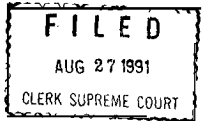


IN THE COURT OF APPEALS OF IOWA

No. 1-73 / 90-987



RODNEY ALEXANDER,

Appellant,

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vs

GREAT PLAINS BAG CORPORATION,

Appellee.

Appeal from the Iowa District Court for Polk County,
Robert A. Hutchinson, Judge.

Workmen's compensation proceeding in which petitioner
appeals district court's judgment sustaining a decision of
the deputy industrial commissioner which had denied
benefits. **AFFIRMED.**

W Michael Murray of Murray, Davoren & Jenkins, Des
Moines, for appellant.

Harry W. Dahl, Des Moines, for appellee.

Considered by Oxberger, C.J., and Donielson and Hayden,

JJ

HAYDEN, J.

Robert Alexander was employed by Great Plains Bag Corporation on the loading dock. His duties included cleaning the dock, driving a forklift, and hand loading bags. On June 15, 1984, Robert spent several hours manually loading materials weighing approximately fifty pounds each onto a truck, taking time off for lunch. The temperature was between sixty-three and sixty-nine degrees. During his afternoon break, Robert suddenly collapsed. He was taken to a hospital where he died. The medical examiner found the cause of death to be atherosclerosis. Robert had a preexisting heart condition and had undergone coronary bypass surgery in 1976 and 1981.

Petitioner Rodney Alexander, the adult son of Robert, brought this action for workmen's compensation benefits. Rodney is mentally incapacitated and was dependent upon Robert.

The deputy industrial commissioner denied the request for benefits, concluding Robert's death was not caused or induced by his employment activities. The deputy also determined Robert did not exert himself on the day of his death more than other members of the public in general, or more than was usual in Robert's employment and nonemployment life. The industrial commissioner affirmed the denial of benefits. On review, the district court affirmed.

On appeal, Rodney contends Robert's death was caused by his work activities which aggravated his preexisting heart condition. He argues Robert's exertions were greater than the normal activities of an average person and greater than Robert's own normal work and nonwork activities. Rodney also claims the deputy's decision is not supported by substantial evidence and it is unreasonable, arbitrary, and capricious.

The scope of review in cases arising out of the Iowa Administrative Procedures Act is limited to the corrections of errors at law. Foods, Inc. v. Iowa Civil Rights Comm'n, 318 N.W.2d 162, 165 (Iowa 1982). A district court decision rendered in an appellate capacity is reviewed to determine whether the district court correctly applied the law. Id. Iowa Code section 17A.19(8)(f) provides in a contested case the court shall grant relief from an agency decision which is unsupported by substantial evidence when the record is viewed as a whole. Eaton v. Iowa Dept. of Job Service, 376 N.W.2d 915, 916-17 (Iowa App. 1985). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Id. at 917. The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Henry v. Iowa Dept. of Job Service, 391 N.W.2d 731, 734 (Iowa App. 1986). The fact that inconsistent conclusions can be drawn from the evidence does not mean one of the conclusions is unsupported by substantial evidence. Id.

To recover, petitioner must prove by a preponderance of the evidence Robert's injury, in this case the resulting death; both arose out of and occurred in the course of his employment. McDowell v. Town of Clarksville, 241 N.W.2d 904 (Iowa 1976). The deputy concluded the evidence established Robert's death occurred in the course of his employment but failed to establish his death arose out of his employment. Because there is substantial evidence in the record to support this finding, we affirm.

The test to determine whether an employee's injury arose out of his employment is based on a causal connection between the conditions under which work was performed and the resulting injury. Briar Cliff College v. Campolo, 360 N.W.2d 91, 94 (Iowa 1984). In Iowa employees with preexisting heart conditions have been permitted to recover workmen's compensation under at least two theories of work-related causation.

Under the first theory, a compensable injury may result "when medical testimony shows an instance of unusually strenuous employment exertion, imposed upon a pre-existing diseased condition, results in a heart injury." Sondag v. Ferris Hardware, 220 N.W.2d 903, 905 (Iowa 1974). The deputy determined, and we agree, this approach to compensability was not applicable in the present case because there was no showing Robert's exertion on the day of his injury was unusually strenuous. The evidence shows it was not unusual for Robert to load bags by hand.

Another employee helped Robert perform the task. Each employee carried the bags only a few feet at a pace of approximately one bag every one and one-half minute. It was not particularly warm on the day in question. The only evidence indicating Robert significantly exerted himself was perspiration on his skin.

Medical testimony was also presented on the issue of Robert's exertion. Whether an injury or disease has a direct causal connection with the employment, or arose independently thereof, is essentially within the domain of expert testimony, and the weight to be given such an opinion is for the finder of fact. Bodish v. Fischer, Inc., 133 N.W.2d 867 (Iowa 1965). We agree with the deputy's conclusion the testimony did not support a finding of unusually strenuous employment exertion. Dr. Thomas Bennett, the state medical examiner, described Robert's cause of death as severe atherosclerosis, noting the interval between onset and death was "years." Dr. Paul From testified Robert's atherosclerosis was not a work-related condition. He also testified it was impossible to affirmatively answer whether Robert's work activities directly led to his death. According to Dr. From, death due to atherosclerosis is usually considered fortuitous and not the result of a specific event. Although in Dr. Kothari's opinion Robert suffered a work-related myocardial infarction, the doctor's opinion was not corroborated by the autopsy report or any other evidence in

the record. In addition, the deputy was not compelled to accept the opinion of any testifying medical expert. Musselman v. Central Telephone Co., 154 N.W.2d 128, 132 (Iowa 1967). This court is required to give deference to the deputy's acceptance or rejection of expert opinion testimony, and this deference is even greater when the opinion rests on medical expertise. Sondag, 220 N.W.2d at 907. We find there is ample evidence in the record to support the deputy's conclusion. This test for compensability was not applicable because the evidence shows Robert's exertions on the day of his injury were not unusually strenuous as compared to his normal employment exertions.

The second test for compensability in heart cases is whether the employment exertion is "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." Sondag, 220 N.W.2d at 905. In the present case, the district court determined the petitioner failed to present evidence on the question of whether the employment exertions of the decedent were greater than the normal nonemployment exertions of the decedent or any other person. Rodney claims on appeal this is an erroneous application of the test and he should not be required to present evidence of the normal nonemployment activities of Robert or other persons.

It is uncontroverted, however, the petitioner has the burden of proving causation. Sondag, 220 N.W.2d at 903. Therefore, where the test for causation is whether the decedent's exertion is greater than normal nonemployment exertion, it was Rodney's burden to present evidence from which the finder of fact could make an informed comparison. He failed to do this. Contrary to Rodney's assertion, the district court did not misapply the law.

AFFIRMED.