

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

CATHOLIC HEALTH INITIATIVES d/b/a MERCY MEDICAL CENTER DES MOINES and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Petitioners, vs. PAULETTE WILCOX, Respondent.	CVCV060687 ORDER ON JUDICIAL REVIEW
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This is a petition for judicial review from a final decision of the Iowa Workers' Compensation Commission. Hearing was held through GoToMeeting videoconference system on 1/8/2021. Petitioners appeared through attorney Valerie Foote. Respondent appeared through attorney Jason Neifert.

I. PROCEDURAL POSTURE AND FACTUAL BACKGROUND.

Claimant/Respondent Paulette Wilcox (Wilcox) sustained an injury to her low back while working for Petitioners on July 20, 2014. Wilcox worked in the nursing field, first with a CNA, then CMA, then LPN, and eventually RN degrees since 1983. Wilcox was employed as an RN for Petitioners (Catholic Health Initiatives d/b/a Mercy Medical Center Des Moines and Indemnity Insurance Company of North America ("Mercy")) since December 1, 1999 until she was terminated on January 20, 2015 because she could no longer work as a nurse. Wilcox has not worked since that date. She receives Social Security disability benefits due to multiple medical conditions, including hypertension, obesity, diabetes, sleep apnea, dyslipidemia, metabolic syndrome, and dyspnea.

The Parties agree Wilcox sustained a work injury on July 20, 2014. The medical history presented in this case includes multiple providers and evaluations:

- July 21, 2014: Wilcox saw Dr. JoEllen Heims. She was removed from work for 3 days initially, diagnosed with a low back strain, and referred for physical therapy. After reporting continued pain and remaining off of work, Wilcox was referred for an MRI. The MRI showed “degenerative changes and underlying changes at L4-5.” (Joint Exhibit (“J”) 3)
- September 4, 2014: Wilcox was seen by Dr. Cassim Igram at Iowa Ortho. He kept her on work restrictions and referred her to physiatry (physical medicine and rehabilitation). (J.5)
- September 19, 2014: Wilcox was treated by Dr. Kurt Smith at Iowa Ortho for ongoing low back pain. She was prescribed medication, lumbar injections, and counseled regarding her diet. Dr. Smith prescribed a walker and a wheelchair. Dr. Smith referred Wilcox for a surgical consultation. (J.6)
- January 29, 2015: Wilcox was evaluated by Dr. Aschenbrenner. He diagnosed myofascial pain, recommended adjusting medications to limit hydrocodone, and recommended a spine rehabilitation program.
 - Aschbrenner provided the following opinions related to causation: “To the nearest degree of medical certainty both diagnoses [myofascial and mechanical low back pain and CMC joint arthritis of the left thumb] were aggravated by the reported work event on July 20, 2014.” He further stated “To the nearest degree of medical certainty, the need for these treatments is due to the reported work incident of July 20, 2014. Ms. Wilcox reported the onset of symptoms as a result of this reported work incident, and her symptoms have not resolved in the intervening period.” (J.9 at 85).
- March 30, 2015: Wilcox was evaluated for the spine clinic but was not considered a good candidate. (J.10 at 98, 103). The spine clinic recommended physical therapy, breathing exercises, water based exercise, and weight loss. (J.10 at 104).
- April 8, 2015: Wilcox returned to Dr. Aschenbrenner. Dr. Aschenbrenner provided a letter dated May 18, 2015. He placed Wilcox at MMI, provided a zero percent impairment rating, and recommended work restrictions. He also provided some discussion of the cause of her symptoms:
 - “Although Ms. Wilcox had onset of myofascial pain with the work incident, she has several risk factors that have led to ongoing pain.” (J.9 at 94).
 - “Ms. Wilcox does have subjective complaints of pain, likely attributable to myofascial pain, however, she also has several non-occupational risk factors increasing the likelihood that she would have such symptoms regardless of any

work incident, including obesity (BMI of 45.55), general deconditioning, and normal age-related changes.” (J.9 at 96).

