

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DARRYL KEITH BROWDER,

Claimant,

vs.

LABOR READY,

Employer,

and

HELIOS SETTLEMENT SOLUTIONS,
ESIS, INC.,

Insurance Carrier,
Defendants.

File No. 5064765

A P P E A L

D E C I S I O N

Head Note: 2402

STATEMENT OF THE CASE

Claimant, Darryl Browder, appeals from a ruling on a motion for summary judgment filed May 23, 2019. In the ruling, the deputy workers' compensation commissioner determined defendants were entitled to summary judgment as a matter of law. Specifically, the deputy workers' compensation commissioner found, based on undisputed facts, claimant's claim for workers' compensation benefits is barred by application of Iowa Code section 85.26(1), as claimant failed to file his petition within two years of the date of the occurrence of the alleged work-related injury.

The detailed record of the parties has been considered, and the evidence has been reviewed de novo.

ISSUE

The issue is whether a summary judgment based on failure to comply with Iowa Code section 85.26(1) is appropriate.

FINDINGS OF FACT

On August 23, 2018, claimant filed his petition in this matter. Claimant alleged, in the petition, dates of injury of August 19, 2015 through September 16, 2015. Claimant

indicated in his petition the injury occurred from “lifting heavy things on job site, and I started hemorrhaging and bleeding in my stools.”

Defendants denied claimant’s claim for benefits and no benefits have been paid. (Exhibit H)

In his response to interrogatory answers, claimant indicated he “. . . told [his employer] immediately that I got hurt on my job and from the date of loss as of 09/16/2015.” (Ex. B) In his response to Interrogatory No. 10, claimant contends he told his supervisor, Julia Topp, about an injury occurring on September 16, 2015. (Ex. C)

In his response to Interrogatory No. 12, claimant indicated he was admitted to the hospital on December 9, 2015, for injuries related to his “09/16/2015” work injury. (Ex. D)

In his response to Interrogatory No. 14, claimant indicates “the date of onset or loss was 09/16/2015.” (Ex. E)

In his reply brief, claimant indicates “claimant is clearly claiming a very traumatic injury occurring at Labor Ready on September 16, 2015.” (Claimant’s Appeal Brief, page 7. See also Claimant’s Brief, pp. 1, 4) Claimant indicates in his brief the injury occurred on September 16, 201,5 from “lifting heavy things on job site.” (Claimant’s Brief, p. 4)

CONCLUSIONS OF LAW

The only issue to be determined is whether summary judgment based on a failure to comply with Iowa Code section 85.26(1) is appropriate.

Rule 876 IAC 4.35 makes Iowa Rules of Civil Procedure 1.981 through 1.983 applicable to motions for summary judgment before this agency.

Summary judgment should be rendered when the record before the court shows that no genuine issue exists as to any material fact and that the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); Suss v. Schammel, 375 N.W.2d 252, 254 (Iowa 1985); Brown v. Monticello State Bank, 360 N.W.2d 81, 83-84 (Iowa 1984).

The burden of showing there is no genuine issue of material fact is upon the party moving for summary judgment. Sparks v. Metalcraft, Inc., 408 N.W.2d 347, 350 (Iowa 1987); Northrup v. Farmland Industries, Inc., 372 N.W. 2d 193, 195 (Iowa 1985); Matherly v. Hanson, 359 N.W.2d 450, 453 (Iowa 1984). If the motion for summary judgment is properly supported, the resisting party “may not rest upon the mere allegations . . . in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Iowa R. Civ. P. 1.981(5). Similarly, the resisting party may not rely solely on legal

conclusions to show there is a genuine issue of material fact justifying denial of summary judgment. Byker v. Rice, 360 N.W.2d 572, 575 (Iowa App. 1984).

When confronted with a motion for summary judgment, the agency is required to examine, in light most favorable to the party opposing the motion, the entire record before it, including the pleadings, admissions, depositions, answers to interrogatories, and affidavits, if any, to determine whether any genuine issue of material fact is generated thereby. Sparks, 408 N.W.2d at 350; Drainage Dist. No. 119, Clay County v. Incorporated City of Spencer, 268 N.W.2d 493, 499-500 (Iowa 1978). "Even if the facts are undisputed, summary judgment is not appropriate if reasonable minds may draw different inferences from them." Tasco, Inc. v. Winkel, 281 N.W.2d 280, 282 (Iowa 1979).

