IN THE COURT OF APPEALS OF IOWA

No. 6-387 / 05-1694
Filed September 7, 2006

JOHN ARNDT,
Petitioner-Appellee,

vs.

CITY OF LECLAIRE and
HIGHLAND INSURANCE GROUP,
Respondents-Appellants.

Appeal from the Iowa District Court for Scott County, Mark J. Smith, Judge.

The City of LeClaire appeals the district court's judicial review ruling, which reversed the agency decision. **AFFIRMED.**

William D. Scherle and Alexander E. Wonio of Hansen, McClintock & Riley, Des Moines, for appellant.

Daniel D. Bernstein of William J. Bribriesco and Associates, Bettendorf, for appellee.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

VAITHESWARAN, J.

John Arndt was employed as a public works supervisor for the City of LeClaire, Iowa. He sought workers' compensation benefits for injuries to his knee and shoulder, which he claimed were sustained on June 14, 2001, when he slipped off a road grader. A deputy workers' compensation commissioner concluded that Arndt did not prove the injury date of June 14, 2001. The workers' compensation commissioner affirmed this decision, but on judicial review, the district court reversed. The City appealed.

On August 9, 2006, we issued an opinion affirming the district court. On August 16, 2006, the City petitioned for rehearing, arguing for the first time that a report of injury cited by the deputy commissioner was admitted for the sole purpose of establishing when the employer received notice of the injury. The City now contends "notice was not an issue in this case and therefore the report was not formally admitted into evidence and is not a valid part of the record made at hearing." The City urges that "the decision of the Court of Appeals, being based in whole or in part on evidence not admitted at trial, fails to contain substantial evidence to support its conclusions." We granted the City's petition for rehearing to address this contention. The opinion filed today is an amended and substituted opinion.

The sole issue on appeal is whether the agency decision is supported by substantial evidence. Iowa Code § 17A.19(10)(f) (2005). As the district court correctly noted

> substantial evidence is defined as 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 understood to be serious and of great importance."

Id. at § 17A.19(10)(f)(1).

The fact at issue is whether Arndt sustained a work-related injury on June 14, 2001. The deputy commissioner found that Arndt "reported on June 15, 2001, that on June 14, 2001, he slipped on grease while climbing onto a City of LeClaire road grader."[1] The deputy also found that "Ed Choate, at the City of LeClaire, did testify that he believed that the claimant had been injured at work." Notwithstanding these findings, the deputy determined that Arndt did not suffer a work-related injury on June 14, 2001. The deputy relied on the following notes contained in medical records:

> On June 28, 2001, the claimant reported to medical personnel that the injury had occurred about a month ago. This is inconsistent with the current claim that the injury occurred at work on June 14, 2001. As late as October 25, 2001, the claimant reported to medical personnel that his injury was on a ladder at home and was to be covered by his private insurance. Based on these inconsistencies, the claimant has not met his burden of establishing that he sustained an injury arising out of and in the course of employment on June 14, 2001.

[1] We agree with the City that the notice referred to by the deputy commissioner was admitted only to establish that the employer received notice of the injury. *See* Iowa Code §§ 86.11, 85.23. We disagree that notice was not an issue in this case. In its original brief, the City framed the issue as follows: "Claimant was required to prove the injury in question occurred on [June 14, 2001]...."[I]t is clear that Claimant failed to prove he was injured at work on June 14, 2001." The fact that Arndt reported the injury to his employer on the day after he claimed he was injured is a fact the deputy commissioner found relevant enough to include in his findings and a fact that we believe we may consider notwithstanding the strictures of Iowa Code section 86.11 (stating "[t]he report to the workers' compensation commissioner of injury shall be without prejudice to the employer or insurance carrier and shall not be admitted in evidence or used in any trial or hearing before any court, the workers' compensation commissioner, or a deputy workers' compensation commissioner except as to the notice under section 85.23.").

Viewing the record as a whole, we agree with the district court that the evidence on which the deputy commissioner relied does not support the agency determination that Arndt failed to prove a work-related injury occurring on June 14, 2001. *See id.* at § 17A.19(10)(f)(3) (stating viewing the record as a whole "means that the adequacy of the evidence in the record before the court to support a particular finding of fact must be judged in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the evidence cited by any party that supports it").

As the deputy initially found, the employer conceded that Arndt sustained a work-related injury on June 14, 2001. At the arbitration hearing, Choate affirmed that, on June 15, 2001, Arndt told him he sustained a work-related injury. Choate was asked, "Did you believe him, sir?" He answered, "Yes." Choate was then asked, "Do you believe him now?" He answered, "Yes." Finally, Choate was asked whether it was correct that "John had a work-related injury." He answered, "That's correct." Choate was the only representative of the City who testified at the hearing and his testimony unequivocally corroborates Arndt's statements concerning where and when his injuries occurred.

On appeal, the City makes no reference to these concessions by the employer. Instead, the City insists that the medical records cited by the deputy are controlling and the district court reweighed the evidence in concluding otherwise. To the contrary, the district court simply considered all the record evidence and determined that the employer's admissions of a work-related injury on June 14, 2001 trumped the qualitatively weaker statements attributed to Arndt by medical personnel. We reach the same conclusion.

We first examine the June 28, 2001 medical records on which the deputy relied. According to these records, Arndt reported that he twisted his right knee "one month ago." There is no question Arndt's approximation of his injury date was two weeks off. This is not the type of evidence that a reasonable fact finder should find more persuasive than an employer's report of injury specifying the date of injury as June 14, 2001.

We turn to the medical note stating the injury occurred "at home." The employer explained this discrepancy. Choate admitted that he initially told Arndt to avoid making this a workers' compensation claim. When asked why he did this, Choate testified,

> My thinking, I believe, at that time was that we were so far down the road from the June time frame when he was first injured, and we had passed everything that we would go with the group insurance first to see, you know, if that would work. I mean, that was our first course of action, I guess.

Choate also said he told Arndt's counsel that he intended to contact Arndt's health care providers and clarify that this was in fact a workers' compensation claim. Arndt confirmed that Choate did so. He stated, "[Choate] called all the people after we received a letter from Blue Cross Blue Shield questioning whether or not this happened at work." Blue Cross Blue Shield subsequently voided its payments and the workers' compensation insurance carrier paid the health care providers.[2]

[2] The deputy found that Arndt "did not want to handle this as a workers' compensation claim until his private insurance would not pay." The record establishes that the employer, rather than Arndt, initially did not want to handle this as a workers' compensation claim.

To affirm the agency decision, we would have to ignore the date on which the employee notified the employer of his injury as found by the deputy commissioner, as well as testimony from the employer's representative confirming that a work-related injury occurred on June 14, 2001, vouching for the credibility of Arndt, and explaining why medical providers were not initially notified that this was a work-related injury. The substantial evidence standard, as articulated in Iowa Code section 17A.19(10)(f), does not allow us to wear such blinders.

We affirm the district court ruling reversing the agency decision.

AFFIRMED.