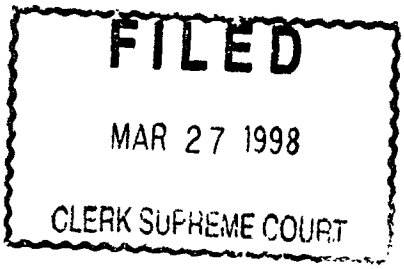
IN THE COURT OF APPEALS OF IOWA

000127

No. 8-017 / 97-0261
Filed March 27, 1998



ROBERT E. GREIM,
Appellant,

vs.

SIVYER STEEL CORPORATION and EMPLOYERS MUTUAL COMPANIES,
Appellees.

Appeal from the Iowa District Court for Scott County, Edward B. DeSilva, Jr., Judge.

Petitioner appeals from the district court's ruling on judicial review affirming the Industrial Commissioner's decision denying his workers' compensation claim.

AFFIRMED.

Michael J. Motto, of Carlin, Hellstrom & Bittner, Davenport, for appellant.

Jeffrey M. Margolin of Hopkins & Heubner, P.C., Des Moines, for appellees.

Considered by Huitink, P.J., and Streit and Vogel, JJ.

PER CURIAM

Robert Greim appeals the district court decision which affirmed the ruling of the Industrial Commissioner denying his claim for workers' compensation benefits. We affirm.

Greim was employed by Sivyer Steel Corporation from 1961 until 1992. In January 1993, Greim was diagnosed with carpal tunnel syndrome. He had surgery in March 1993 and April 1993. In July 1993, Greim discussed with his physician, Dr. John O'Keefe, the nature of his employment with Sivyer. Dr. O'Keefe wrote a letter in July 1993 stating he believed Greim's condition was caused by his former employment. This letter was not sent to Greim's attorney until November 1993 because Greim had not signed a patient waiver. Greim filed a claim for workers' compensation benefits in January 1994. This is when the employer first learned of his claim.

In a deposition, Greim admitted he knew by March or April 1993 that his regular insurance carrier was refusing to pay for treatment of his carpal tunnel syndrome because it was work-related. Greim's deposition was admitted as a joint exhibit at the beginning of the administrative hearing. Later, Greim's attorney objected to the admission of this exhibit. The deputy industrial commissioner admitted the deposition into evidence.

The deputy determined Greim failed to give proper notice of his injuries to his employer, as required by Iowa Code section 85.23. Section 85.23 requires an

employee to give the employer notice of an injury within ninety days from the date of the occurrence of the injury. The deputy found Greim knew in March or April 1993 his injury was work-related and he failed to give notice to his employer within ninety days. The Industrial Commissioner affirmed the decision of the deputy. On judicial review, the district court affirmed the decision of the commissioner. Greim now appeals.

I. We review an agency's decision for errors of law and do not exercise a de novo review. *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 271 (Iowa 1995). We will reverse an agency's findings only if, after reviewing the record as a whole, we determine that substantial evidence does not support them. *Id.*

II. Greim contends the deputy should not have admitted his deposition as an exhibit at the administrative hearing. He states an entire deposition is admissible under Iowa Rule of Civil Procedure 144 only where the deponent is not available. He also asserts the deposition should be considered hearsay.

Depositions are admissible in administrative proceedings. *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 196 (Iowa 1980). Under Iowa Code section 86.18, the deposition of any witness may be taken and used as evidence in any pending proceeding before the Industrial Commissioner. Furthermore, the deposition transcript does not constitute hearsay because it is an admission by a party opponent. See Iowa Rule of Evidence 801(d)(2). We conclude the deposition was properly admitted as evidence.

III. Greim claims he gave notice of his injury to his employer as soon as he was able. He states he did not know he had a work-related injury until his attorney received the letter from Dr. O'Keefe in November 1993. He believes there was insufficient evidence for the commissioner to find he should have known earlier.

We find there is substantial evidence in the record to support the commissioner's finding Greim should have known in March or April 1993, and certainly by at least July 1993, he had a work-related injury. Greim's regular insurance carrier denied coverage in March or April 1993 because the injury was work-related. In July 1993, Dr. O'Keefe discussed the injury with Greim in relation to his employment at Sivyer. We find the commissioner properly denied Greim's request for workers' compensation benefits because he failed to give notice as required by Iowa Code section 85.23.

We affirm the decision of the district court which upheld the Industrial Commissioner's ruling denying Greim's claim for workers' compensation benefits.

AFFIRMED.