

**IN THE COURT OF APPEALS OF IOWA**

No. 8-477 / 07-1887  
Filed October 29, 2008

**LEE BURRESS,**  
Respondent-Appellant,

**vs.**

**IBP, INC.,**  
Petitioner-Appellee.

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Appeal from the Iowa District Court for Polk County, Robert J. Blink,  
Judge.

Lee Burress appeals from the district court order on judicial review finding  
he suffered an occupational disease rather than a work-related injury.

**REVERSED.**

Jason D. Neifert of Max Schott & Associates, P.C., Des Moines, for  
appellant.

Timothy A. Clausen and Sharese Manker of Klass Law Firm, L.L.P., Sioux  
City, for appellee.

Heard by Huitink, P.J., and Vaitheswaran and Potterfield, JJ.

**VAITHESWARAN, J.**

Our legislature has set forth two workers' compensation schemes: one for occupational diseases and one for work-related injuries. *Compare* Iowa Code ch. 85A (affording compensation for occupational diseases) *with* Iowa Code ch. 85 (affording compensation for work-related injuries). The two are mutually exclusive. See Iowa Code § 85A.14 (disallowing compensation under occupational disease chapter for work-related injuries compensable under chapter 85); § 85.61(4)(b) (stating "occupational disease" is not an "injury").

Lee Burress contracted brucellosis at work. The workers' compensation commissioner determined that he had an injury governed by Iowa Code chapter 85 (2005) and a two-year statute of limitations rather than an occupational disease governed by Iowa Code chapter 85A and a one-year statute of repose. On judicial review, the district court reversed. We are persuaded that the agency determination was supported by substantial evidence.

***I. Background Facts and Proceedings***

Burress worked for meatpacker IBP, Inc. between 1987 and 1997. During that time, he came into contact with hog blood. In 2003, he began walking with a severe limp. He subsequently underwent hip surgeries in an effort to address the problem. Following one of these surgeries, Burress acquired an infection, which persisted for several months. In December 2003, Burress learned that he was infected with "*Brucella suis*" or brucellosis. In December 2004, physician William M. Nauseef advised him that he contracted the brucellosis from hog blood, with the "portal of entry" being abrasions in his skin.

On January 3, 2005, Burress filed a workers' compensation petition alleging he suffered from "chronic infection, hips, bone" as a result of "[c]ontact with blood products and tissue from slaughtered hogs." IBP, Inc. responded that the claimed injury was an occupational disease governed by Iowa Code chapter 85A.

Following a hearing, a deputy commissioner found that Burress sustained an injury rather than an occupational disease. The deputy further found that Burress did not become "aware of the probable compensable character of his condition until sometime in early December of 2004" and his petition was filed within two years of that period, as prescribed by chapter 85. The deputy commissioner awarded Burress permanent partial disability benefits.

IBP filed an application for rehearing, which the deputy commissioner denied. On intra-agency appeal, the commissioner adopted the deputy commissioner's decision with one exception; the commissioner concluded that Burress's injury totally disabled him, entitling him to the payment of permanent total disability benefits.

IBP filed a petition for judicial review. The district court reversed the agency decision. The court found that Burress suffered an occupational disease rather than an injury. The court concluded that Burress was obligated to file his petition within a year after the disease manifested itself. Because his petition was not filed within that time frame, the district court dismissed it. Burress appealed.

## ***II. Analysis***

On appeal, Burress does not take issue with the district court's conclusion that his petition was untimely under the occupational disease statute. He simply argues that the brucellosis he acquired was not an occupational disease triggering that deadline.

Chapter 85A, governing occupational diseases, defines "occupational disease" as a disease that has "a direct causal connection with the employment" and "followed as a natural incident thereto from injurious exposure occasioned by the nature of the employment." Iowa Code § 85A.8. The disease "must be incidental to the character of the business, occupation or process in which the employee was employed and not independent of the employment." *Id.* The disease "need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have resulted from that source as an incident and rational consequence." *Id.* If the disease "follows from a hazard to which an employee has or would have been equally exposed outside of said occupation," it is not compensable as an occupational disease. *Id.*

Chapter 85, governing work-related injuries, does not define the term "injury." In *Perkins v. HEA of Iowa, Inc.*, 651 N.W.2d 40, 43 (Iowa 2002), the Iowa Supreme Court filled in that gap, stating:

An "injury" is distinguished from a "disease" by virtue of the fact that an injury has its origin in a specific identifiable trauma or physical occurrence or, in the case of repetitive trauma, a series of such occurrences. A disease, on the other hand, originates from a source that is neither traumatic nor physical . . . .

