

IN THE COURT OF APPEALS OF IOWA

No. 5-239/94-1608

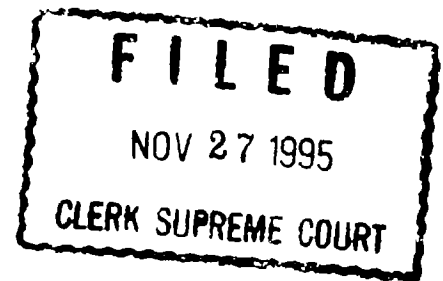
FRENCH & HECHT,

Appellee,

vs.

RAYMOND WORDEN,

Appellant.



Appeal from the Iowa District Court for Scott County, Margaret S. Briles,
Senior Judge.

Respondent appeals the district court's ruling on judicial review reversing the industrial commissioner's decision awarding the respondent penalty benefits pursuant to Iowa Code section 86.13 as a result of nonpayment of healing-period benefits.

AFFIRMED.

James M. Hood, Davenport, for appellant

Vicki L. Seeck and Jean Dickson Feeney of Betty, Neuman & McMahon,
Davenport, for appellee.

Considered by Donielson, C.J., and Cady and Huitink, JJ.

DONIELSON, C.J.

Raymond Worden claimed his employer unreasonably denied him healing period benefits. The Industrial Commissioner determined Worden was entitled to additional benefits under Iowa Code section 86.13. On judicial review, the district court reversed the commissioner. Worden now appeals. We affirm.

Worden became employed with French & Hecht in 1983. The company manufactures rims for tractors and other equipment. Worden was employed as a janitor. In 1984, Worden slipped on ice at work, and experienced back problems. He was able to return to work. He again injured his back in 1986, but was able to return to his job.

On February 4, 1987, Worden reported a work-related injury to his back when he reached for a tractor spindle. Worden was treated by the company physician, Dr. Richard Kreiter. By March 13, 1987, Dr. Kreiter told Worden he could return to work on light-duty status. Worden continued to complain of low-back pain.

In May 1987, Dr. Kreiter referred Worden to Dr. Hoffman. Dr. Hoffman recommended a bone scan to rule out any occult lesion. Worden refused the test due to his fear of radiation from the test.

In June 1987, Worden went to his own physician, Dr. John Collins. Dr. Collins referred Worden to University Hospitals in Iowa City and advised him to refrain from working until the evaluation was completed. During this time, French & Hecht send Worden a letter stating that his refusal to submit to the bone scan was

viewed as a refusal to submit to examination under section 85.39, which suspends the employee's right to any compensation for the period of the refusal.

Worden was examined by Dr. James Weinstein at the Spine Diagnostic and Treatment Center at University Hospitals in August 1987. Worden was placed in a back brace and treated conservatively. In September 1987, Worden was examined by Dr. Xerxes Colah, who was unable to explain Worden's symptoms on an anatomical basis. In February 1988, Worden had back surgery at University Hospitals. He went through vocational rehabilitation and has not returned to work at French & Hecht.

Worden filed a claim for workers' compensation benefits. He also claimed the employer unreasonably denied him healing period benefits from June 1987 through June 1980 and asked to be awarded penalty benefits under section 86.13. The employer claimed Worden's injuries were not causally related to an injury at work. The parties agreed to bifurcate the proceedings. On March 11, 1991, a deputy Industrial Commissioner determined Worden had a thirty percent permanent partial disability as a result of the February 4, 1987, injury. This decision was affirmed on appeal to the commissioner.

On the issue of the unreasonable denial of healing period benefits, on October 21, 1992, a deputy Industrial Commissioner found the employer's denial of healing period benefits was unreasonable. It found the reasons given by the employer for denying benefits were not appropriate and concluded the employer had not denied

benefits because of a dispute over whether the injury was causally connected to the employee's work. The deputy determined Worden was entitled to the maximum penalty benefits allowed by section 86.13. The employer appealed to the Industrial Commissioner. The commissioner adopted the deputy's opinion.

The employer then filed a petition for judicial review. The district court determined the employer had a reasonable basis for believing there was no connection between Worden's employment and his injuries. The court noted that Dr. Kreiter had given the opinion that Worden could return to work. The court found the medical evidence available to the employer was clearly in dispute as to the nature of the problem, or whether Worden even had a continuing problem. The court concluded there was no basis in the record to award Worden penalty benefits under section 86.13. The court reversed the decision of the commissioner. Worden now appeals.

Our scope of review on appeal is limited. *Lithcote Co. v. Ballenger*, 471 N.W.2d 64, 66 (Iowa App. 1991). We review to determine whether the agency decision is supported by substantial evidence when viewing the record as a whole. *Honeywell v. Allen Drilling Co.*, 506 N.W.2d 434, 435 (Iowa 1993). Evidence is substantial if a reasonable mind would accept it as adequate to reach the same findings. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230, 232 (Iowa App. 1990).

Worden contends the district court was incorrect in reversing the Industrial Commissioner's decision finding he was entitled to penalty benefits. Section 86.13, in pertinent part, provides:

If a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the industrial 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.

Worden claims the employer's decision to refuse to pay healing period benefits was without reasonable or probable cause. He points out that the Industrial Commissioner found his injuries were caused by his employment. He believes the employer denied him benefits because he sought unauthorized medical treatment.

Section 86.13 codifies, in the workers' compensation insurance context, the common law rule that insurers with good faith disputes over the legal or factual validity of claims can challenge them, if their arguments for doing so present fairly debatable issues. *Covia v. Robinson*, 507 N.W.2d 411, 413 (Iowa 1993). The employee has the burden to show the alleged delays were without reasonable or probable cause or excuse. *Presthus v. Barco, Inc.*, 531 N.W.2d 476, 481 (Iowa App. 1995).

It is an unreasonable application of the penalty provision to assume that any delay after the furnishing of medical evidence to the employer is unreasonable. *Kiesecker v. Webster City Meat, Inc.*, 528 N.W.2d 109, 111 (Iowa 1995). Even

after the receipt of a medical report, issues regarding percentage of disability may still be fairly debatable. *Id.*

We agree with the district court that there was not substantial evidence in the record to support the commissioner's determination that Worden's claims were not fairly debatable. We conclude that, as a matter of law, his claims were fairly debatable. The medical evidence was not in agreement as to the cause or extent of Worden's injuries. We first note Worden had complaints of back pain before the injury in question. Also, Dr. Kreiter found Worden was capable of returning to work. Dr. Hoffman did not think Worden's problems were significant. Dr. Colah was unable to find an anatomical basis for Worden's complaints. Based on this evidence, we believe the employer had reasonable or probable cause or excuse for delaying benefits.

We affirm the decision of the district court denying Worden's request for penalty benefits under section 86.13.

AFFIRMED.