

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RANDY SANDS,

Claimant,

vs.

CITY OF SIOUX CITY,

Employer,
Self-Insured,
Defendant.

File No. 5050047.01

A P P E A L

D E C I S I O N

Head Note: 4000.2

Defendant City of Sioux City appeals from a penalty decision filed on January 21, 2022. Claimant Randy Sands cross-appeals. The case was heard on August 3, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 15, 2021.

In the penalty decision, the deputy commissioner found defendant unreasonably delayed paying claimant a \$411,842.83 judgment, less credits, without contemporaneously conveying the reason for the 39-day delay to claimant, and assessed a \$5,000.00 penalty against defendant. The deputy commissioner assessed claimant's cost of service against defendant but declined to assess defendant the cost of the filing fee because no filing fee is required when filing a penalty-only petition.

Defendant asserts on appeal that the deputy commissioner erred in assessing a \$5,000.00 penalty against defendant because: (1) no authority exists under Iowa Code or under administrative rule for delegation of authority by the workers' compensation commissioner to a third party other than a deputy commissioner to act upon a workers' compensation claim; (2) there was no lawful delegation of authority prior to entry of the July 2, 2020, order by the deputy workers' compensation commissioner; (3) there was no final order or decision by the division of workers' compensation fixing the amount of the partial commutation pursuant to Iowa Code section 85.48; (4) the judgment was not properly entered by the district court in absence of a file stamped order or decision by the commissioner as required by Iowa Code section 86.42; (5) the absence of a lawful final order or decision by the commissioner fixing the amount of commuted benefits deprived the deputy workers' compensation commissioner of subject matter jurisdiction to enter an award of penalty benefits; (6) the commuted benefits are not subject to imposition of a penalty under Iowa Code section 86.13; and (7) the award of penalty benefits is not supported by the weight of the evidence.

Claimant asserts on appeal that the deputy commissioner correctly awarded penalty benefits, but claimant asserts the penalty award should be increased.

Those portions of the proposed penalty decision pertaining to issues not raised on appeal are adopted as part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 86.24 and 17A.15, the penalty decision filed on January 21, 2022, is affirmed in part, and is reversed in part.

I affirm the deputy commissioner's finding that claimant is entitled to reimbursement from defendant for the cost of service. I respectfully reverse the deputy commissioner's finding that claimant is entitled to an award of \$5,000.00 in penalty benefits with the following additional and substituted analysis.

Claimant sustained an injury arising out of and in the course of his employment with defendant on October 4, 2013. Claimant later filed a petition in arbitration seeking workers' compensation benefits in File Number 5050047. Following a hearing, the deputy commissioner issued an arbitration decision on December 20, 2016, awarding claimant permanent total disability benefits. Defendant did not appeal the decision and the decision became final agency action.

In February 2017, claimant filed an original notice and petition for partial commutation in File Number 5050047, seeking to commute all but one week of the award of permanent total disability benefits. Following a hearing, a second deputy commissioner issued a partial commutation decision on August 7, 2018, granting claimant's petition for partial commutation and ordering defendant to pay a lump sum of the commuted benefits for all of claimant's remaining lifetime benefits, except for the final week of his life expectancy using rule 876 Iowa Administrative Code 6.3. The deputy commissioner ordered the parties to cooperate to calculate the applicable value of the commuted benefits and further ordered:

If the parties cannot reach an agreement on the commuted value, they should file a request for appointment of a financial expert to calculate the value of the partial commutation with the expense of that financial expert to be assessed as a cost against whichever party(ies) presented inaccurate calculations of the commuted value.

(Partial Commutation Decision, p. 9)

Defendant appealed the proposed partial commutation decision to the workers' compensation commissioner. The workers' compensation commissioner issued an appeal decision on January 17, 2020, affirming the partial commutation decision in its entirety, and ordering, in relevant part:

Defendant shall pay claimant a lump sum payment of future weekly benefits for all of claimant's remaining life expectancy, except for the last

week, utilizing rule 876 IAC 6.3, discounted to the present value based on the number of weeks to be commuted and the interest rate for determining the discount as of the date of his decision.

. . . .

The parties shall cooperate to calculate the applicable value of the commuted benefits.

