

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

BRANDON EASTON, Petitioner, vs. MIKE MCMURRIN TRUCKING Employer, WESTERN NATIONAL MUTUAL INSURANCE CO., Insurance Carrier, Respondents.	Case No. CVCV057209 RULING ON PETITION FOR JUDICIAL REVIEW
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The above-captioned matter came before the court on January 18, 2019. Brandon Easton, (“Easton”; “Petitioner”) was represented by Attorney Nathan Willems. Mike McMurrin Trucking, (“Employer”), and Western National Mutual Insurance Co., collectively (“Respondents”), were represented by Attorney Maggie Manternach. Upon review of the court file and applicable law, the court enters the following order.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Easton began working at the employer in June 2014 as a full-time shop assistant. Arb. Dec. at 2. The employer is located in Cedar Rapids, IA. Arb. Dec. at 4. Easton did not have a valid driver’s license when he began working for the employer, but was able to find transportation back and forth to work from his residence in Cedar Rapids. Arb. Dec. at 2-4. On August 6, 2015, Easton suffered an injury at work that resulted in a fractured tibia and fibula. Arb. Dec. at 3. Easton underwent his first surgery for the injury on August 7, 2015. Arb. Dec. at 3. Following the injury, Easton was off work until he was

cleared to return to light duty work in September or October 2015. Arb. Dec. at 3. On November 30, 2015, Easton underwent a second surgery. Arb. Dec. at 3. On January 25, 2016, Easton underwent a third surgery. Arb. Dec. at 3. Easton did not return to work after his second or third surgery. Arb. Dec. at 3.

The employer did not have Easton return to work following the second surgery because he was under restrictions to keep the wound clean and dry, and the employer believed its workplace was not a clean enough environment for Easton to return to. Arb. Dec. at 3. The employer began looking for other work for Easton in April 2016. Arb. Dec. at 4. Easton was informed on May 2, 2016, that a position had been arranged for him at a thrift store, and that his starting date would be May 9, 2016. Arb. Dec. at 4. Easton's attorney advised the employer via letter that Easton was "planning to move in the near future," and that "the specific moving date is presently unknown." Arb. Dec. at 4. Due to Easton's upcoming move to Manchester, IA, Easton's attorney advised that Easton would not be able to travel to Cedar Rapids where the thrift store position was located. Arb. Dec. at 4.

Easton began his move to Manchester in May 2016 and completed the move on June 1, 2016. Arb. Dec. at 4. On May 16, 2016, the employer sent Easton a letter notifying him of a second offer of employment at Mercy Hospital in Cedar Rapids with a start date of May 23, 2016. Arb. Dec. at 4. Easton's attorney sent a letter to the employer on May 18, 2016, informing the employer that Easton would be moving to Manchester prior to the start date at Mercy, and that Easton would not be able to commute from Manchester to Cedar Rapids, as he lacked transportation. Arb. Dec. at 5. Easton did not show up for work at Mercy on May 23. Arb. Dec. at 5. Following Easton's

failure to start at Mercy, the employer terminated the benefits that Easton had been receiving, claiming that it had offered suitable light-duty work within Easton's restrictions, and that Easton had refused the work. Arb. Dec. at 5. The employer attempted to arrange one more placement at a Salvation Army in Marion on July 7, 2016, but Easton's attorney responded that Easton did not have access to transportation, and the offer was not suitable. Arb. Dec. at 6.

Easton filed a petition in arbitration seeking benefits from the time that they were terminated in May 23, 2016, and a Deputy Worker's Compensation Commissioner ("deputy commissioner") heard the claim on February 7, 2017. After considering the facts of the case, the arguments of the parties, and the applicable law, the deputy commissioner found that Easton had refused suitable work provided by the employer and that he was not entitled to receive benefits following his refusal. Arb. Dec. at 8. Easton appealed, and the Iowa Worker's Compensation Commissioner ("commissioner") affirmed the findings of fact, conclusions of law, and denial of benefits rendered by the deputy commissioner. App. Dec. at 2. Easton filed the present Petition for Judicial Review on October 25, 2018.

II. STANDARD OF REVIEW

Chapter 17A of the Iowa Code governs judicial review of administrative agency action. The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). Relief is appropriate where "substantial rights of a party have been prejudiced because the agency action [...] is unsupported by substantial evidence, is unreasonable, arbitrary, or capricious, or is affected by other error of law." *Dico, Inc. v. Iowa Emp't Appeal Bd.*, 576

N.W.2d 352, 354 (Iowa 1998). The standard of review on appeal depends on whether the basis for the petition involves an issue of finding of fact, interpretation of law, or application of law to fact. *Meyer*, 710 N.W.2d at 218-19.

