

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

ARCONIC, INC., Employer, and
INDEMNITY INS. CO. OF N. AMERICA,
Insurance Carrier,

Petitioner,

v.

RICARDO RAMIREZ, Claimant,

Respondent.

No. CVCV302263

**RULING ON PETITION FOR
JUDICIAL REVIEW**

Arconic, Inc. and Indemnity Insurance Company of North America (collectively “Arconic”) seeks judicial review of the Iowa Workers’ Compensation Commissioner’s Appeal Decision filed March 10, 2023 awarding benefits to Ricardo Ramirez (“Ramirez”) for left carpal tunnel syndrome.¹ That Decision rejected Arconic’s statute of limitation’s defense under Iowa Code §85.26. Arconic challenges the finding that Ricardo Ramirez timely filed his petition for workers’ compensation benefits with a date of injury of November 27, 2019. The Deputy Commissioner found, and the Commissioner affirmed, that the “claimant’s injury was caused or materially aggravated by the November 27, 2019, work injury.”² The Deputy Commissioner rejected Petitioner’s defense that the proper injury date for Ramirez’s left carpal tunnel syndrome claim was March 3, 2017. Such a finding would have made Ramirez’s petition untimely under Iowa Code § 85.26. The Commissioner based his finding on “the cumulative injury” rule.³ Applying the substantial evidence standard of review from Iowa Code §17A.19, the Court finds there is substantial evidence in the record to affirm the Decision of Commissioner Cortese.

¹ Petitioner’s Exhibit 2.

² Petitioner’s Exhibit 1, p. 8.

³ Petitioner’s Exhibit 1, p. 8.

FACTUAL BACKGROUND

The relevant facts are not disputed. Ramirez began employment with Arconic in June of 2014, and worked as a quality inspector in the IPS department until November of 2018. On March 3, 2017, Ramirez was evaluated for bilateral pain and stiffness in his hands at the Veteran's Administration by a nurse practitioner, Jennifer Eickstaedt. Ramirez admitted he was advised to use a wrist brace on his left hand.⁴ Ramirez did not report the March 3, 2017 visit with the VA to Arconic.⁵ Jennifer Eickstaedt's Progress Note from March 3, 2017 contains a diagnosis that hand pain is "likely CTS to bilateral hands."⁶ Ramirez was advised to take naproxen two times a day and to use wrist braces when doing repetitive activities and sleeping. He was also told that if the hand pain did not improve, he should return for an EMG. Ramirez told Eickstaedt that he experienced pain in his hands while working.⁷ Ramirez never sought further treatment for the carpal tunnel, until after his November 2019 work injury.

He did, however, sustain an injury to his right shoulder on November 2017. He filed a contested claim. On January 30, 2020, the Commission found the injury was a result of his employment, and to have a 7% permanent impairment to the right upper extremity.

On November 27, 2019, Ramirez was working as a lead operator for Arconic. His daily duties did not usually require much physical labor, but when an employee was absent, he filled in for that employee. On November 27, 2019, Ramirez was gathering materials to make alloy, a job that requires heavy and repetitive lifting, with the materials weighing anywhere from 2 pounds to 60 pounds. While "throwing alloy" Ramirez said he felt pain in his left elbow, and the elbow was sore and numb.

⁴ Hearing Transcript, p. 31, lines 10-19.

⁵ Hearing Transcript, p. 35, lines 12 -24.

⁶ Exhibit J-55.

⁷ Hearing Transcript, p. 28. Lines 15-23.

After reporting his injury, he received treatment at the Arconic medical department, where he received Aleve and was directed to ice his elbow. In December, he was given instructions to limit his lifting at work. In June 2020, Ramirez underwent an EMG/NCV testing, which revealed moderate left carpal tunnel entrapment. In August 2020, Arconic doctor, Theodore Koerner, MD noted that Ramirez had a pre-existing, non-work-related carpal tunnel syndrome. He based his notes on the VA records from March 2017. In November 11, 2020, Ramirez was seen by Dr. Jonathan Winston at ORA Orthopedics for pain in his left upper extremity, beginning approximately on November 27, 2019. He was diagnosed with moderate carpal tunnel syndrome and an electrodiagnostically silent cubital tunnel syndrome.

