IN THE IOWA DISTRICT COURT FOR POLK COUNTY

RACHEL LESTER, Petitioner, VS. HORMEL FOODS CORP., Respondent,	Case No. CVCV063019 RULING ON JUDICIAL REVIEW

FACTUAL AND PROCEDURAL BACKGROUND

This matter arose out of a workers' compensation claim involving repetitive trauma injury to Petitioner, Rachel Lester ("Lester"). Lester began working for the Respondent, Hormel Foods Corporation ("Hormel Foods"), in May of 2002. Lester v. Hormel Foods Corp., CVCV063019, Agency R. Volume 1 p. 138 (Polk Cnty. Dist. Ct., Feb. 16, 2022). Lester was a "strip out operator," which required using a knife ring to cut the strings on pepperoni sticks; Lester would then grab the sticks with her right arm and throw them to her right. Id. Lester did this work for twelve-minute intervals when she would trade jobs to stack meat. Id. Starting in 2017, Hormel Foods became short-staffed, causing Lester to perform both jobs by herself. Id.

Lester's shoulder problems began in September 2017. Lester claims she reported the shoulder pain to her supervisor and plant nurse. Id. at 139. Both Hormel Foods and Lester agree that no record was created of this complaint. Id.; Lester v. Hormel Foods Corp., CVCV063019, Pet'r's Judicial Review Br. p. 4 (Polk Cnty. Dist. Ct., Feb. 17, 2023).

The first injury report generated from an injury complaint occurred in November 2018. Lester, CVCV063019, Agency R. Vol. 1 p. 139. On December 19, 2018, Lester saw Brent Owen

M.D. ("Dr. Owen") for her chronic right shoulder pain, which had persisted for a year. Id. There is no specific date of injury noted at this appointment. Dr. Owen diagnosed Lester with biceps tendinitis, and ordered work restrictions and physical therapy. Id. On February 13, 2019, Dr. Owen saw Lester again for right shoulder pain and reviewed an MRI, which showed nothing remarkable. However, an MRI ordered by Dr. Emile Li, M.D. ("Dr. Li") on April 26, 2019, showed that there was an impingement on the lateral edge of acromion. Id. p. 140.

Lester underwent should surgery on May 16, 2019. Id. At a follow up appointment with Dr. Li, Lester's shoulder was progressing well. Id. In August 2019, Lester began to experience a frozen shoulder, so she had her arm manipulated under anesthesia. Lester, CVCV063019, Agency R. Volume 1 p. 140. Lester returned to see Dr. Li on November 25, 2019, expressing shoulder pain despite increased motion of the shoulder. Id. In a letter dated March 26, 2020, Dr. Li indicated that Lester's diagnosis was tendinitis of a long head of the biceps as well as adhesive capsulitis and that Lester was not at maximum medical improvement ("MMI"). Id. Lester's temporary restrictions were no overhead activity and no lifting more than ten to fifteen pounds. Id.

Lester received two independent medical evaluations ("IMEs"). The first was conducted on July 1, 2020, by Charles Wenzel, D.O. ("Dr. Wenzel"). Id. p. 140. After reviewing the type of work Lester routinely performed and Lester's medical records, Dr. Wenzel concluded that Lester's injury was not work related and may have been caused by her Crohn's disease. Id. p. 140-41. Robin Sassman, M.D. ("Dr. Sassman") conducted another IME of Lester on July 21, 2020. Dr. Sassman reviewed the same materials as Dr. Wenzel, but concluded that Lester's injury was work related and that Lester had reached MMI in June 20, 2020. Lester, CVCV063019, Agency R. Vol. 1 p. 141-42.

Hormel Foods initially accepted responsibility for the injury and paid for treatment as well as temporary disability benefits, but it denied further responsibility once Dr. Wenzel provided his IME stating the injury was not work related. Lester, CVCV063019, Pet'r's Judicial Review Br. p. 6. In response, Lester filed a notice and petition with the Iowa Workers' Compensation Commissioner. Id. p. 1. The Deputy Commissioner issued the arbitration decision on May 19, 2021. The decision held Lester established a work-related injury to her right shoulder that manifested on September 15, 2017. Id. p. 3. The Deputy Commissioner determined that Lester was not entitled to benefits because she failed to provide timely notice of her injury to Hormel Foods within the 90 days required by Iowa Code § 85.23. Id. p. 3.

Lester filed an application for rehearing, which was denied, before filing an appeal to the Iowa Workers' Compensation Commissioner. The arbitration decision was affirmed in its entirety in the appeal decision issued on November 23, 2021. Lester once again filed an application for rehearing on the issue of lack of notice, which the Commissioner denied. Lester then filed a petition for judicial review. After hearing the arguments of Counsel and reviewing the court file, including the briefs filed by the parties and the Certified Administrative Record, the Court enters this Order.

