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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

GARY FREMONT,

Petitioner-Appellant,

vs.

GOMACO CORPORATION, TRAVELERS INSURANCE COMPANY and INDUSTRIAL COMMISSIONER, STATE OF IOWA,

Respondents-Appellees.

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Filed February 26, 1986

5-619
84-1336

Appeal from the Iowa District Court for Woodbury County (85971) - Richard F. Branco, Judge.

Petitioner appeals a judicial review decision affirming a denial of worker's compensation benefits. **REVERSED AND REMANDED WITH DIRECTIONS.**

Paul W. Deck, Sioux City, Iowa, for petitioner-appellant.

Paul D. Lundberg and James M. Cosgrove of Shull, Cosgrove, Kudej & Du Bray, Sioux City, Iowa, for respondents-appellees.

Heard by Schlegel, P.J., Hayden, and Sackett, JJ.

Petitioner appeals a judicial review decision affirming a denial of worker's compensation benefits. We reverse the district court.

Petitioner Gary Fremont began working for Gomaco Corporation on November 20, 1972, as a production control manager. Evidence showed that upon accepting employment, petitioner was satisfied and happy with his wife and family, and looked forward to his position and responsibilities with Gomaco.

Almost immediately after he began work, he was assigned to undertake the quality control responsibilities for his employer. Petitioner was very apprehensive about this new responsibility but believed that he would succeed with some help and guidance from his employer. The expected aid did not come, but after approximately four months of work petitioner finished the program and presented it to his supervisor for approval. The plan was rejected without explanation causing petitioner to develop serious doubts about his job security and whether his employer appreciated and needed his services.

Instead of accepting petitioner's program for quality control, Gomaco required petitioner to make frequent personal inspections throughout the plant and individually supervise the production. Petitioner assumed his new duties but soon became very frustrated because he felt the task was much too large for him to do well. Petitioner was keenly aware of his inadequacies and felt a great deal of pressure because of his responsibilities. In addition to his job as quality control manager, petitioner was assigned additional duties such as: (1) releasing orders to the shop and supervision of engineering sketches and drawings; (2) receiving new materials; (3) servicing warranties; (4) making repairs for customers; (5) being responsible for sale order accuracy; (6) supervising customer orders for parts; (7) maintaining the parts inventory; and (8) associating with inventory control.

For two years petitioner carried out these duties but never received a compliment from his superiors. At this point petitioner was asked to take on the responsibility of cost accounting for Gomaco. His lack of education and experience in this field of expertise again upset petitioner. His new duties encompassed estimating the labor expenditures and cost of materials and evaluating the accuracy of engineering drawings. Petitioner again became frustrated concerning his capabilities. His anxiety and worry intensified concerning his job security and he became irritated with the lack of guidance, cooperation, and support from his superiors. After several months' laboring on the cost accounting project, petitioner submitted it to his superiors. This project was also rejected without explanation.

By this time petitioner had developed nervous tension, headaches, and stomach problems, and even contemplated suicide. His personality changed as he became irritable, self-doubting, short-tempered, and uneasy, causing a great deal of family discord at home.

When petitioner went to work for Gomaco, he was informed that he would be paid a salary that was to be evaluated within 90 days. Five months passed, however, before he received his evaluation which resulted in a 9% raise. In May 1974, petitioner was taken off salary and put on an hourly wage rate. His annual bonus dropped from $550 in 1973, to $250 in 1974. Petitioner retained all of his assigned tasks but was told in early 1974 not to work beyond a 40-hour week. In June of 1975, other management personnel comparable to petitioner's level with the company were given a 10% raise. Petitioner asked his supervisors why he was not given a raise and was told that he would be getting a pay raise at the end of the year that would be in line with what the cost of living had done since his last raise. On December 12, 1975, instead of receiving a raise similar to his co-employees, petitioner received a 5% pay raise. Based upon

his paychecks, he also ascertained that his bonus would only be 2-1/2% instead of the five percent bonus guaranteed by Gomaco when he was hired.

Upon receiving his check on the 12th, petitioner told his coworkers that he was extremely upset with the way he felt he was being treated by his employer. He went home around noon thinking that he didn't ever want to go back to work. Petitioner's wife helped calm him down and convinced him that he should go back and talk to his supervisor one more time. On the way back to work petitioner stopped to get gas and pay a fuel bill at a local gas station. While sitting in the station, petitioner began to feel light-headed and felt a tingly-type sensation throughout his body. These feelings passed quickly but once he began driving to work again his stomach began to hurt. Petitioner then decided to return home. He felt nauseated at first but then began to feel a great deal of pain in his chest area. His wife took him to the hospital where he was diagnosed as suffering from an acute myocardial infarction.

