

IN THE COURT OF APPEALS OF IOWA

JACK KLAS, SR., )

Claimant/Respondent-Appellee, )

v. )

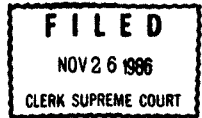
COMMERCIAL SERVICES, )

Employer/Petitioner-Appellant, )

Filed November 28, 1986

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86-524

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Appeal from the Iowa District Court for Webster County (No. 51626) -  
R. K. Richardson, Judge.

Employer and insurance carrier appeal from the district court's affirmance of the industrial commissioner's determination that claimant had an industrial disability of twenty-five percent. **AFFIRMED.**

Roy M. Irish of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway of Des Moines for appellants.

David A. Opheim of Kersten, Opheim & Carlson of Fort Dodge for appellee.

Considered by Oxberger, C.J., Donielson and Sackett, JJ.

**OXBERGER, C.J.**

This is an appeal from the district court's decision affirming the industrial commissioner's determination that the claimant-appellee suffered an industrial disability of twenty-five percent. The appellants, the claimant's employer and the employer's insurance carrier, assert that the claimant suffered only a scheduled injury to his right ankle. As such, they maintain that the commissioner and district court erred as a matter of law in allowing compensation based upon the disability of the claimant's body as a whole, and contend that their liability should have been limited by the schedule covering the specific injury. We affirm.

**II. STANDARD OF REVIEW**

The standard of review which we employ in cases governed by the Iowa Administrative Procedure Act is limited by Iowa Code section 17A.20 to the correction of errors of law. Caylor v. Employers Mutual Casualty Co. 337 N.W.2d 890, 893 (Iowa Ct. App. 1983). We review the district court's decision on appeal from the commissioner's determination for errors of law, and reapply the standards embodied in section 17A.19(8) in order to determine whether our conclusions are the same as those of the district court. Doerfer Division of CCA v. Nicol, 359 N.W.2d 428, 432 (Iowa 1984). If the facts are in dispute, we will adopt the findings made by the industrial commissioner if they are supported by substantial record evidence. Caylor, 337 N.W.2d at 893. Moreover, the commissioner's findings are accorded the same weight as a jury verdict and are applied broadly and liberally to uphold rather than to defeat the commissioner's decision. Armstrong v. State of Iowa Buildings and Grounds, 382 N.W.2d 161, 165 (Iowa 1986); Nicol, 359 N.W.2d at 432.

**I. COMPENSATION OF CLAIMANT**

Turning to the merits of this appeal, the question before us is whether the commissioner and the district court erred in awarding compensation on

the basis of the disability to the body as a whole rather than limiting compensation to the schedule covering the injured member.

In Caylor v. Employers Mutual Casualty Co., 337 N.W.2d 890, 893 (Iowa Ct. App. 1983), we explained at length the difference between a scheduled injury and a further finding of disability. In short, if the claimant's impairment is limited to a scheduled member, the amount of compensation is fixed by statute according to the loss of the use of that member. Id.; see also Dailey v. Pooley Lumber Co., 233 Iowa 758, 760, 10 N.W.2d 569, 571 (1943); see generally Lauhoff Grain Company v. McIntosh, No. 85-434, slip. op. (Iowa Nov. 12, 1986). If, however, the extent of the injury exceeds the specific member, the claimant is said to have suffered a nonscheduled injury, and his compensation is based upon the percentage of industrial loss. See Barton v. Nevada Poultry Co., 253 Iowa 285, 292, 110 N.W.2d 660, 664 (1961); see also Hedberg and Vonderhaar, An Overview of the Iowa Workers' Compensation Act, 30 Drake L. Rev. 809, 827-28 (1980-81).

