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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ARMSTRONG RUBBER COMPANY and LIBERTY MUTUAL INSURANCE COMPANY,	)	Filed November 26, 1980
Petitioners-Appellees,	)	
vs.	)	
CURTIS E. BENNETT and the IOWA INDUSTRIAL COMMISSIONER,	)	0-284 63364
Respondent-Appellants.	)	

Appeal from Polk District Court - Dale S. Missildine, Judge.

Respondent appeals from district court judgment vacating his writ of general execution to collect interest allegedly due on a worker's compensation award. REVERSED.

Lee Gaudineer of Austin and Gaudineer, Des Moines, for respondent-appellant.

Richard G. Book and Dorothy L. Kelley of Jones, Hoffman & Davidson, Des Moines, for petitioner-appellee.

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

DONIELSON, J.

Respondent Curtis Bennett appeals from district court judgment vacating his writ of general execution to collect interest allegedly due on a workers' compensation award. Respondent contends that under section 85.30, The Code 1977, interest on a workers' compensation award should be computed from the date each payment becomes due rather than from the date of the agency decision establishing the right to such award. We agree with the respondent and reverse the district court's judgment.

This matter was certified for appeal pursuant to Iowa R. App. P. 3. Our review is limited to correction of errors at law. Iowa R. App. P. 4.

I.

On February 6, 1975, respondent received an injury to his left shoulder while working for petitioner Armstrong Rubber Company. By the time respondent filed a claim for workers' compensation benefits nearly two years later, he was totally disabled as a result of a heart ailment unrelated to the injury he received at work. The deputy industrial commissioner found that the respondent had sustained a ten per cent permanent partial industrial disability from the injury and awarded him benefits with interest due from December 12, 1977, the date of the decision. The award was affirmed on appeal to the industrial commissioner, who noted in his decision that interest would accrue as provided for by section 85.30, The Code 1977. Both Armstrong Rubber and the insurance carrier petitioned for judicial review, but neither contested the method of computing interest. The agency decision was then affirmed by the district court.

Respondent was paid and acknowledged receipt of the principal amount plus interest that had accrued since the date of the agency decision. He maintained, however, that the interest should have begun to accrue on the eleventh day after the injury rather than two years later on the date of the agency decision, and obtained a writ of general execution seeking $712 in additional interest. Petitioners moved to vacate the writ, contending that the deputy industrial commissioner was correct in his determination that interest would begin to accrue on the date of the decision and that therefore no additional interest was due. Respondent resisted petitioner's motion and asked for a declaratory judgment on the issue. The district court denied respondent's request for declaratory relief and vacated his writ of execution. Respondent then brought this appeal, the prosecution of which was stayed pending resolution of Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174 (Iowa 1979). The district court

certified the issue as one in which an appeal should be allowed pursuant to Iowa R. App. P. 3.

II.

Respondent first contends that the petitioners waived any right on appeal to challenge the method of assessing interest because they failed to raise that issue in their petition for judicial review of the workers' compensation award. Such contention is correct if petitioner is now claiming that respondent's entitlement to interest is to be determined upon some basis other than that which was decided by the final agency action. That decision provided that "interest would accrue as provided for by section 85.30, The Code 1977." In enforcing his rights under that agency decision, which was affirmed upon judicial review, respondent is entitled to a writ of execution for the full amount of interest owed him under section 85.30. The amount of interest required by that statute is the issue we must decide.

III.

The issue on this appeal is the correct construction of section 85.30, The Code 1977, which the industrial commissioner specifically identified in his decision as the provision applicable to the question of interest computation. Respondent contends that according to section 85.30, interest on his compensation award should be computed from the date each payment became due rather than from the date of the agency decision establishing respondent's right to the award. Section 85.30 was recently construed by the Iowa Supreme Court in Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174 (Iowa 1979), and we hold for the respondent on the basis of that decision.

Section 85.30, The Code 1977, provides that:

> [c]ompensation payments shall be made each week beginning on the eleventh day after the injury, and each week thereafter during the period for which compensation is payable, and if not paid when due, there shall be added to such weekly compensation payments, interest at six percent from date of maturity.

Id. In Manning, the supreme court recognized that section 85.30 reflects legislative intent that interest on unpaid compensation payments be computed from the date each payment comes due and that such payments come due the eleventh day after the injury. Manning, 286 N.W.2d at 180. The employer in that case contended that interest on the claimant's unpaid compensation should begin, at the earliest, at the time of the district court's affirmance of the agency's decision to award compensation. Id. The court noted that to adopt this method of computing interest would defeat the legislative intent that

interest begin to accrue eleven days after the injury and would also jeopardize the legislative goal of providing compensation for injured employees at the earliest time possible. Id.; cf. section 86.20, The Code 1977 (encouraging payment of benefits during investigation stage of disability claim). Similarly, these objectives would be defeated in the instant case were we to adopt petitioners' argument that interest on the compensation award should be computed from the date of the agency decision, since that date is well over two years after the date of the injury. Accordingly, we reverse the district court judgment vacating respondent's writ of execution and hold that he is entitled to collect additional interest due from the eleventh day after the injury.

REVERSED.