STANDARD OF REVIEW

In judicial review of an agency action, the Court sits in appellate capacity to correct errors of law on the part of the agency. Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 748 (Iowa 2002). The Iowa Administrative Procedure Act, Iowa Code chapter 17A, governs the scope of this Court's review in workers' compensation cases. Iowa Code § 86.26; Meyer v. IBP, Inc., 710 N.W.2d 213, 218 (Iowa 2006). "Under the Act, [the Court] may only interfere with the commissioner's decision if it is erroneous under one of the grounds enumerated in the statute, and a party's substantial rights have been prejudiced." Meyer, 710 N.W.2d at 218. A party challenging

agency action bears the burden of demonstrating the action's invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a). This can be shown in a number of ways, including proof the action was ultra vires; legally erroneous; unsupported by substantial evidence in the record when that record is viewed as a whole; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. See id. § 17A.19(10).

If the claim of error lies with the agency's findings of fact, the standard is whether substantial evidence supports those findings of fact. Substantial evidence is defined as evidence of the quality and quantity "that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code § 17A.19(10)(f)(1); Mycogen Seeds v. Sands, 686 N.W.2d 457, 464 (Iowa 2024) (superseded by statute on other grounds). The question is not whether the evidence supports a finding different from the Commissioner's, but whether the evidence supports the findings the Commissioner actually made. Ward v. Iowa Dept. of Trans., 304 N.W.2d 236, 237-38 (Iowa 1981). The adequacy of the evidence in the record to support a particular finding of fact must be judged in light of all relevant evidence in the record. This includes any determinations of veracity and credibility by the presiding officer who personally observed the demeanor of the witnesses. Iowa Code § 17A.19(10)(f)(3).

Our standard for claims of errors in the agency's interpretation of the law is whether it was erroneous. If it is erroneous, we may substitute our interpretation for the agency's. Meyer, 710 N.W.2d at 219 (citations omitted). The application of the law to the facts is vested in the Commissioner. Mycogen, 686 N.W.2d at 465. Accordingly, the Court will reverse the Commissioner's application of law to the facts only if it was "irrational, illogical, or wholly unjustifiable." Id.; Iowa Code § 17A.19(10)(l). Finally, the workers' compensation law should be

liberally construed to accomplish the object and purpose of the legislation: to benefit the worker and their dependents. Dillinger v. City of Sioux City, 368 N.W.2d 176, 180 (Iowa 1985).

ANALYSIS

The heart of the case is whether Lester provided proper notice of her cumulative injury to Hormel Foods within the ninety-day requirement established by Iowa Code § 85.23. Lester argues that Hormel Foods waived this affirmative defense via its payment of workers' compensation benefits. Hormel Foods argues that Lester's argument regarding waiver was not preserved for judicial review. Lester also argues that the Commissioner erred in failing to determine the date that she "discovered" her injury. Hormel Foods argues that this issue was likewise not preserved and that substantial evidence supports the Commissioner's decision.

Waiver of Notice

Lester acknowledges that she did not present the waiver of notice to the Deputy Commissioner. Generally, parties are prohibited from presenting new issues to the Commissioner that have not been raised with the Deputy Commissioner. Iowa Admin. Code 867 4.25(7). An exception applies if the new issue is necessarily incidental or dependent on previously presented issues. Iowa Admin. Code 867 4.28 (7).

Iowa courts generally distinguish between claims and arguments presented when determining whether an error has been preserved. Feld v. Borkowski, 790 N.W.2d 72, 82-85 (Iowa 2010) (Appel, J. concurring in part and dissenting in part). Claims must be raised below and argued on appeal to be preserved for every stage of litigation. That said, arguments for a claim can change at different stages of litigation provided the underlying claim was raised at the appropriate point of litigation. Id. p. 84. There are also exceptions to this general rule for judicial economy considerations. Id.

An issue is incidental to a properly preserved claim if it results from the preserved claim. See, generally, O'Reilly Auto Parts v. Alexander, 824 N.W.2d 561 (Iowa 2012) (stating the issue of whether the employee's injury was caused or related to the conditions of his work was a consideration that naturally resulted from determining whether the injury arose out of employee's job). In our case, the new issue is whether Hormel Foods waived notice of the injury. The Deputy Commissioner considered facts to determine the date Lester discovered the injury. Lester, CVCV063019, Agency R. Volume 1 p. 139-140. Determining when the injury was discovered is necessary to determine the time the ninety-day notice clock began to run and whether the employee properly notified the employer about the injury. Whether or not an employer has waived the notice defense is incidental and intertwined with the determination of the injury discovery and notice.