Petitioner filed a petition for arbitration seeking worker's compensation benefits due to a heart attack allegedly precipitated by his employment emotional stress and strain. The deputy industrial commissioner ruled in favor of petitioner and found him to have sustained a 22% permanent partial disability of the body as a whole. The employer appealed to the industrial commissioner who found the evidence to be insufficient to establish by a preponderance of the evidence that petitioner's injury arose out of and in the course of his employment. Petitioner appealed the commissioner's decision to the district court for judicial review, but the commissioner's decision was affirmed.

On appeal, petitioner alleges: (1) the commissioner and the district court erred in holding the evidence substantially supports the findings by the commissioner, and (2) the commissioner and district court erred also as to the application of law.

I. **Substantial Support.** The question to be considered on appeal is not whether the evidence supports a different conclusion, but whether the evidence supports the commissioner's findings. Briar Cliff College v. Campolo, 360 N.W.2d 91, 94 (Iowa 1984). Evidence is "substantial" so as to support agency action only when a reasonable mind would accept it as sufficient to support the conclusion. Herring v. Iowa Law Enforcement Academy, 341 N.W.2d 65, 66 (Iowa 1983).

We will set aside the agency decision when we "cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes." Brown v. Public Employment Relations Bd., 345 N.W.2d 88, 93 (Iowa 1984).

In the case before us, the petitioner had to prove by a probability, not a possibility, that some employment incident or activity caused his injury. See Briar Cliff College, at 95; Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296, 297 (Iowa 1974). Petitioner had a preexisting heart condition and therefore had to prove that he suffered an aggravation to his already-impaired physical condition. Briar Cliff College, at 95; Barz v. Oler, 257 Iowa 508, 512, 133 N.W.2d 704, 706-07 (1965). The Iowa Supreme Court in Sondeg v. Ferris Hardware, 220 N.W.2d 903, 905 (Iowa 1974), adopted what is presently the status of the law in Iowa as it applies to the type of injury we have before us in this appeal.

> But when the employee contributes some personal element of risk--e.g., by having ... a personal disease—we have seen that the employment must contribute *something* substantial to increase the risk. ...
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> In heart cases, the effect of applying this distinction would be forthright:
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> If there is some personal causal contribution **in the form of a previously weakened or diseased heart,** the employment contribution must take the form of an exertion greater than that of nonemployment life. ... Note

> that the comparison is not with **this employee's** usual exertion **in his employment** but with the exertions of normal **nonemployment** life of this or any other person.

(Citing 1B A. Larson, Worker's Compensation § 38.83) (emphasis in original).

The commissioner accepted arguendo that petitioner did experience stress and strain on the job. However, petitioner needed also to provide medical testimony linking the stress and strain of his job to the heart attack he suffered. Petitioner therefore supplied the depositions of Dr. Sinnott and Dr. Mohiuddin who testified that despite petitioner's preexisting heart condition and the fact that he smoked, the stress and strain over a long period of time was a precipitating factor in petitioner's injury. The deputy commissioner noted that the deposition of Dr. Mohiuddin, a cardiologist, "is especially indicative of this point."

The employer provided the deposition of one doctor, who opined that the stress and strain afflicting petitioner did not cause his injury. All three physicians, however, stated that stress is a substantial risk factor in precipitating a heart attack, especially in an individual as young as claimant. In factual determinations such as the one before us, medical expertise is crucial and is often the deciding factor. See Merchant v. SMB Stage Lines, 172 N.W.2d 804, 807 (Iowa 1969) ("The matter of causal connection between decedent's fatal heart attack and this accident is not within the knowledge and experience of ordinary laymen, but is a question as to which only a medical expert can express an intelligent opinion."). See also Bradshaw v. Iowa Methodist Hospital, 251 Iowa 375, 383, 101 N.W.2d 167, 171 (1960) ("In other words the causal connection between the fall and subsequent disability is essentially within the domain of expert testimony"), but cf. Bodish v. Fisher, Inc., 257 Iowa 516, 521, 133 N.W.2d 867, 870 (1965) ("However, the weight to be given such an opinion is for the finder

of fact, and that may be affected by the completeness of the premise given the expert and other surrounding circumstances.").

