IN THE COURT OF APPEALS OF IOWA

No. 0-293 / 09-1665
Filed June 30, 2010

RYKO MANUFACTURING CO., and
EMCASCO INSURANCE COMPANY,
Petitioners-Appellees,

vs.

TROY NEUROTH,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

Workers' compensation claimant, Troy Neuroth, appeals from the district court's ruling on judicial review, which affirmed in part, reversed in part, and remanded to the agency for further fact finding. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Harry W. Dahl, Des Moines, for appellant.

Iris J. Post of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellees.

Heard by Vogel, P.J., and Potterfield and Danilson, JJ.

POTTERFIELD, J.

Workers' compensation claimant, Troy Neuroth, appeals from the district court's ruling on judicial review, which affirmed in part, reversed in part, and remanded to the agency for further fact finding. We affirm in part and reverse in part.

I. Background Facts and Proceedings.

Claimant Troy Neuroth, forty-three years old at the time of the arbitration hearing, received his adult equivalency degree in 1982. He served in the military for more than six years and then performed some seasonal and temporary work. He first worked for Ryko Manufacturing in 1989-1990 as a temporary employee, and again in 1993, beginning as a temporary employee and then in October 1993 as a full-time employee. From 1993 to 1995 or 1996, Neuroth worked in the shipping department, which consisted of general physical work including loading, strapping, and lifting up to approximately forty pounds. From 1996 to 2002, he worked in the tool crib, where he was on rare occasions required to lift up to seventy-five pounds. The tool crib position was eliminated and Neuroth was transitioned to a position in fabrication, which required more lifting, repetitive material handling, and machine operation, and the use of various grinders and sanders to "sand and deburr" metal and aluminum parts.

Neuroth has had symptoms of low back pain as early as May 2001. On May 30, 2001, he saw his family physician, Jennifer M. Olson, D.O., for a strained low back. She prescribed muscle relaxant and anti-inflammatories. Dr. Olson again treated Neuroth in May 2003 for low back complaints. She ordered a CT scan, which showed mild arthritis and degenerative disk disease. Dr. Olson

referred Neuroth to a rheumatologist, whose findings were back pain with symptoms of either spinal stenosis or bilateral nerve root compression of L4-5. Dr. Olson next saw Neuroth in April and September 2004 with continued complaints of back pain, for which she continued to prescribe anti-inflammatory and analgesic medicines. She diagnosed Neuroth's complaints as degenerative disk disease of the lumbar spine.

On May 2, 2005, Neuroth visited Dr. Olson to discuss his back pain. He informed her he was having to take too much medication due to significant overtime at work. Dr. Olson provided this letter addressed to Ryko, "To Whom It May Concern":

> Troy Neuroth is an established patient of mine. He is having increasing problems with degenerative joint disease of his lumbar spine. He also has degenerative disk disease. Due to these problems, I recommend that he have modified work conditions. He may return to work on 5-3-05 with the following restriction a ten hour work day and maximum of 48 hours in a work week. I also recommend that he not lift greater than 25 pounds. I feel that these recommendations should be long term for him and we will re-evaluate this in 12 weeks time.

Neuroth delivered copies of the letter to his supervisor, Dale Strum, and the human relations (HR) department. Ryko accommodated Neuroth's work activities to fit the restrictions and Neuroth continued working with no loss of wages or missed work. Dr. Olson periodically reviewed his low back condition and continued the lifting restrictions by letters dated August 1, 2005, and November 7, 2005. The November letter changed the restriction to "a maximum of a 40 hour work week," rather than the earlier 48 hour work week.

On January 19, 2006, Neuroth informed Strum he was going to see his doctor with respect to pain in his shoulders and neck. Neuroth stated he thought

it might be the flu, but if it was an injury, "it would probably be a work-comp claim." Neuroth saw Dr. Olson that date with complaints of pain at the base of his neck, and pain and decreased range of motion of the bilateral shoulders. He reported having been required to do lifting beyond his restrictions at work. Dr. Olson ordered physical therapy, medications, and imposed new work restrictions against repetitive motions with the arms or working above the shoulder level for one month.

On February 23, 2006, Neuroth returned to Dr. Olson complaining of continued bilateral shoulder pain, tenderness in the cervical spine, and persistent numbness bilaterally in the thumbs and index fingers. Dr. Olson's notes indicate "could be work-related—not filed [with] work comp. yet." Dr. Olson ordered a cervical x-ray, which showed abnormalities at C5-6. An MRI was ordered, which showed spondylosis at C5-6 and C6-7 with very mild central disc bulging at C6-7.

