

IN THE COURT OF APPEALS OF IOWA

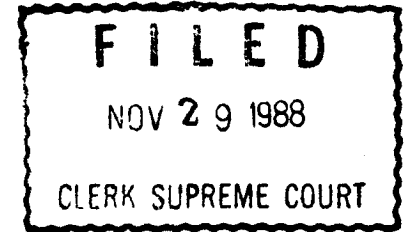
MITCHELL VEEDER,)

Plaintiff-Appellant,)

vs.)

COMMERCIAL CONTRACTING and)
JOHN DEERE INSURANCE,)

Defendants-Appellees.



8-126
87-535

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Appeal from the Iowa District Court for Polk County
(AA 886), Glenn E. Pille, Judge.

Plaintiff appeals the decision of the district court affirming the determination of the Industrial Commissioner that plaintiff had not established entitlement to additional permanent partial industrial disability.
AFFIRMED.

William H. Gilliam, Waterloo, for plaintiff-appellant.

Roger L. Ferris of Nyemaster, Goode, McLaughlin, Emery
& O'Brien, Des Moines, for defendants-appellees.

Heard by Oxberger, C.J., and Donielson and Schlegel,
JJ.

SCHLEGEL, J.

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Plaintiff appeals the decision of the district court affirming the determination of the Industrial Commissioner that plaintiff had not established entitlement to additional permanent partial industrial disability. Plaintiff claims: 1) his permanent partial disability exceeded that allowed by the deputy, who failed to recognize his decreased earning capacity; 2) his healing period under Iowa Code section 35.34(1) extended to at least July 5, 1979, when he was finally stable with his orthopedic prosthesis; and 3) defendants are responsible for the periodic maintenance and replacement of his prosthetic devices. We affirm.

On July 23, 1976, plaintiff Mitch Veeder was crushed by a fork lift while working as an iron worker for the defendant, Commercial Contracting Company, at the Waterloo John Deere Tractor Works. Veeder was given emergency medical treatment at the plant, and transferred to Schoitz Hospital in Waterloo where he was taken by helicopter to University Hospitals in Iowa City. He was hospitalized for three and one-half months immediately after the accident. His right leg was amputated. He also suffered injuries from a burst bladder, severed urethra, multiple fractures in his lower spine, and multiple breaks in his pelvis.

Veeder filed a claim for compensation with the Iowa Industrial Commissioner. The Industrial Commissioner's

file indicates a payment of healing period benefits from July 24, 1976, through December 10, 1977, and from May 10, 1982, through September 10, 1982. Veeder was paid medical expenses, rehabilitation benefits and permanent total disability payments for forty-five percent of the body as a whole. In a review-reopening proceeding on January 24, 1984, Veeder claimed that he was entitled to further healing period and permanent partial disability benefits. The Deputy Industrial Commissioner found that Veeder should receive healing period benefits through August 24, 1977, that he did not establish entitlement to additional permanent partial industrial disability, and that defendants should provide for replacement of the penile implant. Veeder filed a petition under Iowa Code section 86.24(1) for review of the deputy's decision. The Industrial Commissioner affirmed the Deputy's decision in assigning Veeder a rating of forty-five percent permanent partial industrial disability.

Veeder appealed to the district court for review of the decision of the Commissioner. The district court affirmed the Industrial Commissioner, but found that there was no justifiable controversy concerning the maintenance and replacement of the prosthetic devices because Veeder had not sought a replacement for the failed penile implant. Veeder appeals from the district court decision.

As a preliminary matter, we note that this court's scope of review is not de novo; it is not for this court to determine plaintiff's actual healing period or extent of disability. Our task on appeal is to determine whether substantial evidence exists in the record for the Commissioner to have found that plaintiff's permanency did not exceed the forty-five percent already paid by the employee and insurance carrier. See Iowa Code § 17A.19(8)(f); Hawk v. Jim Hawk Chevrolet-Buick, Inc., 282 N.W.2d 84, 87 (Iowa 1979). Evidence is considered "substantial" when a reasonable mind would accept it as adequate to reach a conclusion. Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 63 (Iowa App. 1981).

Evidence was presented at the review-reopening hearing before the Deputy Commissioner that Veeder was initially hospitalized for three and one-half months, during which time he began physical therapy. Veeder was also fitted for a superpubic catheter during this hospitalization. Upon his release, special arrangements were made at his parents' home, including a hospital bed with a trapeze, a commode next to the bed, and a wheelchair. He received daily special therapy with gait training, resistance work, and help learning to negotiate stairs and to walk backwards.

