

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ABF FREIGHT SYSTEM, INC. and
ACE AMERICAN INSURANCE
COMPANY,

Petitioner,

v.

MARCUS HILLIARD,

Respondent.

Case No. CVCV060951

**RULING ON PETITION FOR JUDICIAL
REVIEW**

Petitioners ABF Freight System, Inc. (ABF) and Ace American Insurance Company filed a petition for judicial review from a decision of the Iowa Workers' Compensation Commissioner. The Court held a hearing on April 9, 2021. Chris Spencer represented Petitioners. Matt Petrzelka represented Respondent Marcus Hilliard.

STATEMENT OF THE CASE

I. Facts

The events and extent of Marcus Hilliard's (Claimant) injuries leading to the prior proceeding are relevant to establish a baseline for the claim. Claimant suffered a neck injury while driving a forklift for ABF. He ultimately had a surgery on the C5-C6 and C6-C7 anterior cervical discectomy. Claimant filed a workers' compensation claim and the matter proceeded to an arbitration hearing. The deputy workers' compensation commissioner issued a decision on April 13, 2016. That decision included the following findings of fact:

Claimant is a relatively young man with a high school education. He has no technical training beyond the high school level. He has either farmed or driven various types of trucks since he left high school. Claimant holds a current commercial drivers' license (CDL). The license does not expire until June 2, 2019.

...

In light of all the factors involving industrial disability, it is the determination of the [deputy commissioner] claimant has sustained an industrial disability in the amount of thirty (30) percent as a result of the work injury on August 8, 2013. Defendants shall pay unto claimant, 150 weeks of permanent partial disability benefits at the weekly benefit rate of \$705.46 per week. Said benefits shall commence from February 19, 2016. Defendants shall take credit for all benefits previously paid to claimant.

Arb. Dec., PP. 10-11. Notably for this Review-Reopening, the original arbitration hearing was held less than a year following surgery for the neck injury.

Claimant filed his Petition for Review-Reopening on January 19, 2018. During the hearing for the Review-Reopening, Claimant testified that since the April 2016 hearing, his pain was more severe. Specifically, the pain is between his shoulder blades and moves into his back, and from his neck the pain radiates into the back of his head, down into his shoulders and down into his arms wrists and hands. He has gained 40 to 50 pounds since the original hearing.

Claimant primarily treats with Casey Boyles M.D., for his neck condition. Furthermore, since the 2016 hearing, Dr. Boyles has been treating Claimant for depression. Dr. Boyles has opined that Claimant's depression resulted from the chronic pain caused by his neck injury. Claimant reports that the pain has taken over his life and he feels "inadequate." He was prescribed several new medications since the 2016 hearing: Cymbalta and Lyrica to treat depression and Zanaflex and gabapentin as muscle relaxers to resolve pain. At the time of the 2016 hearing, he was only taking over-the-counter medications. Claimant had one cervical epidural steroidal injection following the 2016 hearing. A second was recommended but denied by the workers' compensation insurer. Claimant testified he cannot work for more than 30 minutes at a time due to his physical condition. As a result, he has stopped driving a truck and hauling cattle. The deputy commissioner notes that Dr. Boyles's medical records confirm Claimant's testimony. In a letter dated February 20, 2019, Dr. Boyles described Claimant's condition as "a continuous decline since

the date of his surgery.” Additionally, Claimant’s wife testified to confirm the symptoms Claimant was experiencing and the deputy found her to be “highly credible.”

II. Procedural Posture

Claimant sustained his work injury on August 8, 2013. In the underlying arbitration decision filed in this case on July 21, 2016, the deputy commissioner found claimant sustained 30 percent industrial disability as a result of the work injury, which entitled claimant to receive 150 weeks of permanent partial disability benefits. The July 21, 2016, arbitration decision was not appealed.

On January 19, 2018, Claimant filed a review-reopening petition alleging he sustained a physical change of condition related to the work injury after the arbitration decision was filed, thus entitling him to receive additional industrial disability benefits for the work injury. The review-reopening petition proceeded to hearing on June 18, 2019.

