E-FILED 2019 JUN 04 3:18 PM POLK - CLERK OF DISTRICT COURT

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

KATHALEEN BROWN, **Petitioner,** **vs.** **CAMANCHE COMMUNITY SCHOOL DISTRICT,** **Employer,** **and** **UNITED HEARTLAND,** **Insurance Carrier, Respondents.**	**Case No. CVCV057202** **RULING ON PETITION FOR JUDICIAL REVIEW**

The above-captioned matter came before the court on April 19, 2019. Kathaleen Brown ("Brown"; "Petitioner") was represented by Attorney Paul McAndrew, Jr. Camanche Community School District ("Employer") and United Heartland, collectively, ("Respondents") were represented by Attorney Sasha Monthei. Upon review of the court file and applicable law, the court enters the following order.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case was preceded by a workers' compensation case in 2012 wherein it was determined that Brown had suffered a pulmonary injury as a result of mold exposure at her workplace. Arb. at 1. There, the Deputy Commissioner determined that Brown had not yet reached Maximum Medical Improvement, ("MMI"), and as a result, total benefits could not be determined at that time. App. Dec. at 1. Brown filed the present workers' compensation petition arguing that she was now at MMI and sought an

industrial disability finding. Arb. Dec. at 1. An arbitration hearing was held before Deputy Commissioner Gerrish-Lampe, ("Arbitration Deputy Commissioner"), on October 11, 2016. Brown also claimed in her petition that her coronary artery disease, ("CAD"), was related to her pulmonary injury, and sought benefits for her CAD in addition to benefits for her pulmonary injury. Arb. Dec. at 2. The Arbitration Deputy Commissioner found that Brown failed to meet her burden to prove her CAD was work related, found that Brown sustained an 85 percent industrial disability due to her pulmonary injury, and awarded commensurate benefits. Arb. Dec. at 20-21.

Brown and Respondents appealed the decision, and an appeal decision issued by Deputy Commissioner Copley ("Appellate Deputy Commissioner") was filed on October 11, 2018. The Appellate Deputy Commissioner affirmed the Arbitration Deputy Commissioner's finding that Brown's heart condition was not work related, but reversed the Arbitration Deputy Commissioner's finding regarding industrial disability related to Brown's pulmonary injury, finding that Brown sustained a 45 percent industrial disability. App. Dec. at 11. Brown filed the present Petition for Judicial Review on October 25, 2018.

II. STANDARD OF REVIEW

Chapter 17A of the Iowa Code governs judicial review of administrative agency action. The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). Relief is appropriate where "substantial rights of a party have been prejudiced because the agency action [...] is unsupported by substantial evidence, is unreasonable, arbitrary, or capricious, or is affected by other error of law." *Dico, Inc. v. Iowa Emp't Appeal Bd.*, 576

N.W.2d 352, 354 (Iowa 1998). The standard of review on appeal depends on whether the basis for the petition involves an issue of finding of fact, interpretation of law, or application of law to fact. *Meyer*, 710 N.W.2d at 218-19.

The standard when the claim is that there was an error in finding of fact is whether the agency's decision is supported by substantial evidence. *Id.* at 218. "Substantial evidence is the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009). Further, the question "is not whether the evidence supports different findings than those made by the commissioner, but whether the evidence supports the findings actually made." *Id.* (internal citations omitted). Evidence may be substantial even if the court would have drawn a different conclusion from the fact finder. *Christiansen v. Iowa Bd. of Educ. Examiners*, 831 N.W.2d 179, 192 (Iowa 2013).

III. APPLICABLE LAW & ANALYSIS

Brown requests that the court 1) Reverse the Commissioner's decision and find that Brown's heart condition is attributable to her regular use of corticosteroids and therefore is work related; 2) Find that Brown is permanently and totally disabled as the result of her work injury; and 3) Find that Brown is entitled to the medical expenses that she has incurred as a result of her heart condition. Respondents request that the court affirm the agency's findings regarding Brown's heart condition, affirm the agency's finding regarding permanent disability, and affirm the agency's decision that Brown is

not entitled to the medical expenses that she has incurred as a result of her heart condition because the heart condition is not work related.

Brown argues that her pulmonary disease process flared up which required the administration of corticosteroids, and those corticosteroids more likely than not greatly accelerated Brown's pre-existing CAD condition. A separate decision in 2012 found that Brown suffered a pulmonary injury as a result of mold exposure at her workplace. The question in this case was whether her CAD was also attributable as a workplace injury and what percentage of industrial disability Brown is entitled to.

In the arbitration decision, the Arbitration Deputy Commissioner found that Brown failed to meet her burden to prove that her CAD was work related. Arb. Dec. at 18. On Appeal, the Appellate Deputy Commissioner agreed and affirmed the arbitration decision finding concerning whether Brown's heart condition was work related. App. Dec. at 6. Brown argues that the agency erred in its finding that Brown's CAD was not work related for four main reasons. First, Brown argues that the Deputy's choice to ignore Dr. Shapiro's opinion is cause for reversal or modification. Second, Brown argues that the Appellate Deputy failed to properly evaluate and weigh Brown's steroid therapy. Third, Brown argues that the Deputy relied on "no-opinion opinions." Finally, Brown argues that the court should reverse the Deputy's exclusion of the Sigurdson and Kline reports.

