IN THE COURT OF APPEALS OF IOWA

No. 9-896 / 08-1507
Filed January 22, 2010

QUAKER OATS COMPANY,
Plaintiff-Appellee,

vs.

ROGER MAIN,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

An employee appeals from a district court judicial review ruling reversing in part the appeal decision of the workers' compensation commissioner. **AFFIRMED.**

Bob Rush and Gary B. Nelson of Rush & Nicholson, P.L.C., Cedar Rapids, for appellant.

Mark A. Woollums and Edward J. Rose of Betty, Neuman & McMahon, P.L.C., Davenport, for appellee.

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

DOYLE, J.

Roger Main appeals from a district court judicial review ruling reversing in part the appeal decision of the workers' compensation commissioner. He claims the court erred in (1) determining that his constitutional challenge to Iowa Code section 85.34(7) (2005) under the single-subject requirement of article III, section 29 of the Iowa Constitution was untimely and (2) reversing the commissioner's determination that section 85.34(7) was inapplicable to his workers' compensation claim because his prior work injuries occurred before the statute's effective date. We affirm the judgment of the district court.

I. Background Facts and Proceedings.

Main began working for Quaker Oats in the packaging department after he graduated from high school in 1977. He injured his left shoulder at home in October 2002 and then reinjured it at work in January 2003 while pulling cartons off a pallet. Later that same year, he learned that he suffered from work-related hearing loss and tinnitus. Main received workers' compensation benefits from Quaker Oats for those injuries.

In January 2004, Main injured his right shoulder after slipping on ice at his home. He underwent rotator cuff surgery in September and was able to return to work without restrictions in December. Unfortunately, Main reinjured his right shoulder a couple of days after he returned to work when he was assigned to "tank supply," which required him to move tanks holding around 2500 pounds of instant oatmeal.

Main filed a petition with the Iowa Workers' Compensation Commissioner in January 2006, alleging he suffered a work-related injury to his right shoulder

on December 22, 2004. Following a hearing, the deputy workers' compensation commissioner denied Main's claim, finding he had not "sustain[ed] an injury arising out of and in the course of his employment." Main appealed, and the workers' compensation commissioner reversed the deputy's decision.

The commissioner found Main had suffered a work-related injury to his right shoulder entitling him to permanent partial disability and healing period benefits. The commissioner then addressed Quaker Oats' request for an apportionment and credit under Iowa Code section 85.34(7)(a) and (b), which govern benefits for successive disabilities.[1] Based on Main's prior work injuries

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[1] Section 85.34(7) was amended by the legislature in an extraordinary legislative session in 2004. *See* 2004 Iowa Acts ch. 1001. It now provides:

> 7. *Successive disabilities*.
>
> *a.* An employer is fully liable for compensating all of an employee's disability that arises out of and in the course of the employee's employment with the employer. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with a different employer or from causes unrelated to employment.
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> *b.* If an injured employee has a preexisting disability that was caused by a prior injury arising out of and in the course of employment with the same employer, and the preexisting disability was compensable under the same paragraph of section 85.34, subsection 2, as the employee's present injury, the employer is liable for the combined disability that is caused by the injuries, measured in relation to the employee's condition immediately prior to the first injury. In this instance, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer.
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> If, however, an employer is liable to an employee for a combined disability that is payable under section 85.34, subsection 2, paragraph "*u*", and the employee has a preexisting disability that causes the employee's earnings to be less at the time of the present injury than if the prior injury had not occurred, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer minus the percentage that the employee's earnings are less at the time of the present injury than if the prior injury had not occurred.

Iowa Code § 85.34(7)(a), (b).

in 2003, the commissioner determined Quaker Oats proved "that a credit for all industrial disability payments paid to this claimant . . . may be justified." The commissioner nevertheless denied Quaker Oats' request for such a credit due to the effective date of the amendments to section 85.34, which is as follows: "2004 amendments to subsection 2, paragraph u, and adding subsection 7 take effect September 7, 2004, and *apply to injuries occurring on or after that date*." *See* 2004 Iowa Acts ch. 1001, § 18 (emphasis added). The commissioner reasoned:

> The specific use of the plural "injuries" means the first and second injuries must occur after the date set by the legislature. Furthermore, it is noted that Iowa Code section 4.5 requires that a change in the law be applied prospectively, unless the legislature specifically requires a retrospective application.
>
> Therefore, it is concluded that because the first injuries for which [Quaker Oats] seeks a credit occurred prior to September 7, 2004, [Quaker Oats] is not entitled to a credit.

