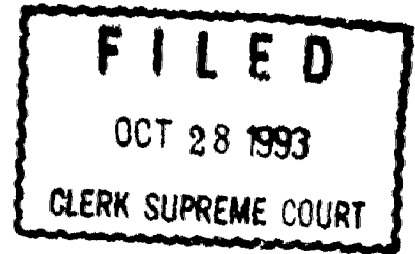


IN THE COURT OF APPEALS OF IOWA

No. 3-450 / 93-350



KAREN H. CHOATE, Surviving Spouse of
Robert E. Choate, Deceased,

Appellee,

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vs.

IOWA DEPARTMENT OF TRANSPORTATION, Employer,
and STATE OF IOWA, Insurance Carrier,

Appellants.

Appeal from the Iowa District Court for Poweshiek
County, James P. Rielly, Judge.

The defendants appeal the district court's order
reversing an industrial commissioner's decision. **REVERSED.**

Bonnie J. Campbell, Attorney General, David A. Ferree,
Special Assistant Attorney General, and Mark Hunacek,
Assistant Attorney General, for appellants.

John M. Bickel and Diane Kutzko of Shuttleworth &
Ingersoll, P.C., Cedar Rapids, for appellee.

Heard by Oxberger, C.J., and Hayden and Sackett, JJ.
Donielson, J., takes no part.

HAYDEN, J. 000078

The Iowa Department of Transportation (DOT), as an employer, appeals a district court decision holding an employee's death was work related. The district court reversed the industrial commissioner's findings the employee's death did not arise out of his employment with the DOT.

Robert Choate was employed as a maintenance engineer for the DOT. Choate was on call twenty-four hours a day for field and maintenance inspections. The following circumstances surrounded the time of his death on April 14, 1988. During the early morning hours of April 14, 1988, Larry Pottridge, another DOT employee, telephoned Choate. Pottridge reported a tractor semitrailer accident on a bridge located on Interstate 80 eastbound. Pottridge advised Choate bridge posts had been struck and perhaps damaged. Approximately thirty-five minutes later Choate met Pottridge at the scene. Choate conducted a visual inspection of the top of the bridge. He and Pottridge walked to one end of the bridge. The two men then walked twenty to twenty-five feet down a path. Choate viewed some areas under the bridge, and the two men walked back up the path. The men then walked to the other end of the bridge, a distance of about 500 feet. Choate viewed the guardrail and the damaged tractor semitrailer. Pottridge then heard a gasp or a grunt, and Choate immediately collapsed, falling to the ground. Choate died of a heart attack that morning.

Choate's wife, Karen, initiated workers' compensation proceedings claiming her husband's heart attack was work related. An administrative hearing was held. In a proposed decision a deputy industrial commissioner determined Choate's heart attack was caused by the activities and stress of his employment with the DOT. The deputy ordered the DOT to pay workers' compensation benefits. The deputy determined the compensation rate of \$632 per week based on gross weekly earnings of \$1480.34. The DOT appealed the deputy's decision to the industrial commissioner. The DOT contended Choate's death did not arise out of his employment and the deputy's calculations of benefits were incorrect and excessive.

The industrial commissioner determined Choate's death did not arise out of his employment with the DOT and reversed the deputy's decision. The commissioner specifically found the two medical experts who opined Choate's heart attack arose out of his employment based their opinions upon false assumptions. The commissioner did not reach the issues concerning the level of benefits. The commissioner found the issue regarding the amount of benefits was moot because Choate's heart attack did not arise out of his employment. Karen sought judicial review of the commissioner's decision.

The district court reversed the industrial commissioner's decision and reinstated the deputy's decision and award of benefits. The court concluded the

commissioner's findings were not supported by substantial evidence. The DOT appeals.

The district court may review decisions of the industrial commissioner pursuant to Iowa Code chapter 17A. Iowa Code § 86.26 (1993). The district court's scope of review, however, is limited to whether the agency committed any errors of law specified in section 17A.19(8). See Neil v. John Deere Component Works, 490 N.W.2d 80, 82 (Iowa App. 1992). The trial court is not empowered to substitute its own judgment for the judgment of the agency because judicial review is limited. McClure v. Iowa Real Estate Comm'n, 356 N.W.2d 594, 597 (Iowa App. 1984) (citation omitted). The commissioner's findings have the effect of a jury verdict, and the court is to broadly and liberally apply those findings in order to uphold rather than defeat the commissioner's decision. King v. City of Mt. Pleasant, 474 N.W.2d 564, 565 (Iowa 1991) (citations omitted). We review the decision of the district court pursuant to Iowa Code section 17A.20 (1993). Our review of workers' compensation cases is for correction of errors at law, not de novo. Kostelac v. Feldman's, Inc., 497 N.W.2d 853, 856 (Iowa 1993); Second Injury Fund v. Braden, 459 N.W.2d 467, 468 (Iowa 1990) (citation omitted). The test we apply is whether the commissioner's factual findings are supported by substantial evidence. Kostelac, 497 N.W.2d at 856 (citation omitted); Gallardo v. Firestone Tire & Rubber Co., 482 N.W.2d 393, 395 (Iowa 1992) (citation omitted).

