IN THE COURT OF APPEALS OF IOWA

No. 3-1111 / 13-0495
Filed January 23, 2014

PLUMROSE USA and ZURICH INS. CO.,
Petitioners-Appellants,

vs.

ROBERT HATHAWAY,
Respondent-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Greg W. Steensland, Judge.

Employer appeals the district court's affirmance of the agency decision awarding employee temporary disability, and permanent disability benefits. **AFFIRMED.**

Sara A. Lamme and Tiernan T. Siems of Erickson & Sederstrom, Omaha, Nebraska, for appellants.

Jacob J. Peters of Peters Law Firm, Council Bluffs, for appellee.

Considered by Vogel, P.J., and Mullins and McDonald, JJ.

MULLINS, J.

Plumrose USA and Zurich Insurance (Plumrose) appeal the district court's affirmance of the Iowa Workers' Compensation Commissioner's decision awarding Plumrose's employee, Robert Hathaway, temporary disability and permanent disability benefits. On appeal Plumrose argues the commissioner's finding that Robert's need for a total knee replacement arose out of and in the course of his employment is not supported by substantial evidence. Plumrose also argues the commissioner's award of temporary disability benefits and permanent impairment benefits was not supported by substantial evidence. We affirm the decision of the commissioner.

I. BACKGROUND FACTS AND PROCEEDINGS.

At the time of the workers' compensation arbitration, Hathaway was fifty-seven years old and had worked for most of his life as a maintenance mechanic. He began working for Plumrose as a maintenance mechanic in 2000. In the course of that employment he performed repairs on the industrial equipment used by Plumrose. In 2005 he was promoted to lead man and held this position at the time of the injury to his right knee in January 2009.

Prior to January 2009, Hathaway had undergone three right knee surgeries. He also had numerous cortisone injections in his knee, and an x-ray showed "bone on bone" arthritis. Hathaway testified that before the accident he had no permanent impairment or permanent restrictions to his right knee. Hathaway also testified he was told prior to January of 2009 he would need a total knee replacement (TKR) of his right knee at some time in the future.

The cause of Hathaway's workplace injury in this appeal is not in dispute. During his shift, Hathaway exited the plant and fell down a flight of exterior stairs. Earlier in the day a maintenance worker had washed floor mats on the stairs, leaving them covered in a coat of ice. Immediately after the fall, Hathaway radioed for help. An employee drove him to the local hospital where he was evaluated. The evaluating physician ordered an MRI of Hathaway's knee. The MRI revealed a medial meniscus tear in the right knee, a chronic ACL tear, and patella tendon tear. The physician referred Hathaway to an orthopedic surgeon, Dr. Goebel. Dr. Goebel recommended conservative care, which proved unsuccessful. TKR was then discussed as a treatment option.

In a May 2009 letter, Dr. Goebel indicated that Hathaway was a candidate for a total knee replacement. Dr. Goebel noted that Hathaway suffered from chronic osteoarthritis and the work injury aggravated the osteoarthritis. In June, an independent medical evaluator, Dr. Gammel, reviewed Hathaway's records. In a letter, Dr. Gammel opined that Hathaway would have required the TKR prior to the injury in January 2009. He also noted that the injury was a substantial factor in the need for a TKR. Subsequently, in a July letter, Dr. Goebel clarified his previous opinion and stated that there was no way of knowing when Hathaway would have required the TKR, absent the occurrence of the fall down the icy staircase. Relying on Dr. Goebel's July letter, in August, Plumrose denied Hathaway's claim for benefits. In September, Dr. Goebel performed the TKR on Hathaway's right knee. Hathaway returned to work with no restrictions in December 2009.

In a September 2010 letter, Dr. Goebel opined Hathaway's right TKR was directly related to Hathaway's acute exacerbation of his chronic knee arthritis. Dr. Goebel found Hathaway had a 50% permanent impairment to his right leg. He also affirmed the opinions of his May 2009 letter. Hathaway testified he has limitations in his range of motion in his right leg. Hathaway believes he lost approximately 25% of his strength in his right leg because of his injury and surgery. Hathaway has difficulty climbing stairs and getting down on his knees.

In August 2011, after the arbitration hearing, the deputy commissioner determined that Hathaway's knee injury was compensable and that Hathaway had sustained a 50% permanent impairment to the right knee. Plumrose then appealed the decision to the commissioner. The commissioner, without further comment, affirmed the deputy's decision. Plumrose next appealed to the district court. The district court affirmed the agency decision. Plumrose now brings this appeal.

II. SCOPE AND STANDARD OF REVIEW.

The scope of review of our review in workers' compensation cases is governed by Iowa Code section 17A.19(10) (2011) of the Iowa Administrative Procedures Act. *See Meyer v. IBP, Inc.*, 710 N.W.2d 213, 216 (Iowa 2006). Because the commissioner's factual determinations are "clearly vested by a provision of law in the discretion of the agency . . . we defer to the commissioner's factual determinations if they are based on substantial evidence[1]

[1] "'Substantial evidence' means 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

in the record before the court when that record is viewed as a whole." *Thorson*, 763 N.W.2d at 850 (internal quotation marks and citation omitted). Our assessment of the evidence focuses not on whether the evidence would support a different finding than the finding made by the commissioner, but whether the evidence supports the findings actually made. *See Meyer*, 710 N.W.2d at 218. "Because the commissioner is charged with weighing the evidence, we liberally and broadly construe the findings to uphold his decision." *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 331 (Iowa 2005).

