BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ALEVIA GREEN, Claimant, vs. NORTH CENTRAL IOWA REGIONAL SOLID WASTE AGENCY, Employer, and IMWCA, Insurance Carrier, Defendants.	File No. 5042527 APPEAL DECISION

Defendants North Central Iowa Regional Solid Waste Agency, employer, and its insurer, IMWCA, filed a motion for summary judgment and supporting documentation in this matter on September 10, 2018. Claimant Alevia Green filed a resistance to the motion for summary judgment on October 2, 2018. On October 11, 2018, the deputy workers' compensation commissioner filed a ruling sustaining defendants' motion for summary judgment. Claimant appeals from that ruling and defendants respond to the appeal.

A brief review of the procedural background of this case is necessary. On October 6, 2014, this case proceeded to hearing in arbitration. At the October 6, 2014, hearing, the parties stipulated claimant sustained a work-related injury resulting in temporary disability, though they disputed whether claimant's injury caused any permanent disability or additional periods of temporary disability.

In an arbitration decision issued on December 19, 2014, a deputy workers' compensation commissioner determined claimant did not meet her burden of establishing that her work injury caused any permanent impairment or loss of earning capacity. Specifically, the deputy commissioner found "claimant suffered mild (at most) brain injury and some relatively minor physical injury, all of which *resolved* without any permanency." (Arbitration Decision, page 4) (emphasis added) The deputy commissioner also determined claimant was not entitled to additional temporary benefits or medical benefits beyond those already paid by defendants. The deputy commissioner noted the period of temporary benefits sought by claimant was "long after

the claimant's temporary disability was *resolved*" and that defendants had "reimbursed the claimant for all reasonable medical expenses incurred in the treatment of the injury." (Arb. Dec. pp. 5-6) (emphasis added) Claimant appealed.

On April 11, 2016, the commissioner issued an appeal decision affirming the arbitration decision in its entirety with some additional analysis. The commissioner specifically affirmed the deputy commissioner's finding that claimant failed to carry her burden of proof that her work injury caused permanent disability. The commissioner also specifically affirmed the deputy commissioner's finding that defendants were not responsible for any additional medical care or treatment beyond what had already been paid. (Appeal Decision, p. 20) Based on the fact that neither claimant's own independent medical examiner nor any of her authorized treating medical providers were recommending additional treatment for her work injury, the commissioner added that "defendants are not responsible for any ongoing or future medical care or treatment." Lastly, because the deputy commissioner's finding that claimant was not entitled to additional temporary benefits was not appealed, it was not addressed by the commissioner. Claimant then filed a petition for judicial review.

On May 1, 2017, the District Court issued its ruling. The court affirmed the commissioner's decision but for his findings regarding claimant's claims for reimbursement of past medical expenses. That portion of the decision was reversed and remanded.

In a remand decision dated March 8, 2018, the commissioner found defendants liable for past medical charges incurred with Trinity Regional Medical Center for the date of service of April 30, 2012; with The Iowa Clinic, UnityPoint Clinic, and Iowa Methodist Medical Center for dates of service from April 30, 2012 through May 2, 2012; and for UnityPoint Clinic billings for the date of service of May 17, 2012. The commissioner determined defendants were liable for no other charges.

Defendants asserted they are entitled to summary judgment on claimant's review-reopening petition because claimant "suffered no disability that could be reviewed in a review-reopening proceeding." In her resistance to the motion for summary judgment, claimant asserts she has seen a number of healthcare providers since the original hearing on October 6, 2014, and this new treatment raises a factual issue regarding whether her condition has worsened or developed into a permanent disability.

In essence, claimant asserts there is a factual dispute regarding whether she sustained a worsening in condition, and defendants assert the existence or non-existence of a worsening in condition is irrelevant because claimant is precluded, as a matter of law, from seeking review-reopening given the findings in claimant's underlying petition in arbitration.

Rule 876 IAC 4.35 makes Iowa Rules of Civil Procedure 1.981 through 1.983 applicable to motions for summary judgment before this agency.

Summary judgment should be rendered when the record before the court shows that no genuine issue exists as to any material fact and that the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); Suss v. Schammel, 375 N.W.2d 252, 254 (Iowa 1985); Brown v. Monticello State Bank, 360 N.W.2d 81, 83-84 (Iowa 1984).

