
IN THE IOWA DISTRICT COURT FOR WEBSTER COUNTY

VIRLENE PINGEL,
Claimant/Petitioner,

vs.

IOWA CENTRAL COMMUNITY
COLLEGE,
Employer,

EMCASCO INSURANCE COMPANY,
Insurance Carrier,

Defendants/Respondents.

Case No. CVCV322689

**ORDER RE: CLAIMANT’S PETITION
FOR JUDICIAL REVIEW**

The matter came before the court for trial on November 1, 2023. Claimant filed her Petition for Judicial Review on May 16, 2023. After hearing the arguments of counsel and reviewing the record, the court rules as follows.

FACTUAL & PROCEDURAL BACKGROUND

I. Petition & Answer

On May 16, 2023, claimant Virlene Pingel (“Pingel”), by and through her attorney Janece Valentine (“Ms. Valentine”), filed a Petition for Judicial Review, pursuant to Iowa Code § 17A.19, against defendants Iowa Central Community College (“Iowa Central”) and Emcasco Insurance Company (“Emcasco”). Pingel was a resident of Fort Dodge and employed at the Iowa Central Fort Dodge campus. Emcasco was an issuer of workers’ compensation policies in Iowa.

Pingel is seeking review of a final order of the Iowa Workers’ Compensation Commissioner (“Commissioner”) filed May 10, 2023. Pingel believes that the agency decision is deficient in the following ways: (a) erroneous interpretation of law not within discretion of agency; (b) determination of fact not supported by substantial evidence; (c) inconsistent with the agency’s precedent; (d) product of illogical and irrational reasoning; (e) product of an inconsiderate decision-making process; (f) action not required by law with a grossly disproportionate negative

impact; (g) irrational interpretation of law; (h) irrational and illogical application of law to fact; and (i) otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *Claimant's Petition*, ¶ 6. Pingel is asking the court to reverse the agency's final decision entirely.

On May 17, 2023, Iowa Central and Emcasco ("Defendants") filed an Answer to Petition for Judicial Review. Defendants reject Pingel's issues with the Commissioner's decision, arguing that the decision was in fact supported by substantial evidence. *Defendants' Answer*, ¶ 2. They are asking the court to affirm the Commissioner's decision.

II. Record of Appeal Decision

On June 23, 2023, the Commissioner filed a Certificate, or certified record, of the agency case being contested by Pingel. The record included electronic copies of the exhibits, transcript, and other written records, as well as a thumb drive containing video/audio recordings of depositions. Of particular relevancy in this case is the Commissioner's attached Appeal Decision, which lays out his reasoning for reversing the arbitration decision of Deputy Commissioner Walsh ("Mr. Walsh") who heard this case in the first instance.

The Appeal Decision describes Pingel's visits to the family clinic between August and October 2019. *Certificate*, p. 10. Pingel had visited her doctor for several ailments – including allergy symptoms, trouble breathing, vomiting, and diarrhea – at various points over that period (except during the month of September). *Id.* at pp. 10-11. On October 23, 2019, Pingel returned to her doctor with similar symptoms, and asserted (for the first time in the record) that her symptoms were related to an exposure to chemicals at work that aggravated her pre-existing condition of pulmonary hypertension. *Id.* at p. 11. Her doctor diagnosed Pingel with bronchitis and duly prescribed. Pingel presented no evidence of medical treatment in November 2019. *Id.*

After at least one other visit in early December 2019, Pingel was referred to pulmonologist James Meyer, D.O. ("Dr. Meyer") to undergo a complete pulmonary function test. *Id.* at pp. 11-12. Dr. Meyer found Pingel suffered from exertional dyspnea. *Id.* at p. 12. Pingel reported her dyspnea had gotten worse while working with chemicals at Iowa Central. *Id.* Dr. Meyer noted several reasons for her exertional dyspnea: chronic obstructive pulmonary disease, tobacco abuse disorder, chronic systolic congestive heart failure, nonischemic cardiomyopathy, chronic atrial fibrillation, pulmonary hypertension, snoring, sleep disturbance, obesity, and physical deconditioning. *Id.* Dr. Meyer recommended Pingel to continue her ongoing bronchodilator

therapy, stop smoking, and undergo an echocardiogram and sleep study. *Id.* At Pingel's request, Dr. Meyer agreed to take her off work until a cardiologist. evaluated her *Id.*

Pingel returned to work. She revisited Dr. Meyer on January 29, 2020. She reported that she was ill and that she believed that chemicals at work were the cause. *Id.* According to Dr. Meyer, Pingel wanted to be paid disability benefits, but he advised her to simply find substitute employment. *Id.* Dr. Meyer provided Pingel with a work excuse, stating that working with chemicals "causes complications with her respiratory system." *Id.* at p. 13., Shortly thereafter, Iowa Central terminated Pingel from her employment as a result of this restriction. *Claimant's Brief*, p. 6.