III. ARISING OUT OF EMPLOYMENT.

On appeal Plumrose argues that Hathaway did not meet his burden of presenting substantial evidence to show that his need for a TKR arose out of and in the course of his employment with Plumrose. In support of this argument, Plumrose cites Hathaway's knee problems and his need for a TKR, both of which predated the January 2009 injury. Plumrose asserts the TKR would have occurred at some point regardless of the January injury. In response, Hathaway references the extensive injuries to his knee revealed in the MRI taken after the injury. He argues the worsened and aggravated condition of his knee necessitated an immediate TKR, rather than at some undefined point in the future.

The claimant has the burden of proving by a preponderance of the evidence that his injuries arose out of and in the course of his employment.

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understood to be serious and of great importance." Iowa Code § 17A.19(10)(f)(1); *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009).

Dunlavey v. Econ. Fire & Cas. Co., 526 N.W.2d 845, 849 (Iowa 1995). An injury "arises out of" the employment when there is a causal relationship between the employment and the injury. *Briar Cliff Coll. v. Campolo*, 360 N.W.2d 91, 94 (Iowa 1984). The injury must be a "rational consequence of the hazard connected with the employment." *Burt v. John Deere Waterloo Tractor Works*, 73 N.W.2d 732, 737 (Iowa 1955). "In the course of" the employment refers to the time, place, and circumstances of the injury. *McClure v. Union Cnty.*, 188 N.W.2d 283, 287 (Iowa 1971). "[A]n injury occurs in the course of the employment when it is within the period of employment at a place where the employee reasonably may be in performing his [or her] duties, and while he [or she] is fulfilling those duties or engaged in doing something incidental thereto." *Farmers Elevator Co. v. Manning*, 286 N.W.2d 174, 177 (Iowa 1979).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. *Rose v. John Deere Ottumwa Works*, 76 N.W.2d 756, 759 (Iowa 1956). "[I]f a claimant had a pre-existing condition or disability, aggravated, accelerated, worsened or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist, he would be accordingly entitled to compensation." *Musselman v. Cent. Tel. Co.*, 154 N.W.2d 128, 132 (Iowa 1967).

The deputy commissioner reasoned:

> The record indicates claimant had several right knee surgeries prior to the January 6, 2009 injury. The record indicates claimant had bone-on-bone arthritis prior to the January 2009 injury. The record also suggests that because of claimant's

> preexisting condition, he was a candidate for a TKR in the future. The record indicates claimant did not have any treatment to his right knee for approximately 6 months prior to his fall. There is no evidence in the record, prior to the day of injury, indicating a certain date when claimant would require a TKR. The record indicates prior to the January 6, 2009 injury, claimant had no permanent impairment or permanent restrictions regarding his right knee.
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> On January 6, 2009, claimant sustained a traumatic injury when falling down stairs. The record indicates claimant sustained a medial meniscus tear and a patellar tendon tear. The MRI also showed degenerative changes in claimant's knee. After conservative treatment failed, claimant underwent a TKR on the right.
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> . . . .
>
> I recognize that claimant had preexisting osteoarthritis. The record indicates that prior to his January 2009 fall, claimant was a candidate for a TKR in the future.
>
> However, claimant had not had any treatment for approximately 6 months prior to the January 2009 fall. There is no indication in the record claimant had any loss of strength or range of motion to his right knee before his fall. Claimant had no permanent impairment or permanent restrictions to his right knee prior to his fall. The record indicates that the January 2009 fall was the traumatic event that worsened claimant's condition to the point that he needed a TKR.
>
> Given this record, claimant has proven that his need for a TKR arose out of and in the course of his employment.

We review the commissioner's decision only to find if the decision is supported by substantial evidence, not to determine if the evidence in the record could support a different finding. *See Meyer*, 710 N.W.2d at 218. The evidence provided in the record shows at the time of the accident Hathaway had preexisting problems with his right knee. The record also shows the preexisting injury was "aggravated" by his tumble down the ice-glazed staircase. *See Musselman*, 154 N.W.2d at 132. The MRI taken of Hathaway's knee after the accident shows the new aggravations to his right knee. Given the commissioner's well-reasoned opinion and understanding of the facts, we affirm

the commissioner's finding that Hathaway satisfied his burden of presenting substantial evidence to show that his need for a TNR arose out of and in the course of his employment with Plumrose.

III. TEMPORARY DISABILITY AND PERMANENT DISABILITY.

Relying on its argument that the need for the TKR was preexisting and not a result of an employment injury, Plumrose also challenges the commissioner's award of temporary disability benefits and permanent partial disability benefits. Since we have found the commissioner relied on substantial evidence in ruling that Hathaway's need for a TKR arose out of and in the course of his employment with Plumrose, we uphold the commissioner's award of temporary disability benefits and permanent impairment benefits.

IV. CONCLUSION.

We find substantial evidence supports the commissioner's determination that the work injury worsened Hathaway's preexisting condition and the current need for the TKR arose out of and in the course of employment. Accordingly, we affirm the decision of the district court in this matter.

AFFIRMED.