

**IN THE COURT OF APPEALS OF IOWA**

No. 7-707 / 07-0162  
Filed December 28, 2007

**MICHAEL E. JOHNSON,**  
Petitioner-Appellant,

**vs.**

**R.R. DONNELLY PRINTING CO., LP,**  
**and ZURICH INSURANCE COMPANY,**  
Respondents-Appellees.

---

Appeal from the Iowa District Court for Polk County, Carla T. Schemmel,  
Judge.

Claimant appeals the ruling on judicial review from his workers'  
compensation action. **AFFIRMED.**

Erik A. Luthens of Luthens Law Offices, P.C., West Des Moines, for  
appellant.

Charles E. Cutler and Stephen J. Brown of Cutler Law Firm, P.C., West  
Des Moines, for appellee.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

**BAKER, J.**

Michael Johnson appeals the ruling on judicial review from his workers' compensation action. Because we conclude the commissioner's findings are supported by substantial evidence in the record, we affirm.

**I. Background and Facts**

Michael Johnson began working for R.R. Donnelly's predecessor, Meredith Printing, in 1973. His duties required a significant amount of lifting and bending. He had ongoing problems with carpal tunnel, which required surgeries in May 1986 and May 1998. Due to complications of esophageal cancer, Johnson left employment with R.R. Donnelly on February 9, 2001.

In the spring of 2001, Johnson notified R.R. Donnelly of his continuing carpal tunnel condition.<sup>1</sup> In May and July 2001, Johnson was seen at Concentra Medical Centers. On May 30, 2001, he reported that the pain had been present for approximately three years, but had worsened over the last several weeks. In August 2001, Johnson was tested and treated by Dr. Jacqueline Stoken. Tests revealed abnormal findings indicating carpal tunnel and cumulative trauma types of problems relative to Johnson's upper extremities.

On August 5, 2003, Johnson filed a petition in arbitration seeking workers' compensation benefits from R.R. Donnelly and its insurer. Following a January

---

<sup>1</sup> The injury report form completed by Johnson lists April 12, 2001, as the notice date, but that date is crossed out and May 15, 2001, filled in. The Deputy Workers' Compensation Commissioner found that the time of injury was February 9, 2001, and that Johnson first reported the injury on May 15, 2001, and therefore failed to give timely notice of injury under Iowa Code section 85.23 (2003). In the appeal decision, the Interim Workers' Compensation Commissioner found that Johnson reported the injury on April 12, 2001; therefore the affirmative defense under section 85.23 failed. The district court found, notwithstanding that some evidence would support a contrary finding, there was substantial evidence to support the notice date of April 12, 2001.

25, 2006 hearing, the deputy commissioner found that Johnson had failed to give timely notice of injury under Iowa Code section 85.23, and that, because he was aware prior to August of 2001 that he had suffered a significant injury at work, Johnson had failed to timely commence an action under section 85.26(1). In the final agency decision affirming the deputy, the commissioner found that Johnson gave timely notice to the employer under section 85.23. The commissioner also found, however, that Johnson “knew the nature, seriousness, and probable compensable character of his work injury . . . on April 12, 2001.” Because Johnson did not file his petition within two years of that date, the commissioner determined that he had failed to timely file his petition under section 85.26(1). The district court affirmed the commissioner on both issues. Johnson appeals.

## II. Merits

“[O]ur review is confined to those propositions relied upon by the appellant for reversal on appeal.” *Hylar v. Garner*, 548 N.W.2d 864, 870 (Iowa 1996) (citing *Richardson v. Neppel*, 182 N.W.2d 384, 390 (Iowa 1970)). The claimant only appears to assert that substantial evidence does not support the commissioner’s findings.

