 588 N.W.2d 737, 740 (Minn. 1999) (explaining that the treatment parameters do not "consider[] every possible scenario," and rejecting the notion that "the employee's health" should be allowed "to decline to the point of inability to work rather than to continue an inexpensive treatment that allows continued employment"). With these general principles in mind, we now turn to the specific facts of this case.

Here, the WCCA concluded that the compensation judge erred as a matter of law because the judge should have sua sponte considered whether Leuthard's case is a rare exception to the treatment parameters. *Leuthard*, 2020 WL 3073339, at *4. ISD 912 argues that the WCCA erred in this conclusion because Leuthard did not assert before the compensation judge that her case presents rare circumstances, and therefore the claim was forfeited. Leuthard, relying on the specialized nature of the WCCA, urges us to uphold the WCCA's decision to address the rare case exception notwithstanding the absence of that claim before the compensation judge. We agree with ISD 912 that this claim was forfeited.

The WCCA's "review is limited to the issues raised by the parties in the notice of appeal." Minn. Stat. § 176.421, subd. 6 (2020); *see also Gianotti v. Indep. Sch. Dist. 152*, 889 N.W.2d 796, 800 (Minn. 2017). This limitation is consistent with the overall nature of appellate courts, which typically confine their review to "issues that . . . were presented and considered by the" lower court. *Thayer v. Am. Fin. Advisers, Inc.*, 322 N.W.2d 599, 604 (Minn. 1982). "We consider issues that are not raised in the district court but are raised for the first time on appeal to be forfeited." *State v. Balandin*, 944 N.W.2d 204, 220 (Minn. 2020). As we stated in *Hengemuhle*, the WCCA "performs an appellate review function." 358 N.W.2d at 59; *see also Ansello v. Wisc. Cent., Ltd.*, 900 N.W.2d 167, 170 n.2 (Minn.

2017) (noting the WCCA's position in that case, and stating that "it may not consider issues not raised" before the compensation judge). To summarize, "an argument is forfeited if the theory was 'not litigated or addressed by the compensation judge and not appealed to the WCCA.' " *Ewing v. Print Craft, Inc.*, 936 N.W.2d 886, 890 n.4 (Minn. 2020) (quoting *Ruether v. Mankato State Univ.*, 455 N.W.2d 475, 479 (Minn. 1990)).

Leuthard did not raise the rare case exception before the workers' compensation judge. Indeed, nothing in the record before the compensation judge suggests that she did so, and the compensation judge's decision is, not surprisingly, devoid of any discussion of that exception. Moreover, the findings and conclusions Leuthard listed in her appeal to the WCCA do not directly or indirectly reference the rare case exception, and she did not assert the rare case exception in her notice of appeal to the WCCA as an alternate ground for reversal. The first time this issue came up was in her brief to the WCCA.

Leuthard asserts that the WCCA can nonetheless raise or consider the *Jacka* rare case exception for the first time on appeal. We disagree.

Leuthard relies on the decision in *Asti v. Northwest Airlines*, noting our comment that "our inquiry does not end" with "the WCCA's conclusion that Asti failed" to show that he met the requirements for a departure from the parameters. 588 N.W.2d at 740. We made this comment, however, to explain the evidence showing that the treatment had "clearly assisted" the employee in returning to work and remaining employed. *Id*. Nothing in this case-specific language addresses forfeiture or the longstanding requirement for the appellant to identify the issues in an appeal to the WCCA in the notice of appeal. *See Gianotti*, 889 N.W.2d at 801 (stating that the specific findings listed in the notice of appeal

did not address an expert competency issue). Further, our decision in *Jacka* was still pending when *Asti* reached the WCCA, which led that court to stay its resolution of *Asti* pending our decision in *Jacka*. *Asti*, 588 N.W.2d at 739. This solution, which was an efficient use of party and judicial resources given the similarity of the issues between two appeals pending at two different courts at the same time, does not support the conclusion that sua sponte consideration of the *Jacka* rare case exception is now the rule.

Nor are we persuaded by decisions from the WCCA that have considered or referred to the *Jacka* rare case exception.[9] Conclusions of law reached by the WCCA are not binding on our court, *see, e.g.*, *Kloss v. E & H Earthmovers*, 472 N.W.2d 109, 112 (Minn. 1991), and in any event, these cases do not hold that this exception must be considered by a compensation judge sua sponte.

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[9] Leuthard relies on four WCCA decisions that discussed *Jacka* in support of her argument. Three of these decisions addressed a rare case claim on appeal after the issue was specifically decided by the compensation judge and are therefore distinguishable from this decision. *Stately v. Red Lake Builders*, 71 Minn. Workers' Comp. Dec. 123, 130–31 (Minn. WCCA 2010) (describing the compensation judge's finding "that this matter did not qualify for a 'rare case' exception"); *Adamich v. Lauri Koski, Inc.*, 67 Minn. Workers' Comp. Dec. 674, 678–79 (Minn. WCCA 2007) ("The compensation judge found that a departure from the treatment parameters . . . under *Jacka* was appropriate"); *Rushmeyer v. Lyngblomsten Care Ctr.*, No. WC06-177, 2006 WL 3891512, at *5 (Minn. WCCA Dec. 20, 2006) ("The compensation judge found that all of the medications here at issue were reasonable and necessary . . . as a 'rare case' exception to the treatment parameters"). The fourth dealt with *Jacka* in dictum and there is no indication as to whether the rare case exception was raised before the compensation judge. *Marschel v. Bird & Cronin, Inc.*, No. WC15-5794, 2015 WL 5107871, at *7 (Minn. WCCA Aug. 7, 2015) (explaining that the treatments at issue qualified for a departure under Minn. R. 5221.6050, subp. 8 while opining that the treatment "may also be" a rare case exception). It too is inapplicable here. The WCCA also cited to these four cases as generally supporting its rare case conclusion without further explanation. *See Leuthard*, 2020 WL 3073339, at *4.

Leuthard did not assert before the compensation judge that her case presented rare circumstances that warrant an exception to the treatment parameters, and she did not assert in her Notice of Appeal to the WCCA that the compensation judge erred in failing to consider that exception. Thus, the WCCA erred as a matter of law in vacating the compensation judge's decision and remanding to address that exception in this case. *See Greenlaw v. United States*, 554 U.S. 237, 244 (2008) ("We wait for cases to come to us, and when they do we normally decide only questions presented by the parties." (quoting *United States v. Samuels*, 808 F.2d 1298, 1301 (8th Cir. 1987) (R. Arnold, J., concurring))).

CONCLUSION

For the foregoing reasons, we reverse the decision of the Workers' Compensation Court of Appeals and reinstate the decision of the compensation judge.

Reversed.