- July 2015: Wilcox was evaluated by Dr. Sassman at the direction of her attorney.
 - Dr. Sassman opined the work injury was “directly and causally related to the disc bulge and acted as a substantial aggravating factor in the degenerative changes in her lumbar spine.” She stated that although the degenerative changes predated the work injury, “they were asymptomatic.” (J.11 at 112-113).
- December 30, 2015: Wilcox was evaluated by Dr. Boarini. He recommended a laminectomy and decompression.
 - Dr. Boarini stated the following regarding causation: “explained to her that although she may have had some aggravation of her back pain from this incident [7/20/14], her lumbar stenosis clearly predates it and I do not think it is significantly caused by the work incident in question.” (J.14 at 196)
- January 13, 2016: Wilcox was seen for an IME by Dr. Mooney at the request of the employer’s counsel. He found no evidence of “nonphysiologic findings,” opined she was not at MMI regarding her back and that she was “significantly deconditioned, significantly overweight, and quite dysfunctional, and would be unable to perform physical activity, even within the light duty category.”
 - Dr. Mooney provided the following opinion: “Wilcox did have evidence of preexisting lumbar disc disease and lumbar spinal stenosis. However, she was functionally able to perform her work activities, and was intermittently treated for lumbar pain prior to the date of injury 06/20/14 [sic], and as such the incident appears to have aggravated the preexisting medical condition and is directly contributory to her current presentation, as Bradford-Hill criteria of temporality, specificity, and consistency are met.” (J.12 at 130).
- February 19, 2016: Dr. Boarini performed surgery in the form of a lumbar laminectomy, medical facetectomy at L4-5. Wilcox continued to report pain and symptoms after surgery. Dr. Boarini did not believe any further surgery was indicated and released Wilcox from his care as of June 27, 2016.
- July 20, 2016: Dr. Boarini provided a letter placing Wilcox at MMI as of 6/27/2016, finding a 10% impairment as a result of the work injury, and finding no work restrictions related to the injury.
- In January 2017, Wilcox returned to Dr. Sassman. Dr. Sassman recommended continued pain management, provided work restrictions, and reaffirmed her causation opinion. (J.19)

- On March 1, 2017, Dr. Mooney provided an update after reviewing medical records since his last report. He revised his report to find Wilcox met MMI on 8/30/2016 and provided the following opinions:
 - Dr. Mooney provided a 13% whole person impairment rating “with regard to” the work injury.
 - “It is my opinion, based on her surgery alone, that she would not require permanent restrictions; however, she has multiple medical comorbidities, advanced deconditioning, and continues to demonstrate, at least by physical therapy reports, some difficulty with normal ambulation. As such, it is my opinion that Ms. Wilcox would be able to function only in the light duty capacity with a maximum lift of 20 pounds from knees to waist and maximum push/pull of 20 pounds and maximum lift/carry of 20 pounds. It is my opinion that the majority of her duties would be required in a sedentary position with walking and standing limited to 15 minutes per hour, an assistive device (cane) may be used if desired.” (J.17 at 215).
- Wilcox treated with Dr. Hansen (beginning January 2016) and Dr. Ledet (beginning November 2017) for pain management including prescription medication and injections. (J.13, J.21).
- Dr. Hansen conducted an IME on June 2, 2018. He found Wilcox was not at MMI and recommended spinal cord stimulator and aggressive physical therapy. He provided a causation opinion as related to the work injury based on the patient’s report of timing. (J.21 at 268).

On December 24, 2019, the Deputy Commissioner issued an Arbitration Decision holding Wilcox suffered a work injury on July 20, 2014, that it substantially aggravated or lit up her spinal stenosis in the low back, and that the accident was the cause of the need for ongoing treatment including surgery and pain management. The Deputy Commissioner found Wilcox had plateaued and reached MMI and that she is permanently and totally disabled. In Appeal Decision dated August 12, 2020, the Commissioner affirmed and adopted the Arbitration Decision as the final agency decision. Mercy sought judicial review.

II. ANALYSIS AND CONCLUSIONS OF LAW.

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 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 v. IBP, 710 N.W.2d 213, 219 (Iowa 2006); Iowa Code § 17A.19(10)(i), (j).

A. Whether Substantial Evidence Supports Finding that Symptoms After June 27, 2016 are Work-Related.

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)). "Ordinarily, expert testimony is necessary to establish the causal connection between the injury and the disability for which benefits are claimed." Id. However, "[t]he commissioner, as the fact finder, determines the weight to be given to any expert testimony." Id.

“Because the commissioner is charged with weighing the evidence, we liberally and broadly construe the findings to uphold his decision.” Finch v. Schneider Specialized Carriers, Inc., 700 N.W.2d 328, 331 (Iowa 2005).

