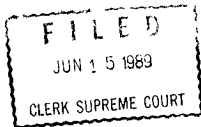


IN THE COURT OF APPEALS OF IOWA



MARGARET A. KOOPMANS,)

Petitioner-Appellant,)

vs.)

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IOWA INDUSTRIAL COMMISSION and)
IOWA ELECTRIC LIGHT & POWER)
COMPANY,)

9-137
88-1256

Respondents-Appellees.)

Appeal from the Iowa District Court for Polk County
(AA-1292), Gene Needles, Judge.

Petitioner appeals from the district court decision affirming the Industrial Commissioner's decision she did not give timely notice as required by Iowa Code section .85.23 **AFFIRMED.**

John Dale Stobbs of Stobbs & Sinclair, Alton, Illinois, and Walter J. McNamara, Cedar Rapids, for petitioner-appellant.

Julie A. Cohen, Cedar Rapids, for respondent-appellee Iowa Electric Light & Power Co.

Heard by Oxberger, C.J., and Sackett and Habhab, JJ.

OXBERGER, C.J.

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On February 1, 1982, petitioner-appellant Margaret Koopmans filed for workers' compensation benefits claiming her husband's death on March 5, 1980 was due to a heart attack caused by work-related stress. She is appealing from the district court decision which affirmed the Industrial Commissioner's ruling she failed to give timely notice required by Iowa Code section 85.23 and her claim is barred. We affirm.

On appeal, petitioner essentially contends the trial court erred as a matter of law in holding (1) substantial evidence existed to support the commissioner's finding the deceased's employer, Iowa Electric Light & Power Company, did not have actual notice the death was possibly work-related; (2) the ninety-day notice period of section 85.23 begins to run as soon as petitioner believed her husband's heart attack could be work-related and not when she learned a work-related heart attack was compensable under the workers' compensation statute; and (3) substantial evidence existed to support the commissioner's finding petitioner knew of the possible connection between work-related stress and her husband's attack but did not notify the employer of this connection within 90 days of having such knowledge, thereby barring her claim.

Our standard of review in such cases was recently summarized as follows:

A review of the industrial commissioner's decision is governed by Iowa Code section 17A.19. . . . The scope of review is not de novo. . . . The commissioner's findings have the effect of a jury verdict. . . . Those findings are applied broadly and liberally to uphold rather than defeat the commissioner's decision; they are binding on appeal unless a contrary result is demanded as a matter of law. . . . The above rules are applicable in the district court review. We review the district court's appeal decision for errors of law. In this pursuit we reapply the section 17A.19(8) standards to the agency action to determine whether our conclusions are the same as those of the district court.

The question on judicial review is not whether the evidence might support a different finding but whether evidence supports findings the commissioner actually made. The substantial evidence test is applied to the entire record; evidence is substantial if a reasonable mind would accept it as adequate to reach a conclusion. (Citations omitted.)

Armstrong v. State of Iowa Bldgs., 382 N.W.2d 161, 165-166 (Iowa 1986).

I.

The actual knowledge which must be found to exist to obviate the need for section 85.23 notice must include knowledge, not only of the death or injury, but whether a reasonably conscientious employer had grounds to suspect the possibility of a potential compensation claim.

Robinson v. Department of Transp., 296 N.W.2d 809, 811 (Iowa 1980).

In Robinson a finding the employer had no actual knowledge of a work-related heart attack was upheld despite the fact the employer knew of the claimant's prior heart problem, the stressful nature of his job, and had a stressful week prior to the heart attack. Id.

The employer in the present case had even less knowledge of the facts surrounding the deceased condition and possible stressfulness of the job causing an attack. The commissioner found the employer had no knowledge of decedent's heart condition. Several co-workers testified decedent's work did involve stress. Decedent died at home and had not worked overtime or on an emergency for two weeks prior to his death. The employer was sent a death certificate which indicated the cause of the heart attack was due to moderately severe atherosclerosis. The commissioner's finding the employer did not have actual notice Mr. Koopman's heart attack was work-related is supported by substantial evidence.

