

IN THE COURT OF APPEALS OF IOWA

No. 6-018 / 95-179

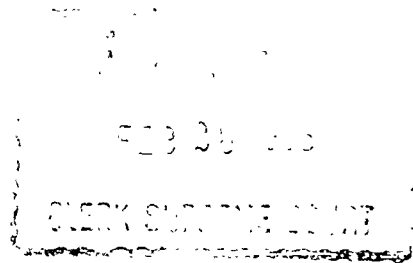
DAN J. ROBBENNOLT,

Petitioner-Appellant,

vs.

SNAP-ON TOOLS CORPORATION,
Self-Insured, Employer,

Respondent-Appellee.



Appeal from the Iowa District Court for Kossuth County, Frank B. Nelson,
Judge.

Petitioner appeals from the district court's ruling on judicial review essentially affirming the industrial commissioner's decision on petitioner's workers' compensation claim. **AFFIRMED.**

Mark S. Soldat, Algona, for appellant.

Joseph M. Barron of Peddicord, Wharton, Thune & Spencer, P.C., Des Moines, for appellee.

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

PER CURIAM

Petitioner-appellant Dan J. Robbennolt appeals a district court's ruling affirming the Industrial Commissioner's decision on petitioner's workers' compensation claim. Petitioner claims the district court erred (1) in affirming the commissioner's determination petitioner's permanent disability was limited to his right hand and did not extend into his right arm; (2) in affirming the commissioner's determination limiting the impairment award to a converted medical rating of a hand impairment based on the loss of a finger; (3) in affirming the commissioner's refusal to impose sanctions under Iowa Code section 86.13; (4) in its determinations regarding the accrual of section 85.30 interest; and (5) in decisions regarding the assessment of appeal costs and judicial review costs against him. We affirm.

On August 17, 1990, petitioner was cut on the third finger of his right hand while working for respondent-appellee Snap-On Tools Corporation. Petitioner was treated for the injury and was off work for two days. Petitioner continued to have problems with the finger and, as a result, missed additional work days. He subsequently had six surgeries, including one that took a skin graft from his wrist joint, in hopes of resolving his problems. The finger was finally amputated in an August 1991 surgery. On September 23, 1991, a treating physician determined petitioner had a ninety-four percent permanent partial impairment rating for the ring third finger.

Petitioner still experienced pain in his hand; a ray resection surgery was performed in November 1992 to attempt to alleviate the pain. Petitioner complained he lost grip strength in his right hand and suffers fatigue due to the loss of his finger. The treating physician reported petitioner made a good recovery from the ray resection surgery. After April 1993, petitioner had no work restrictions. He began working overtime. On June 30, 1993, the physician doing the ray resection surgery gave petitioner a one hundred percent permanent partial impairment rating regarding the right third finger, which was translated into a twenty percent permanent partial impairment. Petitioner notes this rating does not take into account the pain he was suffering. Petitioner also claims he was not able to do all the tasks he was able to do with his hand prior to the injury and the injury affected his right arm.

After the initial injury, Snap-On Tools paid workers' compensation benefits on the basis of a rate that did not include the overtime pay petitioner had received prior to the injury. Petitioner now claims compensation payments were not timely paid and these failures should require the payment of interest and a penalty under Iowa Code section 86.13. Snap-On Tools ultimately paid the correct amount with interest.

Petitioner filed a workers' compensation claim seeking a determination his finger injury caused a permanent disability to his right arm and he should receive additional interest for the failure to make timely payments of various compensation and he should receive penalty awards under Iowa Code section 86.13 for the alleged unreasonable delay in certain payments.

On June 29, 1994, the commissioner entered a decision determining petitioner had a twenty percent permanent impairment to his right hand due to the loss of his finger on the basis of medical evidence submitted to the commissioner. The commissioner refused to assess interest under Iowa Code section 85.30 in the manner petitioner wanted and also refused to impose a penalty under Iowa Code section 86.13 for any unreasonable delay or denial of benefits. The commissioner assessed the cost of the appeal, including the transcription of the hearing, to petitioner and required Snap-On Tools to pay all other costs.

On July 5, 1994, petitioner filed a petition for judicial review challenging the commissioner's decision. On January 3, 1995, the district court entered a ruling essentially affirming the commissioner's decision. The court rejected petitioner's claim the commissioner neglected to determine whether there was a permanent disability to petitioner's right arm concluding the commissioner considered petitioner's argument and rejected it. The court determined there was substantial evidence to support the commissioner's determination regarding the extent of petitioner's impairment. The court also concluded there was a sufficient basis for the commissioner's decision limiting petitioner's hand impairment to twenty percent based on the medical rating. The court further concluded the compensation payments were paid within the time required by Iowa Code section 85.30. The court determined the commissioner incorrectly determined petitioner's permanent partial disability payments accrued on July 9, 1993, when a permanent partial disability rating was

determined on September 23, 1991. However, the court noted Snap-On Tools paid petitioner for the original impairment rating at the time the rating was given and any payment at an incorrect rate was corrected. The court determined petitioner was not entitled to additional interest. The court also determined petitioner was not entitled to penalties under Iowa Code section 86.13. The court further determined the commissioner did not abuse his discretion in taxing costs of petitioner's unsuccessful appeal to petitioner. The court also taxed the costs of the judicial review action to petitioner.

Judicial review of the actions of an administrative agency is governed by the standards of Iowa Code section 17A.19(8). *Mercy Health Center, a div. of Sisters of Mercy Health Corp. v. State Health Facilities Council*, 360 N.W.2d 808, 811 (Iowa 1985). The court acts in an appellate capacity by reviewing the agency's decision solely to correct any errors of law. *Dubuque Community School Dist. v. Public Employment Relations Bd.*, 424 N.W.2d 427, 430 (Iowa 1988). The agency's decision is final if it is supported by substantial evidence and is correct in its conclusions of law. *Heatherly v. Iowa Dep't of Job Serv.*, 397 N.W.2d 670, 670 (Iowa 1986). The possibility of drawing two inconsistent conclusions from the same evidence does not prevent the agency's decision from being supported by substantial evidence. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 734 (Iowa App. 1986).

I. Petitioner claims the commissioner erred in failing to address the issue of whether he sustained a schedule member injury/disability to his right arm. He

contends this was error.

Petitioner argues the commissioner failed to address the issue of whether he sustained an injury to his right arm, as opposed to the right hand. The commissioner recognized Dr. DeBartolo's impairment rating. This rating was one hundred percent of the finger which Dr. DeBartolo then converted to a twenty percent hand impairment using the conversion charts. The commissioner specifically found petitioner had decreased ability to lift with his right hand and decreased grip and pinch strength in that hand. The commissioner specifically considered and analyzed the issue relating to the extent of petitioner's impairment.

We find no error on this issue.

II. Petitioner next contends the commissioner erred in limiting the disability award to loss of a finger. The decision is supported by substantial evidence. We affirm on this issue.

III. Petitioner contends it was error not to award section 86.13 sanctions.

Petitioner further contends section 86.13 sanctions should be imposed for failure to mail or deliver the benefit checks when due. Petitioner received benefit checks ~~within~~ approximately one week of the first date of the week for which they are payable. We find no error.

We have considered petitioner's other issues and find them to be without merit.

AFFIRMED.