

IN THE IOWA DISTRICT COURT IN AND FOR APPANOOSE COUNTY

TERESA LIFORD, Plaintiff, v. CHRISTENSEN FARMS, ACE AMERICAN INSURANCE CO., and SECOND INJURY FUND OF IOWA,, Defendants.	NO. CVEQ005483 RULING ON JUDICIAL REVIEW
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On August 22, 2022, this case came before the Court for status hearing in this Chapter 17A judicial review proceeding. The plaintiff, Teresa Liford, was represented by attorney Michael Carpenter. The defendants Christensen Farms and Ace American Insurance Co. were represented by attorney Abigail Wenninghoff. The defendant Second Injury Fund of Iowa was represented by attorney Sarah Timko.

Counsel informed the Court that all parties have now filed briefs, according to the briefing schedule previously ordered by the Court, and that this case should be submitted for ruling.

Accordingly, the Court enters the following:

PROCEDURAL BACKGROUND

On August 16, 2019, Plaintiff Teresa Liford filed two petitions for workers' compensation benefits. Ms. Liford filed the first claim against her employer, Christensen Farms, and its insurance carrier Liberty Mutual Insurance (predecessor to Ace American Insurance Company) for a work-related injury to her right knee which occurred on March 10, 2014, and "left knee disability as a sequela to the right knee injury." (Petitioner, case no. 1580224.01). Ms. Liford filed the second claim against Christensen Farms and its

insurance company and the Second Injury Fund of Iowa for a left knee injury, alleged to have occurred from overuse on December 5, 2014, which she claimed was “separate and distinct” from the right knee injury, and therefore compensable from the Second Injury Fund. (Petitioner, case no. 20006580.01).

Both cases proceeded to hearing on the same date before Deputy Commissioner Erin Q. Pals on September 17, 2020. Deputy Commissioner Pals decided the following issues: 1) whether Ms. Liford sustained two separate injuries to her right and left knees, or a single bilateral injury as the result of the March 10, 2014, injury; 2) whether Ms. Liford was entitled to permanent partial disability benefits; 3) the appropriate commencement date for any benefits. (Arbitration Decision, p. 2).

Deputy Commissioner Pals filed a written decision on December 16, 2020. She decided that Ms. Liford had sustained a single bilateral injury to her knees, and awarded benefits accordingly. Specifically, she determined that Ms. Liford’s left knee condition was not a second injury compensable by the Second Injury Fund, but was instead a “sequela” of the right knee injury. (Arbitration Decision, p. 6). She determined that Ms. Liford’s single injury was compensable under Iowa Code § 85.34(2)(s) (2020). Accordingly, she awarded Ms. Liford fifteen weeks of permanent partial disability benefits commencing July 14, 2016.

Ms. Liford appealed from this Arbitration Decision. On May 18, 2021, Workers’ Compensation Commissioner Joseph Cortese II filed a written decision upholding the decision of the Deputy Commissioner. Commissioner Cortese conducted a de novo review of the evidentiary record and the arguments of the parties. Commissioner Cortese affirmed the Deputy Commissioner’s finding that Ms. Liford’s left knee condition was a sequela of

her right knee injury. He further affirmed the Deputy Commissioner's conclusion that Ms. Liford failed to prove that she had sustained two separate qualifying injuries for her claim against the Second Injury Fund. (Appeal Decision, p. 3). On June 16, 2021, Ms. Liford appealed the Commissioner's decision by filing a Petition for Judicial Review.

FINDINGS OF FACT

Ms. Liford worked as a farrower for Christensen Farms. She took care of sows and piglets, including feeding them and moving them. The work was largely physical, involving twelve-hour shifts spent walking, standing, bending, and crawling on a concrete floor. (Tr. 30).

It is undisputed that Ms. Liford suffered a work injury to her right knee on March 10, 2014. She was reaching into a pen to retrieve a piglet, braced up against the edge of the pen, when her knees "just went down," and she collapsed on the floor. (Tr. 31, ln 9-14). A few days later, her right knee began to hurt. She was off work from March 14, 2014 to October of 2014.

