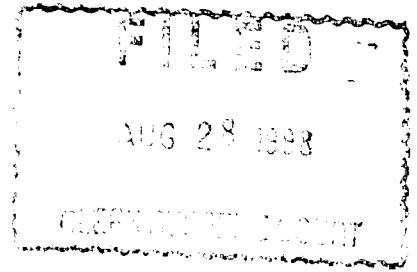


IN THE COURT OF APPEALS OF IOWA

No. 8-186 / 96-1448
Filed August 28, 1998



SIN CHA YI,
Appellee,

vs.

GENERAL MILLS, INC.,
LIBERTY MUTUAL, and
SECOND INJURY FUND OF IOWA,
Appellants.

Appeal from the Iowa District Court for Linn County, William R. Eads, Judge.

The respondents appeal from the district court's rulings on judicial review directing the industrial commissioner to award the petitioner additional workers' compensation benefits and determining that Second Injury Fund liability was triggered. **REVERSED.**

Kevin R. Rogers and Natalie Williams Burris of Swisher & Cohrt, P.L.C.,
Waterloo, for appellants General Mills and Liberty Mutual.

Thomas J. Miller, Attorney General, Craig Kelson and Joanne Moeller,
Assistant Attorney Generals, for appellant Second Injury Fund.

Thomas J. Currie of Tom Riley Law Firm, P.L.C., Cedar Rapids, for appellee.

Heard by Sackett, P.J., and Huitink and Streit, JJ.

STREIT, J.

General Mills and the Second Injury Fund appeal the trial court's findings Sin Cha Yi's injuries were work related and the Second Injury Fund was liable to Yi for benefits. Because the industrial commissioner's findings that Yi's April 12, 1988 injury and her psychological injuries were not work related are supported by substantial evidence on the record, we reverse the trial court. The trial court's finding the Second Injury Fund was liable for benefits is also reversed.

I. Background Facts & Proceedings.

Sin Cha Yi began working for General Mills in 1983 in the mix department. After six months, she was transferred to the fruit roll ups department to work as a Doboy operator. In 1986, she was transferred to the popcorn department where she worked as a Doboy operator; an A-operator on the Bartelt machine, and on the second-fold machine. In March of 1989, Yi began working on the Bemis and Langen machines. She did not return to work at General Mills after May 9, 1989. General Mills discharged her in February 1990.

Yi claims she sustained four physical work-related injuries during her employment at General Mills. The physical injury which is the subject of this appeal is Yi's bilateral carpal tunnel and cubital tunnel syndrome allegedly sustained on April 12, 1988, while she was working as a Doboy operator on the popcorn line. She claims she is entitled to benefits under the Second Injury Compensation Act for this

injury. Additionally, Yi claims a psychological injury causally connected to her alleged work-related injuries.

In March of 1991, the Industrial Commissioner denied Yi benefits for the injury she allegedly sustained in April of 1988, and her alleged psychological injury. The commissioner also found the Second Injury Fund assumed no liability for Yi's damages under the Act. Yi sought judicial review of the commissioner's decision.

The district court remanded the case twice to the Industrial Commissioner. The commissioner's ruling did not change. Yi sought judicial review of the commissioner's ruling a third time. The district court reversed the Industrial Commissioner's ruling. The court held Yi's April, 1988, injury was work related and her psychological injury causally connected to her work. General Mills and Liberty Mutual, its insurance carrier, appeal this ruling. In a separate ruling, the district court determined the Second Injury Fund was liable to Yi for benefits under the Act. The Fund appeals this ruling. The two appeals are consolidated.

II. Standard of Review.

An appellate court reviews decisions of the Industrial Commissioner under the rules set out in the Iowa Administrative Procedure Act, Iowa Code section 17A.19. *Pirelli-Armstrong Tire Co. v. Reynolds*, 562 N.W.2d 433, 436 (Iowa 1997). Review is for the correction of errors at law, not de novo. *Henkel Corp. v. Iowa Civil Rights Comm'n*, 471 N.W.2d 806, 809 (Iowa 1991).

It is the commissioner's task, not the court's, to weigh the evidence. *Reynolds*, 562 N.W.2d at 436. For this reason, the commissioner's findings are binding on appeal if supported by substantial evidence. *Id.* The court may reverse, modify, or grant other appropriate relief only if the agency action is unsupported by substantial evidence in the record. *Burns v. Bd. of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993).

In deciding whether substantial evidence exists, the record is viewed as a whole. Iowa Code § 17A.19(8)(f). Evidence is substantial if a reasonable mind would find it adequate to reach the same conclusion. *2800 Corp. v. Fernandez*, 528 N.W.2d 124, 126 (Iowa 1995). An agency's decision does not lack substantial evidence merely because inconsistent conclusions can be drawn from the same evidence. *Id.* In light of these standards, we assess whether the district court erred in reversing the findings of the Industrial Commissioner.

