

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

CLARENCE A. BLEVINS,)

Petitioner-Appellant,)

Filed October 25, 1983

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vs.)

WILSON FOODS CORPORATION AND)
THE IOWA INDUSTRIAL)
COMMISSIONER,)

3-192
2-69242

Respondents-Appellees.)

Appeal from Linn District Court - Larry J. Conmey, Judge.

Claimant appeals from the district court decision on judicial review affirming the industrial commissioner's denial of occupational disease benefits pursuant to Iowa Code chapter 85A (1979). REVERSED AND REMANDED.

J. R. Norris of J. R. Norris & Associates, Cedar Rapids, Iowa, for petitioner-appellant.

John M. Bickel of Shuttleworth & Ingersoll, Cedar Rapids, Iowa, for respondents-appellees.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden and Sackett, JJ.

SCHLEGEL, J.

Claimant, Clarence A. Bevins, appeals from the district court decision on judicial review affirming the industrial commissioner's denial of occupational disease benefits pursuant to Iowa Code chapter 85A (1979). Claimant asserts that there is not substantial evidence to support the agency decision that his back condition does not constitute a compensable occupational disease under chapter 85A, that the issue of notice addressed in the arbitration decision but not in the final agency action should be considered on judicial review, and that the deputy industrial commissioner was biased against him. We reverse and remand to the industrial commissioner.

Claimant was employed by the Wilson Foods Corporation (Wilson) for twenty-seven and one-half years where he held the job of truck driver-delivery person for most of that period. Claimant's duties included deliveries and pickup of frozen meat for Wilson customers. Claimant was fifty-eight years old at the time of the hearing and had completed the eighth grade. Prior to commencing work for Wilson in 1953, claimant had been employed for thirteen years as a general farm laborer, for ten months delivering feed for a feed company, and for three months at another meat packing company.

As a truck driver for Wilson, claimant was required to load, transport, and unload quarters of beef and packaged meats. The quarters of beef weighed up to 165 pounds while the boxes of meat would weigh as much as 100 to 130 pounds. Claimant testified that, depending on the facilities of the customer, he would be required to handle the meat as many as three times per trip. Claimant also testified that during the time he had been employed by Wilson he could recall falling four times. He fell on his back on one occasion with a quarter of beef falling on top of him. Upon another occasion he injured his ankle while carrying meat up steps. With the exception of the fall resulting in the ankle injury, after each fall the claimant continued to work.

The claimant took sick leave on July 31, 1980, after gradually increasing pain in his back and legs reduced his mobility. On November 25, 1980, claimant filed a petition in arbitration seeking benefits for an occupational disease. Claimant asserts that the heavy work required by his job at Wilson resulted in his disability.

The record contains the testimony of three medical experts who indicated that claimant had a degenerative disk disease of the lower back and suffered from spinal stenosis. Dr. Warren N. Verdeck, an orthopedic surgeon, examined claimant twice and from those examinations, opined that the degenerative disease was not caused by the work but that the work aggravated the condition. Dr. Verdeck further testified that this aggravative effect would be mainly "symptomatic, bringing out his underlying degenerative process and this could be either an episode such as a fall incident, lifting something at work could aggravate or sometimes increase his severity or accumulative effect over a long period of time, prolonged lifting and physical." Dr. John Walker, an orthopedic surgeon, examined the claimant a number of times and concurred in the finding of the degenerative disease. Based upon the work history related to him by the claimant, he opined that the disease itself was caused by the work claimant had engaged in at Wilson's. Dr. Albert Coates, also an orthopedic surgeon, saw claimant five times in 1980 and treated him during a period of hospitalization. After an examination on August 29, 1980, Dr. Coates described claimant's back condition in a letter as a work-related injury resulting from chronic stress to the back and recommended hospitalization. During his deposition, Dr. Coates stated that the work did not cause the condition, but that the work aggravated the condition. Dr. Coates distinguished the underlying condition from the symptoms the claimant suffered. All three doctors testified that it would be possible for claimant to do light work, such as guard work, unless it became too painful.

The deputy industrial commissioner denied the claim, finding that claimant's back condition was not an occupational disease as the term is defined by Iowa

Code section 85A.8. The deputy's decision also indicated that petitioner had failed to comply with statutory notice requirements and that the employer could not have had actual notice of his medical history. On appeal the industrial commissioner treated the deputy's findings on the notice issues as dicta but affirmed the deputy's decision on the ground that the back condition was not a compensable occupational disease. The industrial commissioner's appeal decision did not address the notice issues. The district court affirmed on judicial review, finding that substantial evidence supported the agency determination that the back condition was not an occupational disease. The district court did not address the notice issues concluding that only the final agency action was before the court for review. The district court found no evidence of bias on the part of the deputy industrial commissioner.

