IN THE COURT OF APPEALS OF IOWA

No. 7-971 / 07-1025
Filed February 13, 2008

THE DEXTER COMPANY and
EMC INSURANCE COMPANIES,
Petitioners-Appellants,

vs.

RICHARD L. JONES,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Artis Reis, Judge.

The Dexter Company and its insurance carrier appeal a workers' compensation decision in favor of a former employee. **AFFIRMED.**

Steven Ort of Bell, Ort & Liechty, New London, for appellant.

Dennis Emanuel of Webber, Gaumer & Emanuel, P.C., Ottumwa, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Baker, JJ.

VAITHESWARAN, J.

The Dexter Company and its insurance carrier appeal a workers' compensation decision in favor of a former employee. We affirm the agency decision.

I. Background Facts and Proceedings

For twenty-seven years, Richard Jones was employed by the Dexter Company as a foundry laborer. In December 2002, Jones began experiencing pain in his left shoulder. Knowing that he would be able to rest his arm during a holiday plant shutdown, he did not immediately "say anything more about [his] arm to anybody."

On December 27, 2002, during the plant shutdown, Jones visited his physician and mentioned the shoulder discomfort. Medical progress notes from that visit state, "the patient is having left shoulder discomfort from repetitive work he does at the factory."

Jones returned to work after the holidays and his shoulder discomfort quickly worsened. Jones reported the pain to his supervisor, suggesting the cause might be "repetitive motion." An orthopedic surgeon evaluated him and concluded "given his history, exam, and x-rays, as well as his work activity and recreational activity, the shoulder condition is most likely related and caused by his work activities."

Jones continued to work but, by October 2003, he could not lift his left arm. He filed a workers' compensation petition, which Dexter contested on the ground the injury was not work-related.

Jones's injury required surgery to repair a damaged rotator cuff tendon. Following a recuperation and rehabilitation period, he was cleared to return to work with lifting restrictions. However, Dexter terminated Jones's employment, concluding he "could not perform all the essential functions of this job with restrictions."

Jones's workers' compensation claim was heard and initially decided by a deputy workers' compensation commissioner. She determined (1) Jones experienced a cumulative injury that arose out of and in the course of his employment at Dexter, (2) the injury manifested itself on December 27, 2002, and (3) Jones sustained "a permanent partial disability in the amount of 82 percent." In a final agency decision, the workers' compensation commissioner affirmed these key determinations, as did the district court.

II. Analysis

Dexter and its insurance carrier raise a host of challenges to the commissioner's decision, some factual and others involving the application of law to fact. Our review of the agency's fact-findings is for substantial evidence. Iowa Code section 17A.19(10)(f) (2003). Our review of the agency's application of law to fact is under the "irrational, illogical, or wholly unjustifiable" standard. Iowa Code § 17A.19(10)(m).

A. "In the Course of" Employment

Dexter and its insurance carrier argue Jones's injury could not have been "in the course of employment." Iowa Code § 85.3(1). They do not dispute the agency findings that Jones sustained an injury or that the manifestation date was December 27, 2002. Instead, they argue Jones:

> was not at work [on that date], had not been to work, was not on his employer's premises, nor those of another on his employer's behalf . . . was not under his employer's supervision nor engaged in any activity furthering his employer's business.

There is no question that, for an injury to be "in the course of employment," it must occur "within a period of employment, at a place where the employee reasonably may be, and while the employee is fulfilling work duties or is engaged in doing something incidental thereto." *Lakeside Casino v. Blue*, 743 N.W.2d 169, ___ (Iowa 2007) (citation omitted). However, our highest court has expressly rejected the notion that an employee alleging repetitive traumas over a period of time must physically have been at work on the date found to have been the manifestation date. *Oscar Mayer Foods Corp. v. Tasler*, 483 N.W.2d 824, 829 (Iowa 1992) (affirming manifestation date occurring after employer's plant had permanently closed). That date is "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." *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 221 (Iowa 2006).

Jones testified his shoulder began to hurt sometime in December 2002. His physician's records confirm a causal relationship between the pain and his employment as of December 27, 2002. This evidence was sufficient to support the commissioner's determination that Jones's injury was in the course of employment. Additionally, that determination was entirely rational, logical, and justifiable.

B. "Arising Out Of" Employment

Dexter and its insurance carrier next challenge the commissioner's determination that Jones's injury arose out of his employment with Dexter. *See* Iowa Code § 85.3(1). That element requires proof of a causal connection between the injury and the employment. *See Lakeside Casino*, 743 N.W.2d at ___.

The defendants concede "the claimant's work activities after December 27, 2002 aggravated the torn rotator cuff," but argue "Jones' work activities after December 27, 2002 cannot, as a matter of law and common sense, be the cause of an earlier injury." Their argument presupposes Jones suffered an acute, one-time injury on December 27, 2002—a presupposition that is not supported by the record. As the commissioner found, Jones sustained a cumulative injury to his shoulder. *See McKeever Custom Cabinets v. Smith*, 379 N.W.2d 368, 373 (Iowa 1985) (defining cumulative injury as "numerous incidents over a period of time"). Therefore, the injury did not occur on a specific date. *Id.* This finding is supported by substantial evidence.

As noted, the commissioner found the injury "manifested" on December 27, 2002, a term that incorporates a causation requirement. *Meyer*, 710 N.W.2d at 213. This finding is also supported by substantial evidence and essentially disposes of the argument that the injury did not arise out of Jones's employment. Simply put, if there was a causal connection between the injury and employment as of December 27, 2002, the causal connection did not disappear after that date. The commissioner's determination that Jones's injury arose out of his employment was rational, logical and justifiable.

III. Other Issues

Dexter and its carrier next raise seven issues they characterize as "important and relevant matters relating to the propriety or desirability of the action taken." Three of the arguments have been addressed above: (1) the commissioner's selection of an "injury date," (2) the "in the course of employment" argument, and (3) the "arising out of employment" argument. Two of the remaining issues are not supported by argument or authority and, therefore, are waived. Iowa R. App. P. 6.14(g). A sixth issue was admittedly resolved by the commissioner in favor of the defendants.

That brings us to the seventh issue, the commissioner's determination that Jones sustained permanent partial disability of eighty-two percent. This is inherently a fact-based determination. *See Acuity Ins. v. Foreman*, 684 N.W.2d 212, 219 (Iowa 2004). The deputy commissioner provided a detailed analysis of the pertinent factors. She determined "claimant has suffered a devastating loss of earning capacity as a result of this injury." This determination was affirmed in pertinent part by the commissioner.[1] The commissioner's determination is supported by substantial evidence.

AFFIRMED.

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[1] The commissioner stated the deputy's finding that Jones applied for five jobs was not supported by the record.