

IN THE COURT OF APPEALS OF IOWA

No. 6-566 / 06-0326
Filed November 16, 2006

SEEDORFF MASONRY, INC.
and ZURICH INSURANCE CO.,
Petitioners-Appellants,

vs.

TIMOTHY GOBB,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Karen A. Romano,
Judge.

An employer appeals the district court's affirmance of the workers'
compensation commissioner's award of benefits to an employee. **AFFIRMED.**

Charles E. Cutler and M. Kathleen Brown of Culter Law Firm, P.C., West
Des Moines, for appellants.

Thomas J. Reilly of Thomas J. Reilly Law Firm, P.C., Des Moines, for
appellee.

Considered by Sackett, C.J., and Vaitheswaran, J., and Nelson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

NELSON, S.J.***I. Background Facts & Proceedings***

Timothy Gobb was employed as an apprentice bricklayer by Seedorff Masonry, Inc. On November 1, 2001, Gobb suffered an abdominal wall hernia due to lifting heavy blocks.¹ Gobb had hernia repair surgery on January 15, 2002. He continued to complain of abdominal pain. Gobb has lifting restrictions to prevent the reoccurrence of an abdominal wall hernia.

In addition, Gobb has a history of depression. Dr. Scott Jennisch diagnosed Gobb with major depressive disorder and pain disorder. Dr. Jennisch stated, "Unquestionably patient's significant pain and ability to work and mounting financial pressures are significant aggravating factors in terms of his present depressive condition."

Gobb filed a claim for workers' compensation benefits, claiming his continuing pain and depressive condition were caused by his work injury in November 2001. After a hearing, a deputy workers' compensation commissioner determined Gobb sustained a hernia injury and a psychological injury on November 1, 2001, as a result of heavy lifting at work. The deputy determined Gobb sustained a forty-five percent industrial disability. The workers' compensation commissioner adopted the deputy's decision.

Seedorff filed a petition for judicial review. The district court found substantial evidence in the record to support the commissioner's decision that Gobb's hernia was work-related. The court also found "[t]he evidence clearly supports the Deputy's findings that Gobb continued to have abdominal pain

¹ This is hernia through the abdominal wall.

problems after the surgical repair of the hernia.” In turn, the court found “Gobb’s depression was materially aggravated due to the pain he continues to experience from the hernia injury, as well as the additional stressors directly attributable to the work injury.” The court affirmed the commissioner’s decision. Seedorff appeals.

II. Standard of Review

Our review is governed by the Iowa Administrative Procedure Act. Iowa Code ch. 17A (2003); *Acuity Ins. v. Foreman*, 684 N.W.2d 212, 216 (Iowa 2004). We review the district court’s decision by applying the standard of chapter 17A to the agency action to determine if our conclusions are the same as those reached by the district court. *University of Iowa Hosp. & Clinics v. Waters*, 674 N.W.2d 92, 95 (Iowa 2004). We may reverse, modify, or grant other relief if a party shows the agency’s action is “[b]ased upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole.” Iowa Code § 17A.19(10)(f).

III. Psychological Injury

The employer claims there is not substantial evidence in the record to support the commissioner’s finding that Gobb’s psychological difficulties were permanently and significantly aggravated by the November 1, 2001, work injury. The employer admits that Gobb’s depression may have been aggravated by pain, but it denies there is evidence his pain was caused by his injury in November 2001. Gobb had a different type of hernia, a hiatal hernia, with

resulting surgery in 2003.² The employer asserts Gobb's continued pain was due to this second hernia.

The commissioner "determined that claimant did sustain the burden of proof by a preponderance of the evidence that he sustained a hernia injury and a psychological injury on November 1, 2001" We find the commissioner's decision is supported by substantial evidence. Gobb complained of abdominal pain continually since the abdominal wall surgery in January 2002, and the commissioner could conclude that his continuing pain related to the November 1, 2001, injury, and not the later hiatal hernia. Dr. Robert Jones, a neurologist, reported Gobb had chronic discomfort in the abdominal hernia site, and this caused him to become depressed. Dr. Wendy Fluegel, a sleep specialist, attributed Gobb's depression to pain and being off work from his injury. Dr. Jennisch, a psychiatrist, found that Gobb's psychiatric impairment was "secondary to his work related pain." There is substantial evidence that Gobb's depression was aggravated by continuing pain due to his work-related injury.

IV. Industrial Disability

The employer contends there is not substantial evidence in the record to support the commissioner's finding that Gobb sustained a forty-five percent industrial disability. The employer again claims that Gobb's abdominal pain and psychological difficulties were not caused by the November 1, 2001, work-related injury. The employer asserts Gobb's symptoms were caused by his later hiatal hernia. It also points out that Gobb has non-work-related problems, including narcolepsy, sinusitis, and chronic headaches.

² A hiatal hernia is a protrusion of the stomach upward toward the esophagus.

Factual findings regarding the award of benefits are within the commissioner's discretion, and so we are bound by the commissioner's findings of fact if they are supported by substantial evidence. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464-65 (Iowa 2004). We have already determined there is substantial evidence in the record to support a finding that Gobb's continuing pain and the aggravation of his depression were as a result of his work-related injury.

We note an employer takes employees 'as is' and, therefore, "takes them subject to any active or dormant health impairment incurred prior to employment." *Bearce v. FMC Corp.* 465 N.W.2d 531, 536 (Iowa 1991). In this case, Gobb has a history of narcolepsy or CNS hypersomnia. If he does not stay physically active he tends to fall asleep. Gobb is unable to read a book or watch television because he falls asleep. His condition caused him to have difficulty in school. Also, he is unable to drive more than short distances. He has been prescribed stimulants, with limited effectiveness. The commissioner properly considered Gobb's condition in reaching an industrial disability rating.

We find substantial evidence in the record to support the commissioner's finding that Gobb had a forty-five percent industrial disability. Gobb is somewhat limited in seeking manual labor jobs due to his lifting restrictions. He is also limited in seeking sedentary jobs due to his narcolepsy.

We affirm the decision of the workers' compensation commissioner.

AFFIRMED.