

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

MELVIN R. MARTIN,

Petitioner,

v.

CITY OF HARLAN,

Respondent.

Case No. CVCV058902

**ORDER ON JUDICIAL
REVIEW**

Petitioner through counsel filed a Petition for Judicial Review (the Petition) in this matter on September 10, 2019. Oral argument was held on January 31, 2020. Petitioner appeared through attorney Jason D. Neifert. Respondent appeared through attorney D. Brian Scieszinski. Oral argument was not reported.

Upon review of the Petition, the certified agency record, and the balance of the court file, and after considering the respective arguments of counsel, the court finds the following facts, reaches the following conclusions and issues the following order.

BACKGROUND FACTS AND PROCEEDINGS

Petitioner filed a petition with the workers' compensation commissioner on July 27, 2016, alleging an injury arising in and out of the course of his employment and asserting an injury date of January 29, 2010.¹ (07/27/19 Pet. p. 1; Tr. p. 46). Respondent denied Petitioner had sustained a compensable work related injury and asserted that

¹ The Petition originally alleged alternative dates of injury of November 7, 2014, and August 17, 2015. Petitioner dismissed these alternative dates of injury just prior to the start of the agency hearing. (Tr. p. 4).

Petitioner's claim was barred by the statute of limitations and failure to provide timely notice. (Hrg. Rpt. p. 1).

An arbitration hearing was held on September 26, 2017, before a deputy workers' compensation commissioner. (Tr. p. 1). The deputy found that Petitioner's hearing problems were work related. Although Petitioner had retired from his employment with Respondent on January 29, 2010, the deputy further found that Petitioner sustained an injury date of November 7, 2014. (Arb. Dec. p. 7; Tr. p. 34). On that basis the deputy concluded Petitioner's November 2014 notice and July 2016 petition were timely. (Arb. Dec. p. 7).

Respondent appealed the arbitration decision to the workers' compensation commissioner. The commissioner ultimately found that Petitioner knew, or as a reasonable person should have known, the probable compensable nature of his hearing loss and tinnitus sometime in the 1990s, but certainly no later than January 29, 2010, when Petitioner retired. (Appeal Dec. p. 6). The commissioner further found Petitioner had a "clear understanding of the nature and seriousness of his injury before he retired." (Appeal Dec. p. 6). Accordingly, the commissioner found that Petitioner's November 2014 notice and July 2016 petition were untimely. (Appeal Dec. p. 7).

Petitioner seeks judicial review from these findings by the commissioner. He asserts the commissioner erred in finding that his claim was barred due to lack of timely notice and failing to file his petition within the applicable statute of limitations.

BACKGROUND FACTS AND PROCEEDINGS

Petitioner began working for Respondent in August of 1970. (Tr. p. 34). Petitioner worked for Respondent until he voluntarily retired on January 29, 2010. (Tr. p. 34).

Petitioner testified that he did not have any hearing problems before he began working for Respondent. (Tr. pp. 34-35). Petitioner stated that he began noticing ringing in his ears (tinnitus) sometime in the 1990s. (Tr. p. 35).

Petitioner testified he knew the ringing in his ears was a serious problem from the time it started. (Tr. pp. 35-36). He also admitted that he knew he would need to have hearing aids when he retired. (Tr. p. 38). He conceded he knew his hearing problems would not go away when he retired. (Tr. p. 38).

Petitioner testified during the hearing:

Q. And I think you mentioned before you retired you knew you were going to need hearing aids; is that right?

A. Yes.

(Tr. p. 36). Petitioner further testified:

Q. And I think you told me in your deposition, when you retired, you knew that the hearing problems weren't going to go away; is that fair?

A. Yeah. Yes.

(Tr. p. 38).

Petitioner admitted he always knew his hearing problems were work related. (Tr. pp. 45-46). He stated at the hearing:

Q. And regardless of what anybody told you in 2014 or 2015, you knew all the noise at the city that you were around, you were aware of how

loud it was and how difficult it was to talk to people while you were there; is that right?

A. Sure.

Q. So any reason to think that your hearing problem was related to something else other than work before you retired?

A. I don't believe so.

(Tr. pp. 45-46).

