IN THE COURT OF APPEALS OF IOWA

No. 9-371 / 89-33

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CLERK SUPREME COURT

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DENNIS GETTLER,

Petitioner-Appellant,

vs.

ROBERT TICKNOR and
EMPLOYERS MUTUAL COMPANIES,

Respondents-Appellees.

Appeal from the Iowa District Court for Polk County, Ray Hanrahan, Judge.

Dennis Gettler appeals the district court's affirmance of a decision by the industrial commissioner denying him benefits. **AFFIRMED.**

Barry Moranville of Harry W. Dahl, P.C., Des Moines, for petitioner-appellant.

Fred D. Huebner and E. J. Kelly of Hopkins & Huebner, P.C., Des Moines, for respondents-appellees.

Heard by Hayden, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

Petitioner-appellant Dennis Gettler appeals the district court's affirmance of a decision by the industrial commissioner denying him benefits. Petitioner contends the district court erred in failing to hold the agency decision was based on an error of law, was not supported by substantial evidence and was arbitrary and capricious. We affirm the district court.

Our scope of review is for the correction of errors at law. Iowa Code § 17A.20 (1989); Dickenson v. John Deere Prods. Eng'g, 395 N.W.2d 644, 646 (Iowa App. 1986). We are bound by the commissioner's fact findings if they are supported by substantial evidence. Thomas v. William Knudson & Son Inc., 349 N.W.2d 124, 126 (Iowa App. 1984).

Petitioner began working for respondent-appellee Robert Ticknor in February 1983. Petitioner worked on respondent's sow gestation operation, spending about half his time inside confinement buildings. Because of the dust and fumes, petitioner's asthma caused him to have breathing problems when he worked in the buildings, and he stopped working for respondent in February 1984. Since that time, petitioner has worked in construction and has started a hog confinement operation of his own. Testimony indicated he spends very little time in the confinement buildings of his own operation, however.

Petitioner filed a claim for workers' compensation, claiming his bronchial asthma was caused or aggravated by

the condition in the hog confinement buildings. A deputy commissioner found petitioner was suffering from an occupational disease and his last injurious exposure to the disease occurred while he was working for respondent. The deputy found petitioner to have a forty-percent industrial disability. The industrial commissioner reversed the deputy, holding that petitioner did not suffer any compensable disability. The district court affirmed that final agency decision.

Petitioner first contends the district court made an error of law when it interpreted Iowa Code section 85A.10 (1987). That section provides: "If compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of the disease, is liable for the compensation." Petitioner's treating physician, Dr. Hicklin, testified that petitioner's asthma was not caused by his employment in hog confinement buildings but rather was a pre-existing condition irritated by that employment. For a disease to be recognized as occupational, it must be caused by the employment. See Iowa Code § 85A.8 (1987). Petitioner argues that the aggravation of a pre-existing condition may be compensable, according to McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980). McSpadden, however, concerns the burden of proof an employee must bear once it is determined that the disease was at some time caused by the employee's occupation. Once the employee proves this,

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McSpadden makes it easier for the employee to recover under section 85A.10. 288 N.W.2d at 188-89. McSpadden does not support the proposition petitioner can recover for a pre-existing disease such as his asthma.

Even if petitioner's asthma were compensable, there was evidence from which the agency could conclude petitioner's employment with respondent was not the last injurious exposure. Since leaving his job with respondent, petitioner has taken on other employment that has exposed him to conditions known to irritate his asthma. We find the district court decision is not affected by error of law.

Petitioner next contends the agency action was unsupported by substantial evidence in the record. We disagree. Substantial evidence is that which reasonable minds would accept as sufficient to support the conclusions drawn. Dillinger v. City of Sioux City, 368 N.W.2d 176, 182 (Iowa 1985). Both parties rely on testimony given by Dr. Hicklin, who had been treating petitioner for over two years at the time of trial. Dr. Hicklin specializes in diseases of the respiratory system. His testimony indicated petitioner's disease was not occupational. He stated petitioner's exposure to the irritants at respondent's farm did not worsen petitioner's asthma. Rather, such exposure merely aggravated a pre-existing condition; the symptoms disappear once petitioner removes himself from the harmful environment. The fact that two

inconsistent conclusions could be drawn from the record does not mean the agency's decision is unsupported by substantial evidence. Ross v. Public Employment Relations Bd., 417 N.W.2d 475, 476 (Iowa App. 1987). There was substantial evidence for the commissioner to conclude that petitioner failed to establish any compensable disability.

Petitioner finally contends the district court erred by failing to find the agency action was arbitrary and capricious. Again, we must disagree. We have stated we find the agency decision to be supported by substantial evidence. Petitioner's condition existed before he began working for respondent. At that time, petitioner had been a cigarette smoker for over ten years. The record supports a conclusion that petitioner has suffered no compensable disability due to his employment with respondent. We find the agency decision was not arbitrary. The decision of the district court is affirmed.

AFFIRMED.