FILED 104
NOV 24 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ROBERT E. MULLEN,

Plaintiff-Appellant,

vs.

THE BOARD OF TRUSTEES OF THE FIRE RETIREMENT SYSTEM FOR THE CITY OF DAVENPORT, IOWA,

Defendant-Appellee.

Filed November 24, 1981

1-325
2-65032

Appeal from Scott District Court - J. Hobart Darbyshire, Judge.

Plaintiff appeals from district court's decision on review affirming defendant board's refusal to grant accidental disability benefits to him asserting that the evidence does not support the board's conclusion that the disability he received was not a result of a work-related injury. AFFIRMED.

Alan R. Havercamp, Davenport, Iowa, for plaintiff-appellant.

Scott Hartsook, Assistant County Attorney, Davenport, Iowa, for defendant-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff appeals from district court's decision on review affirming defendant board's refusal to grant accidental disability benefits to him. He asserts that the evidence does not support the board's conclusion that the disability he received was not a result of a work-related injury. We affirm.

Plaintiff, Robert E. Mullen, was a 25-year veteran of the Davenport Fire Department when he was forced to retire on November 25, 1975, as a result of a physical disability. He suffered what was diagnosed, on November 3, 1974, as a subarachnoid hemorrhage to the left brain. He subsequently filed an application with the board of trustees of the fire retirement system for the City of Davenport, Iowa, asking that he be granted an accidental disability pension for a service-connected disability under the provisions of section 411.6, The Code 1975. Several proceedings were held by the board to hear evidence concerning the nature of the accident and to receive expert medical evidence regarding the causal connection between the alleged accident and the disability and substantiating a permanent disability. Thereafter, the board denied plaintiff's application for accidental benefits because no causal connection was shown between the disability and any work-related injury. Plaintiff then made application for review by way of writ of certiorari to the district court. The district court affirmed the board's decision and this appeal followed.

I. Scope of Review. Certiorari is an ordinary proceeding triable as a law action. Carstensen v. Board of Trustees of the Police Retirement System, 253 N.W.2d 560, 561 (Iowa 1977). As such, our review is for correction of errors only, not de novo. Iowa R. App. P. 4.

II. Substantial Evidence. The burden of establishing illegality rests upon an asserting party. Carstensen, 253 N.W.2d at 562. The illegality asserted by the plaintiff in the instant case is that the decision of the board is unsupported by competent and substantial evidence. The principles governing this determination are well-known. Evidence is substantial if a reasonable person would find it adequate for reaching a decision. City of Davenport v. PERB, 264 N.W.2d 307, 311 (Iowa 1978). The fact that a different or opposite result may have been fully justified by the record is of no importance. Carstensen, 253 N.W.2d at 562. The question is not whether there is sufficient evidence to warrant a decision the board did not make, but rather whether there is sufficient evidence to warrant a decision it did make. Dever v. Armstrong Rubber Company, 170 N.W.2d 455, 464 (Iowa 1969). We do not pass on the credibility of

the witnesses or the preponderance of the evidence. Reisner v. Board of Trustees of the Fire Retirement System, 205 N.W.2d 812, 815 (Iowa 1973). Where the evidence presents a question which would be property submitted to a jury, if trial were to a jury, we are bound by the board's findings. Staads v. Board of Trustees of the Firemen's Retirement Pension Fund, 159 N.W.2d 485, 491 (Iowa 1968). This is true even though this court might arrive at a different conclusion from the evidence. Id. With these principles in mind, we turn to our analysis of the instant case.

