IN THE COURT OF APPEALS OF IOWA

No. 1999-294 (9-524) / 99-86
Filed January 12, 2000

FILE
JAN 12 2000
CLERK SUPREME COURT

H&W MOTOR EXPRESS,
Appellant,

vs.

DALE FARLEY,
Appellee.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge.

H&W Motor Express appeals the district court's ruling on judicial review which affirmed the industrial commissioner's award of workers' compensation benefits to Dale Farley. **AFFIRMED.**

Stephen W. Spencer and Joseph M. Barron of Peddicord, Wharton, Thune & Spencer, P.C., Des Moines, for appellant.

Matthew J. Petrzelka of Simmons, Perrine, Albright & Elwood, P.L.C., Cedar Rapids, for appellee.

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

VOGEL, J.

H&W Motor Express appeals the district court's ruling on judicial review which affirmed the industrial commissioner's award of workers' compensation benefits to Dale Farley. We affirm.

Background facts. Dale Farley began working as a driver for H&W Motor Express in 1968. Throughout his employment, Farley has received treatment for various back and shoulder problems which have been attributed to lifting, loading, unloading, changing gears, and steering a heavy steering wheel. Farley has undergone several surgeries over the years and his doctors have, at times, recommended various work restrictions to avoid further injury. On January 9, 1995, Farley transported some tires using a non-power steering truck and helped pull some tires off the truck. The next day, he went to Dr. Ray Miller complaining of pain in his left shoulder. Dr. Miller opined that Farley was suffering from rotator cuff tendinitis with myofascial symptoms. He recommended that Farley not do any lifting, pushing, pulling or reaching of the shoulder. Farley returned to full-time work on January 13th and continued to work until January 27th. After that date, Farley claimed he could not bear the pain any longer and has not returned to work since.

In April of 1995, Farley filed petitions with the industrial commissioner alleging that he sustained work-related injuries on January 9, 1995, and January 27, 1995. A deputy industrial commissioner awarded no benefits for the alleged January

9th injury,[1] but awarded healing period benefits for the January 27th injury from January 27, 1995, until October 1, 1996. The deputy further found Farley had suffered a twenty percent industrial disability and awarded one hundred weeks of permanent partial disability benefits. On appeal, the industrial commissioner affirmed and adopted the deputy's decision except for declining to award disputed medical expenses amounting to $92.00. The district court affirmed the industrial commissioner's ruling on judicial review and H&W now appeals.

Scope of review. We review district court decisions regarding the validity of agency actions for correction of errors at law. *U.S. West Communications, Inc. v. Overholser*, 566 N.W.2d 873, 875 (Iowa 1997) (citations omitted). In determining whether the law has been correctly applied, we give weight to the commissioner's interpretation of the relevant statutory provisions, but are not bound by it. *Second Injury Fund v. Klebs*, 539 N.W.2d 178, 180 (Iowa 1995). We are bound by the commissioner's factual findings if they are supported by substantial evidence in the record. *Id.* The possibility of drawing different conclusions from the same evidence does not mean that an agency's decision lacks substantial support. *See Schreckengast v. Hammermills, Inc.*, 369 N.W.2d 809, 811 (Iowa 1985). Evidence is substantial if a reasonable mind would accept it as adequate to reach a conclusion. *Dunlavey v. Economy Fire and Cas. Co.*, 526 N.W.2d 845, 849 (Iowa 1995).

---

[1] The record revealed that Farley told his general practitioner that he had wakened on the morning of January 9th with his neck and shoulder "locked stiff."

I. Applicable code. H&W first argues that the commissioner failed to find that January 27, 1995, was the "first day of disability after the injury," as required by Iowa Code section 85.34(1). However, H&W appears to be citing to the 1999 Iowa Code rather than the applicable 1995 Code. *Compare* Iowa Code § 85.34(1) (1999) (providing that benefits should begin "on the first day of disability after the injury"), *with*Iowa Code § 85.34(1) (1995) (providing that benefits should begin "on the date of injury"). We conclude the commissioner did not err in failing to make such a finding.

II. Healing period benefits. H&W next contends there was insufficient evidence to support that Farley was temporarily totally disabled throughout the specified healing period and that his injury was causally connected to his employment.

