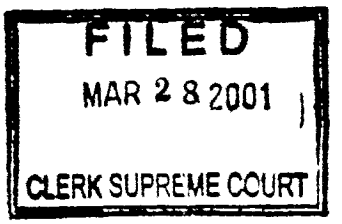
IN THE COURT OF APPEALS OF IOWA

No. 0-671 / 00-0490
Filed March 28, 2001



CARL W. SCHROEDER,
Petitioner-Appellee,

vs.

CITY OF BOONE and IOWA MUNICIPALITIES WORKERS' COMPENSATION ASSOCIATION,
Respondents-Appellants.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

Respondents appeal from the district court ruling on judicial review reversing the commissioner's decision to deny the petitioner workers' compensation benefits. They contend the district court erred in reversing the commissioner's finding that petitioner had not established an exception to the two-year statute of limitations under Iowa Code section 85.26(1) (1995).

DISTRICT COURT JUDGMENT AFFIRMED; REMANDED TO AGENCY.

Anne L. Clark of Hopkins & Huebner, P.C., Des Moines, for appellants.

Max Schott, Jason D. Neifert, and Martin Ozga of Max Schott & Associates, P.C., Des Moines, for appellee.

Heard by Streit, P.J., and Vogel and Miller, JJ.

MILLER, J.

Respondents City of Boone and Iowa Municipalities Workers' Compensation Association (hereinafter "the City") appeal from the district court's ruling on the Petitioner, Carl W. Schroeder's, petition for judicial review. The district court reversed the workers' compensation commissioner's decision which had denied Schroeder workers' compensation benefits. The City contends the district court erred in reversing the commissioner's finding that Schroeder had not established an exception to the two-year statute of limitations under Iowa Code section 85.26(1) (1995). We affirm and remand to the agency for further proceedings.

I. BACKGROUND FACTS AND PROCEEDINGS

Schroeder was employed by the City of Boone's wastewater treatment plant. He injured his right shoulder at work on November 3, 1993 while cranking a grit pump. Schroeder first sought medical treatment for his injury from a chiropractor on November 11, 1993. He then saw his family physician, Dr. Clemons, on November 17, 1993. Dr. Clemons determined Schroeder had suffered a shoulder strain, prescribed Ibuprofen, and advised light duty. Clemons told Schroeder that the injury would take a long time to heal, which was consistent with Schroeder's prior experience with an injury he had suffered to his left shoulder prior to 1993. In the prior injury, Schroeder had dislocated his left shoulder playing softball. He sought medical attention and was advised by two doctors that the shoulder would heal on its own given time, and it in fact did so without any medical treatment.

Schroeder did not seek further medical treatment for his work-related right shoulder injury until June 1, 1995. Schroeder missed no work between November 3, 1993 and June 1, 1995 although he continued to experience varying degrees of discomfort in his shoulder throughout this period. He continued to perform his regular duties at the wastewater plant and the City made no special accommodations for him during this time.

Based on information from his chiropractor that an injection might help his shoulder Schroeder went to see Dr. Gitchell, an orthopedic specialist on June 1, 1995.[1] Dr. Gitchell diagnosed Schroeder's shoulder problems as bursitis and tendonitis at that time and gave him an injection to relieve the pain. Schroeder indicated this injection helped him a lot but it did not completely eliminate the discomfort. Based on Dr. Gitchell's recommendation, Schroeder returned to him in approximately six weeks and received another injection or injections. Schroeder testified that after this second round of injections his shoulder felt the best it had ever felt. However, by October of 1995 the shoulder again "felt just like it had from the first time I hurt it" and so Schroeder returned once again to Dr. Gitchell.

At this October 1995 appointment Dr. Gitchell first told Schroeder he could be considered for surgery if he did not get relief from the injections. Dr. Gitchell did not tell him surgery was definite or probable. Rather, he "just left that open as an option." Schroeder returned to Dr. Gitchell in December of 1995 and received another injection. This injection did not provide the same relief as the

[1] At that time Schroeder was seeing the chiropractor for his back and neck problems, not for his shoulder. Dr. Gitchell was the doctor Schroeder had previously consulted with for his earlier left shoulder injury.

previous ones had, so Schroeder called Dr. Gitchell once again. Dr. Gitchell suggested Schroeder try some physical therapy. Surgery was still not being mandated as treatment at that time.