The Court finds the Agency Decision is supported by substantial evidence. “Evidence may be substantial even though [the court] may have drawn a different conclusion as fact finder.” Cedar Rapids Cmty. Sch. Dist. V. Pease, 807 N.W.2d 839, 845 (Iowa 2011). Here, the Agency Decision relied upon some expert physicians over others. The Agency Decision also relied on the fact that despite Wilcox’s pre-existing degenerative problems, Wilcox was able to perform a job including heavy labor for years, until the work accident.

The factual timeline of the injury and Wilcox’s prior ability to work despite her pre-existing conditions supports the Agency Decision.

It is a well-established principle in workmen's compensation law if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened or “lighted up” by an injury which arose out of and in the course of employment resulting in a disability found to exist, he would be accordingly entitled to compensation.

Glenn v. W. Des Moines Cmty. Sch. Dist., 682 N.W.2d 82 (Iowa Ct. App. 2004) (citing Dep’t. of Transp. V. Van Cannon, 459 N.W.2d 900, 904 (Iowa Ct. App. 1990)). Medical evidence and Wilcox’s testimony supports that prior to the work injury, Wilcox had pre-existing degenerative changes, but they were asymptomatic and she was able to perform her work as a nurse.

Mercy does not dispute that treatment through the February 19, 2016 surgery was related to the work injury. Instead, Mercy asserts that, after the surgery, Wilcox reached MMI on June 27, 2016, when she was released from Dr. Boarini’s care, and that any further treatment or symptoms from that date forward were not causally related to the work injury. Mercy argues the Agency lacked substantial evidence to reject Dr. Boarini’s opinion and adopt the opinion of Dr. Sassman and Dr. Hansen.

Weighing of competing expert opinions is within the province of the commission. Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 845 (Iowa 2011) (“the determination of whether to accept or reject an expert opinion is within the peculiar province of the commissioner.”). The commissioner considers expert testimony with all other evidence and determines the weight to be given any expert testimony. Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 752 (Iowa 2002); see also Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560 (Iowa 2010); Martinez Const. v. Ceballos, 836 N.W.2d 152, 2013 WL 2646833, at *4 (Iowa Ct. App. June 12, 2013) (“Lay witness testimony is also relevant and material to the causation determination, and the agency must consider all evidence—both medical and nonmedical—in arriving at a disability determination.”). To reverse the Agency Decision, this Court would be required to find the experts relied upon as so flawed as to not constitute substantial evidence. See Bahic v. Mercy Medical Center, 919 N.W.2d 768 (Iowa 2018) (citing Pease, 807 N.W.2d at 845).

The Agency Decision expressly found Wilcox highly credible and found the timeline of her prior work history supported the decision to credit the opinions of Dr. Sassman and Dr. Hansen. Mercy has not shown that these experts are “so flawed as to not constitute substantial evidence.” Bahic, 919 N.W.2d 768. Although neither doctor is a surgeon, both are doctors who evaluated or treated Wilcox.

Mercy argues the Agency Decision’s reliance on Dr. Mooney is misplaced and that Dr. Mooney actually supports Mercy’s position. In his first IME report from 1/13/2016, Dr. Mooney provided the causation opinion that the work incident “aggravated the preexisting medical condition and is directly contributory to [Wilcox’s] current presentation.” (J.12 at 130). Mercy focuses on Dr. Mooney’s follow-up letter. However, Dr. Mooney was not asked to and did not revisit his causation opinion regarding ongoing symptoms. He was asked whether he would assign

any permanent impairment as a result of her injury, to which he assigned 13% whole body impairment. He was also asked to identify any permanent restrictions he “would assign with regard to the injuries claimant allegedly sustained on 6/20/14,” to which he stated he would not assign permanent physical restrictions based on her surgery alone, but that when her medical comorbidities were considered, Wilcox continued to have physical restrictions. (J.17 at 215). Regardless of whether the surgery would not have required permanent restrictions for an otherwise healthy employee, here, the employee did have comorbidities. “Employers take employees as they find them. As a result, if a subsequent condition aggravates a preexisting condition rendering the condition disabling, the employer is liable for the disability.” Glenn v. W. Des Moines Cmty. Sch. Dist., 682 N.W.2d 82 (Iowa Ct. App. 2004).