Brown argues that the agency's disregard for uncontroverted expert medical evidence without a reasonable explanation for why the evidence was disregarded requires the court to remand the case back to the agency. Specifically, Brown points to the lack of consideration of Dr. Shapiro's opinion. Dr. Shapiro was Brown's physician

and surgeon for an angioplasty. Brown relies on several cases, including *Hurley v. Sheller-Globe Corp.*, wherein the Iowa Court of appeals stated, "when a deputy or the industrial commissioner disregards uncontroverted expert medical testimony he or she must say why such testimony was disregarded. The factfinder may not arbitrarily or totally reject offered testimony; he or she has the duty to weigh it and determine its credibility." *Hurley v. Sheller-Globe Corp.*, 512 N.W.2d 796, 798 (Iowa Ct. App. 1993) (internal citations omitted).

Respondents argue that Brown is not entitled to assert this argument because it is a violation of due process. Respondents claim that Brown has never before relied upon the opinions of Dr. Shapiro, and at every agency level, Brown relied upon the opinions of Dr. Teseteroet and Dr. Kline in claiming that her CAD was work related. Respondent points out that Brown asserted in one of her briefs to the agency that besides Dr. Testeroet and Kline, "the only other physician to give an opinion in this matter is Dr. Rasmussen, who is a cardiologist." Cl. Br. served 6/5/17 at 23-24. Brown did not rely upon Dr. Shapiro's opinions in her arguments before either the Arbitration Deputy or the Appeal Deputy.

"In workers' compensation cases appellate review is limited to those matters raised and litigated before the commissioner." *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 184 (Iowa 1980). The Iowa Supreme Court has explained, "[o]bviously an administrative agency cannot in its decision set out verbatim all the testimony in a case. Obviously also, if the agency quotes some testimony, a losing party should not be able, ipso facto, to urge successfully that the agency did not weigh all the other evidence." *McDowell v. Town of Clarksville*, 241 N.W.2d 904, 908 (Iowa 1976). However,

"[a]dministrative findings of fact must be sufficiently certain to enable a reviewing court to ascertain with reasonable certainty the factual basis on which the administrative officer or body acted." *Catalfo v. Firestone Tire & Rubber Co.*, 213 N.W.2d 506, 509–10 (Iowa 1973). A commissioner's decision must be sufficiently detailed to show the path that they took through conflicting evidence. *Id.* at 10. "When [the commissioner] disregards uncontroverted expert medical evidence he must say why he has done so. Otherwise we have no way to determine if he acted arbitrarily or misapplied the law." *Id.*

The Court is not satisfied on review of the record that the agency properly considered all of the evidence in this case. Respondents argue that consideration of Dr. Shapiro's opinions at this stage violates their due process rights. "Parties to an administrative hearing are entitled to notice and the opportunity to defend. [...] In such contested cases, all parties shall be afforded an opportunity for hearing after reasonable notice in writing. The notice must include a reference to the particular sections of the statutes and rules involved and a short and plain statement of the matters asserted." *Freeland v. Employment Appeal Bd.*, 492 N.W.2d 193, 195 (Iowa 1992)(internal citations omitted). The court agrees with Brown that Respondents had notice of the issues involved in this case. Respondents were also in possession of the exhibits in which Dr. Shapiro's opinions are illustrated. Specifically, Respondent had possession of Exhibit 15, which was admitted into evidence at the Arbitration Hearing.

Exhibit 15 contains, in relevant part:

ASSESSMENT AND PLAN:

2. Plavix 75 mg uninterrupted x12 months. Antilipid therapy. Follow with Cardiology in 2 weeks. The patient is on steroids and advised to have these tapered as necessary.

3. History of allergies. The patient follows with Pulmonary Clinic in Davenport, which she is advised to follow within the next 2 weeks to have steroid taper reviewed. Continue mini dose inhalers.

Ex. 15 at 14.

Full Operative Note by Robert Shapiro, MD

5. Discussed case with Dr. Rasmussen. He will decide on other aggressive treatment of residual CAD including possible beta blocker (unclear if her lung disease will tolerate this) and possible other medications to help with microvascular dysfunction.

Ex. 15 at 24.

Dr. Shapiro was Brown's physician and surgeon when she presented for an angiogram related to her CAD. Dr. Shapiro created a plan for Brown to taper her steroid use related to her treatment in his care. Brown's argument regarding the work-relatedness of her CAD stems from the steroids that she was prescribed for her pulmonary injury. The court finds error with the agency's failure to consider the opinions of Dr. Shapiro and remands to the agency for consideration of said opinions.

IV. ORDER

IT IS THEREFORE ORDERED that the Petition for Judicial Review is GRANTED and the decision of the Iowa Worker's Compensation Commissioner is REVERSED and REMANDED for further consideration.

Costs are assessed against the Respondent.

SO ORDERED.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV057202	KATHALEEN BROWN VS CAMANCHE COMMUNITY SCHOOL DISTRICT ET AL

So Ordered

Celene Gogerty, District Judge
Fifth Judicial District of Iowa