IN THE COURT OF APPEALS OF IOWA

No. 0-512 / 99-1973
Filed February 28, 2001

HONG ANH NGUYEN,
Petitioner-Appellee,

vs.

IBP, INC.,
Respondent-Appellant.

FILED
FEB 28 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Woodbury County, Richard Vipond, Judge.

Employer appeals from a district court ruling on judicial review of an agency decision in a worker's compensation contested case proceeding. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

James C. Meehan, Dakota City, Nebraska, for appellant.

Dennis M. McElwain and MacDonald Smith of Smith & McElwain, Sioux City, for appellee.

Heard by Sackett, C.J., and Huitink and Hecht, JJ., but decided by Sackett, C.J., and Miller and Hecht, JJ. Huitink, J. takes no part.

HECHT, J.

Hong Anh Nguyen filed an Iowa worker's compensation claim on January 16, 1996, alleging he sustained a cumulative injury on February 16, 1994. The Iowa Industrial Commissioner[1] determined Nguyen's date of injury was October 28, 1992, and dismissed the contested case proceeding because it was not filed within the time allowed by the statute of limitations. Nguyen sought judicial review in the district court. In its "Ruling on Petition for Judicial Review," the district court reversed the agency decision. The employer, IBP, Inc. ("IBP"), appealed the district court's ruling. We affirm the district court's ruling in part, reverse it in part, and remand this case to the agency for further proceedings consistent with this opinion.

I. Factual Background and Proceedings. Nguyen worked as a production worker for IBP in Dakota City, Nebraska, from June of 1986 until the spring of 1996. He made claims for worker's compensation benefits in both Nebraska and Iowa alleging a cumulative injury to his right arm and shoulder stemming from his employment with IBP.

A. The Medical Evidence. Nguyen was treated for right shoulder discomfort in June of 1992. Dr. Ray Sherman, his treating orthopedist, administered an injection, ordered physical therapy, prescribed oral medications, and permitted Nguyen to return to his "trim job" at IBP. In December of 1992, Dr. Sherman found no loss of range of motion, weakness, or muscle wasting and described the condition as "ongoing tendonitis." Nguyen was briefly restricted to

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[1] The Commissioner is now known as the Iowa Workers' Compensation Commissioner. *See* Iowa Code § 86.1 (2001).

light duty work, but Dr. Sherman found the tendonitis to be "resolving" in January of 1993, and Nguyen returned to full duty at that time. The doctor's progress notes pertaining to three subsequent examinations during 1993 document additional conservative medical care for "mild ongoing problems" and "mild discomfort" in the right shoulder. The uncontroverted evidence demonstrates Nguyen was engaged in full duty and missed no work during 1993 due to the shoulder condition.

On January 28, 1994, Nguyen again consulted Dr. Sherman for shoulder discomfort. The doctor's progress note for the examination on that date indicates claimant was experiencing "another exacerbation of pain in the right shoulder." An MRI film documented tendonitis and a degenerative cyst at the insertion of the rotator cuff. Dr. Sherman imposed work restrictions on Nguyen and observed that "[i]t's time that we look into this a little bit further." On February 7, 1994, the doctor found Nguyen was "unable to lift his arm . . . overhead today." Dr. Sherman restricted Nguyen to one-hand work duty and recommended a surgical procedure to decompress the cyst and reattach the rotator cuff. Nguyen missed no work as a result of the shoulder condition until he underwent surgery later that month.

