

IN THE IOWA DISTRICT COURT FOR WEBSTER COUNTY

ALEVIA GREEN,

Petitioner,

v.

NORTH CENTRAL IOWA REGIONAL
SOLID WASTE AGENCY,

Employer,

IMWCA,

Insurance Carrier,
Respondents.

Case No. CVCV321086

**ORDER ON PETITION FOR JUDICIAL
REVIEW**

Now before the Court is a petition for judicial review. This matter came before the Court for oral argument on January 20, 2021. Attorney Jerry L. Schnurr III appeared for Petitioner Alevia Green (“Green”), and attorney Ryan M. Clark appeared for Respondents North Central Iowa Regional Solid Waste Agency (“NCIRSWA”) and IMWCA (collectively “Respondents”). Having considered the arguments of counsel, the parties’ filings, and the applicable law, the Court enters the following Order.

I. BACKGROUND FACTS & PROCEEDINGS

The Court recites the following procedural history, excepted from the appealed-from decision before the Iowa Workers’ Compensation Commission:

On October 6, 2014, this case proceeded to hearing in arbitration. At the October 6, 2014, hearing, the parties stipulated [Green] sustained a work-related injury resulting in temporary disability, though they disputed whether [her] 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 [Green] did not meet her burden of establishing that her work injury caused any permanent impairment or loss of earning capacity. [. . .] The deputy commissioner also determined [Green] was not

entitled to additional temporary benefits or medical benefits beyond those already paid by [Respondents]. [. . . Green] 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 [Green] 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 [Respondents] were not responsible for any additional medical care or treatment beyond what had already been paid. (Appeal Decision, p. 20) [. . . Green] 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 [Green]'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 [Respondents] liable for past medical charges [. . .] The commissioner determined [Respondents] were liable for no other charges.

[Respondents] asserted they are entitled to summary judgment on [Green]'s review-reopening petition because [Green] "suffered no disability that could be reviewed in a review reopening proceeding." In her resistance to the motion for summary judgment, [Green] assert[ed] 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, [Green] assert[ed] there is a factual dispute regarding whether she sustained a worsening in condition, and [Respondents] assert the existence or non-existence of a worsening in condition is irrelevant because [Green] is precluded, as a matter of law, from seeking review-reopening given the findings in [Green]'s underlying petition in arbitration.

(Appeal Decision, Jan. 16, 2020).

Green filed the aforementioned Review Reopening Petition with the Iowa Workers' Compensation Commissioner on June 4, 2018. Green's Review-Reopening Petition alleged a dispute regarding the "extent" of her disability from the April 30, 2012 injury.

In response to the Review-Reopening Petition, Respondents filed a Motion for Summary Judgment on September 13, 2018, asserting they were entitled to judgment as a matter of law

because res judicata principles prevented the Commission from reevaluating the issue of Green's impairment.

On October 11, 2018, Deputy Workers' Compensation Commissioner filed her Ruling, granting Respondents' Motion for Summary Judgment. She agreed with Respondents that Green was precluded from seeking review-reopening due to res judicata principles.

Green appealed the Ruling of the Deputy Commissioner. On January 16, 2020, the Iowa Workers' Compensation Commissioner affirmed the Deputy's Ruling. Green then filed the instant Petition for Judicial Review on February 12, 2020, asking this Court to reverse the Commissioner's Review-Reopening Appeal Decision and to remand the matter to the Commission. Other necessary facts will be adduced below.

II. STANDARD OF REVIEW

The Iowa Administrative Procedure Act, Iowa Code chapter 17A, governs the scope of the court's review in workers' compensation cases. Iowa Code § 86.26 (2009); *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. A party challenging agency action bears the burden of demonstrating the action's invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a). This can be shown in a number of ways, including proof the action was ultra vires; legally erroneous; unsupported by substantial evidence in the record when that record is viewed as a whole; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *See id.* § 17A.19(10). 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).

“If the claim of error lies with the agency’s findings of fact, the proper question on review is whether substantial evidence supports those findings of fact” when the record is viewed as a whole. *Meyer*, 710 N.W.2d at 219. Factual findings regarding the award of workers’ compensation benefits are within the commissioner’s discretion, so the court is bound by the commissioner’s findings of fact if they are supported by substantial evidence. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464–65 (Iowa 2004). Substantial evidence is defined as evidence of the quality and quantity “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.” Iowa Code § 17A.19(10)(f)(1); *Mycogen*, 686 N.W.2d at 464. The commissioner’s decision must be sufficiently detailed to show the path he has taken through the conflicting evidence. *Catalfo v. Firestone Tire & Rubber Co.*, 213 N.W.2d 506, 510 (Iowa 1973).

