

IN THE COURT OF APPEALS OF IOWA

No. 1-227 / 90-1558

AUDUBON BROOKHISER TRANSPORT, INC., and
HAWKEYE-SECURITY INSURANCE COMPANY,

Appellants,

vs

JERRY W. McCCLURE,

Appellee.

FILED

AUG 27 1991

CLERK SUPREME COURT

24

Appeal from the Iowa District Court for Polk County,
James Brown, Judge.

Appellants challenge the denial of their motion for summary judgment, claiming no genuine issues of material facts exist concerning why McClure's motorized wheelchair needs replaced. Appellants also challenge the finding they are responsible for replacing McClure's wheelchair if it requires replacement due to ordinary wear and tear.

Affirmed.

Thomas Henderson of Whitfield, Musgrave & Eddy, Des Moines, for appellants.

J. W. McGrath of McGrath & McGrath, P.C., Keosauqua, for appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel,
JJ.

OXBERGER, C.J.

On June 1, 1985, respondent Jerry McClure was injured during the course of his employment as a truck driver for Audubon Brookhiser Transport, Inc. (ABT). Hawkeye-Security Insurance Company is ABT's workers' compensation insurance carrier. As a result of the accident, McClure is a quadriplegic and must use a wheelchair. McClure's workers' compensation benefits have been commuted and he is receiving payments under a structured settlement. ABT provided McClure with a motorized wheelchair. McClure is presently employed to monitor a feed lot operation. For brevity we will refer to the appellants as ABT throughout this opinion.

In August 1988 McClure filed a claim with the Industrial Commissioner seeking to have ABT pay for a new motorized wheelchair because his wheelchair had become unreliable. ABT filed a motion for summary judgment, arguing that the wheelchair is a permanent prosthetic device and therefore, under Iowa Code section 85.27 it is required to provide only one wheelchair to McClure. McClure resisted ABT's motion for summary judgment and also filed a motion for summary judgment, arguing the wheelchair was a reasonable and necessary appliance which the employer was required to provide on a continuing basis.

A deputy commissioner found as a matter of law that a wheelchair is not a permanent prosthetic device, but an

appliance used to provide function. The deputy granted McClure's motion for summary judgment, denied ABT's motion for summary judgment, and ordered ABT to provide McClure with a motorized wheelchair.

ABT appealed to the Industrial Commissioner. The Commissioner agreed with the deputy's determination that a wheelchair is an appliance, not a permanent prosthetic device. However, the Commissioner noted that ABT had raised a new issue concerning whether the wheelchair had worn out due to McClure's present employment, or through ordinary wear and tear. The Commissioner found that ABT would be responsible for replacing the wheelchair if it had worn out through ordinary wear and tear, but not if it had worn out due to McClure's current employment duties. Thus, the Commissioner reversed the deputy and ordered a hearing on the issue of what caused the wheelchair to wear out.

ABT did not go forward with the hearing, but instead filed a petition for judicial review. The district court affirmed the Commissioner. ABT now appeals.

ABT claims the Commissioner should have granted its motion for summary judgment because there was no genuine issue of material fact concerning whether the wheelchair had worn out due to McClure's subsequent employment. Additionally, ABT claims it is not responsible for replacing the wheelchair if it has become damaged due to ordinary wear and tear. It asserts that under section

85.27, it would be responsible to replace the wheelchair only if it became damaged while McClure was working for ABT.

SCOPE OF REVIEW. This appeal results from a state agency contested case proceeding. See Iowa Code § 17A.2(2) (1989). In "contested case" proceedings, the agency, rather than the district court, is empowered to hear evidence and make findings of fact. Iowa Code § 17A.19(7) (1989). The district court, when exercising the power of judicial review over agency action, function in an appellate capacity to correct errors at law. Iowa Code § 17A.19(8) (1989). Kohorst v. Iowa State Commerce Comm'n, 348 N.W.2d 619, 621 (Iowa 1984). Our review of the district court's decision is limited to correction of errors at law. Roberts v. Iowa Dep't of Job Serv., 356 N.W.2d 218, 221 (Iowa 1984).

SUMMARY JUDGMENT. ABT asserts the trial court erred by denying its motion for summary judgment. ABT argues the Industrial Commissioner erred as a matter of law in failing to grant its motion for summary judgment because there was no genuine issue of material fact about why McClure's motorized wheelchair required replacement. ABT relies on an affidavit dated December 7, 1988, by Ray Campbell, a claims supervisor for Hawkeye-Security Insurance Company. ABT filed two affidavits by Ray Campbell, a claims adjuster for Hawkeye-Security Insurance. In the

second affidavit dated December 7, 1988, Campbell stated that McClure indicated to him when McClure contacted him to request a new wheelchair, that:

his wheelchair needed to be replaced due to the wear and tear that it was receiving as a result of his employment at a feed lot operation near his home. [McClure's] employment required him to drive his motorized wheelchair through dusty areas and the dust was destroying the motor on the wheelchair.

