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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-474 / 89-211

LARRY DAVIS,

Petitioner-Appellant,

vs.

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J.M. STEEL ERECTORS, INC., and WAUSAU INSURANCE,

Respondents-Appellees.

Appeal from the Iowa District Court for Page County, Glen M. McGee, Judge.

Petitioner appeals a district court affirmance of the industrial commissioner's denial of workers' compensation benefits. **AFFIRMED.**

Jon H. Johnson of Johnson & Graeser, P.C., Sidney, for petitioner-appellant.

W. Curtis Hewett of Smith, Peterson, Beckman & Willson, Council Bluffs, for respondents-appellees.

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

SACKETT, J.

Petitioner-appellant Larry Davis appeals a district court decision affirming a decision by the industrial commissioner, who found petitioner had not sustained an injury out of and in the course of his employment. Petitioner alleges the commissioner erred in making that finding.

Our scope of review is for the correction of errors at law. Iowa Code § 17A.20 (1989); Dickenson v. John Deere Prods. Eng'g, 395 N.W.2d 644, 646 (Iowa App. 1986). We are bound by the commissioner's fact findings if they are supported by substantial evidence. Thomas v. William Knudson & Son Inc., 349 N.W.2d 124, 126 (Iowa App. 1984). We affirm the district court.

Petitioner was employed by J.M. Steel Erectors, Inc. as a construction worker. On September 3, 1983, petitioner finished working on a project in Oblong, Illinois. The work supervisor gave petitioner and John Rupp permission to take a company truck to their home in Shenandoah, Iowa, to pick up equipment belonging to the employer before returning to work on a new project in Clemons, Iowa, on September 5. Petitioner was to be paid for the amount of time it would have taken to travel directly from Oblong to Clemons. On September 5, instead of reporting for work in Clemons, petitioner attended a Labor Day festival in Essex, Iowa. Later that day he met with Rupp, who had already

picked up a coworker, and they drove toward Shenandoah to pick up another coworker. Before they reached Shenandoah, they were involved in an accident in which petitioner injured his back.

Petitioner filed a claim for workers' compensation benefits. After a hearing, a deputy industrial commissioner concluded petitioner did not sufficiently show his injury arose out of and in the course of his employment. The deputy found J.M. Steel expected the workers to be at the new job site on Monday morning, September 5, 1983, and that the use of the employer's truck for unnecessary trips did not make petitioner's injury work-related. Petitioner appealed and the industrial commissioner affirmed the deputy. Petitioner then filed a petition for judicial review, and the district court affirmed the commissioner.

The burden rests with petitioner to show his injury arose out of and in the course of his employment with J.M. Steel. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181, 188 (Iowa 1980). He contends the evidence shows the accident occurred in the course of employment. The fact that two inconsistent conclusions could be drawn from the record does not mean the agency's decision is unsupported by substantial evidence. Ross v. Public Employment Relations Bd., 417 N.W.2d 475, 476 (Iowa App. 1987). We find there was substantial evidence for the commissioner to conclude

petitioner failed to establish his injury arose out of and in the course of his employment.

Petitioner also raised other issues regarding the extent of his disability, the length of the healing period, and the rate of compensation. Because we find petitioner's injury did not occur in the course of his employment, we need not address these issues.

The decision of the district court is affirmed.

AFFIRMED.

Hayden, J., concurs; Schlegel, P.J., dissents.

SCHLEGEL, J. (dissenting)

I respectfully dissent.

I believe that Davis was in the expected course of his employment, picking up coemployees to deliver them to work. I would reverse.