Ms. Liford had an appointment with her family physician, Dr. Poncy, on March 14, 2014. Dr. Poncy referred her to an orthopedic specialist, Dr. Christopher Vincent. Ms. Liford underwent arthroscopic surgery on her right knee on August 17, 2014. (JE 3-9). She was placed at maximum medical improvement on June 26, 2015. (JE 5-67; JE 5-69). Dr. Christopher Vincent assigned her a 4% permanent impairment rating to her right lower extremity resulting from the March 10, 2014, work injury. (JE5-69).

Meanwhile, Ms. Liford had returned to work on October 10, 2014. She started part-time, and was returned to work with no restrictions commencing on November 10, 2014

(JE 5-36). At the time Ms. Liford returned to work, her right knee was still in recovery mode, and her left knee was symptom-free.

When Ms. Liford returned to work, she noted that the layout of the workplace had been re-arranged. The spaces between the crates were narrower in order to accommodate more pigs. She had to twist more to get into the spaces, putting additional stress on her knees. Ms. Liford began to “baby” her right knee, still recovering from surgery, and was using her left knee more than her right knee as she worked in the smaller spaces. (Tr. 35; Ex 4-5, IME of Dr. Kuhnlein).

Ms. Liford first began experiencing pain in her left knee on October 12, 2014, two days after she had returned to work at Christensen Farms. She first sought treatment for her left knee pain two months later, in December of 2014. On December 5, 2014, she saw her primary physician complaining of pain in both knees. She was diagnosed with bilateral knee osteoarthritis. (JE 1, pp.9-10).

Later in December of 2014, Ms. Liford saw her orthopedist, Dr. Vincent. Dr. Vincent opined that she had “injured her left knee from overuse back in October.” (JE 5-40). On February 26, 2016, Dr. Vincent performed arthroscopic surgery on Ms. Liford’s left knee.

In addition to Dr. Vincent, two other experts rendered their opinions as to the cause of pain in Ms. Liford’s left knee, and whether such pain constituted a “separate and discrete” injury from the injury to her right knee which occurred on March 10, 2014. At the request of Defendant’s employer, Dr. David Field performed a records review and issued a report. This report was inconclusive. Dr. Field stated, “[b]y history it is difficult

to know exactly what happened to the left knee by the record.” (Def. Ex. G, p. 4). “I cannot say there was a probable injury to the left knee [in March 2014]. (Def. Ex. G, p. 5).

At the request of her attorney, Ms. Liford underwent an independent medical examination with Dr. John Kuhnlein, D.O. Dr. Kuhnlein opined that the “left knee condition developed as a sequelae to the right knee condition as Ms. Liford accommodated for the right knee injury, and so would be related to her work for Christensen Farms.” (Claimant’s Ex. 4, p. 10). He further clarified, “[i]n stating this, I would agree with Dr. Vincent that the work aggravated her left knee symptoms and condition.” (Claimant’s Ex. 4-10).

STANDARD OF REVIEW

Iowa Code Section 17A.19 governs judicial review of a final agency action in a contested case. The district court acts in an appellate capacity when reviewing agency action. *See* Iowa Code Section 17A.19(7); *Cerro Gordo Cnty Care Facility v. Iowa Civil Rights Comm’n*, 401 N.W. 2d 192, 195 (Iowa 1987). The Court’s review of an agency finding is corrections of error at law and not de novo. *Empire Cable of Iowa, Inc. v. Dept. of Revenue and Finance*, 507 N.W.2d 705, 706 (Iowa Ct. App. 1993). Final agency determinations are to be left undisturbed when they are within the agency’s scope of expertise and based on accurate application of legal principles. *Office of Consumer Advocate v. Iowa Utilities Board*, 449 N.W. 2d 383, 385 (Iowa 1989).

