

IN THE COURT OF APPEALS OF IOWA

No. 6-409 / 95-1600

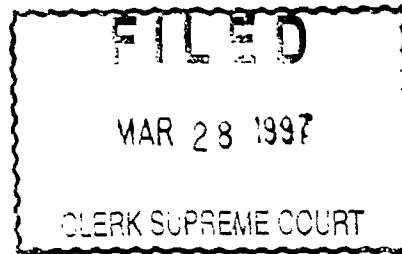
IBP, INC.,

Appellant,

vs.

ROBERT J. LAUGHLIN,

Appellee.



Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

IBP, Inc., the employer, appeals the district court's ruling on judicial review which affirmed the industrial commissioner's decision awarding Robert Laughlin workers' compensation benefits for an injury to his body as a whole. **AFFIRMED.**

Paul T. Kirchner, Dakota City, Nebraska, for appellant.

Jay P. Roberts of Beecher, Rathert, Roberts, Field, Walker & Morris, P.C.,
Waterloo, for appellee.

Considered by Habhab, C.J., and Huitink and Streit, JJ.

HABHAB, C.J.

This is an appeal by IBP, Inc., claiming the district court improperly affirmed the award of workers' compensation benefits to Robert Laughlin. IBP contends the district court's finding, that the notice was adequate with respect to his back and leg injuries, is not supported by substantial evidence. We affirm.

I. Background Facts. Laughlin was in excellent physical condition before he went to work for IBP in June 1990. While employed by IBP, Laughlin "pulled casings" which required that he lift a portion of a hog carcass with his left hand while pulling the "guts" from the carcass with his right hand. The job was strenuous and repetitive. His hands swelled and his fingernails fell off. His repeated physical complaints resulted in first aid treatment, but no referral to a physician. Laughlin quit working for IBP in December 1990 because of chronic pain.

Laughlin believed his condition would improve with time if he ended his repetitive work at IBP. However, his condition did not improve and he sought medical treatment when he lost all feeling in his hands. He went to Michael Deters, a specialist in internal medicine, in December 1991. Deters referred Laughlin to J.D. Kothari, who performed decompression and nerve transposition surgery on both of Laughlin's elbows in April and September 1992.

In January 1993 Laughlin again went to Deters with complaints about his right foot and back. There is no written record of Laughlin complaining about his back or

lower extremities prior to this time. However, Laughlin testified he did make such complaints to IBP personnel and to his physicians. Laughlin and another former IBP employee testified the job of pulling casings placed a great deal of stress on the back and legs. Laughlin testified he complained to his foreman about pain in his hands, arms, legs, and back. He further testified he asked for and was denied a back brace. Deters testified he did not remember complaints about Laughlin's back and legs prior to 1993, but an explanation for that might be that Laughlin's primary complaint concerned his hands. Deters was of the opinion Laughlin's foot and back problems were related to his repetitive work at IBP.

The industrial commissioner wrote:

Based upon the views of Dr. Deters and the credible testimony of claimant and his witnesses at hearing, it is found that claimant's injury on September 1, 1990, extends into the body as a whole by virtue of the eventual involvement of his back and right leg. All of these problems have now developed into chronic pain condition which leaves claimant with a permanent partial impairment to his body as a whole. Dr. Deters primarily blames the lack of prompt and immediate care of claimant's physical problems at IBP as the cause of claimant's progressively worsening condition since 1990.

....
[C]laimant suffered a total or 100 percent loss of his earning capacity as a result of the work injury.

....
Defendant urges on appeal that claimant failed to comply with Iowa Code section 85.23, in that claimant did not give notice of his back and leg injuries within ninety days. It is held that the claimant's back and leg complaints do not constitute separate injuries, and therefore did not require separate notice to the employer. Rather, these complaints were worsening symptoms of his cumulative injury "pulling guts" for defendant employer. Claimant has suffered one cumulative injury, and has given adequate notice under Iowa Code section 85.23.

The district court affirmed on judicial review, concluding substantial evidence supports the finding that Laughlin's back and leg injuries were not separate injuries but rather extensions of the cumulative injury sustained while Laughlin worked at IBP. IBP now appeals.