Additionally, the issues Lester presented on appeal from the Deputy Commissioner's ruling do not explicitly raise the issue of waiver of notice, but they do question the findings of fact regarding the date Lester discovered her injury, which directly relates to the notice issue. Id. at p. 94. This issue was addressed at the application for rehearing with the Commissioner as well. Therefore, the question before the Court is whether the waiver of notice argument is incidental to the claim regarding the discovery of the injury.

There are two additional exceptions that are context-specific to courts sitting in judicial review of agencies. First, a party may raise a new issue if they could not have raised the issue earlier and they raised the issue on an application for rehearing at the agency level. Soo Line R. Co. v. Iowa Dep't of Transp., 521 N.W.2d 685, 691 (Iowa 1994). This exception does not apply here because Lester had the opportunity to raise the issue of waiver of notice at the beginning of the proceedings. Lester did not lack any information regarding this positive defense against the

ninety-day notice requirement at the start of the proceedings. Furthermore, Lester did not raise the waiver of notice issue until an application for rehearing with the Commissioner.

The second exception is that an issue will be preserved if "it was raised for the first time in an application for rehearing where the opportunity for response by the opponent was adequate at that stage of the proceedings." Id. This exception does apply to this case. Hormel Foods does not dispute that it paid benefits. Hormel Foods did not require additional evidence to adequately mount a resistance to the waiver of notice issue presented when it was presented in the application for rehearing. This is a legal question and Hormel Foods fully argued the merits of Iowa Code § 86.13(1)'s applicability to this case. Lester, CVCV063019, Agency R. Volume 1 p. 9-13. Further, although the concept of waiver is not listed, Lester did assert in her Appeal Brief that Hormel Foods "failed to prove its asserted section 85.23 affirmative defense." Id. p. 11.

For the foregoing reasons the Court concludes that the issue is properly before it. See, also, Schoenberger v. Acuity, et. al., p. 6 (Iowa Ct. App. Case No. 22-1613, Apr. 12, 2023) (finding that a claimant preserved an issue for judicial review given the "broad scope to be embraced on appeal pursuant to [Iowa Admin. Code] rule 876-4.28(7).").

Having found that Lester preserved her argument, this Court must consider whether Hormel Foods waived its affirmative defense of lack of notice under Iowa Code § 86.13(1). At issue is the relationship between Iowa Code § 85.23 and Iowa Code § 86.13(1). Under section 85.23, if an employer does not receive notice no compensation shall be allowed. There are two ways for an employer to have notice: 1) They have "actual knowledge" of the occurrence of an injury received within ninety days from the date of the occurrence of the injury; or 2) the employee gives notice to the employer within ninety days from the date of the occurrence of the injury. Section 86.13(1) states that if an employer pays weekly compensation benefits to an employee,

"[t]he payments establish conclusively that the employer and the insurance carrier have notice of the injury. . . but the payments do not constitute an admission of liability."

How two statutes interact and effect one another is a question of interpretation. As with any interpretation of a statute or a group of statutes, a cardinal rule is that the interpretation must be reasonable. Chavez v. MS Technology LLC, 972 N.W.2d 662, 668 (Iowa 2022) (stating that courts look for interpretations that are reasonable, best achieve the statute's purpose, and avoid absurd results). If an interpretation renders part of the statute superfluous, it is illogical. Beverage v. Alcoa, Inc., 975 N.W.2d 670, 685 (Iowa 2022). Chapter 85 of the Iowa Code is the general law governing workers' compensation, whereas, Chapter 86 governs the division of workers' compensation in the Iowa government. Section 86.13 is then directed at the Deputy Commissioner and the Commissioner. This is confirmed by the fact that the other subsections to section 86.13 tell the Commissioner when to toll the statute of limitations. Therefore, when Section 86.13(1) states that the payment of compensation benefits conclusively establishes that an employer has notice, it is directing the Deputy Commissioner and Commissioner when to find the employer had notice.

If section 86.13(1) does not result in waiver of the employer's affirmative defense of notice, it renders the language stating that notice is conclusively established meaningless. It cannot be both that the employer conclusively has notice of the injury because they made compensation payments, but is not required to make further payments because the employee failed to give it proper notice.