In a Report dated April 21, 2022, Dr. Rick Garrels opined that Ramirez's left elbow complaints appeared to be related to the November 27, 2019 injury, but that his left carpal tunnel syndrome was not causally related to the November 2019 injury, and further, that his left carpal tunnel syndrome was not "materially aggravated" by the November 27, 2019 injury. In an April 26, 2022 report, Dr. Sunil Bansal documented that Ramirez continued to have pain in his left elbow, and found that he had left cubital tunnel syndrome caused by repetitive lifting and moving materials at Arconic. Dr. Bansal further opined that Ramirez's repetitive job tasks at Arconic could increase his carpal tunnel pressure. Absent further treatment, Dr. Bansal placed Ramirez at maximum medical improvement (MMI), and assigned a 6% permanent impairment to the left elbow and a 3% permanent impairment to the carpal tunnel syndrome.

The Commission made numerous findings of facts and conclusions of law. But the only issue before this Court is the Commission's determination that Ramirez sustained left carpal tunnel syndrome on November 27, 2019, and that such condition arose out of and in the course of his employment at Arconic.

STANDARD OF REVIEW

The parties disagree on the proper standard of review. Arconic claims the proper standard is improper application of law to the facts. Ramirez argues the Court should apply the substantial evidence standard. For the reasons set forth below, the Court finds the substantial evidence standard applies to these facts.

This Court's review is governed by the standard set forth in Iowa's Administrative Procedure Act, chapter 17A. *Lange v. Iowa Dep't of Revenue*, 710 N.W.2d 242, 246 (Iowa 2006). Under the Act, the district 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. *Id.* § 17A.19(10). *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). When exercising its judicial review power, the district court acts in an appellate capacity. *Nance v. Iowa Dep't of Revenue*, 908 N.W.2d 261, 267 (Iowa 2018).

This Court's review of the Commissioner's decision depends on the type of error alleged:

“If the error is one of fact, we must determine if the commissioner's findings are supported by substantial evidence. Iowa Code § 17A.19(10)(f). If the error is one of interpretation of law, we will determine whether the commissioner's interpretation is erroneous and substitute our judgment for that of the commissioner. Iowa Code § 17A.19(10)(c). If, however, the claimed error lies in the commissioner's application of the law to the facts, we will disturb the commissioner's decision if it is “[b]ased upon an irrational, illogical, or wholly unjustifiable application of law to fact.” Iowa Code § 17A.19(10)(m)”

Jacobson Transp. Co. v. Harris, 778 N.W.2d 192, 196 (Iowa 2010). Iowa Code

§17A.19(10)(f)(1) defines “substantial evidence” as:

the quantity and quality of evidence 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.

When reviewing the Commissioner's factual determinations, "the question is not whether the evidence might support a different finding, but whether it supports the findings actually made." *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 649 (Iowa 2000) (citations omitted). If the decision is based upon the Commissioner's application of the law to the facts, this Court may only reverse if the Commissioner's decision was irrational, illogical or wholly unjustifiable. *Larson Mfg. Co., Inc. vs. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009). Where the cumulative injury rule is at issue, the Commission's determination of the manifestation date of the injury must be supported by substantial evidence. *Oscar Mayer Foods Corp. vs. Tasler*, 483 N.W.2d 824, 830 (Iowa 1992).

ANALYSIS

Arconic agrees that Ramirez's left carpal tunnel is a "cumulative injury" and does not dispute the commissioner's determination that the November 27, 2019 workplace injury "materially aggravated" the left carpal tunnel issue. Arconic argues the Commission made an error of law when it found that the statute of limitations did not apply to Ramirez's left carpal tunnel. The sole issue presented is the rejection of the statute of limitation defense and finding that the left carpal tunnel injury did not manifest itself in March 2017.

Under Iowa Code §85.26(1), an original proceeding for benefits must be filed within two years from the date of the occurrence of the injury for which benefits are claimed. In 2017, the legislature amended §85.26(1) and added the following sentence: *For the purposes of this section, "date of the occurrence of the injury" means the date that the employee knew or should have known that the injury was work-related.* Arconic argues that the 2017 addition eliminated the applicability and use of the discovery rule for purposes of the statute of limitation, but ultimately claimed that Ramirez failed to timely file under either version of §85.26(1).⁸

⁸ Petitioner's Brief, p. 10, FN4.

