

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

JOSHUA DOUGLAS,

Petitioner,

VERMEER MANUFACTURING,

Employer,

and

EMC RISK SERVICES,

Insurance Carrier,

Respondents.

Case No. **CVCV059181**

ORDER ON JUDICIAL REVIEW

This is a petition for judicial review from a final decision of the Iowa Workers' Compensation Commission. At hearing, Petitioner Joshua Douglas ("Douglas") appeared through attorney Erin Tucker. Respondents Vermeer Manufacturing and EMC Risk Services (collectively "Vermeer") appeared through attorney William Scherle. After hearing the arguments of counsel, reviewing the court file, the administrative record, and being otherwise advised in the premises, the court enters the following ruling:

I. PROCEDURAL POSTURE AND FACTUAL BACKGROUND.

Douglas began working for Vermeer in 2004. (Tr. 15). Prior to starting his employment, Douglas underwent and passed a pre-employment physical. (JE1-0001; JE1-0002). Douglas work in various positions during his employment with Vermeer. (Tr. 15-19). Relevant to this matter, Douglas worked as a parts specialist from 2010-2012 and an assembly tech from 2012-2016. (Tr. 59-61). While the assembly tech position

required Douglas to be on the plant floor, his work as a parts specialist did not. (Tr. 18; 59). From 2010-2012, Douglas worked in an office setting and was not exposed to smoke, fumes or dust. (Tr. 18; 59). As an assembly tech, Douglas was assigned to "Plant 2." (Tr. 19). From 2012-2016 his job duties included inspecting parts during various stages of the manufacturing process. (Tr. 19). Specifically, Douglas inspected the welding, painting, and assembly areas of the machine shop. (Tr. 19).

While employed with Vermeer, and even prior to holding these positions, Douglas began to suffer health problems. In 2009, he underwent a kidney transplant. (Tr. 37). Although he had no work restrictions from the transplant, Douglas was prescribed permanent immunosuppressant medications. (Tr. 54). In February 2010, Douglas presented at the emergency room with complaints of a fever, coughing, and a sore throat. (Jt. Ex. 2, pr. 6; 10). While Douglas was originally treated for bronchitis, he was subsequently hospitalized and diagnosed with pneumonia. (Jt. Ex. 2, pr. 6; 10).

In July 2011, Douglas was again diagnosed with pneumonia following complaints of chest congestion, cough, fever and fatigue. (Jt. Ex. 2, p. 21; 24). Douglas experienced similar symptoms in February 2012, and, again, was diagnosed with pneumonia. In March 2012, Aneesa Afroze, M.D. with Chest & Infectious Diseases evaluated Douglas for his respiratory symptoms. ((Tr. 25:11-16; JE5-0209; JE5-0212). Dr. Afroze diagnosed Douglas with pneumonitis. (Tr. 25:11-16; JE5-0209; JE5-0212).

In October 2012, approximately six months after he began his job as an assembly tech, Douglas was diagnosed with an upper respiratory infection. (JE2-0032) In January and October 2013, Douglas presented to the emergency room. Both times, he was hospitalized and diagnosed with pneumonia. (JE2-0035-0041; JE2-0051-0054).

Douglas was again diagnosed with pneumonia in September 2014, March 2015 and September 2015. Both the March and September 2015 diagnoses required hospitalization. (JE2-0067-0071; 0076-0078; 0093-0103). After the September 2015 hospitalization, Dr. Vermuri evaluated Douglas. (JE5-0227-0229). Dr. Vermuri opined that Douglas' respiratory problems might be related to his exposure to particulates at Vermeer. (JE5-0227).

In September 2015, Douglas' immunosuppressant medication dosage was cut in half. (Tr. 66). Douglas was released back to work on October 30, 2015. (JE2-0117). Vermeer placed Douglas on medical leave. (Tr. 30). In December 2015, Vermeer offered Douglas a different position. Douglas declined the offer, and Vermeer terminated him in 2016 because he was no longer able to perform the essential functions of his job. (Claimants Ex. 5 & 6).

Both parties had Douglas submit to an Independent Medical Examination. On August 14, 2017, Douglas presented to Dr. Sunil Bansal for an independent medical examination. (Claimant's Ex. 1). Dr. Bansal found Douglas had sustained a work-related injury and assigned a 10% permanent impairment of his lungs. (Claimant Ex 1). On September 27, 2017, Dr. Hartley evaluated Douglas. Dr. Hartley found no evidence that Douglas had sustained a work-related injury. Instead, he attributed Douglas' respiratory problems to bacterial and/or viral infections exacerbated by Douglas' compromised immune system. (Def. Ex. C).

Douglas filed an arbitration petition, and his case came before the Deputy Workers' Compensation Commissioner on December 20, 2017, for Arbitration Hearing. The issues before the Deputy Commissioner were (1) whether Douglas sustained injuries which

arose out of and in the course of employment; (2) whether Douglas' injuries were permanent, warranting payment of Permanent Partial Disability (PPD); (3) the proper commencement date for any permanent benefits, if any; (4) whether Douglas was entitled to Temporary Total Disability (TTD); (5) whether Douglas was entitled to reimbursement, payment or satisfaction of past medical expenses; (6) whether Vermeer was subject to a penalty for its failure to provide benefits for Douglas' injuries; (7) whether Vermeer was entitled to a credit under Iowa Code 85.38(2) for the payment of disability benefits; (8) whether Petitioner was entitled to reimbursement of Medical Expenses, including mileage, and Petitioner's Independent Medical Examination (IME); and (9) costs. (Arb. Dec. p.2).

