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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CARL MAROVEC,

Petitioner-Appellant,

vs.

HAWK BILT COMPANY, THE HOME INSURANCE COMPANY,

Respondents-Appellees,

and the IOWA INDUSTRIAL COMMISSIONER,

Respondent.

Filed October 23, 1984

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Appeal from the Iowa District Court for Polk County - Harry Perkins, Judge.

Petitioner appeals from the district court decision on judicial review affirming the industrial commissioner's refusal to award worker's compensation benefits. REVERSED AND REMANDED.

John R. Ward of Hedberg, Ward, Tan, Owens, Pratt & Vonderhaar, Des Moines, Iowa, for petitioner-appellant.

W. C. Hoffman of Jones, Hoffman & Davison, Des Moines, Iowa, for respondents-appellees.

Heard by Oxberger, C.J., Snell, and Hayden, JJ.

HAYDEN, J.

Petitioner appeals from the district court decision on judicial review affirming the industrial commissioner's refusal to award worker's compensation benefits.

Petitioner was employed by respondent Hawk Bilt Company from 1966 until 1981 when the plant closed. For the majority of the time he worked the drill press. This job required lifting large pieces of steel onto the machine, twisting them into position, and removing them from the press. In 1969 or 1970 petitioner injured his lower back on the job and eventually underwent back surgery in 1972. The surgery was not completely successful and further back surgery was performed in 1973. Petitioner developed spinal stenosis, a narrowing of the spinal canal by scar tissue. In 1976 spinal fusion of the L4-S1 levels was performed. Petitioner was unable to work for approximately one year following the fusion.

Petitioner made a claim for healing period benefits for the time following the 1976 surgery and for permanent partial disability benefits. He claims that the stress of his job aggravated his condition and was a contributing cause of the fusion surgery. The industrial commissioner ruled that petitioner's back problems were a result of the 1972 and 1973 surgeries and were not caused by any employment-related activity in 1976. On judicial review the district court affirmed the agency decision. Petitioner appealed asserting that the record lacked substantial evidence to support the agency's decision.

Our review of this agency decision is not de novo. Like the district court we review the record to determine whether there is substantial evidence in the record as a whole to support the agency's final decision. Dameron v. Neumann Brothers, Inc., 339 N.W.2d 160, 163 (Iowa 1983). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. Iowa Beef Processors, Inc. v. Burmeister, 301 N.W.2d 768, 769 (Iowa Ct. App. 1980). 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). We are not bound by the agency's legal conclusions. Green v. Iowa Department of Job Service, 299 N.W.2d 651, 655 (Iowa 1980).

In this case the industrial commissioner's legal conclusion was, "claimant did not sustain an injury which arose out of and in the course of his employment with Hawk Bilt Company on or about March 26, 1976." We do not agree. There is no question that under Iowa Code chapter 85 the term "injury" includes the aggravation or lighting-up of a preexisting injury. Nicks v. Davenport Produce Co., 254 Iowa 130, 135, 115 N.W.2d 812, 815 (Iowa 1962); Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 64 (Iowa Ct. App. 1981). The evidence in this case overwhelmingly shows that the heavy stresses of petitioner's work between 1973 and 1976 aggravated his earlier injury and were a substantial cause of the 1976 fusion surgery. Furthermore, the evidence indicates that the work stress aggravated the condition of petitioner's back and not just his symptoms as claimed by respondent.

The following excerpts from the deposition of Dr. Robb were acknowledged by the commissioner to be in claimant's favor:

> Q. And there you mention that at the time that you operated on him in March of '76 that you found this substantial narrowing of the disk space. Now, that's something that you just spoke of a little bit ago to us, correct, sir? A. Yes.
>
> Q. And it's my understanding from your April 16 letter that you attribute that change to the heavy loading of the back and the repeated stresses on his back at that level, which you say is unstable; is that correct, sir?
>
> MR. HOFFMANN: Just a moment, Doctor. I'm going to object to the form of that question because it includes the word change, which is not a part of the exhibit.
>
> MR. WARD: Knock out the word change.
>
> MR. HOFFMANN: Thank you.
>
> Q. Would that be correct, sir? A. That would be correct.

Q. Does that represent a change, sir, over his previous condition? By that, I'm talking about the additional narrowing that we're talking about here. A. The narrowing of the disk space to which we refer in this examination and letter of April 16, 1976, the narrowing that exists then is greater than it was in 1972, '73.

Q. Now, as I understand it, the patient was off of work for about a year following that surgery, and that would be consistent with the kind of surgery that was done and consistent with the kind of job that he had to return to; would that be correct, sir? A. That's right.

* * *

Q. Sir, I am advised here and there will be testimony in the case to the effect that the work that Mr. Marovec was doing leading up to your seeing him in 1976, that that work involved a great deal of heavy lifting and it involved bending in operating some sort of a drill, and that over that period of time while doing that work and leading up to him seeing you in 1976 that his complaints worsened and that's what led him to come to see you. Assuming those things I have just stated to be true, is this type of heavy activity or stress that I've mentioned — is that the kind of activity that would likely aggravate his condition or complaints, particularly in a man that had already had these two previous back surgeries? A. Yes, this would.