I. Scope of Review. Our scope of review for appeals from district court judicial review of agency action pursuant to Iowa Code section 17A.19 was discussed in Foods, Inc. v. Iowa Civil Rights Commission, 318 N.W.2d 162, 164-65 (Iowa 1982). Those principles are equally applicable to this case. When the agency decision is attacked on the substantial evidence ground in section 17A.19(8)(f), we examine the entire record including the hearing officer's decision to determine if the agency decision is supported by substantial evidence. Iowa State Fairgrounds Security v. Iowa Civil Rights Commission, 322 N.W.2d 293, 294-95 (Iowa 1982). The findings of the commissioner are binding on us unless a contrary result is demanded as a matter of law. Ward v. Iowa Department of Transportation, 304 N.W.2d 236, 238 (Iowa 1981).

II. Aggravation of a Preexisting Condition as an Occupational Disease. The agency, in its decision, found that there was "no showing that claimant's back disease has any direct causal connection with the employment or that it is incidental to claimant's activities." The agency, in its finding of fact, concluded that claimant's back disability was caused by generalized degenerative arthritis

which may occur whether claimant ever worked or not. The agency also concluded that there was no showing of an injury arising out of and in the course of the employment which would permit recovery under Iowa Code chapter 85. The only issue before us is whether there was sufficient evidence to support the agency decision precluding recovery for an occupational disease under Iowa Code chapter 85A. The possibility of our drawing two inconsistent conclusions from the evidence does not prevent the administrative agency's findings from being supported by substantial evidence. City of Davenport v. Public Employment Relations Board, 264 N.W.2d 307, 311 (Iowa 1978). The district court, on judicial review, found that there was substantial evidence to support the finding that claimant's back condition was not, to a medical probability, caused by his work and that the back condition could have come about regardless of his employment. The district court held that a "direct causal connection" is required by Iowa Code section 85A.8 before a disability is an occupational disease. The court noted that absent some linkage between the disease and employment, benefits are not available.

The supreme court in McSpadden v. Big Ben Coal Company, 288 N.W.2d 181, 190 (Iowa 1980), set out the criteria for establishing causation of an occupational disease under Iowa Code section 85A.8. The claimant need only meet the two basic requirements imposed by the statutory definition of occupational disease. First, the disease must be causally related to the exposure to harmful conditions of the field of employment. Id. at 190. Secondly, those harmful conditions must be more prevalent in the employment concerned than in everyday life or in other occupations. Id. at 190. Claimant asserts that the agency rejected "uncontroverted evidence" that his back disability was related to his field of employment because all three medical experts agreed that his employment had aggravated his back condition. Wilson asserts, on the other hand, that the evidence was controverted and that there was substantial evidence to support the

agency finding that claimant's condition was not related to his work. We find that there was substantial evidence supporting the agency decision that claimant's degenerative back condition did not originate as a result of his employment. We are presented, therefore, with the issue of whether the aggravation of a preexisting condition may constitute an occupational disease under Iowa Code chapter 85A.

There is no question that under Iowa Code chapter 85, the term "injury" includes the aggravation or lighting-up of a preexisting injury. DeShaw v. Energy Manufacturing Company, 192 N.W.2d 777, 780 (Iowa 1971); Jacques v. Farmers Lumber & Supply Co., 242 Iowa 548, 552, 47 N.W.2d 236, 239 (Iowa 1951). See Blacksmith v. All-American, Inc., 290 N.W.2d 348, 354 (Iowa 1980); Bodish v. Fischer, Inc., 257 Iowa 516, 133 N.W.2d 867 (1965). The causation requirements under the provisions of Iowa Code chapter 85 and Iowa Code chapter 85A are not the same. McSpadden v. Big Ben Coal Co., 288 N.W.2d at 190. Both chapters, however, provide compensation for disabilities sustained by an employee "arising out of and in the course of the employment." Iowa Code § 85.3 (1979); Iowa Code § 85A.8 (1979). After discussing several cases dealing with aggravation of preexisting weakness as an occupational disease, Larson concludes:

It can readily be seen that, as this process has gone forward, the line between occupational disease and aggravation of preexisting disease or weakness has become blurred. The ultimate working rule that seems to emerge is simply that a disability which would be held to arise out of the employment under the tests of increased risk and aggravation of a preexisting condition will be treated as an occupational disease.

IB A. Larson, The Law of Workman's Compensation § 41.63 at 7-423 (1982) (see generally cases cited therein). We hold that an occupational disease, as defined in Iowa Code section 85A.8, doesn't necessarily have to originate in the occupation. An occupational disease may also result from aggravation of a preexisting condition. Beaudry v. Winchester Plywood Co., 255 Or. 503, 512-14, 469 P.2d 25, 29-30 (1970).

