

DEC 21 1978

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ED MILLER & SONS, INC., and)
UNITED STATES FIDELITY AND)
GUARANTY COMPANY,)

Filed December 21, 1978

Appellants,)

vs.)

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RONALD N. MEFFERD,)

2-61417

Appellee.)

Appeal from Pottawattamie District Court - Harold L. Martin, Judge.

Employer and insurance carrier appeal grant of worker's compensation benefits alleging noncompliance with notice provision of § 85.23, The Code.

Affirmed.

Gregory G. Barntsen, of Smith, Peterson, Beckman & Willson, Council Bluffs, for Appellant.

Dennis M. Gray, of Peters, Campbell & Pearson, P.C., Council Bluffs, for Appellee.

Heard by Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Petitioners, an employer and its insurance carrier, appeal trial court's affirmance of a grant of worker's compensation benefits to respondent-claimant. The employer urges that claimant failed to comply with the notice provisions of § 85.23, The Code. We affirm.

Claimant filed a petition for worker's compensation benefits on May 18, 1976, as a result of an injury sustained in July or August, 1975. The deputy commissioner rendered an arbitration decision in claimant's favor. On appeal, the Iowa Industrial Commissioner affirmed. Employer petitioned for judicial review, and trial court entered judgment affirming the Industrial Commissioner's decision.

The notice provision of the worker's compensation statute at issue provides:

Unless the employer or his representative shall have actual knowledge of the occurrence of an injury within ninety days from the date of the occurrence of the injury, or unless the employee or someone on his behalf or a dependent or someone on his behalf shall give notice thereof to the employer within ninety days from the date of the occurrence of the injury, no compensation shall be allowed.

Employer argues that the date of the occurrence of claimant's injury was sometime in July or August of 1975, that claimant failed to give notice of the occurrence of the injury until April 14, 1976, that claimant had the burden to prove the employer had actual knowledge and that even if employer had this burden, there is insufficient evidence to support finding that employer had actual knowledge within 90 days of the injury.

In reviewing this matter, we accord the Commissioner's fact findings the deference given to a jury verdict. *Deaver v. Armstrong Rubber Co.*, 170 N.W.2d 455, 459 (Iowa 1969). Unfortunately, the Commissioner's decision is obscured by his failure to set forth precise "Findings of Fact" and "Conclusions of Law." It appears his decision is based on alternative grounds (1) employer failed to sustain its burden of proving lack of notice, (2) claimant's duty to give notice did not arise until February, 1976, and thereafter he gave timely written notice to employer.

In connection with the first ground, the Commissioner neglected to state specifically the reasons for his conclusion. His rationale may be gleaned from the following: the deputy commissioner's arbitration decision held that employer had

actual notice; the Commissioner's decision affirmed the arbitration decision; the Commissioner's decision recites the same circumstances relied on by the deputy which led to the latter's finding of actual notice. It is fair to infer, therefore, that the Commissioner made an implicit finding of actual notice and thus concluded that employer failed to sustain its burden of proof. There is substantial evidence in the record to support this finding. Claimant testified he informed his supervisor and foreman of the circumstances of his accident shortly after it occurred. Once actual notice is shown, the date that claimant supplied employer with written notice becomes irrelevant. *Knipe v. Skelgas Co.*, 229 Iowa 740, 748, 294 N.W. 880 (1940). We do not consider, therefore, the second ground of the Commissioner's decision.

AFFIRMED.

Carter, J., concurs in result only.