The December 7, 1988, affidavit and ABT's argument about the significance of the reason for the needed replacement did not emerge until ABT's November 30, 1988, motion for rehearing and/or reconsideration. Relying on Iowa Rule of Civil Procedure 237(e), ABT asserts that because McClure did not offer any evidence to the contrary, and because Campbell's affidavit was used in a proceeding which arose from a motion for summary judgment, the facts stated in the affidavit must be accepted as true. ABT relies on Iowa Rule of Civil Procedure 237(e).

Although ABT correctly discusses Iowa Rule of Civil Procedure 237(e), it fails to discuss the significance of the fact that the affidavit was filed only after the Commissioner denied its motion for summary judgment. We find the Commissioner correctly remanded the case for an evidentiary hearing to determine the cause of McClure's wheelchair wearing out. The time had passed for ABT to present new evidence which it knew, or at least should have known, prior to the commencement of the agency action. ABT

provides no basis for asserting it could continue to add evidence after filing its motion for rehearing or reconsideration and we know of none.

REPLACEMENT FOR ORDINARY WEAR AND TEAR. ABT also claims the Industrial commissioner erred by determining "[a]s long as claimant's wheelchair is necessary, defendants are required to repair and replace claimant's wheelchair that has worn out through ordinary wear and tear." ABT asserts that under Iowa Code section 85.27 an employer is not required to replace or repair a wheelchair damaged as a result of ordinary wear and tear.

Neither party has provided us with any case law as to whether section 85.27 requires employers to replace worn out orthopedic appliances for their employee's who are injured while working. Our research also has not uncovered any case law giving us direction on this issue, therefore, we turn to the language of the statute.

The first paragraph of Iowa Code section 85.27 provides in relevant part:

The employer, for all injuries compensable under this chapter or chapter 85A, shall furnish reasonable [services] The employer shall also furnish reasonable and necessary crutches, artificial members and appliances but shall not be required to furnish more than one set of permanent prosthetic devices.

The fifth paragraph of Iowa Code section 85.27 provides:

When an artificial member or orthopedic appliance, whether or not previously furnished by the employer, is damaged or made unusable by

circumstances arising out of and in the course of employment other than through ordinary wear and tear, the employer shall repair or replace it. When any crutch, artificial member or appliance, whether or not previously furnished by the employer, either is damaged or made unusable in conjunction with a personal injury entitling the employee to disability benefits, or services as provided by this section or is damaged in connection with employee actions taken which avoid such personal injury, the employer shall repair or replace it.

(emphasis added).

In Hines v. Illinois Central Gulf R.R., 330 N.W.2d 284, 288 (Iowa 1983), the supreme court discussed the principles applicable to statute interpretation:

In our role of determining the meaning of statutes, the ultimate goal is to ascertain, and if possible, give effect to the intention of the legislature. In this endeavor we are aided by principles of statutory construction. We examine the language used in the statute and the purpose for which it was enacted. All parts of the statute are considered together, without giving undue importance to a single or isolated part. We then give a sensible and logical construction to the legislation; we avoid interpretations that produce strained, impractical, or absurd results. The manifest intent of the legislature prevails over the literal import of the words used.

(quoting Iowa Beef Processors, Inc. v. Miller, 312 N.W.2d 530, 532-33 (Iowa 1981)(citations omitted)).

ABT contends the emphasized language of the fifth paragraph of section 85.27 means an employer is not responsible for the replacement of an orthopedic appliance if it is damaged through either ordinary wear and tear or as the result of activities arising out of or in the course of employment for a subsequent employer. We disagree, such

an interpretation fails to consider the first paragraph of section 85.27. The last sentence of the first paragraph of section 85.27 holds employers responsible for furnishing reasonable and necessary appliances, but such employers are specifically required to furnish only one set of permanent prosthetic devices. If the legislature intended to limit the number of appliances an employer would have to furnish it knew how to do so.

The fifth paragraph discusses all employers' responsibilities with respect to employees who have orthopedic appliances. It does not limit those employee's current employer's responsibilities to instances where that employer originally furnished the appliance. Instead, the paragraph simply addresses the situation where an employee is using an orthopedic appliance while employed and the appliance becomes damaged or unusable while the employee is working, regardless of whether the employee's current employer originally furnished the appliance or not. The sentence does not limit the liability of the original employer, but rather emphasizes that if the appliance is damaged due to ordinary wear and tear, any subsequent employers are not responsible for replacing the appliance. As we have previously stated, the legislature, in the first paragraph did not limit the duty of the original employer to supply additional appliances.

Consequently, the Industrial Commissioner did not err in determining that if, on remand, the deputy commissioner determines that the wheelchair needs replaced due to ordinary wear and tear, then the defendants are responsible for furnishing McClure with a new motorized wheelchair.

AFFIRMED.