A cumulative injury “is manifested when the claimant, as a reasonable person, would be plainly aware (1) that he or she suffers from a condition or injury, and (2) that this condition or injury was caused by the claimant's employment. Upon the occurrence of these two circumstances, the injury is deemed to have occurred.” *Herrera v. IBP, Inc.*, 633 N.W.2d 284, 288 (Iowa 2001). Cumulative injuries are those that develop gradually or “over a period of time.” *McKeever Custom Cabinets v. Smith*, 379 N.W.2d 368, 373 (Iowa 1985). A claimant is plainly aware when the claimant knows “the nature, seriousness and probable compensable character of an injury” and when the “physical condition is serious enough to have a permanent adverse impact on...employment or employability.” *Larson Mfg. Co.* at 855. The date an employee first becomes aware of a physical condition is not always the date of “manifestation” as “by their very nature, repetitive-trauma injuries often will take years to develop to the point where they will constitute a compensable workers’ compensation injury.” *Tasler*, 483 N.W.2d at 830.

Under the discovery rule, the statute of limitations does not begin to run until the employee knows the physical condition will have an adverse impact on employment or employability. *Herrera*, 633 N.W.2d at 288. Although the discovery rule and the cumulative injury rule are related, they remain distinct doctrines. *McKeever Custom Cabinets v. Smith*, 379 N.W.2d 368, 373 (Iowa 1985). The discovery rule may apply where an injury occurs at one time but the employee does not recognize its significance until later. *Id.*

This Court finds the proper standard of review for analysis of the Commission Decision is the substantial evidence standard. The Deputy Commissioner found that “claimant’s injury was caused or materially aggravated by the November 27, 2019, work injury.”⁹ Implicit in this finding is a finding that the injury did not manifest itself to Ramirez until November 27, 2019.

⁹ Deputy Commissioner’s Arbitration Decision, September 14, 2022. Exhibit 1, p. 8.

Because the Deputy Commissioner's Decision was based upon a finding that Ramirez's left carpal tunnel injury was a cumulative injury that did not manifest itself until November 27, 2019, the Deputy Commissioner then found that the petition was timely filed.¹⁰ The Deputy found that Arconic failed to meet its burden of proof to show "claimant knew the nature of his injury, the seriousness of the disability, and the probably compensable nature of the disability."¹¹

Is there substantial evidence to support the Commissioner's findings that Ramirez sustained a cumulative injury that did not manifest itself until November 27, 2019? Arconic's argument that the statute of limitations began to run on March 3, 2017 is based upon Ramirez's visit to the Veteran's Administration on that date, the Progress Note created by Jennifer Eickstaedt and testimony of Ramirez. Ramirez admitted Eickstaedt advised him that his left hand symptoms were likely related to the repetitive nature of his employment and that he should use a wrist brace.

As recognized in the Arbitration Decision and Appeal Decision, the record is devoid of any evidence that Ramirez "had complaints or sought further treatment for the left carpal tunnel syndrome until after November 27, 2019."¹² The Deputy Commissioner found the causation opinions of Dr. Garrels and Dr. Koerner to be not convincing. Ramirez was diagnosed with a right shoulder injury in December of 2017 and pursued a claim for that injury.

Under the *Tasler* test, and the discovery rule, the statute of limitations does not begin to run until the claimant has knowledge of the seriousness of his injury. The facts in the current case establish that Ramirez did not know the nature, seriousness, or probable compensable character of his carpal tunnel until the November 27, 2019 injury. He sought no treatment for his

¹⁰ Such a finding made analysis of the discovery rule unnecessary.

¹¹ Deputy Commissioner's Arbitration Decision, September 14, 2022. Exhibit 1, p. 8.

