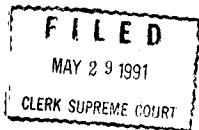


IN THE COURT OF APPEALS OF IOWA

No. 1-047 / 90-1294



JESSE W. JAMES,

Appellee,

vs.

SHELLER-GLOBE CORPORATION,

Appellant.

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

Employer appeals district court ruling remanding case
to the industrial commissioner for additional findings of
fact. **AFFIRMED AND REMANDED WITH DIRECTIONS.**

Harry W. Dahl, Des Moines, for appellant.

Phillip Vonderhaar, Des Moines, for appellee.

Heard by Oxberger, C.J., and Schlegel and Habhab, JJ.

HABHAB, J.

The petitioner sought workers' compensation death benefits for his wife's death from an acute asthma attack. The industrial commissioner denied benefits. However, upon judicial review, the district court remanded to the industrial commissioner for additional findings.

The employer has appealed from the district court's order. The employer contends the remand was erroneous because the industrial commissioner had already considered and rejected the petitioner's theory of recovery and the factual allegations supporting it. The employer also contends the district court erred by suggesting that the petitioner would be entitled to recover if he could prove (1) that his wife's underlying asthma condition was caused by her employment, and (2) that the acute asthma attack which killed her was a direct and natural consequence of her underlying asthma condition. We affirm and remand with directions to proceed in a manner consistent with this opinion.

I.

Rosa Lee James was employed at Sheller-Globe manufacturing plant from 1975 to 1985. She worked in Department 78 from January of 1981 through February of 1982 and from March of 1982 through January of 1984. She served as a finish operator and used a spray wax in the performance of her duties. In January of 1984, she

transferred to a different department where she worked until shortly before her death.

In September 1985 Rosa Lee died of an acute asthma attack. At the time of her death she had not been at the Sheller-Globe plant for some nineteen hours. Doctors suggested that the acute asthma attack could have been triggered by a household cleanser she had been using or by stress from marital difficulties.

After Rosa Lee's death, her husband, Jesse James, sought workers' compensation death benefits. His theory was that Rosa's underlying asthma condition was caused by her employment and that her acute asthma attack was a direct and natural consequence of her underlying asthma condition.

The industrial commissioner denied Jesse James' request. The industrial commissioner concluded Jesse had not met his burden to show that Rosa's acute asthma attack arose out of or in the course of her employment.

Jesse then sought judicial review to challenge this agency action. The district court concluded the industrial commissioner had failed to give sufficiently specific reasons for its denial of benefits. The court remanded the case to the industrial commissioner with directions to consider two factual issues: (1) whether Rosa's underlying asthma condition was caused by her employment with Sheller-Globe, and, if so, (2) whether the acute asthma

attack which caused Rosa's death was a direct and natural consequence of her underlying asthma condition.

Sheller-Globe has appealed from the district court's ruling. It contends the remand was erroneous for the industrial commissioner had considered and rejected Jesse's theory of recovery. Sheller-Globe also argues the district court erred by endorsing Jesse's theory of recovery, and by indicating that Jesse would be entitled to recover if he could prove the two elements of the remand order.

II.

Our scope of review is not de novo. Our duty is to correct errors of law made by the district court. We are bound by the commissioner's fact findings if they are supported by substantial evidence in the record made before the agency. Armstrong Tire & Rubber v. Kubli, 312 N.W.2d 60, 63 (Iowa App. 1981). If a jury issue is presented, were the case tried to a jury the commissioner's findings stand. Id. The supreme court has uniformly and repeatedly held that courts cannot interfere with the fact-finding prerogatives of the commissioner, nor with his findings of fact when there is supporting evidence and he acts within his powers and without fraud. Tebbs v. Denmark Light & Telephone Corp., 230 Iowa 1173, 1179 300 N.W. 328, 330 (1941).

In determining whether a claimant is entitled to worker's compensation benefits, it is first necessary to determine whether his or her injury arose out of and in the

course of employment, which involves a finding of whether the injury was caused by the employment. Burt v. John Deere Waterloo Tractor Works, 73 N.W.2d 732, 737 (Iowa 1955). In this respect, the claimant has the burden of proving by a preponderance of the evidence that the injury arose out of and in the course of the worker's employment. McDowell v. Town of Clarksville, 241 N.W.2d 904, 908 (Iowa 1976).