On March 16, 2006, Louise Lear, the case manager for Ryko's insurer, EMCASCO, completed a report that summarized her tour of the Ryko facility and visit with HR administrator Thomas Rupp. She noted that Neuroth had worked 248 hours of overtime in 2005, with two weeks of overtime in April. The following statements are included in her report:

- Mr. Rupp said some of Mr. Neuroth's points were valid. He will meet with the engineering department to look into ways of lessening strain on employees.
- I noted I could see where some of the sanding booth activities would adversely affect shoulders. I am unable to determine how the cervical spine would be injured in the job. However, if Mr. Neuroth did have some disc bulges, it was possible the activity would aggravate. I recommend Mr. Rupp make a short video of the job for review by an occupational medicine physician. Mr. Neuroth could be evaluated at the same time. . . . An occupational medicine physician would better be able to determine the causation.

- Mr. Rupp said that Mr. Neuroth had never put his lumbar spine complaints under work comp.

On March 31, 2006, Dr. Olson referred Neuroth to pain management specialist Christian P. Ledet, M.D. Dr. Ledet recommended bilateral shoulder EMG studies and referred Neuroth to orthopedic surgeon Kary R. Schulte, M.D.

On April 24, 2006, Dr. Schulte diagnosed Neuroth with bilateral shoulder impingement with possible rotator cuff tears and bilateral AC joint arthrosis, and recommended surgery. A right shoulder arthroscopy, subacromial decompression, and distal clavicle excision was performed on May 9, 2006; a left shoulder rotator cuff repair, subacromial decompression, and distal clavical excision was performed on June 6, 2006. At the time of these surgeries EMCASCO had not yet informed Neuroth of its decision whether his bilateral shoulder claims would be compensable.

EMCASCO scheduled Neuroth for an independent medical examination on June 19, 2006, with N. John Prevo, D.O., director of Company Medicine P.C., "as it relates to a causation issue regarding complaints of bilateral shoulder, hand, and neck pain." Dr. Prevo reviewed Neuroth's medical records, as well as a "video depicting Mr. Neuroth's job tasks at Ryko Manufacturing," and job descriptions for the tool crib attendant and general fabricator. In a letter to Lear dated June 20, 2006, and based on his review and examination of Neuroth, Dr. Prevo concluded, "I cannot state with a high degree of medical certainty that Mr. Neuroth's bilateral shoulder conditions were/are work related or work aggravated in my opinion."

On July 27, 2006, Dr. Olson wrote to Neuroth's legal counsel that she felt that Neuroth's "work activities at Ryko were definitely aggravating his low back condition" and that his "neck and shoulder conditions were caused and aggravated by his work activities at Ryko, especially with his compensation for his lower back pain that needed to be done due to his long-term degenerative disk disease."

On July 31, 2006, Dr. Schulte noted the following:

> The patient and I had a discussion regarding whether or not this was a work-related condition. Apparently, he is applying for this to be covered under workers' compensation. The patient reports that he is working as a tool crib attendant but he also has added to his job work with grinders and sanders which required repetitive grasping, pulling and lifting. He attributed his symptoms to his repetitive work activities. This is consistent with the history provided to me by the patient when I first saw him on April 24, 2006. Based upon the history provided to me by the patient, describing his work activities, it is reasonable to consider the cause of his bilateral shoulder symptoms a work-related condition.

On August 14, 2006, Neuroth returned to work and was assigned paperwork duties.

On September 6, 2006, Dr. Schulte gave Neuroth a work release for full duty without restrictions "with regard to the shoulders."

On September 26, 2006, Dr. Olson wrote to Ryko:

> Troy Neuroth has continued problems with back, degenerative disk and joint disease of the lumbar spine as well as a recent right knee injury. Due to this, I feel that he needs to be on some work restrictions starting September 26, 2006. He should not work more than an eight hour work day and no more than five days per week. I also recommend that he restrict his weight lifting to 25 pounds and that he should not have any prolonged standing greater than two hours without a 5-10 minute break to alleviate the weight concern in his knee. He is undergoing medical workup in regards to his knee and these restrictions may be modified for his knee. The weight restriction will be long term due to arthritis in his back.

Neuroth continued to be assigned to light duty at Ryko until December 2006, when he underwent carpal tunnel surgery.