Schroeder tried some physical therapy but it did not help. He informed Dr. Gitchell in January of 1996 that the physical therapy was not helping and it was at this point Dr. Gitchell stated surgery was probably going to be needed. On January 16, 1996 Dr. Gitchell performed an excision of the distal clavicle and partial acromionectomy for decompression of a rotator cuff impingement.

As a result of the surgery Dr. Gitchell concluded that Schroeder had a five-percent permanent physical impairment. Schroeder was also examined by Dr. Riggins, who assigned an impairment of fifteen percent to the upper extremity, and nine percent of the whole person. Both physicians causally related Schroeder's need for surgery to the injury he sustained on November 3, 1993.

Schroeder filed two original petitions with the Iowa Industrial Commission on April 23, 1996. He alleged an injury date of November 3, 1993 to the right shoulder and a cumulative injury to the right shoulder with an injury date of January 16, 1996, the date of his surgery. A hearing was held before a deputy commissioner. In his "Arbitration Decision" the deputy commissioner found that as to the November 3, 1993 injury the two-year statute of limitations, under Iowa Code section 85.26, had not run due to the applicability of the discovery rule and awarded Schroeder benefits for that injury. Based on this determination the deputy found that as to the alleged January 16, 1996 cumulative injury Schroeder took nothing. The City appealed to the workers' compensation commissioner. The commissioner came to a different result. The commissioner concluded

Schroeder had sustained a cognizable, traumatic injury to his shoulder in November 1993, Shroeder had not established any exception to the two-year statute of limitations in section 85.26(1), and his claim was therefore barred because not filed within that two year period.

Schroeder filed a petition for judicial review of the commissioner's decision with respect to the November 3, 1993 injury date. However, he did not appeal the determination as to the January 16, 1996 injury date. The district court concluded the commissioner had applied the wrong legal analysis in treating the injury as a "traumatic event/latent manifestation" case and remanded the case to the agency for further action. The court ordered that on remand the commissioner must apply the discovery rule and determine on what date the statute of limitations started running.

The City filed a timely appeal of the district court's decision contending the court erred in reversing the commissioner's decision because Schroeder failed to establish a discovery rule exception to the limitations period.

II. STANDARDS OF REVIEW

Our review of a final decision of the workers' compensation commissioner, like that of the district court, is for correction of errors of law, not de novo. *Second Injury Fund v. Hodgins*, 461 N.W.2d 454, 455 (Iowa 1990). In determining whether the district court erred in exercising its power of judicial review, we apply the standards of Iowa Code section 17A.19(8) to the agency action to determine whether our conclusions are the same as those of the district court. *E.N.T. Associates v. Collentine*, 525 N.W.2d 827, 829 (Iowa 1994). The commissioner's findings are akin to a jury verdict, and we broadly apply them to

uphold the decision. *Second Injury Fund of Iowa v. Shank*, 516 N.W.2d 808, 812 (Iowa 1994). While we give weight to the commissioner's interpretation of relevant statutory provisions, we are not bound by it. *Bergen v. Iowa Veterans Home*, 577 N.W.2d 629, 630 (Iowa 1998).

We may reverse, modify, or remand to the commissioner for further proceedings if that agency's action was affected by an error of law, or if it is not supported by substantial evidence when the record is viewed as a whole. Iowa Code § 17A.19(8) (1999); *Quaker Oates Co. v. Ciha*, 552 N.W.2d 143, 150 (Iowa 1996). Evidence is substantial if a reasonable mind would find it adequate to reach the same findings. *Murrillo v. Blackhawk Foundry*, 571 N.W.2d 16,17 (Iowa 1997). The commissioner's decision does not lack substantial evidential support merely because inconsistent conclusions could be drawn from the same evidence. *Id.* The ultimate question is not whether the evidence supports a different finding, but whether it supports the finding the commissioner actually made. *Id.*

III. MERITS

In order to obtain workers' compensation benefits, an injured worker must bring a claim before the agency "within two years from the date of the occurrence of the injury for which benefits are claimed," unless weekly compensation benefits[2] have been paid. Iowa Code §85.26(1) (1993). The Iowa Supreme Court has interpreted this statute to mean that the injury occurs when it is discovered. *Swartzendruber v Schimmel,* 613 N.W.2d 646, 649 (Iowa 2000);

[2] "Weekly compensation benefits" under this section refers to disability benefits which are only paid to an employee who has had to miss work due to a work related injury. *See* Iowa Code §§ 85.33 and 85.34. Such benefits were clearly not paid to Schroeder until after his surgery as he did not miss any work due to his injury until then.

