

IN THE COURT OF APPEALS OF IOWA

No. 7-266 / 06-0759
Filed June 27, 2007

JOHN DEERE DES MOINES WORKS,
Petitioner-Appellant/Cross-Appellee,

vs.

RICHARD GALVAN,
Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble,
Judge.

Appeal from the district court's affirmance of an award of workers'
compensation benefits for industrial disability. **REVERSED AND REMANDED.**

Joseph A. Quinn of Nyemaster, Goode, West, Hansell & O'Brien, P.C.,
Des Moines, for appellant.

John P. Dougherty of Lawyer, Dougherty, Palmer & Flansburg, P.L.C.,
West Des Moines, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

SACKETT, C.J.

Appellant/cross-appellee, John Deere Des Moines Works, (“employer”) appeals from the district court’s ruling on judicial review that affirmed an award of workers’ compensation benefits, contending the award is not supported by substantial evidence and is “illogical, irrational, unreasonable, and unjustifiable.” Appellee/cross-appellant, Richard Galvan, (“claimant”), cross-appeals, contending he suffered a greater impairment than what was determined. We reverse and remand.

I. Background

Claimant worked for the employer from 1971 until his retirement in 2002. For the last five years before he retired, claimant worked on a punch press in a department that cuts and forms parts. His work involved repetitive lifting of up to thirty pounds in a noisy environment. He generally made up to 2000 parts per day. In May of 2001 claimant visited the employer’s medical department complaining of bilateral arm and wrist pain and was given modified duty, wrist splints, and anti-inflammatory medication. In April of 2002, claimant was given a warning for not making quota. Claimant blames his inability to make quota on pain in his wrists and arms. On May 10, 2002, claimant told a nurse at the employer that he was retiring that day. An illness report indicates he had been “babying” his wrists for two years and believed he had carpal tunnel syndrome.

After his retirement, which was effective June 1, 2002, claimant continued to experience pain in his wrists and was diagnosed with bilateral carpal tunnel syndrome. He had release surgery on his left wrist in December of 2002. In May of 2003, the surgeon opined claimant had reached maximum medical

improvement, his employment likely had caused his symptoms, and he had a five percent permanent partial impairment to his left upper extremity.

Claimant was examined by Dr. Tyler, an audiologist, for complaints of hearing loss and tinnitus. His June 25, 2003 report indicated claimant had a whole-body impairment from tinnitus caused by the noisy work environment.

On July 21, 2003, claimant filed separate workers' compensation claims for bilateral carpal tunnel and hearing loss/tinnitus. The September 30, 2004 arbitration decision concluded that claimant proved he suffered "a bilateral carpal tunnel injury and tinnitus" from his employment. The deputy commissioner noted the medical evidence showed claimant had between a five and ten percent functional impairment of his upper extremities from his carpal tunnel syndrome. Although the deputy found Dr. Tyler's tinnitus rating techniques "less than objective and questionable," the deputy concluded claimant "has a permanent disability" because of the tinnitus, but made no impairment rating. The deputy determined claimant had a thirty percent "loss of earning capacity or industrial disability as a result of his June 1, 2002 bilateral carpal tunnel injury" and awarded 150 weeks of permanent partial disability payments.

In the August 31, 2005 appeal decision the commissioner concluded the claimant had two compensable conditions. He noted "the deputy impliedly ruled that they are one injury and one disability but he did not completely explain why." The commissioner explained that the carpal tunnel and tinnitus were one injury and one disability because they (1) had the same date of injury, (2) developed over the same time period, and (3) were caused by the same "ongoing traumatic

conditions in the environment” of the department where claimant worked. The commissioner affirmed the deputy’s decision.

On judicial review, the district court determined substantial evidence supported the conclusion the carpal tunnel and tinnitus “are a single disability arising out of the same traumatic work environment” in the department where claimant worked. The court further determined

a reasonable finder of fact could conclude the work environment in Department 27, including the excessive hammering noise of the machines and the repetitive motion necessary to operate them coalesced to cause both bilateral carpal tunnel syndrome and tinnitus at the same time.

The court affirmed the decision to award industrial disability benefits, giving some deference to the decision because it was within the expertise of the agency.

II. Scope and Standards of Review

Our review is for correction of errors at law. *Herrera v. IBP, Inc.*, 633 N.W.2d 284, 286-87 (Iowa 2001). We are bound by the agency’s findings of fact so long as they are supported by substantial evidence. *Chapa v. John Deere Ottumwa Works*, 652 N.W.2d 187, 189 (Iowa 2002). “Evidence is substantial if a reasonable person would find it adequate for reaching a conclusion, even though a reviewing court might reach a contrary inference.” *Oscar Mayer Foods Corp. v. Tasler*, 483 N.W.2d 824, 830 (Iowa 1992). “Because factual determinations are within the discretion of the agency, so is its application of law to the facts.” *Clark v. Vicorp Rests., Inc.*, 696 N.W.2d 596, 604 (Iowa 2005); see Iowa Code § 17A.19(10)(f) (2005). “The administrative process presupposes that judgment calls are to be left to the agency. Nearly all disputes are won or lost there.” *Burns v. Board of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993).