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The fact findings of an agency are binding on the court when they are supported by substantial evidence. Norland v. Iowa Dep't of Job Serv., 412 N.W.2d 904, 913 (Iowa 1987) (citations omitted). Evidence is substantial if a reasonable mind would accept it as adequate to reach a conclusion. Kostelac, 497 N.W.2d at 856 (citing John Deere Dubuque Works of John Deere & Co. v. Weyant, 442 N.W.2d 101, 105 (Iowa 1989)).

On appeal the DOT contends the district court erred in reversing the decision of the industrial commissioner. The DOT argues substantial evidence supported the commissioner's decision.

The industrial commissioner applied three legal standards in determining if Choate's heart attack arose out of his employment. The three standards applied by the commissioner are set out below.

The first theory of recovery allows compensation "if the work requires heavy exertions which, superimposed on an already-defective heart, aggravates or accelerates the condition resulting in injury." Neil v. John Deere Component Works, 490 N.W.2d 80, 83 (Iowa App. 1992) (citations omitted); see Sondag v. Ferris Hardware, 220 N.W.2d 903, 905 (Iowa 1974). This standard is further qualified, however:

[W]hen the employee contributes some personal element of risk--e.g., by having . . . a personal disease--we have seen that the employment must contribute something substantial to increase the risk. . . .

In heart cases, the effect of applying this distinction would be forthright:

If there is some personal casual contribution in the form of a previously weakened or diseased heart, the employment contribution must take the form of an exertion greater than that of nonemployment life. Note that the comparison is not with this employee's usual exertion in his employment but with the exertions of normal nonemployment life of this or any other person.

Briar Cliff College v. Campolo, 360 N.W.2d 91, 95 (Iowa 1984) (citing Sondag, 220 N.W.2d at 905) (emphasis added).

The second theory of recovery allows compensation "when the medical testimony establishes unusually strenuous employment exertion, imposed upon a preexisting diseased condition, resulted in a heart injury." Neil, 490 N.W.2d at 83 (citations omitted); see Sondag, 220 N.W.2d at 905 (citing Guyon v. Swift & Co., 229 Iowa 625, 295 N.W. 185 (1940)).

The commissioner applied a third standard under which a compensable injury may result. The commissioner stated compensation may be allowed when a decedent feels impelled to continue working after the onset of a possible heart attack. The application of this standard is supported by Varied Enterprises, Inc. v. Sumner, 353 N.W.2d 407, 409 (Iowa 1984). See also Sondag, 222 N.W.2d at 906. In Varied Enterprises, Inc., claimant suffered an acute myocardial infarction while driving a truck as part of his employment with Varied Enterprises, Inc. Varied Enters., Inc., 353 N.W.2d at 408. The Iowa Supreme Court affirmed the commissioner's finding "the reason [claimant/employee] felt impelled to continue driving after the onset of symptoms was the demands of his employment." Id. at 409.

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The industrial commissioner applied these three legal standard to the facts in reaching its decision regarding Choate's death. Iowa courts have recognized these legal standards as proper. Neil, 490 N.W.2d at 83; Sondag, 220 N.W.2d at 905; Varied Enters., Inc., 353 N.W.2d at 409. The commissioner concluded claimant had failed to satisfy any one of these standards. Specifically, the commissioner determined evidence did not show (1) Choate's work required heavy exertions which aggravated his heart condition, (2) Choate engaged in an act of unusually strenuous employment exertion at the investigation scene, or (3) Choate felt impelled to continue working after the onset of a possible heart attack.

The only question is whether the commissioner's findings are supported by substantial evidence.