(quoting *Noble v. Lamoni Prods.*, 512 N.W.2d 290, 295 (Iowa 1994)). The court continued:

[A] personal injury, contemplated by the Workmen's Compensation Law, obviously means an injury to the body, the impairment of health, or a disease, not excluded by the act, which comes about, not through the natural building up and tearing down of the human body, but because of a traumatic or other hurt or damage to the health or body of an employee. The injury to the human body here contemplated must be something, whether an accident or not, that acts extraneously to the natural processes of nature, and thereby impairs the health, overcomes, injures, interrupts, or destroys some function of the body, or otherwise damages or injures a part or all of the body. This is the personal injury contemplated by the workers' compensation statute.

*Id.* at 44 (quoting *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 650-51 (Iowa 2000)). Pertinently, the court stated contraction of a disease will be deemed an injury if it is due to some unexpected or unusual event or exposure, such as "the germs gaining entrance through a scratch or through unexpected or abnormal exposure to infection." *Id.* at 43-44 (quoting 3 Larson's Workmen's Compensation Law § 51, at 51-1 (2002)).

The deputy workers' compensation commissioner, whose findings were adopted by the commissioner, determined that Burress "was exposed to brucellosis in an event that occurred unexpectedly." The deputy further found that "[t]he event, most likely a cut to claimant's hand and exposure to the blood, was sudden, traumatic and of a brief duration." Addressing the risk of contracting brucellosis in a meatpacking plant, the deputy stated,

It might be said that workers in a hog packing plant have a greater than average risk of contracting brucellosis, but that risk is the result of risk from a traumatic injury under circumstances that result in infection of the disease as a consequence of trauma.

The deputy also found “no evidence that employees who work in hog packing plants are routinely subject to brucellosis” and “no evidence that brucellosis is a disease known to be incidental to the employment of people who work in hog packing plants.” We review these findings for substantial evidence. See Iowa Code §17A.19(10)(f); *Asmus v. Waterloo Cmty. Sch. Dist.*, 722 N.W.2d 653, 657 (Iowa 2006) (reviewing “outcome determinative findings of fact” for substantial evidence); *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006) (“A question of fact is presented by the operative events that give rise to the injury,” manifestation of injury is fact-based inquiry, but whether injury arose out of and in the course of employment involves application of law to facts); *West v. Phillips*, 227 Iowa 612, 619, 288 N.W. 625, 628-29 (Iowa 1939) abrogated on other grounds by *Hanson v. Reichelt*, 452 N.W.2d 164, 168 (Iowa 1990) (stating ultimate facts were whether decedent received an injury arising out of and in the course of his employment).

The agency finding that Burress sustained an injury is supported by the following language in Dr. Nauseef’s opinion letter:

It is important to emphasize that *B. suis* is confined to domestic or feral swine and the cause of abattoir-associated infections when swine are the animals processed. The portal of entry is through abrasions in the skin, most commonly during handling of infected animals or their carcasses. There is risk of aerosol transmission in slaughter houses as well, although this appears to be less common.

We recognize the same letter could have supported a finding that Burress’s brucellosis was an occupational disease, as Dr. Nauseef also stated Burress was “exposed to blood products and tissue from the slaughtered hogs” and “this exposure [was] the ideal setting for acquisition of *Brucella suis*” during

the course of his employment at the IBP plant. However, “[i]t is the commissioner’s duty as the trier of fact to determine the credibility of the witnesses, weigh the evidence, and decide the facts in issue.” *Arndt v. City of Le Claire*, 728 N.W.2d 389, 394-95 (Iowa 2007). The commissioner chose to accept the evidence indicating that Burress contracted the infection through an abrasion in the skin as opposed to a generalized exposure to hog blood. This was his prerogative.

Nor does it matter that Burress could not state when he sustained a cut or abrasion. The date of injury may bear on questions relating to which of several employers might be liable for the injury or on statute of limitations questions. See *Meyer*, 710 N.W.2d at 221; *Perkins*, 651 N.W.2d at 44. The date does not bear on whether Burress sustained a traumatic injury while working for IBP. On that question, the agency found he “most likely” did. That finding is supported by Burress’s testimony that he stuck his finger with a knife while “dropping [hog] heads.”

Finally, we are not persuaded by IBP’s argument that chapter 85A governs because it addresses brucellosis. See Iowa Code § 85A.11 (prescribing tests that shall be used to confirm disease). The preliminary step is to determine whether a condition is a disease. *Noble v. Lamoni Prods., Inc.*, 512 N.W.2d 290, 294 (Iowa 1994) (noting threshold proof of disease was a prerequisite to recovery under Chapter 85A). Only after that determination is made, can the commissioner determine whether the condition is governed by Chapter 85A. That chapter does not mandate that, as a matter of law, all diagnoses of brucellosis be treated as occupational diseases.

***III. Disposition***

The commissioner's determination that Burress suffered an injury rather than an occupational disease is supported by substantial evidence. The district court's finding to the contrary is reversed.

**REVERSED.**