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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

9-363 / 88-1808

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LLOYD L. HANSON and VALORA J. HANSON, Administrators of Dennis L. Hanson, Deceased,

Appellants,

vs.

SHERMAN REICHELT, Employer, and **FARM BUREAU MUTUAL INSURANCE COMPANY,** Insurance Carrier,

Appellees.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

Appellants appeal the decision of the district court denying death benefits and medical benefits under the Iowa Worker's Compensation Act for their decedent. **REVERSED AND REMANDED.**

Nathan B. Updegraff and Steven J. Holwerda of Selby, Updegraff, Smith & Holwerda, Newton, for appellants.

E.J. Giovannetti and Varlori A. Fandel of Hopkins & Huebner, Des Moines, for appellees.

Considered by *Donielson, P.J., and Schlegel and Hayden, JJ.*

SCHLEGEL, J.

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Petitioners appeal the denial of workers' compensation benefits for their decedent who suffered from heat stroke while working, and later died. The Industrial Commissioner and district court determined decedent's injuries did not arise out of his employment. We reverse and remand.

Petitioners argue that Dennis's injuries arose out of his employment because the conditions or obligations of his employment put him in the position where he was injured. Also, the injury arose out of his employment because the employment caused an increased risk to decedent.

The employer contends that the medical care and treatment rendered to Dennis after the alleged injury and prior to his death was not reasonable and necessary as required by Iowa Code section 85.27. The employer states that Dennis suffered brain death on June 26, 1983, and further treatment was unnecessary.

Lloyd L. Hanson and Valora J. Hanson are the administrators of the estate of Dennis L. Hanson. In the summer of 1983, Dennis was 35 years old. He suffered from a schizo-affective disorder and was prescribed psychotropic medication. A side effect of this medication is an interference with the body's ability to sweat. Evidence showed that Dennis had not been taking his medication for a time prior to his death.

On June 24, 1983, Dennis was employed by Sherman Reichelt to help bale hay. The temperature was about ninety degrees with high humidity. Dennis had a canteen of water with him in the field. After about one and one-half hours of work Dennis quit and sat down. Reichelt finished loading the hay. When he returned about thirty minutes later Dennis was unconscious. Dennis was taken to a hospital where he was diagnosed as having heat stroke. Dennis died on July 18, 1983.

Petitioners sought death benefits and medical benefits under the Iowa Workers' Compensation Act. In an arbitration decision a deputy Industrial Commissioner determined that petitioners did not show Dennis's injury arose out of and in the course of his employment. The deputy noted that Dennis was not exposed to artificial heat or greater heat than any worker in general. Also, there was not a sufficient showing that Dennis's medication interfered with his ability to sweat because he had not taken his medication for some time prior to his death. The Industrial Commissioner and the district court affirmed the decision of the deputy.

This is an administrative law action and therefore we review for errors at law. We are bound by the Commissioner's findings of fact if they are supported by substantial evidence. Cedar Rapids Community School v. Cady, 278 N.W.2d 298 (1979)

Iowa Code section 85.3(1) requires payment of compensation "for any and all personal injuries sustained by an employee arising out of and in the course of the employment." It has been admitted by both sides that Dennis was injured in the course of his employment. The only issue to be decided is whether his injury arose out of his employment.

The element of arising out of the employment refers to the cause and origin of an injury. Id. at 299. The injury must be a natural incident of the work. This means it must be a rational consequence of a hazard connected with the employment. Id. Appellee suggests that the injury did not arise out of the employment because under the "increased risk" doctrine Dennis was exposed to no more heat than the average person would be exposed to. Appellants suggest that Dennis was exposed to an increased risk of sunstroke, and that in the alternative, recovery should be allowed under the "positional risk" doctrine, which allows recovery when "but for" the employment the employee would not have been injured.

In order to determine which theory is correct it is first necessary to establish the nature of the risk and the type of injury. There is no question that Dennis was killed due to his extreme exertion in direct exposure to the sun. One of the medical experts specifically stated that "putting up hay on a day like June 24, 1983, would

certainly put a stress on anybody's thermal regulatory mechanism, healthy or otherwise." Dennis in effect was killed due to his exposure to the heat of the sun.

