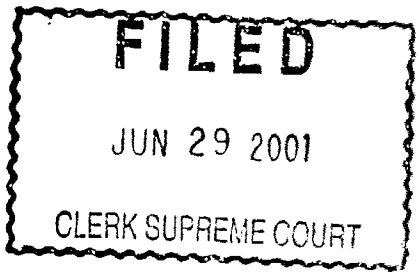
IN THE COURT OF APPEALS OF IOWA

No. 1-184 / 00-873
Filed June 29, 2001



RICHARD GILBERT,
Plaintiff-Appellant,

vs.

USF HOLLAND, INC., and
CONSTITUTION STATE SERVICE COMPANY,
Respondents-Appellees.

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge.

The petitioner appeals from the district court's ruling on judicial review reversing the workers' compensation commissioner's award of penalty benefits under Iowa Code section 86.13 (1997) for the alleged unreasonable denial of his workers' compensation claim. **DISTRICT COURT REVERSED; INDUSTRIAL COMMISSIONER AFFIRMED.**

Jerry Jackson of Moranville & Jackson, P.C., West Des Moines, for appellant.

John E. Swanson and Aaron T. Oliver of Hansen, McClintock & Riley, Des Moines, for appellees.

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

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ZIMMER, J.

Richard Gilbert appeals from the district court's ruling on judicial review reversing the workers' compensation commissioner's award of penalty benefits under Iowa Code section 86.13 (1997) for the alleged unreasonable denial of his workers' compensation claim. Gilbert claims that the record contains substantial evidence supporting the determination to award such benefits. We reverse the ruling of the district court and affirm the industrial commissioner's award of penalty benefits.

I. Background Facts and Proceedings. The appellant, Rick Gilbert, is employed by the respondent, USF Holland, Inc., as a truck driver.[1] On June 4, 1997, he suffered neck pain while at work. He alleges he pulled a cord to pop a dock plate but the dock plate jerked back and failed to release. He claims at that time he felt a pop in his neck. Gilbert pulled the cord a second time releasing the dock plate, shut the door to his trailer, and walked to a table to sign a bill. He bent down to sign the bill and as he straightened up he felt something pop in his neck, causing pain.

The following day, Gilbert filled out an incident report. In the space provided to explain how the incident occurred, Gilbert wrote that he bent over a desk to sign a bill and when he stood back up his neck popped. Gilbert was directed by USF Holland to go to Concentra Medical Center for medical treatment. He was diagnosed as having an upper thoracic and cervical strain. He was prescribed anti-inflammatories, directed to physical therapy and was taken off work for one week. In both the medical files of his treating physician

[1] Respondent Constitution State Service Company administers USF Holland's workers' compensation claims.

and his physical therapist, Gilbert's injury was described as having occurred when he bent over to sign the bill.

One week after the injury occurred, Gilbert was re-examined by a physician from Concentra. At that time he reported no complaints and was discharged from care. Gilbert returned to his position without restrictions or limitations placed upon his work. He worked his normal shift and overtime hours.

On July 12, 1997, Gilbert's back popped while he was getting out of bed. He reported for work that day and continued working until he experienced severe pain in his neck that radiated down his arm, causing numbness. He was seen in a hospital emergency room on July 13, and was referred back to Dr. Minervini who saw him July 14, 1997. Minervini diagnosed Gilbert with acute radiculitis and a herniated cervical disc and took him off work. Minervini referred Gilbert to Dr. . Thomas Carlstrom, a neurosurgeon. Dr. Carlstrom also diagnosed a herniated disc. Gilbert subsequently missed about one month of work. Gilbert was released from Dr. Carlstrom's care on August 22, 1997, and again returned to his job with no restrictions.

In mid June 1997, respondents denied Gilbert's claim for workers' compensation injury on the basis that it was an idiopathic injury. An idiopathic injury is one that is personal to the claimant and not the result of any increased risk stemming from the claimant's work. The initial denial was based on the incident report prepared by Gilbert and the history provided at his medical and therapy sessions in early June. Respondents continued to deny Gilbert's claim after both Drs. Minervini and Carlstrom opined that his cervical back condition is casually related to a work injury on June 4, 1997. They base their continuing

denial in large part on the fact that Gilbert did not mention a history of lifting a dock plate until after their initial denial of his claim as an idiopathic injury.

Gilbert filed a workers' compensation petition on August 18, 1997. The case was heard by a deputy workers' compensation commissioner who awarded Gilbert twenty percent permanent partial disability benefits. The deputy also awarded Gilbert penalty benefits pursuant to Iowa Code section 86.13 upon determining respondents unreasonably denied Gilbert's claim. Respondents appealed the decision to the workers' compensation commissioner who affirmed the penalty award, but reduced Gilbert's permanency award to five percent. Gilbert appealed and respondents cross-appealed to the district court, which affirmed the five percent permanent partial disability award but reversed the award for penalty benefits. Gilbert appeals the reversal of his award for penalty benefits.

