

IN THE COURT OF APPEALS OF IOWA

No. 1999-76 (9-263) / 98-1073

Filed June 23, 1999

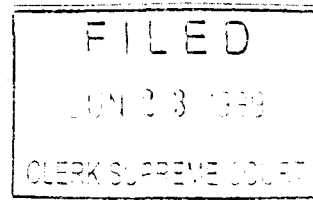
IBP, INC.,

Petitioner-Appellant,

vs.

JAMES HOOPER,

Respondent-Appellee.



Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Petitioner appeals from the district court's ruling on judicial review affirming the industrial commissioner's decision. **AFFIRMED.**

James Meehan and Paul T. Kirchner, Dakota City, Nebraska, for appellant.

Steven D. Hamilton of Hamilton Law Firm, P.C., Storm Lake, for appellee.

Heard by Sackett, C.J., and Mahan and Zimmer, JJ.

MAHAN, J.

IBP appeals the district court's ruling on judicial review affirming the industrial commissioner's decision. IBP contends the evidence is insufficient to establish a causal connection between James Hooper's physical injuries and his mental condition. We affirm.

Hooper began working for IBP in August 1989. Hooper suffered repetitive motion injuries. In August 1990, Hooper underwent surgery on his right wrist for carpal tunnel syndrome. On July 31, 1991, Hooper underwent surgery on his left shoulder to repair a torn rotator cuff. Hooper was unable to return to work following this surgery.

By late August, Hooper was hospitalized for depression and began seeing Dr. Paul Anderson, a psychiatrist he was referred to by IBP's company doctor. In his intake evaluation, Anderson noted Hooper's past history of counseling, involvement in substance abuse organizations, and family life dominated by an abusive, alcoholic father. Anderson continued to treat Hooper's depression through at least May 1996, the date his deposition was taken. Anderson reported a patient will usually recover from depression within a year, and then will be able to stop taking medications. However, Hooper's depression was not responding to treatment and Anderson stated Hooper would, at a minimum, have to take antidepressants for the rest of his life.

At the hearing, IBP admitted liability for the physical injuries but denied liability for Hooper's depression. The causation issue was submitted to the deputy.

The deputy found Hooper's mental condition pre-existed his IBP employment but his shoulder injury aggravated his pre-existing condition and caused the onset of Hooper's current depressive episode. Hooper's depression was found to be totally disabling and he was entitled to permanent and total disability benefits.

IBP appealed and the commissioner affirmed. The commissioner found Anderson "clearly is of the opinion that [Hooper's] injuries were a substantial cause among many factors leading to his depression" and concluded Hooper had carried his burden of proving causation between the work injury and the mental condition. Upon judicial review, the agency decision was affirmed.

IBP appeals.

I. STANDARD OF REVIEW. We review an agency's decision for errors of law and do not exercise a de novo review. *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 271 (Iowa 1995) (citing *Kostelac v. Feldman's, Inc.*, 497 N.W.2d 853, 856 (Iowa 1993)). When we review findings of the industrial commissioner, those findings carry the effect of a jury verdict. *Id.* We will reverse an agency's findings only if, after reviewing the record as a whole, we determine substantial evidence does not support them. Iowa Code § 17A.19(8)(f) (1997); *Sierra v. Employment Appeal Bd.*, 508 N.W.2d 719, 720 (Iowa 1993). Evidence is substantial if a reasonable mind would accept it as adequate to reach the conclusion at issue. *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 404 (Iowa 1993). The mere fact we could draw inconsistent conclusions from the same evidence does not mean substantial evidence

does not support the commissioner's determinations. *Kostelac*, 497 N.W.2d at 856; *Reed v. Iowa Dep't of Transp.*, 478 N.W.2d 844, 846 (Iowa 1991). The ultimate question is not whether the evidence supports a different finding, but whether it supports the findings the commissioner actually made. *Reed*, 478 N.W.2d at 846.