The burden of showing there is no genuine issue of material fact is upon the party moving for summary judgment. Sparks v. Metalcraft, Inc., 408 N.W.2d 347, 350 (Iowa 1987); Northrup v. Farmland Industries, Inc., 372 N.W. 2d 193, 195 (Iowa 1985); Matherly v. Hanson, 359 N.W.2d 450, 453 (Iowa 1984). If the motion for summary judgment is properly supported, the resisting party "may not rest upon the mere allegations . . . in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Iowa R. Civ. P. 1.981(5). Similarly, the resisting party may not rely solely on legal conclusions to show there is a genuine issue of material fact justifying denial of summary judgment. Byker v. Rice, 360 N.W.2d 572, 575 (Iowa App. 1984).

When confronted with a motion for summary judgment, the agency is required to examine, in light most favorable to the party opposing the motion, the entire record before it, including the pleadings, admissions, depositions, answers to interrogatories, and affidavits, if any, to determine whether any genuine issue of material fact is generated thereby. Sparks, 408 N.W.2d at 350; Drainage District No. 119, Clay County v. Incorporated City of Spencer, 268 N.W.2d 493, 499-500 (Iowa 1978). "Even if the facts are undisputed, summary judgment is not appropriate if reasonable minds may draw different inferences from them." Tasco, Inc. v. Winkel, 281 N.W.2d 280, 282 (Iowa 1979).

If, upon examination of the entire record, the undersigned determines no factual dispute is present and the movant is entitled to judgment as a matter of law, entry of summary judgment is proper. Sparks, 408 N.W.2d at 350.

In this case, claimant does not allege a factual dispute regarding defendants' assertion that she is precluded from initiating a review-reopening proceeding given this agency's findings in her underlying claim. She does not dispute, for example, defendants' characterization of the procedural history and disposition of her underlying claim. In fact, she acknowledges the commissioner found she failed to prove her entitlement to additional temporary benefits and that she failed to satisfy her burden to prove she sustained a permanent disability. (See Claimant's Statement of Material Facts in Resistance to Defendants' Motion for Summary Judgment, paras. 6-7). Instead, claimant leapfrogs this issue and alleges a factual dispute regarding whether her condition has worsened since her original hearing in October of 2014.

The issue at hand is not whether claimant's recent treatment is causally related to her work injury or whether she has sustained a worsening in condition; the issue is whether claimant is entitled to make a claim for review-reopening. In other words, the factual dispute identified by claimant is not material to the determination of whether

claimant is precluded from bringing a review-reopening claim. I therefore affirm the finding of the deputy commissioner that there are no genuine issues of material fact.

Having found no genuine issues of material fact, the next issue to be decided is whether defendants are entitled to judgment as a matter of law.

Iowa Code section 86.14, subsection 2, addresses review-reopening proceedings. It provides:

> In a proceeding to reopen an award for payments or agreement for settlement as provided by section 86.13, inquiry shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon.

Iowa Code section 86.14(2).

Claimant asserts she has sustained a change in condition warranting an increase of compensation; specifically, she asserts a worsening of her physical condition and/or that her temporary disability developed into a permanent disability. While these are recognized avenues for proving a change in condition, they cannot be utilized when, as in this case, the issues of claimant's entitlement to future medical benefits and temporary and permanent disability were previously ripe for determination and were decided adversely to claimant.

At the outset, before inquiry can be made into whether claimant sustained a change in condition, there must first be an award of compensation. See Iowa Code section 86.14(2). Without an award of compensation, there is nothing to end, diminish, or increase. See id. In this case, it was determined that claimant sustained a temporary injury that had resolved by the time of the underlying hearing. Because claimant's injury resolved, the commissioner found claimant sustained no permanent disability and was not entitled to temporary disability benefits beyond those already paid. Given that claimant's condition resolved and there were no recommendations for future care, the commissioner also determined defendants were not responsible for future medical care. Based on these determinations, claimant was awarded no compensation that could be ended, diminished, or increased upon review-reopening. Because claimant failed to satisfy the prerequisite to the inquiry of whether she sustained a change in condition, I affirm the deputy commissioner's finding that claimant is precluded from bringing a review-reopening claim.

This outcome is consistent with the Supreme Court's holding in Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387 (2009), which discussed review-reopening proceedings in great detail. In that decision, the court emphasized that "the principles of res judicata still apply" in review-reopening claims. Id. at 393. The court instructed the agency to avoid reevaluating a claimant's impairment "if all of the facts and circumstances were known or knowable at the time of the original action." Id. "Likewise," the court stated, "section 86.14(2) does not provide an opportunity to relitigate causation issues that were determined in the initial award or settlement agreement."