The claimant bears the burden of showing that although the specific injury is limited to a particular member, "there resulted an ailment extending beyond the scheduled loss...." Kellogg v. Shute and Lewis Coal Co., 256 Iowa 1257, 1262, 130 N.W.2d 667, 669 (1964). This is a question of fact determined from the record. Id. at 1257, 130 N.W.2d at 669. The supreme court held that such a showing had been made in Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). There the court stated that:

[W]hile the trauma, the injury, was limited to the right foot, the Commissioner found Claimant, as a result thereof, was affected with an ailment that extended beyond the scheduled loss of a foot, or the use thereof. The schedule is not applicable.

Id. at 292, 110 N.W.2d at 664.

The court reached a similar conclusion in Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943). In Dailey, the claimant sustained an injury

to his right femur. This injury caused a shortening of the leg, which in turn resulted in a tilting of the pelvis and curvature of the spine. 233 Iowa at 763, 10 N.W.2d at 571. On the basis of this evidence, the court held that the claimant's initial scheduled injury resulted in a nonscheduled permanent ailment, and that he was entitled to nonscheduled permanent disability benefits. Id. at 765, 10 N.W.2d at 573-74.

We think that the evidence adduced in the case at bar warrants a similar conclusion. The record reflects that following the injury to his ankle, the claimant began experiencing pain in his lower back. At the appellant-insurer's request, he then visited an orthopedic surgeon. This surgeon stated that the back pains "were probably related to the abnormal gait which had ensued following the ankle injury." The claimant then consulted another orthopedic surgeon who opined that the claimant had suffered a twenty-two percent partial disability of the body as a whole. Finally, another physician reported that the claimant had suffered "traumatic degenerative arthritis of his right ankle with pain in his right knee and low back region secondary to the alteration of gait the right ankle injury [had] caused." On the basis of this evidence, the industrial commissioner stated:

Defendants contend that claimant's back pains are a natural consequence of the scheduled injury and compensation must be limited to the provisions of the schedule. They do not offer evidence or explanation as to why back pain should be construed as the usual or ordinary result of a fracture to the ankle. Claimant's back pains imply injury additional to the fractured ankle; that is, an injury not confined to the lower extremity. The testimony of Drs. Walker and Zittergruen indicate the injury is of a permanent nature and produces a functional impairment that extends beyond the impairment to the right leg. As the injury suffered by claimant extends beyond the scheduled area, the schedule does not apply, and an analysis of industrial disability is appropriate. It should be noted here that defendants suggest that claimant's back condition is attributable to rheumatoid arthritis. There is no medical evidence in the record that supports this contention.

We find credible evidence in the record refuting the defendant-appellants' contentions presented in the above excerpt. First, although Dr. Walker commented on the fact that the claimant might have rheumatoid arthritis, he nowhere stated that the arthritis caused the back pain; on the contrary, he specifically opined that the back pain was a result of the injury to the claimant's foot. In addition, Dr. Walker explicitly noted that the claimant had sustained a permanent disability:

It appears that this patient is going to end up with some permanent disability because of his problems with the low back, the right knee, the right ankle and to some extent the right elbow and cervical spine.

The appellants assert that this case is indistinguishable from Kellogg v. Shute & Lewis Coal Co., 256 Iowa 1257, 130 N.W.2d 667 (1964). We disagree. In Kellogg, the supreme court denied nonscheduled compensation because the claimant had presented insufficient evidence of other disability resulting from the initial injury. 226 Iowa at 1266, 130 N.W.2d at 671, 672. As discussed above, the same cannot be said in the instant case.

In addition, the appellants appear to argue that it is necessary for the claimant to establish that he suffered an independent injury to his back at the time of the accident. We find the language utilized by the supreme court in Barton v. Nevada Poultry Co., 253 Iowa at 292, 110 N.W.2d at 664, directly contradictory. There, the court stated that, "the injury, the loss, suffered by the claimant" is the critical inquiry; the court does not require a showing of isolated injuries beyond the scheduled impairment, but rather only that a further disability "resulted." 253 Iowa at id., 110 N.W.2d at 664. Accordingly, we conclude that the decisions of the district court and the commissioner are affirmed.

**AFFIRMED.**