IN THE COURT OF APPEALS OF IOWA

No. 4-125 / 93-1236

FILED
MAY 26 1994
CLERK SUPREME COURT

MARVIN TIMMERMAN,

Petitioner-Appellee/Cross-Appellant,

vs.

WILSON FOODS,

Respondent-Appellant,

SECOND INJURY FUND OF IOWA,

Respondent-Appellee/Cross-Appellee.

Appeal from the Iowa District Court for O'Brien County, Joseph J. Straub, Judge.

The industrial commissioner denied Timmerman occupational disease and second injury fund benefits. **REVERSED AND REMANDED.**

John O. Ackerman, Judith Ann Higgs and Thomas M. Plaza of Eidsmoe, Heidman, Redmond, Fredregill, Patterson & Schatz, Sioux City and David L. Sayre, Cherokee for appellant.

Steve Hamilton of Hamilton Law Firm, P.C., Storm Lake, for appellee Timmerman.

Bonnie J. Campbell, Attorney General, and Charles S. Lavorato, Assistant Attorney General, for appellee Second Injury Fund.

Heard by Hayden, P.J., and Sackett and Habhab, JJ.

PER CURIAM

Repondents-appellants/cross-appellees Wilson Foods and Second Injury Fund of Iowa appeal a district court decision finding carpal tunnel syndrome was an occupational disease and remanding to the Industrial Commissioner for a determination of benefits. Petitioner-appellee/ cross-appellant Marvin L. Timmerman cross-appeals the Industrial Commissioner's denial of second injury fund responsibility. We reverse the district court and affirm the Industrial Commissioner on the appeal. We remand to the trial court on the cross-appeal.

On May 7, 1990, Timmerman filed a petition for arbitration claiming his hands were injured on August 20, 1988, at Wilson Foods' plant. An amended petition was filed claiming his hands, arms, and body were injured on April 11, 1988, and claiming his condition was an occupational disease. A Deputy Industrial Commissioner awarded workers' compensation benefits but denied occupational disease benefits. The Deputy also found Timmerman was not entitled to second injury fund benefits. The Industrial Commissioner affirmed the Deputy's decision, and Timmerman sought judicial review. The district court, without benefit of the record made before the agency, concluded the issue of whether Timmerman's condition was an injury or an occupational disease was a question of law. The district court concluded Timmerman suffered an occupational disease and remanded to the Industrial

Commissioner to determine the benefit to which Timmerman is entitled. The district court did not address Timmerman's claim to the second injury fund.

Wilson Foods appealed raising four issues, one of which was the district court incorrectly interpreted the law when it held carpal tunnel syndrome is an occupational disease rather than an injury.

Judicial review by an appellate court of an agency decision is limited to correcting errors of law. Iowa R. App. P. 4; Geiken v. Lutheran Home For The Aged Ass'n, 468 N.W.2d 223, 225 (Iowa 1991).

After the trial court decision and before this appeal reached us, the Iowa Supreme Court filed Noble v. Lamoni Prods. and Liberty Mut. Ins. Co., --- N.W.2d --- (Iowa 1994. Noble found carpal tunnel syndrome was a work-related accident and not an occupational disease.

In oral argument, the parties recognized the issue in Noble was identical to the issue before us and Noble was controlling. Having examined the record before us, we find the issue on appeal was addressed in Noble and find Noble controlling. We, therefore, reverse the trial court and affirm the Industrial Commissioner. We have considered the other issues raised by Wilson Foods on appeal and find it unnecessary to address them.

The second question is whether Timmerman had a claim to the Second Injury Fund. The trial court failed to address

this issue. We remand to the trial court for that purpose. We do not retain jurisdiction.

REVERSED AND REMANDED.