IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

No. 0-637 / 00-0158
Filed February 28, 2001

STEPHEN M. JANIC, JR.,Claimant,
Petitioner-Appellee,

vs.

CYPRUS AMAX MINERALS COMPANY, Employer,
Respondent-Appellant.

Appeal from the Iowa District Court for Des Moines County, William L. Dowell, Judge.

The respondent appeals from the district court's ruling on judicial review reversing the workers' compensation commissioner's decision denying the petitioner's claim for industrial disability benefits. The respondent claims that there was substantial evidence supporting the commissioner's determination that the petitioner's work-related injury was not causally related to two hip surgeries and that the commissioner erred in excluding the petitioner's treating physician's report on causation for hip replacement surgery. **REVERSED.**

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

Steven E. Ort of Bell, Ort & Cornell, P.C., New London, for appellee.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

SACKETT, C.J.

The respondent-appellant employer, Cyprus Amax Minerals, Co., appeals from the district court's ruling on judicial review reversing the workers' compensation commissioner's decision which denied the petitioner-appellee, Stephen Janic's, claim for industrial disability benefits. Cyprus claims substantial evidence supported the commissioner's determination that Janic's work-related injury was not causally related to his two hip surgeries. Cyprus also claims the commissioner erred in excluding Janic's physician's report on causation for the hip replacement surgery. We reverse the district court.

Background facts: Stephen Janic worked for Cyprus Amax Minerals Co., from 1966 until August 31, 1995. At the end of his employment with the company, Janic was operations manager. On July 15, 1995, Janic injured his right hip in a fall at work. Afterwards, he experienced pain and sought medical treatment. Medical examinations revealed Janic suffered from avascular necrosis in both hips with the condition much more advanced on the right hip. In August 1995, Janic had core decompression surgery on his right hip to treat the avascular necrosis. Janic subsequently returned to work for Cyprus. On August 31, 1995, Cyprus terminated Janic's employment. He found other employment. Janic began experiencing more hip pain and ultimately had right hip replacement surgery in January 1997 because the core decompression surgery had not been successful in treating the necrotic condition. Janic's treating physician gave him a fifteen percent whole body impairment rating due to the second surgery.

Agency proceedings: Janic filed a claim for workers' compensation benefits because of his July 1995 injury. After a hearing, a deputy commissioner

entered an arbitration decision denying workers' compensation benefits. Dr. Neff, a certified orthopedic surgeon, indicated the fall did not cause the condition and was not a substantial contributing factor affecting the condition. Dr. Neff considered the fall as only causing a short term aggravation. Janic's treating physician indicated that there was no proximate cause to Janic developing symptoms other than the fall. The deputy concluded the symptoms Janic suffered from the fall led to discovery of the underlying hip condition, but the surgery performed was designed to relieve that condition rather than the symptoms he suffered from the fall. The deputy concluded:

> Janic has established that his fall brought on symptoms that brought about discovery of the necrotic condition when x-rays were taken. He has not, however, established a causal nexus between those symptoms and the subsequent treatment of his necrotic condition.

Janic appealed the decision to the workers' compensation commissioner. The commissioner affirmed the deputy's decision and adopted it as the final agency action. The commissioner did not allow Cyprus to introduce a letter from Janic's treating physician because Cyprus did not make it available to Janic until just before the hearing.

Judicial review: Janic filed a petition for judicial review challenging the commissioner's decision. The district court reversed the industrial commissioner's decision. The court determined Janic suffered an injury which arose out of his employment which accelerated and worsened his preexisting condition. The court concluded the deputy commissioner did not apply the law to the facts of this case or, in the alternative, the decision was not supported by

substantial evidence. The court remanded the case to the commissioner to make a determination as to Janic's industrial disability. Cyprus appeals.

Appellate claims: Cyprus claims the district court erred in reversing the commissioner's decision because that decision was supported by substantial evidence. Cyprus also claims the commissioner erred in excluding a letter from Janic's treating physician which discussed causation of the total hip replacement. Janic argues Cyprus failed to preserve error on the evidentiary issue.