In early 1977 he returned to Iowa City for urethroplasty. He remained in the hospital for this treatment for approximately one month. After the

urethroplasty, Veeder was able to urinate rather than being catheterized. The evidence indicated that Veeder continued to be seen for follow-up treatment regarding the urethroplasty, and that he still suffers from incontinence and occasionally discharges urine into his pants. His final urological follow-up was on November 29, 1979.

In January or early February of 1979, Veeder began fittings for a socket prosthesis. Before the suction socket could be placed, Veeder developed an "ulcer" at the end of his stump which required a few months to heal. Veeder's last checkup regarding the ulcer was November 15, 1978. Veeder then underwent stump revision surgery in December 1978 and had a new socket made in February of 1979. Veeder testified that due to the critical nature of the socket fit, he has to keep his leg weight within a five to seven pound range.

As a further result of Veeder's injuries, he was sexually impotent. In March of 1981 Veeder underwent a procedure to implant a penile prosthetic device, which subsequently malfunctioned at the end of 1982.

At the time of the hearing, Veeder was 29 years old. Prior to the accident, he suffered polio in his left lower leg as a child, which left him, after two surgeries, with dropfoot. Veeder had preinjury work experience in an auto parts store, plastics factory, and a sheet metal plant, and in iron working. In December of 1979, Veeder obtained a

bachelor's degree in psychology and since then has had work experience as a personnel manager for an insurance company, an interviewer, an editor, and a supervisor.

Dr. Elias Jacobo's deposition indicated that, according to AMA guidelines, Veeder is considered to be a thirty percent disabled whole man. However, the evaluation of Veeder's functional ability is not necessarily dispositive of his disability within the contemplation of the worker's compensation law. As stated in McSpadden v. Big Ben Coal Co., 288 N.W.2d 181, 192 (Iowa 1980):

Disability from injuries covered by chapter 85 has been defined by case law as "industrial disability," or a reduction in earning capacity. Among the criteria considered in determining industrial disability are the claimant's age, education, qualifications, experience and his inability, because of the injury, to engage in employment for which he is fitted. Functional disability, while a consideration, has not been the final criterion (citations omitted).

In other words, while functional disability may be only a twenty-five or thirty percent disability compared with the one hundred percent perfect man, disability may be considered total from the standpoint of a claimant's ability to go back to work to earn a living for himself and his family. See Diederich v. TriCity Railway, 219 Iowa 587, 594, 258 N.W. 899, 902 (1935).

Based upon the evidence presented at the hearing, the Commissioner fixed compensation for Veeder on the basis of forty-five percent permanent disability. Upon our review, we cannot say that the evidence is such that reasonable

minds could not draw different inferences from it regarding the percentage of Veeder's industrial disability fixed by the Commissioner.

It is clear, as the Commissioner recognized, that Veeder, based upon his injuries, could not return to employment substantially similar to the employment in which he was engaged at the time of the injury. Prior to his injury, Veeder engaged in heavy physical labor, and earned approximately \$10.50 per hour. Because of his injuries, Veeder's opportunities have been restricted to employment involving the most minimal physical activity. Testimony by Donald Shurr, Veeder's physical therapist, indicates that Veeder has difficulty with prolonged standing, walking, and stair climbing. Testimony also indicated that Veeder requires employment with minimal lifting. In addition, Veeder suffers from injuries to his urogenital system, and Veeder's urologist indicated that Veeder continues to suffer from incontinence.

Information from Veeder's present employer indicates he was earning \$3.25 to \$3.45 per hour when he was first employed in March of 1980. In August of 1982, his hourly rate was \$5.50. Although at the time of his injury, he was earning substantially more money, Veeder testified at the hearing that he intended to return to school and complete his college education, which he did in 1979. The record also indicates that Veeder has the skill and intellectual

capacity to pursue many jobs which require only minimal physical activity. Moreover, Veeder testified at the hearing that he intended to begin work on his M.A. and Ph.D. in clinical psychology.

As stated by the Deputy Commissioner, we look towards the severity of the injury and the length of the healing period as well as the factors previously stated in determining industrial disability. The Commissioner found that Veeder's total condition had stabilized as of August 24, 1977, based upon the determination of Dr. R. Cooper of the University of Iowa Orthopedic Department. The record shows that Veeder did return to college in the fall of 1977 and was able to function in a manner as he would have functioned as if actually employed.

We believe that the record substantiates the commissioner's finding that Veeder's industrial disability did not exceed forty-five percent and the benefits set forth in accordance with this determination.

AFFIRMED.