B. Nebraska Claim. On January 26, 1995, Nguyen filed an action in the Nebraska Workers' Compensation Court claiming that on or about October 28, 1992, he sustained cumulative trauma injuries to his right upper extremity, right shoulder, and neck while working for IBP. On July 6, 1995, the parties presented a stipulation at a hearing on the Nebraska claim. The agreement identified

October 28, 1992, as the date of injury under Nebraska law, established a weekly rate, and set the period of temporary total disability from February 23, 1994, to March 22, 1994. The agreement further confirmed IBP had paid Nguyen's medical expenses and recognized that Nguyen was entitled to permanent partial disability benefits in the amount of $251.91 per week for twenty-seven weeks for a twelve percent loss to his right shoulder. The only contested issues presented to the Nebraska tribunal for decision were whether Nguyen had sustained a permanent total disability and whether he was entitled to vocational rehabilitation benefits. On August 7, 1995, a judge of the Nebraska Workers' Compensation Court determined Nguyen was not permanently and totally disabled[2] and was not entitled to additional vocation rehabilitation benefits as a result of the injury.[3]

On January 16, 1996, Nguyen filed an original notice and petition before the Iowa Industrial Commissioner alleging he was injured through repetitive production work and received a cumulative trauma to his right arm and shoulder. He alleged a cumulative injury date of February 16, 1994, the date of his shoulder surgery. The matter came for a hearing before a deputy Iowa Industrial Commissioner who was asked to resolve the following issues: (1) whether Nguyen sustained an injury on February 16, 1994, which arose out of and in the course of his employment; (2) the extent of Nguyen's entitlement to permanent

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[2] The court reasoned that Nguyen "has a single member impairment and there is no [Nebraska] statutory authority . . . to find a permanent and total disability or loss of earning capacity as a result of a single member impairment absent some extraordinary circumstance which is not present in this case."

[3] On appeal, a split panel of the Nebraska Workers' Compensation Court affirmed the dismissal of Nguyen's Nebraska petition on February 1, 1996.

partial disability benefits; and (3) whether Nguyen's petition was timely filed pursuant to Iowa Code section 85.26.[4] The deputy found:

> The totality of the medical evidence indicates that claimant's injury did arise on October 28, 1992, and that the surgery he subsequently underwent on February 16, 1994 stemmed directly from his injury in October 1992. The medical evidence is consistent in its supporting defendant's contention that from October 1992 up to and including claimant's date of the surgery he sustained continuous problems with his shoulder as a result of the repetitive functions he performed for defendant employer. No new injury occurred on February 16, 1994, merely medical treatment for an injury that originated on October 28, 1992.
> *****
> The medical evidence and claimant's own testimony established that on October 28, 1992, he sustained an injury at work. Claimant was aware of the serious nature of his injury and the fact that it was work connected, as evidenced by his own actions in reporting the injury, and seeking treatment from the company nurse as well as seeking subsequent medical treatment. Claimant's medical treatment included surgery, which took place on February 16, 1994. The surgery does not constitute an injury date, merely a date of medical treatment for a previous injury.

The deputy noted her findings were supported by the Nebraska Workers' Compensation Court's finding that Nguyen's surgery was medical treatment for an injury which occurred on October 28, 1992. On intra-agency appeal, the Iowa Workers' Compensation Commissioner affirmed the deputy's decision that Nguyen's claim was time-barred.

On judicial review, the district court reversed the agency decision. The court concluded the commissioner: (1) gave improper effect to the Nebraska ruling, (2) failed to apply the correct legal standard in determining the date of the

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[4] The statute provides, in pertinent part: "An original proceeding for benefits under this chapter . . . shall not be maintained in any contested case unless the proceeding is commenced within two years from the date of the occurrence of the injury for which benefits are claimed . . . ." Iowa Code § 85.26.

injury, and (3) erred by finding a date of injury that was not supported by substantial evidence. The district court remanded the case to the workers' compensation commissioner to enter a decision "denying the respondent's statute of limitations defense and deciding the petitioner's claim on the merits." On appeal, IBP contends the district court erred in: (1) finding the commissioner determined the wrong injury date; (2) failing to give full faith and credit to the Nebraska decision; and (3) finding there was not substantial evidence supporting the commissioner's finding as to the date of injury.

