

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHARLES H. WHITACRE, JR.,

Claimant,

vs.

AVERA HOLY FAMILY D/B/A
AVERA HOLY FAMILY HOSPITAL,Employer,
Self-Insured,
Defendant.

File Nos. 5061284, 5061285

A P P E A L

D E C I S I O N

Claimant Charles H. Whitacre, Jr., appeals from a ruling on motion for summary judgment filed on July 10, 2018.

In the ruling, the deputy commissioner determined defendants were entitled to summary judgment as a matter of law. More specifically, the deputy commissioner found, based on "undisputed facts," (Ruling on Motion for Summary Judgment, page 9) that claimant did not provide notice of his alleged work injuries in compliance with Iowa Code section 85.23.

On appeal, claimant argues there is a genuine issue of material fact with respect to whether claimant reported his alleged injuries to his supervisor, Matt Dalen.

I performed a de novo review of the evidentiary record before the presiding deputy workers' compensation commissioner and the detailed arguments of the parties. Pursuant to Iowa Code section 86.24 and 17A.15, those portions of the ruling on motion for summary judgment filed on July 10, 2018 that relate to issues properly raised on intra-agency appeal are respectfully reversed.

Iowa Administrative Code rule 876-4.35 makes Iowa Rules of Civil Procedure 1.981 through 1.983 applicable to motions for summary judgment before this agency.

Summary judgment should be rendered when the record before the court shows that no genuine issue exists as to any material fact and that the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); Suss v. Schammel, 375 N.W.2d 252, 254 (Iowa 1985); Brown v. Monticello State Bank, 360 N.W.2d 81, 83-84 (Iowa 1984).

The burden of showing there is no genuine issue of material fact is upon the party moving for summary judgment. Sparks v. Metalcraft, Inc., 408 N.W.2d 347, 350

(Iowa 1987); Northrup v. Farmland Industries, Inc., 372 N.W. 2d 193, 195 (Iowa 1985); Matherly v. Hanson, 359 N.W.2d 450, 453 (Iowa 1984). If the motion for summary judgment is properly supported, the resisting party “may not rest upon the mere allegations . . . in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Iowa R. Civ. P. 1.981(5). Similarly, the resisting party may not rely solely on legal conclusions to show there is a genuine issue of material fact justifying denial of summary judgment. Byker v. Rice, 360 N.W.2d 572, 575 (Iowa App. 1984).

When confronted with a motion for summary judgment, the agency is required to examine, in light most favorable to the party opposing the motion, the entire record before it, including the pleadings, admissions, depositions, answers to interrogatories, and affidavits, if any, to determine whether any genuine issue of material fact is generated thereby. Sparks, 408 N.W.2d at 350; Drainage District No. 119, Clay County v. Incorporated City of Spencer, 268 N.W.2d 493, 499-500 (Iowa 1978). “Even if the facts are undisputed, summary judgment is not appropriate if reasonable minds may draw different inferences from them.” Tasco, Inc. v. Winkel, 281 N.W.2d 280, 282 (Iowa 1979).

If, upon examination of the entire record, the undersigned determines no factual dispute is present and the movant is entitled to judgment as a matter of law, entry of summary judgment is proper. Sparks, 408 N.W.2d at 350.

In the instant case, defendants’ motion for summary judgment included several affidavits in which the affiants, including claimant’s supervisor, denied ever hearing claimant report a work-related injury. (See Olsen Affidavit; Dalen Affidavit; Will Affidavit; Jensen Affidavit) Based on these affidavits, defendants asserted it is undisputed that “[a]t no time from March of 2016 to December of 2016 when [claimant] left employment at Avera Holy Family did he report to anyone that his medical condition and work restrictions were in any way related to his employment at Avera Holy Family.” (Defendants’ Statement of Undisputed Material Facts, para. 20)

In his resistance to defendants’ motion, claimant attached his answers to interrogatories for both alleged dates of injury. In his answers regarding the March 17, 2016, date of injury (File No. 5061285), claimant stated, “On March 18, 2016, I told my Supervisor, Matt Dalen, about experiencing burning and pain on the outside of my knee when going up and down stairs doing checks at the hospital on March 17, 2016.” (Ex. A, Answer to Interrogatory No. 12; see Ex. A, Answers to Interrogatory Nos. 27, 28, 30) In his answers regarding the June 13, 2016, date of injury (File No. 5061284), claimant stated, “At the beginning of my shift the following day, June 14, 2016, I discussed the incident with my Supervisor, Matt Dalen, and told him that carrying the ladder had

caused pain and tightness in my low back.” (Ex. B, Answer to Interrogatory No. 12; see Ex. B, Answers to Interrogatory Nos. 27, 28, 30)

Claimant’s answers to defendants’ interrogatories directly conflict with the affidavits of claimant’s supervisor, Mr. Dalen, and others. Furthermore, the conflicting testimonies pertain to the heart of the issue - whether claimant timely reported to defendant-employer that his injuries were work-related. As a result, I find the conflicting accounts of claimant and Mr. Dalen and others generate a genuine issue of material fact.

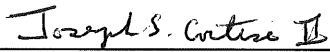
In her ruling, the deputy commissioner was critical of claimant’s “revisionist history,” (Ruling, p. 8) particularly in light of the aforementioned affidavits and numerous times in the medical records in which claimant denied having a work-related injury. While the deputy commissioner’s criticisms may be well-founded, the determination of which party’s account is more credible is a question of material fact, making summary judgment improper. The deputy commissioners’ determination that the facts are undisputed is therefore respectfully reversed, and defendants’ motion for summary judgment must be denied.

ORDER

IT IS THEREFORE ORDERED that the ruling on motion for summary judgment filed on July 10, 2018 is reversed.

Defendants’ motion for summary judgment is denied.

Signed and filed on this 8th day of November, 2019.



JOSEPH S. CORTESE II
WORKERS’ COMPENSATION
COMMISSIONER

The parties have been served as follows:

David A. Scott (Via WCES)

Matthew T. E. Early (Via WCES)