

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LACY ALLEN,

Petitioner,

vs.

ANNETT HOLDINGS, INC.,

Respondent.

Case No. CVCV056582

**RULING ON PETITION FOR
JUDICIAL REVIEW**

Petitioner Lacy Allen filed a petition seeks judicial review of the June 7, 2018 Worker's Compensation Agency decision denying his petition for review-reopening of his worker's compensation award.

Having heard the arguments of the parties the Court makes the following findings:

I. BACKGROUND FACTS AND PROCEDURAL HISTORY

Petitioner attended school through the 10th grade and later received his GED. He worked a number of manual labor jobs including as a logger and as a truck driver. At the time of his injury, Annett Holdings, Inc. ("Annett Holdings") employed Petitioner.

On March, 31, 2006, while on the job, Petitioner developed a burning sensation in his neck and left shoulder. He reported his injury to Respondent and received medical care. He ended up receiving therapy. After the therapy failed, Petitioner received a two-level cervical fusion at his C3-4 and C4-5 vertebrae from Dr. Edward Cullom III.

Petitioner was examined on November 10, 2008 by Dr. Ashraf Ragab. Dr. Ragab agreed with Dr. Cullom's impairment rating. Dr. Ragab did not recommend any permanent restrictions on Petitioner's employment.

On February 3, 2009, Petitioner was seen by a physical therapist. The therapist placed Petitioner in the light category of work. This examination resulted in a number of questionable findings, with the physical therapist noting that Petitioner only gave 'moderate' effort, partially self-limited his performance, exhibited increased distracted cervical motion, and a score of 38 on a pain questionnaire where anything above a 29 tens to indicate exaggeration of pain.

On September 3, 2009, Michael Jackson, M.D. saw Petitioner. Dr. Jackson opined that Petitioner's whole person was at sixteen percent impairment. He initially recommended a light work restriction. His original opinion was that Petitioner could return to over-the-road trucking.

Petitioner was eventually examined on September 4, 2009 by Dr. John Kuhnlein. He later opined, in a report dated January 14, 2010, that Petitioner could be in pain for a variety of reasons unrelated to his 2006 work injury. In his opinion, Petitioner had reached maximum medical improvement on July 27, 2007.

At some point (the timing is unclear) Dr. Cullom responded to a form letter request by Respondent, Annett Holdings, opining that Petitioner could work at a medium work level with lifting and carrying restrictions. Cullom further opined that Petitioner should eventually be able to return to a full-time work schedule, particular his former job as an over-the-road trucker. He later revised his findings to opine that Petitioner be given medium-level work restrictions.

Following an arbitration hearing on March 17, 2010, Petitioner was awarded 42.174 weeks of healing period benefits, finding Petitioner had 50% industrial disability and awarding Petitioner 250 weeks of permanent partial disability benefits starting July 28, 2007. The Deputy noted that during the initial worker's compensation hearing Petitioner appeared evasive and provided shifting explanations and excuses for his actions.

Petitioner has now filed an application for review-reopening, alleging that his original work injury has caused him increased pain and resulted in new impediments to his ability to work. Specifically, Petitioner complains that he has developed numbness in his bilateral upper extremities, a cracking sensation in his neck, a burning sensation in his neck, difficulty swallowing, and increased pain in his neck and shoulders. He seeks an award of total disability. He acknowledges that some of the pain he complains about now is a more intense version of the pains complained about in 2010. Respondent appealed and Petitioner Cross-Appealed the Deputy's ruling. The Commissioner affirmed.

Both parties filed petitions for judicial review. The district court reversed the agency's finding that Petitioner was offered unsuitable work, reversed the healing period benefits, and affirmed the fifty (50) percent industrial disability award as well as the 250 weeks of permanent partial disability benefits. The Iowa Supreme Court reversed the district court in part and affirmed in part, reversing the agency's finding that the work offered to Allen was suitable but affirming the healing period and permanent partial disability benefits awards.

From 2010 through 2015, Petitioner went through further examinations with Dr.'s Cullom, Larry Field, David Collipp, Howard Katz, and ARNP Andrea Speed. Of the five,

only Dr. Katz supported Petitioner's claim that the pain he was experiencing was related to his original work injury. The others disputed that claim. The others disagreed in their diagnoses and prescribed treatments.

On September 30, 2015, Petitioner filed a petition for review-reopening alleging injuries to his neck, shoulder, back, and body. Specifically, he has alleged he has experienced a change of condition since his original award and is now completely and totally disabled. Respondent filed their answer on October 23, 2015. Following a hearing at the Division of Workers' Compensation, the Deputy Commissioner filed their ruling on March 15th, 2017 denying Petitioner's request. The ruling was upheld by the Commissioner on June 7, 2018.

