IN THE COURT OF APPEALS OF IOWA

No. 8-005 / 96-1989

000225

FILED
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CLERK SUPREME COURT

PASCUAL MAGANA,

Appellant,

vs.

IBP, INC.,

Appellee.

Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge.

Pascual Magana appeals from the district court's ruling on judicial review affirming the industrial commissioner's decision awarding him workers' compensation benefits. **REVERSED AND REMANDED.**

William J. Bribriesco and Daniel D. Bernstein of William J. Bribriesco & Associates, Bettendorf, for appellant.

Paul T. Kirchner, Dakota City, Nebraska, for appellee.

Heard by Cady, C.J., and Sackett, and Mahan, JJ.

CADY, C.J.

Pascual Magana appeals a decision by the district court affirming the Industrial Commissioner's decision awarding him workers' compensation benefits. Magana claims the Industrial Commissioner's determination that he suffered a scheduled injury to his arm, rather than an injury to his whole body, was not supported by substantial evidence. We reverse and remand this case to the Industrial Commissioner.

Magana began working for IBP, Inc. in October 1989. At the time of his injury, he worked at IBP's meat processing facility. His job required him to cut meat with his right hand, and throw the strips of meat with his left hand into bins located in front of him. He processed approximately eighteen loins per minute, and he worked between eight and nine hours a day.

In December 1991, Magana began to experience pain in his left shoulder and sought medical treatment. He subsequently saw various doctors for pain. Dr. Koert Smith determined Magana suffered a five percent upper extremity impairment. Dr. Robert Chesser determined Magana suffered from a six percent impairment to the left upper extremity.

The Industrial Commissioner found Magana sustained a work-related injury "limited to the left upper extremity," but not to the body as a whole. The Industrial Commissioner ordered IBP to pay 12.5 weeks of permanent partial disability payments. The district court affirmed the Industrial Commissioner's decision.

On appeal Magana claims the district court erred by determining substantial evidence existed to support the Industrial Commissioner's decision that he suffered only a scheduled injury. Magana contends he suffered a whole body injury.

I. Standard of Review

We review workers' compensation cases for errors at law. *See George A. Hormel & Co. v. Jordan*, 569 N.W.2d 148, 151 (Iowa 1997). The findings of the Commissioner are binding unless a contrary result is required as a matter of law. *See Prewitt v. Firestone Tire & Rubber Co.*, 564 N.W.2d 852, 854 (Iowa App. 1997).

II. Magana's Injury

Our workers' compensation statute provides compensation for permanent partial disability for injuries to specific parts of the body pursuant to an established schedule. *See* Iowa Code § 85.34(2) (1995). On the other hand, a permanent partial disability to an area of the body not identified in the schedule is compensated as an injury to the body as a whole. *See Prewitt*, 564 N.W.2d at 854. Losses to the "arm" are scheduled injuries. *See* Iowa Code § 85.34(2). Injuries to the shoulder, however, are unscheduled and should be treated as an injury to the body as a whole. *See Prewitt*, 564 N.W.2d at 854.

In *Prewitt* we recognized medical terminology used to describe an area of the body is not always compatible with the statutory terminology used to described an area of the body to classify a scheduled injury. *See id.* In particular, this problem occurs when medical professionals describe an injury to the "upper extremity." When the medical profession uses the phrase "upper extremity," it specifically includes the

shoulder under the AMA Guides. *See* AMA Guides to the Evaluation of Permanent Impairment (4th ed. 1993) ("upper extremity" includes the hand, wrist, elbow, and shoulder). Under the statute, however, the term "arm" excludes the shoulder. *See Prewitt*, 564 N.W.2d at 855.

The central issue in this case is whether Magana's injury to his left "upper extremity" includes merely the arm, rendering it a scheduled injury, or whether it includes the shoulder, rendering it a whole body injury. We are unable to determine from the record whether his injury occurred to the arm or to the shoulder. All the medical evidence indicates an injury occurred to the left "upper extremity." Throughout the record references to the terms "arm," "shoulder," and "upper extremity" occur. Yet, it is impossible to determine whether they were used in the medical context pursuant to AMA guidelines, or in the legal context pursuant to the Iowa Code rule on scheduled injuries. Even the Commissioner concluded Magana suffered an impairment to his "left upper extremity," but then limited benefits to the loss of use of his left arm.

We conclude substantial evidence does not exist in the record to support the finding Magana sustained a scheduled loss of the use of his left arm. Although the Commissioner was free to accept the testimony of Dr. Smith over that of Dr. Chesser, even Dr. Smith's testimony repeatedly referred to Magana's loss as an injury to his upper extremity. There was no further explanatory evidence to limit the injury to the arm. *See Prewitt*, 564 N.W.2d at 855.

We reverse the decision of the district court and remand the case to the Industrial Commissioner for additional findings on the situs of the actual impairment. If the findings cannot be made with the present record, the Commissioner may receive additional evidence on remand in view of our pronouncements in *Prewitt*. *See Murillo v. Blackhawk Foundry*, 571 N.W.2d 16, 19 (Iowa 1997). We do not retain jurisdiction.

REVERSED AND REMANDED.