IN THE COURT OF APPEALS OF IOWA

No. 3-383 / 92-1910

FILED
MAY 26 1994
CLERK SUPREME COURT

ROBERT L. McCLELLON,

Petitioner-Appellant,

vs.

IOWA SOUTHERN UTILITIES, Employer,

Respondent-Appellee.

Appeal from the Iowa District Court for Des Moines County, John C. Miller, Judge.

Petitioner appeals a ruling of the district court affirming the Industrial Commissioner's decision denying him industrial disability benefits. **AFFIRMED.**

Robert J. Todd of Robert J. Todd Law Offices, Burlington, for appellant.

Ann M. VerHeul of Shearer, Templer, Pingel & Kaplan, P.C., West Des Moines, for appellant.

Considered by Sackett, P.J., and Cady and Huitink, JJ.

SACKETT, P.J.

Petitioner-appellant Robert L. McClellon appeals following a district court's affirmance of an Industrial Commissioner's decision denying him industrial disability benefits. McClellon contends the district court failed to apply the correct evidentiary standard; failed to find the decision of the Commissioner was contrary to the law; failed to find the decision of the Industrial Commissioner was not supported by substantial evidence; and failed to find sufficient words of causality were used by his physician. We affirm.

McClellon has worked for respondent-appellee Iowa Southern Utilities since 1972. McClellon suffers an inflammatory arthritic disease called ankylosing spondylitis that results in a complete fusion of the victim's spine into an immovable bone. McClellon's disease was diagnosed in 1987, but dates back to 1972. Its cause is not known but there is no evidence it is caused by his employment. On August 11, 1987, McClellon fell while working. He has not worked since. McClellon sought workers' compensation benefits contending the fall aggravated his previous condition.

A hearing was held before a Deputy Industrial Commissioner who found the fall was a temporary aggravation but McClellon did not prove he suffered a fracture in the fall or the fall accelerated his disease. The Deputy concluded McClellon was unable to work because his disease

was progressing. The Deputy awarded benefits for the temporary disability from August 8, 1988 to June 13, 1990. The Industrial Commissioner affirmed. This appeal follows.

Where there is a preexisting condition, an employee is not entitled to recover for the results of the preexisting injury or disease but can recover only for an aggravation of it which results in a disability. Olson v. Goodyear Serv. Stores, 255 Iowa 1112, 1119, 125 N.W.2d 251, 256 (1963). The Commissioner found McClellon's fall temporarily aggravated his disability. The testimony established McClellon has a debilitating and progressive disease and the permanent impairment McClellon suffers was an inevitable result of the disease. The focal issue is whether the fall and the aggravation it caused accelerated the progress of the disease and prematurely caused McClellon's current level of impairment.

The evidence was the only way the fall could have accelerated the course of McClellon's disease was if McClellon suffered a cervical fracture when he fell. There was testimony it is common medical practice to assume an ankylosing spondylitis patient suffers a cervical fracture when a fall occurs. The doctor testifying could only speculate McClellon's fall may have caused a cervical fracture. No tests confirmed any fracture occurred. The Commissioner, relying on this evidence, found McClellon had failed to prove a cervical fracture occurred and that

McClellon's disability was not a result of the August 11, 1988 fall.

McClellon first claims the Commissioner drew an improper inference from the evidence because the doctor paid by the employer did not perform proper medical tests. The burden is on McClellon to prove his disability rose from his employment. Sparks v. Consolidated Ind. Coal Co., 195 Iowa 334, 337, 190 N.W. 593, 594 (1922).

The doctor was asked, and answered:

> Q. Is there any way we can quantify now the aggravation to Bob's condition that the fall caused and the meter reading aggravation caused and the jackhammer use caused? A. Not unless you could prove by MRI at this time that there was evidence of an unstable fracture. I think even the finding of a healed fracture at this time would not prove that that fracture had occurred at that time. I mean I think, you know, it's too far away from the event.

The doctor also testified she was unable to state whether McClellon's alleged fall was a substantial aggravation of his preexisting disease. The doctor testified she was unable to express an opinion as to whether McClellon's continuing decline is related to the alleged fall or to the underlying disease process. She stated it is very difficult to document what is actually occurring in terms of a possibility of an undiagnosed cervical fracture versus the underlying disease process to account for McClellon's present disability.

McClellon contends there should be a legal inference there was a stress fracture and permanent injury. He

supports his position with Hamer v. Iowa Civil Rights Comm'n, 472 N.W.2d 259, 262 (Iowa 1991). We disagree.

McClellon next contends there is not substantial evidence to support the agency decision.

The standard for review in this case is limited to an inquiry into whether there is substantial evidence in the record as a whole to support the agency's decision. Chauffeurs, Teamsters and Helpers, Local Union No. 238 v. Iowa Civil Rights Comm'n, 394 N.W.2d 375 (Iowa 1986). In making a determination as to whether an agency decision was supported by substantial evidence, the reviewing court will apply the law and determine whether its conclusions are the same as the lower court's. Ray v. Iowa Dep't of Job Serv., 398 N.W.2d 191 (Iowa App. 1986). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Eaton v. Iowa Dep't of Job Serv., 376 N.W.2d 915, 917 (Iowa App. 1985). The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986). The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. Id.

There is no medical evidence documenting the fact there was a fracture or McClellon suffered a fracture when he fell.

We have considered all other issues raised by McClellon and find them to be without merit.

AFFIRMED.