On December 21, 2006, Neuroth filed four workers' compensation petitions concerning his low back, neck, bilateral shoulders and bilateral carpal tunnel, and knee. After voluntary dismissal of two of the petitions, amendment, and consolidation, this proceeding encompassed Neuroth's claim for workers' compensation benefits for a May 2, 2005 injury to his low back due to repetitive work activity, and for injury to his neck and right and left shoulders with an alleged injury date of January 19, 2006. Ryko and EMCASCO (hereinafter collectively referred to as Ryko) asserted a notice defense with respect to the May 2, 2005 low back claim.

Neuroth was released to return to work in July 2007 with no restrictions associated with his carpal tunnel surgery. However, there was no work available at Ryko within Dr. Olson's most recent work restrictions to accommodate Neuroth's low back condition (twenty-five pound lifting restrictions with a maximum eight-hour day and five days per week).

On July 20, 2007, an independent medical evaluation was performed by John D. Kuhnlein, D.O., an occupational and environmental medicine specialist. Dr. Kuhnlein was of the opinion that Neuroth's "neck pain was substantially, although not perhaps exclusively aggravated by his work activities at Ryko." He also opined "his low back pain was substantially aggravated by his Ryko work activities." And finally, Dr. Kuhnlein "agree[d] with the treating physicians that his bilateral shoulder conditions are related to his Ryko employment." He gave the

following impairment ratings: with respect to the cervical spine (7% whole person); lumbar spine (7% whole person); for decrements in range of motion for right upper extremity (2%) and left upper extremity (4%); for distal clavicle resection (3% to each upper extremity); combined values of the right upper extremity converted to a 3% whole person impairment and the combined values of the left upper extremity converted to 4% whole person impairment; "these values would combine to a 20% whole person impairment."

On October 3, 2007, Neuroth was evaluated by orthopedic surgeon Peter D. Wirtz, M.D., who opined Neuroth's "back symptoms do not relate to an impairment." With respect to Neuroth's neck, Dr. Wirtz stated the symptoms were not consistent with a traumatic injury in the cervical spine but "relate to the spinous processes C7." Dr. Wirtz also stated, "The bilateral shoulder symptomatology would not occur based on the job requirement on his video," and concluded "these conditions are unrelated to the repetitive activities so performed at work." He noted no permanent restrictions in the neck area and rated functional impairment of each upper extremity at ten percent "based on distal clavicle excision."

On November 8, 2007, Neuroth went through a functional capacity evaluation (FCE), which resulted in his being assigned to light to sedentary work categories. The evaluation notes "significant deficits" in floor to waist lifting, overhead lifting, elevated work, forward bending, standing trunk rotation, crawling, kneeling, crouching, squatting, stair climbing, and ladder climbing.

The workers' compensation arbitration hearing was held on December 12, 2007. The issues to be resolved with respect to his low back claim were: (1)

whether Neuroth sustained injury to the low back arising out of and in the course of employment on May 2, 2005; (2) whether the injury caused permanent disability; (3) the extent of industrial disability; and (4) whether the claim is barred under Iowa Code section 85.23[1] for lack of timely notice. With respect to Neuroth's neck and bilateral shoulder claim, the issues were: (1) whether Neuroth sustained injury to the neck and shoulders bilaterally arising out of and in the course of employment on January 19, 2006; (2) whether the injury caused permanent disability; and (3) the extent of industrial disability.

Neuroth testified that when he gave the May 2, 2005 note concerning work restrictions to his supervisor, Dale Strum, he told Strum it was due to the work he was doing and the hours he was working. On cross-examination he acknowledged that at his deposition he had testified, "I don't specifically remember" stating it was work-related. Strum testified he was not told the May 2, 2005 restrictions were work-related and that if he had been told, he would have taken that information to HR. Mr. Rupp testified that he first learned that Neuroth was making a workers' compensation claim for a back injury in March 2006, which was at the same time he was making a claim for his neck and his shoulders. Mr. Rupp was asked, "And prior to that time you had no knowledge that he was relating his back problem to his employment, did you?" He responded, "No. I knew he was treating as a personal condition, and it wasn't until March of '06 that he said it was work related."

In the arbitration decision, the deputy commissioner first addressed when Neuroth's low back cumulative injury occurred. *See George A. Hormel & Co. v.*

[1] Unless otherwise noted, all statutory citations are to the 2005 Iowa Code.