III. Yi's Alleged April 10, 1988 Injury.

Yi had the burden of proving to the agency, by a preponderance of evidence, her injury arose out of and in the course of employment. *City of Oelwein v. Bd. of Trustees*, 567 N.W.2d 237, 239 (Iowa App. 1997). An injury "arises out of" employment when a causal relationship exists between the employment and the injury. *2800 Corp. v. Fernandez*, 528 N.W.2d 124, 129 (Iowa 1995). The injury must be a "rational consequence of the hazard connected with the employment." *Id.* (quoting *Burt v. John Deere Waterloo Tractor Works*, 247 Iowa 691, 700, 73 N.W.2d

732, 737 (1955)). "In the course of" employment refers to the time, place, and circumstances of the injury. *Id.*

In April of 1988, Yi was working as a Doboy operator in the popcorn area. This job required heavy lifting, bending, twisting, and extensive use of her arms and hands. She complained of left shoulder, left back, left leg, and left hip pain. Yi was treated by Dr. Harris, the company physician, and Dr. Hales. Dr. Hales diagnosed her condition as bilateral carpal and cubital tunnel syndromes as a result of overuse and performed surgeries in September and December 1988.

Yi argued the opinion of Dr. Hales proved her claim the April 12, 1988, injury arose out of and in the course of her employment. The description of her job duties as a Doboy operator and Dr. Hales' opinions are the evidence Yi offered to prove her burden the injury was work related.

The industrial commissioner found Yi's evidence insufficient to meet her burden. The commissioner found Yi had not sufficiently proven her job as a Doboy operator was repetitive or required use of the both her right and left hands and elbows to the extent necessary to manifest bilateral carpal and cubital tunnel syndromes. As for Yi's assertion Dr. Hales' opinions proved her claim, the commissioner found Dr. Hales' opinions regarding the causal link between Yi's work and her injury unreliable, varying, and partially based on inaccurate information. The commissioner found Yi's injury did not arise out of and in the course of her employment.

The district court reversed the decision of the industrial commissioner on two grounds. First, the district court found sufficient evidence working as a Doboy operator required Yi to repetitively use her hands and arms. Second, the district court found the commissioner erred in not giving proper weight to Dr. Hales' opinion on the causal connection between Yi's injury and her work.

We review the evidence not to decide which opinion is more convincing, but rather, whether the industrial commissioner's opinion was supported by substantial evidence on the record. *Reynolds*, 562 N.W.2d at 436.

First, the industrial commissioner found Yi had insufficient lay testimony the Doboy operator job was repetitive. Neither Yi nor her supervisor testified the Doboy operator job required repetitive use of her hands and arms. Her testimony indicated she always used her hands, but nothing in the record indicated she used them in a repetitive motion. The only lay testimony on the subject is the following:

Q: Did the Doboy operator job on the popcorn line require you to use your hands or your arms?

A: Yes, all the time using hand and arm because change of paper and lifting bad product and sometimes second fold line . . .

Second, we assess whether the weight the industrial commissioner accorded to Dr. Hales' testimony was supported by substantial evidence on the record. Dr. Hales never clearly testified Yi's bilateral carpal and cubital tunnel syndromes were caused by her job as a Doboy operator. Rather, he admitted in his deposition he did not know how strenuous or repetitive Yi's jobs were before she worked on the Bemis

and Langen machines. Some of Dr. Hales' opinions were based on the inaccurate assumption Yi was working on the Bemus and Langen machines at the time she developed carpal and cubital tunnel syndrome. In a letter from Dr. Hales to Yi's attorney, Dr. Hales wrote:

I understand there were other things that she did in the plant during the time she worked there and we also tried to review those at that time, but particularly the machines that she had been on during the time these problems had developed, the Bemus and the Langdon . . .

The industrial commissioner rejected Dr. Hales' testimony. The commissioner was allowed to discount or reject Dr. Hales' uncontroverted expert medical testimony as long as she specified the reasons for doing so. *See James v. Sheller-Globe Corp.* 510 N.W.2d 170, 174 (Iowa App. 1993). The commissioner's reasons for rejecting his testimony were that the testimony varied and parts of the testimony were based on inaccurate information. The weight given an expert opinion may be affected by the accuracy of the facts relied upon and the general consistency of the opinion. *See Bodish v. Fischer Inc.*, 133 N.W.2d 867, 870 (Iowa 1965). The industrial commissioner's reasons for rejecting Dr. Hales' opinions are supported by substantial evidence in the record. Without Dr. Hales' testimony, Yi had no evidence of repetitive motion by Yi to prove her April 12, 1988 injury was work related.