II. Standard of Review. Iowa Code section 17A.19(8) governs our review of appeals from administrative actions. *Robbennolt v. Snap-On Tools Corp.*, 555 N.W.2d 229, 233 (Iowa 1996). Judicial review of an industrial commissioner's decision is on error, not de novo. *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 271 (Iowa 1995). The district court is, as are we, bound by factual findings made by the commissioner so long as those findings are supported by substantial evidence. *Christensen v. Snap-On Tools Corp.*, 554 N.W.2d 254, 257 (Iowa 1996). Evidence is substantial if a reasonable mind would accept it as adequate to reach the same findings. *John Deere Dubuque Works of Deere & Co. v. Weyant*, 442 N.W.2d 101, 105 (Iowa 1989). When the relevant evidence is uncontroverted and reasonable minds could not draw different inferences from the evidence, we may determine the facts as a matter of law. *Bearce v. FMC Corp.*, 465 N.W.2d 531, 534 (Iowa 1991). The commissioner's determination of a question of law is given careful consideration,

but is subject to our review. *Briar Cliff Coll. v. Campolo*, 360 N.W.2d 91, 93 (Iowa 1984).

III. Full Faith and Credit Claim. IBP claims the district court erred in failing to give full faith and credit to the Nebraska Workers' Compensation Court's determination of the date of injury.[5] We disagree. The principle that injured workers may bring successive workers' compensation claims in different states is well established. *See Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 281, 100 S. Ct. 2647, 2660, 65 L. Ed. 2d 757, 773 (1980). Although it is true "resolutions of factual matters underlying a judgment must generally be given the same res judicata effect in the forum State as they have in the rendering State," the Nebraska Workers' Compensation Court has no power to pass on Nguyen's rights under Iowa's workers' compensation law. *Id.* at 284, 100 S. Ct. at 2661-62, 65 L. Ed. 2d at 775. Accordingly, the district court correctly concluded the Nebraska Workers' Compensation Court's identification of a date of cumulative injury pursuant to Nebraska law is not entitled to full faith and credit in Iowa.[6] We affirm the district court's ruling on this issue.

IV. The Date of the Cumulative Injury.

A. The Applicable Law. IBP contends the district court erred in concluding that the agency failed to apply the correct law in arriving at Nguyen's date of

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[5] We note Nguyen's assertion that the date of October 28, 1992, was selected as the date of injury by stipulation of the parties in the Nebraska proceeding. The date of injury was clearly not an issue of great significance to the parties in that forum because they did not litigate it.

[6] The district court noted its suspicion that the commissioner probably gave preclusive effect to the Nebraska Court's selection of October 28, 1992, as the date of injury. In view of our resolution of the other issues in this appeal requiring remand, we need not decide whether the Agency did give improper effect to the Nebraska ruling.

injury. Our resolution of this issue requires an analysis of Iowa law controlling the selection of the date of injury in cumulative injury cases. Our supreme court applies the "manifestation" test. "The date of manifestation" is best characterized as "the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." *Oscar Mayer Foods Corp. v. Tasler*, 483 N.W.2d 824, 829 (Iowa 1992). In a series of cases, the appellate courts of this state have recognized various events as indicia that a disability is manifest. *McKeever Custom Cabinets v. Smith*, 379 N.W.2d 368, 374 (Iowa 1985) ("clearly the employee is disabled and injured when, because of pain or physical inability, he can no longer work"); *Tasler*, 483 N.W.2d at 830 (affirming agency finding that claimant's disability became manifest on the date when the employer's plant closed); *Venenga v. John Deere Component Works*, 498 N.W.2d 422, 425 (Iowa Ct. App. 1993) (reversing the agency's determination marking the date of injury on the day when claimant was first hospitalized because he did not miss work during the hospitalization and was not eligible for workers' compensation benefits until a later date); *George A. Hormel & Co. v. Jordan*, 569 N.W.2d 148, 152 (Iowa 1997) (affirming agency determination that claimant's disability was manifest on the date when he was informed of permanent impairment to his shoulder and resulting permanent restrictions on work activities). The mere fact that an employee is aware of a medical problem does not mandate that a disability resulting from cumulative injury is manifest, for "by their very nature, repetitive trauma injuries often will take years to develop to the point where they will

constitute a compensable workers' compensation injury." *Tasler*, 483 N.W.2d at 829-30.

