IN THE COURT OF APPEALS OF IOWA

No. 0-435 / 99-1821
Filed November 8, 2000

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CLERK SUPREME COURT

NANCY LEEDOM,
Appellant,

vs.

EVERCO INDUSTRIES and LIBERTY MUTUAL INSURANCE CO.,
Appellees.

Appeal from the Iowa District Court for Polk County, James W. Brown, Judge.

Petitioner appeals the district court's ruling on judicial review affirming the workers' compensation commissioner's decision to dismiss her claim for additional workers' compensation benefits. **AFFIRMED.**

Joseph M. Bauer, Des Moines, for appellant.

Richard G. Book of Huber, Book, Cortese, Happe & Brown, Des Moines, for appellees.

Heard by Streit, P.J., and Vogel and Miller, JJ.

VOGEL, J.

Nancy Leedom appeals the district court's ruling on judicial review affirming the workers' compensation commissioner's decision to dismiss her claim for additional workers' compensation benefits. We find the workers' compensation commissioner correctly determined Leedom's injury should be compensated as a scheduled member loss, the lay testimony was properly considered, and the Iowa statutory workers' compensation scheme does not violate the equal protection clause of either the United States or the Iowa Constitutions. We affirm.

Background facts. Leedom began working for Everco Industries (Everco) in 1976. On June 9, 1993, she was injured when the contents of a box she was packing shifted, causing the box to slip. She sustained injuries to her right forearm and hand, including torn cartilage in the wrist. After considerable treatment, including surgical reparations, several casts, and occupational therapy, her wrist has properly healed and is fully functional. However, her thumb and forearm continue to cause her pain. She is somewhat restricted in her motions involving the right hand and cannot repetitively lift more than one pound. Her injury was determined to be an eleven percent loss of function to the right hand and she was awarded permanent partial disability as a scheduled member loss. The award was affirmed by the industrial commissioner and the district court. She appeals.

Scope of review. Decisions of the industrial commissioner are reviewed by the district court pursuant to Iowa Code chapter 17A. *See* Iowa Code § 86.26.

The district court's scope of review under section 17A.19 and our review on appeal under section 17A.20 is at law and not de novo. We must examine whether the commissioner's conclusions are supported by substantial evidence in the record made before the agency when the record is viewed as a whole. *Second Injury Fund of Iowa v. Bergeson*, 526 N.W.2d 543, 546 (Iowa 1995). In our review we apply the standards of section 17A.19(8) to the agency's actions to determine whether our legal conclusions are the same as those reached by the district court. *Norland v. Iowa Dep't of Job Serv.*, 412 N.W.2d 904, 908 (Iowa 1987). Because the questions presented concern an interpretation of Iowa's workers' compensation act, the review is one of law. *Mortimer v. Fruehauf Corp.*, 502 N.W.2d 12, 14 (Iowa 1993).

Scheduled v. unscheduled injury. Leedom argues her injury should have been compensated as an unscheduled rather than a scheduled injury. An unscheduled permanent partial disability is compensated as an industrial disability, and considers, among other factors, a workers' loss of earning capacity. *Id. at 15-16.* A scheduled permanent partial disability is compensated according to the statutory classifications under Iowa Code section 85.34(2), as a scheduled member loss or functional disability. *Id.* Because the hand is listed as a scheduled member, Leedom's injury was compensated based on the percentage of impairment to the hand, a functional disability. In spite of this classification, she argues the continued pain in her thumb and forearm, along with her restricted movements, has an effect on her whole body and, therefore, should be compensated as an unscheduled injury. She claims her injury reduced

her earning capacity, as evidenced by her difficulty in securing new employment. She alleges, therefore, she should be entitled to permanent total disability, calculated under the industrial disability method.

Everco contends the record contains substantial evidence to support the commissioner's determination that Leedom's disability is limited to her hand and, therefore, was properly compensated as a functional disability under the scheduled member table.

Leedom's argument has previously been addressed by our supreme court.

> The only limitation regarding location of the injury concerns permanent partial disabilities arising from scheduled injuries. And although such injuries may cause permanent total disability because of the claimant's lack of education or experience or physical strength or ability, the injuries are arbitrarily compensable according to the schedule. This is so because the legislature in its wisdom has seen fit to give the commission no discretion with regard to scheduled injuries. The legislature did this in order to make certain the amount of compensation in cases of specific injuries and to avoid controversies. But where there is injury to a scheduled member and also to parts of the body not included in this schedule, there is no logical reason for such arbitrariness.

