



Iowa General Assembly

2015 Legal Updates

Legislative Services Agency – Legal Services Division

<https://www.legis.iowa.gov/>

Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

WORKERS' COMPENSATION—SUCCESSIVE INJURIES—DIFFERENT EMPLOYERS—NO APPORTIONMENT

Filed by the Iowa Supreme Court
April 3, 2015

Roberts Dairy v. Billick

No. 13-1009, 861 N.W.2d 814 (2015)

[http://www.iowacourts.gov/About the Courts/Supreme Court/Supreme Court Opinions/Recent Opinions/20150403/13-1009.pdf](http://www.iowacourts.gov/About%20the%20Courts/Supreme%20Court/Supreme%20Court%20Opinions/Recent%20Opinions/20150403/13-1009.pdf)

Facts. An employee, Grady Billick, received workers' compensation benefits for a series of work-related injuries that occurred during employment with multiple employers. In 1985, he sustained a whole body injury to his back while working in Iowa and settled his workers' compensation claim under Iowa law based on 85 percent industrial disability (includes compensation for physical disability involving the whole body plus loss of earning capacity due to that disability). In 1993, he sustained whole-body injuries while working in Missouri and settled his workers' compensation claim under Missouri law based on 18.5 percent permanent partial disability of his whole body.

Billick began working at Roberts Dairy in Iowa in 2001 and suffered four work-related injuries, in March and June 2004, and in 2006 and 2007. His four workers' compensation claims against Roberts Dairy were consolidated and he was awarded permanent partial disability benefits for a scheduled injury, i.e., a loss of function of 12 percent of his left lower extremity (includes compensation pursuant to a statutory schedule for physical disability only due to an injury to a specified body part) and 35 percent for industrial disability.

Issue. Whether the Iowa Workers' Compensation Commissioner (Commissioner) was correct in concluding that Roberts Dairy's liability for permanent partial disability benefits to a claimant who sustained successive work-related whole-body injuries with different employers should not be apportioned.

Holding. The Commissioner correctly concluded that Roberts Dairy is not entitled to apportionment of its liability for permanent partial disability benefits to a claimant who sustained successive work-related whole-body injuries with different employers. The General Assembly's 2004 amendments to Iowa Code section 85.34 did not modify the fresh-start rule regarding the apportionment or reduction of liability under these circumstances.

Workers' Compensation Commission Hearing. At the hearing, Roberts Dairy contended that its liability for industrial disability should be apportioned because Billick also suffered industrial disability and had already received compensation as a consequence of two separate injuries previously sustained while working for other employers. The Commissioner rejected that argument and concluded that the amendments to Iowa Code section 85.34 did not alter the fresh-start or full-responsibility rules in cases involving successive disabilities resulting in industrial disability with different employers. In reaching this conclusion, the Commissioner observed that new Iowa Code section 85.34(7)(b) expressly altered those rules as they related to successive disabilities sustained with the same employer by establishing a formula for apportioning disability only in that situation.

Judicial Review of Agency Decision. On judicial review, the Iowa District Court rejected the Commissioner's interpretation of the statute. The district court found that the Commissioner's formulation of a modified fresh-start rule erroneously exposed Roberts Dairy to liability in violation of new Iowa Code section 85.34(7)(a), which provides that an employer is not liable for compensation of an employee's preexisting disability that arose from employment with a different employer.

Appeal.

Statutory Background and Analysis.

Statutory Background. The Supreme Court (Court) stated that resolution of the issue presented in this case depends on the legal effect of the General Assembly's 2004 amendments to Iowa Code section 85.34. The 2004 amendments provided that the General Assembly expressly intended to modify the fresh-start and full-responsibility rules of law announced by the Court in a series of judicial precedents. However, the legislation also clearly emphasized that the General Assembly did not intend any change to existing law that was not expressly provided for in the enactment.

Prior to the 2004 amendments, the fresh-start rule, as set forth in Iowa case law, provided that when an employee is hired, the employer takes that employee subject to any active or dormant health impairments incurred prior to this employment. If an employee sustains a new work-related injury after commencing work for a new employer, any resulting loss of earning capacity is measured as a diminution of the new, complete earning capacity that existed at the time employment with the new employer commenced.

A corollary of the fresh-start rule was the full-responsibility rule. This rule provided that when there are two successive work-related unscheduled injuries (involving whole-body disabilities), the employer liable for the second injury is generally held liable for the entire disability resulting from the combination of the prior disability and the present injury.

The rationale for applying the full-responsibility rule and not allowing apportionment of liability under those circumstances, is that when a successive injury is sustained by an employee with a different employer, the earning capacity possessed by the employee when the injury occurred is considered to have been reset or refreshed by market forces at the time the employee obtained the new employment. Application of the full-responsibility rule in whole-body disability situations is based on the premise of a fresh start with respect to industrial disability.

In a special session of the General Assembly held in 2004, two amendments to Iowa Code section 85.34 were adopted. At the time the 2004 amendments were enacted, Iowa case law applied the fresh-start and full-responsibility rules to claims for industrial disability arising from successive work-related injuries and did not apportion liability whether the injuries were sustained while working for the same employer or for different employers.

The first amendment was to Iowa Code section 85.34(2)(u) and provided that compensation for permanent partial disability for whole-body injuries should be paid in the amount that the "reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred." The second amendment added Iowa Code section 85.34(7), which deals with an employer's liability for successive disabilities of an employee caused by successive injuries with the same or a different employer.

Analysis. The Court began with the presumption that the General Assembly knew the preexisting law pertaining to the fresh-start and full-responsibility rules when the 2004 amendments were drafted and passed.

The Court stated that while the 2004 amendments expressly provided a mechanism for apportioning an employee's loss of earning capacity sustained from successive injuries with the same employer, the legislation did not prescribe how such a credit or offset of disability benefits should be made in cases of successive unscheduled injuries with different employers. In addition, the General Assembly's statement of purpose when it adopted the 2004 amendments specifically recognized that market forces reevaluate a person as a working unit each time that person competes in the competitive labor market causing a fresh start and a reset of the employee's earning capacity with each change of employment.

The Court concluded that under the modified fresh-start rule contained in the 2004 amendments, a new employer is not liable for disability arising out of unscheduled injuries sustained during past employment with a former employer. Instead, the new employer's liability is measured by comparing the employee's earning capacity when the injury occurred with the reduction in earning capacity caused by the disability. The earning capacity when the injury occurred is a refreshed capacity provided by the fresh-start rule.

The Court upheld the Commissioner's decision and opined that if the General Assembly had intended to eliminate the fresh-start rule and require apportionment of successive injuries producing permanent partial disability in the course and scope of employment with different employers, it would have done so expressly. The Court observed that the General Assembly specifically disavowed any intent to change Iowa Code chapter 85 except as expressly provided in the amendments.

LSA Monitor: Ann Ver Heul, Legal Services, (515) 281-3837.