On March 11, 2020, the deputy workers’ compensation commissioner issued a review-reopening decision finding claimant carried his burden of proof to establish he sustained a physical change of condition regarding the work injury after the arbitration decision was filed thus entitling claimant to receive additional industrial disability benefits. The deputy commissioner found the commencement date for the additional benefits is January 19, 2018, the date Claimant filed his review-reopening petition. The deputy commissioner ordered defendants to pay Claimant’s costs of the arbitration proceeding.

Petitioner appealed this decision to the commissioner. In the appeal decision, the commissioner affirmed the deputy commissioner’s decision in part. The commissioner affirmed the deputy commissioner’s finding that Claimant proved he sustained a change of condition related to the work related injury, that Claimant is entitled to receive additional benefits, that Claimant’s

disability increased from 30 to 50 percent, which entitles claimant to receive an additional 100 weeks of benefits, and that Petitioner pay costs. The commissioner modified the deputy commissioner's ruling to begin the payments of the additional benefits on January 4, 2019.

The commissioner modified the deputy commissioner's decision due to the fact that the benefits from the original arbitration expired on January 3, 2019. Therefore, the additional benefits would not begin until the original benefits ceased.

CONCLUSIONS OF LAW

I. 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 (2019); *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). "Under the Act, we may only interfere with the [C]ommissioner'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. “Evidence is not insubstantial merely because different conclusions may be drawn from the evidence.” *Cedar Rapids Comm. Sch. Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011). “To that end, evidence may be substantial even though we may have drawn a different conclusion as fact finder.” *Id.* The application of the law to the facts is also an enterprise vested in the Commissioner. *Mycogen*, 686 N.W.2d at 465. The findings of the commission have “the force of a jury verdict.” *Holmes v. Bruce Motor Freight*, 215 N.W.2d 296, 297-98 (Iowa 1974).

The Court will only reverse the Commissioner's application of law to the facts if it was “irrational, illogical, or wholly unjustifiable.” *Id.*; Iowa Code § 17A.19(10)(l). “A decision is “irrational” when it is not governed by or according to reason.” *Christensen v. Iowa Dep’t. of Revenue*, 944 N.W.2d 895 at 905 (Iowa 2020). A decision is “illogical” when it is “contrary to or devoid of logic.” *Id.* “A decision is “unjustifiable” when it has no foundation in fact or reason” or is “lacking in justice.” *Id.* This standard requires the Court to allocate some deference to the Commissioner's application of law to the facts, but less than it gives to the agency's findings of fact. *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009).

II. Merits

A. Whether the commission's finding of Claimant's change of condition is supported by substantial evidence.

Iowa Code section 86.14(2) allows the Workers' Compensation Commissioner to reopen an award for payments or an agreement for settlement to inquire as to whether the condition of the injured worker warrants "an end to, diminishment of, or increase of compensation so awarded or agreed upon." Iowa Code § 86.14(2). The moving party carries the burden of establishing by a preponderance of the evidence that, subsequent to the date of the award under review, there was a change to the employee's impairment or earning capacity caused by the original injury. *Gallardo v. Firestone Tire & Rubber Co.*, 482 N.W.2d 393, 395–96 (Iowa 1992). A claimant seeking an increase in an award must show via a preponderance of the evidence that their current condition was "proximately caused by the original injury." *Kohlhaas v. Hog Slat, Inc.*, 777 N.W.2d 387, 391 (Iowa 2009) (cite omitted). This standard implements principles of res judicata, that is, the agency "should not reevaluate an employee's level of physical impairment or earning capacity if all of the facts and circumstances were known or knowable at the time of the original action." *Id.* at 393. The standard implements the legislative intent to "avoid litigation, lessen the expense incident thereto, minimize appeals, and afford an efficient and speedy tribunal to determine and award compensation under the terms of this act." *Id.*

The Commissioner found Claimant's condition worsened since the original award. In support of this finding, the Commissioner compared two different "snapshots" of Claimant's condition: one at the time of the first hearing and another at the time of the second hearing. The newer snapshot contained testimony from Claimant, his wife, and his doctor stating that his physical pain has increased and his mental condition has deteriorated.