Following his January 29 examination, Dr. Meyer instructed Pingel to call or return if her respiratory issues worsened. *Certificate*, p. 14. Pingel testified she has not experienced flare-ups – and therefore not visited Dr. Meyer – since she last worked for Iowa Central in January, 2020. *Id.* The record reflects no additional visits to her family physician except through Pingel's testimony. *Id.*

Mr. Walsh found in his arbitration decision (filed December 1, 2022) that Pingel satisfied her burden of proof for permanent disability as a result of her work injury. *Id.* at 15. He found Pingel sustained a nominal loss of earning capacity of 20% and awarded costs accordingly. *Id.* at p. 81. Mr. Walsh largely relied on an independent medical examination by Dr. Bansal conducted on March 18, 2022. *Id.* at p. 15. Dr. Bansal assigned 10% whole person impairment and recommended permanent work restrictions based on Pingel's asthma. *Id.*

In contrast, Defendants obtained expert reports from several different doctors. Dr. Hawk opined on March 25, 2022, that he could not state with a reasonable degree of medical certainty that Pingel had sustained a permanent injury or impairment from her employment at Iowa Central. *Id.* at p. 14. Dr. Hawk further indicated that any work-related aggravation was only temporary and primarily caused by her underlying conditions, not her employment. *Id.* Dr. Brimeyer, a pulmonologist, agreed with Dr. Hawk's opinion, expressly disagreed with Dr. Bansal's opinion, and attributed Pingel's symptoms primarily to her "bad lifestyle choice" of smoking which exacerbated her COPD. *Id.* at p. 15. Dr. Brimeyer agreed with Dr. Meyer that there were several explanations for Pingel's exertional dyspnea, and concluded that Pingel had no current or permanent restrictions or limitations as a result of her employment at Iowa Central. *Id.*

The Commissioner disagreed with Mr. Walsh's conclusion that Dr. Bansal's medical opinion was the "most convincing" in the record. *Id.* The Commissioner found that Dr. Bansal never affirmatively opined that Pingel's workplace exposures materially or permanently aggravated her pre-existing condition, as Mr. Walsh found. *Id.* Further, the Commissioner found that Dr. Bansal's opinion relied on information that was unsupported by the record. *Id.* at p. 16. The Commissioner noted that there were no contemporaneous records to establish that Pingel's medications increased in dosage or frequency since the date of injury. Instead, Dr. Bansal relied on Pingel's narrative in concluding that she had a workplace disability. *Id.* Also, the Commissioner noted that Dr. Bansal failed to consider or address Dr. Meyer's alternate explanations for Pingel's pulmonary condition. *Id.* at p. 17. The Commissioner further found Dr. Bansal's opinions failed to establish an affirmative causal relationship between Pingel's workplace exposures and her alleged permanent impairment. *Id.*

Alternatively, Mr. Walsh found that "industrial disability benefits would still be appropriate" in the absence of a finding of permanent impairment. *Id.* Again, the Commissioner disagreed. Pingel offered no evidence to establish that she developed a permanent allergy to any chemical at Iowa Central. *Id.* at p. 18. On the contrary, Dr. Hawk and Dr. Brimeyer opined that her allergies were not caused or related to the Iowa Central employment, nor would any such allergies impose any current or permanent restrictions or limitations on employment. *Id.* While both Dr. Meyer and Dr. Bansal imposed work restrictions, neither "expressly relate[d such restrictions] to the alleged work injury or deem[ed] the restrictions permanent." *Id.*

The Commissioner concluded that Pingel failed to satisfy her burden to prove that she sustained any permanent disability as a result of her April 25, 2019, work injury. *Id.* at pp. 18-19. The Commissioner thereby reversed Mr. Walsh, concluding that Pingel "shall take nothing with respect to permanent partial disability benefits." *Id.* at 19.