The general principle concerning exposure cases, in the application of workers' compensation statutes is stated as follows:

> Sunstroke, heat prostration, freezing, pneumonia, and other effects of exposure to heat and cold arise out of the employment in all jurisdictions if the exposure is accentuated by the nature and conditions of the employment, or, to use a familiar formula, if the exposure is greater than that to which the general public is subject. (Emphasis added.)

1 Larson, Law of Workmen's Compensation § 8.41, at 3-40 (1989).

From this general principle have developed two schools of thought. The distinction between them has been created by the interpretation of the phrase, "greater than the general public." On the one hand, is the worker permitted to recover because he is forced to be outside in the elements? On the other hand, is recovery denied because any member of the general public who happens to be outside is subject to those same elements?

There are some jurisdictions that would deny recovery in this instance because the sun shines equally on everyone (in that area). The more logical answer, as Professor Larson points out, is to ask what does the average man, free of the obligations of any particular employment, do when it is twenty below or a hundred in the shade? There are doubtless private

individuals who choose to exert themselves on a hot day, but the distinction is that Dennis was driven, perhaps to excess, by his employment obligation. A Texas court employed this sound logic in American General Insurace Co. v. Webster, 118 S.W.2d 1082, 1085 (Tex. Civ. App. 1938).

> The extra hazard may be supplied by the very nature of the work itself. It is a known fact, . . . that heavy exertions tend to generate a great deal of bodily heat.
>
> In the case before us the very work which the deceased was doing for his employer exposed him to greater hazard from heatstroke than the general public was exposed to for the simple reason that the general public were not pushing wheelbarrow loads of sand in the hot sun on that day.

Id. at 1085-86.

The expert's statement would allow recovery under the increased risk doctrine, because even though everyone is susceptible to the same heat, not everyone is required to put up hay in that heat. On the basis of the increased risk theory, appellants are entitled to compensation and medical benefits. However, aside from appellants' right of recovery under the increased risk doctrine, in Cedar Rapids Community School v. Cady, 278 N.W.2d 298 (Iowa 1979), the Iowa Supreme Court adopted the positional risk doctrine, under which Dennis's representatives are entitled to recover compensation.

In Cady, the claimant was killed by a fellow employee who was afflicted by an insane delusion. The supreme court allowed recovery even though the only real work connection

was that Cady was killed at work. The court cited Gargiulo v. Gargiulo, 13 N.J. 8, 97 A.2d 593 (1953), in support of its decision. In that case a small boy shot an arrow over the fence surrounding the claimant's place of employment and struck him in the eye. That court allowed recovery simply because the claimant's employment caused him to be in the position to be struck by the arrow. Just as the claimant in Gargiulo, and in Cady were placed in the "path of the arrow" and the "path of an insane person" respectively, Dennis was placed in the path of extreme heat. Due to the nature of his employment, Dennis was not only required to be out in the heat, but he was also required to perform hard labor. There is far more of a connection between the employment and the injury in this case than in either Cady or Gargiulo, and it would make little sense to deny recovery here when the claimants in those two cases were allowed to recover. The resulting injury in this case was a rational consequence of a hazard connected with the employment and therefore arose out of the employment.

The appellee contends the care and treatment given to Dennis was not reasonable and necessary as required by Iowa Code section 85.27. This is a question of fact to be determined by the Industrial Commissioner. This issue is remanded to the Industrial Commissioner for a determination as to whether the treatment given was reasonable and

necessary and the amount of medical benefits that should be allowed.

REVERSED AND REMANDED.

Hayden, J., concurs; Donielson, P.J., dissents.

DONIELSON, J. (dissenting)

I respectfully dissent. "It is essential in order to recover an award for death from heat exhaustion that natural heat be intensified by artificial heat." West v. Phillips, 227 Iowa 612, 616, 288 N.W. 625, 627 (1940). In Wax v. Des Moines Asph. Pav. Corp., 220 Iowa 864, 866, 263 N.W. 333, 334 (1935), the Iowa Supreme Court held, "[I]n order to recover for death from sunstroke, the deceased must have been subjected to a greater hazard from the heat than that to which the public generally in that locality is subjected." I find these cases to be controlling and am unpersuaded by the Cady analysis adopted by the majority. I would affirm the decision of the trial court.