The commissioner did not address a constitutional challenge Main raised to the statute, noting that "[a]dministrative agencies cannot decide issues of constitutional validity of a statute." *See Salsbury Labs. v. Iowa Dep't of Envtl. Quality*, 276 N.W.2d 830, 836 (Iowa 1979) ("Agencies cannot decide issues of statutory validity.").

Quaker Oats filed a petition for judicial review, challenging the agency's award of benefits and its failure to grant its request for an apportionment and credit under section 85.34(7)(a) and (b). Main responded, arguing in relevant part that the agency correctly determined the statute did not apply in this case due to its effective date. In the alternative, he argued section 85.34(7) was unconstitutional under the single-subject requirement of article III, section 29 of the Iowa Constitution.

Following a hearing, the district court affirmed the agency's determination that Main's right shoulder injury arose out of and in the course of his employment at Quaker Oats. The court rejected Main's single-subject challenge to section 85.34(7) as untimely because "Main did not lodge a challenge to section 85.34(7) before its codification," and reversed the agency's determination that the statute did not apply to Main's claim, finding the

> term "injuries" as used in the postscript [to section 85.34(7)] is in reference to all injuries that may be suffered by any number of workers' compensation claimants generally, and that this implies that only one injury for a specific claimant, the successive injury, need occur after the effective date to warrant the statute's application.

The court remanded the case to the agency so that it could address Quaker Oats' claim under section 85.34(7). Main appeals.

II. Scope and Standards of Review.

The Iowa Administrative Procedure Act, Iowa Code chapter 17A, governs the scope of our review in workers' compensation cases. Iowa Code § 86.26; *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). "Under the Act, we may only interfere with the commissioner's decision if it is erroneous under one of the grounds enumerated in the statute, and a party's substantial rights have been prejudiced." *Meyer*, 710 N.W.2d at 218. The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002). In reviewing the district court's decision, we apply the standards of chapter 17A to determine whether our conclusions are the same as those reached by the district court. *Clark v. Vicorp Rests., Inc.*, 696 N.W.2d 596, 603 (Iowa 2005).

III. Discussion.

A. Timeliness of Single-Subject Challenge.

Article III, section 29 of the Iowa Constitution provides in part: "Every act shall embrace but one subject, and matter properly connected therewith; which shall be expressed in the title." Main argues the individual provisions of the bill that contained the challenged amendments to section 85.34(7), House File 2581,[2] do not relate to the same subject, thus violating the single-subject requirement of article III, section 29. We agree with the district court that Main's constitutional challenge to the statute is not timely.

Our supreme court has held on multiple occasions "that codification of legislation cures any defect in subject matter or title." *Iowa Dep't of Transp. v. Iowa Dist. Ct.*, 586 N.W.2d 374, 376 (Iowa 1998); *accord State v. Kolbet*, 638 N.W.2d 653, 661 (Iowa 2001); *State v. McCright*, 569 N.W.2d 605, 607 (Iowa 1997); *Tabor v. State*, 519 N.W.2d 378, 380 (Iowa 1994). This rule was first announced in *State v. Mabry*, 460 N.W.2d 472, 475 (Iowa 1990), in which our supreme court explained that

> most states have constitutional provisions like article III, section 29 of the Iowa Constitution. In a number of these states, courts have held that codification of the challenged legislation cures a constitutional defect in title or subject matter.
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> The rule is stated this way:

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[2] The bill contained nine divisions, which included: (1) The Endow Iowa Grants Program; (2) statutes governing supersedeas bonds; (3) workers' compensation law; (4) the Iowa Consumer Credit Code; (5) the Loan and Credit Guarantee Program; (6) interest earned on the Unemployment Compensation Reserve Fund; (7) marketing strategies to expand and stimulate the state economy; (8) accelerated bonus depreciation and expensing allowance for businesses; and (9) re-creation of the Grow Iowa Values Board, the Economic Development Marketing Board, and the Loan and Credit Guarantee Advisory Board. *Godfrey v. State*, 752 N.W.2d 413, 416-17 (Iowa 2008) (citing 2004 Iowa Acts ch. 1001).