III. Trial Briefs

On July 13, 2023, the court filed a Trial Notice setting a telephonic non-jury trial for November 1, 2023. On November 1, Ms. Valentine appeared on behalf of Pingel and attorney Brian Scienszinski appearing via telephone for Defendants.

The Petitioner's Brief ("Claimant's Brief") argues: (I) The Commissioner committed error of law in finding Dr. Meyer did not provide a causation opinion when his causation opinion is set out at Joint Exhibit 3, page 63; (II) The agency committed error of law when it used agency expertise in second-guessing Dr. Bansal's use of the AMA Guides – agency expertise which is specifically prohibited by Iowa Code 85.34(2)(x); and (III) The agency committed error of law in concluding Pingel was precluded from recovery that her allergy was "an underlying personal allergy condition", and further, the agency erred in finding there was no evidence to suggest permanency or restrictions. *Claimant's Brief*, pp. 8-16.

Defendants-Respondents' Brief on Judicial Review ("Defendants' Brief") responds that the Commissioner's finding that Pingel did not sustain a permanent injury as a result of her employment with Iowa Central was supported by *substantial evidence in the record as a whole* and therefore must be upheld on judicial review. *Defendants' Brief*, pp. 7-21.

ANALYSIS

I. Standard of Review

Iowa Code Chapter 17A governs review of this matter. In a proceeding for judicial review, the reviewing court is not permitted to engage in a de novo review of the evidence; instead, the court must "broadly and liberally construe the [C]ommissioner's findings to uphold, rather than defeat the [C]ommissioner's decision." *Second Injury Fund v. Bergeson*, 526 N.W.2d 543, 546 (Iowa 1995). The Commissioner's findings made as a final agency action are binding on appeal unless a contrary result is compelled as a matter of law. *Long v. Roberts Dairy Co.*, 528 N.W.2d 122, 123 (Iowa 1995). The court is not bound by the Commissioner's interpretation of the law and need not give any deference to the agency's decision on legal issues. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218-19 (Iowa 2006); *Second Injury Fund v. Nelson*, 544 N.W.2d 258, 264, 267-68 (Iowa 1995); Iowa Code § 17A.19(10)(b), (c), (l)-(m); Iowa Code § 17A.19(11)(b). To the extent error is predicated on an erroneous interpretation of the law, the court is not to give deference to the Commissioner. *Schadendorf v. Snap-On Tools Corp.*, 757 N.W.2d 330, 334 (Iowa 2008); *Bell Bros. Heating & Air Conditioning v. Gwinn*, 779 N.W.2d 193 (Iowa 2010). In such cases, a reviewing court is empowered to substitute its own judgment for that of the Commissioner. *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 330 (Iowa 2005).

However, the court is required to give limited deference to the Commissioner's application of the law *to the facts* of the case. *Meyer*, 710 N.W.2d at 218-219; *Second Injury Fund v. Braden*, 459 N.W.2d 467, 468 (Iowa 1990); Iowa Code § 17A.19(11)(c). Further, the court must give significant deference to the Commissioner's factual findings, which must be affirmed if they are supported by substantial evidence in the record as a whole. *Meyer*, 710 N.W.2d at 218-219; *Mycogen Seeds v. Sands*, 668 N.W.2d 457, 463-64 (Iowa 2004); Iowa Code § 17A.19(10)(f). In reviewing the Commissioner's findings of fact, the question is not whether the evidence might support a different finding, but whether it supports the findings actually made. *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 649 (Iowa 2000). Where substantial evidence amply supports a finding actually made by the Commissioner, the court is not at liberty to disturb it on the grounds the evidence could support a different conclusion. *Mike Brooks, Inc. v. House*, 843 N.W.2d 885, 889 (Iowa 2014).

Generally, expert testimony is essential to establish the causal connection between an injury and the claimed disability. *Sherman v. Pella Corp.*, 576 N.W.2d 312 (Iowa 1998). The expert opinion may be accepted or rejected, in whole or in part. The weight to be given such opinion is for the finder of fact. *St. Luke's Hosp.*, 604 N.W.2d at 652.