Mercy asserts the Agency should have relied on the opinions of Dr. Igram, Dr. Aschenbrenner, and Dr. Boarini. The Agency Decision stated these three doctors did not “adequately” address the issue of “whether the injury was a substantial causal or aggravating factor, or whether it lit up the condition.” (Arbitration Decision at 8). Dr. Igram did not provide any opinion regarding whether the pre-existing condition was aggravated/lit-up. He did not provide a causation opinion and only noted the underlying degenerative changes and that they predated Wilcox’s injury. (J. 5 at 51). Dr. Aschenbrenner provided a causation opinion on January 29, 2015 that supports Wilcox: finding her need for treatment was due to the work injury’s aggravation of low back pain. He later indicated that Wilcox’s risk factors “increas[ed] the likelihood” that she would have experienced symptoms regardless of the work incident. The possibility that Wilcox would have ultimately experienced symptoms without the work incident does not directly address Dr. Achbrenner’s own prior opinion that the work injury caused an aggravation of her pre-existing symptoms.

Mercy relies primarily on Dr. Boarini's identification of June 27, 2016 as the date of MMI. Dr. Boarini's initial opinion acknowledged "some aggravation" of back pain but did not think it "significantly caused" by the work incident. He found a 10% permanent impairment due to the work injury and that MMI was reached on June 27, 2016 with no further work restrictions due to the work injury. Dr. Boarini does not explain why Wilcox's condition prior to June 27, 2016 could be attributed to the work injury but not treatment afterwards, particularly where her physical condition had not improved. It is not for this Court to step in and make its own opinion weighing the experts. Instead, it is a question of whether substantial evidence supports the Agency Decision to credit other opinions over Dr. Boarini. Given the evidence outlined above, the Court finds there is substantial evidence to support the Agency Decision that Wilcox's work injury caused permanent disability.

B. Whether Finding of Permanent and Total Disability is Irrational, Illogical, and Wholly Unjustifiable.

Mercy next contends that the Agency's finding that Wilcox is permanently and totally disabled as a result of the work injury is irrational, illogical, or wholly unjustifiable. "Industrial disability measures an injured worker's lost earning capacity." Myers v. F.C.A. Servs., Inc., 592 N.W.2d 354, 356 (Iowa 1999). The factors to be considered include the "employee's functional disability, age, education, qualifications, experience, and the ability of the employee to engage in similar employment." Id.

Mercy asserts Wilcox sustained minimal permanent impairment and required no permanent work restrictions. A total disability is when "the injury wholly disables the employee from performing work that the employee's experience, training, intelligence, and physical capabilities would otherwise permit the employee to perform." IBP, Inc. v. Al-Gharib, 604 N.W.2d at 621, 633 (Iowa 2000). According to the Agency Decision, Wilcox presented to hearing with a walker

and in obvious discomfort. Evidence was presented that she continues to have disabling low back pain and very limiting work restrictions that would prevent lifting, pushing, pulling, and carrying. She must change positions frequently. Wilcox has not worked since she was terminated in January 2015 by Mercy because she was unable to perform her job as a nurse. Wilcox's vocational expert provided the opinion that "based on her injury and subsequent restrictions [she] is currently unable to be gainfully or competitively employed." (J.22 at 276). Wilcox's vocational expert met with her, while Mercy's vocational expert did not have that opportunity. Finally, setting aside the causation issue addressed above, the physicians involved in this case identified either a permanent impairment, work restrictions, or both:

- Dr. Mooney: 13% impairment whole person due to work injury; work restrictions of maximum lift, push/pull, carry 20 lbs, majority duties required to be sedentary (J.17 at 215).
- Dr. Aschenbrenner: 0% impairment, work restrictions of maximum lift 20-25 lbs, rare twisting, bending, or stooping. (J.9 at 96-97).
- Dr. Boarini: 10% impairment due to injury, no restrictions related to injury (J.14 at 208)
- Dr. Sassman: 13% impairment of the whole person, no lifting, pushing, pulling, or carrying, limit standing and walking, change positions frequently, no stooping, crawling, kneeling, walking on uneven surfaces, no ladders, rare use of stairs, no vibratory or power tools. (J.11, at 113-114)
- Dr. Hansen: 18% impairment for the whole person, did not address work restrictions (J.21 at 269).

This Court finds the Agency Decision regarding permanent and total disability is not irrational, illogical, or wholly unjustifiable.

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



State of Iowa Courts

Case Number
CVCV060687
Type:

Case Title
CATHOLIC HEALTH INITIATIVES VS PAULETTE WILCOX
OTHER ORDER

So Ordered

Sarah Crane, District Court Judge
Fifth Judicial District of Iowa

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