II. Standard of Review. This appeal results from a contested case state agency proceeding. *See* Iowa Code § 17A.2(2) (1997). In "contested case" proceedings, the agency, rather than the district court, is empowered to hear evidence and make findings of fact. *Id.* § 17A.19(7). The district court, when exercising the power of judicial review over agency action, is functioning in an appellate capacity to correct errors at law. *Id.* § 17A.19(8); *Kohorst v. Iowa State Commerce Comm'n*, 348 N.W.2d 619, 621 (Iowa 1984). Our review of the district court's decision is limited to correction of errors at law. *Roberts v. Iowa Dep't of Job Serv.*, 356 N.W.2d 218, 221 (Iowa 1984). We, like the district court, are bound by the agency's fact findings if those findings are supported by substantial evidence. Iowa Code § 17A.19(8)(f). Evidence is substantial if a reasonable person would find it adequate for reaching a decision. *Peoples Memorial Hosp. v. Iowa Civil Rights Comm'n*, 322 N.W.2d 87, 91 (Iowa 1982). When we review the district court's ruling, we apply the standards of section 17A.19(8) to determine whether our conclusions are the same as those of the district court. *Venenga v. John Deere Component Works*, 498 N.W.2d 422, 424 (Iowa App. 1993). If the conclusions are the same, we affirm; otherwise we reverse. *Id.*

III. Notice. Iowa Code section 85.23 provides:

Unless the employer or the employer's representative shall have actual knowledge of the occurrence of an injury received within ninety days from the date of the occurrence of the injury, or unless the employee or someone on the employee's behalf or a dependent or someone on the dependent's behalf shall give notice thereof to the employer within ninety days from the date of the occurrence of the injury, no compensation shall be allowed.

Failure to give adequate notice is an affirmative defense and the burden of proof rests upon the employer. *DeLong v. Iowa State Highway Comm'n*, 229 Iowa 700, 703, 295 N.W. 91, 92 (1940). IBP complains it had timely notice only of Laughlin's injuries to his upper extremities and Laughlin is, therefore, not entitled to compensation for any other type of injury. We conclude the industrial commissioner appropriately rejected IBP's claim.

The workers' compensation act is to be liberally construed in the employee's favor. *Teel v. McCord*, 394 N.W.2d 405, 406 (Iowa 1986). The purpose of the notice provision "is to alert the employer to the possibility of a claim so that an investigation of the facts can be made while the information is fresh." *Robinson v. Department of Transp.*, 296 N.W.2d 809, 811 (Iowa 1980). No particular form of notice is required so long as the notice "is sufficient to advise the employer that a certain employee, by name, received an injury in the course of employment on or about a specified time, at or near a certain place." Iowa Code § 85.24. The precise nature of a claimant's injury is not required. *Alm v. Morris Barick Cattle Co.*, 240 Iowa 1174, 1177, 38 N.W.2d 161, 163 (1949); accord *Gano Elec. Contracting v. Industrial Comm'n*, 631

N.E.2d 724, 727 (Ill. App. 1994) (notice is to enable an employer to investigate; liberal construction on issue of notice; “if some notice has been given, although inaccurate or defective, then the employer must show that he has been unduly prejudiced); *see also Nabisco Biscuit Co. v. Slimp*, 660 So.2d 991, 993 (Ala. Civ. App. 1993) (if employer has some information connecting work activity with an injury, it has reasonable notice to investigate further); *U.S. Fire Ins. Co. v. Ramos*, 863 S.W.2d 534, 539 (Tex. App. 1993) (liberality to be indulged in determining the sufficiency and scope of notice of work-related injury); *Texas Employers’ Ins. Assoc. v. Mathes*, 771 S.W.2d 225, 228 (Tex. App. 1989) (same) (at 230, noting the difficulty of notice issues in “repetitious trauma cases”).

Here, the industrial commissioner found IBP received notice that Laughlin suffered a cumulative injury in the course of his employment around September 1990. This is a finding of fact which must be affirmed if supported by substantial evidence. *See Dillinger v. City of Sioux City*, 368 N.W.2d 176, 181 (Iowa 1985) (commissioner’s finding of no actual knowledge by employer unsupported by substantial evidence); *accord Gano Elec. Contracting*, 631 N.E.2d at 728; *Newberg v. Sleets*, 899 S.W.2d 495, 498 (Ky. App. 1995) (finding of timeliness of notice affirmed since supported by substantial evidence).

Like the district court, we conclude substantial evidence supports the finding that Laughlin’s back and leg injuries were not separate injuries but rather extensions of the cumulative injury sustained while Laughlin worked at IBP. There is thus

substantial evidence in the record to support the commissioner's finding that notice was adequate. We therefore affirm the commissioner's award of benefits.

AFFIRMED.