FILED
OCT 19 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RICHARD L. CROSS,	)	
Appellant,	)	Filed October 19, 1978
vs.	)	
SMITH'S TRANSFER CORP., Employer TRANSPORT INSURANCE COMPANY, Insurance Carrier,	))	
Appellees,	)	608 2-61339
and		
IOWA INDUSTRIAL COMMISSIONER,	)	
Respondent.	)	

Appeal from Polk District Court - Ray A. Fenton, Judge.

Petitioner appeals from trial court decision affirming Industrial Commissioner's denial of worker's compensation. Affirmed.

Harry W. Dahl, of Des Moines, counsel for appellant.

Roy M. Irish, of Paterson, Lorentzen, Duffield, Timmons, Irish & Becker, of Des Moines, counsel for appellees.

Robert Landess, Iowa Industrial Commissioner, pro se.

Heard by Donielson, Acting C. J., Snell, Oxberger and Carter, JJ.

DONIELSON, Acting C. J.

The petitioner appeals from judgment of the district court affirming the final decision of the Iowa Industrial Commissioner concerning the petitioner's application for worker's compensation for a carpal tunnel syndrome (compressed nerves resulting in numbness) in both arms.

The deputy commissioner and the commissioner on review found that Richard I. Cross sustained personal injury arising out of and in the course of his employment on December 13, 1973, and June 16, 1975. While the deputy commissioner awarded Cross compensation for both injuries, the commissioner on review found that the claim for benefits from the December 13, 1973 incident was barred by § 85.23, The Code 1975, for failure to give timely notice. The commissioner also reduced the award of benefits from the June 16, 1975 incident from seventeen (17) weeks to one and four-sevenths (1 4/7) weeks. The district court affirmed the commissioner.

The petitioner asserts on appeal that the district court erred in ruling (1) that the issue of timely notice of the 1973 injury was properly before the commissioner; (2) that Cross failed to make a reasonable effort to discover the cause of the 1973 injury; and (3) in affirming the reduced award for the 1975 injury and denying benefits for permanent disability. We affirm.

Judicial review of decisions or orders of the commissioner are pursuant to § 86.26, and § 17A.19(8), The Code 1977. This review, unlike the commissioner's review of the deputy's decision, is not **de novo**; rather, the commissioner's findings have the force and effect of a verdict. Paveglio v. Firestone Tire and Rubber Co., 167 N.W.2d 636, 640 (Iowa 1969). It is the commissioner, not the court, who weighs the evidence, and the court must liberally construe the commissioner's findings to uphold rather than defeat his decision. Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296, 298 (Iowa 1974). The question on review is not whether there is sufficient evidence to warrant the decision the commissioner did not make, but rather whether evidence is sufficient to warrant the decision he did make. **Holmes,** supra at 298; Musselman v. Central Telephone Co., 154 N.W.2d 128, 130 (Iowa 1967).

Petitioner's first contention is that the notice requirement of § 85.23, The Code 1975, was not properly before the commissioner and trial court. The respondent's answer

to Cross's application for arbitration asserted the affirmative defense of lack of timely notice, and the deputy commissioner made specific findings concerning notice. Section 86.24, The Code 1975, provided for a review hearing at which "the commissioner shall hear the parties, consider all evidence taken before the deputy industrial commissioner . . . and may hear any additional evidence, and he may affirm, modify or reverse the decision . . . ." There is no restriction on the issues or scope of review, and the issue of notice was properly before the commissoner and the district court. **Paveglio**, supra at 640. We consider the merits of the issue.

Section 85.23, The Code, stated in relevant part: "Unless the employer or his representative shall have actual knowledge of the occurrence of an injury, or unless the employee or someone on his behalf . . . shall give notice, . . . then no compensation shall be paid. . . ." The injury occurred on December 13, 1973, and Cross called in sick on December 16, 1973. In the trial court Cross conceded that the call was insufficient to put employer on notice then that Cross was suffering from a compensable injury. Cross contends that it was not until July 7, 1975 that he first learned from his doctor that his injuries were work-related. Notice need not be given until an employee learns the nature of his injury. Jacques v. Farmers Lumber & Supply Co., 242 Iowa 548, 554, 47 N.W.2d 236 (1951). However, once the injury or disease is discovered, the claimant's duty is to exercise reasonable care and diligence in discovering the nature of the problem. Mousel v. Bituminous Material & Supply Co., 169 N.W.2d 763, 766 (Iowa 1969).

There is clear evidentiary support for the finding by the commissioner that notice had not been timely given that Cross's injury was work related. Cross knew as early as February 1974 that he suffered from carpal tunnel syndrome. He experienced its most severe symptoms while at his job. He underwent surgery and was able to work at only light jobs without severe pain. He was physically unable to carry out his previous duties as truck driver and loading dock worker. Cross had the obligation to exert a reasonable and diligent effort to discover the cause of his injury, and he failed to do so. Barcel v. Barrel Finish, 232 N.W.2d 13, 15 (Minn. 1975); Davidson v. Bermo, Inc., 137 N.W.2d 567, 572 (Minn. 1965). There is no error.

Cross's final contention concerns the award of benefits for the June 16, 1975 injury. Medical testimony indicated that no further treatment of Cross was required

after July 7, 1975, and that he could return to work handling normal loads. The commissioner found that Cross suffered only a temporary disability and awarded benefits accordingly. "The Commissioner's findings of fact have the effect of a jury verdict and, where the evidence is in dispute or where reasonable minds may differ on inferences fairly to be drawn from the disclosed facts, the Commissioner's findings of fact are conclusive on appeal." Merchant v. SMB Stage Lines, 172 N.W.2d 804, 807 (Iowa 1969).

Affirmed.