III. Causal Connection.[1] The evidence in this case is conflicting, although there is no dispute that plaintiff is permanently disabled as a result of the hemorrhage. In his testimony, plaintiff related to that board that on October 21, 1974, some three weeks before he suffered the subarachnoid hemorrhage, he was struck in the back left side of his head by a swinging house coupling while in the process of hanging wet hoses in the drying tower at the fire station. He related that the blow caused him immediate pain in his head, which continued for a period of approximately one and one-half to two hours and that, after completing the task of hanging the wet hoses, he reported the injury to his shift lieutenant. He thought nothing further of the occurrence until after suffering the hemorrhage to the brain on November 3, 1974. After being released from the hospital, he went to the fire station and asked the shift lieutenant if his injury had been recorded and was advised by the lieutenant that the lieutenant did not remember doing so. Plaintiff then went immediately to the chief of the fire department and reported the injury.

A May 20, 1975, medical report made by plaintiff's family physician, Dr. Merle J. Brown, stated: "the subarachnoid hemorrhage was the sequential end result of the trauma to the left occiput. It is believed the the injury set the stage for the devastating cerebral hemorrhage." A medical report prepared by Dr. Brown, dated August 7, 1975, stated, after relating the history of the injury as related to the physician by the appellant, that "within a reasonable degree of medical certainty, the injury received by Mr. Mullin on October 21, 1974, while on the job as a fireman, caused the

---

[1] We note that the district court indicated in its findings that plaintiff failed to establish that an injury occurred on October 21, 1974. Our review of the board's determination in this matter, however, reveals an entirely unclear record of the boards resolution of that specific issue. Inasmuch as the board's minutes only stated that the plaintiff's application was "unanimously denied as no causal connection was shown[,]" we resolve this case under the assumption that the injury occurred. It, therefore, is our task to determine if the board's determination that "no causal connection was shown" is supported by substantial evidence.

subarachnoid hemorrhage on November 3, 1974." In a medical report prepared by Dr. Byron W. Roveen, the neurosurgeon who cared for the plaintiff after his injury, Dr. Roveen indicated that "it is medically possible that this blow to the head could have been a factor in the subsequent rupture of the cerebral anneurysm which occurred on the morning of November 3, 1974." However, the pension board physician, in a medical report submitted to the board after an examination of plaintiff, stated that he was not "capable of determining the work-related component of this particular incident." According to the minutes of the meeting of the board, the medical reports from the pension board's physician were discussed and it was noted that the board was unable to give an answer to the "job-related questions." The board also discussed the earlier medical report by plaintiff's family physician which referred to an "acute and unusual history of symptoms."

Appellant's allegations that the trauma occurred in a service-connected accident on October 21, 1974, was contradicted by testimony of fire department officials that no report was ever recorded on the injury and that the fire department has always required a written statement to be prepared designating the time of, place of, and witnesses to any injury occurring in the line of duty. The board also learned that plaintiff did not discuss the incident with his wife on October 21, 1974, although he later alleged that he suffered cerebral pain for nearly two hours as a result of the blow.

Based on this evidence, we conclude that reasonable persons may well disagree on whether the evidence supports plaintiff's contention that an injury which occurred at work on October 21, 1974, caused the cerebral hemorrhage on November 3, 1974. It is clear, however, that this court cannot substitute its judgment for the board by entering a different or amended decree or order. Since there is evidence substantiating either determination a factfinder might have reached, there is substantial evidence to support the finding that the board did reach. We thus affirm the decision of the board and the district court.

AFFIRMED.

Oxberger, C.J., and Snell, J., dissent.

OXBERGER, C.J., (dissenting).

I dissent.

The majority would deny appellant disability benefits because its own pension board physician stated he was not "capable of determining the work-related component of this particular incident." Such evidence is not affirmative in nature, and hardly qualifies as "substantial evidence" to support the denial of appellant's claim. I believe the evidence is overwhelming that the cerebral hemorrhage was caused by the injury of October 21, 1974. First, the great probability that a cerebral hemorrhage is induced by trauma cannot be ignored. Second, the fact that appellant sustained a blow to his head while at work shortly before suffering the hemorrhage presents the unavoidable conclusion that his disability was caused by the work-related incident. The board's finding should be reversed, and appellant should be granted disability benefits.

Snell, J., joins in this dissent.