Further, any fear that allowing section 86.13(1) to result in waiver of the affirmative notice defense will have a chilling effect on compensation payments to employees is misplaced. If there is an injury that is allegedly work-related employers are *required* to pay compensation. Iowa Code

§ 85.32. If the injury is later found not be work related then the employer is not required to make any more payments. If the injury is found to be work related, then the employer may be required to make further compensation payments. In both cases, the employer is doing what is required by law, and the employees are getting what they are permitted under the law. Only if the Court allowed an employer to pay compensation and then later use the affirmative defense of lack of notice, would a deserving employee not receive the compensation they are due.

Further, this interpretation does not render the ninety-day notice period superfluous. It merely puts the onus on the employer to do the work on the front end rather than the back end. Under this interpretation. when an employee complains about an injury, the employer can question when the injury occurred. If the employee suggests a date that is or could be outside the ninety-day window, then the employer could seek to deny compensation. Even if the injury is a repetitive one that manifests over time, the employer can state that the employee should have known that the injury was compensable. If the employee disagrees, they can bring a claim to the Commission.

There is only one case that deals directly on how to interpret these statutes. Hawkins v. TMC Transp., No. 03-0004, 2003 WL 22701375 (Iowa Ct. App. Nov. 17, 2003). This case is unpublished and therefore not precedential to this Court, but it can have persuasive authority. The court in Hawkins, determined that the intent of the legislature was to have the voluntary payments "waive any objection to notice, but preserve other defenses regarding liability." Id. at *4. Hawkins is interpreting an older version of section 85.23 that does not include the last clause of the statute that states the date of the injury occurrence is when the employee knows or should have known about the injury. This clause has little effect on the relationship between the statutes. Therefore, having considered the argument of waiver, the Court finds it applicable. Hormel had notice of the

injury and was paying benefits related thereto. Accordingly, it was an error of law for the Commissioner to reject benefits based on the asserted lack of notice.

Discovery Date of Injury

Although the waiver of the defense of notice resolves this matter, Lester prevails for an additional reason. The Court finds that she preserved her argument that the Commission erred in its determination of the discovery date for Lester's injury and that, when the proper discovery date is used, Hormel Foods had timely notice of the injury.

Prior to the application for judicial review, Lester raised issues regarding the fact determinations made by the Deputy Commissioner. Lester, CVCV063019, Agency R. Volume 1 p. 94. Lester's arguments focused on fact determinations regarding the notice argument. The specific witness testimony was related to whether or not Lester informed her employer about her injury in 2017. Id. 103-05. Lester's other arguments dealt with the Deputy Commissioner's failure to make explicit credibility findings and their failure to consider inferences. Hormel Foods agrees that these arguments are all related to the determination of the notice argument. Lester, CVCV063019, Respt's Judicial Review Br. p. 3. Utilizing the same legal analysis from above, this Court finds that the discovery argument is necessarily incidental to the facts that were determined which all dealt with notice. In the absence of determining a discovery date, the Commissioner could not have determined that notice was not provided within the 90-day window running from that date. For these reasons, this Court concludes the issue is properly preserved, and must address the merits of Lester's argument.

To determine if substantial evidence supports the Commissioner's finding of fact, the question is whether the evidence supports the findings the commission actually made. Ward, 304 N.W.2d at 237-38. The Deputy Commissioner correctly states the law regarding the manifestation

of the injury and the determination of the statute of limitations via the discovery rule. Lester, CVCV063019, Agency R. Volume 1 p. 143-144.

The cumulative injury rule is determined by the manifestation test. Tilton v. H.J. Heinz Company, 2022 WL 2824290 (Iowa Ct. of App. July 20, 2022) (citing Herrera v. IBP, Inc., 633 N.W.2d 284, 287 (Iowa 2001)). An injury meets the requirements for the manifestation test when both 1) the fact of the injury is plainly apparent to a reasonable person, and 2) the causal relationship of the injury to the claimant's employment is plainly apparent to a reasonable person. Herrera, 633 N.W.2d at 287. The Deputy Commissioner correctly interpreted and applied the manifestation test to the facts in this case. Lester's injury began to manifest in September 15, 2017, and was casually connected to her employment. Lester, CVCV063019, Agency R. Volume 1 p. 145. However, the discovery rule must still be considered.

The discovery rule dictates the answer to the notice question. Herrera, 633 N.W.2d at 288; Lester, CVCV063019, Agency R. Volume 1 p. 143-144. Under the discovery rule, the statutory notice period does not begin to run until the Lester realizes that her injury will have an impact on her employment. The Iowa Supreme Court has made it clear that the impact on employment requires the employee to know that the injury will seriously impact the employee's employment or employability. Tilton, 2022 WL 2824290 p. *3. Put differently, the employee knows or should know the injury is serious and may be compensable. Herrera, 633 N.W.2d p. 288. This does not mean that the first instance the employee seeks out medical treatment is evidence that the employee knew the injury was serious or compensable. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148, 152 (Iowa 1997) (stating that the nature of repetitive-trauma injuries often takes "years to develop to point where they will constitute a compensable workers' compensation injury" (citations omitted)).