The Deputy Commissioner ruled that Douglas had proven by a preponderance of evidence that he had sustained a work-related injury to his lungs. (Arb. Dec.). The Deputy Commissioner awarded Douglas a ten percent (10%) industrial disability. The Deputy, however, declined to award Douglas full temporary total disability (TTD) benefits and declined his request for reimbursement of his Independent Medical Examination. (Arb. Dec.). He did order reimbursement for past medical expenses and assess costs against Vermeer. (Arb. Dec.).

Both parties appealed the Arbitration Decision to the Commissioner. Deputy Commissioner Copely, by order of delegation from the Commissioner, issued the final agency order. Deputy Copely reversed the Arbitration Decision as it related to causality of Douglas' work injury and affirmed the Arbitration Decision as it related to the denial of reimbursement for Douglas' IME. (App. Dec.).

Douglas appeals the final agency decision in its entirety.

II. ANALYSIS AND CONCLUSIONS OF LAW.

A. Standard.

This Court's review of a workers' compensation action is governed by Iowa Code chapter 17A. Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 748 (Iowa 2002); see Iowa Code § 86.26. The commissioner's factual determinations are "clearly vested by a provision of the law in the discretion of the agency" and this Court will defer to those factual determinations if they are based on "substantial evidence in the record before the court when that record is viewed as a whole." Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 557 (Iowa 2010) (quoting Iowa Code § 17A.19(10)(f)). This Court may grant relief from an agency action if it determines the substantial rights of the claimant have been prejudiced because the agency action is unsupported by substantial evidence. Iowa Code § 17A.19(10)(f). "Evidence is substantial if a reasonable person would find the evidence adequate to reach the same conclusion." Grundmeyer, 649 N.W.2d at 748. "[The] question is not whether there is sufficient evidence to warrant a decision the commissioner did not make, but rather whether there is sufficient evidence to warrant the decision he did make." Musselman v. Cent. Tel. Co., 154 N.W.2d 128, 130 (Iowa 1967).

If the commissioner's interpretation of law is the claimed error, the question on review is whether the commissioner's interpretation was erroneous. See Clark v. Vicorp Rests., Inc., 696 N.W.2d 596, 604 (Iowa 2005). If the commissioner's ultimate conclusion reached is the claimed error, "then the challenge is to the agency's application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence." Meyer, 710 N.W.2d at 219; Iowa Code § 17A.19(10)(i), (j).

B. Analysis

Douglas argues that Deputy Commissioner Copely erred in ruling that he had not proven by a preponderance of the evidence that his lung injury arose out of and in the course of his employment. Specifically, Douglas asserts this finding is not supported by substantial evidence and is based on an erroneous application of the law.

At the commission level, “[a] claimant must prove by a preponderance of the evidence that the injury is a proximate cause of the claimed disability.” Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560 (Iowa 2010) (quoting Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 752 (Iowa 2002)). An injury “arises out of” the employment when a causal relationship exists between an injury and the employment. Miedema v. Dial Corp., 551 N.W.2d 309, 311 (Iowa 1996). An injury occurs “in the course of” employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Quaker Oats v. Ciha, 552 N.W.2d 143, 150 (Iowa 1996)

“Ordinarily, expert testimony is necessary to establish the causal connection between the injury and the disability for which benefits are claimed.” *Id.* With regard to the commission’s consideration of expert testimony,

[t]he commissioner must consider [such] testimony together with all other evidence introduced bearing on the causal connection between the injury and the disability. The commissioner, as the fact finder, determines the weight to be given to any expert testimony. Such weight depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. The commissioner may accept or reject the expert opinion in whole or in part.

Id. (quotations omitted).

Here, the Court finds Deputy Commissioner Copely's decision is supported by substantial evidence, did not fail to consider important evidence, and is not irrational, illogical, wholly unjustifiable, or based upon an incorrect application of the law. Deputy Copely walked through the medical reports of Dr. Vermuri, Dr. Hellbusch, Dr. Bansal, and Dr. Hartley in detail. As the Deputy Copely explained, none of Douglas' doctors affirmatively stated that Douglas' bouts of pneumonia were actually caused by particulates at Vermeer. (App. Dec. p. 2-3). Further, Deputy Copely considered Dr. Hartley's testimony and opinions. (App. Dec. p 3-4). After having the opportunity to hear testimony and view the credibility of Douglas, in addition to all other evidence, the Deputy Commissioner's decision aligned with Dr. Hartley and listed factual findings Dr. Hartley had relied upon. In addition, the Deputy Commissioner noted that none of Douglas' doctors had issued an affirmative opinion that Douglas' exposure to germs at Vermeer caused his pneumonia. (App. Dec. p.4) Finally, the Deputy Commissioner noted that without medical support, the mere temporal connection between Douglas' bouts of pneumonia and his medical leave was insufficient to satisfy his burden of proof. Particularly, when Douglas' immunosuppressant medications were decreased during the same time. (App. Dec. P. 4-5)¹.

The Commissioner is allowed to weigh all of the evidence in determining whether to accept or reject expert opinions. The weight given to expert testimony depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 845 (Iowa 2011). Weighing

¹ / The Court does not find this was a misapplication of the law of causation. Deputy Copely found that even in the best light, Douglas' medical evidence did not support a finding of causation.

the expert opinions and the surrounding circumstances was within the province of the commissioner. Id. The basis of the Commissioner's determination is set forth above. The Court finds there was substantial evidence and the agency decision is not irrational, illogical, or wholly unjustifiable.

Order

IT IS HEREBY ORDERED that the decision of the Worker's Compensation Commission is AFFIRMED. Costs are assessed to the Petitioner.



State of Iowa Courts

Type: OTHER ORDER

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So Ordered

A handwritten signature in black ink, appearing to read "Heather Lauber". The signature is written in a cursive style with a long horizontal stroke at the end.

Heather Lauber, District Judge,
Fifth Judicial District of Iowa