III. Merits

A. Appeal. The employer contends the decision that claimant sustained “a single industrial injury is affected by error of law, is unsupported by substantial evidence, and is illogical, irrational, unreasonable, and unjustifiable.” It argues the specific finding that the two conditions developed during and as a result of claimant’s work in Department 27 has no evidentiary support from any physician or expert. It also argues the commissioner’s novel definition of injury has not previously been recognized, nor has his three-factor analysis been used previously.

The deputy commissioner determined:

When all relevant factors are examined, Claimant has a 30% loss of earning capacity or industrial disability as a result of his June 1, 2002, bilateral carpal tunnel injury. Claimant is entitled to 150 weeks of permanent partial disability benefits.

This determination is erroneous as stated because a bilateral carpal tunnel injury is a scheduled injury under section 85.34(2)(s). Permanent partial disability resulting from scheduled injuries is compensated on a functional basis, not for a loss of earning capacity. *Simbro v. DeLong Sportswear*, 332 N.W.2d 886, 889 (Iowa 1983).

The commissioner determined the deputy commissioner “impliedly ruled” the carpal tunnel injury and the tinnitus are one injury and one disability “but he did not completely explain why.” In providing further analysis in an effort to explain why, the commissioner applied a three-part test to evaluate whether the carpal tunnel and tinnitus were two separate injuries or one injury. The commissioner considered (1) the date of the injuries, (2) the period over which

the injuries occurred or developed, and (3) the cause of the injuries. We examine each in turn.

Date of the Injuries. The commissioner determined the carpal tunnel syndrome and tinnitus had the same injury date, which was fixed as the date of the claimant's retirement. Both conditions are cumulative or repetitive trauma injuries. Claimant indicated he had carpal tunnel symptoms more than a year before his retirement date. He complained several times of hearing problems and ringing in his ears as early as a year and nine months before his retirement. The determination that both conditions have the same date of injury, the date of claimant's retirement, is not supported by substantial evidence and is illogical.

Injury Development Period. The commissioner determined the carpal tunnel and tinnitus developed over the same period of time. Claimant visited the employer's medical department because of his carpal tunnel symptoms in May of 2001, almost a year before his retirement. He was placed on restrictions, but refused treatment for his condition because he wanted to avoid the restrictions that would have prevented him from doing his job. At the hearing, he testified his bilateral carpal tunnel problems had increased over just the last two or three months before his retirement. One medical report, on which claimant relied for his tinnitus claim, indicates he first reported experiencing symptoms of tinnitus three years earlier, which would have been about two years before he retired. In his deposition, claimant stated he began experiencing the ringing or buzzing in his ears during his last couple of years of employment. At the hearing, however, he testified the tinnitus started during the last year of his employment and worsened in the last two or three months before he retired. Even though the

evidence might support a different determination, we conclude the commissioner's finding on the period of the injuries is supported by substantial evidence.

Cause of the Injuries. The commissioner determined:

The carpal tunnel was caused by repetitive motion while the tinnitus was caused by noise. That is an indication that there are two separate injuries and disabilities. However, both were caused by the ongoing traumatic conditions in the environment in Department 27.

The district court, on judicial review, determined,

a reasonable finder of fact could conclude the work environment in Department 27, including the excessive hammering noise of the machines and the repetitive motion necessary to operate them coalesced to cause both bilateral carpal tunnel syndrome and tinnitus at the same time.

The commissioner correctly determined that repetitive motion caused the carpal tunnel and that noise caused the tinnitus. The extension of the law, however, to determine the "ongoing traumatic conditions" caused the two conditions is illogical and a wholly unjustifiable interpretation of the law and application of the law to the facts. See Iowa Code §§ 17A.19(10)(l), (m). The district court erred in affirming the commissioner's determination the carpal tunnel and tinnitus were a single injury. See *Chapa*, 652 N.W.2d at 189.

B. Cross Appeal. Claimant contends the extent of his industrial disability is greater than what the commissioner determined and, consequently, his benefits should be increased. Because we have determined the carpal tunnel syndrome and tinnitus are two separate injuries, the determination of claimant's industrial disability was incorrect. We do not address the cross-appeal.

IV. Conclusion

We reverse the decision of the district court affirming the commissioner's determination that claimant's bilateral carpal tunnel syndrome and tinnitus are a single injury. Because they are separate injuries, not a single injury, the determination of claimant's benefits is incorrect. We remand this matter to the agency for further proceedings consistent with this decision.

REVERSED AND REMANDED.