Jordan, 569 N.W.2d 148, 151 (Iowa 1997) (noting the date of injury for cumulative injury resulting from repetitive physical trauma is when it manifests, which 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"). The deputy found the date of Neuroth's low back injury was May 2, 2005, the date Dr. Olson imposed significant long-term work restrictions.

The deputy wrote, "Neuroth testified that he believed that the problem was work related, and there is nothing in the record to the contrary." However, the deputy then found that Neuroth did not give notice of this alleged work injury until March 2006. Because Ryko did not have notice within ninety days of the injury, the deputy commissioner concluded that Ryko had proved its notice defense and "Neuroth takes nothing on this claim."

With respect to Neuroth's cumulative neck and bilateral shoulder injuries, the deputy found that the medical providers supporting Neuroth's claim that these injuries were work-related were persuasive. However, the deputy found that the date of manifestation for this claim was not January 19, 2006, as alleged. Rather, the date of injury was found to be the date of the first surgery—May 9, 2006. The deputy awarded healing period benefits from May 9 through August 13, 2006, which was the date Neuroth returned to Ryko and was assigned to "paperwork." The deputy found there was permanent partial disability associated with this claim and was then required to address the extent of industrial disability. The deputy wrote:

> The multiplicity of conditions appearing in the medical records is a complication in this case. Work restrictions and functional deficiencies are not broken down by condition, but are instead offered as a unitary whole. Restrictions relating to Neuroth's back do not relate to a compensable claim, and any restrictions relating to carpal tunnel syndrome are within the purview of a separate claim not under review in this litigation. Neuroth also has a knee problem. Many of the restrictions and functional limitations can easily be seen as attributable to either the back or neck/shoulder conditions.

The deputy noted that the restrictions imposed by Dr. Olson were not shown to relate to Neuroth's neck and shoulder conditions; Dr. Kuhnlein deferred assigning restrictions pending the FCE; the FCE found numerous significant deficits "at least some of which are clearly relevant to neck and shoulder injuries (overhead lifting, elevated work), and others of which are arguably relevant (floor to waist lifting or crawling, for example)"; and Ryko's surveillance videos of Neuroth show that "at least on some days, Neuroth is capable of considerable exertion without obvious discomfort." The deputy concluded that Neuroth experienced a loss of earning capacity "on the order of ten percent (10%) of the body as a whole, or the equivalent of 50 weeks of permanent partial disability benefits commencing August 14, 2006."

Neuroth filed an intra-agency appeal asserting the deputy erred in: finding defendants had carried their burden of proving the notice defense; apportioning claimant's industrial disability rather than applying the full responsibility rule; and finding claimant had sustained only a ten percent industrial disability. In response, Ryko asserted, in part, that applying full responsibility would negate the legislative intent of the notice requirement.

The commissioner[2] filed an appeal decision affirming and adopting the arbitration decision with additional analysis. The commissioner concluded:

> There is an issue of whether the so called "full responsibility rule" should be applied in this case in light of the holding in *Venegas v. IBP, Inc.*, 638 N.W.2d 699 (Iowa 2002) and the current wording of Iowa Code section 85.34(7). However, before any apportionment of disability can be considered, the party who stands to gain from an apportionment of disability, in this case, the employer, must provide a reasonable apportionment method and the amount of the apportionment must be ascertainable. The claimant needs to only show that his disability was proximately caused by the work injury. . . . Once that burden is established, the employer is liable for the entire disability in the absence of a showing that an ascertainable portion of this disability is attributed to the non-work related medical conditions. . . .
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> In this case defendants failed to show any rational means or method of apportioning the restrictions imposed by the functional capacity testing and the resulting disability. Therefore, the defendants are liable for the entire disability.

The commissioner then found a sixty percent loss of earning capacity and ordered defendants to pay 300 weeks of permanent partial disability benefits.

Ryko filed a petition for judicial review, asserting numerous errors with the commissioner's application of law and findings of fact. Neuroth cross-petitioned the denial of his back claim.

In its ruling on the cross-petitions, the district court first rejected Neuroth's claim that the commissioner erred in finding the notice defense had been proved by the more credible witnesses. The court concluded substantial evidence supported the finding that notice was not given until March 2006.