First, we must determine whether substantial evidence supports a conclusion Choate's work did not require exertion greater than exertion of normal nonemployment life. Pottridge telephoned and woke up Choate at 2 a.m. on April 14, 1988. Choate drove thirty-five minutes to the investigation scene. The temperature outdoors was approximately thirty-eight degrees. Choate walked twenty to twenty-five feet down a path and then back up the path. During examination by claimant's attorney Pottridge testified to his characterization of the terrain along the path:

Q: The terrain, according to Rodolfo [Laudencia], was rough terrain. Do you agree with

that? He's testified it was rough terrain.
A: It was a path along the wing wall. So I wouldn't classify it as being rough, no.

Q. He's testified that for the ordinary person this would be rough terrain. Do you disagree with his testimony and characterization of that? A: Yes, I do.

Depositions of Rodolfo Laudencia were admitted into evidence at trial. Laudencia gave the following description of the terrain of the path:

Q: Would you describe the terrain from where you started down to where Mr. Pottridge is pointing at the bearings? A: The terrain was extremely--it would be rolling to flat.

Q: Would you describe from where Mr. Pottridge is standing in Exhibit D-2 down to where he's standing in Exhibit D-3? Would you describe walking from here to here as going down a deep--a steep slope? A: No.

Q: How would you describe the slope of that area? A: Relatively flat.

The steepness of the slope was estimated to be at a three-to-one angle. Pottridge testified Choate then said he wanted to inspect the mud rail on the other end of the bridge. Choate and Pottridge walked 500 feet on a level surface to the other end of the bridge. Pottridge testified they took their time walking because they were looking at other aspects of the bridge as they walked. At the other end of the bridge they stepped over the damaged guardrail which had been pushed down to a height of ten inches. They then looked at the tractor semitrailer. Substantial evidence supports a conclusion Choate engaged in activities which did not require a greater amount of exertion than normal nonemployment activities would require.

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Second, we view the facts supporting a conclusion the medical evidence failed to show the requirements of Choate's employment were unusually strenuous and caused his death. Pottridge testified he did not notice Choate having any shortness of breath as he walked down the path or any problems as he walked up the path. As the two men walked the length of the bridge, Choate carried on a normal conversation with Pottridge about the expansions in the Jersey barrier of the bridge. Pottridge testified Choate said nothing to indicate he was not feeling well. Dr. Thomas L. Bennett, the State medical examiner, performed an autopsy on Choate's body. In his report, Dr. Bennett concluded:

At postmortem [sic] examination, the decedent was found to have an enlarged heart (470 grams, approximately 1 1/2 times the expected weight), with diffuse severe atherosclerotic coronary artery narrowing. In my opinion, this man's death is a direct result of his atherosclerotic coronary artery disease, the hypertrophic cardiomyopathy (probably hypertensive) certainly being a contributing significant condition.

The report also states Choate was mildly obese and was fifty-six years old. In an interrogatory admitted into evidence, Dr. Bennett stated: "Mr. Choate died directly as a result of his hypertensive and atherosclerotic cardiovascular disease. . . . Alcohol was present in Mr. Choate's system. . . . In my opinion, alcohol is thus a very significant factor in this man's death." Evidence showed Choate had a history of tobacco abuse, recurring obesity, and hypercholesterolemia. Choate's wife testified

he had smoked cigarettes for many years. Doctors From and Ferguson, experts for the claimant, opined Choate's work caused his death. The commissioner, however, found the conclusions of these two doctors were based on false assumptions. The doctors worked from the premise the path had a very steep incline and Choate had a desk-type job. The general rule is expert opinion testimony may be accepted or rejected by the trier of fact. Sondag, 220 N.W.2d at 907; see Bodish v. Fisher, Inc., 257 Iowa 516, 521, 133 N.W.2d 867, 870 (1965) ("the weight to be given to such an opinion is for the finder of fact, and that may be affected by the completeness of the premise given the expert and other surrounding circumstances"). The reliable medical evidence fails to show Choate's work activities on April 14, 1988, were unusually strenuous and caused his death.

Third, we determine whether substantial evidence supports a conclusion Choate felt impelled by the demands of his employment to continue working after the onset of heart attack symptoms. In this case Choate showed no symptoms of a heart attack nor did he express any problems with Pottridge. Pottridge testified Choate made a short gasp or grunt noise and immediately collapsed upon the ground. Efforts to revive Choate were unsuccessful.

We determine substantial evidence supports the commissioner's decision. Choate's death did not arise out of his employment with the DOT. We reverse the decision of

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the district court and reinstate the decision of the industrial commissioner.

In light of our decision holding Choate's death did not arise out of his employment with the DOT, we need not address DOT's claim the amount of benefits awarded to claimant by the district court were outside the scope of the court's authority and were calculated incorrectly.

REVERSED.