The standard when the claim is that there was an error in finding of fact is whether the agency's decision is supported by substantial evidence. *Id.* at 218. When the claim is that an agency made an incorrect interpretation of law, the question is whether the agency's interpretation was erroneous. *Id.* at 219. If the agency's interpretation is erroneous, the court is not bound by the agency's interpretation and may substitute its own interpretation. *Id.* "The question of whether an employer offered suitable work is ordinarily a fact issue." *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 518 (Iowa 2012)(internal citations omitted). However, "whether the commissioner considered an improper factor in reaching its factual determination regarding suitability" is a question of law. *Id.* The Iowa Supreme Court found in *Neal* that the legislature "did not vest the authority to interpret the phrase suitable work for purposes of Iowa Code section 85.33(3) in the workers' compensation commission." *Id.* at 519 (internal citations omitted). Since the legislature did not clearly vest the agency with the authority to interpret "suitable work," if the court finds that the commissioner made an error of law, the commissioner's interpretation is not accorded any deference, and the court may substitute its own interpretation. *Id.*

III. APPLICABLE LAW & ANALYSIS

Easton alleges that the commissioner erred in affirming the deputy commissioner's conclusions because 1) the work provided by the employer was not suitable pursuant to Iowa Code § 85.33(3); 2) even if the work was initially suitable, it

became unsuitable on May 26, 2016; and 3) Easton did not refuse the work. The employer argues that the commissioner was correct in affirming the findings of the deputy commissioner because it offered suitable alternative employment to Easton and he refused the work. The employer bears the burden to establish that suitable work was offered and that claimant refused the offer of suitable work. *Id.* at 524. Iowa Code § 85.33(3)(a) states, in relevant part:

If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employer offers the employee suitable work and the employee refuses to accept the suitable work offered by the employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal.

Iowa Code § 85.33(3)(a).

Easton does not contend that the work offered at Mercy was outside of his capabilities pursuant to the restrictions placed on him by his doctor. Instead, Easton argues that the offered work was not suitable because the employer knew that Easton was moving to Manchester, and the offered work at Mercy was in Cedar Rapids. Easton argues that the commissioner erred in his decision because he did not consider whether light-duty work in Cedar Rapids was suitable for an individual living in Manchester. Easton does not have a driver's license and is unable to drive his car anyway because it

is a manual transmission and his doctor has only cleared him for driving automatic vehicles.

Easton points the court to two main opinions in support of his argument that the commissioner was incorrect in his consideration of geographic location; *Musgrove v. Sedona Staffing*, 2018 WL 580411 (Iowa Workers' Comp. Com'n. 1/19/18) and *Neal v. Annett Holdings*, 814 N.W.2d 512 (Iowa 2012). In *Musgrove*, the employee moved due to a domestic incident. *Musgrove*, 2018 WL at *5. The employer told the employee that if she had to move she could work a light duty assignment in her new location. *Id.* The employer found the employee light duty work at a homeless shelter, but at the homeless shelter there were issues with sexual assault between residents as well as drug usage, which made the employee uncomfortable due to her own recent situation. *Id.* Next, the employer offered work that was an hour and twenty minutes away from the employee's residence. *Id.* at *6. The commissioner found that it was reasonable for the employee to decline the work at the homeless shelter due to her personal circumstances and risk to her health, safety, and morals. *Id.* The commissioner also found that it was not reasonable or suitable to offer the employee without transportation a job that was an hour and twenty-minute drive away. *Id.*

The Iowa Supreme Court considered the suitability of an alternative work placement in *Neal*. There, the Court examined worker's compensation cases from a number of different states, as well as examined Iowa employment law in other contexts in order to determine the considerations necessitated by the word "suitable" in Iowa Code § 85.33(3). See generally, *Neal*, 814 N.W.2d. The court determined that geographic proximity is a factor to be considered in whether alternative placement is

suitable, and found that requiring an employee to accept a position 387 miles from his home was unreasonable and not suitable. *Id.* at 525. The Court explained, “the commissioner may consider distance of available work from the claimant’s home in determining whether an employer has offered ‘suitable work’ for purposes of Iowa Code section 85.33(3)” *Id.* at 524. Though the Court did not apply these factors to the case before it, the Court also explained that in other areas of employment law the agency considers “the degree of risk involved to the individual’s health, safety, and morals, the individual’s physical fitness, prior training, length of employment, and prospects for securing local work in the individual’s customary occupation, the distance of available work from the individual’s residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph.” *Id.* at 522-23 (internal citations omitted).