Although the fixing of the date of injury is "an inherently fact-based determination," the agency's finding "must rest on the proper legal standard." *Jordan*, 569 N.W.2d at 152. After carefully reviewing the agency's decision, we agree with the district court's conclusion the commissioner failed to apply the "manifestation standard." The arbitration decision acknowledges Nguyen's assertion of a cumulative injury claim, but makes no reference to the applicable standard against which the evidence is to be evaluated. Indeed, the agency's failure to discuss the principles enunciated in *Tasler, Venenga*, or *Jordan* is strong evidence that the standard was ignored. We affirm the district court's conclusion the commissioner failed to apply the correct legal standard in the determination of Nguyen's date of injury.

B. Sufficiency of the Evidence Supporting the Agency's Finding of Fact. IBP contends the district court erred in concluding the date of injury found by the commissioner is not supported by substantial evidence in the record. We first acknowledge Nguyen filed a worker's compensation action before the Nebraska Workers' Compensation Court alleging an injury on October 28, 1992. However, the law governing the determination of date of injury for purposes of the Nebraska workers' compensation claim is not controlling or relevant in this case. The task facing the Iowa agency was the selection of the date when the injury was manifest pursuant to Iowa law.

Iowa law dictates the disability must be manifest to a reasonable claimant before the date of injury occurs in a cumulative injury case. *See Tasler*, 483 N.W.2d at 829. As stated by our court in *Venenga*, "we find more is required than knowledge of an injury or receipt of medical care. The employee must realize his or her injury will have an impact on employment." *Venenga*, 498 N.W.2d at 425. As of October 28, 1992, Nguyen had not missed work due to the shoulder condition and had not received a permanent impairment rating. He had not undergone surgery for the shoulder condition and had not been hospitalized for its treatment. Indeed, all of the medical care provided to Nguyen up to October 28, 1992, had been conservative (oral medications, injections, etc.) in nature. An arthrogram, which was the most sophisticated diagnostic test administered up to that date by the treating physician, was negative. The medical evidence in the record clearly demonstrates the shoulder condition was not thought to be a serious or permanent problem even by the treating physician long after October 28, 1992. As of January 4, 1993, the diagnosis was "resolving right shoulder tendonitis." On that date, Nguyen's doctor found he had a full range of motion and no weakness in his shoulder. The treating physician's progress note of September 13, 1993, is clear evidence the shoulder condition did not, as a matter of law, yet constitute a "disability" that would have been manifest to a reasonable person:

> I reviewed this gentleman today. He's still having some mild ongoing problems with his shoulder. He finds that when he is on the Naprosyn, he is doing well. When he is off it, he is still having some discomfort at the end of the day. He does not feel that his shoulder is bad enough to require a repeat cortisone injection. PHYSICAL EXAM: Today shows some moderate subacromial

> clicking to the right shoulder. He does not have any significant impingement findings. There is no muscle wasting or atrophy. We will place him back on the anti-inflammatories so he can continue on with his full job description. I will keep him on this Rx for the next 6 months. If he continues to need it after that, he should return and we will proceed with arthrogram or MRI scan to make sure that he does not have a rotator cuff tear that would be amendable (sic) to surgery. Otherwise we will keep him on with his full work.

The treating physician's records further indicate shoulder surgery was not discussed with Nguyen until February 7, 1994, after an MRI test revealed the existence of a degenerative subchondral cyst near the rotator cuff. Nguyen was first assigned a permanent impairment rating for the injury which is the subject of this case on September 20, 1994.

