IN THE COURT OF APPEALS OF IOWA

No. 7-152 / 06-1348
Filed March 28, 2007

SYLVIA LOPEZ,
Petitioner-Appellant,

vs.

IBP., INC.,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge.

Sylvia Lopez appeals from the district court order affirming the Iowa Workers' Compensation Commissioner's decision denying her claim for workers' compensation benefits. **AFFIRMED.**

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

James L. Drury II, Dakota Dunes, South Dakota, for appellee.

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

EISENHAUER, J.

Sylvia Lopez appeals from the district court order affirming the Iowa Workers' Compensation Commissioner's decision denying her claim for workers compensation benefits. She contends the agency's finding that her claim was untimely is not supported by substantial evidence.

We review a district court's review of agency action for correction of errors of law. *Midwest Auto. III, L.L.C. v. Iowa Dep't of Transp.,* 646 N.W.2d 417, 422 (Iowa 2002). On judicial review of agency action, the district court functions in an appellate capacity, applying the standards of Iowa Code section 17A.19 (2001). Iowa Code section 17A.19(10)(f) (2005) provides that, in a contested case, the court shall grant relief from an agency decision if substantial rights of a person have been prejudiced because agency action is unsupported by substantial evidence in the record made before the agency when the record is viewed as a whole. We apply the standards of section 17A.19 to the agency action and determine whether our conclusions are consistent with those of the district court. *Brown v. Quik Trip Corp.,* 641 N.W.2d 725, 727 (Iowa 2002). We affirm if the conclusions are the same; otherwise we reverse. *Hill v. Fleetguard, Inc.,* 705 N.W.2d 665, 669 (Iowa 2005).

On August 3, 2000, Lopez suffered a work-related injury, which she immediately reported to her supervisor. She reported this date of injury to three doctors, a vocational consultant, and during a functional activity evaluation. It is undisputed that Lopez did not suffer a work-related injury on March 19, 2001, and she was not even employed by the appellee on that date.

Lopez filed a claim for benefits on December 3, 2002, well after the section 85.26 (2001) statute of limitations expired. However, she claims the statute of limitations was tolled because she was not aware of the severity of her injury until March 19, 2001. Under the discovery rule, the two-year limitation period does not begin to run until the employee discovers, or should discover in the exercise of diligence, (1) the nature, (2) seriousness, and (3) probable compensable character of the injury or disease. *Swartzendruber v. Schimmel,* 613 N.W.2d 646, 650 (Iowa 2000). The claimant must have actual or imputed knowledge of all three characteristics of the injury or disease before the statute begins to run. *Id.*

We conclude substantial evidence supports the agency's finding that Lopez was aware of the seriousness of her injury on August 3, 2000. She testified that she knew as soon as the event occurred that she had a back injury and that she would not be able to return to her original job as a result. She also testified she did not believe the doctor when he told her the injury was not serious. She refused to return to her regular job as a result of the injury and was reassigned. The evidence shows Lopez was aware of the seriousness of her injury more than two years before she filed her claim. Accordingly, her claim is untimely. We affirm.

AFFIRMED.