The agency decision in this case did not address the issue in terms of whether the claimant's disability was an occupational disease as a result of aggravation of a preexisting condition. The agency decision indicates that it believed that the claimant, in order to recover under chapter 85A, was required to show a direct causal connection between the origin of the disease and the claimant's employment. As stated above, however, recovery is also allowed if the claimant can establish that the employment aggravated a preexisting condition. The application of erroneous legal principles mandates reversal. McSpadden v. Big Ben Coal Co., 288 N.W.2d at 185-86. Remand is also necessitated in order to permit the agency to reevaluate the evidence, applying the correct rule of law, unless the reviewing court can make the necessary factual findings as a matter of law because the relevant evidence is both uncontradicted and reasonable minds could not draw different inferences from it. Id. at 186. While claimant asserts that the evidence is uncontroverted on the issue of aggravation of preexisting condition, we find that much of the testimony is unclear and addressed to the issue of causation of the origin of the disease rather than aggravation of a preexisting condition. Unless other grounds can be found to affirm the agency decision, this issue should be remanded.

The claimant, in order to establish causation between occupational injury and his employment, must also meet the second element of the McSpadden test. The harmful conditions must be more prevalent in the employment concerned than in everyday life or in other occupations. Id. at 190. The hearing officer made no finding as to whether the harmful conditions were more prevalent in the claimant's employment than in everyday life. The deputy industrial commissioner, in the final agency decision, stated that "degenerative back disease, which in this deputy's experience occurs among people who do light work as well as heavy work, is a malady to which claimant is exposed outside his employment." The agency, in its findings of fact, also concluded that degenerative arthritis may occur whether

claimant ever worked or not. We uphold this determination if it is supported by substantial evidence. Iowa Civil Rights Commission v. Woodbury County Community Action Agency, 304 N.W.2d 443, 446 (Iowa App. 1981). Evidence is substantial if a reasonable person would find it adequate for reaching a decision. Id. at 446.

"However, the conditions of employment which distinguish occupational diseases from ordinary diseases of life need not be unusual chemicals, fumes, and the like. They may be distinctive because familiar harmful elements are present in unusual degree." 1B A. Larson, *The Law of Workmen's Compensation* § 41.33 at 7-376 (1982). The evidence was undisputed in this case that claimant was employed for nearly twenty-seven years in a job which required substantial lifting. Although lifting does occur in everyday life and in other occupations, we believe the degree of lifting claimant was continually required to engage in, as shown by the record, requires a finding that the harmful conditions of lifting heavy weight was more prevalent in claimant's job than in everyday life or other occupations. The deputy industrial commissioner's reference to his own experience does not overcome the evidence as clearly shown in the record. The commissioner is left to determine on remand only the issue of whether the claimant has sustained his burden to show that the aggravation of his preexisting condition resulting in disability was causally related to his employment. We have determined the second element of causation as a matter of law.

III. Notice of Occupational Disease. There was dispute between the parties as to whether or not the claimant complied with the notice provisions of Iowa Code section 85A.18 (1979). That provision requires that "written notice be given to the employer of an occupational disease within ninety days after the first distinct manifestation thereof." The evidence indicates that claimant discontinued work on July 31, 1980, and commenced receiving sick leave benefits from Wilson pursuant to the union contract. Claimant filed a petition in

arbitration on November 25, 1980, specifying August 4, 1980, as the "injury" date. Wilson asserts that receipt of the original notice was the first time it knew the disability was employment related. Claimant asserts that the letter of August 29, 1980, from Dr. Coates was the first time he became aware of the employment related nature of his disability. The hearing officer decided the issue against claimant but the final agency decision specifically stated that it was unnecessary to reach that issue because of its decision on the merits.

Where the agency makes no findings of fact or conclusions of law as to an issue, a reviewing court is left with an impossible task. The principles relating to the timeliness of a notice in a worker's compensation case are set out in Robinson v. Department of Transportation, 296 N.W.2d 809, 812 (Iowa 1980). The issue of knowledge is one of fact for the commissioner. Id. Prior to the adoption of the Iowa Administrative Procedure Act, a deputy industrial commissioner was charged with making findings of fact and conclusions of law in proceedings before him by Iowa Code section 86.23 (1975). See Catalfo v. Firestone Tire and Rubber Co., 213 N.W.2d 506, 510 (Iowa 1973). We believe the provisions of Iowa Code sections 17A.15 and 17A.19 (1983) contemplate the continuation of that practice. Because there is nothing for us to review, we remand this matter to the agency to make an initial determination on the issue of notice.

IV. Agency Bias. Claimant also asserts that the hearing officer was biased against him. Where a record on this issue has been made, our review is *de novo*. Iowa Code § 17A.17(4) (1983). No evidence of bias appears in the record or has otherwise been presented. Claimant's assertion of bias is without merit.

Thus, in accordance with the foregoing, the district court's judgment is reversed and remanded to the industrial commissioner with instructions.

REVERSED AND REMANDED TO THE INDUSTRIAL COMMISSIONER.