The deputy commissioner came to a rational conclusion from the evidence presented. He found that Claimant's condition appeared better than it actually was at the first hearing. At that snapshot in time, the surgery was relatively recent and appeared to have good results. Claimant had no work restrictions. That information led to a finding of moderate to low loss of earning capacity. The next three years painted a different picture. The evidence presented at the second hearing showed that the injury had not healed well. Claimant was subsequently diagnosed with chronic pain, depression, and anxiety. He had been prescribed several different medications over that period to attempt to remedy his pain and depression. He was working for only short periods of time on his farm before taking a break. The deputy found Claimant, his wife, and Dr. Boyles to be credible. These facts led to the new determination that Claimant's loss of earning capacity was more severe than originally estimated.

Petitioners point to a number of facts supporting their position, particularly that Dr. Boyles did not prescribe work restrictions. However, Dr. Boyles explained that he does not impose work restrictions as a matter of practice because he has seen employers deny jobs to his patients with work restrictions.¹ Rather, he only does so when absolutely necessary. It was not necessary in this case because Claimant's work was restricted to his farm. It is well settled that the Commissioner has discretion when weighing the testimony from expert witness. *Cedar Rapids Comm. Sch. Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011). In this case, the Commissioner properly gave weight to Dr. Boyles' overall testimony about Claimant's decline in health, notwithstanding his decision not to formally impose work restrictions.

Based on the record as a whole, the commissioner's finding of fact was supported by substantial evidence nonetheless.

¹ Cl. Exh. 5, depo pp. 39-40.

B. Whether the granting of additional benefits was irrational, illogical, or wholly unjustifiable.

The determination of industrial disability is a mixed question of law and fact. *Neal v. Annette Holdings*, 814 N.W.2d 512, 525 (Iowa 2012). In determining the amount of industrial disability, the Commissioner is required to consider the amount of reduction of earning capacity. *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 192 (Iowa 1980). Several criteria are considered, including the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted, and the employer's offer of work or failure to so offer. *Id.* A change in condition can be shown by many factors beyond physical capacity. *Simonson*, 588 N.W.2d at 434. Therefore, the "decisive issue" in a review-reopening case is "whether substantial evidence supports the commissioner's conclusion" on whether there was a change in a claimant's earning capacity. *Id.* at 435.

In this case, the Commissioner primarily focused on Claimant's physical condition. The deputy's decision discussed his worsening and chronic pain since the 2016 decision. He discussed the mental health diagnoses following the 2016 decision and how they were tied to the pain resulting from the neck injury. The deputy evaluated this information in light of testimony that Claimant has only been able to work 30 minutes at a time before requiring a break. The agency reasonably concluded that this information met the burden to justify a reopening to consider additional benefits.

From that point, the Commissioner properly considered the industrial disability factors in finding that Claimant had a 50 percent reduction in earning capacity. As discussed above, the agency pointed to the evidence showing that Claimant's condition was not fully known at the time of the 2016 hearing. Subsequent diagnoses of chronic pain, depression, and anxiety, all caused by

the neck injury, resulted in the finding of additional loss of earning capacity. Even in light of the burden facing Claimant in a review reopening case, this conclusion is not irrational, illogical, or wholly unjustifiable.

ORDER

The decision by the Workers' Compensation Commissioner is affirmed. Petitioner is responsible for any costs.



State of Iowa Courts

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Type:

Case Title
ABF FREIGHT SYSTEM INC ET AL VS MARCUS HILLIARD
OTHER ORDER

So Ordered

Jeffrey Farrell, District Court Judge,
Fifth Judicial District of Iowa

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