The Supreme Court has made it clear that the analysis of these two tests is to first determine the date of the injury under the manifestation test, and then to examine whether the statutory notice period commenced on the date or if it commenced on a later date. Herrera, 633 N.W.2d p. 288. In this case, the Deputy Commissioner correctly determined the manifestation date but then concluded that the discovery test applied to the same date without a full analysis. The Court finds that substantial evidence does not support this finding.

The facts, as determined by the Deputy Commissioner and confirmed by the Commissioner, establish that the injury began in September 2017. Lester's arm was irritated from the work, but there is no indication in the record that Lester reduced her work hours or needed to limit the type of work she did until November 2018. In fact, Lester did not miss any work despite her injury until her surgery in May 2019. Lester, CVCV063019, Pet'r's Judicial Review Br. p. 4, 10. Furthermore, there is no indication that Lester did physical therapy or other means of treatment like k-tape until November 2018. Lester, CVCV063019, Agency R. Volume 1. p. 361. At that time, a lump was found in Lester's arm that was painful to the touch, and she then went to see the doctor, who performed an ultrasound. Id. In the interim, Lester was put on light work duty. Id. The pain persisted until Lester eventually got shoulder surgery in May 2019.

The facts show that a reasonable person would not know that Lester's injury was permanent and that it would adversely impact one's employment until much later. Lester's shoulder was merely irritated in September 2017. The facts show that Lester continued to work for a year with this shoulder irritation taking pain medications to alleviate her pain. A reasonable person would not expect this shoulder irritation to adversely affect her employability at this stage when she could continue to perform her work.

The Iowa Supreme Court reached a similar conclusion in George A. Hormel & Co. v. Jordan. Jordan was diagnosed with a subluxating shoulder in 1988 by a company physician. George A. Hormel & Co., 569 N.W.2d at 150. He sustained the injury while unloading trucks by grabbing boxes of meat by the strap with his right arm. Id. Jordan did not lose any time from work due to his injury, but he was constantly stiff and sore, much like Lester. Similarly, Jordan's shoulder injury eventually made it so he could not raise his arm above shoulder level; if he did it would clunk out of alignment causing excruciating pain. Id. For three years, Jordan saw employer-authorized physicians and therapists until a physician stated he had reached permanent injury and a twenty-four percent work-related disability to his shoulder. Id. Hormel paid the appropriate amount for the twenty-four percent injury, but Jordan requested interest for the injury dating back to 1988. This sparked an arbitration with the Iowa Workers' Compensation Commission. The Deputy Commissioner found that the injury manifested in October 1991, making Jordan's petition timely for purposes of the statute of limitations. Id. at 150-51. The Iowa Supreme Court affirmed the Deputy Commissioner's selected date of manifestation stating that Jordan did not have knowledge of the "permanent impairment to his shoulder, nor did he realize the causal impact that injury would have on his job with Hormel." Id. at 153.

Lester's shoulder injury also bothered her, but did not fully impair her ability to work. She never missed a day due to her injury, but her shoulder was stiff. Lester iced it and treated it with pain killers. Like Jordan, Lester continued to perform her duties and was by all accounts an "able, dependable Hormel employee." Id. at 153; Lester, CVCV063019, Agency R. Volume 1 p. 69. (Hormel Supervisor Seebecker stating that Lester was an excellent employee, that she was used to train other employees, and that if COVID magically disappeared and Lester's original job was unavailable he would look for other opportunities for her to work a different position because she

was a very good worker). There is not substantial evidence to support a finding that Lester had knowledge of the permanent nature of her shoulder injury nor the causal impact the injury would have on her job prior to November 2018.

In sum, substantial evidence supports the Commissioner's determination that the injury manifested in September 2017, but not the implied conclusion that Lester discovered the injury more than 90 days prior to November 2018, when Hormel Foods acknowledges that it had actual notice of Lester's injury.

For the foregoing reasons, the decision by the Commission is reversed. This matter is remanded to the Workers' Compensation Commissioner for further proceedings in accordance with this Order.

IT IS SO ORDERED.

Copy to:

Iowa Division of Workers' Compensation

State of Iowa Courts

Case Number	**Case Title**
CVCV063019	RACHEL LESTER VS HORMEL FOODS CORP
Type:	ORDER FOR JUDGMENT

So Ordered

David Nelmark, District Judge
Fifth Judicial District of Iowa

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