It is the law of our state that where an accident occurs to an employee in the usual course of his employment, the employer is liable for all consequences that naturally and proximately flow from the accident. Oldham v. Scofield & Welch, 222 Iowa 764, 767 266 N.W. 480, 481 (1936). A cause is considered proximate if it is a substantial factor in bringing about the result. It needs to be one cause; it does not have to be the only cause. Blacksmith v. All-American, Inc., 290 N.W.2d 348, 354 (Iowa 1980).

Professor Larson, in his treatise on worker's compensation discusses the "Range of Compensable Consequences". In this section he states :

When the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to claimant's own intentional conduct.

1 Larson, The Law of Worker's Compensation, §13.00 (1978).

III.

With the aforesaid principles of law in mind, we turn to the core of the dispute before us. In doing so, we take from the trial judge's ruling the positions of the parties as he perceived them:

Petitioner contends that the Industrial Commissioner erred as a matter of law in failing to consider Petitioner's legal theory of recovery That theory is that if Mrs. James' injury, which was allegedly her development of asthma, was caused by her employment, then Petitioner would be entitled to benefits if the acute asthma attack that led to her death was a "natural consequence" of her asthma condition. Petitioner further argues that there is substantial evidence in the record which would entitle Petitioner to workers' compensation death benefits under this legal theory.

Petitioner further argues that the Deputy did not consider Petitioner's legal theory because the Deputy applied a different and incorrect standard of law. Petitioner contends that this incorrect standard was that the Deputy required Petitioner to show that the irritant which set off the acute asthma attack was a work-related irritant. Petitioner contends that the Deputy's reliance on this improper standard can be surmised from the Deputy's written ruling and from the reliance by the Deputy on the reports of experts who never actually examined Mrs. James. Petitioner further contends that because the Deputy applied this incorrect standard, the Deputy was incorrect in concluding that, because Mrs. James had not been at work for nineteen hours prior to her death and because she had not been in Department 78 for a year and a half prior to her death, the irritant was not work-related.

Respondent argues that the Deputy did decide the case under the appropriate standard, and that actually the Deputy did consider Petitioner's theory of the appropriate standard but rejected it. In support of this argument, Respondent contends that the Deputy correctly found that Mrs. James' death was not caused by her employment because she had not been at Sheller-Globe for nineteen hours, or in Department 78 for more than

a year and a half, prior to her death. Respondent argues that these facts show that there was no direct causal connection between the final acute asthma attack and her employment.

The petitioner-claimant is entitled to have submitted and considered his legal theories as long as they are supported by pleadings and substantial evidence. Sanders v. Ghrist, 421 N.W.2d 520, 522 (Iowa 1988). Here, the claimant's theory of recovery, using his words from his brief, is that the exposure in the Sheller-Globe factory caused Rosa James to develop the permanent condition of asthma, or at least significantly aggravated the condition of her lungs so as to create the permanent asthma condition. The claimant then argues that if the asthma condition is an injury caused by her work, then all that need be shown is that the acute asthma attack and death was a natural and direct consequence of the asthma condition.

As we pointed out earlier, the employer argues that the commissioner did consider the claimant's theory of recovery. It argues further that the commissioner rejected the claimant's theory and found that death was not caused directly by her employment and also that it was not caused indirectly by work-related asthma.

It may very well be that on remand the commissioner may find that Mrs. James' asthma condition was not caused by her employment. There is medical testimony on each side of the question. If such a finding is made, then petitioner is not entitled to benefits.

But from the record, we are unable to determine with any degree of certainty that the commissioner did in fact consider the petitioner's theory when it rendered its decision. With that uncertainty before us, it then follows that we agree with the trial court that the commissioner should have made a finding as to whether or not Mrs. James' asthma condition was caused or aggravated by her employment with Sheller-Globe. If such a finding is made, then an additional finding must be made as to whether or not Mrs. James' fatal acute asthma attack was a natural and direct consequence of that asthma condition. We believe this to be the appropriate standard to apply in this case.

Recognizing there is evidence on both sides of the question, we, of course, form no opinion as to what those findings should be. We remand with instructions to proceed in a manner consistent with this opinion. We do not retain jurisdiction.

AFFIRMED.