FILED
FEB 21 1984
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

DAILY INDUSTRIES, INC., Employer, and **PENN NATIONAL MUTUAL INSURANCE COMPANY**, Insurance Carrier,

Petitioners-Appellants,

vs.

MERLIN HAMILTON,

Respondent-Appellee,

and

ROBERT C. LANDESS, Industrial Commissioner,

Respondent.

Filed February 21, 1984

3-389
83-358

Appeal from the Iowa District Court for Des Moines County - D. B. Hendrickson, Judge.

Petitioners appeal from the district court decision on judicial review affirming the industrial commissioner's award of permanent partial disability benefits in a review-reopening decision, asserting that substantial record evidence fails to support a finding that the amputation of claimant's leg, chosen as a remedy for a prior condition of osteomyelitis, was causally related to the injury he sustained at work. AFFIRMED.

Craig D. Warner and Robert A. Engberg of Pryor, Riley, Jones & Aspelmeier, Burlington, for petitioners-appellants.

Gene R. Krekel of Hirsch, Link, Adams, Hoth & Krekel, Burlington, for respondent-appellee.

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

SNELL, J.

Claimant Merlin Hamilton received a gunshot wound while he was serving in the United States Army in Vietnam. As a result, he developed a condition known as osteomyelitis, which is an infection deep inside the bone. During the 1960's and until March, 1973, Hamilton required approximately twenty hospitalizations and surgeries to treat the osteomyelitis condition. Hamilton and his wife testified that he had not had any flare-ups of the condition from March 1973, until August 1975. On August 7, 1975, Hamilton suffered a work-related injury when he stepped onto a trailer bed and the floor gave way, causing his right leg to go through the floor of the trailer bed. This injury caused his osteomyelitis condition to flare up; he required hospitalization and surgery to relieve the condition.

After the accident, Hamilton returned to work. His leg became progressively worse with increased pain, swelling and discharges. On March 1, 1976, he was hospitalized again; an operation was performed in which the leg was opened, drained, cleaned, and the bone was scraped. At this time, his physician gave him three options: he could continue to have his leg opened, cleaned, drained and scraped whenever it flared up; he could have his leg shortened and have a knee fusion performed; or he could have his leg amputated. He chose amputation.

In a review-reopening decision, the industrial commissioner awarded permanent partial disability benefits based on amputation of the leg. This award was affirmed on judicial review. On appeal, Daily Industries claims the trial court erred in holding that Hamilton's elective amputation of his leg, offered to cure his preexisting chronic osteomyelitis condition, was related causally to the work-related injury.

Our scope of review is not de novo; our duty is to correct errors of law made by the district court. Jackson County Public Hospital v. PERB, 280 N.W.2d 426, 429 (Iowa 1979). Furthermore:

> We are bound by the commissioner's fact findings if they are supported by substantial evidence in the record made before the agency. Hawk v. Jim Hawk Chevrolet-Buick, Inc., 282 N.W.2d 84, 85 (Iowa 1979); Auxier v. Woodward State Hospital School, 266 N.W.2d 139, 143 (Iowa 1978); § 17A.19(8)(f), The Code 1981. We construe such findings broadly and liberally to support rather than defeat the commissioner's decision. Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296, 298 (Iowa 1974). "Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion." General Telephone Company of the Midwest v. Iowa State Commerce Commission, 275 N.W.2d 364, 370 (Iowa 1979) (quoting City of Davenport v. PERB, 264 N.W.2d 307, 311 (Iowa 1978)). The fact that an agency could draw two inconsistent conclusions from the evidence presented to it does not mean that one of those conclusions is unsupported by substantial evidence. City of Davenport, 264 N.W.2d at 311.

Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 63 (Iowa Ct. App. 1981).

The commissioner's findings of fact included that the work-related injury caused a series of flare-ups of Hamilton's preexisting osteomyelitis, that the aggravation caused Hamilton's condition to deteriorate to the point that amputation was suggested by his physician, and that Hamilton's leg was amputated as a treatment for the condition. Appellant admits that the work-related injury caused a temporary aggravation of Hamilton's preexisting condition. However, it denies that the injury was the proximate cause of the need for amputation. The issue is whether the employer was responsible for treatments to put Hamilton in the same condition as he was before the accident, or whether the employer is responsible for essentially curing the preexisting condition by the extreme remedy of amputation.

We find the case of Ziegler v. United States Gypsum Company, 106 N.W.2d 591 (Iowa 1961), to be helpful. In that case, an employee suffered an injury to his back while in the course of his employment. Id. at 593. He received compensation benefits from his employer until he returned to work one year later. He did relatively light work for six days, during which time the pain in his back increased. This pain was diagnosed as being caused by a bulged disk. The evidence showed

the employee had recovered from compression fractures and that in other areas where some pain existed the ailments were dormant and undisturbed until the second injury occurred. After returning to work, the lifting required, although not exceedingly heavy, appeared to "light up" and aggravate the injury to the disk. The employee's condition was treated, but still was subject to future aggravation. The treating physician testified he believed the only real cure for the disability was an operation to remove the ruptured disk, and a special fusion. The supreme court said that under these circumstances, the evidence was sufficient that the finder of fact could have concluded that the employee was too disabled to return to work, that he'd never received treatment of the injury to his disk, and that the pain would be disabling until the injury was reduced by the suggested operation.

> It is, of course, well settled that when an employee is hired, the employer takes him subject to any active or dormant health impairments incurred prior to this employment. If his condition is more than slightly aggravated, this resultant condition is considered a personal injury within the Iowa law.

Id. at 595. The supreme court held that there was substantial evidence to support the commissioner's award based on an aggravation of his undisclosed impairment, a herniated, ruptured or bulged disk that required medical and hospital aid to reduce the pain from it. "There are a host of cases throughout the country, including Iowa, where dormant disease or physical ailments have been aggravated by working conditions and compensation was allowed." Id. at 596.

The case of Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920), though aged, bears directly on this issue. There, an employee, while in the course of employment, hit his knee with a hammer. The resultant bruise grew and swelled. It was determined that the employee had gonorrhoeal arthritis, but the treating physician could not say whether the condition would have occurred on its own or whether it was caused by the injury. The disease, dried up by treatment six years previous, was awakened into activity shortly after the injury. Dead bone was

removed from the knee area leaving a depression. The supreme court admitted that the injury was slight and, but for the disease, would not have proven serious nor have resulted in prolonged disability. However, the court upheld compensation for both the injury and the subsequent surgery as "the natural consequences flowing therefrom and traceable thereto." Id. at 734. It stated that the claim was not based on the disease, but on what the bruise did to the disease. The court also noted that the Workmen's Compensation Act does not purport to deal with the consequences, save as these may fix the compensation to be paid by the employer, and there is no tenable reason for modifying the rule as to liability which obtained at common law.

Similarly, in the case at bar, the injury may have been slight, but the natural consequences flowing from the injury to Hamilton were to aggravate the osteomyelitis condition. We cannot second-guess the physicians' and patient's choice of treatment. Thus, the amputation of Hamilton's leg was caused by the work-related injury and the employer must compensate Hamilton for that extreme result. We find the commissioner's fact findings were supported by substantial evidence.

AFFIRMED.