Scope of review: Judicial review of worker compensation cases is at law. *Mortimer v. Fruehauf Corp.*, 502 N.W.2d 12, 13 (Iowa 1993). This standard of review applies to the initial review in the district court, as well as any subsequent review by the appellate courts. *Id.* It limits judicial interference with the decision of the Industrial Commissioner to the correction of errors at law. *See Dowell v. Wagler*, 509 N.W.2d 134, 136 (Iowa Ct. App.1993). Courts are required to give deference to the fact finding role of the agency and must broadly and liberally construe agency findings to uphold, not defeat, the decision. *Holmes v. Bruce Motor Freight Inc.*, 215 N.W.2d 296, 298 (Iowa 1974). It is the same respect accorded a jury verdict. *Paveglio v. Firestone Tire & Rubber Co.*, 167 N.W.2d 636, 640 (Iowa 1969).

Review at law means courts are bound by the agency findings if supported by substantial evidence in the record as a whole. *See Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 404 (Iowa 1993). A court exercising judicial review may interfere with the agency's findings only if the evidence is uncontradicted and reasonable minds could not draw different inferences. *Longford v. Kellar Excavating & Grading*, Inc., 191 N.W.2d 667, 668 (Iowa 1971). Legal error is

present under a substantial evidence analysis when the agency reaches a conclusion based on uncontroverted evidence which is contrary to the conclusion reasonable minds would reach. *Riley v. Oscar Mayer Foods Corp.*, 532 N.W.2d 489, 491 (Iowa Ct. App. 1995). If evidence is in conflict, however, the reviewing court has no room to interfere. *Kostelac v. Feldman's Inc.*, 497 N.W.2d 853, 856 (Iowa 1993).

Analysis: To prevail, Janic had to prove his work-related injury was a proximate cause of the impairment on which he based his claim for workers' compensation benefits. *Miedema v. Dial Corp.*, 551 N.W.2d 309, 311 (Iowa 1996). To be a proximate cause, the injury must be a substantial factor in bringing about the result. *Scoggins v. Wal-Mart Stores, Inc.*, 560 N.W.2d 564, 567 (Iowa 1997). The question of a causal connection is essentially within the domain of expert testimony. *Lithcote Co. v. Ballenger*, 471 N.W.2d 64, 66 (Iowa Ct. App. 1991). The agency had expert testimony from Dr. Neff and Dr. Paul before it. The trier of fact may accept or reject expert testimony and determine the weight to be given to the testimony. *Dunlavey v. Economy Fire and Cas. Co.*, 526 N.W.2d 845 853 (Iowa 1995). There is no question Janic suffered symptoms of pain from his fall. Those symptoms caused him to seek medical care, which led to the discovery of his pre-existing degenerative condition. Although Janic is not entitled to compensation for the results of a pre-existing disease, mere existence of the disease at the time of the injury is not a defense. *Rose v. John Deere Ottumwa Works*, 247 Iowa 900, 908, 76 N.W.2d 756, 761-62 (Iowa 1956). If his condition was aggravated, accelerated, worsened or 'lighted up' by the injury so it resulted in disability, Janic was entitled to recover. *Id.* at 76 N.W.2d at

762. The aggravation must be material and a direct and immediate cause of the disability to be compensable. *Yeager v. Firestone Tire & Rubber Co.*, 253 Iowa 369, 375, 112 N.W.2d 299, 302 (1961) (quoting 100 C.J.S. *Workmen's Compensation*, § 555(17)(a)). Substantial evidence in the record before the agency supports a finding the fall caused pain which led to the discovery of the underlying condition. From the evidence, the agency could conclude there was not a causal nexus between the injury at work and the treatment and resulting disability. We conclude the district court erred in substituting its judgment for that of the agency. Although substantial evidence may support the district court's decision, the question before the court and before us is whether substantial evidence supports the agency's decision. *Iowa Department of Transp. v. Van Cannon*, 459 N.W.2d 900, 904 (Iowa Ct. App. 1990). We determine it does. We therefore reverse the decision of the district court and affirm the commissioner's decision.

Cyprus asserts the commissioner erred in excluding the letter from Dr. Paul concerning causation. Because we have reversed the district court's decision, we need not address this claim.

REVERSED.