> Although an act, as originally passed, was unconstitutional because it contained matter different from that expressed in its title, or referred to more than one subject, it becomes, if otherwise constitutional, valid law on its adoption by the legislature and incorporation into a general revision or code.
>
> We think the rule is fair to all concerned, and we adopt it. The rule strikes a balance between the salutary purposes of the single-subject rule and the importance of upholding the constitutionality of new legislation.

(Internal citations omitted.)

Main urges us to either "limit the boundaries of the *Mabry* rule or alternatively reconsider [the] holding in *Mabry*." This court is, however, obligated to follow our supreme court's precedent. *See McElroy v. State*, 703 N.W.2d 385, 393 (Iowa 2005) (noting the court of appeals has "understandably . . . declined to tinker with [supreme court] precedents" on past occasions); *State v. Eichler*, 248 Iowa 1267, 1270, 83 N.W.2d 576, 578 (1957) ("If our previous holdings are to be overruled, we should ordinarily prefer to do it ourselves."); *State v. Hastings*, 466 N.W.2d 697, 700 (Iowa Ct. App. 1990) ("We are not at liberty to overturn Iowa Supreme Court precedent.").

We also disagree with Main that "an aggrieved individual like [himself] is left without even a finite date when a challenge would have to be made under a broad reading of the *Mabry* rule." *Mabry* clearly provides the timeframe within which a challenge under article III, section 29 may be made:

> Section 14.15 [now section 2B.12(1)] provides a window of time measured from the date legislation is passed until such legislation is codified. During this window of time, the legislation may be challenged as violative of article III, section 29 of the Iowa Constitution. Absent a successful challenge during this period of time, the new legislation, if it is otherwise constitutional, becomes valid law. This is so even though the way the new legislation was passed may have violated article III, section 29 of the Iowa Constitution. And an article III, section 29 challenge is barred even

> though future litigants may claim they were in no position to make such a challenge before codification.

460 N.W.2d at 475.

A litigant with two prior work-related injuries did raise a single-subject challenge to section 85.34(7) in *Godfrey*, 752 N.W.2d at 428, but our supreme court held she did not have standing to assert such a challenge because she had not yet suffered a successive injury. As the court recognized in *Kolbet*, 638 N.W.2d at 661, the time limitation in *Mabry*

> means that the window of opportunity for challenging a statute on this ground is entirely fortuitous because persons are not motivated to challenge a statute until they are placed in a position in which the statute adversely affects them. Nevertheless, this is an inescapable conclusion of the *Mabry* doctrine.

We therefore reject Main's argument that "[e]ven if the rule was fair to the *Mabry* litigants, who did not challenge [the statute] until nine years after passage, it is hardly fair to Main and other similarly situated litigants."

The amendments to section 85.34(7) were enacted and made effective on September 7, 2004. *See* 2004 Iowa Acts ch. 1001; *Godfrey*, 752 N.W.2d at 416. The legislation was codified in the 2005 Iowa Code. Main did not file his workers' compensation petition until January 2006. His single-subject challenge to section 85.34(7) is thus untimely. We decline his request to nevertheless reach the merits of his challenge "by recognizing the issue involves a matter of great public importance." *See Godfrey*, 752 N.W.2d at 428 ("In the broad scheme of constitutional violations, the [single-subject] constitutional issue presented in this case is not one of great public importance. . . .").

B. Applicability of Statute.

This brings us to Main's final claim on appeal: whether the district court erred in reversing the commissioner's determination that section 85.34(7) was inapplicable to Main's workers' compensation claim because his prior work injuries occurred before the statute's effective date. We agree with the district court that the commissioner's determination that the statute did not apply was in error. *See Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 330 (Iowa 2005) ("The interpretation of workers' compensation statutes and related case law has not been clearly vested by a provision of law in the discretion of the agency. Accordingly, this court is free to substitute its judgment de novo for the agency's interpretation of law.").

