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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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CATERPILLAR TRACTOR COMPANY, )
Plaintiff-Appellee, ) Filed March 31, 1987
vs )
SUSANO MEJORADO, ) 6-498 / 86-485
Defendant-Appellant )

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Appeal from the Iowa District Court for Scott County (No. 69591) - Margaret S Briles, Judge

Claimant appeals the district court's reversal of an industrial commissioner's ruling **AFFIRMED.**

Kent A Simmons of Kiebbe & Simmons, Davenport, for defendant-appellant.

Larry L Shepler and Vicki L Seeck of Betty, Neuman & McMahon, Davenport, for plaintiff-appellee

Heard by Donielson, P J , and Snell and Schlegel, JJ

**PER CURIAM**

On August 21, 1975, the appellant, Susano Mejorado, was injured at his place of employment. His employer, appellee Caterpillar Tractor Company, filed a memorandum of agreement with the industrial commissioner on August 28, 1975. Caterpillar commenced paying Mejorado healing period and permanent partial disability benefits. In a December 28, 1977, status report, Caterpillar's benefits supervisor estimated Mejorado's permanent partial disability to the body as a whole at forty-one percent. Based upon a January 1980 examination of Mejorado at an industrial injury clinic, Caterpillar determined that Mejorado's permanent partial disability was twenty-five percent. Caterpillar added a six percent industrial disability figure and paid Mejorado an amount based upon the total disability of thirty-one percent of the body as a whole. The last payment was made on April 21, 1980.

On August 2, 1982, Mejorado requested a review-reopening hearing pursuant to Iowa Code section 86.14(2)(1981), claiming a dispute as to the extent of permanent disability to the body as a whole. A hearing was conducted on August 12, 1983, before a deputy industrial commissioner. On January 26, 1984, the deputy industrial commissioner filed an order setting Mejorado's permanent partial industrial disability at thirty-six percent and ordering Caterpillar to pay additional benefits. This determination was affirmed by the industrial commissioner. On judicial review, the district court determined that the deputy industrial commissioner and the industrial commissioner had made an error of law in reaching their decisions and remanded the case for further proceedings. This appeal followed.

Our review is limited by sections 17A.19 and .20 of the Iowa Code (1985). The commissioner's findings have the effect of a jury verdict, and we broadly apply them to uphold his decision. Beier Glass Company v. Brundige, 329 N.W.2d

280, 282 (Iowa 1983). The commissioner's determination of a question of law is entitled to careful consideration but is subject to our review. Id. We have a duty to correct the district court's errors of law as well. Foods, Incorporated v Iowa Civil Rights Commission, 318 N.W.2d 162, 165 (Iowa 1982); Iowa R. App. P. 4. We review the district court's decision on appeal from the commission'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).

The district court, on judicial review, held that the commissioner had erred by failing to impose upon Mejorado the burden of showing that an adjustment in compensation was warranted. Both the deputy industrial commissioner and the industrial commissioner had determined that Mejorado bore no such burden because, notwithstanding the filing of the memorandum of agreement, no actual agreement for settlement as to disability had been reached between the parties. As no such agreement had been reached, Mejorado did not come within Iowa Code 86.14(2) (1985), the judicial interpretation of which would require him to shoulder the above-mentioned burden.

Iowa Code section 86.14(2) provides that

> [i]n a proceeding to reopen an award for payments or agreement for settlement as provided by section 86.13, inquiry shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon.

The review-reopening procedure of section 86.14(2) provides the vehicle for adjusting a prior award or agreement when the passage of time and subsequent events show the true extent of disability. See Meyers v. Holiday Inn of Cedar Falls, Iowa, 272 N.W.2d 24, 26 (Iowa Ct. App. 1978) (in context of prior adjudication). An employee who requests a review-reopening proceeding subject to

section 86.14(2) has the burden of showing by a preponderance of the evidence his or her right to compensation in addition to that accorded by a prior agreement. Gosek v. Garmer & Stiles, Co., 158 N.W.2d 731, 732 (Iowa 1968); see Freeman v. Luppes Transport Company, Inc., 227 N.W.2d 143, 147 (Iowa 1975). While an employee need not show a change in physical condition in order to prove an increase in industrial disability, Blacksmith v. All-American, Inc., 290 N.W.2d 348, 350 (Iowa 1980), the employee must prove that the increased disability was proximately caused by the injury which was the subject of the agreement. Id. at 352.

Mejorado contends, however, that he need not shoulder this burden as the agreement evidenced by the memorandum and subsequent papers on file pursuant to section 86.13 does not constitute an "agreement for settlement" within the meaning of section 86.14. We disagree. Although the memorandum is not the agreement itself but, rather, notice an agreement has been reached, such an acknowledgment is all that is required by section 86.13. Whitters & Sons, Inc. v. Karr, 180 N.W.2d 444, 447 (Iowa 1970). Unless disapproved by the industrial commissioner within twenty days, "the agreement shall stand approved and be enforceable for all purposes." Iowa Code § 86.13 (1981). The memorandum need not be signed by both parties. Whitters & Sons, 180 N.W.2d at 447. The employer or insurance carrier, by paying, and the employee, by accepting payment, evidence by their actions an agreement to be bound by the applicable provisions of the Iowa Workmen's Compensation Law. Id. at 446-47. One of those provisions, of course, is section 86.14. That provision, and the case law which has interpreted it, places the burden to show a right to increased compensation upon the claimant. E.g., Gosek, 158 N.W.2d at 732.