Petitioner did not provide notice of his claim to Respondent until more than five years after he last worked for Respondent. (Tr. pp. 34, 47-48; Ex. 4, pp. 28-29). He did not file the instant Petition until July 26, 2016, more than six years after he retired. (Tr. pp. 34, 46). Respondent testified that had he been aware he could file a petition for his hearing problems, he would have done so earlier. (Tr. p. 46).

SCOPE OF REVIEW

In a judicial review proceeding, the district court does not engage in a de novo review of the evidence. Instead, the court must “broadly and liberally construe the commissioner’s findings to uphold, rather than defeat the commissioner’s decision.” *Second Injury Fund v. Bergeson*, 526 N.W.2d 543, 546 (Iowa 1995) (citation omitted).

Concerning questions of law, the court is not bound by the commissioner’s interpretation of the law and need not give any deference to the agency’s decision. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218-19 (Iowa 2006); *Second Injury Fund v. Nelson*, 544 N.W.2d 258, 264 (Iowa 1995); Iowa Code § 17A.19(10)(b)(c)(l)-(m); Iowa Code § 17A.19(11)(b). However, the court must give limited deference to the commissioner’s

application of the law to the facts of a case. *Meyer*, 710 N.W.2d at 218-19; *Second Injury Fund v. Braden*, 459 N.W.2d 467, 468 (Iowa 1990); Iowa Code § 17A.19(11)(c).

Further, the court must give deference to the commissioner's factual findings, which are akin to a jury verdict and must be affirmed if they are supported by substantial evidence in the record as a whole. *Meyer*, 710 N.W.2d at 218-19; *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 465 (Iowa 2004); Iowa Code § 17A.19(10)(f). The determinative factor is not whether the evidence could a different finding, but whether the evidence supports the finding actually made. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 632 (Iowa 2000). Evidence is not insubstantial merely because it would have supported a contrary inference. *Id.*

ANALYSIS

Iowa Code section 85.23 provides that a worker's compensation claim is barred unless the employer has actual knowledge of the occurrence of an injury or the employee provides notice of the alleged injury within ninety days from the occurrence of the injury. Iowa Code section 85.26 provides that where the employee was not paid weekly compensation benefits (which is the case here), an original proceeding for benefits shall not be maintained unless the proceeding is commenced within two years from the date of the occurrence of the injury. However, 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 determining Petitioner did not provide timely notice or filed his petition timely, the commissioner properly considered the discovery rule. (Appeal Dec. p. 5). The commissioner made the following specific findings of fact:

Claimant stated he began noticing ringing in his ears sometime in the 1990s. (Tr. p. 35). He testified he knew the ringing in his ears was a serious problem from the time it started. (Tr. p. 36). Furthermore, claimant was aware his hearing problems were not going to resolve. (Tr. pp. 36-38). He admitted he always knew his hearing problems were work-related. (Tr. pp. 45-46).

(Appeal Dec. p. 5).

Based upon the evidence presented, including Petitioner’s own admissions, the commissioner specifically found that Petitioner had “a clear understanding of the nature and seriousness of his injury before he retired.” (Appeal Dec. p. 6). The commissioner also specifically found that “a reasonable person should have known the probable compensable nature of his hearing loss and tinnitus sometime in the 1990s, when he first noticed the condition, but certainly no later than January 29, 2010, when [Petitioner] retired from his employment”. (Appeal Dec. p. 6).

The commissioner further specifically found that because Petitioner “recognized the nature, seriousness and the work-relatedness of his hearing loss and tinnitus, that realization should have prompted claimant long before November 2014 to investigate whether he had a compensable workers’ compensation claim.” (Appeal Dec. p. 6).

The commissioners’ finding of fact that Petitioner, as a reasonable person, knew or should have known the nature, seriousness and probable compensable character of the injury no later than January 29, 2010, is supported by substantial evidence in the record.

Because Petitioner did not provide notice of his claim for more than four years after he knew or should have known the nature, seriousness and probable compensable character of the injury, his claim is barred for lack of timely notice. Because Petitioner did not file a petition for workers’ compensation benefits for more than six years after he knew or should have known the nature, seriousness and probable compensable character of the injury, his claim is barred by the applicable statute of limitations.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Petition is denied and dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that costs are assessed to Petitioner.



State of Iowa Courts

Type: OTHER ORDER

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So Ordered

A handwritten signature in cursive script that reads "Jeanie Vaudt".

Jeanie Vaudt, District Court Judge,
Fifth Judicial District of Iowa