¹² Petitioner's Ex. 1, p. 6.

carpal tunnel between 2017 and 2019. He pursued a separate claim for a right shoulder injury from November 2017. Carpal tunnel can resolve on its own if the affected wrist is given appropriate resting time, and if preventative measures (like a brace) are implemented.¹³

According to Ramirez's depositions, he took the doctor's advice and started wearing the wrist brace more consistently, and taking NSAIDS as needed. In 2017, Ramirez's left carpal tunnel was minor enough that the Nurse Practitioner simply sent him home with instructions to rest his wrists. There is substantial evidence to support the findings of the Commissioner.

Ramirez reported the accident on November 27, 2019 and his supervisor completed a Medical Injury Intake Form.¹⁴ He reported the injury occurred throwing alloy of various weights and that the pain developed gradually. He also denied experiencing the problem before.¹⁵ The record indicates Ramirez worked continuously for Arconic between March 2017 and November 27, 2019. The result here turns on when a reasonable person would have recognized an injury and its causal relationship to employment. Certainly, Ramirez understood his left wrist pain was related to his employment in March 2017. But was it apparent to Ramirez that the left wrist pain was an injury that had manifested itself as compensable?

In *Talser*, 483 N.W.2d at 829–30, the Court stated:

We thus reject an interpretation of the term “manifestation” that will always require an employee suffering from a repetitive-trauma injury to fix, as the date of accident, the time at which the employee first became aware of the physical condition, presumably through medical consultation, since by their very nature, repetitive-trauma injuries often will take years to develop to the point where they will constitute a compensable workers' compensation injury.

¹³ See Joint Exhibit 1, pg 2-4, Record 3 of 4, Progress Notes from 2017 VA appoint, where in NP Eichstaedt advised Ramirez to wear wrist braces and take an NSAID as needed, and if the pain worsens or does not improve over the next 1-2 months, to schedule an EMG.

¹⁴ Exhibit JE2-29.

¹⁵ Exhibit JE2-30.

The Court finds substantial evidence exists that Ramirez did not know that his left carpal tunnel symptoms experienced in March 2017 were serious enough to have a permanent adverse impact on his employability. He did not seek any further treatment for a substantial period of time after the March 3, 2017 office visit. In addition, he pursued a separate claim for an injury to his right shoulder sustained on November 8, 2017. That claim went to hearing in December 2019.¹⁶ The Court views this as evidence that Ramirez understood his rights upon recognizing an injury.

Substantial evidence exists to find the carpal tunnel injury did not manifest itself until November 27, 2019. There is substantial evidence to support the Commission's finding that Arconic failed to understand the nature of his injury, the seriousness of the injury or its potential for compensability. There is substantial evidence to support the findings made by the Commission. *See Larson Mfg. Co., Inc.*, 763 N.W.2d at 850. Applying the substantial evidence standard, the Court must affirm the Commissioner's Decision filed March 10, 2023.

After Arconic filed for this Petition for Judicial Review, Ramirez filed a motion asking the Court to enter judgment pursuant to Iowa Code §86.42. On April 28, 2023, the Court denied the request for entry of judgment but ordered Arconic to post a bond in the amount of \$6,706.34. On May 16, 2023, Arconic posted a cash bond with the clerk. Having found that the Commissioner's Decision filed March 10, 2023 should be affirmed, §86.42 requires the Court to enter judgment on the Commissioner's Decision.

RULING

For all of the above-stated reasons, the Commissioner's Decision filed March 10, 2023 is **AFFIRMED**. Costs of the judicial review¹⁷, if any, are assessed to Arconic. Pursuant to the provisions of Iowa Code §86.42, judgment is entered on the Commissioner's Decision filed

¹⁶ Exhibit 1, p. 2.

¹⁷ Iowa Code §86.32.

March 10, 2023. Due to the existence of the cash bond, execution or enforcement of the judgment remains stayed until further Order of this Court.



State of Iowa Courts

Case Number
CVCV302263
Type:

Case Title
ARCONIC INC VS RAMIREZ RICARDO
ORDER FOR JUDGMENT

So Ordered

A handwritten signature in black ink, appearing to read "Jeffrey D. Bert". The signature is written in a cursive, flowing style.

Jeffrey D. Bert, District Court Judge
Seventh Judicial District of Iowa

Electronically signed on 2023-09-27 14:31:09