Q. In your opinion, would those activities — those work activites have played a significant part in making the fusion surgery necessary at that time in '76, sir? A. Yes. That played a significant role. It's not the only factor, but it is certainly a part of it.

Q. His previous back injuries and surgeries would have played a part in it, too, I assume? A. Yes.

* * *

Q. And as I understand it from your testimony here, the heavy work stresses and surgery with the fusion have added some further amount of limitation; would that be correct, sir?

* * *

A. The stresses between 1973 and 1976 were of such magnitude that it led to incapacity really to work — or to continue working.

The commissioner characterized the portions of Dr. Robb's testimony quoted above as "at best equivocal" because they show "that both claimant's work and previous back problems would have contributed to the necessity for the fusion

surgery." The testimony is not equivocal at all. It clearly states that the fusion surgery was necessary due to both scar formation from the prior surgery and the heavy stresses of petitioner's job. Dr. Robb stated that the work stress played a "significant role" in making the fusion necessary. This is sufficient to find proximate cause. "A cause is proximate if it is a substantial factor in bringing about the result . . . . It only needs to be one cause; it does not have to be the only cause." Blacksmith v. All-America Inc., 290 N.W.2d 348, 354 (Iowa 1980).

The following testimony of Dr. Robb is relied upon by the commissioner to support a denial of benefits to petitioner:

> Q. In your next subsequent report, which is your letter of April 7, 1976, you refer in the first paragraph of that letter to a recurring disk syndrome. Tell us what a recurring disk syndrome is. A. Low back pain with radicular pain in the leg.
>
> Q. What does the use of the word recurring mean in that connection? A. It has been experienced before. It would recover or improve and then it would return.
>
> Q. What would you say with respect to whether that is typical of this kind of back problem or is it untypical? Can you characterize it for us? A. Not in a general sense, but in this man's instance I think you can. Because we know from the second surgery that he had a lot of scar, so he is what we physicians or surgeons call a scar former. So we know that if he has further surgery, he's going to have more scar.
>
> Q. And would that be a part at least of why you went on to say in that same paragraph "and chronic recurrent low back pain?" That's also typical of this kind of thing? A. Yes.
>
> Q. When he was admitted to St. Luke's Hospital, in your second paragraph of that letter of April 17, 1976 — and a myelogram was performed which revealed spinal stenosis, which you've already described for us, that spinal stenosis didn't develop sometime in March of 1976 when it was explored on March 28? It had to develop sometime prior to that; did it not? A. Yes.
>
> Q. Is it reasonable, Doctor — and correct me if it is not reasonable to assume that that stenosis began to form sometime after the 1973 surgery and continued to form up until it was operated on again in 1976? A. Yes.

Q. And as I believe you said in your third paragraph from the bottom in that same report, Doctor, that the symptoms he complained about and for which the present surgery was indicated relate to the original injury in 1972, would that still be your opinion after a lot of more recent history on the man? A. Yes.

Q. Doctor, in response to one of Mr. Ward's questions on direct examination, you indicated that in the 1976 surgery exploration indicated that he now had some scarring or tissue or problems at least on both sides, the right and left, whereas earlier it had been a one-sided problem. Was that a result of additional scar formation or something else? A. I think it was due to scar formation.

Q. And so that, in turn, would relate back to the earlier surgeries? A. Yes.

Q. And the original injury in '72, which caused those surgeries to become necessary. Sir, again in response to a question, you said that the narrowing was greater in 1976 than in 1972 and '73. Why was it greater in '76, if you know, if there's a way to know, if you have an opinion? A. This is the degenerative process that takes place with stress that a cartilage or disk, as we are talking about, the disk stressed wears down more readily in an individual who is stressing their back than one who is not. And this is more apt to occur if there has been a surgical procedure or removal of the disk.

Q. So at that time in 1976, being concerned about these recurrences, you made the election to stabilize the situation by way of a fusion? A. Yes.

None of the foregoing testimony establishes that the earlier injuries were the sole cause of petitioner's fusion surgery. It merely supports the doctor's prior testimony that the earlier surgeries were one factor necessitating the fusion.

Although the doctor characterized petitioner's condition as recurring and degenerative, he stated that stress causes the condition to deteriorate more quickly than it otherwise would. In Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d at 64-65, this court held that medical testimony that a claimant's degenerative back disease was aggravated by his work was sufficient to support the conclusion that claimant's employment was a proximate cause of his back problem.

It is clear from the industrial commissioner's decision in the present case that he mistakenly believed there could only be one proximate cause of the 1976 surgery. Therefore, he ignored the clear, undisputed medical evidence that there were two factors which played a substantial part in aggravating petitioner's injuries. Consequently, the decision of the district court must be reversed and the case remanded to the agency for further proceedings.

Our review of the entire record shows that all of petitioner's back problems from the first injury in 1970 through the 1976 fusion were work-related. On remand the agency should determine the benefits to which petitioner is entitled.

Both parties have cited to this court the supreme court case of Blevins v. Wilson Foods Corp., 344 N.W.2d 723 (Table) (Iowa 1984). Since the decision was unpublished, we have not considered the case or relied upon it as authority. See Iowa R. App. P. 25.

REVERSED AND REMANDED.