As we previously indicated, the legislation enacting the amendments to section 85.34(7) provided the "2004 amendments to subsection 2, paragraph u, and adding subsection 7 take effect September 7, 2004, and apply to injuries occurring on or after that date." Iowa Code § 85.34(7) (citing 2004 Acts ch. 1001, § 18). We fully agree with the district court's reasoning that

> [t]o say . . . the term "injuries" as used in the applicability postscript to section 85.34 is in specific reference to both an initial and successive injury as described *only* in subsection 7 completely ignores the postscript's specific reference to section 85.34(2)(u) and is contrary to logic. A far more reasonable interpretation would be that the term "injuries," as utilized by the legislature, is in reference to all injuries that may be sustained by any number of claimants generally following the September 7, 2004 effective date, meaning that any disability determination based upon an injury occurring after this date may be affected by the statute. Such an interpretation would be in accord with expressed legislative intent and is further supported by the fact that section 85.34(7), by its terms, only affects the amount of compensation that is payable for a subsequent *injury*.

This conclusion is supported by our supreme court's recent decision in *Drake University v. Davis*, 769 N.W.2d 176, 184 (Iowa 2009), where an employee suffered an injury in July 2002 for which she received workers' compensation benefits from her employer. She then suffered another injury on September 14, 2004, which she again sought benefits for from the same employer. In addressing the employer's claim that the agency erred in failing to apportion benefits under section 85.34(7), the supreme court stated:

> We generally do not apportion the benefits from two successive work-related injuries without a statute allowing us to do so. Therefore, the workers' compensation statutes control the apportionment of benefits.
>
> Presently, Iowa Code section 85.34(7) governs the apportionment of benefits. Section 85.34(7) became effective September 7, 2004, and applied to all injuries occurring on or after its effective date. *The injury that caused Davis's permanent total disability occurred on September 14, 2004. Thus, the resolution of the apportionment issue requires an interpretation of section 85.34(7).*

Drake Univ., 769 N.W.2d at 184 (internal citations omitted) (emphasis added). The district court was therefore correct in concluding that only the successive injury must occur after the effective date of the statute in order to trigger its application.

We do not believe this interpretation leads to a retrospective application of the statute, as the commissioner's decision suggested and Main urges on appeal. "A statute is presumed to be prospective in its operation unless expressly made retrospective." Iowa Code § 4.5. In implementing that principle, our supreme court has explained:

> The legislature may not extinguish a right of action that has already accrued to a claimant. A cause of action accrues when an aggrieved party has a right to institute and maintain a lawsuit.

> When a cause of action has accrued, the party owning the action has a vested interest in it.
>
> New legislation that takes away a cause of action, which previously existed either through legislation or the common law or creates new rights, is substantive legislation. Because substantive legislation cannot extinguish vested rights, such legislation can only operate prospectively.

Dolezal v. Bockes, 602 N.W.2d 348, 351 (Iowa 1999) (internal citations omitted); *see also Anderson Fin. Servs., L.L.C. v. Miller*, 769 N.W.2d 575, 578-79 (Iowa 2009) ("A retrospective act operates 'on transactions that have occurred or rights and obligations that existed before passage of the act.'" (citation omitted)).

Main did not have a right to institute and maintain a claim for benefits from two successive work-related injuries until his right shoulder injury occurred, despite the existence of his prior injuries. Thus, application of section 85.34(7) to that successive injury, which occurred after the effective date of the statute, does not impermissibly extinguish any vested rights. *See, e.g.*, *Godfrey*, 752 N.W.2d at 423 (determining employee who had suffered two prior work-related injuries did not have standing to challenge section 84.34(7) because she had not yet suffered another covered injury).

IV. Conclusion.

We agree with the district court that Main's single-subject challenge to section 85.34(7) is untimely and that the agency erred in determining the statute did not apply to Main's claim due to its effective date. The judgment of the district court reversing the agency's determination that section 85.34(7) did not apply to Main's claim is therefore affirmed.

AFFIRMED.