Under chapter 17A of the Iowa Code, the Iowa Administrative Procedures Act, the district court is authorized to review decisions rendered by the industrial commissioner. *Bearce v. FMC Corp.*, 465 N.W.2d 531, 534 (Iowa 1991). When we review a district court decision on the validity of an agency action, we only consider whether the court has correctly applied the law. *Id.* We are bound by the agency’s findings of fact if supported in the record as a whole and will reverse the agency findings only if we determine that substantial evidence does not

support them. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). Under the substantial evidence standard,

we determine whether there is substantial evidence in the record as a whole to support the decision of the agency . . . . Evidence is not unsubstantial merely because it would have supported contrary inferences. Evidence is substantial when a reasonable mind could accept it as adequate to reach the same finding.

*Bearce*, 465 N.W.2d at 534 (citations omitted). The definitive question is not whether the evidence supports a different finding, but whether the evidence supports the findings that were actually made. *Meyer*, 710 N.W.2d at 218.

#### **A. Notice**

Pursuant to Iowa Code section 85.23, a claimant must give the employer adequate and proper notice of an alleged work injury within ninety days of the date of the injury. The commissioner concluded that Johnson had provided R.R. Donnelly with timely notice of his work-related injury. Although both parties discuss whether Johnson gave timely notice, we need not address this issue because the statute of limitations issue disposes of this case.

#### **B. Statute of Limitations**

Johnson contends there is not substantial evidence in the record to support a finding that he knew or should have known that these bilateral upper extremity problems would have a permanent adverse impact on his employment or employability prior to August 14, 2001, when he gained knowledge of the results of the tests performed by Dr. Stoken. Therefore, he argues, his petition filed on August 5, 2003, is timely.

A petition for workers' compensation benefits must be filed "within two years from the date of the occurrence of the injury for which benefits are

claimed.” Iowa Code § 85.26(1); *Swartzendruber v. Schimmel*, 613 N.W.2d 646, 649 (Iowa 2000). The purpose of this statute of limitations is to give the claimant time to investigate the claim and establish grounds to file a petition and to give the employer reasonable closure to potential liability. *Swartzendruber*, 613 N.W.2d at 649. The statute of limitations period does not commence until the claimant, acting as a reasonable person, recognizes its “nature, seriousness and probable compensable character.” *Herrera v. IBP, Inc.*, 633 N.W.2d 284, 288 (Iowa 2001) (quoting *Orr v. Lewis Cent. Sch. Dist.*, 298 N.W.2d 256, 257 (Iowa 1980)).

The question of when a claimant knew, or should have known, about the traumatic event and its work-related nature is a fact issue determinable by the industrial commissioner and binding on us if supported by substantial evidence in the record.

*Gates v. John Deere Ottumwa Works*, 587 N.W.2d 471, 475 (Iowa 1998) (citations omitted).

In this case, the commissioner made the following findings of fact:

The record convincingly establishes that claimant has had long-standing bilateral upper extremity complaints. Claimant has had surgeries on both of his upper extremities prior to his injury on February 9, 2001. Claimant testified that he knew that his bilateral upper extremity injuries could be serious because he had those same or similar types of problems and had required surgeries in the past. Claimant testified that he knew that he had never fully recovered from his prior surgeries to his upper extremities. Claimant testified that he knew that his bilateral upper extremity injuries were a serious problem and that the condition could require surgery. Claimant testified that as early as February 9, 2001, claimant realized that his work injury could affect his ability to work – and in fact his work was causing him increased pain. Claimant also testified that when he left work on February 9, 2001, he knew that the injury was caused by his work and he knew that such an injury was compensable under the workers’ compensation system. I find that claimant knew the nature, seriousness, and probable compensable character of his work injury when he filed his notice of

injury with the employer on April 12, 2001. As claimant failed to file his petition within two years of April 12, 2001, he failed to timely file his petition as required by Iowa Code section 85.26(1).

The commissioner's findings are supported by substantial evidence. We therefore affirm.

**AFFIRMED.**

Vogel, J concurs. Huitink, P.J., concurs in result only.