FILED
MAR 3 1 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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ROBIN HOOTMAN,	)	
Petitioner-Appellee,	)	Filed March 31, 1987
vs.	)	
WEYERHAEUSER COMPANY,	)	
Respondent,	)	6-533 86-563
and **SECOND INJURY FUND OF IOWA,**	)	
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Linn County (No. LA 13851) - Thomas M. Horan, Judge.

Respondent appeals the district court's order which reversed the industrial commissioner designee's denial of benefits from Second Injury Fund. **AFFIRMED.**

Thomas J. Miller, Attorney General, and James M. Peters and Jo Anne MacKusick, Assistant Attorneys General, for respondent-appellant.

Benjamin W. Blackstock of Eells, Blackstock, Affeldt & Harms, Cedar Rapids, for petitioner-appellee.

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

On April 21, 1982, the appellee, Robin Hootman, filed a petition for workers' compensation benefits from her employer, Weyerhaeuser Company, and the Second Injury Compensation Fund. Weyerhaeuser Company subsequently reached a settlement with Hootman and did not participate in the May 6, 1983, hearing on the petition. That hearing resulted in a denial of fund benefits. Hootman appealed to the industrial commissioner, and his designee affirmed the denial of benefits on October 4, 1985. Hootman then sought judicial review and, on March 6, 1986, the district court reversed the denial of fund benefits, finding a lack of substantial evidence in support of the agency's decision. Following an unsuccessful motion urging the district court to amend its ruling, the Fund brought this appeal.

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).

Section 85.64 (1985) of the Iowa Code establishes qualification criteria for Second Injury Fund benefits and provides, in pertinent part, as follows:

> If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently disabled by a compensable injury which has resulted in the loss of or loss of use of another such member or organ, the employer shall be liable only for the degree of disability which would have resulted from the latter injury if there had been no preexisting disability. In addition to such compensation, and after the expiration of the full period provided by law for the payments thereof by the employer, the employee shall be paid out of the "Second Injury Fund" created by this division the remainder of such compensation as would be payable for the degree of permanent disability involved after first deducting from such remainder the compensable value of the previously lost member or organ.

The Second Injury Fund was established in order to encourage employers to hire handicapped workers. Second Injury Fund v. Michigan Coal Company, 274 N.W.2d 300, 302 (Iowa 1979); see Anderson v. Second Injury Fund, 262 N.W.2d 789, 791-92 (Iowa 1978). This encouragement results from the fact that the employer is held liable for only the disability resulting from the second injury. Michigan Coal Company, 274 N.W.2d at 301. The Fund is obligated to pay the balance of any permanent injury award after deducting the total separate compensable values of the first and second injuries. Id. An employee need not lose total use of a body member in order to qualify for Second Injury Fund benefits. Irish v. McCreary Saw Mill, 175 N.W.2d 364, 369 (Iowa 1970).

On October 13, 1980, while performing tasks related to her employment at Weyerhaeuser, Hootman experienced pain in her right hand and wrist. The pain was diagnosed as a result of deQuervain's disease, a fibrosis of the sheath of a tendon of the thumb. Stedman's Medical Dictionary (3d Unabridged Lawyers' Edition, 1972). The condition was treated by surgery on November 18, 1980. Hootman underwent a similar operation in January 1982 as a result of deQuervain's disease in her left hand. Hootman testified that the condition in her

left hand worsened gradually due to its overuse following the surgery in her right hand and culminated in an injury in November 1981.

The deputy industrial commissioner, on administrative appeal, reasoned that Hootman could not "be awarded second injury fund benefits as she has not established two seperates [sic] and distinct traumas." The deputy commissioner supports this reasoning by noting that Hootman "was first diagnosed as having deQuervain's [disease] on the right [wrist] as a result of a specific traumatic event. There were no additional events thereafter." The deputy commissioner's pertinent findings of fact were (1) "That the claimant developed bilateral deQuervain's disease;" (2) "That the deQuervain's was first diagnosed on the right following a specific traumatic event;" and (3) "That claimant had no subsequent traumatic event." The district court found the deputy commissioner's action to be unsupported by substantial record evidence, reversed the decision, and remanded for a determination of the percentage of disability suffered by Hootman. We agree with the district court's disposition of Hootman's appeal, but our agreement is premised upon a different rationale.

