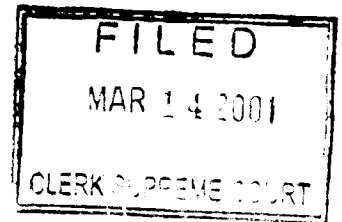


IN THE COURT OF APPEALS OF IOWA

No. 0-752 / 00-0547
Filed March 14, 2001



**SECOND INJURY FUND
OF IOWA,**

Appellant,

vs.

LOUIS G. WOOD,

Appellee.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II,
Judge.

The Second Injury Fund of Iowa appeals the district court's ruling on
judicial review affirming the workers' compensation commissioner's decision that
the fund had liability for Louis G. Wood's industrial disability. **AFFIRMED.**

Thomas J. Miller, Attorney General, and Julie Burger, Assistant Attorney
General, for appellant.

Steven C. Jayne, Des Moines, for appellee.

Considered by Habhab, R. Peterson, and Honsell, Senior Judges.*

*Senior judges assigned by order pursuant to Iowa Code section 602.9206
(2001).

HABHAB, S.J.

This is an appeal by the Second Injury Fund of Iowa (Fund) from a district court ruling that upheld the workers' compensation commissioner's award of Second Injury Fund benefits for Appellee Louis G. Wood (Wood)¹. The Fund's main argument on appeal is "Wood failed to prove his industrial disability is related to the combined effects of his first and second injury." The Fund, in the argument portion of its brief, further claims the commissioner misapplied the law by concluding that a prior loss and a subsequent loss alone are sufficient bases to invoke Fund liability. Thus it claims that a legal issue was before the district court and is now before us. For the reasons that follow, we affirm.

We review decisions of the workers' compensation commission under Chapter 17A. See Iowa Code § 86.26. Our review of the commissioner's decision is for error at law, not de novo. *Second Injury Fund v. Braden*, 459 N.W.2d 467, 468 (Iowa 1990). We broadly and liberally construe the commissioner's findings to uphold, rather than defeat the commissioner's decision. *Second Injury Fund v. Hodgins*, 461 N.W.2d 454, 456 (Iowa 1990). We must examine whether the commissioner's conclusions are supported by substantial evidence in the record made before the agency when the record is viewed as a whole. Iowa Code § 17A.19(10)(f). Evidence is substantial "if a reasonable mind would find it adequate to reach a conclusion. An agency's decision does not lack substantial evidence because inconsistent conclusions may be drawn from the same evidence." *Second Injury Fund v. Shank*, 516

¹ The deputy workers' compensation commissioner also awarded Wood benefits under the fund.

N.W.2d 808, 812 (Iowa 1994). In reviewing the commissioner's interpretation of the statutes governing the agency, we defer to the expertise of the agency, but reserve for ourselves the final interpretation of the law. *Braden*, 459 N.W.2d at 468.

The Second Injury Compensation Act is codified at Iowa Code sections 85.63 through 85.69. The Fund's purpose is to encourage the employment of disabled individuals. *Aluminum Co. of Am. v. Quinones*, 522 N.W.2d 63, 65 (Iowa 1994). Section 84.64 limits the liability of the employer in the event an employee suffers a specified second injury. The statute provides in part:

If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently disabled by a compensable injury which has resulted in the loss of or loss of use of another such member or organ, the employer shall be liable only for the degree of disability which would have resulted from the latter injury if there had been no pre-existing disability. In addition to such compensation, and after the expiration of the full period provided by law for payments thereof by the employer, the employee shall be paid out of the "*Second Injury Fund*" created by this division the remainder of such compensation as would be payable for the degree of permanent disability involved after first deducting from such remainder the compensable value of the previously lost member or organ.

Iowa Code § 85.64. The employee must prove three things to trigger the liability of the Fund. *Shank*, 516 N.W.2d at 812. First, that he or she has either lost, or lost the use of a hand, arm, foot, leg, or eye. *Id.* Second, the employee sustained the loss, or loss of use of another such member or organ through a work-related, compensable injury. *Id.* Third, there must be some permanent injury from the injuries. *Id.* The prior loss does not have to be total. *Id.* at 813; *Braden*, 459 N.W.2d at 469.

Our supreme court in *Anderson v. Second Injury Fund*, 262 N.W.2d 789 (Iowa 1978), cited with approval the following from Kacena, *Workmen's Compensation in Tennessee: The Second Injury Fund*, 6 Memphis U. L. Rev. 715, 716-19 (1976):

If an employer hires a worker who is perfectly healthy and subsequently that worker loses his eye while on the job, the employer's liability would be limited to the scheduled amount for loss of an eye. But if an employer hires a worker who is already blind in one eye, or has already lost an arm or a leg, and that worker subsequently loses his other eye, arm, or leg while on the job, the employer's compensation liability would be much greater than just the scheduled benefit for loss of that member. The combined effect of the two losses would very likely be total disability, and the employer would, under the earliest workmen's compensation statutes, ordinarily be liable for the entire total disability compensation.