The agency’s decisions must be supported by substantial evidence in the record. *See* Iowa Code Section 17A.19(10)(f). “Substantial evidence” consists of evidence that a reasonable person would accept as adequate to reach a given conclusion. *Cargill, Inc. v. Conley*, 620 N.W.2d 496, 500 (Iowa 2000). If supported by substantial evidence, the

findings of fact made by the agency are binding on the reviewing court. *City of Des Moines v. Employment Appeal Board*, 722 N.W.2d 183, 195 (Iowa 2006). In deciding whether a decision is supported by substantial evidence, the reviewing court is to “look only to the final agency decision and determine whether the record supports the agency’s ruling.” *Freeland v. Employment Appeal Board*, 492 N.W.2d 193, 196 (Iowa 1992). The ultimate question is not whether the evidence supports a different finding than that made by the agency, but whether the evidence supports the findings actually made. *Reed v. Iowa Dep’t of Transp.*, 478 N.W.2d 844, 846 (Iowa 1991).

If a claim of error lies with the agency’s interpretation of the law, the question on review is whether the agency erroneously interpreted the law. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006); Iowa Code § 17A.19(10) (c). The agency’s legal findings are binding on appeal unless a contrary result is compelled as a matter of law. *Ward v. Iowa Dep’t of Transp.*, 304 N.W.2d 236, 238 (Iowa 1981). The agency’s application of the law to the facts can only be reversed if the court determines that the application was “irrational, illogical, or wholly unjustifiable.” *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 465 (Iowa 2004) *superseded by statute on other grounds*, 2004 Iowa Acts 1st Extraordinary Sess. Ch. 1001, §§ 12, 20, *as recognized in JBS Swift & Co. v. Ochoa*, 888 N.W.2d 887 (Iowa 2016).

LEGAL ANALYSIS AND RULING

The only issue before the Court is whether the Worker’s Compensation Commissioner erred in determining that Plaintiff’s left knee condition was a sequela injury, and not a “separate and distinct” injury from the injury to her right knee which occurred on March 10, 2014. The Commissioner had affirmed the Deputy Commissioner’ decision that Ms. Liford’s left knee condition developed as a sequela to her March 10, 2014 right knee

injury. The Commissioner likewise affirmed the Deputy Commissioner's decision that Ms. Liford should be compensated for a "single accident," as set forth in Iowa Code § 85.34(2)(s) (2020). Based on the determination that Ms. Liford had sustained a "single accident," her claim against the Second Injury Fund was denied.

The question of whether one single injury or two separate and distinct injuries have occurred in this case required a medical determination of what caused Ms. Liford's left knee condition. The issue of causation is ordinarily for the finder of fact. As the Iowa Supreme Court has stated:

Medical causation presents a question of fact that is vested in the discretion of the workers' compensation commission. *See Dunlavey v. Econ. Fire & Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995). We will therefore only disturb the commissioner's finding of medical causation if it is not supported by substantial evidence. *See* Iowa Code § 17A.19(10)(f).

Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844–45 (Iowa 2011); *See also Second Inj. Fund v. Greenman*, 725 N.W.2d 658, 2006 WL3017955 (Iowa Ct. App. Oct. 25, 2006) ("Whether Greenman's injury to her left arm is a new and subsequent injury or one aggravated by the right arm injury is a judgment call, and judgment calls are to be left to the agency. . . there was substantial evidence in the record (to support the agency's decision)).

In this case, the Deputy Commissioner relied heavily on an expert medical doctor's report in determining that Ms. Liford had not proven that she suffered two separate and distinct injuries. As the Deputy Commissioner ruled, "[t]he question of causal connection is essentially within the domain of expert testimony." (Arbitration decision, p. 7). The Deputy Commissioner gave the greatest weight to Dr. Kuhnlein's independent medical evaluation, in which he opined that the "left knee condition developed as a sequelae to

the right knee condition as Ms. Liford accommodated for the right knee injury. . .” (Claimant’s Ex. 4, p. 10).

The Deputy Commissioner noted her reasons for giving Dr. Kuhnlein’s expert opinion the most weight: “Dr. Kuhnlein had the opportunity to review Ms. Liford’s medical records and examine and interview Ms. Liford. I find Dr. Kuhnlein’s report to be thorough and well reasoned.” (Arbitration Decision p. 6).

