IN THE COURT OF APPEALS OF IOWA

No. 9-189 / 98-0935
Filed July 23, 1999

KAY R. GAARD,
Petitioner-Appellee,

vs.

BURROUGHS AG. SERVICES, INC., d/b/a S & J AG. SERVICES, and FARMLAND INSURANCE COMPANIES,
Respondents,

and

SECOND INJURY FUND OF IOWA,
Respondent-Appellant.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge.

The Second Injury Fund of Iowa appeals the district court's ruling on judicial review reversing the decision of the Iowa Industrial Commissioner. **AFFIRMED.**

Thomas J. Miller, Attorney General, and Julie Burger, Assistant Attorney General, for appellant.

Donald G. Beattie and R. Bradley Skinner of Skinner & Beattie, P.C., Altoona, for appellee.

Considered by Huitink, P.J., and Streit and Mahan, JJ.

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HUITINK, P.J.

The Second Injury Fund of Iowa appeals the district court's decision reversing the Industrial Commissioner's determination of Gaard's eligibility for Fund benefits. We find the Commissioner's decision was in error and affirm the district court.

I. Background Facts and Procedure.

Kay Gaard suffered a workplace injury on April 21, 1976, resulting in the complete amputation of his right index finger and a partial amputation of his right thumb. On October 14, 1992, while working for Burroughs Ag. Services, Inc., Gaard suffered another workplace injury when he fell from the roof of a railroad car and injured his left heel. Gaard was eventually discharged because he was unable to work forty hours a week.

Gaard filed a petition against the Second Injury Fund ("Fund") on October 14, 1994, seeking benefits for the combined injuries to his right hand and left heel. A deputy industrial commissioner der ed Gaard benefits under the Fund, finding Gaard did not suffer an independent disability of the hand as a result of the 1976 injury. This decision was affirmed by the Industrial Commissioner, after which Gaard sought judicial review in the district court.

In reversing the Industrial Commissioner, the district court cited *Stumpff v. Second Injury Fund of Iowa,* 543 N.W.2d 904, 907 (Iowa 1996), for the proposition "the Industrial Commissioner has correctly allowed recovery for a hand injury when the site of the injury is at the point where the bones of the finger connect to the bones

of the hand (phalangeal-metacarpal joint), and also has correctly denied benefits where only the finger was injured." The district court agreed with the Industrial Commissioner that the injury to the right thumb was not an injury to the right hand, but concluded the injury to the right finger was an injury to the hand because the medical records reflected the finger was amputated at the metacarpal-phalangeal joint. Accordingly, the court found Gaard was qualified for benefits from the Fund and reversed the decision of the Industrial Commissioner.

On appeal, the Fund argues the surgery to the metacarpal-phalangeal joint was merely to close the skin over the area, and there is no evidence of any loss to the joint itself. It maintains the impact of the injury was limited only to the loss of his finger.

II. Scope of Review.

Iowa's Administrative Procedure Act, Iowa Code chapter 17A, governs our review. *See* Iowa Code § 86.26 (1991). We, like the district court, review contested case proceedings for errors at law. Although we give limited deference to the Industrial Commissioner's interpretation of the statutes governing the agency, the proper interpretation of the statutes is a question of law for the court. *Stumpff v. Second Injury Fund*, 543 N.W.2d 904, 905 (Iowa 1996). When construing workers' compensation statutes our policy is to liberally construe the statutes in favor of the worker. *Id.*

III. Character of Gaard's 1976 Injury.

In order to trigger liability under the Second Injury Fund, an employee must prove three things:

> First, that he or she has either lost, or lost the use of a hand, arm, foot, leg, or eye. Second, the employee sustained the loss, or loss of use of another such member or organ through a work-related, compensable injury. Third, there must be some permanent injury from the injuries. The prior loss does not have to be total.

Second Injury Fund v. Bergeson, 526 N.W.2d 543, 547-48 (Iowa 1995). *See also* Iowa Code § 85.64 (1991).

We conclude the district court correctly reversed the Industrial Commissioner's decision to deny benefits. Our review of the record demonstrates the 1976 amputation of Gaard's right index finger was made "at the point where the bones of the finger connect to the bones of the hand (phalangeal-metacarpal joint)." *Stumpff*, 543 N.W.2d at 907. The undisputed medical evidence[1] clearly states "[s]ince the proximal phalanx was completely destroyed and multiple bone fragments were noted, it was decided to disarticulate that index finger at the metacarpal-phalangeal joint area." The Fund's argument that the purpose of the surgery to the phalangeal-metacarpal joint was merely to close the wound of the amputation is not supported by the record. Further, the supreme court's analysis in *Stumpff* does not require that there be a loss to the metacarpal-phalangeal joint itself to qualify as an injury to the hand. The Industrial Commissioner therefore erred as a matter of law in finding Gaard's 1976 injury did not qualify as a enumerated first injury under Iowa Code section 85.64. We affirm the district court.

AFFIRMED.

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[1] We note the fund did not request an independent medical examination of Gaard's injuries.