A claimant has the burden of proving by a preponderance of the evidence that the disability upon which he bases his claim is causally related to injuries arising out of and in the course of his employment. *See Sanchez v. Blue Bird Midwest*, 554 N.W.2d 283, 285 (Iowa App. 1996); *Lithcote Co. v. Ballenger*, 471 N.W.2d 64, 66 (Iowa App. 1991). Where the disability developed over a period of time from repetitive trauma in the workplace, we recognize and provide compensation for this cumulative or gradual injury. *See George A. Hormel & Co. v. Jordan*, 569 N.W.2d 148, 151 (Iowa 1997) (citing *McKeever Custom Cabinets v. Smith*, 379 N.W.2d 368, 372-74 (Iowa 1985)). In those cases, the date of injury is appropriately fixed at "the date on which both the fact of the injury and the causal relationship of the injury to

the claimant's employment would have become plainly apparent to a reasonable person." *Oscar Meyer Foods Corp. v. Tasler*, 483 N.W.2d 824, 829 (Iowa 1997). This formula for determining the time of injury does not require a significant causal occurrence on the established date of injury. *See Ellingson v. Fleetguard, Inc.*, 599 N.W.2d 440, 444 (Iowa 1999) (citation omitted). Compensation is provided for time during which the employee is unable to work because of pain or physical inability. *See McKeever*, 379 N.W.2d at 374.

The question of causal connection has essentially been within the domain of expert testimony. *See Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998) (citation omitted). However, the commissioner must consider any expert testimony together with all other evidence introduced bearing on the causal connection between the injury and the disability. *See id.*

After reviewing the record, we conclude there is sufficient evidence to support the commissioner's determination that Farley suffered a cumulative injury casually connected to his work which entitled him to healing period benefits from January 27, 1995 until October 1, 1996.[2] The medical records support that Farley endured years of hard physical work and repetitive trauma to his shoulder. Farley finally ceased his employment on January 27th because, in his words, he could no longer "bear up under the pain." He visited his doctor on January 28th and thereafter had a series of

---

[2] Following his surgery, Farley's doctor indicated that an improvement rating would be appropriate on October 1, 1996. This date was apparently stipulated to by the parties as the date Farley reached maximum medical improvement.

referrals, tests and treatments on his shoulder over the next several months. H&W emphasizes that Farley ceased working on his own initiative rather than on a doctor's orders. The commissioner clearly found Farley's testimony on this point to be credible. Moreover, Farley's orthopaedist, Dr. MacMenamin, had suggested that Farley not do any lifting, pushing, pulling or shoulder reaching at his visit on January 10, 1995. Dr. MacMenamin also imposed a thirty-pound lifting restriction on April 25, 1995. The commissioner's findings were further supported by a progress note of Dr. MacMenamin's in September of 1995 which stated that Farley "continue[d] to be unable to work." H&W contends this notation does not support that Farley's shoulder injury was the cause of his inability to work because it was made during a visit scheduled for lumbar pain only. However, given that Dr. MacMenamin had treated Farley since 1985, we find sufficient evidence to support that the comment referred to Farley's persistent shoulder problems.

H&W alternatively argues that Farley should not have been entitled to healing period benefits until at least after his arthroscopic surgery in October of 1996. However, Farley's records support that his doctors did not immediately advise surgery, and recommended alternative treatments. If these alternative treatments had healed Farley's injury to the extent that he could have returned to work, the healing period would have ended at that time. H&W offered no evidence to support that Farley unnecessarily delayed surgery.

III. Industrial disability. Finally, H&W appears to challenge the commissioner's award of industrial disability. H&W reasserts that there is insufficient evidence to show that Farley's current disability is casually connected to his work injury. We see no need to revisit the supporting evidence in light of our previous finding. The commissioner considers many factors and must draw upon prior experience and specified knowledge to make a finding of industrial disability. *See Second Injury Fund of Iowa v. Shank*, 516 N.W.2d 808, 813 (Iowa 1994); *Lithcote*, 471 N.W.2d at 68. We conclude there is sufficient evidence to support the industrial disability award.

Having considered all issues properly before us on appeal, we hereby affirm the district court's ruling on judicial review.

AFFIRMED.