The employer argues that the facts of this case are distinguishable from *Musgrove* and *Neal*, and are in fact more analogous to another Iowa Worker’s Compensation Commissioner arbitration decision issued in *Meraz v. Sunrise Farms*. In *Meraz*, the employee argued the job offer was not suitable because the offered employment was 50-60 minutes from his residence. *Meraz v. Sunrise Farms, Inc.*, 2013 WL 1287790 at *7 (Iowa Worker’s Comp. Comm’n 3/13/13). The employee did not have a driver’s license or other means of transportation. *Id.* The deputy commissioner considered the geographic factor that the Iowa Supreme Court found important in *Neal*, but also noted that in most states the distance is measured from the original work site rather than the employee’s home. *Id.* The deputy commissioner explained that in the case before her, the worksite remained the same but the employee’s residence

changed. *Id.* The deputy commissioner found that even if the work site had changed, a distance of 50-60 minutes would not be unsuitable. *Id.*

The court first notes that neither *Musgrove* nor *Meraz* is binding on this court. The legislature did not vest the Iowa Worker's Compensation Commissioner with the authority to interpret the phrase "suitable." *Neal*, 814 N.W.2d at 518. The court has considered the facts and decisions outlined in those cases as well as the other cases cited by the employer and Easton, and finds that in this case the commissioner did not err in his finding that the employment offer was suitable and that Easton refused the offer. The commissioner adopted the factual findings and conclusions of law of the deputy commissioner. App. Dec. at 2. The deputy commissioner issued a thorough opinion that considered all of the factors involved in this case, including the geographic proximity between Easton and the offered employment. The deputy commissioner also considered the reasons behind Easton's move and the efforts by the employer to ensure that Easton was provided suitable work.

The deputy commissioner considered the fact that Easton's attorney sent a letter to the employer on May 5, 2016, that stated, "as we have previously discussed and as you were already aware, my client is planning to move in the near future. The specific moving date is presently unknown." Arb. Dec. at 4. It was not unreasonable, therefore, that the employer attempted to find Easton suitable work in the Cedar Rapids area, as Easton did not know exactly when he would be moving. The deputy commissioner considered the fact that Easton moved to Manchester because it would be cheaper for him. Arb. Dec. at 4. The employer sent Easton a letter on May 16, 2016, informing him of his offer at Mercy. Arb. Dec. at 4. Easton did not complete his move to Manchester

until June 1, 2016. Arb. Dec. at 4. Easton testified that he did not accept the position because he did not have transportation from Manchester to Mercy in Cedar Rapids. Arb. Dec. at 5. Easton did not show up at Mercy on his arranged start date. Arb. Dec. at 5. Manchester is forty-five miles away from Cedar Rapids. Arb. Dec. at 8.

The deputy commissioner examined the Iowa Supreme Court's holding in *Neal*, and determined that the facts in this case are not analogous to *Neal*. Arb. Dec. at 8. The deputy commissioner explained:

Easton lived in Cedar Rapids and worked for Mike McMurrin in Cedar Rapids at the time of his work injury. Easton was struggling financially, and he chose to move to his uncle's home in Manchester, forty-five miles away. Mike McMurrin Trucking is not responsible for Easton losing his driver's license. Easton did not have a driver's license at the time he commenced his employment with Mike McMurrin Trucking, due to nonpayment of fines. Easton did not experience difficulty finding transportation to work before his work injury. Mike McMurrin offered Easton work at Mercy Hospital, in Cedar Rapids. If Easton had remained in Cedar Rapids he could have taken the city bus to and from work. Mike McMurrin Trucking has established Easton was offered suitable work, consistent with his restrictions, which he refused.

Arb. Dec. at 8. The deputy commissioner considered all of the relevant circumstances in this case. This case involved a forty-five minute commute rather than the 328-mile commute that the Iowa Supreme Court found unsuitable in *Neal*. The alternative offered employment was only four miles away from the employer's location where Easton had

previously worked. Easton voluntarily moved to Manchester because of financial difficulty. Easton's transportation situation did not change as the result of his injury— he did not have a driver's license before the injury. The court finds that the commissioner did not commit legal error in its finding that the employer offered suitable work and that Easton refused the offer of suitable work. The court also finds that the commissioner's decision was supported by substantial evidence.

IV. ORDER

IT IS THEREFORE ORDERED that the Petition for Judicial Review is DENIED and the decision of the Iowa Worker's Compensation Commissioner is AFFIRMED.

Costs to Petitioner.



State of Iowa Courts

Type: OTHER ORDER

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So Ordered

A handwritten signature in blue ink, appearing to read 'Celene Gogerty', written over a horizontal line.

Celene Gogerty, District Judge
Fifth Judicial District of Iowa