

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CITY OF HARLAN and EMCASCO INSURANCE COMPANY, Petitioner, JIM THYGESEN, Respondent.	Case No. CVCV058612 RULING ON PETITION FOR JUDICIAL REVIEW
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INTRODUCTION

This is a petition for judicial review from a final decision of the Iowa Workers' Compensation Commission. The parties appeared through their counsel of record. Having considered the certified administrative record, court file, briefs of the parties, and arguments of counsel, the court enters the following ruling:

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Thygesen filed a petition for workers' compensation benefits on July 27, 2016. His petition alleged that he had sustained work injuries on December 17, 2013 and February 4, 2014, that affected his hearing. This matter came before Deputy Workers' Compensation Commissioner for Arbitration Hearing. At issue was whether Thygesen suffered a compensable work related injury or industrial disability on account of his hearing loss. Harlan disputed these issues and also argued that Thygesen's claim was barred both by the applicable statute of limitations and because Thygesen failed to notify his employer of the injury within 90 days as required by the statute.

The Deputy Commissioner found Thygesen's injury was work related and that he suffered an industrial disability as a result of his hearing loss. Furthermore, the Deputy Commissioner found that Thygesen did not know, and in the exercise of reasonable diligence would not have recognized the compensability of his injury until late 2014 and that he notified his employer within 90 days as required. Accordingly, the Deputy Commissioner found Thygesen's workers compensation claim was timely filed and that Harlan failed to prove its affirmative defense to the contrary. The Commissioner adopted the findings of fact contained in the arbitration decision and affirmed the Deputy Commissioner on appeal in a final agency decision.

The respondent seeks judicial review from these findings by the commissioner. Harlan asserts the commissioner erred in finding that the petitioner's claim was not barred for failing to file his petition within the applicable statute of limitations.

Additional facts will be discussed in the conclusions of law set forth below.

ANALYSIS AND CONCLUSIONS OF LAW

I. Standard.

This Court's review of a workers' compensation action is governed by Iowa Code chapter 17A. Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 748 (Iowa 2002); see Iowa Code § 86.26. The commissioner's factual determinations are "clearly vested by a provision of the law in the discretion of the agency" and this Court will defer to those factual determinations if they are based on "substantial evidence in the record before the court when that record is viewed as a whole." Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 557 (Iowa 2010) (quoting Iowa Code § 17A.19(10)(f)). This Court may grant

relief from an agency action if it determines the substantial rights of the claimant have been prejudiced because the agency action is unsupported by substantial evidence. Iowa Code § 17A.19(10)(f). “Evidence is substantial if a reasonable person would find the evidence adequate to reach the same conclusion.” Grundmeyer, 649 N.W.2d at 748. “[The] question is not whether there is sufficient evidence to warrant a decision the commissioner did not make, but rather whether there is sufficient evidence to warrant the decision he did make.” Musselman v. Cent. Tel. Co., 154 N.W.2d 128, 130 (Iowa 1967).

If the commissioner’s interpretation of law is the claimed error, the question on review is whether the commissioner’s interpretation was erroneous. See Clark v. Vicorp Rests., Inc., 696 N.W.2d 596, 604 (Iowa 2005). If the commissioner’s ultimate conclusion reached is the claimed error, “then the challenge is to the agency’s application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence.” Meyer, 710 N.W.2d at 219; Iowa Code § 17A.19(10)(i), (j).

II. Statute of Limitations.

Iowa Code Section 85.26 requires that an original proceeding for workers’ compensation benefits must be commenced within two years from the date of the occurrence of the injury. A proceeding for worker’s compensation benefits will not stand unless it is commenced within that time period. Iowa Code Section 85.23 additionally provides that a claim for workers’ compensation benefits will be barred unless the employer (1) has actual knowledge of the injury, or (2) the employee provides the employer of notice of the injury within 90 days of the date the injury is sustained.

As in other contexts, the discovery rule applies both to the notice and statute of limitations requirements contained in sections 85.23 and 85.26. Jacques v. Farmers Lumber & Supply Co., 47 N.W.2d 236, 239 (Iowa 1951); Robinson v. Dep't of Transp., 296 N.W.2d 809, 812 (Iowa 1980). Under the discovery rule, the time period to provide notice begins to run when the employee knows or should have known that his injury is "both serious and work connected." *Robinson*, 296 N.W.2d at 812. The time period for both providing notice and filing a claim begins to run when the claimant, as a reasonable person, should recognize the nature, seriousness and probable compensable character of the injury. Herrera v. IBP, Inc., 633 N.W.2d 284, 287 (Iowa 2001); Orr v. Lewis Cent. Sch. Dist., 298 N.W.2d 256, 257 (Iowa 1980).