On this record, we affirm the district court's determination that, as a matter of law, on October 28, 1992, a reasonable person would not have had knowledge of the permanent injury to Nguyen's shoulder, nor would he have realized the causal impact that injury would have his employment. *See Jordan*, 569 N.W.2d at 152. As of that date, none of the occurrences recognized as indicia of manifestation in *Tasler*, *Venenga*, and *Jordan* had occurred. The commissioner's decision failed to identify, and substantial record evidence does not support a finding of, any alternative equivalent indicator of manifestation of a disability as of October 28, 1992. We conclude the district court correctly concluded the commissioner's selection of October 28, 1992, as the date of Nguyen's date of injury is not supported by substantial evidence in the record.

V. Statute of Limitations Defense. The district court did not find substantial evidence in the record tending to prove that the date of injury

antedated February 16, 1994. In its order remanding the case to the agency, the court directed the commissioner to "enter a decision denying [IBP's] statute of limitations defense." IBP contends if the case is to be remanded to the agency for application of the manifestation standard, the agency must be permitted to make a factual determination of the date of injury in light of that standard. We agree. It is the agency's responsibility in the first instance, not the district court's, to make findings of fact supported by substantial evidence and apply the correct legal standard consistent with this opinion. We reverse the portion of the district court's ruling resolving the statute of limitations defense as a matter of law against IBP.[7]

V. Disposition. We have reviewed all other contentions raised by IBP and find them to be without merit. We affirm the district court's ruling to the extent it remands this case to the agency for further proceedings consistent with this opinion. We reverse that portion of the ruling directing the agency to deny the respondent's statute of limitations defense.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Miller, J., concurs; Sackett, C.J., concurs in part and dissents in part.

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[7] By our disposition, we make no determination whether there is substantial evidence in the record to support a finding of an injury date after October 28, 1992, but before January 16, 1994. The applicable standard of judicial review dictates the agency must be given the opportunity on remand to make findings of fact required by the applicable legal standard discussed above.

SACKETT, C.J. (concurs in part and dissents in part). I would affirm the agency.

Nguyen filed a worker's compensation claim in Iowa on January 16, 1996, contending he was injured through repetitive production work and received a cumulative trauma to his right arm and shoulder. He claimed the time of disability was February 16, 1994, the date he had surgery on the arm. Although Nguyen had received benefit from the injury in Nebraska where he was employed, he had received none in Iowa. Consequently, to be compensable his claim needed to be "commenced within two years from the date of the occurrence of the injury for which benefits are claimed . . . ." Iowa Code § 85.26.

Nguyen's claim for compensation in Iowa was denied by the commissioner in affirming a deputy's finding that Nguyen's injury date was October 28, 1992, and therefore his claim was not timely. On appeal the district court determined that finding Nguyen's injury incurred on October 28 was legally flawed and not supported by substantial evidence.

The majority has affirmed the district court's determination the agency's finding was legally flawed and has affirmed the district court's determination as a matter of law that October 28, 1992 is not the injury date. I disagree with the majority's resolution of these issues. The majority has reversed the district court in resolving the statute of limitation defense as a matter of law, and with this I agree. Also I agree, as did the district court and does the majority, that we should not give full faith and credit to the Nebraska decision as I.B.P. argues. The injury date is determined by the law of each state. I.B.P. failed to plead and

prove the law determining an injury date under these circumstances in Nebraska defeating its claim the decision should be given full faith and credit. *See Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 282, 100 S. Ct. 2647, 2661, 65 L. Ed. 757, 773 (1980).

