

IN THE COURT OF APPEALS OF IOWA

ADAMS DOOR COMPANY and)
BITUMINOUS INSURANCE)
COMPANIES,)

Plaintiffs-Appellants,)

vs.)

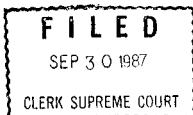
KEVIN R. SHOEMAKER,)

Defendant-Appellee.)

Filed September 30, 1987

7-86
86-1074

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Appeal from the Iowa District Court for Scott County (No. 70946), David J. Sohr, Judge.

Employer and insurance carrier appeal from the district court's affirmance of a decision filed by the industrial commissioner which permitted worker's compensation claimant to pursue review/reopening proceeding challenging claimant's compensation provided in settlement agreement. **AFFIRMED.**

Larry L. Shepler and Vicki L. Seeck of Betty, Neuman & McMahon, of Davenport, for plaintiffs-appellants.

James M. Hood of Davenport for defendant-appellee.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

OXBERGER, C.J.

In this appeal, Adams Door Company and Bituminous Insurance Companies (employer/insurance carrier) appeal the district court's affirmance of the industrial commissioner's allowance of additional benefits to Kevin Shoemaker. Appellants argue that, since there was an effective settlement agreement, Shoemaker must show a change in condition that would entitle him to additional benefits. They also argue that such an agreement cannot be rescinded or reformed for a mutual mistake of fact; and, the settlement cannot be set aside because of Shoemaker's mistake as to the nature of his injury. We affirm.

Our scope of review in this agency proceeding is governed by the principles summarized in Doerfer Division of CCA v. Nicol, 359 N.W.2d 428 (Iowa 1984): "A review of the industrial commissioner's decision is governed by Iowa Code § 17A.19. The scope of review is not de novo. The commissioner's findings have the effect of a jury verdict." Id. at 432. The commissioner's determination of a law question is entitled to careful consideration but nonetheless is subject to review. Id. We review the district court's appeal for errors of law, and determine whether our conclusions are the same as those of the district court. Id.

The facts are undisputed. Shoemaker was injured while during the course of his employment in November 1980. Following the injury, Shoemaker and his attorney negotiated a settlement with his employer/insurance carrier. A formal settlement agreement was not executed. The employer/insurance carrier filed a memorandum of agreement with the industrial commissioner on December 5, 1980.

In January 1984, Shoemaker petitioned for a review/reopening hearing. A hearing was held and additional benefits were awarded. This decision was subsequently affirmed by the industrial commissioner. The district court also

affirmed the decision, but on the grounds that the settlement agreement could be rescinded or reformed for mutual mistake of both parties.

The central issue in this appeal, as appellant states, is whether Shoemaker and his employer/insurance carrier reached an effective settlement agreement. If so, Shoemaker must show a change in condition to recover additional benefits. Appellant's primary argument is that, under the 1981 Code, the law in effect when the settlement was reached, the memorandum of agreement and supplemental filings constituted an effective settlement agreement between the parties because the industrial commissioner approved it by operation of law. We disagree.

This appeal presents the identical issue examined by the supreme court in Caterpillar Tractor Co. v. Mejorado, No. 86-485, slip op. at 2 (Iowa Aug. 19, 1987). Mejorado examined the effectiveness of a memorandum of agreement under the 1981 Code. Mejorado, slip op. at 6. In finding that Mejorado did not have to show a change in condition to recover additional benefits, the court held "the memorandum of agreement filed by Caterpillar, which Mejorado neither approved nor executed, was not the equivalent of a formal settlement" Id. at 7. The memorandum merely established the employer-employee relationship, and that the injury arose out of and in the course of Mejorado's employment. Id. at 9. Because the memorandum of agreement was not the equivalent of a formal settlement agreement, Mejorado only had to prove the increased disability was proximately caused by the injury. Id.

There is no evidence in the record of a separate formal settlement agreement, only the memorandum of agreement. Under the Mejorado rule, the memorandum is not the equivalent of a formal agreement; and, therefore, Shoemaker is not required to show a change in condition to recover increased benefits.

Because we determine a formal settlement was not reached, the remaining issues relating to rescission, reformation, and mistake are no longer relevant. Thus, we decline to address them. Accordingly, the judgment of the district court is affirmed.

AFFIRMED.