

IN THE COURT OF APPEALS OF IOWA

No. 8-259 / 07-1824

Filed May 29, 2008

**THE DEXTER COMPANY AND
EMC INSURANCE COMPANIES,**
Petitioner-Appellee,

vs.

STEVEN CONNELLY,
Respondent-Appellant.

Appeal from the Iowa District Court for Jefferson County, Daniel P. Wilson,
Judge.

An employee appeals the district court's decision finding his workers' compensation claim was barred by the statute of limitations. **REVERSED AND REMANDED.**

Nathaniel R. Boulton of Hedberg Law Firm, P.C., Des Moines, for appellant.

Steven E. Ort of Bell, Ort & Liechty, New London, for appellees.

Considered by Mahan, P.J., and Eisenhauer, J., and Beeghly, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

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

Steven Connelly was employed by the Dexter Company as a manual laborer. Connelly injured his lower back on April 16, 2003, during the course of his employment. He informed the employer of the incident that day.

On April 22, 2003, Dr. David Larson diagnosed him with low back strain and placed him on a twenty-pound lifting restriction. An MRI on May 2, 2003, showed he had lower lumbar degenerative disc and facet disease with bulging annulus and spinal stenosis on several levels. Connelly had epidural steroid injections, which gave him only temporary relief.

The employer closed the plant for three weeks in July 2003, and Connelly testified he believed he would get better after having time off. His condition did not improve, however. On August 6, 2003 he saw a specialist, Dr. Chad Abernathy, who diagnosed him with chronic lumbosacral strain. Dr. Abernathy recommended conservative treatment. Connelly continued to have problems with his back. He was discharged from his employment on February 2, 2004, because the employer had no work available within his restrictions.

Connelly filed a claim for workers' compensation benefits on June 3, 2005. The employer asserted Connelly's claim was barred by the two-year statute of limitations found in Iowa Code section 85.26(1) (2005). After a hearing, the deputy determined Connelly had "a single, traumatic injury to his low back on April 16, 2003, consisting of an aggravation of an underlying degenerative and congenital back condition." The deputy applied the discovery rule and concluded

that Connelly “did not become aware that his back condition was serious enough to have a permanent adverse impact on his employment or employability until August 6, 2003.” The deputy found Connelly’s claim was not barred by the statute of limitations. Connelly was found to have a sixty percent industrial disability. The workers’ compensation commissioner affirmed and adopted the deputy’s decision.

The employer filed a petition for judicial review. The district court found Connelly knew, or should have known, he had a serious back injury at the latest by May 2, 2003, when he had the MRI. The court concluded, “Connelly’s failure to file his claim in a timely fashion was not the result of his lack of knowledge that an injury had occurred, or that it was having an adverse effect on his work.” The court found Connelly’s claim was barred by the statute of limitations and reversed the decision of the commissioner. Connelly appeals.

II. Standard of Review

We review decisions of the workers’ compensation commissioner for the correction of errors at law. *Chapa v. John Deere Ottumwa Works*, 652 N.W.2d 187, 189 (Iowa 2002). We are bound by the commissioner’s factual findings if those findings are supported by substantial evidence in the record. *Perkins v. HEA of Iowa, Inc.*, 651 N.W.2d 40, 43 (Iowa 2002). Evidence is substantial if a reasonable mind would find it adequate to reach the same findings. *Murillo v. Blackhawk Foundry*, 571 N.W.2d 16, 17 (Iowa 1997). We consider not whether the evidence supports a different finding, but whether it supports the finding the commissioner actually made. *Id.*

III. Merits

Connelly contends the district court erred in reversing the decision of the commissioner because the commissioner's decision was supported by substantial evidence and his application of the law to the facts was not an abuse of discretion. Connelly states he did not know of the seriousness of his injury until August 6, 2003, when he saw a specialist for his back.

Section 85.26(1) provides that an action for workers' compensation benefits must be "commenced within two years from the date of the occurrence of the injury for which benefits are claimed" For purposes of the statute, an injury occurs when it is discovered. *Ranney v. Parawax Co.*, 582 N.W.2d 152, 154 (Iowa 1998).

"Under the discovery rule, the time within which a proceeding must be commenced does not begin to run until the claimant, as a responsible person, should recognize the nature, seriousness, and probable compensable character of the condition." *Johnson v. Heartland Specialty Foods*, 672 N.W.2d 326, 328 (Iowa 2003). All three elements must be present before the statute begins to run. *Perkins*, 651 N.W.2d at 45. A claimant has the burden to show the deadline for commencing a case should be extended due to the discovery rule. *Chapa*, 652 N.W.2d at 190.

"Knowledge is imputed to a claimant when he gains information sufficient to alert a reasonable person of the need to investigate." *Ranney*, 582 N.W.2d at 155. "As of that date he is on inquiry notice of all facts that would have been disclosed by a reasonably diligent investigation." *Id.* A claimant's need to

investigate “arises when a reasonable person has knowledge of the *possible* compensability of the condition.” *Swartzendruber v. Schimmel*, 613 N.W.2d 646, 650 (Iowa 2000). A claimant has two years to complete the investigation and establish sufficient grounds to file a petition. See *Chapa*, 652 N.W.2d at 190.

A claimant is not required to have exact knowledge of the seriousness of an injury. *Swartzendruber*, 613 N.W.2d at 650. “[I]f it is reasonably possible an injury is serious enough to be compensable as a disability, the seriousness component of the test is satisfied.” *Id.* at 651. A claimant is not required to have the opinion of a specialist to confirm the seriousness of an injury before knowledge of the injury’s seriousness is imputed to the claimant. *Id.*

The issue of when a reasonable person would recognize the seriousness of an injury or disease is a fact-specific inquiry, which must satisfy a test of reasonableness. *Id.* The question of when a claimant knew, or should have known, about the serious nature of an injury is a fact issue determinable by the commissioner and binding on appeal if supported by substantial evidence in the record. *Gates v. John Deere Ottumwa Works*, 587 N.W.2d 471, 475 (Iowa 1998).

The commissioner found Connelly did not become aware of the seriousness of his back condition until August 6, 2003, when he saw a specialist. Connelly testified that prior to August 2003, he received medical advice that he would recover and return to normal duties in his job. The commissioner found the medical records showed that on July 8, 2003, Connelly was informed his

work restrictions would be of an indefinite duration. The commissioner noted that on August 6, 2003, Dr. Abernathy told Connelly his back condition was “chronic.”

We conclude the commissioner’s decision is supported by substantial evidence. A medical report dated June 3, 2003, by Dr. Larson notes Connelly thought he could make a complete recovery after he had time off in July when the factory closed. Dr. Larson prescribed medication, kept Connelly on lifting restrictions, and stated, “will see if we can get the back strain to settle down.” It was only after Connelly had two epidural steroid injections, in May and June of 2003, and Connelly had an incomplete resolution of his symptoms, that Dr. Larson recommended he see a specialist.

Although the evidence could support a contrary conclusion, as found by the district court, that based on the results of an MRI taken on May 2, 2003, Connelly should have known he had a serious condition, we do not consider whether the evidence supports a different finding, but whether it supports the finding the commissioner actually made. *See Murillo*, 571 N.W.2d at 17.

Because there is substantial evidence in the record to support the commissioner’s decision, we reverse the decision of the district court that found Connelly’s petition was barred by the statute of limitations found in section 85.26(1). We remand the case to the commissioner for reinstatement of the commissioner’s decision.

REVERSED AND REMANDED.