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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

QUAKER OATS AND IDEAL MUTUAL INSURANCE CO.,	)	Filed August 30, 1983 258
Petitioners-Appellants,	)	3-96
vs.	)	2-68835
SELMA C. FURLER AND IOWA INDUSTRIAL COMMISSIONER,	)	
Respondents-Cross-Appellants.	)	

Appeal from Linn District Court, Ansel J. Chapman, Judge.

Petitioners employer and insurance carrier appeal and respondent cross-appeals from the district court decision on judicial review in a worker's compensation case affirming the industrial commissioner's finding on causation and remanding for recomputation of benefits. AFFIRMED.

James E. Shipman and Roger W. Stone of Simmons, Perrine, Albright & Ellwood, Cedar Rapids, for petitioners-appellants.

Robert R. Rush of Lynch, Dallas, Smith & Harman, Cedar Rapids, for respondents/cross-appellants.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden, JJ.

OXBERGER, C.J.

Petitioners employer and insurance carrier appeal and respondent cross-appeals from the district court decision on judicial review in a worker's compensation case affirming the Industrial Commissioner's finding on causation and remanding for recomputation of benefits. Petitioners assert that substantial record evidence fails to support the conclusion that a second injury suffered by claimant while recovering from an earlier work-related injury arose out of an in the course of her employment. Claimant asserts: (1) that failure to name claimant in the caption of the petition for judicial review as required by Iowa Code section 86.29 constituted a defect depriving the district court of subject matter jurisdiction; (2) that the district court erred in finding that claimant's two injuries should not be combined to create one industrial disability; (3) that claimant should not have been assessed half of the costs; and (4) that claimant should have received an award for certain chiropractic expenses incurred during the course of her treatment. We affirm.

I. Subject Matter Jurisdiction

We must first determine whether the district court lacked subject matter jurisdiction. We find that the employer substantially complied with the "naming" requirement of Iowa Code § 86.29 inasmuch as Selma Furler was named in the petition which showed the course of the controversy, the parties before the agency, and a request for modification of the Industrial Commissioner's decision. Green v. Iowa Department of Job Service, 299 N.W.2d 651, 654 (Iowa 1980). Furthermore, the district court permitted the employer to amend that caption to relate back and include Selma Furler's name. Therefore, we affirm its jurisdiction.

II. Whether the Knee Injury is Compensable

The district court's finding that the knee injury is compensable is also affirmed. Our scope of review is not de novo. Our duty is to correct errors of law made by the district court. Armstrong Tire and Rubber Co. v. Kubli, 312 N.W.2d 60, 63 (Iowa Ct. App. 1981), citing Jackson County Public Hospital v. PERB, 280 N.W.2d 426, 429 (Iowa 1979). We find no such error. The question on judicial review is not whether the evidence might support a different finding but whether the evidence supports the finding the commissioner made. Ward v. Iowa Dept. of Transportation, 304 N.W.2d 236, 237-38 (Iowa 1981).

Employer contends that Ms. Furler deviated from the recommended exercises by running, and that the cause of the knee injury cannot be attributed to the prescribed activity. They do not challenge that an injury sustained while engaged in medically prescribed activity for a compensable injury is also compensable. See DeShaw v. Energy Manufacturing Co., 192 N.W.2d 777, 780 (Iowa 1971). The record is not clear whether the prescribed exercise included running. However, we do agree with the district court that whether "running a little" was a prescribed activity or that it was so like walking that it should be considered such an activity was a matter to be decided by the factfinder.

The employer then claims that there is a lack of direct medical testimony whether the knee injury was caused by running. Iowa Code § 17A.14(1) establishes the standard of adequacy for evidence in a contested case for administrative agencies. In Foods Inc. v. Iowa Civil Rights Commission, 318 N.W.2d 162, 166 (Iowa 1982), the court found that lay testimony alone about epileptics was sufficient to support a finding that the employee was disabled from epilepsy. Expert testimony based on an incomplete history must be weighed with the

surrounding circumstances as disclosed in the record. Musselman v. Central Telephone Co., 261 Iowa 352, 154 N.W.2d 128, 133. The necessity of expert medical testimony of causation has generally been determined by the facts of the particular case, whether causation was necessarily within the realm of expert testimony and not clearly apparent to laymen or could be reliably established by nonexpert testimony. See 3 Larson, The Law of Workmen's Compensation, sections 79.50-79,54 (1976).

In this case Dr. Naden's notes and records can be treated as a medical opinion based on an incomplete history as in Musselman, id at 133, and may be considered in light of the omission in the history and in the surrounding circumstances in the record. Uncontroverted testimony discloses immediate discoloration and inflexibility of the knee following the running accident.

We therefore conclude there is sufficient evidence to support the agency's finding that the running incident caused the knee injury.

III. Whether the Knee Injury is subject to Schedule

In light of Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983), we affirm the district court's remand to the Industrial Commissioner for recomputation of benefits with the knee injury to be considered separately. In that case, the Supreme Court upheld its long established rule that compensation for scheduled injuries should be properly limited to specific physical impairments and benefits are not to be measured by industrial disability factors such as loss of earning capacity. See also Kellogg v. Shute & Lewis Coal Co., 256 Iowa 1257, 130 N.W.2d 667 (Iowa 1964). As in Graves, the medical testimony in the case at bar went to the specific physical impairment of the leg. In Dr. Naden's medical opinion, he would award a 10 percent permanent-partial disability to the right leg because of the knee injury Selma sustained. In the Graves case, the supreme court continued

its refusal to expand on this rule by quoting from Soukup v. Shores Co., 222 Iowa 272, 279 , 268 N.W.2d 598, 601 (Iowa 1936) which stated:

> That a workman sustaining one of the minor injuries for which specific compensation is provided under the statute might, because of such an injury, be unable to resume his employment and, because of his lack of education or experience or physical strength or ability, might be unable to obtain other employment, does not entitle him to be classed as totally and permanently disabled.

Even though some courts are beginning to treat the loss of members as amounting to disability of the entire body (See 2 Larson, The Law of Workmens' Compensation, § 58.00 at 10-164 (1979), the Iowa Supreme Court in Graves deems it inappropriate to do so now. Id. at 119. We therefore affirm the remand to consider the knee injury as separate and subject to schedule and to render a decision on the disability rating for the back injury.

IV. Whether the Chiropractic expenses Issue will be Considered

Our duty is to correct errors of law made by the district court. The issue of the reduction of chiropractic expenses was not raised or argued in the district court. Therefore, it will not be considered now. Armstrong Tire & Rubber Co. V. Kubli, 312 N.W.2d 60, 64 (Iowa Ct. App. 1981) citing Temple v. Vermeer Manufacturing Co., 285 N.W.2d 157, 159 (Iowa 1979).

V. Assessment of Costs

The appeal to the district court did not contest the award of costs ordered by the agency. We therefore conclude that the district court's order of costs be limited to those incurred in the district court. We affirm the order of those costs.

AFFIRMED.