In this case, it was determined by the commissioner that claimant's injuries had resolved. As a result, the commissioner found claimant failed to prove her work injury caused any temporary disability beyond that already paid by defendants or any permanent disability or loss of earning capacity. (App. Dec., pp. 17, 19) The commissioner also determined claimant failed to prove the causal relationship between her work injury and future medical care given that her injuries had resolved and her treating physicians and independent medical examination doctor were not recommending additional care. Claimant now seeks to relitigate these same causation issues via a review-reopening proceeding—the exact scenario the holding in Kohlhass precludes.

In Winn v. Pella Corporation, File No. 5027519, the claimant filed a review-reopening petition after a deputy commissioner, in an underlying arbitration decision, ordered the defendant to pay claimant's medical expenses. The defendant in Winn contended that claimant was precluded from proceeding under review-reopening because there was no compensation awarded in the underlying arbitration decision. In the review-reopening decision, the deputy commissioner held as follows:

> At the time of the [arbitration] hearing, claimant was still working at Pella. Claimant had not lost any time at Pella due to her left shoulder injury. At the time of the January 12, 2010 hearing, claimant was only seeking to have Pella pay for her medical care. Claimant had not lost any time off of work due to her left shoulder injury and had no claim for temporary benefits. Claimant had not yet reached maximum medical improvement, as she was still seeking to have Pella pay for her right shoulder treatment. *For that reason, she had no claim for permanent partial disability benefits at that time. The only justiciable issue at the time of the January 12, 2010 hearing was whether claimant's injury of August 11, 2008 arose out of and in the course of employment, and if claimant's injury was causally connected to the claimed medical expenses.*
>
> Given the facts of this case, claimant should not be precluded from now seeking permanent partial disability benefits merely because she did not have a justiciable claim for temporary benefits or permanent partial disability benefits at the time of the January 12, 2010 hearing.

Winn, File No. 5027519 (Review-Reopening Decision March 26, 2015). The deputy commissioner's decision was affirmed on appeal, and defendants' subsequent application for rehearing on this ground was denied.

The distinguishing factor between this case and Winn is that claimant in this case had justiciable claims at the time of her underlying hearing in October of 2014, and those claims were decided adversely to claimant. Unlike the claimant in Winn, claimant in this case has already had an opportunity to litigate the entirety of her case.

Claimant is correct that the Iowa Supreme Court has held awards may be adjusted pursuant to Iowa Code section 86.14(2) "when a temporary disability later

develops into a permanent disability." See Kohlhaas, 777 N.W.2d at 392 (citing Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (Iowa 1956)). However, in Rose v. John Deere Ottumwa Works, when the Court initially recognized this method of demonstrating a change of condition, the issue of whether claimant sustained a permanent disability had not yet been adjudicated or agreed upon; instead, the payments claimant received prior to filing his petition for review-reopening "were made for, and on the assumption there was only, temporary disability." See Rose, 76 N.W.2d at 758. Thus, the court's determination that an "additional award" can be made when a temporary disability later develops into a permanent disability was in the context of a claim in which claimant was "in the early stages of his injury" when permanency could not yet be decided. See id. at 759-60.

Again, this case is distinguishable from Rose because claimant's claim for permanency has already been litigated and decided.

The court in Kohlhaas recognized review-reopening proceedings are intended to address "future developments," meaning changes that occur after the initial award or settlement, such as a claimant reaching MMI after an initial award of running healing period benefits, or a claimant sustaining a compensable diminution of earning capacity after an initial award of industrial disability. See Kohlhaas, 777 N.W.2d at 392. However, given the court's holding that review-reopening proceedings are not to be used as a tool to relitigate causation issues that were decided in the initial award, the court's reference to "future developments" was not an invitation to claimant to take a "second bite at the apple" regarding issues that have already been litigated and decided.

For the forgoing reasons, I affirm the deputy commissioner's finding that claimant in this case cannot be allowed to resurrect her claims by simply seeking additional treatment after the initial award when it was already determined in the initial award that her condition resolved without any permanent disability, she sustained no temporary disability beyond what was already paid, and she is not entitled to future medical benefits. I therefore affirm the deputy commissioner's finding that defendants in this case are entitled to judgment as a matter of law.

Having concluded there is no genuine issue of material fact and that defendants are entitled to judgment as a matter of law, I affirm the deputy commissioner's finding that defendants' motion for summary judgment must be granted.

ORDER

IT IS THEREFORE ORDERED that the ruling on defendants' motion for summary judgment filed in this matter on October 11, 2018, is affirmed in its entirety.

Defendants' motion for summary judgment is granted.

Signed and filed on this 16th day of January, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Jerry L. Schnurr, III Via WCES

Ryan M. Clark Via WCES