Summary judgment is a proper remedy in cases where its application advances its salutary objective of avoiding useless, expensive, and time-consuming trial where there exists no genuine, factual issue to be tried. Diamond Products v. Skipton Painting and Insulation, Inc., 392 N.W.2d 137, 138 (Iowa 1986); Neoco, Inc. v. Christenson, 312 N.W.2d 559, 560 (Iowa 1981).

Pursuant to Iowa R. Civ. P. 1.981(5):

When a motion for summary judgment is made and supported . . . an adverse party may not rest upon the mere allegations . . . in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered.

An original proceeding for benefits must be commenced within two years from the date of the occurrence of the injury for which benefits are claimed or within three years from the date of the last payment of weekly compensation benefits if weekly compensation benefits have been paid under section 86.13. Section 85.26(1).

The record in this case indicates defendants did not pay any benefits regarding claimant's alleged work injury. For this reason, claimant's claim for benefits must be filed within two years of the date of injury.

Claimant makes several arguments why the two-year statute of limitations under Iowa Code section 85.26(1) should be tolled. Claimant argues the statute of limitations is tolled because his employer allegedly did not file a First Report of Injury. (Claimant's Brief, p. 1) Claimant contends the statute of limitations is tolled because his employer allegedly did not send a Denial of Liability and Notification Letter. (Claimant's Brief, p. 1) Claimant alleges the statute is tolled because his employer allegedly signed a document that he was disabled and again did not file a First Report of Injury. (Claimant's Brief, p. 4) Claimant contends his supervisor knew he had an accident but allegedly indicated claimant quit work with Labor Ready. (Claimant's Brief, p. 5)

Claimant alleges defendants failed to respond to his discovery, which allegedly tolled the statute of limitations. (Claimant's Brief, p. 6) Claimant also alleges that his statute is tolled, allegedly, because "defendants and their attorney has [sic] violated all of the claimants' [sic] workers [sic] compensation rules and laws." (Claimant's Brief, p. 6)

Claimant does not cite to any case law suggesting any of the alleged conduct by defendants toll the two-year statute of limitations in this matter. There is no statute or rule indicating any of the alleged conduct by defendants toll the two-year statute of limitations in this case. There is no case law indicating any of the alleged conduct by defendants toll the two-year statute of limitations under Iowa Code section 85.26(1).

The record in this case indicates claimant sustained a traumatic injury on September 16, 2015. (Claimant's Petition; Exs. B, C, D, E; Claimant's Brief, pp. 1, 4, 7) No benefits have been paid on the claim. (Ex. H)

Iowa Code section 85.26(1) requires a petition for benefits must be filed with the workers' compensation commission within two years of the date of the occurrence of the injury, or within three years of the date of the last payment of weekly compensation benefits. Claimant's original notice and petition was filed with this agency on August 23, 2018. Claimant alleges a date of injury of September 16, 2015. There is no evidence any weekly compensation benefits have been paid. Iowa law recognizes a discovery rule. However, claimant has not asserted it applies here, and the undisputed facts make the non-applicability of the rule plain.

Even when taking the entire record before the agency in a light most favorable to claimant, claimant's original notice and petition was not filed with the Iowa Workers' Compensation Commissioner until more than two years after the date of the alleged injury. For this reason, claimant's original notice and petition are barred by the statute of limitations pursuant to Iowa Code section 85.26(1).

Claimant makes reference in his brief that he believes his case is not under appeal but is still "active." (Claimant's Brief, p. 3)

Claimant is representing himself pro se. However, the chronology of this matter, as described above, is that defendants filed a motion for summary judgment and that motion has been granted. Pursuant to the May 23, 2019, ruling, claimant's petition was dismissed. Claimant appealed that ruling intra-agency.


For the reasons detailed above, I affirm the deputy commissioner's finding that defendants' motion for summary judgment is granted. This is because claimant's claim for benefits is barred by the two-year statute of limitations under Iowa Code section 85.26(1).

ORDER

IT IS THEREFORE ORDERED:

The ruling on defendants' motion for summary judgment filed in this matter on May 23, 2019 is affirmed in its entirety. Claimant's original notice and petition is dismissed.

Signed and filed on this 13th day of March, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

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Stephen Brown (via WCES)