Second, with respect to the neck and shoulder claim, the district court rejected Ryko's argument that the commissioner had applied an incorrect burden

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[2] The appeal decision was issued by another deputy workers' compensation commissioner. However, for ease of reference, we will refer to the appeal deputy as the commissioner.

of proof on the issue of apportionment. Rather, the district court concluded the commissioner applied the common law rule of apportionment, which had been statutorily modified by the legislature in its 2004 Extraordinary Session. The amended apportionment provision is codified at Iowa Code section 85.34(7), which provides in subsection a:

> An employer is fully liable for compensating all of an employee's disability that arises out of and in the course of the employee's employment with the employer. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with a different employer or from causes unrelated to employment.

The court noted that the legislative intent behind the new law was to "prevent all double recoveries and all double reductions in workers' compensation benefits for permanent partial disability." *See* 2004 Acts, 1st Extraordinary Session, ch. 1001, § 20, at 1143. Because the court found the question of whether Neuroth's back injury arose out of and in the course of his employment was never reached, the district court concluded the commissioner erred in finding Ryko "fully liable for compensating Mr. Neuroth's disability in its entirety, including any portion which did not arise out of and in the course of his employment." Consequently, the district court reversed the commissioner's finding of sixty percent industrial disability.

Neuroth now appeals, contending: (1) the district court erred in finding Iowa Code section 85.34(7)(a) applicable and remanding to the commissioner for further findings; (2) there is substantial evidence to support the commissioner's

finding of sixty percent industrial disability;[3] and (3) the district court erred in concluding the employer and its insurer carried their burden of proving lack of notice of his 2005 claim of injury to his low back.

II. Scope and Standard of Review.

Our review of workers' compensation actions was recently outlined in *Jacobson Transportation Co. v. Harris*, 778 N.W.2d 192, 196 (Iowa 2010):

> Our review of a decision of the workers' compensation commissioner varies depending on the type of error allegedly committed by the commissioner. If the error is one of fact, we must determine if the commissioner's findings are supported by substantial evidence. 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. 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." Because of the widely varying standards of review, it is "essential for counsel to search for and pinpoint the precise claim of error on appeal."

(Citations omitted.)

III. Analysis.

Neuroth contends the district court erred in ruling Iowa Code section 85.34(7)(a) is applicable under the facts of this case for several reasons: (1) because there was no measurable effect on his earning capacity as a result of the back injury, there was no preexisting disability that would trigger section

[3] Neuroth's argument on appeal–that the language of the commissioner's finding of sixty percent industrial disability limits that finding to the May 9, 2006 shoulder and neck injury, without including the low back injury of May 2005 is different than his interpretation of the commissioner's ruling in the district court, which was that the full responsibility rule should apply. Although the language of the commissioner's finding is confusing, the subsequent order on taxation of costs clearly states that Ryko lost the issue of apportionment as to the back injury, and it was the back injury that resulted in the increased award.

85.34(7)(a);[4] (2) because he did not receive any prior workers' compensation benefits for his back injury, there is no question of double recovery, which was the legislature's concern in enacting the 2004 amendments to section 85.34(7)(a); and (3) the employer could not have shown that his back injury occurred with a different employer or that it was unrelated to his employment with Ryko.

Ryko's response is that we should affirm the district court's finding that the commissioner erred in holding the employer fully liable because to do otherwise would negate the notice requirement of Iowa Code section 85.23. Ryko also asserts the commissioner did not "take into account the deputy's implied and expressed finding of the lack of claimant's credibility in the assessment of industrial disability." Ryko further argues, "[t]here was no finding by the deputy [or] the commissioner that the claimant's back injury 'arose out of or in the course of his employment' as that issue could not be reached in view of claimant's failure to give proper notice of his injury to his employer."

We address this last contention of Ryko's first. The district court apparently agreed with Ryko, concluding that the matter had to be remanded to the commissioner for a determination of whether Neuroth's back injury arose out of and in the course of employment because that question was "never reached." While not a model of clarity, we believe the commissioner *did* reach the issue. With regard to Neuroth's low back claim, the deputy wrote: "Neuroth testified that he believed that the problem was work related, and *there is nothing in the record*

[4] We note that "preexisting disability" is addressed in subsection 85.34(7)(b), not (a).

to the contrary." The commissioner affirmed and adopted the deputy's decision with "additional analysis." We believe the commissioner affirmed and adopted the deputy's finding that Neuroth's low back injury was work-related.

Consequently, we find the district court erred in ruling that the commissioner "erred in finding [Ryko] fully liable for compensating Mr. Neuroth's disability in its entirety, including any portion which did not arise out of and in the course of his employment." The commissioner did not include any portion of disability not found to have arisen out of and in the course of Neuroth's employment with Ryko.