If the parties cannot reach an agreement on the commuted value, they should file a request for appointment of a financial expert to calculate the value of the partial commutation with the expense of that financial expert to be assessed as a cost against whichever party(ies) presented inaccurate calculations of the commuted value.

(Appeal Decision, p 3)

Defendant filed a petition for judicial review of the appeal decision for File Number 5050047. On May 12, 2020, Iowa District Court Judge Roger Sailer affirmed the appeal decision and remanded the case to the agency “for computation of the precise dollar amount of the commuted lump-sum payment, either through the process established by the agency (appointment of a financial expert), or by the agency itself.” (JE 1, p. 33)

On June 17, 2020, claimant’s attorney sent an e-mail to defendant’s counsel with claimant’s proposed calculations and stated in the event defendant disagreed with the calculations, “we will need to request the appointment of a financial expert to determine the commuted value.” (Ex. 1) Claimant’s counsel suggested two experts to compute the award and stated if the parties could not reach an agreement, he would petition the agency for appointment of an expert. (Ex. 1)

On June 22, 2020, claimant filed a request for appointment of a financial expert for File Number 5050047 with the division of workers’ compensation, stating he had not received a response from defendant’s counsel regarding his June 17, 2020, correspondence. Claimant’s counsel represented defendant’s counsel had not provided claimant with any proposed commutation value computations.

In response to claimant’s motion for appointment of a financial expert, a third deputy workers’ compensation commissioner issued an order on July 2, 2020. In the order, the deputy commissioner noted defendant had not responded to claimant’s motion or to the deputy commissioner’s e-mail and telephone inquiries on June 29, 2020, made in an effort to resolve the pending motion. Pursuant to the commissioner’s January 17, 2020, order, the deputy commissioner appointed Tim Swedean with Swedean and Company to determine the correct amount of the commuted value and ordered the parties to provide Swedean with the documents to make the determination

within 10 days of the date of his order. The order stated the expenses for Swedean's work would be assessed against the party who presented inaccurate information regarding the calculation. (JE 3, pp. 38-39) Defendant did not appeal from, request reconsideration of, or otherwise challenge the July 2, 2020, order.

Pursuant to the July 2, 2020, order, claimant's counsel provided the relevant information to Swedean, and Swedean determined the value of the commutation award through correspondence dated July 10, 2020. (Ex. 2, pp. 20, 24, 48)

Claimant's counsel filed a request for entry of judgment with the district court on August 13, 2020. On August 18, 2020, at approximately 3:30 p.m., Iowa District Court Judge Sailer entered a judgment in claimant's favor in the amount of \$411,842.83, plus interest in the amount of \$24.47 per day from August 2, 2020, until paid. (JE 4, pp. 40-41)

At 3:38 p.m. on August 18, 2020, the workers' compensation commissioner issued an order of delegation delegating authority to the third deputy commissioner to handle the issues raised by the ruling on the petition for judicial review and remand to the agency. (Ex. D)

Defendant did not move to set aside the August 18, 2020, judgment, or otherwise appeal the entry of judgment by the district court. The judgment became final.

On September 25, 2020, defendant issued a check to claimant in the amount of \$409,726.63, representing the judgment, plus interest, minus ongoing payments. (JE 5, pp. 42-43) Claimant filed a satisfaction of judgment with the district court acknowledging receipt of payment of the August 18, 2020, judgment, noting the payment of the judgment had been late and could form the basis of an action for penalty benefits under Iowa Code section 86.13, and documenting the satisfaction of judgment did not waive claimant's potential separate claim for penalty benefits under Iowa Code section 86.13. (JE 6, p. 47) Defendant did not take any action following the filing of the satisfaction of judgment.

On October 16, 2020, claimant filed an original notice and petition seeking penalty benefits and the matter was assigned File Number 5050047.01. On November 5, 2020, defendant filed an answer taking issue with procedural aspects of File Number 5050047. Defendant did not file a motion to dismiss or for summary judgment addressing the purported procedural issues with File Number 5050047.

The penalty hearing for File Number 5050047.01 was scheduled for August 3, 2021. At 10:20 p.m., on August 2, 2021, the night before the penalty hearing, defendant filed a motion to dismiss. The deputy commissioner assigned to the penalty action took the motion under advisement and provided claimant with the opportunity to respond to the late-filed motion. The deputy commissioner issued a penalty decision on January 21, 2022, rejecting

defendant's challenges to the case and assessing a \$5,000.00 penalty and the cost of claimant's filing fee against defendant.