In this case, Thygesen has been employed by Harlan since 1981 in various capacities in a water treatment plant. (Ex. 13, p. 7-8); (Tr. p.8-9). As part of his employment, Harlan provided hearing tests to Thygesen. It was during one of these hearing tests that Thygesen was first advised he had hearing loss. (Tr. p. 10). Thygesen has been aware of his hearing problems for the last ten to fifteen years. (Ex. 13, p 20) (Tr., p 40). His hearing had deteriorated to the extent he reported it to his family doctor in July 2012. (Tr. p. 40-41). Thygesen always attributed his hearing loss to his employment and acknowledged that his hearing had continued to get worse over time. (Tr. p. 39-40).

In August 2014, Thygesen told his supervisor that he was considering filing a workers' compensation claim. (Tr. p. 45). Thygesen notified his employer of his injury until February 4, 2015. (Tr. p. 43). His application for workers' compensation benefits was not filed until July 2016.

Thygesen's hearing loss is properly considered a cumulative injury. As Thygesen points out, the date of injury for cumulative trauma is "the time at which the disability manifests itself." Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824, 829 (Iowa 1992) (internal citations omitted). "Manifestation" is best characterized as "the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." Tasler, 483 N.W.2d at 829. Because of the nature of these injuries, the manifestation date may not be immediate. As the Iowa Supreme Court has noted, "repetitive-trauma injuries often will take years to develop to the point where they will constitute a compensable workers' compensation injury." Id. at 829-30.

There is no real dispute that Thygesen was unaware of his hearing loss. Instead, the "real question is when [Thygesen] knew, or by reasonable inquiry, should have known the probable compensable nature of his injury." Chapa v. John Deere Ottumwa Works, 652 N.W.2d 187, 190 (Iowa 2002). A "claimant is deemed to know the nature, seriousness and probable compensable character of an injury when []he knows [his] physical condition is serious enough to have a permanent adverse impact on [his] employment or employability." Larson Mfg. Co. v. Thorson, 763 N.W.2d 842, 855 (Iowa 2009).

Here, the Commissioner primarily relied on Thygesen's testimony that he had not actually seen the results of his hearing tests until 2015, and, accordingly, did not recognize the severity of his hearing loss, to determine Harlan had not met its burden to prove the untimeliness of Thygesen's claim.

To reach this conclusion, the Commissioner failed to apply “the longstanding rule that a worker has a duty to investigate whether an injury—even a latent one—is work-related and, hence, potentially compensable. Under this rule of inquiry notice, neither the lack of positive medical information nor lack of an expert opinion will prevent commencement of the statute of limitations.” Chapa, 652 N.W.2d at 190 (internal citations omitted). There is scant evidence in this record that Thygesen investigated his hearing loss. He knew the hearing loss was serious, work-related, and worsening over time. (Tr. p. 39-41). It had risen to the level that he reported it to his doctor in 2012. (Tr. p. 40-41). The fact that Thygesen’s family doctor did not make any comments to him about his hearing loss, however, did not obviate Thygesen’s duty to investigate his injury. There is no evidence in the record he did so. It was another two years before Thygesen requested his hearing tests from City Hall.

Thygesen argues that because his hearing loss did not sufficiently interfere with his job duties that he did not know, and reasonably should not have known, that he had a compensable injury. He asserts that until he saw his hearing tests, he did not know that his condition was serious enough to have a permanent impact on his employment or employability. The Commissioner accepted this argument when ruling that Thygesen’s claim was not barred by sections 85.23 and 85.26.

The court finds this finding is not supported by substantial evidence in the record. Thygesen worked in a water treatment plant where loud noises were prevalent. Harlan performed periodic hearing tests on its employees, including Thygesen. Even though he did not see his test results, Thygesen knew his hearing was declining. He knew his hearing problems were serious and were work-related. He reported them to his physician.

Even though he had not seen his test results, Thygesen was aware of a serious injury. He should have known by at least 2012 that his condition was serious enough to have a permanent impact on his employment or employability. Accordingly, the court finds the ruling that Thygesen's claim was timely filed was not supported by substantial evidence and that the decision of the Workers' Compensation Commissioner should be reversed.

ORDER

IT IS THEREFORE ORDERED that the decision of the Worker's Compensation Commission is **REVERSED and REMANDED**. Costs are assessed to the respondent.

Copy to: Iowa Workforce Development



State of Iowa Courts

Type: OTHER ORDER

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So Ordered

A handwritten signature in black ink, appearing to read "Heather Lauber".

Heather Lauber, District Judge,
Fifth Judicial District of Iowa