Rather, the commissioner held Ryko fully liable for Neuroth's industrial disability pursuant to the "full responsibility" rule. This is consistent with statutory and case law. That case law is summarized as follows in *Second Injury Fund of Iowa v. Nelson*, 544 N.W.2d 258, 264-65 (Iowa 1995):

> An employer's liability for an employee's industrial disability is complicated when that disability results in part from a prior injury or condition. In deciding this case, it is helpful to summarize the various rules that might apply in successive-injury situations.
>
> A. *The apportionment rule.* Iowa applies a rule of apportionment in limited situations. When a prior injury, condition or illness, *unrelated to employment, independently* produces an *ascertainable* portion of an injured employee's cumulative industrial disability, the employer is liable only for that portion of the industrial disability attributable to the current injury. In other words, the industrial disability is apportioned between that caused by the work-related injury and that caused by the nonwork-related condition or injury. The employer is liable only for the work-related portion.
>
> It is important to recognize two limitations on this rule. First, the prior injury or condition must cause an "ascertainable portion" of the ultimate industrial disability. Thus, if the portion of the industrial disability resulting from the pre-existing, nonwork-related injury or condition cannot be determined, the employer is liable for the full industrial disability of the employee.
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> Second, the prior injury or condition must "independently" produce some degree of *industrial* disability before the second

> injury. Hence, the apportionment rule does not apply where the prior condition or injury has not caused any industrial disability. Similarly, the apportionment rule does not apply where the second injury aggravates the pre-existing condition. In these situations, the employer is liable for the full industrial disability.
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> B. *The full-responsibility rule.* Perhaps most importantly, the rule allowing apportionment for prior conditions causing industrial disability does not apply to conditions and injuries related to employment. When there are two successive *work-related* injuries, the employer liable for the second injury "is generally held liable for the entire disability resulting from the combination of the prior disability and the present injury." In another opinion filed today, we applied this "full responsibility" rule, holding the employer liable for its employee's 100% permanent industrial disability resulting from a recent work-related injury and two prior work-related injuries. Thus, the employer liable for the current injury is also liable for any preexisting industrial disability caused by a work-related injury when that disability combines with industrial disability caused by a later injury.

(Citations omitted). The same day *Nelson* was decided, the supreme court also decided *Celotex Corp. v. Auten*, 541 N.W.2d 252, 256 (Iowa 1995), where the court noted, "our workers' compensation law does not expressly provide for apportionment in the case of successive injuries sustained by an employee in the same employment, regardless of whether or not the employee receives compensation for the prior injury." The court then declined to give the employer credit for a prior disability award. *Id.*

As we have noted above, the "full responsibility" rule has been statutorily modified to provide the employer credit in certain circumstances of successive injuries sustained by an employee in the same employment. *See* Iowa Code § 85.34(7)(b), (c). However, those statutory modifications are not pertinent here.

"Apart from statute, in a situation of two successive work-related injuries, the employer is generally held liable for the entire disability resulting from the combination of the prior disability and the present injury." *Mycogen Seeds v.*

Sands, 686 N.W.2d 457, 465 (Iowa 2004) (internal quotation and citation omitted). In *Drake University v. Davis*, 769 N.W.2d 176, 184 (Iowa 2009), our supreme court reiterated that "[w]e generally do not apportion the benefits of two successive work-related injuries without a statute allowing us to do so."

Ryko argues that, since the lack of notice bars compensation under Iowa Code section 85.23, the back injury cannot be compensated under the full responsibility rule of section 85.34(7), regardless of causal connection. Ryko cites no authority for the proposition that failure to give notice under section 85.23 disqualifies an injury from inclusion in the full responsibility rule of section 85.34(7). But in any event, even assuming Ryko is correct that the low back injury should not be included in the total industrial disability, it failed to show any rational method for segregating that injury from the total. The commissioner ruled that the employer "failed to show any rational means or method of apportioning the restrictions imposed by the functional capacity testing and the resulting disability." The commissioner's ruling was not "[b]ased upon an irrational, illogical, or wholly unjustifiable application of law to fact" and is supported by substantial evidence. *Jacobson Transp*., 778 N.W.2d at 196. There was no reason to disturb it.

IV. Conclusion.

The commissioner's findings of fact were supported by substantial evidence and its application of law to the facts was justified. The district court thus erred in reversing in part. We reverse the district court's ruling to the extent it reversed the commissioner. We remand to the district court for entry of ruling

affirming the commissioner in all respects.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.