If the claim of error lies with the agency’s application of law to the facts, the agency may be overturned for reasons such as an erroneous interpretation of law; irrational reasoning; failure to consider relevant facts; or irrational, illogical, or wholly unjustifiable application of law to the facts. Iowa Code § 17A.19(10)(c),(i),(j),(m). “We allocate some degree of discretion in our review of this question, but not the breadth of discretion given to the findings of fact.” *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). “These different approaches to our review of mixed questions of law and fact make it essential for counsel to search for and pinpoint the precise claim of error on appeal.” *Id.* That is, “[i]f the claim of error lies with the agency’s findings of *fact*,” the court applies the substantial evidence standard, but if the claimed error is based on the agency’s interpretation of law, the question on review is whether the agency’s interpretation was erroneous.

Id. If the claim lies with the ultimate conclusion reached, then the challenge is to the agency's application of the law to the facts. *Id.*

Therefore, the Court will review the Commissioner's decision by the aforementioned standards.

DISCUSSION

Green makes one argument in her brief on judicial review: "the Commissioner's Decision granting [Respondents'] Motion for Summary Judgment should be reversed because it is based on an error of law in finding that Alevia Green is not entitled to seek review-reopening based upon an arbitration decision that found she was entitled to medical and temporary disability benefits after her condition got worse and developed into permanent disability." Respondents counter with two arguments: (1) "the [Commission] correctly concluded there was no genuine issue of material fact which would preclude summary judgment in favor of [Respondents] and (2) "the [Commission] correctly concluded that [Green] is precluded from review-reopening because she failed to prove any disability caused by her work injury, aside from the temporary disability for which she was already compensated, despite having the opportunity to fully litigate her case." Green then responded with the following argument, "the original decision of the Commissioner found that Alevia Green's work injury to her head, neck and back entitled her to medical benefits under Iowa Code Chapter 85. Ms. Green's work condition has deteriorated from a temporary condition to a permanent condition and is not barred by res judicata." The Court will first address the question of whether summary judgment may be rendered in this matter (specifically whether material facts exist). Then the Court will address whether summary judgment should be rendered in this matter (specifically whether Respondents are entitled to judgment as a matter of law).

a. Whether the Commissioner erred in finding no issues of material fact exist which would preclude summary judgment.

The Court applies broadly applicable principles of summary judgment law to the present controversy.

The rules of civil procedure shall govern the contested case proceedings before the workers' compensation commissioner unless the provisions are in conflict with these rules and Iowa Code chapters 85, 85A, 85B, 86, 87 and 17A, or obviously inapplicable to the workers' compensation commissioner. In those circumstances, these rules or the appropriate Iowa Code section shall govern. Where appropriate, reference to the word "court" shall be deemed reference to the "workers' compensation commissioner" and reference to the word "trial" shall be deemed reference to "contested case hearing."

Iowa Admin. Code r. 876-4.35(86).

In order to obtain summary judgment two fundamental prerequisites must be established. First, the moving party must show that there is no genuine issue as to any material fact concerning the matters addressed in its motion for summary judgment. Second, the moving party must establish that it is entitled to judgment as a matter of law. Iowa R. of Civ. P. 1.981(3); *Red Giant Oil Co. v. Lawlor*, 528 N.W.2d 524, 528 (Iowa 1995); *Vaughn v. City of Cedar Rapids*, 527 N.W.2d 411, 412 (Iowa Ct. App. 1994); *Drainage Dist. No. 119, Clay County v. Incorporated City of Spencer*, 268 N.W.2d 493, 499 (Iowa 1978).

As to the issue of material facts, the Commissioner in his Appeal Decision made the following conclusions:

In this case, [Green] does not allege a factual dispute regarding [Respondents'] 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, [Respondents'] 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. [...] Instead, [Green] 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 [Green]’s recent treatment is causally related to her work injury or whether she has sustained a worsening in condition; the issue is whether [Green] is entitled to make a claim for review-reopening. In other words, the factual dispute identified by [Green] is not material to the determination of whether [Green] 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.

(Review-Reopening App. Dec., pp. 2-3)

The question before the Court is largely a procedural one. Green’s case rises or falls on preceding events. The question of whether a review-reopening is permitted at this juncture is determined by how matters were resolved previously. To that extent, the parties are in agreement. In this regard, the Commissioner is correct. No factual issues exist as to the procedural history or disposition of Green’s underlying claim. As a result, the Commissioner is affirmed as to the question of genuine issues of material fact; there are none. The Court now turns to the thornier question.

b. Whether the Commissioner erred in concluding the Respondents were entitled to judgment as matter of law and in granting their Motion for Summary Judgment.