Ranney v. Parawax Co., Inc., 582 N.W.2d 152, 154 (Iowa 1998). This "discovery rule" delays the commencement of a limitation period until the injured worker discovers or by the exercise of reasonable diligence should have discovered the injury. *Dillinger v. City of Sioux City*, 368 N.W.2d 176, 179 (Iowa 1985).

It is well-settled law that the workers' compensation statute should be liberally construed and applied to accomplish the object and purpose of the legislation, to benefit the worker and his dependents. *Dillinger*, 368 N.W.2d at 180; *Orr v. Lewis Cent. Sch. Dist.*, 298 N.W.2d 256, 261 (Iowa 1980); *Jacques v. Farmers Lumber & Supply Co.*, 242 Iowa 548, 551, 47 N.W.2d 236, 238 (1951). Therefore, the discovery rule has been applied to section 85.26 in order to aid the employee by preventing the limitations period from commencing in furtherance of the purposes behind the workers' compensation law. *Dillinger,* 368 N.W.2d at 180 (citing *Orr,* 298 N.W.2d at 261). The application of the discovery rule in the workers' compensation context means that the limitations period of section 85.26(1) "begins to run when 'the employee discover[s] or in the exercise of reasonable diligence should . . . discover[ ] the nature, seriousness and probable compensable character' of his injury or disease." *Ranney*, 582 N.W.2d at 154 (quoting *Orr,* 298 N.W.2d at 261); *Gates v. John Deere Ottumwa Works*, 587 N.W.2d 471, 474 (Iowa 1998). The question of when the claimant knew or should have reasonably known of the nature, seriousness and the compensable character of the injury is a fact issue determinable by the commissioner. The commissioner's determination of a fact issue is binding on us if supported by substantial evidence in the record. *Gates*, 587 N.W.2d at 475; *Dillinger,* 368 N.W.2d at 182.

Under the discovery rule the claimant must have actual or imputed knowledge of all three characteristics of the injury or disease before the limitations period begins to run. *Swartzendruber*, 613 N.W.2d at 650; *Ranney*, 582 N.W.2d at 154-55. The reasonableness of a claimant's conduct is judged in light of his own education and intelligence. *Robinson v. Dep't of Transp.*, 296 N.W.2d 809, 812 (Iowa 1980).

After finding certain underlying facts the commissioner stated that Schroeder "had a cognizable, traumatic injury to his shoulder in November 1993," and thereafter concluded Schroeder's claim was barred by the two-year statute of limitations in section 85.26(1) because not filed within two years of November 3, 1993. Neither the commissioner's reference to a "traumatic injury" nor anything else in the commissioner's decision suggests the commissioner applied a "traumatic event/latent manifestation" analysis to the facts. We therefore do not agree with a conclusion of the district court that the commissioner applied such an analysis.

As noted in the trial court's judicial review ruling, Schroeder's contention in the district court was that "there was no substantial evidence to support the finding of the Workers' Compensation Commissioner that the discovery rule does not apply to toll the start of the statute of limitations." The district court's ruling reversed the commissioner's decision and directed that, "On remand, the Commissioner must apply the discovery rule, and in so doing determine on what date the statute of limitations started running." If the district court had merely determined that the commissioner had erroneously applied a "traumatic event/latent manifestation" analysis, it would have appropriately remanded for the

commissioner to apply the correct legal standard to determine whether or not the discovery rule applied. By going further and directing the commissioner to apply the discovery rule the district court apparently decided the issue it had identified as raised by Schroeder's petition for judicial review, whether or not there was substantial evidence to support the commissioner's determination that the discovery rule does not apply. The City's brief makes clear that is the issue it raises on appeal, stating, "The issue before the district court was whether there was substantial evidence to support the commissioner's conclusion that Schroeder's claim was time barred under Iowa Code § 85.26(1)," and asserting the district court erred in reversing the commissioner on that point. Schroeder's brief directly confronts the City's brief on this issue. We therefore turn to this issue.