II. STANDARD OF REVIEW.

Judicial review of an agency decision is appropriate under Iowa Code §17A.19. Applying worker's compensation laws to facts as found by the commissioner is vested in the commissioner. Midwest Ambulance Serv. v. Ruud, 754 N.W.2d 860, 864 (Iowa 2008). Factual findings of the commissioner are reversed only if they are not supported by substantial evidence. Id. The court may reverse the commissioner's application of the law to the facts if it is irrational, illogical, or wholly unjustifiable. Id., see also Iowa Code § 17A.19(10)(m). The district court may revise, modify, or grant other appropriate relief from agency action if it determines the agency acted improperly under any of the provisions of §17A.19(10). See Iowa Code §17A.19(10).

Review-reopening proceedings are appropriate where the condition of the employee warrants an increase of compensation so awarded or agreed upon. Wagner v.

Otis Radio & Elec. Co., 119 N.W.2d 751, 753 (Iowa 1963). The party filing for review-reopening bears the burden of establishing by a preponderance of the evidence that an increased incapacity resulted from the original injury. E.N.T. Assocs. V. Collentine, 525 N.W.2d 827, 829 (Iowa 1994). The agency should look to the condition of the employee, which is found to exist subsequent to the date of the award being reviewed. Strice v. Consol. Ind. Coal Co., 291 N.W. 452, 456 (Iowa 1940). However, the commission is not to re-determine the condition of the employee which was adjudicated by the former award. Id. Petitioner need not prove that the current extent of their disability was not contemplated by the workers' compensation commissioner in the arbitration award or the parties in their agreement for settlement. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (2009). However, the agency, in the review-reopening petition, should not reevaluate the 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. While worsening of the claimant's physical condition is one way to satisfy the review-reopening requirement, it is not the only way for a claimant to demonstrate his or her current condition warrants an increase of compensation under Iowa Code §86.14(2). Id.

III. MERITS

A core issue is whether the Commissioner's factual findings are supported by the substantial weight of the evidence. Determination of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. V. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The Commissioner is entitled to make factual findings, regarding the veracity and weight of the experts' testimony. Unless those findings are

egregiously wrong or improper, the court should defer to the Commissioner's findings. The filings do not indicate any reason to find that the Commissioner abused his discretion in the findings he made concerning the weight and veracity of the expert testimony.

Petitioner bears the burden of proving that the Commissioner's conclusion is unsupported by the facts presented to the Commissioner. "[O]nce there has been an agreement or adjudication the commissioner, absent appeal and remand of the case, has no authority on a later review to change the compensation granted on the same or substantially same facts are those previously considered." Kohlhaas 777 N.W.2d at 393. Petitioner must prove that the changed circumstance he now claims is a result of his original work injury from 2006. Reviewing the record, the Commissioner was entitled to find that Petitioner visited with a number of physicians in the time since their initial injury in 2006. They were further entitled to find that the various medical professionals came to different findings regarding the extent of Petitioner's alleged changed condition. There is no indication that the Commissioner assigned inappropriate or undue weight to their factual findings of the various medical examinations Petitioner underwent. They acted properly in finding that Petitioner's claimed changed condition was not, on the basis of those same findings, related to his original 2006 work injury.

This court finds the evidence to be weighted in favor of Respondent. Petitioner was examined and treated by a number of medical experts. Of the variety of medical professionals of doctors that examined petitioner's shoulders from 2006 through 2016, only one supports Petitioner's claim that his new pain is caused by his original work injury. The others decline to make that connection. They instead claim that Petitioner's new complaints are an entirely new issue, not one related to the original injury sustained

in 2006. Given that medical causation is very much within the purview of the medical experts, and the weight of the evidence tends to show that Petitioner has not suffered from a changed condition sufficient to support a review-reopening, Petitioner does not appear to meet their burden of proof. Petitioner's application for review-reopening is denied.

IV. ORDER

IT IS THEREFORE ORDERED Petitioner's Application for review-reopening is **DENIED**. The order of the Commissioner is **AFFIRMED**.



State of Iowa Courts

Type: OTHER ORDER

Case Number	Case Title
CVCV056582	LACY ALLEN V TMC TRANSPORTATION

So Ordered

A handwritten signature in black ink, reading "Scott D. Rosenberg", is written over a horizontal line.

**Scott D. Rosenberg, District Court Judge,
Fifth Judicial District of Iowa**