II. Application of Law to Facts

The Commissioner found that any allergies to the chemicals used at Iowa Central were due to Pingel's underlying personal health condition, based on the opinions of Dr. Hawk and Dr. Brimeyer. The Commissioner further found that any aggravation of Pingel's breathing condition was merely temporary. Dr. Hawk was unable to conclude that Pingel sustained any permanent injury or impairment related to her employment at Iowa Central, and Dr. Brimeyer opined that any aggravation related to Pingel's work environment would have resolved in days to weeks after Pingel's removal from the environment.

Despite Pingel's claims to the contrary, Dr. Bansal did not opine that Pingel sustained any permanent injury or disability *as a result* of her employment at Iowa Central. Rather, Dr. Bansal determined that Pingel had a 10% whole person impairment of her lungs/pulmonary function based on asthma, which Pingel admitted she had for many years before her employment at Iowa Central. Mr. Walsh found that Dr. Bansal concluded that Pingel's impairment was caused or aggravated by her exposure to chemicals at Iowa Central. While Dr. Bansal implied (or, rather, it can be inferred

from his opinion) that Pingel's Iowa Central employment likely aggravated her breathing, he never specifically described the causal connection. Dr. Bansal certainly never opined that Pingel suffered any permanent injury or permanent aggravation of her breathing condition as a result of her employment. Likewise, Dr. Bansal never predicted that any increased treatment or worsening of Pingel's condition would be related to her work at Iowa Central.

Additionally, Pingel cites Iowa Code § 85.34(2)(x) – “[A]gency expertise shall not be utilized in determining loss or percentage of permanent impairment” – in support of her claim that the agency committed an error of law when it second-guessed Dr. Bansal's use of the AMA Guides. The Commissioner did not violate this provision. Rather, the Commissioner utilized the “agency's expertise, technical competence, and specialized knowledge . . . in the evaluation of evidence.” Iowa Code § 17A.14(5). The Iowa Code does not prohibit the agency from relying on its expertise to determine whether a claimant's burden of proof to establish a causal relationship between their impairment and their alleged permanent work injury has been satisfied.

The Commissioner found that Pingel's current breathing problems are likely due to her long history of smoking. Pingel admitted that her doctors advised her smoking would worsen her asthma. Dr. Brimeyer opined that Pingel's breathing issues were related to her underlying health issues – including CHF, COPD, obesity, and deconditioning – as opposed to her work at Iowa Central. His opinion was based upon his education and experience, including a fellowship in pulmonology, nine years of experience practicing pulmonary and critical care medicine, and board certification in internal medicine and pulmonology. As Dr. Brimeyer stated, any worsening of Pingel's condition – and any treatment she has sought since she last worked at Iowa Central – was due to her history of smoking and continued smoking.

Despite Pingel's claims to the contrary, the Commissioner did not fail to consider Dr. Meyer's medical opinions. Dr. Meyer opined in a work release sent to Pingel that “[i]t is my medical opinion that Virlene Pingel should not be **working with chemicals** as it **causes complications with her respiratory system.**” *Certificate*, p. 13 (emphasis added). Despite Pingel's claims, the fact that this statement is from a work release, not a medical note, comports with the Commissioner's summary that “the **contemporaneous medical notes** of Dr. Meyer . . . **are void of any causation opinions**”. *Id.* (emphasis added). Furthermore, the Commissioner did

not err in finding the opinions of Dr. Bansal unconvincing compared with the other evidence presented.

CONCLUSION

The court finds in the defendant's favor. The Commissioner found that Pingel did not sustain any permanent injury or permanent aggravation of her underlying medical condition as a result of her employment at Iowa Central. Substantial evidence in the record supports this finding. Therefore, the Commissioner's decision must be upheld.

IT IS ORDERED that Claimant's Petition for Judicial Review filed on May 16, 2023, is **DENIED**, and the Commissioner's appeal decision filed on May 10, 2023, is **AFFIRMED**. Costs are assessed to the plaintiff.

CLERK TO PROVIDE COPIES TO:

Counsel of Record



State of Iowa Courts

Case Number
CVCV322689

Case Title
VIRLENE PINGEL VS IOWA CENTRAL COMM COLLEGE &
EMCASCO INS CO
Type: OTHER ORDER

So Ordered

A handwritten signature in black ink, appearing to read "Kurt J. Stoebe", is written over a horizontal line.

Kurt J. Stoebe, District Court Judge,
Second Judicial District of Iowa

Electronically signed on 2023-12-01 14:19:42