II. SUBSTANTIAL EVIDENCE. The gravamen of this appeal is IBP's contention the commissioner's decision is not supported by substantial evidence in the record. IBP argues Anderson's testimony cannot be relied upon either alone or in combination with the other evidence. IBP asserts Anderson was unable to express an opinion as to the probability of causation. When combined with all other evidence, IBP maintains Anderson's testimony documents Hooper's long history of mental problems and the numerous factors which may play a role in his depression. We disagree.

Generally, expert testimony is essential to establish causal connection. *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998) (citing *Bodish v. Fischer, Inc.*, 257 Iowa 516, 521, 133 N.W.2d 867, 870 (1965)). The commissioner must consider the expert testimony together with all other evidence introduced bearing on the causal connection between the injury and the disability. *Id.* The commissioner, as the fact finder, determines the weight to be given to any expert testimony. *Id.* Such weight depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. *Id.*

The commissioner reviewed Anderson's testimony and found "[a]lthough Dr. Anderson does not use the word "substantial," taking his testimony as a whole, he clearly is of the opinion that [Hooper's] injuries were a substantial cause among many factors leading to his depression." We find reasonable minds would accept Anderson's testimony as adequate to reach the same finding.

Even if we assume IBP is correct in its assertion that Anderson testified only to a "possibility" of a causal connection, there is still substantial evidence to support the commissioner's findings. The "probability" of the causal connection may be inferred by combining an expert's possibility testimony with non-expert testimony that the described condition of which a complaint is made did not exist before the occurrence of those facts alleged to be the cause thereof. *Becker v. D & E Distrib.*, 247 N.W.2d 727, 730 (Iowa 1976). This inference may be made even if the condition was pre-existing if the prior condition was asymptomatic at the time of the injury. *Id.*

Our supreme court has held a psychological condition caused or aggravated by a scheduled injury is compensable. *Mortimer v. Fruehauf Corp.*, 502 N.W.2d 12, 16 (Iowa 1993). Hooper's pre-existing depression was asymptomatic; the evidence shows Hooper functioned, sustained gainful employment, never missed a day of work, and had never sought intensive mental health services prior to his shoulder injury. Subsequent to the injury, Hooper's depression prevented his return to work, he sought mental health services, was hospitalized at one point, and will, at a minimum, be on antidepressants for the remainder of his life. We find reasonable minds would accept

the record, as a whole, adequate to reach the same findings the commissioner did that Hooper carried his burden of proof to show his present disabling condition was substantially caused by his work injuries. Thus, we conclude the commissioner's findings are supported by substantial evidence.

For these reasons, we affirm the commissioner's decision.

AFFIRMED.

No. 98-1073. [1999-76 (9-263)] IBP, INC. v. HOOPER

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.
AFFIRMED. Heard by Sackett, C.J., and Mahan and Zimmer, JJ. Opinion by Mahan,
J. (6 pages \$2.40)

Hooper suffered repetitive motion injuries while working for IBP. In August 1990, he underwent surgery on his right wrist for carpal tunnel syndrome. On July 31, 1991, he underwent surgery on his left shoulder to repair a torn rotator cuff. Hooper was unable to return to work following shoulder surgery; within one month of the surgery Hooper was hospitalized for depression. The deputy industrial commissioner found the work injuries caused the onset of Hooper's current depressive episode and Hooper was entitled to permanent and total disability benefits. The commissioner affirmed, found the treating psychiatrist "clearly is of the opinion that [Hooper's] injuries were a substantial cause among many factors leading to his depression," and concluded Hooper had carried his burden of proving causation between the work injury and the mental condition. **OPINION HOLDS:** IBP argues the treating psychiatrist's testimony cannot be relied upon either alone or in combination with the other evidence. We find reasonable minds would accept the psychiatrist's testimony as adequate to reach the same finding the commissioner did. Even if we assume IBP is correct in its assertion that the psychiatrist testified only to a "possibility" of a causal connection, there is still substantial evidence to support the commissioner's findings. The "probability" of the causal connection may be inferred by combining an expert's possibility testimony with non-expert testimony that the described condition of which a complaint is made did not exist before the occurrence of those facts alleged to be the cause thereof. This inference may be made even if the condition was pre-existing if the prior condition was asymptomatic at the time of the injury.