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FILED

MAY 31 1983

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RIEDAR OESTENSTAD,)

Petitioner-Appellant,)

Filed May 31, 1983

vs.)

QUAIL CONSTRUCTION CO., employer,)

BITUMINOUS INSURANCE COMPANIES,)

insurance carrier,)

3-25
2-68802

Respondents-Appellees.)

Appeal from Clay District Court - James H. Andreasen, Judge.

Petitioner, Riedar Oestenstad, appeals from the district court decision on judicial review affirming respondent agency's adverse decision in a workers' compensation review-reopening case. **AFFIRMED.**

Stephen F. Avery of Cornwall, Avery, Bjornstad & Scott, Spencer, for petitioner-appellant.

William D. Scherle of Hansen, McClintock & Riley, Des Moines, for respondents-appellees employer and insurance carrier.

Considered by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ. Hayden, J. takes no part.

DONIELSON, J.

Petitioner appeals from the district court decision on judicial review affirming respondent agency's adverse decision in a workers' compensation review-reopening case. On appeal he asserts: (1) that due to the difficulty of establishing the cause of a stroke in workers' compensation cases involving a stroke, the claimant should be required to show only a possibility rather than a probability that the injury was employment-related; and (2) that the agency decision that petitioner had failed to meet his burden of proving a causal relationship between his employment and the stroke he suffered, affirmed on judicial review, was unreasonable, arbitrary, capricious, and unsupported by substantial record evidence. We affirm.

Our scope of review is limited under Iowa Code §§ 17A.19 and .20 (1981). The principles governing our review of agency decisions were summarized in Iowa Civil Rights Commission v. Woodbury County Community Action Agency, 304 N.W.2d 443 (Iowa Ct. App. 1981):

In its exercise of section 17A.19 review powers, the district court acted in an appellate capacity to correct errors of law specified for contested cases in section 17A.19(8)(f). This court's review then is limited to the sole question of whether the district court correctly applied the law. To make that determination, we ask whether the agency action is supported by substantial evidence in the record before the agency when the record is viewed as a whole. . . . The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. . . . Evidence is substantial if a reasonable person would find it adequate for reaching a decision. *Id.* We are limited to the record made before the hearing office. . . . If our conclusions are the same as district court's, affirmance is in order; if not, reversal may be required.

¹*Id.* at 446 (citations omitted).

I.

Petitioner, Riedar Oestenstad, cut his thumb while operating machinery in

the course of his employment. Petitioner went to the doctor's office to have stitches in his thumb. He suffered a stroke while undergoing treatment for his thumb, resulting in paralysis and total disability.

Petitioner sought workers' compensation, claiming that the stroke was a work-related injury. Four doctors testified that the cut was a possible cause of the stroke but that it was difficult to determine the exact cause of a stroke.

The industrial commissioner found that petitioner had failed to meet his burden of proving by a preponderance of the evidence a causal relationship between his employment and the stroke. In order to meet that burden both the agency and the district court on judicial review required a showing that the work-related injury was a probable cause of the stroke. The agency decision was affirmed on judicial review. Petitioner then instituted this appeal.

II.

Initially petitioner argues that, due to the difficulty of determining the exact cause of a stroke, he should be eligible to receive workers' compensation upon a showing that the work-related injury was one possible cause of the stroke. To adopt petitioner's position, this court would have to recognize a lesser burden of proof for stroke victims who seek workers' compensation benefits. We refuse to do so here.

It is well recognized that a stroke is a compensable injury under the workers' compensation statute so long as the claimant proves by a preponderance of the evidence that the stroke arose out of and in the course of his employment. See Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296, 297 (Iowa 1974). To meet his burden of proof, the claimant must show that some employment incident or activity brought about the stroke. Id. "A possibility [that the incident brought about the stroke] is insufficient; a probability is necessary." Id., (citing Burt v. John Deere Waterloo Tractor Works, 247 Iowa 691, 73 N.W.2d 732 (1955)). While

the employment incident need not be the sole proximate cause of it, the stroke must be directly traceable to the incident. Id.; see also Sondag v. Ferrish Hardware, 220 N.W.2d 903, 905 (Iowa 1974); Blacksmith v. All-American, Inc., 290 N.W.2d 348, 354 (Iowa 1980)(a proximate cause of the injury need not be the only cause, so long as it is a substantial factor in bringing about the result). While we recognize that the workers' compensation statute is to be applied liberally, it "must be administered by the application of logical and consistent rules or formulas notwithstanding its benevolent purpose." Bulman v. Sanitary Farm and Dairies, 247 Iowa 488, 494, 73 N.W.2d 27, 30 (1956). We thus must agree with respondent that there is no authority for applying a more lenient burden of proof in those cases in which the claimant has suffered a stroke. We thus consider whether the respondent and the district court erred in finding that claimant had not met his burden of showing that the stroke arose out of and in the course of his employment.

III.

Claimant challenges that the respondent's decision is unsupported by substantial evidence and is unreasonable, arbitrary and capricious. See Iowa Code § 17A.198(f)-(g) (1981). The thrust of his argument under both of these subsections is the same: he contends that the respondent could not have found that he did not prove a sufficient causal relationship between the injury to his thumb and the stroke. In our review "the question is not whether the evidence is sufficient to support a finding the commissioner did not make but whether the evidence supports the finding he did make." Holmes, 215 N.W.2d at 298 (citing DeShaw v. Energy Manufacturing Co., 192 N.W.2d 777 (Iowa 1972).

The evidence is somewhat conflicting as to the exact time lapse between the thumb injury and the stroke. It appears however that the stroke occurred twenty minutes to one hour after the claimant cut his thumb. There was an excessive loss

of blood from the injury which may have contributed to the stroke. In fact, the medical experts testified that the cut may have been a possible cause of the stroke. However, there was no evidence that the cut was the probable cause of the stroke or even one proximate cause of the stroke. Further, all agreed that evidence of claimant's blood pressure reading would have been helpful in determining the cause of the stroke; but no such evidence was documented. We cannot rely on speculation or the assumption that claimant's blood pressure level, if documented, would have supported claimant's theory. See Burt, 247 Iowa at 701, 73 N.W.2d at 737-38. Based on the record before us we must agree with the district court that the commissioner's decision is supported by substantial evidence in the record and is not unreasonable, arbitrary or capricious. Accordingly, the appeal decision is affirmed.

AFFIRMED.