FILED
FEB 28 1978
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

Filed February 28, 1978

LORI FREDERICKSEN, Widow,
DAVID N. FREDERICKSEN, Deceased,

Appellee,

v.

NORTHWEST IOWA MASONRY, INC.,
and HAWKEYE-SECURITY INSURANCE
COMPANY,

Appellants.

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2-60299

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Appeal from Emmet District Court - Richard C. Cooper, Judge.

Appeal by employer and insurance carrier from district court affirmance of Industrial Commissioner's finding and order in workmen's compensation death benefits claim. Affirmed.

Robert L. Ulstad, of Ulstad, Guinan & Cornell, of Fort Dodge, for appellants.

Francis Fitzgibbons, of the Fitzgibbons Law Firm, of Estherville, for appellee.

Heard by Allbee,C.J., and Donielson, Snell, Oxberger and Carter, JJ.

**PER CURIAM**

Defendants Northwest Iowa Masonry, Inc. and Hawkeye Security Insurance Co. appeal from trial court's judgment affirming the finding and order of the Industrial Commissioner that David Fredericksen was in the course of employment when killed in an auto accident and that his widow was thus entitled to workmen's compensation death benefits. We affirm the trial court.

I. Initially, because it directly affects the scope of this court's review, we consider whether the district court employed the proper standard for reviewing the Industrial Commissioner's order. The question has been raised whether the Iowa Administrative Procedure Act (IAPA), ch. 17A, The Code 1975, which became effective after the original claim in this case was made but before the petition for judicial review was filed, determines the scope of judicial review of the present agency action. We conclude that the district court properly determined its scope of review to be "substantial evidence in the record made before the agency when that record is viewed as a whole;" the standard dictated by the IAPA, § 17A.19(8)(f). Section 86.30, The Code 1973, which set the scope of such district court review prior to the IAPA, was repealed by 65 GA, ch. 1090, § 211, effective July 1, 1975. Section 86.26, The Code, still effective on July 1, 1975, provided for review "in accordance with the terms of the [IAPA]." Because § 86.30 was no longer effective on July 1, 1975, and because the contemplated proceeding was judicial in nature rather than administrative, § 17A.23 operates to require the IAPA standard for judicial review. Furthermore, although district court review and thus our review is controlled by the IAPA, case law made prior to the IAPA retains it vitality. Review under repealed § 86.30(4), The Code 1973, was a review of the sufficiency of the evidence. The IAPA was not meant to alter the substantive rights of any person or agency. § 17A.1(2), The Code 1975.

II. In the present case the Commissioner's conclusion was a result of his finding that the facts supported the application of the dual purpose doctrine. First expressly adopted by the supreme court in Golay v. Keister Lumber Company, 175 N.W.2d 385, 388 (Iowa 1970), the dual purpose doctrine provides:

> Injury during a trip which serves both a business and a personal purpose is within the course of employment if the trip involves the performance of a service for the employer which would have caused the trip to be taken by someone even if it had not coincided with the personal journey.

See 1 Larson, Law of Workmen's Compensation 253-254, § 16.10 (1965).

The evidence before the Industrial Commissioner supports the following facts. David Fredericksen, the deceased, was employed by Northwest Iowa Masonry, Inc. at a construction site in Algona, Iowa. On October 17, 1974, he was told by his foreman to stop at a shop in Estherville, Iowa, to pick up a piece of repaired machinery needed on the job site the next day. Fredericksen had often made such stops after normal working hours and was compensated by his employer for doing so. Fredericksen's home, as well as the repair shop, was in Estherville. Shortly after leaving the job site at 5:00 P.M. on October 17, 1974, and before reaching Estherville, a collision occurred and Fredericksen was killed.

We conclude, as did the district court, that substantial evidence supports the Commissioner's finding that the dual purpose doctrine applies and that the deceased was in the course of employment at the time of his death. The judgment of the trial court is affirmed.