II. Scope of Review. We review a district court's ruling on judicial review of a workers' compensation case for correction of errors of law. *Blanchard v. Belle Plaine/Vinton Motor Supply Co.*, 596 N.W.2d 904, 906 (Iowa App. 1999). Our review is limited to whether the district court correctly applied the law in exercising its judicial review function. *IBP v. Harpole,* 621 N.W.2d 410, 414 (Iowa 2001). In determining whether the law has been correctly applied, we are bound by the industrial commissioner's factual findings if they are supported by substantial evidence in the record. *Id.* Evidence is substantial if a reasonable mind would accept it as adequate to reach the same conclusion. *St. Luke's Hosp. v. Gray,* 604 N.W.2d 646, 649 (Iowa 2000).

III. Penalty Benefits. Gilbert contends the district court erred in reversing the commissioner's award of penalty benefits. He argues the district court erred by finding that as a matter of law his workers' compensation claim was fairly debatable.

Iowa Code section 86.13 provides in pertinent part:

> If a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were unreasonably delayed or denied.

An employer and insurance carrier have a duty to act reasonably in paying benefits absent specific direction by the commissioner. *Davidson v. Bruce,* 594 N.W.2d 833, 838 (Iowa Ct. App. 1999). If there has been a delay in the payment of workers' compensation benefits, an employee is entitled to receive penalty benefits unless the employer proves it had a reasonable cause or excuse to delay payment. *Id.* A reasonable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to contest the employee's entitlement to benefits. *Id.* Penalties are not only available for willful or reckless acts, but also for negligent conduct. *Boylan v. American Motorists Ins. Co.,* 489 N.W.2d 742, 744 (Iowa 1992).

Both the deputy industrial commissioner and the industrial commissioner found the denial of Gilbert's claim unreasonable. Although they agreed that the denial might have been justified at first due to the information Gilbert provided in the incident report, they found respondent's denial of benefits unreasonable once Drs. Carlstrom and Minervini opined that Gilbert's injuries were work-related.

In reversing the penalty award, the district court found that the denial of Gilbert's claim was reasonable because his claim was "fairly debatable." The court concluded the claim was fairly debatable because Gilbert provided a revised history of the June 4, 1997 incident after his workers' compensation claim was denied. The record reveals Gilbert first mentioned a history of lifting a dock plate to Dr. Carlstrom on July 22, 1997.

In reviewing the industrial commissioner's findings of fact, the question is not whether the evidence might support a different finding, but whether it supports the findings actually made. *St. Luke's Hosp.*, 604 N.W.2d at 649. The industrial commissioner weighs the evidence, and we should broadly and liberally apply those findings in order to uphold, rather than defeat, the industrial commissioner's decision. *Id.* We are not free to interfere with a commissioner's decision just because inconsistent conclusions may be drawn from the same evidence. *Quaker Oats v. Ciha,* 552 N.W.2d 143, 150 (Iowa 1996).

We find substantial evidence exists to support the commissioner's finding that respondents acted unreasonably in denying Gilbert's claim. Gilbert provided the opinions of two medical experts that his injury arose out of and in the course of his employment. Dr. Carlstrom described Gilbert's injury as a "lifting, tugging work injury," and not merely an injury one would sustain from standing up. Although respondents contend the injury was idiopathic, they never presented any medical experts to controvert the opinions of Drs. Carlstrom and Minervini. Respondents' only investigation into Gilbert's claim was the review of his initial report. While there is also evidence that might support the district court's view that the claim was fairly debatable, "[w]hen there is a conflict in the evidence, we

are not free to interfere with the commissioner's findings." *Presthus v. Barco, Inc.*, 531 N.W.2d 476, 479 (Iowa Ct. App. 1995).

There was no basis for finding the commissioner's decision was unsupported by substantial evidence. Therefore, the district court erred in reversing the commissioner's decision. We reverse the district court's denial of penalty benefits and reaffirm the decision of the industrial commissioner.

DISTRICT COURT REVERSED; INDUSTRIAL COMMISSIONER AFFIRMED.

Vogel, J., concurs; Sackett, C.J. dissents.

Sackett, C.J. (dissenting)

The majority affirms the commissioner and reverses the district court. The majority determined that our review is of the commissioner's factual finding and the question is whether the finding is supported by the evidence. The majority determines there are facts to support the commissioner's findings while also conceding there is evidence that might support the district court's view the claim is fairly debatable.

I first believe the majority has applied the wrong standard of review. Our review is at law to determine if there are facts which if believed by the fact finder, in this case the commissioner, would result in a denial of the claim. There are facts which if believed would have supported a denial of the claim.

The question was whether the claimant satisfied the "arising out of employment" requirement. Three times claimant indicated the injury occurred while he stood at work. He later revised or changed this history. The commissioner decided to believe the history was revised and award benefits. The commissioner in my opinion could as well have determined the history was changed and deny benefits. There was a factual dispute as to the employer's liability generated. Consequently, I would find the claim fairly debatable and would affirm the district court.