Mejorado attempts to support his argument by reference to cases which hold that the filing of a memorandum of agreement does not foreclose inquiry

into the extent of disability, unless the agreement has been commuted. E.g., Freeman, 227 N.W.2d at 150. While we agree that this inquiry is not foreclosed, we are convinced that in order to address that issue a claimant must proceed through the review-reopening process and accept the burdens that process imposes. See Beier Glass Company, 329 N.W.2d at 286 ("[a] memorandum of agreement . . . leaves open the extent of disability for future determination through review-reopening"); Tebbs v. Denmark L. & T. Corp., 230 Iowa 1173, 1176, 300 N.W. 328, 329 (Iowa 1941) (memorandum of agreement leaves "the question with reference to disability open for adjustment in accordance with the facts" provided timely application for review-reopening is made as provided for by what is now sections 85.26 and 86.14).

This analysis, however, does not entirely dispose of the case at bar. Effective July 1, 1982, an amendment to Iowa Code section 86.13 changed the manner in which settlement agreements became valid and enforceable. This effective date follows the last payment made to Mejorado by Caterpillar but precedes the review-reopening petition. While the pre-amendment statute provided that employer-employee agreements became enforceable unless the industrial commissioner disapproved the agreement, as evidenced by the memorandum, within twenty days, the 1982 amendments provide that such agreements are "valid only if signed by all parties and approved by the industrial commissioner." Iowa Code § 86.13 (1983). Mejorado signed nothing which could be construed as an agreement in this case; in fact, the memorandum of agreement form does not contain a space for an employee's signature. As a result, if the 1982 amendment is applied to this case, there would be no valid settlement to reopen or review, the administrative hearing consequently would be an original proceeding within Iowa Code section 86.14(1) (1981) and, consistent with Mejorado's argument, he would have no burden to show a right to compensation in addition to a prior

agreement. See Iowa Code § 86.14(1) (1983). The industrial commissioner's result would accordingly be correct. We must therefore determine whether the 1982 amendment should be applied retroactively to the facts of this case.

In ascertaining the prospective or retrospective effect of a statute, legislative intent is determinative. State ex rel. Turner v. Limbrecht, 246 N.W.2d 330, 332 (Iowa 1976). In divining legislative intent, the general rule is that, absent clear legislative indication to the contrary, a statute operates prospectively only. Id. This general rule prevails where the statute or amendment is "substantive." Smith v. Korf, Diehl, Clayton & Cleverly, 302 N.W.2d 137, 138 (Iowa 1981). Where the statute or amendment relates to "procedure," however, it is not limited to prospective application and may be applied retrospectively, even absent clear legislative intent. Id. Even when only part of the enactment is procedural, retroactive effect is ordinarily given to that part. State ex rel. Buechler v. Vinsand, 318 N.W.2d 208, 210 (Iowa 1982). Substantive law is that part of the law which creates, defines, and regulates rights. Limbrecht, 246 N.W.2d at 332. Procedural law is the practice, method, procedure, or legal machinery by which the substantive law is enforced or made effective. Id.

The case at bar is illustrative of the difficulty involved in the categorization of a statute or amendment as either "substantive" or "procedural." That this simplistic dichotomy belies a complex interaction between the two is evidenced by the 1982 amendment of section 86.13 which deals with the procedural prerequisites to a settlement agreement's substantive validity.

We have noted on a number of occasions that Iowa Code Chapter 86 allows a claimant to secure compensation for injuries covered by our workers' compensation act either by entering into an agreement with his or her employer or by filing a petition for arbitration. E.g., Beier Glass Company, 329 N.W.2d at

282. The 1982 amendment preserves the right of an employer and employee to enter into a settlement agreement. Iowa Code § 86.13 (1983). The amendment does not end there, however, as it also restricts the validity of the exercise of that right. We think the amendment's provision at issue here regulates the right, confirmed and preserved in the same paragraph, to enter into agreements for compensation. As such, it is a substantive amendment and, absent legislative intent clearly to the contrary, should be applied only prospectively, so as not to affect the agreement entered into by Mejorado and Caterpillar under the provisions of the pre-amendment section 86.13. Cf. 82 C.J.S. Statutes § 417 (1953) (a statute is not construed to impair the validity of a contract entered into before its passage, absent plain legislative intent to the contrary). We find no such intent and consequently do not apply the amendment to the 1975 agreement of the parties.

Finally, we reject Mejorado's contention that the 1982 amendment was simply the codification of requirements already being enforced under the statute. It is quite plain to us that the 1982 amendments effected a substantial change in the statutory requirements.

We affirm the district court's order.

**AFFIRMED.**