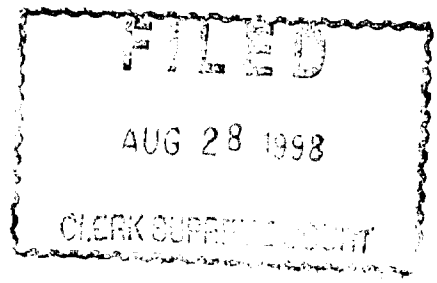
IN THE COURT OF APPEALS OF IOWA



No. 8-290 / 97-1428
Filed August 28, 1998

L.B. TRANSPORT, INC., and GREAT WEST CASUALTY COMPANY,
Appellants,

vs.

KIEWIET TILING and EMPLOYERS MUTUAL COMPANIES,
Appellees.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge.

Petitioners appeal from a district court ruling on judicial review which affirmed a decision of the industrial commissioner's determination petitioners were obligated to pay workers' compensation benefits to L.B.'s employee, Patrick Higgins.

AFFIRMED.

Stephen W. Spencer and Joseph M. Barron of Peddicord, Wharton, Thune & Spencer, P.C., Des Moines, for appellants.

Valerie A. Landis of Hopkins & Huebner, P.C., Des Moines, for appellees.

Heard by Sackett, P.J., and Huitink and Mahan, JJ.

HUITINK, J.

L.B. Transport and Great West Casualty Company appeal the district court's decision affirming the Industrial Commissioner's finding Great West is liable for a workers' compensation claim. We affirm.

I. Background Facts and Proceedings.

L.B. Transport (L.B.), Kiewiet Tiling, and Kiewiet Trucking are owned by Susan Kiewiet and Terry Kiewiet. The businesses operate from the same location. In 1990, L.B. hired Patrick Higgins as a temporary dispatcher. Higgins performed work for all three businesses. Higgins estimated he spent ten to twenty percent of his time working for Kiewiet Tiling and eighty to ninety percent of his time working for L.B. and Kiewiet Trucking. In 1991, Higgins was transferred to Kiewiet Tiling's payroll for accounting convenience and resulting favorable tax consequences.

Higgins was injured in May 1993, while working on a trailer owned by L.B. At the time, Kiewiet Tiling had a workers' compensation insurance policy with Employers Mutual. L.B. had a similar policy with Great West. Kiewiet Tiling and L.B. paid their insurance premiums from their separate payrolls. Higgins filed two claims for workers' compensation benefits, one identifying Kiewiet Tiling as the employer and Employers Mutual as the insurer, and the other naming L.B. as the employer and Great West as the insurer.

The deputy industrial commissioner found L.B. was Higgins' employer at the time of his injury and accordingly determined Great West was responsible for

payment of Higgins' benefits. The industrial commissioner affirmed the deputy's decision. On judicial review, the district court affirmed the industrial commissioner. On appeal, L.B. and Great West contend Employers Mutual is responsible for payment of Higgins' benefits because Employers Mutual collected premiums for Higgins' coverage as an employee of Kiewiet Tiling.

II. Standard of Review.

We review workers' compensation cases for errors of law. *Second Injury Fund v. Hodgins,* 461 N.W.2d 454, 455 (Iowa 1990). The findings of the commissioner are binding unless a contrary result is required as a matter of law. *Wetzel v. Wilson*, 276 N.W.2d 410, 412 (Iowa 1979).

III. The Merits.

An employee seeking to recover workers' compensation benefits must prove: (1) an employer-employee relationship at the time of the claimant's injury; (2) an injury arising out of and in the course of his or her employment; and (3) the injury proximately caused a disability or death. *Freeman v. Luppes Transport Co., Inc.*, 227 N.W.2d 143, 148 (Iowa 1975)(citations omitted). None of these elements of proof are in dispute. Great West concedes Higgins' status as L.B.'s employee and L.B.'s attendant liability for Higgins' work-related injury. Great West, however, seeks to avoid coverage by claiming it is inequitable for Employers Mutual to avoid responsibility for payment of Higgins' benefits when Employers Mutual collected premiums from Kiewiet Tiling for Higgins' workers' compensation coverage.

There is no authority supporting Great West's equitable arguments. While Iowa Code section 85.21(1)[1] provides for allocation of benefits between multiple employers and insurance carriers, such allocations have historically been determined by considerations other than equitable principles. *See Doerfer Div. of CCA v. Nicol*, 359 N.W.2d 428, 434-35 (Iowa 1984)(equitable principles not applicable to allocation of liability for claimant's injury between employers). Because there is no evidence establishing Kiewiet's liability as Higgins' employer, we hold the allocation provisions of section 85.21(1) are not implicated.

We also decline L.B.'s and Great West's invitation to reassess the evidence in the record. Iowa Code section 85.21 allocates the decision-making responsibility regarding liability on a workers' compensation claim to the Industrial Commissioner. It is the role of the commissioner, not the court, to weigh the evidence. *Holmes v. Bruce Motor Freight, Inc.*, 215 N.W.2d 296, 298 (Iowa 1974). We liberally and broadly apply its findings to uphold, rather than defeat, the commissioner's decision. *Ward v. Iowa Dep't of Transp.*, 304 N.W.2d 236, 237 (Iowa 1981). Absent evidence the commissioner's decision is affected by an error of law, is not supported by

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[1] Iowa Code section 85.21(1) states:

> The Industrial Commissioner may order any number of combination of alleged workers' compensation insurance carriers and alleged employers, which are parties to a contested case or to a dispute which could culminate in a contested case, to pay all or part of the benefits due to an employee . . . if any of the carriers or employers agree, or the commissioner determines after an evidentiary hearing, that one or more of the carriers or employers is liable to the employee . . . .

substantial evidence in the record, or exhibits an abuse of discretion, we will not modify the agency's action. *Burns v. Bd. of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993). We affirm the district court.

AFFIRMED.