Defendant asserts on appeal that the deputy commissioner erred in assessing a \$5,000.00 penalty against defendant because: (1) no authority exists under Iowa Code or under administrative rule for delegation of authority by the workers' compensation commissioner to a third party other than a deputy commissioner to act upon a workers' compensation claim; (2) there was no lawful delegation of authority prior to entry of the July 2, 2020 order by the deputy workers' compensation commissioner; (3) there was no final order or decision by the division of workers' compensation fixing the amount of the partial commutation pursuant to Iowa Code section 85.48; (4) judgment was not properly entered by the district court in absence of a file stamped order or decision by the commissioner as required by Iowa Code section 86.42; and (5) the absence of a lawful final order or decision by the commissioner fixing the amount of commuted benefits deprived the deputy workers' compensation commissioner of subject matter jurisdiction to enter an award of penalty benefits.

Defendant's arguments focus on alleged procedural irregularities with File Number 5050047 involving the petition for partial commutation. Defendant also raises the issue of subject matter jurisdiction.

The district court issued a final judgment in favor of claimant on August 18, 2020. Under Iowa Rule of Appellate Procedure 6.101, "[a] notice of appeal must be filed within 30 days after the filing of the final order or judgement. However, if a motion is timely filed under Iowa R. Civ. P. 1.904(2) or Iowa R. Civ. P. 1.1007, the notice of appeal must be filed within 30 days after the filing of the ruling on such motion." Defendant did not move to reconsider, enlarge or amend the judgment or appeal the judgment, and the judgment became a final judgment 30 days after it was entered and paid the judgment on September 25, 2020. Instead, defendant seeks to collaterally attack the judgment in this penalty proceeding.

In Schott v. Schott, 744 N.W.2d 85, 88 (Iowa 2008), the court rejected a similar collateral attack following the entry of adoption decrees that were not appealed, as follows:

We have repeatedly said a final judgment is conclusive on collateral attack, even if the judgment was erroneous, unless the court that entered the judgment lacked jurisdiction over the person or the subject matter. See In re Estate of Falck, 672 N.W.2d 785, 792 (Iowa 2003) ("Even though a judgment may be erroneous, if the court has jurisdiction over the person and the subject matter, the judgment is conclusive on collateral attack."); Davis v. Rudolph, 242 Iowa 589, 595, 45 N.W.2d 886, 890 (1951) ("It is also the established rule in this state that, where the court had jurisdiction both of the person and the subject matter, a judgment is conclusive against

collateral attack, though it be erroneous.” (quoting Reimers v. McElree, 238 Iowa 791, 796, 28 N.W.2d 569, 572 (Iowa 1947)).

The court then found the district court issuing the adoption decrees was a court of general jurisdiction and it had the necessary subject matter jurisdiction to grant the adoption decrees.

Under Schott, it is necessary to determine whether the district court had subject matter jurisdiction over the commutation proceeding when it entered the judgment.

The Iowa courts distinguish between jurisdiction of the case and subject matter jurisdiction. Ney v. Ney, 891 N.W.2d 446, 453 (Iowa 2017) (citing Schaefer v. Putnam, 841 N.W.2d 68, 80 (Iowa 2013); Alliant Energy-Interstate Power & Light Co. v. Duckett, 732 N.W.2d 874 (Iowa 2007)). In Ney, the court noted:

Subject matter jurisdiction is “the authority of a court to hear and determine cases of the general class to which the proceedings in question belong, not merely the particular case then occupying the court’s attention.” Schaefer, 841 N.W.2d at 80 n.13 (quoting Christie v. Rolscreen Co., 448 N.W.2d 447, 450 (Iowa 1989)). Jurisdiction of the case refers to a court’s “authority to hear the particular case.” Christie, 448 N.W.2d at 450.