As is obvious from her decision, the deputy industrial commissioner was operating on the understanding that, as a matter of law, in order for Hootman to be eligible for Second Injury Fund benefits she was obligated to prove that her second disability was the result of a "specific traumatic event." While we agree that if Hootman had lost the use of both hands as the result of "a single accident," she would properly be denied benefits, see Iowa Code section 85.34(s) (1985), we think the deputy industrial commissioner's understanding of the type of "injury" which gives rise to a claim against the Second Injury Fund is too narrow.

Our courts, in interpreting the workers' compensation statute, long ago rejected the notion that a personal injury must arise from a specific accident,

special incident, or unusual occurrence. Almquist v. Shenandoah Nurseries, 218 Iowa 724, 732, 736, 254 N.W. 35, 39, 41 (1934). The broad definition of personal injury which this state adopted in Almquist and has frequently reaffirmed, e.g., McSpadden v. Big Ben Coal Company, 288 N.W.2d 181, 185 (Iowa 1980), requires only "something, whether an accident or not, that acts extraneously to the natural process of nature, and thereby impairs the health, overcomes, injures, interrupts, or destroys some function of the body, or otherwise damages or injures the body." Almquist, 218 Iowa at 732, 254 N.W. at 39. Guided by this understanding of "injury," we think Hootman qualifies as "an employee who has previously . . . lost the use of . . . one hand . . . [who has] become[] permanently disabled by a compensable injury which has resulted in the . . . loss of use of another such member . . . ." Iowa Code § 85.34 (1985). The surgery on her left hand was approximately fourteen months after the surgery on her right hand. There is no dispute that she returned to work following her first surgery and worked for most of 1981. Cf. Schubert v. Peerless Products, Incorporated, 223 Kan. 288, 290, 573 P.2d 1009, 1011 (Kans. 1978) (in workers' compensation case involving deQuervain's disease, date of disablement is date employee unable to continue work). The Fund stresses the deposition testimony of Dr. Leland G. Hawkins, who treated Hootman and performed the surgery on her right wrist, to the effect that the deQuervain's disease developed simultaneously in both wrists. The deputy commissioner, however, understood Dr. Hawkins' testimony as equivocal and inconsistent on that point. We think that understanding is correct. Hootman was rendered permanently disabled by a compensable injury to her left hand after previously losing partial use of her right hand. We think, therefore, she is eligible for Second Injury Fund benefits and that the result reached by the district court is correct.

The Fund also argues the district court erred in allowing Hootman to argue on appeal that her first injury was the deQuervain's disease in her right wrist, whereas her administrative petition claimed a 1979 episode of carpal tunnel syndrome as her first injury. Hootman claims the issue of whether her deQuervain's injuries constituted qualifying disabilities under Iowa Code section 85.64 was tried by consent.

In ordinary civil actions, where evidence is introduced on an issue not pleaded and it is received without objection, it amounts to consent to try the issue and the issue is rightfully in the case. Rouse v. Rouse, 174 N.W.2d 660, 666 (Iowa 1970). In the workers' compensation area, our courts have held that applications for review-reopening are not formal pleadings, should not be judged by technical rules of pleading, and do not require even the degree of conformity of proof to allegation necessary in ordinary actions. Coghlan v. Quinn Wire & Iron Works, 164 N.W.2d 848, 850 (Iowa 1969).

In the administrative hearing, Hootman presented evidence of her second deQuervain's surgery, its causes and consequences. The Fund did not object to such evidence. The Fund was given the opportunity to cross-examine on this issue and did so. We think, consequently, the issue was tried by consent. In addition, we reject the Fund's claim of prejudice.

The district court is affirmed.

AFFIRMED.