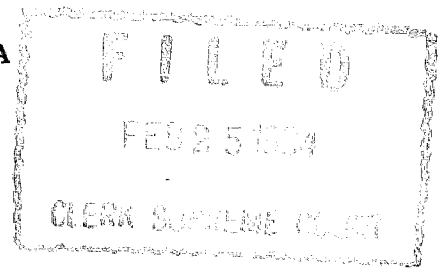
IN THE COURT OF APPEALS OF IOWA



No. 4-035 / 93-1092

WILTON CROFT,
Petitioner-Appellant,

vs.

000083

JOHN MORRELL & COMPANY,
Respondent-Appellee.

Appeal from the Iowa District Court for Emmet County, James L. McDonald, Judge.

Wilton Croft appeals the denial by the Industrial Commissioner of his claim for compensation as a result of an occupational disease. The district court affirmed the commissioner. **AFFIRMED.**

M. Anne McAtee and E.J. Kelly of Hopkins and Huebner, P.C., Des Moines, and E.W. Wilcke, Spirit Lake for appellant.

Dick H. Montgomery of Montgomery, Barry & Bovee, Spencer, for appellee.

Heard by Oxberger, C.J., and Sackett and Habhab, JJ.

000084

PER CURIAM.

Petitioner-appellant Wilton Croft, a long-time employee of respondent-appellee John Morrell & Company, claimed his asthmatic bronchitis was an occupational disease. On May 22, 1986, a deputy found his claim barred. On January 27, 1988, the Industrial Commissioner dismissed his claim as barred because he failed to give his employer notice of his occupational disease as required under Iowa Code section 85A.18. On appeal to the district court, the Industrial Commissioner was affirmed. The matter was appealed to this court, and we reversed and remanded to the Industrial Commissioner for reconsideration. Croft v. John Morrell & Co., 451 N.W.2d 501, 503 (Iowa App. 1989). The matter was returned to the Commissioner. A deputy denied benefits, the Commissioner concurred, and the district court affirmed.

Croft contends the law of the case is that he sustained an occupational disease resulting in disablement on April 26, 1985, which disease is causally related to his work at John Morrell. Croft premises his contention on the fact, in the arbitration decision filed May 22, 1986, the Deputy Industrial Commissioner found Croft had sustained an occupational disease resulting in disablement on April 26, 1985, which disease was causally related to his work at John Morrell. The deputy denied the claim finding Croft's claim was barred. The Commissioner then entered a decision concluding Croft's claim is barred because Croft failed to give his employer notice of his occupational disease as

000885

required under section 85A.18. The Commissioner's decision did not conclude, as did the deputy's, that Croft sustained an occupational disease resulting in disablement on April 26, 1985, which disease was causally related to his work at John Morrell.

This court in Croft v. John Morrell & Co., 451 N.W.2d 501, 503 (Iowa App. 1989), said, "The Industrial Commissioner adopted the Deputy Industrial Commissioner's findings of fact and conclusions of law. The Commissioner found 'Croft sustained an occupational disease resulting in disablement on April 26, 1985, which disease was causally related to his work at John Morrell.'"

A careful reading of the Industrial Commissioner's decision reveals we incorrectly found the Industrial Commissioner adopted the deputy's findings. The only finding made by the Industrial Commissioner with regard to the condition was "Croft has chronic obstructive pulmonary disease consisting of asthmatic bronchitis and central to smaller airway disorder with a history of temporary aggravation as a result of condition in his work environment."

We did not adopt the Industrial Commissioner's findings in our decision in Croft. The only issue we addressed was "Did the legislature intend to require employees to notify the employer when the first symptoms of an occupational disease occurred or did they intend that the notice was to be given when the employee became disabled from the disease." Id. at 502-03. And we remanded to the

commissioner for reconsideration in light of our holding in the opinion. Id. at 503. The only law of our prior decision was that the notice requirement of section 84A.18 had been met. Id. We find no merit to Croft's contention the law of the case is that he suffered an occupational disease resulting in disablement on April 26, 1985.

We therefore address Croft's next argument that we should find as a matter of law that Croft has suffered an industrial disability as a result of the occupational disease which resulted in his disability on April 26, 1985, and which he claims was causally related to his work at John Morrell.

Croft's action was properly brought under the provisions of Iowa Code section 17A.19 (1991). Our scope of review in cases arising out of the Iowa Administrative Procedure Act is to correct errors of law made by the district court. Foods, Inc. v. Iowa Civil Rights Comm'n, 318 N.W.2d 162, 164-65 (Iowa 1982). The review function of the district court under section 17A.19 is to correct errors of law which are specified in section 17A.19. The issue for our determination is whether the district court correctly applied the law. Id. at 165. In order to make that determination, we apply the standards of section 17A.19(8) to the agency action to determine whether this court's conclusions are the same as those of the district court. Jackson County Pub. Hosp. v. Public Employment Relations Bd., 280 N.W.2d 426, 429-30 (Iowa 1979).

The finding only was that Croft suffered a temporary disability but suffered no industrial disability as a result of the temporary aggravation.

There are facts in the record that at the time of the alleged disability Croft chose to retire despite being offered a similar job in another plant. John Morrell had no knowledge of the alleged problem until Croft retired. Croft never lost a day of work because of the alleged disability nor did he inform John Morrell of the alleged problem until after he retired. There is substantial medical evidence his problem was nothing more than a temporary aggravation. The only doctor who testified it was not was Croft's hired expert who did not know Croft's job at the plant or his previous medical history. The doctor did not perform a physical examination and was not aware Croft had been hospitalized in 1980, suffering from pneumonia. The doctor spent a very brief period of time with Croft.

There is substantial evidence to support the decision of the Commissioner.

AFFIRMED.