However, I disagree with any argument that the agency based its decision as to injury date on the Nebraska decision, as well as with finding the facts surrounding the Nebraska claim irrelevant. On January 26, 1995, Nguyen filed a claim in the Nebraska Worker's Compensation court claiming that on or about October 28, 1992, he sustained personal injury from an accident arising out of and in the course of his employment with defendant and the injury was cumulative trauma injuries to his right upper extremity, right shoulder and neck, resulting in permanent disability. The matter was submitted to a single judge of the Nebraska Workers' Compensation Court and the parties stipulated that Nguyen

> suffered an injury to his right arm on October 29, 1992, and that temporary total disability benefits were paid from February 23, 1994, to and including March 22, 1994, and thereafter that permanent partial disability benefits were paid from March 23, 1994 to September 27, 1994, a period of 27 weeks, which represents a 12 percent impairment to the right upper extremity. And further all medical expenses as a result of the accident and injury of October 28, 1992 have been paid by the defendant.

The single Nebraska judge found that Nguyen, "injured his right arm on October 28, 1992, while performing the repetitive functions of his employer." The court further found that Nguyen underwent a right shoulder arthroscopic decompression acromioplasty on February 16, 1994. The court went on to determine Nguyen was paid all medical expenses and indemnity benefits he was

due and there was no further vocational rehabilitation liability on the part of the employer. The petition was dismissed at Nguyen's cost. The Nebraska claim next came on for a review hearing before a panel of the Nebraska Workers' Compensation court. On February 2, 1996, by a two-to-one vote, affirmed the earlier decision.

The petition Nguyen filed in the Nebraska Worker's Compensation court alleged he received a cumulative trauma injury to his right upper extremity, right shoulder and neck, resulting in permanent disability and that he reported it to I.B.P. who had notice and knowledge of the injuries on about October 28, 1992, and thereafter. There is nothing in the record to contradict this allegation, and it was further stipulated to in the Nebraska proceedings. Nguyen further admits he began complaining to the company nurse about his right shoulder in the fall of 1991 and the winter of 1992, and Nguyen began receiving benefits shortly thereafter.

The deputy found that:

> The totality of the medical evidence indicates that claimant's injury did arise on October 28, 1992, and that the surgery he subsequently underwent on February 16, 1994 stemmed directly from his injury in October 1992. The medical evidence is consistent in its supporting defendant's contention that from October 1992 up to and including claimant's date of the surgery he sustained continuous problems with his shoulder as a result of the repetitive functions he performed for defendant employer. No new injury occurred on February 16, 1994, merely medical treatment for an injury that originated on October 28, 1992.

The deputy further determined her finding was supported by the judge's finding in the Nebraska case that Nguyen's surgery was medical treatment for an

injury which occurred on October 28, 1992. The deputy went on to determine further:

> The medical evidence and claimant's own testimony established that on October 28, 1992, he sustained an injury at work. Claimant was aware of the serious nature of his injury and the fact that it was work connected, as evidenced by his own actions in reporting the injury, and seeking treatment from the company nurse as well as seeking subsequent medical treatment. Claimant's medical treatment included surgery, which took place on February 16, 1994. The surgery does not constitute an injury date, merely a date of medical treatment for a previous injury.

These findings convince me that the deputy only considered the Nebraska decision as further support for its own decision.

Unlike the majority, I believe the agency correctly applied the correct law and its decision is supported by substantial evidence. Nguyen stipulated in Nebraska he injured his right arm on October 28, 1992. There is evidence he began complaining of pain at that time and was assigned to light duty and received continuous medical and nursing services, remained on prescription drugs and was continually complaining of pain from that date forward.

This evidence would certainly appear to be very substantial evidence to support the agency's findings that Nguyen sustained an injury at work on October 28, 1992, he was aware of the serious nature of the injury and it was work connected. In holding Nguyen suffered a cumulative injury which therefore occurred on a different injury date, the majority dismisses this evidence.

The deputy applied the cumulative injury rule. When a claimant sustains a cumulative trauma injury, the "occurrence" date for purposes of calculating the two-year statute of limitations under section 85.26 is the date when the disability

manifests itself. *Gates v. John Deere Ottumwa Works*, 587 N.W. 2d 471, 475 (Iowa 1998); *George A. Hormel & Co. v. Jordan*, 569 N.W.2d 148, 151 (Iowa 1997). "Manifestation" means the date when both the fact of the injury and the injury's causal relationship to the claimant's employment would be plainly apparent to a reasonable person.

