

IN THE COURT OF APPEALS OF IOWA

No. 6-519 / 04-1492
Filed August 23, 2006

RANDY GILLESPIE,
Petitioner-Appellant,
vs.

SECOND INJURY FUND OF IOWA,
Respondent-Appellee.

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

A worker's compensation claimant appeals from the judicial review
affirming the agency's denial of Second Injury Fund benefits. **AFFIRMED.**

Martin Ozga of Max Schott & Associates, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Joanne Moeller, Assistant
Attorney General, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

VOGEL, P.J.

Randy Gillespie appeals from the district court's ruling on judicial review that affirmed the Iowa Worker's Compensation Commission's (IWCC) agency decision denying Second Injury Fund benefits. We affirm.

In 1974, while serving in the military, Gillespie was diagnosed with rheumatoid arthritis affecting his hands, shoulders, and joints. In 1977, Gillespie began working in the sheet metal industry and continued in that field until April 1999 when he claimed his arthritis and depression rendered him disabled. His first petition for benefits, asserting cubital tunnel injury from 1999, was settled on a full commutation basis and approved by the commissioner on February 15, 2002.

On February 21, 2002, Gillespie filed a petition with the IWCC, seeking benefits from the Second Injury Fund of Iowa. He claimed his first loss occurred in 1974, from rheumatoid arthritis, affecting the use of his right and left hand. He alleged his second loss occurred on April 28, 1999, as a "cumulative injury from bending and cutting of sheet metal," affecting his right and left arms.

Gillespie's symptoms of the rheumatoid arthritis include pain and stiffness in both hands and shoulders, as well as his knees, ankles, feet, toes, and heels. The cubital tunnel syndrome has likewise affected his right and left arms, with pain in his forearms and numbness and tingling into his hands and fingers. Several physicians have given impairment ratings concerning the cubital tunnel syndrome as to each upper extremity, but did not apply any work restrictions as to this affliction. Other physicians, both treating and independent medical examiners, noted a significant functional impairment ranging from fifty percent in

each hand to full and permanent disability caused by the rheumatoid arthritis. All medical testimony considered rheumatoid arthritis to be a chronic, systematic, and inflammatory disease that afflicts not only multiple joints of the body but also the renal, pulmonary, and cardiovascular systems.

In June 2003, the IWCC denied Gillespie's petition for benefits under the Second Injury Fund. The deputy commissioner concluded that because rheumatoid arthritis is a chronic, systematic inflammatory disease affecting different parts of the body, it is therefore considered an unscheduled injury. On intra-agency appeal, the commissioner affirmed the denial of benefits for the same reason, but also added that because Gillespie's alleged first and second injuries were to the same parts of his body, (his arms and hands) he was barred recovery from the Second Injury Fund. On judicial review, the district court agreed with both conclusions reached by the IWCC. Gillespie appeals, arguing: 1) rheumatoid arthritis is a qualifying first injury under Iowa Code section 85.64 and 2) that his bilateral injuries were not to the same body members.

When the findings of fact are not challenged, but the claim of error lies with the agency's interpretation of the *law*, the question on review is whether the agency's interpretation was erroneous, and we may substitute our interpretation for the agency's. *Clark v. Vicorp Rests., Inc.*, 696 N.W.2d 596, 604 (Iowa 2005) (citing Iowa Code § 17A.19(10)(c), (11)(b) (2005)).

Both the IWCC and the district court relied on our opinion in *Collins v. Dep't of Human Servs.*, 529 N.W.2d 627 (Iowa Ct. App. 1995) in concluding rheumatoid arthritis is a non-qualifying first injury. In *Collins*, the claimant suffered from reflex sympathetic dystrophy, a dysfunction of the sympathetic

nervous system. *Id.* at 629. Although the claimant's injury manifested itself in her hands, the underlying disease affected the entire nervous system and therefore was considered an unscheduled injury. *Id.* The undisputed expert medical testimony in this case, described rheumatoid arthritis a chronic, systematic inflammatory disease that affects the entire body. From this testimony, we agree with the IWCC and the district court that rheumatoid arthritis must be considered as an unscheduled injury, though it may manifest symptoms in scheduled-members, such as the hands and feet. Under Iowa Code section 85.64, Second Injury Fund liability is limited to cases where "an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye" The clear language of this section limits coverage to cases in which the first injury has been to a scheduled-member body part, as listed in section 85.34(2). Disabilities resulting from injuries other than those listed in section 85.34(2) are considered unscheduled injuries to the body as a whole. *Second Injury Fund v. Shank*, 516 N.W.2d 808, 812 (Iowa 1994). An unscheduled injury cannot trigger Second Injury Fund liability, even where that unscheduled injury affects a scheduled member, such as an arm or hand. *Second Injury Fund of Iowa v. Nelson*, 544 N.W.2d 258, 269 (Iowa 1995). The IWCC correctly concluded that Gillespie's rheumatoid arthritis is an unscheduled injury and fails to trigger Second Injury Fund liability. We decline to reach the remaining issue as unnecessary to the disposition of the case.

AFFIRMED.