II.

Since the employer did not have actual knowledge of the work-related injury, Iowa Code section 85.23 of the workers' compensation act requires the employee or the employee's representative give notice of such an injury to the employer within ninety days from the date of the occurrence of the injury. See Iowa Code § 85.23. The parties agree, and the record clearly shows, such notice was not given to the employer of the possible claim within ninety days of decedent's heart attack.

The discovery rule, however, has been applied to workers' compensation cases to delay the running of the ninety-day notice period until the claimant, as a

reasonable [person], should or does recognize the nature, seriousness, and probable compensable character of his injury or disease. Jacques v. Farmer's Lumber & Supply Co., 242 Iowa 548, 47 N.W.2d 236 (1951); Robinson, 296 N.W.2d at 812. We note application of this rule has been applied uniformly to the statute of limitations period found in Iowa Code section 85.26 of the Workers' Compensation Act and such cases are helpful in determining how the terms "probable compensable character" should be interpreted. Orr v. Lewis Cent. Sch. Dist., 298 N.W.2d 256, 257 (Iowa 1980); Carter v. Continental Telephone, 373 N.W.2d 524, 527 (Iowa App. 1985).

These cases hold the ninety-day time period begins to run when the claimant recognizes or should recognize the injury or disease is probably work-related and not when the claimant discovers such an injury is possibly covered by workers' compensation.

In Carter, the court held the statute of limitations period began to run when the claimant learned the nature of his disability and its relationship to his employment and not when the claimant learned from a friend his injury may be compensable under workers' compensation. Id. at 527.

In Robinson, a "notice" case, the court focused on the claimant's knowledge of the cause of his injury and medical information which connected the injury to his work to put the claimant on notice of its probable compensability.

Robinson, 296 N.W.2d at 812. The commissioner and the trial court correctly focused on when petitioner became aware of the possible connection between her husband's heart attack and his work when determining the starting point of the ninety-day notice period. 91

III.

Petitioner's last claim of error is the record does not contain substantial evidence to support the commissioner's conclusion she had the requisite knowledge of the relationship between the injury and her husband's work more than ninety days before she filed her claim.

Petitioner admitted during the agency hearing she was aware her husband's job stress and its possible connection to his heart attack at all times subsequent to his death. The commissioner noted she suspected her husband's death was work-related. She made no inquiries with the employer as to possible benefits other than through her husband's estate attorney who sent a letter requesting any employment benefits owed to her husband. There is nothing in the record indicating petitioner later discovered more medical information making a causal connection between the heart attack and work stress more clear to her. The only additional information petitioner seems to have received from the time she suspected the relationship until she filed the claim was the legal advice that work-related heart attacks causing death are also covered by workers' compensation.

As stated earlier the duty to give notice begins when the claimant, as a reasonable person, should recognize the nature, seriousness, and probable compensable character of his injury or disease. The fact-finder must look to the subjective characteristics such as age and intelligence to determine when the claimant should reasonably see the causal connection. Robinson, 296 N.W.2d at 812.

The commissioner went through this analysis of petitioner's situation. We find substantial evidence to support his conclusion petitioner failed to give the employer notice within ninety days of when she recognized or should have recognized the connection between the injury and her husband's employment.

The purpose of the notice provision which is to give employer's a chance to investigate the facts surrounding such an injury when the information is fresh. Dillinger v. City of Sioux City, 368 N.W.2d 176, 180 (Iowa 1985). Similar harsh results from imposition of notice and statutes of limitations provisions can be found but without statutory exceptions petitioner's lack of knowledge regarding the scope of workers' compensation does not provide grounds for relief in this case. See generally 3 A. Larson, Workers' Compensation Law, § 78.47 15-334 (1976).

AFFIRMED.