Because the industrial commissioner's finding Yi's April 12, 1988 injury was not work related was supported by substantial evidence, it was error for the trial court to reverse. *See Burns*, 495 N.W.2d at 699. The trial court weighed the evidence,

found it supported another result and, on this basis, reversed the industrial commissioner. By doing so, the trial court erred. *See id.* The industrial commissioner's findings on this issue are reinstated.

IV. Yi's Alleged Psychological Injury.

Yi has not asserted a mental-mental injury claim under *Dunlavey v. Economy Fire & Cas. Co.* 526 N.W.2d 845(Iowa 1995)¹. Rather, Yi asserts her psychological injury was cause or aggravated by a scheduled injury pursuant to *Mortimer v. Fruehauf Corp.*, 502 N.W.2d 12 (Iowa 1993).

It has long been the law of Iowa that psychological conditions resulting from work-related physical trauma are compensable. *Deaver v. Armstrong Rubber Co.*, 170 N.W.2d 455, 466 (1969)(head injury caused manic depressive psychosis). In *Mortimer*, the court expanded the law by holding a psychological condition which caused or aggravated a scheduled injury was compensable as an unscheduled injury. *Mortimer*, 502 N.W.2d at 17.

Yi has the burden to show, by a preponderance of evidence, her work-related injury caused her psychological injury. *Frye v. Smith-Doyle Contractors*, 569 N.W.2d 154, 156 (Iowa App. 1997).

¹ A mental-mental injury is a mental injury caused solely by a mental stimulus which "aris[es] out of and in the course of the employment." *Dunlavey v. Economy Fire and Cas. Co.*, 526 N.W.2d at 851.

As stated, in evaluation of Yi's April 1988, injury we do not judge whether the district court's decision is more convincing than the industrial commissioner's decision. We evaluate the commissioner's decision to determine whether it is supported by substantial evidence on the record.

The commissioner found Yi had not proven her work was the proximate cause of her psychological injury. The district court held the commissioner erred in rejecting the uncontroverted evidence of Dr. Wellso that Yi's condition was work related. The industrial commissioner is entitled to make credibility findings and it is entirely within his right to reject any evidence he considers less reliable than other contradictory testimony. *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 273 (Iowa 1995).

The commissioner found Wellso's testimony established merely the psychological condition occurred at the same point in time as the work injuries, but not that work caused the psychological condition. The evidence showed numerous things which may have caused Yi's depression other than work, for example, her divorce, trouble with family members, the legal process, and financial circumstances. The commissioner believed this contradictory evidence to be the cause rather than Yi's work-related injury.

Yi contends the commissioner held her to a higher burden than was required by requiring she prove work was the probable cause of her injury. The industrial commissioner did not err. The commissioner found, in light of the evidence on

record, Yi would need to prove her condition was caused by work rather than the other circumstances in her life to meet her evidenciary burden.

The industrial commissioner's decision Yi did not prove her psychological injury was work related and not compensable is also supported by substantial evidence on the record. The district court erred in reversing the commissioner's finding.

V. Liability of Second Injury Fund.

Yi claimed she was entitled to benefits under the Second Injury Fund. Yi claimed her injury on February 19, 1987, was a first injury and the April 12, 1988 injury was a second injury. The commissioner denied her claim of benefits under the Fund. The district court reversed, finding the requirements of the Second Injury Fund had been met.

Liability for an industrial disability caused by two successive injuries is apportioned between the employer and the Second Injury Fund when: (1) the employee has either lost or lost the use of a hand, arm, foot, leg, or eyes; (2) the employee sustained the loss, or loss of use of another such member or organ through a work-related injury; and (3) there is some permanent disability from the injuries. Iowa Code § 85.64; *Haynes v. Second Injury Fund*, 547 N.W.2d 11, 13 (Iowa App. 1996).

When the three circumstances are present, the Fund becomes responsible for the difference between the compensation for which the current employer is liable and

the total amount of industrial disability suffered by the employee, reduced by the compensable value of the first injury. *Second Injury Fund v. Nelson*, 544 N.W.2d 258, 269 (Iowa 1995).

Yi cannot establish the elements needed to establish liability of the fund for her injury. She has not established the April 12, 1988 injury was work related or that either of her injuries resulted in a permanent disability. The district court's determination the requirements of the Second Injury Fund were met is reversed. The industrial commissioner's determination the fund had no liability to Yi is reinstated.

REVERSED.