Anderson, 262 N.W.2d at 791-92.

It is from the above-quoted provision from *Anderson* that the Fund argues that under the record made Wood failed to prove and the commissioner failed to find that the two injuries complained of combined to create industrial disability. We disagree with the Fund's interpretation of the record. However, and even though we disagree with the Fund's reading of the record, we do agree with its contention that before Wood can recover from the Second Injury Fund there must be proof that the two injuries complained of combined to create the industrial disability. Our supreme court has held that in order to establish the third element, the first and second injuries must combine, making the impairment from the second injury greater than it would have been had there not been the first injury. *Shank*, 516 N.W.2d at 813. The supreme court has further stated that "[i]t is the *cumulative* effect of scheduled injuries resulting in disability to the body as

a whole – rather than the injuries considered in isolation – that triggers the Fund's proportional liability." *Id.* (quoting *Braden*, 459 N.W.2d at 471).

Turning then to the record we note that the Fund does not dispute that Wood sustained two injuries resulting in a permanent loss of use of two scheduled injuries. The first injury occurred in 1959 and was to Wood's right knee. This injury required surgery. The parties stipulated that the injury produced a twenty-two percent permanent partial impairment of his right leg.

In early 1990 Wood was involved in a traffic accident. As a result of this accident, Wood had a permanent partial impairment rating of five percent of the left arm. Wood was unemployed for a year and a half following this accident. He had difficulty finding work. Eventually he was hired by his landlord as an on-premise assistant manager.

In March of 1992 while changing a light bulb, the ladder Wood was working on collapsed, and he fell nearly two stories, landing on his feet. He had a crush injury of his left ankle and heel bone that was treated with surgical fixation. He also had a right ankle fracture that was treated with a removable splint. The right ankle has recovered comfortably, but the left ankle did not and is the subject of this action.

It is the Fund's contention that any industrial disability Wood suffered is strictly related to restrictions Wood has as a result of this second injury. Although Wood did indeed suffer a permanent partial disability injury in 1959, the Fund argues that injury did not combine with Wood's 1992 injury to bring about his industrial disability.

The Fund finds encouragement for its position from a statement made by the trial court that there was considerable merit in the Fund's position that Wood's industrial disability related only to Wood's second injury. However, the trial court carefully noted and correctly stated that what it would have determined if it were the finder of fact is irrelevant.

We do not necessarily disagree with this observation made by the trial court, but like the trial court, we are not free to interfere with the commissioner's findings where there is a conflict in the evidence or when reasonable minds might disagree about the inferences to be drawn from the evidence whether disputed or not. *Ward v. Iowa Dep't of Transp.*, 304 N.W.2d 236, 239 (Iowa 1981). In this respect, it is for the commissioner to weigh the evidence, not the court, and it follows that those findings have the same effect as a jury verdict. *Id.* at 237. As noted earlier, the court must broadly and liberally apply those findings in order to uphold rather than defeat the commissioner's decision. *Id.*

The Fund takes exception to the following finding made by the commissioner: "In the instant case claimant has proved that he suffered prior loss of use of his right leg and his left arm. The prior loss of use invoked Fund liability." The Fund then argues that, based on this statement, the commissioner ignored the teachings from *Anderson* and in effect has held that a prior loss and a subsequent loss standing alone are sufficient bases to invoke the Fund liability.

We think not. This statement by the commissioner is directed to the first of the three requirements to invoke the Fund's liability.² It cannot go unnoticed

² We have set forth those three requirements previously in this opinion.

that shortly after this statement, the commissioner made the following finding: "The next issue to be resolved is the extent of the claimant's cumulative industrial disability."

In addition, the commissioner found that Wood's two scheduled injuries to his legs, and Wood's scheduled arm injury, resulted in an industrial disability. Specifically, the commissioner stated that "[w]hen all relevant factors are considered claimant has demonstrated that the combined effect of the loss of use of the right leg, left arm and left leg resulted in a 40 percent disability." From this statement and after considering the opinion in its entirety, we conclude, the agency correctly applied the law. The commissioner, as required by law, determined that it was the *combined* effect of the scheduled injuries that caused the industrial disability, not the second injury alone. We hold that neither the commissioner nor the district court erred.

Finally, we conclude that the commissioner's decision that Wood sustained forty-percent industrial disability is supported by substantial evidence. Because of his injuries, Wood may only work in jobs that are exclusively sedentary or light. Further, his lack of ambulatory ability makes travel difficult. Wood's reduced physical capacities have further reduced his possible employment opportunities. The commissioner's findings and conclusions are supported by substantial evidence.

AFFIRMED.