IN THE COURT OF APPEALS OF IOWA

No. 0-059 / 99-1117
Filed on March 29, 2000

QUAKER OATS COMPANY,
Petitioner-Appellant,

vs.

ALLEN WILLIAMS,
Respondent-Appellee.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, David M. Remley, Judge.

Quaker Oats appeals a district court decision affirming the industrial commissioner's award in favor of Allen Williams. **AFFIRMED.**

James M. Peters of Simmons, Perrine, Albright & Ellwood, P.L.C., Cedar Rapids, for appellant.

Bob Rush of Lynch, Dallas, Smith & Harman, P.C., Cedar Rapids, for appellee.

Heard by Mahan, P.J., and Zimmer, and Vaitheswaran, JJ.

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VAITHESWARAN, J.

Quaker Oats Company seeks further judicial review of the industrial commissioner's award of workers' compensation benefits to former employee Allen Williams. We affirm.

I. Background Facts and Proceedings

Williams began working for Quaker Oats in 1966, as a laborer, and remained an employee for almost twenty nine years. On July 20, 1994, Williams was changing light bulbs at work, when he lost his balance and fell off a rickety ladder. Williams hit his elbow on top of some lockers and his right knee hit a bench below him.

Williams initially complained only of knee pain. Three weeks after the fall, he disclosed to Quaker Oats that he also had been experiencing shoulder pain since the fall. A medical examination revealed a tear to the right rotator cuff in Williams's shoulder. Williams had surgery to repair the cuff, which ultimately tore again.

Williams applied for workers' compensation benefits. A deputy industrial commissioner found Williams's shoulder injury arose out of the 1994 fall, and found he sustained a ninety percent permanent partial disability. The industrial commissioner affirmed the deputy's causation finding but found Williams suffered from a permanent and total industrial disability rather than a partial disability. The district court on judicial review affirmed the commissioner's decision. Quaker Oats appealed.

II. Scope of Review

On judicial review of administrative decisions, our function is not to examine the evidence de novo but to correct errors of law. *Manpower Temp. Servs. v. Sioson,* 529 N.W.2d 259, 262 (Iowa 1995). The findings of the industrial commissioner have the effect of a jury verdict. *Kostelac v. Feldman's, Inc.*, 497 N.W.2d 853, 856 (Iowa 1993). We will uphold those findings if they are supported by substantial evidence in the record made before the agency. *Id.* Evidence is substantial if a reasonable mind would find it adequate to reach a conclusion. *Quaker Oats Co. v. Ciha,* 552 N.W.2d 143, 150 (Iowa 1996).

III. Causal Connection

The key issue on appeal is whether Williams's shoulder injury arose out of and in the course of his employment. Quaker Oats contends it did not. The industrial commissioner found otherwise, stating, "claimant's right rotator cuff tear and the surgery incurred September 6, 1994 are causally connected to the July 20, 1994 work injury." The commissioner stated, "[t]he causal connection is established based upon credible medical evidence indicating the fall of July 20, 1994 as the mechanism of injury." The agency record contains substantial evidence to support the commissioner's finding.

Williams testified his elbow hit some lockers as he fell, and his arm became numb. He further stated, when he was taking a bath that evening, his arm was still numb and his right shoulder was killing him. He testified he called Quaker Oats's nurse and told her about the pain in his shoulder. Williams's wife confirmed Williams was experiencing shoulder pain on the evening of the fall. The deputy industrial commissioner found her testimony "extremely credible."

Medical records corroborated Williams's rendition of events. On August 11, 1994, just three weeks after the accident, Williams reported to Quaker Oats staff that his right shoulder had been hurting since the fall. Six days later, Williams advised Quaker Oats that he "jammed" his shoulder during the fall. He told medical staff he hit certain cabinets with his right arm. He further advised that, on his return to work, he experienced increased pain and weakness in his right arm when he attempted to lift it above shoulder level. Dr. Neiman concluded the July 1994 fall was the "responsible cause" of the shoulder injury. Dr. Hart concluded that, assuming Williams experienced shoulder pain since he fell off the ladder, "it is probable that Mr. Williams' fall from the ladder on July 20, 1996 [sic] contributed to his rotator cuff tear." While Dr. Law stated he could not "ascertain with any certainty" whether the shoulder injury was related to the fall, he did note Williams could have injured the right shoulder when his right elbow struck the locker. Accordingly, like the district court, we conclude substantial record evidence supports the agency decision finding a causal connection between Williams's shoulder injury and his fall.

IV. Extent of Industrial Disability

Quaker Oats next contends the industrial commissioner erred in finding Williams sustained a permanent total industrial disability. The company maintains that Williams's pre-existing health problems, as well as problems that appeared after the July 1994 fall contributed to his inability to work.

"Industrial disability measures an injured worker's lost earning capacity" or ability to be gainfully employed. *Myers v. F.C.A. Servs., Inc.*, 592 N.W.2d 354, 356 (Iowa 1999). Factors considered in determining industrial disability include

an employees' functional disability, age, education, qualifications, experience, and ability to engage in similar employment. *Id.* To determine the extent of industrial disability, the agency must compare the employee's earning ability prior to and after the injury. *Second Injury Fund of Iowa v. Nelson*, 544 N.W.2d 258, 266 (Iowa 1995).

When pre-existing, nonwork-related injuries exist, the agency considers the applicability of the apportionment rule. *Id.* at 264. Quaker Oats concedes that rule does not apply here. Instead, the company maintains the July 1994 fall was not the "proximate cause" of Williams's permanent, total disability. We disagree. The commissioner acknowledged Williams had other health problems that pre-existed the July 1994 injury, but noted Williams worked until the fall despite these other health problems. She concluded, "there is no evidence that the prior conditions were disabling, or that they now cause any 'ascertainable portion' of claimant's present disability." We find substantial evidentiary support for this conclusion. We also find substantial evidentiary support for the following agency findings:

> Claimant's age makes retraining for other types of work unlikely, and makes him a less attractive candidate to employers hiring personnel. Claimant's severe intellectual limitations likewise rule out retraining, and again result in significant obstacles to claimant being hired. Claimant's intellect, combined with his age and his restrictions and impairment rating, make the likelihood of his being hired in any capacity extremely remote.
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> Claimant's brief return to work resulted in claimant leaving work again due to the pain, and then undergoing surgery. This confirms claimant's inability to return to the type of work he had done for most of his life.

In light of our ruling, we find it unnecessary to address any remaining issues raised by Quaker Oats. We affirm the industrial commissioner's award of workers' compensation benefits.

AFFIRMED.