Id. at 17. The legislature has not enacted such a change as Leedom urges us to apply to her situation, which would convert the injury to her hand to a total body injury. Although there have been cases in which a scheduled member loss, coupled with an unscheduled loss, resulted in a disability being compensated on the basis of the unscheduled injury, such is not the case here. *Barton v. Nevada Poultry Co.*, 253 Iowa 285, 110 N.W.2d 660 (1961) (holding an injury to the foot which led to a circulatory disorder should be compensated as a unscheduled injury); *Lauhoff Grain Co. v. McIntosh*, 395 N.W.2d 834 (Iowa 1986) (stating a

scheduled leg injury which resulted in a prosthetic hip joint be compensated as an unscheduled injury).

The reason for limiting compensation for scheduled member loss to the loss of the particular body member lies with the very purpose of the Workers' Compensation legislation. The legislature has attempted to avoid controversies when an employee is injured by making certain the amount of compensation for specific or scheduled injuries. *Mortimer,* 502 N.W.2d at 17. There is substantial evidence in the record supporting the commissioner's finding that Leedom's injury was confined to her hand and, therefore, appropriately compensated as a partial loss to a scheduled member.

Medical and lay testimony. In assessing Leedom's disability as a scheduled member loss, Leedom also contends the commissioner failed to consider lay testimony. She correctly asserts that the commissioner is to consider all evidence in the record, both medical and nonmedical. *Miller v. Lauridsen Foods, Inc.,* 525 N.W.2d 417, 421 (Iowa 1994).

Reports from two doctors regarding Leedom's impairment were received into evidence at the hearing. Leedom's treating physician assigned an eleven percent loss of function to the hand, while a reviewing doctor assigned a slightly lesser loss of function of six percent to the hand. Neither opined the injury extended beyond the injured hand. However, Denise Behrends, an occupational therapist, explained in her deposition testimony how she considered Leedom's injury to have affected her entire body, rather than just the hand. Leedom claims that had the commissioner properly considered Behrends' testimony, she would

have been awarded either extensive industrial disability or permanent and total disability.

However, it is clear from the record the commissioner considered Behrend's testimony, referring to the lay testimony to explain the difficulties Leedom encounters when performing daily routines. She also considered the lay testimony as support for the medical evidence provided by the two physicians. *Miller*, 525 N.W.2d at 421 (stating medical testimony may be buttressed by supporting lay testimony). While the commissioner may not have assigned as great of a weight to the lay testimony as Leedom contends should have been assigned, it is clear from her ruling that she considered the lay testimony. As such we find no error by the exclusion of relevant lay testimony.

Equal protection. Finally, Leedom asserts that Iowa Code section 85.34(2), which restricts scheduled member loss to a non-industrial method of computation of the disability, is arbitrary and provides disparate treatment to similarly situated employees. She claims this disparity between compensation for scheduled and unscheduled injuries is in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article 1, section 6 of the Iowa Constitution. Because this issue does not involve a fundamental right, it must be analyzed using the rational basis test. *Gilleland v. Armstrong Rubber Co.*, 524 N.W.2d 404, 407 (Iowa 1994). Our supreme court there stated:

> Gilleland is correct that a disparity exists between the compensation for scheduled and nonscheduled injuries. Nonscheduled permanent partial disabilities are compensated by the industrial disability method which takes into account the loss of

> earning capacity. Scheduled permanent partial disabilities, on the other hand, are "arbitrarily" compensable according to the classifications of section 85.34(2) without regard to loss of earning capacity. (citations omitted)

Id. The legislature could have rationally based the statutory scheme on the reduction of controversies through the certainty of compensation. *Id.* Therefore, a rational basis does exist for the alleged disparate treatment and Leedom's challenge must fail.

Accordingly, we conclude the district court properly affirmed the findings of the commissioner. We affirm the decision of the district court.

AFFIRMED.

STREIT, P.J. (concurring specially)

I concur specially. Given existing Iowa law, Leedom's injury was appropriately compensated as a scheduled member loss. However, to borrow the words of former Justice McCormick, the result in this case is "indefensible except that it is demanded by an anachronistic statute." *Graves v. Eagle Iron Works*, 331 N.W.2d 116, 120 (Iowa 1983) (McCormick, J., concurring specially); *see also Gilleland v. Armstrong Rubber Co.*, 524 N.W.2d 404, 408-10 (Lavorato, J., concurring specially). The legislature should take note of this injustice.