The two-year limitation period begins to run when the injured employee discovers or in the exercise of reasonable diligence should have discovered the nature, seriousness and probable compensable character of his injury.[3] *Ranney*, 582 N.W.2d at 154 (citing *Orr*, 298 N.W.2d at 261). Our supreme court recently discussed what constitutes recognition of the seriousness of an injury. *See Swartzendruber v. Schimmel*, 613 N.W.2d 646 (Iowa 2000). The court stated that the failure to file a workers' compensation claim within two years of the occurrence of the injury may be excused if the claimant had no reason to believe

[3] The "probable compensable character" component of the discovery rule is conceded and therefore is not at issue here. We interpret the "probable compensable nature" component as meaning that the claimant knew the injury arose out of and in the course of his employment. *See Ranney*, 582 N.W.2d at 155. This knowledge is demonstrated by Schroeder's immediate filing of an accident report with his employer on November 3, 1993 and the fact the City paid his medical expenses up to the time the statute of limitations would run absent application of the discovery rule.

the condition was serious. *Id.* at 650. "If the injury is trivial or minor, or the symptoms indicate no serious trouble, the seriousness component is not met." *Id.*

> The legal resolution of the question of what constitutes recognition of the seriousness of an injury or disease is a fact specific inquiry. The facts, however, must satisfy the test of reasonableness.
>
> Under the test of reasonableness, we refrain from pinpointing any specific event to establish the seriousness of an injury, such as going to a physician or missing work. Although these events are relevant, we consider all the facts and circumstances in resolving the issue.

Id. at 651 (citations omitted). *See also Oscar Mayer Foods Corp. v. Tasler,* 483 N.W.2d 824, 830 (Iowa 1992) (holding that in determining date of injury under the cumulative injury rule the commissioner is entitled to consider a multitude of factors, such as absence from work because of inability to perform, the point at which medical care is received, and others, none of which is dispositive in determining when "manifestation" of injury occurred).

Implicit in the commissioner's finding that the discovery rule does not apply is a finding that as of November 3, 1993 Schroeder had discovered or in the exercise of reasonable diligence should have discovered both the nature and seriousness of his injury. The question thus becomes whether the facts constitute substantial evidence that will support such a finding.

The commissioner found that on November 3 Schroeder was operating a crank to raise a heavy pump when he felt his right shoulder pop and he reported the injury to his supervisor the same day. The commissioner also found that prior to 1993 Schroeder had injured his left shoulder playing softball, had sought medical attention but received no treatment, and over time the left shoulder

condition had ceased being symptomatic. Although not found as facts by the commissioner, the record also shows that on November 3 Schroeder experienced pain in his shoulder but completed the task of raising the pump and missed no work. All other findings by the commissioner and all other facts related to Schroeder's right shoulder injury have to do with events occurring well after November 3 and thus have little or no bearing on the question of what Schroeder had discovered or should have discovered regarding the nature and seriousness of his injury as of November 3, 1993.

"The seriousness component of the discovery rule exists so that 'every minor ache, pain, or symptom' does not begin the statute of limitations." *Swartzendruber*, 613 N.W.2d at 650 (quoting 2B Arthur Larson, *Workers' Compensation* §78.41(e), at 15-279 (1994)). Schroeder's previous experience with what likely appeared to him to have been a worse injury to his left shoulder, a dislocation, apparently led him to initially believe any injury to his right shoulder was not serious, for he completed his task, missed no work, and sought no medical attention. The fact he gave notice of his injury to his employer does not mean he had discovered or should have discovered the nature or seriousness of his injury as of November 3. *See Dillinger*, 368 N.W.2d at 180 (holding employee may give employer a first report of injury without nullifying employee's right to the benefits of the discovery rule).

Although the question of whether a person recognized or should have recognized the seriousness of an injury is a fact specific inquiry, the facts urged in support of such recognition must satisfy the test of reasonableness. *Swartzendruber*, 613 N.W.2d at 651. We consider all relevant facts and

circumstances in resolving the issue. *Id.* When all the facts and circumstances are considered, we agree with the district court that the record does not contain substantial evidence that Schroeder, as a reasonable person, should have recognized the seriousness of his injury on November 3, 1993. We therefore further agree with the district court that the discovery rule is applicable and the case must be remanded to the commissioner for further proceedings consistent with this opinion, including applying the discovery rule and in doing so determining on what date the statute of limitations started running. We express no opinion on what that date is, a matter to be determined by the commissioner as fact finder. We need not address the question of whether Schroeder recognized or should have recognized the nature of his injury on November 3, 1993.

DISTRICT COURT JUDGMENT AFFIRMED; REMANDED TO AGENCY.