Indeed, Larson breaks down the causation of this type of injury into two parts: the legal and the medical. 1B A. Larson, Worker's Compensation § 38.83(a) at 7-273.

In his appeal decision, the commissioner stated, "Drs. Mohiuddin and Sinnott both testified to the existence of a preexisting arteriosclerotic condition. . . . The evidence is insufficient to establish by the requisite preponderance that claimant's condition was a result of an injury arising out of and in the course of his employment." Completely lacking was any reference to the only medical testimony supporting the apparent finding by the commissioner that the medical evidence was insufficient to support petitioner's claim. On appeal, the district court simply stated, "The testimony of Dr. Larimer was to the effect that the heart attack did not result from the employment."

When we look to the appendix, we find that Dr. Larimer based his opinion upon a hypothetical question. However, nowhere can we find what the hypothetical question was. The only hint of what the content of the question was is when we find an objection by opposing counsel that it ". . . does not include all the facts in evidence and does include facts that are not in evidence."

Based upon the record before us, we cannot say that the commissioner's finding that petitioner's heart attack was not medically related to his employment is supported by substantial evidence. The record before us simply is lacking the specific basis for Dr. Larimer's opinion. Moreover, according to the deputy commissioner's findings, Dr. Larimer has admitted that stress and strain on the job can lead to a heart attack. Finally, we need not rely so heavily upon the lower tribunal's analysis of the witness's credibility in this case because neither the deputy commissioner nor the commission actually heard and saw

the medical witnesses testify. All of the medical testimony was submitted by way of deposition. We hold, therefore, that the district court's affirmance of the commissioner's finding of fact is not supported by substantial evidence.

II. Application of Law. When exercising the power of judicial review, the district court is functioning in an appellate capacity to correct errors at law. Iowa Code § 17A.19(8); Kohorst v. Iowa State Commerce Comm'n., 347 N.W.2d 619, 621 (Iowa 1984). Our duty is to correct errors of law made by the district court. Thomas v. William Knudson & Son, Inc., 349 N.W.2d 124, 126 (Iowa App. 1984). In doing so, we apply the standards set forth in section 17A.19(8) to the agency action and determine whether our conclusions are the same as the district court's. Doerfer Division of CCA v. Nicol, 359 N.W.2d 428, 432 (Iowa 1984).

In its opinion upholding petitioner's claim, the deputy commissioner went to great lengths emphasizing that the stress and emotional strain involved in this case was not a single incident or disappointment. He stressed, however, that the employment activity that he found to be arising out of and in the course of employment, was the accumulation of frustration and anxiety felt by claimant over the entire tenure of his employment with Gomaco. We concur with the deputy commissioner and conclude that this provides the legal causation element of petitioner's claim. See 1B A. Larson, Worker's Compensation § 38.83(a) at 7-273. The deputy commissioner applied the principles of Sondag in his opinion. The commissioner, while also relying on Sondag, did not look to the overall period of employment in applying the law. The commissioner's legal analysis can best and most fairly be explained by directly quoting part of his conclusions of law.

> Accepting arguendo claimant's testimony that he did experience stress and strain on the job, the question is whether or not this strain was greater than that exper-

> ienced in the nonemployment life of this or any other person.
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> Physical exertion is not involved in the case subjudice but rather the alleged mental and emotional stress and strain which resulted from the failure of claimant to receive an expected salary raise and bonus. This was the significant employment event on the day the claimant sustained his myocardial infarction.
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> Claimant's theory that emotional stress brought about by his personal feelings that he was not being paid what he was worth and therefore should receive benefits for a coronary attack precipitated by stress brought about from receiving a paycheck that included less than he anticipated is unique. Under this theory a majority of the working public could bring claims for any number of nervous disorders as the feeling of being undercompensated is shared by a large number of workers.
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> There is little doubt that everyone experiences stressful situations in the employment setting as well as nonemployment life. It is also without question that individuals have differing emotional reactions to these instances. The circumstances testified to by the claimant as causing him stress and strain were not unusual or uncommon among employees. In comparison to one's nonemployment life, it cannot be said that claimant's experience at work produced a greater degree of stress and strain than unfulfilled expectations in nonemployment life. Therefore, claimant's claim must fail under this theory.

The district court did not cite Sondag and chose to affirm the agency decision solely on the basis of substantial evidence. We cannot discern whether the district court even considered the application of the Sondag principles to the issue of the alleged stress and strain involved in this case.