This distinction is important because although a statute cannot deprive a court of its constitutionally granted subject matter jurisdiction, it can affect the jurisdiction of the case by prescribing specific parameters of the court’s authority to rule on particular types of matters. See Max 100 L.C. v. Iowa Realty Co., 621 N.W.2d 178, 181 (Iowa 2001) (“[T]he legislature may impose a duty to grant an injunction by specifying conditions [under which an injunction must be granted] in a statute. When this is done, the conditions specified in the statute supersede the traditional equitable requirements.” (Citation omitted)); see also Mensch v. Netty, 408 N.W.2d 383, 386 (Iowa 1987) (“[C]ourts of equity are bound by statutes and follow the law in absence of fraud or mistake.”) Further, while parties cannot waive the absence of subject matter jurisdiction, a defect in the court’s jurisdiction of the case can be obviated by consent, waiver, or estoppel. In re Marriage of Seyler, 559 N.W.2d 7, 10 n.3 (Iowa 1997) (citing State v. Mendicino, 509 N.W.2d 481, 482-83 (Iowa 1993), which overruled cases to the contrary).

Id. at 453-54.

The distinction between subject matter jurisdiction and jurisdiction of the case is significant because a judgment entered by a court without subject matter jurisdiction is void and subject to collateral attack, whereas a judgment entered by a court without jurisdiction over the case is voidable, rather than void. Schaefer, 841 N.W.2d at 83 n.13. If a party waives the court’s authority to hear a particular case the judgment is not

subject to collateral attack. Id. (quoting Klinge v. Bentien, 725 N.W.2d 13, 16 (Iowa 2006)).

By enacting Iowa Code chapter 85, the legislature removed the district court's general, original jurisdiction to hear claims involving the rights and remedies of injured employees against employers for industrial injuries and placed such claims, including commutations of awards or settlements, within the exclusive jurisdictional purview of the workers' compensation commissioner. Heartland Express, Inc. v. Gardner, 675 N.W.2d 259, 262 (Iowa 2003) (citing Shirley v. Pothast, 508 N.W.2d 712, 714 (Iowa 1993)). Thus, the legislature has vested subject matter jurisdiction over workers' compensation claims in the workers' compensation commissioner, "subject to any further circumscription by the legislature." Id. An example of such a circumscription is found in Iowa Code section 85.71, which governs the commissioner's subject matter jurisdiction over claims involving injuries sustained outside of Iowa. Id. (citing Heartland Express, Inc. v. Terry, 631 N.W.2d 260, 265 (Iowa 2001)).

After receiving Swedean's value of the commutation, claimant did not seek a final order from the agency adopting Swedean's calculations and, instead, filed a request for entry of judgment with the district court on August 13, 2020. On August 18, 2020, at approximately 3:30 p.m., Iowa District Court Judge Sailer entered a judgment in claimant's favor in the amount of \$411,842.83, plus interest in the amount of \$24.47 per day from August 2, 2020, until paid. (JE 4, pp. 40-41)

While the commutation matter was pending before the agency, the district court did not have subject matter jurisdiction over the determination of the commutation amount. The court had remanded the matter for that determination. When the district court entered judgment in claimant's favor on August 18, 2020, it did not have subject matter jurisdiction over the commutation proceeding, and thus, it lacked authority to enter the judgment. Claimant's penalty action is based on the delay of the payment of the judgment. Because the court lacked subject matter jurisdiction to enter the judgment, claimant is not entitled to penalty benefits under Iowa Code section 86.13, for defendant's delay in paying the judgment, and the decision must be reversed.

This decision is not meant to encourage defendant's counsel's unprofessional conduct throughout this proceeding. Defendant's counsel repeatedly failed to respond to communications from opposing counsel and to deputy commissioners of this agency. She also failed to raise the issue of the irregularities in the entry of the judgment knowing a petition for penalty had been filed, and instead, elected to direct her client to pay the judgment.

ORDER

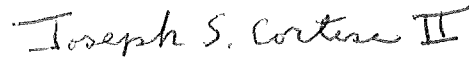
IT IS THEREFORE ORDERED that the penalty decision filed on January 21, 2022, is affirmed in part, and reversed in part with the above-stated additional and substituted analysis.

Claimant shall take nothing in the way of penalty benefits.

Defendant shall reimburse claimant seven and 05/100 dollars (\$7.05) for the cost of service and shall pay the cost the transcript on appeal pursuant to 876 IAC 4.33.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed on this 13th day of July, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Dennis Mahr (via WCES)

Connie Anstey (via WCES)