

IN THE COURT OF APPEALS OF IOWA

FILED

AUG 29 1985

CLERK SUPREME COURT

WILSON FOODS CORPORATION,

)

592

Petitioner-Appellant,

)

Filed August 29, 1985

vs.

)

KENNETH JOHNSTON,

)

5-236
84-1395

Respondent-Appellee.

)

Appeal from the Iowa District Court for Linn County - Ansel J. Chapman,
Judge.

Petitioner appeals the district court's affirmance of the industrial commissioner's decision which concluded that respondent obtained an injury out of the course of his employment resulting in 55 percent disability to the body as a whole for industrial purposes. **AFFIRMED.**

John M. Bickel and Diane Kutzko of Shuttleworth & Ingersoll, P.C., Cedar Rapids, Iowa, for petitioner-appellant.

Lloyd E. Humphreys of Humphreys and Associates, Cedar Rapids, Iowa, for respondent-appellee.

Heard by Oxberger, C.J., Schlegel and Sackett, JJ.

SCHLEGEL, J.

Petitioner, Wilson Foods Corporation, appeals the affirmance by the district court of the industrial commissioner's decision on respondent, Kenneth Johnson's petition for review-reopening. Wilson claims that there was insufficient evidence to support the finding that Johnston's injury was work related; that there was insufficient evidence to support a finding of a 55 percent impairment to the body as a whole; and alternatively, that the commissioner ignored relevant evidence and failed to support his findings and conclusions concerning both causal connection and the degree of impairment.

From the record, the Deputy Industrial Commissioner was justified in finding the following facts. Johnston became an employee of Wilson in 1967. In August of 1975, he sustained an injury, which was found to be an injury arising out of and in the course of his employment, by a final decision of the worker's compensation agency entered on January 6, 1977. On August 19, 1981, Johnston filed his petition for review-reopening, alleging that the permanent disability involved has worsened since the original decision.

The sole issue for resolution by the deputy commissioner was the nature and extent of disability caused by the injury arising out of and in the course of employment on August 28, 1975.

The initial injury that was considered in the prior hearing occurred when Johnston was cleaning out barrels while working for Wilson. He injured his back, and as a result, underwent a laminectomy. As a result of the hearing on his claim, his disability, for industrial purposes, was fixed at 25 percent of the body as a whole.

The Deputy Industrial Commissioner found that Johnston's industrial disability, at the time of the review-reopening decision, was 55 percent of the body as a whole. That decision was affirmed by final agency decision. Wilson

filed its petition for judicial review, and upon such review the decision of the agency was affirmed.

I. Scope of Review. Our scope of review is limited. Our basic questions are whether the district court correctly applied the law to the agency action, and whether the facts found by the agency have substantial evidentiary support. If so, we affirm. If not, reversal may be in order. Rockwell Graphics Systems, Inc. v. Prince, 336 N.W.2d 187, 189 (Iowa 1985); Caterpillar Davenport Employees Credit Union v. Huston, 292 N.W.2d 393 (Iowa 1980); Jackson County Public Hospital v. Public Employment Relations Board, 280 N.W.2d 426, 429-30 (Iowa 1979). Evidence is "substantial" when a reasonable mind would accept it as adequate to reach a conclusion. Rockwell Graphics Systems, Inc. v. Prince at 190; City of Davenport v. PERB, 264 N.W.2d 307, 311 (Iowa 1978); see Peoples Hospital v. Iowa Civil Rights Commission, 322 N.W.2d 87 (Iowa 1982).

II. Work-Related Injury. Wilson first claims that there is insufficient evidence to support a finding that Johnston's injury was work related.

Wilson correctly states that Johnston bears the burden of proving that his condition of further disability is work related. It is Johnston's burden to show that his present disability is related to the original 1975 work place injury.

A. Considering the record as a whole, we must consider if the findings of the commissioner that Johnston's present disability is due to the injury he received in the course of his employment in 1975 is supported by substantial evidence.

Reviewing the evidence presented, by written medical reports only, we believe that there was substantial evidence to support the findings of the industrial commission. We believe that it was reasonable for the hearing officer, and the deputy commissioner, in making the final determination for the agency, to rely upon the testimony of Dr. Walker, who opined that Johnston's falling

and pain in the back, as well as the restriction of motion of the low back, was the result of the prior injury, and the scarring caused by the corrective surgery carried out to relieve the effects of that injury. While other doctors felt there was no additional disability resulting from the industrial injury of 1975, they were either uncertain as to the cause of the symptoms that cause Dr. Walker concern (principally the falling) or expressed no opinion as to the cause of those symptoms. Dr. Walker gave, in the justifiable opinion of the agency, a plausible explanation of the cause of that part of Johnston's symptoms. That report provided substantial evidence for the conclusion that Johnston's disability had increased since the prior adjudication, and that the falling incidents were "probably related to the back, indicating a change of condition, thereby allowing claimant to recover."

B. Wilson urges us to adopt the language of Hancock v. Secretary of Dept. of HEW, 603 F.2d 739 (8th Cir. 1979), that the testimony of treating physicians must be given greater weight than that of an examining physician who has seen the patient only briefly. Without burdening this opinion with further discussion of that principle, the Iowa Supreme Court has recently dealt with that specific issue, stating as follows:

We think a rule of law would be unwise that a treating physician's testimony should be given greater weight than that of a later physician who examines the patient in anticipation of litigation.

Rockwell Graphics Systems, Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

In view of that holding, Wilson's argument is not persuasive.

III. Percentage of Impairment. It is clear that Johnston was, at the time of the hearing, totally disabled, by reason of his various ailments and diseases including the disability resulting from the injury in question in this case. Dr. Walker, a qualified orthopedic surgeon, rated the disability related to the back injury as 35 percent of the body as a whole. On the strength of

that rating, Johnston's education and training, his age, qualifications, experience, and his inability, because of the injury, to engage in employment for which he is fitted, as well as his functional disability, the agency found that Johnston's industrial disability which is related to the August 28, 1975 injury is 55 percent. See Olson v. Goodyear Service Stores, 255 Iowa 1112, 1121, 125 N.W.2d 251, 257 (1963). From the record, such a finding is supported by substantial evidence. The commissioner's findings are binding unless a contrary result is demanded as a matter of law. Ward v. Iowa Department of Transportation, 304 N.W.2d 236, 238 (Iowa 1981). That reasonable minds could draw different inferences from the record does not deprive a finding of legally adequate record support. Ward at 239. We find that there is substantial evidence to support the agency's finding that Johnston's industrial disability, related to the injury in question, is 55 percent. Whether we would have reached the same conclusion is not the issue. The decision of the agency is supported by substantial evidence.

IV. Failure to Support Findings and Conclusions. Wilson claims that the commissioner ignored certain relevant evidence and failed to support his findings and conclusions. It appears that the commissioner relied substantially upon Dr. Walker's testimony both on the issue of causal connection and the degree of impairment. As indicated, we believe it was reasonable for the commissioner to do so. The question of causation is ordinarily the province of experts. Deaver v. Armstrong Rubber Co., 170 N.W.2d 455, 464 (Iowa 1969). In compensation proceedings it is the province of the commissioner to accept the testimony of the experts which seem to him to be most consistent with all the testimony. Bodish v. Fischer, Inc., 257 Iowa 516, 522, 133 N.W.2d 867, 870 (1965). We believe the commissioner considered the whole record and adequately supported his findings and conclusions in the final agency ruling.

We believe the district court correctly ruled upon the issues involved in this matter, and the ruling of the court should be affirmed.

AFFIRMED.