We note at the outset that while we agree that the legal principles of Sondag are controlling, we cannot agree that the facts of this case allow a blind adherence to Sondag, its predecessors, or its progeny.

The parties have not supplied, nor have we found an Iowa case that has involved a heart attack or injury stemming from only mental or emotional stress and strain All of the Iowa judicial history involving heart-related injuries have been based upon physical stress and strain. See Briar Cliff College v. Campolo,

360 N.W.2d 981 (Iowa 1984); Sondag v. Ferris Hardware, 220 N.W.2d 903 (Iowa 1974); Littell v. Lagomarcino Grupe Co., 235 Iowa 523, 17 N.W.2d 120 (1945); and Guyon v. Swift & Co., 229 Iowa 625, 295 N.W. 185 (1940). In each of the Iowa cases, therefore, the trier of fact could look to a single moment of physical exertion that linked the employment activity with the heart failure. Thus, it is easy to understand why the commissioner looked to the single solitary day of December 12, 1975, when claimant got his raise disappointment, in deciding whether or not the stressful employment connection could factually, and legally, be related to claimant's heart failure.

We hold that to focus just on that one day was error as a matter of law. The proper perspective was that of the deputy commissioner when he examined the overall period of employment and its emotional effects on petitioner.

Our legal reasoning is founded on solid footing. As we have noted, we apply the principles enunciated by the Sondag court at 220 N.W.2d at 905:

> If there is some personal causal contribution **in the form of a previously weakened or diseased heart**, the employment contribution must take the form of an exertion greater than that of nonemployment life. . . . Note that the comparison is not with **this employee's** usual exertion **in his employment** but with the exertions of normal **nonemployment** life of this or any other person.

Significantly, however, the Sondag court cites to Beck v. State, 184 Neb. 477, 168 N.W.2d 532 (1969). There the facts involved no physical exertion but rather emotional stress and strain. The court applied Larson's principles found in Sondag and held that a heart attack would be compensable only if the employment contribution takes the form of exertion greater than that of nonemployment life. Clearly then, exertion, within the meaning contemplated by Sondag applies to mental stress as well as physical stress.

The remaining question, however, that must be dealt with is what is meant by the words ". . . the comparison is not with this employee's usual exertion

in his employment, but rather with the exertions present in the normal nonemployment life of this or any other person." Sondag, at 905; Beck, at 533-34. Because we find no Iowa law relating to our facts, we look therefore to Nebraska. In Mann v. City of Omaha, 319 N.W.2d 454, 458-59 (Neb. 1982), the Nebraska Supreme Court awarded a policeman worker's compensation benefits due to mental stress associated with his police work. In that opinion the court said:

> The evidence in this case overwhelmingly supports the conclusion of the compensation court that Officer Mann was subject on the job to a great deal of stress, greater than that in the normal nonemployment life of himself and other persons.
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> * * *
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> In Crosby v. American Stoves, 207 Neb. 251, 298 N.W.2d 157 (1980), we said that it is no longer necessary that the injury be caused by a single traumatic event, but the exertion in the employment must contribute in some material and substantial degree to cause the injury.
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> * * *
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> In this case there was sufficient showing that the appellant experienced greater stress in his employment life than his nonemployment life.

This language refutes the legal analysis employed by the commissioner. The question was not whether this single incident caused petitioner's heart attack, or if this type of stress and strain would have similarly affected other members of our society. The question to be asked was whether the employment circumstances of this person affected him sufficiently to cause this type of injury. The facts must prove that this petitioner was indeed frustrated and severely anxious about his employment situation. The facts here sufficiently show that petitioner was suffering from emotional tension and that this tension, brought about by his employment, led to his injury.

We have addressed, in this appeal, both the substantial evidence issue and the application of law issue. It was necessary for us to establish that the

commissioner's medical causation analysis was not supported by substantial evidence because, even though an error was made in applying the law to the legal causation, the petitioner could still have been denied benefits if there was no medical connection to the injury We hold that the district court's affirmation of commissioner's denial of petitioner's claim is not supported by substantial evidence, and is not correct in its application of law Therefore, we reverse the district court and remand to enter judgment for the petitioner awarding him 22% disability to the body as a whole

REVERSED AND REMANDED WITH DIRECTIONS

Hayden, J , concurs, Sackett, J , dissents

SACKETT, J (dissenting)

I would affirm the trial court