The legal question at issue is whether, given Ms. Green’s procedural history, she is entitled to a review-reopening. When inquiry is to be made into “whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon,” a review-reopening proceeding may be commenced. Iowa Code § 86.14. A review-reopening may be brought by either party where benefits have not been commuted, where an award of benefits has been made through adjudication or where an agreement for settlement has been entered. *Huffman v. Keokuk Area Hosp.*, IAWC 319 (appeal dec. 1988) (claimant required to show loss of earnings beyond that contemplated an agreement for settlement); *Spence v. Griffin Wheel Co.*, 89–90 IAWC 477, 481 (rehearing dec. 1989) (“[a] settlement under § 86.13 contemplates all

effects of the injury known at the time of the settlement, regardless of whether those effects are specifically enumerated in the settlement document itself or not”); *Hensley v. Swift*, I-4 Iowa Indus. Comm'r Dec. 881 (1985) (date after which change of condition had to be shown was the date settlement agreed upon); *Sanford v. Allied Maintenance Corp.*, 4 Iowa Indus. Comm'r Rep. 297 (1984). See *Brown v. John Deere Waterloo Tractor Works*, 4 Iowa Indus. Comm'r Rep. 42 (1984); *Rankin v. National Carbide Co.*, 254 Iowa 611, 118 N.W.2d 570 (1962). The principles of res judicata apply to review-reopenings. *Kohlhaas v. Hog Slat, Inc.*, 777 N.W.2d 387 (Iowa 2009).

A change in condition is necessary for a review-reopening to be brought. The change can be a deterioration of the physical condition resulting in increased loss of function or restrictions. The change can also be a change in the economic circumstance related to the injury. The change does not need to be unanticipated at the time of the previous award or settlement. Prior to *Kohlhaas v. Hog Slat Inc.*, it appeared that the change must not have been anticipated at the time of the settlement or award. § 20:1. Generally, 15 Ia. Prac., Workers' Compensation § 20:1

The Commissioner affirmed the Deputy Commissioner's logic in the following respect:

At the outset, before inquiry can be made into whether [Green] 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 [Green] sustained a temporary injury that had resolved by the time of the underlying hearing. Because [Green]'s injury resolved, the commissioner found [Green] sustained no permanent disability and was not entitled to temporary disability benefits beyond those already paid. Given that [Green]'s condition resolved and there were no recommendations for future care, the commissioner also determined [Respondents] were not responsible for future medical care. Based on these determinations, [Green] was awarded no compensation that could be ended, diminished, or increased upon review reopening.

(Review-Reopening App. Dec., p. 4). The Court finds this conclusion illogical. The Commissioner concludes that if no compensation was awarded previously it cannot *inter alia* be “increased” upon review reopening. This is plainly illogical. An award of “zero” may obviously be increased. “No

award” may be philosophically distinguishable from “zero.” However, the Iowa Supreme Court treats such terms as interchangeable. *See Thornton v. Am. Interstate Ins. Co.*, 940 N.W.2d 1, 18 (Iowa 2020) (“Where no damages may be awarded as a matter of law, [...] the only permissible award on these theories is zero.”) Accordingly, the Commissioner’s conclusion that Green’s lack of award renders it incapable of being increased is illogical. The conclusion that Green is precluded from bringing a review-reopening claim is erroneous.

The Court now turns to the question of res judicata. “[T]he legal principles announced and the views expressed by a reviewing court in an opinion, right or wrong, are binding throughout further progress of the case upon the litigants, the trial court and this court in later appeals.” *State v. Grosvenor*, 402 N.W.2d 402, 405 (Iowa 1987).

The Commissioner’s logic as to the res judicata arguments is somewhat circular. Essentially, Green had no compensable injury because she failed to show causation. And Green cannot prove causation because she had no compensable injury. The Commissioner’s Decision suffers from the same infirmity as previous issue. The Commissioner presumes that if no compensable injuries were proven at the arbitration hearing, they can never be proven to have changed in condition. But the review-reopening presupposes a potential “change in condition” (including from temporary to permanent). Such a change in condition may still be causally related to a work injury. On this matter, the parties have a difference of opinion as to the medical evidence produced on the present claim (whether a temporary injury has morphed into a permanent one). Such a difference of opinion as to a matter so consequential is a genuine issue of material fact. Because such a fact issue exists, the Respondents’ are not entitled to summary judgment. Green’s review-reopening claim is not barred by res judicata. The Commissioner’s conclusion to the contrary was erroneous.

It is therefore ordered that the Iowa Workers' Compensation Commissioner's decision is **AFFIRMED** in part and **REVERSED** in part. This case is **REMANDED** to the Workers' Compensation Commission for proceedings consistent with this Order.

IT IS SO ORDERED.



State of Iowa Courts

Case Number
CVCV321086

Case Title
ALEVIA GREEN VS NORTH CENTRAL IOWA REGIONAL
SOLID WASTE
OTHER ORDER

Type:

So Ordered

Kurt L. Wilke, Chief District Court Judge,
Second Judicial District of Iowa

Electronically signed on 2021-03-03 13:27:20