The cumulative injury rule differs from the discovery rule which may apply where a compensable injury occurs at one time but the employee, acting as a reasonable person, does not recognize its "nature, seriousness and probable compensable character" until later. *Orr v. Lewis Cent. Sch. Dist.*, 298 N.W.2d 256, 257 (Iowa 1980). The cumulative injury rule may apply when the disability develops over a period of time; then the compensable injury itself is held to occur at the later time. *Jordan*, 569 N.W. 2d at 153. The deputy found a compensable injury to Nguyen's right arm occurred on October 28 at which time he recognized its seriousness and compensable nature. *See Orr*, 298 N.W.2d at 257.

There is substantial evidence supporting this decision. The date of the occurrence for purpose of computing the statue of limitations is an inherently fact-based determination and the agency's findings are entitled to substantial deference. *See Jordan*, 569 N.W.2d at 152; *also Oscar Mayer Foods Corp. v. Tasler*, 483 N.W.2d 824, 829 (Iowa 1992). The deputy's determination, however, must rest on the two-part *Tasler* manifestation test: the date on which the claimant, as a reasonable person, would be plainly aware of (1) the injury and (2) the causal relationship between the injury and claimant's employment. *Tasler*, 483 N.W.2d at 829.

Nguyen reported an injury on October 28, 1992. At that point he was aware he had been injured in the course of his employment, thereby making the injury compensable. The "occurrence of the injury" marks day one on the calendar for purposes of requiring filing a claim within two years. *Jordan*, 569 N.W. 2d at 152; *McKeever Custom Cabinets v. Smith*, 379 N.W.2d 368, 375 (Iowa 1985). At this stage compensability, though a possibility, or even a probability, remains an uncertainty. Whether the injury is, indeed, compensable will be determined at a later stage. *Jordan*, 569 N.W. 2d at 152; *See also Miedema v. Dial Corp.*, 551 N.W.2d 309, 311 (Iowa 1996).

Although he continued to work for I.B.P. following his report of injury, Nguyen also began to receive benefits in Nebraska. Nguyen was placed on restricted duty due to pain as of October 28, 1992. He was put on temporary restrictions and light duty work and given a prescription for an anti-inflammatory medication. Even after he returned to his regular duties his pain level limited the work he did. He remained on the prescription medication, naprosyn, continuously until the date of surgery and consistently complained of right shoulder pain that continued after October 28, 1992. This evidence supports a finding Nguyen was aware both of the injury and the fact it would affect his employment. *See Tasler*, 483 N.W.2d at 829.

While it can be argued the facts in *Jordan* are sufficiently similar to demand a different result than the one I would reach here, there are differences in the two cases. One primary difference is that in *Jordan* the claimant continued at the same job after experiencing difficulties that ultimately ripened into a

compensable claim; here Nguyen was immediately given lighter work and there was evidence that during the balance of his employment he did not continue to work as he originally had. More important is the fact that in *Jordan* the Supreme Court found the issue of injury date to be fact driven and affirmed on the basis that there was factual support for the agency decision. It is on the same basis that I would affirm here.

The question of when a claimant knew, or should have known, about the traumatic event and its work-related nature is a fact issue determinable by the industrial commissioner and binding on us if supported by substantial evidence in the record. *Gates,* 587 N.W. 2d at 474; *Dillinger v. City of Sioux City*, 368 N.W.2d 176, 182 (Iowa 1985). The record reveals Nguyen had knowledge of a shoulder injury as early as the fall of 1991 and as early as October of 1992 was aware that it was work-related and compensable in nature. We are bound by the findings actually made, not those the fact finder could have made. *See Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 271 (Iowa 1995). I would affirm the agency.