Although the Deputy Commissioner gave most weight to Dr. Kuhnlein’s medical report, she made clear that she also relied on Ms. Liford’s own testimony. Ms. Liford was the only lay witness who testified at the hearing. The deputy commissioner noted that Ms. Liford’s symptoms of left knee pain, by her own testimony, began shortly after she returned to work after her right knee surgery. She sought treatment for bilateral knee pain on December 5, 2014, but did not complain that a work injury had occurred on that date. Ms. Liford admitted that she had “babied” her right knee after surgery, and had overused her left knee beginning in October, causing it to hurt. Ms. Liford did not recall any specific injury to her left knee. (Arbitration decision, p. 4-5).

This Court determines that the Deputy Commissioner, whose findings were all affirmed by the Commissioner, relied on “substantial evidence,” as outlined above, in determining that Ms. Liford had not suffered two separate and distinct injuries. As indicated above, “substantial evidence” consists of evidence that a reasonable person would accept as adequate to reach a given conclusion. *Conley*, 620 N.W.2d at 500. In this case, a reasonable person could accept the above outlined evidence as adequate to conclude that Ms. Liford’s left knee condition was a sequela of her initial right knee injury, and not

a separate and distinct injury. Thus, “substantial evidence” supports the Commissioner’s decision.

In her appeal, Ms. Liford never argues that the Commissioner’s decision that she suffered just one injury is unsupported by substantial evidence. Rather, she argues that the Commissioner erred in not correctly applying the law set forth in *Gumm v. Easter Seal Society of Iowa*. 943 N.W.2d 23 (2020). In *Gumm*, the Iowa Supreme Court set forth the legal standard for distinguishing “separate and distinct” work injuries, from “aggravations” of original work injuries. The Iowa Supreme Court framed the issue as follows:

This case presents the question whether a worker’s compensation claimant who receives disability benefits for a traumatic injury can later recover disability benefits on a separate cumulative injury claim if the cumulative injury is based solely on aggravation of the earlier traumatic injury. . . we conclude that a separate cumulative injury is not available in these circumstances. . .

Id at 25. Later in the *Gumm* ruling the Iowa Supreme Court held:

For the foregoing reasons, we hold the commissioner and the district court correctly ruled that where a claimant has received disability benefits for a prior compensable injury, the claimant is limited to the review-reopening remedy for additional disability benefits unless she can prove she has suffered another injury. If the subsequent injury is a cumulative injury, it must be a distinct and discrete injury, not merely the aggravation of the prior injury due to regular work activities.

Id. at 33.

Ms. Liford interprets the above language from the *Gumm* ruling to indicate that the Commissioner is legally required to engage in specific fact finding to determine whether Ms. Liford’s left knee condition was “solely” or “merely” an aggravation of her prior work injury which occurred March 10, 2014. As the words “solely” or “merely” never appear in the ruling of the Deputy or the Commissioner, Ms. Liford concludes that the agency has violated the law. Specifically, Ms. Liford alleges that “[t]here was no discussion of the significance of the fact that the injuries were separated in time. There was no discussion of

the fact that Teresa had no pain in her left knee until she returned to work. There was no discussion of the fact that her post-October work environment put markedly more stress on her knee.” Pet. Jud. Review Br., p. 10.

In fact, the Deputy Commissioner considered all of these matters in her findings of fact. She indicated that the original work injury to Ms. Liford’s right knee occurred on March 10, 2014, and that Ms. Liford began to experience pain in her left knee on October 12, 2014. (Arbitration Decision, p. 4). She indicated that Ms. Liford’s left knee symptoms commenced only after this return to work in October. (Arbitration Decision, p. 4). She indicated that because Ms. Liford’s work space had been reconfigured, after she returned to work she had to twist more to get into spaces. (Arbitration Decision, p. 4). She indicated that she considered lay testimony (Ms. Liford was the only one who testified) and all other evidence, including expert opinion, in coming to her conclusion that Ms. Liford had suffered only one injury. (Arbitration Decision, p. 7).

Ms. Liford’s legal argument seems to be that even if the above facts were discussed, the Commissioners would have had to specifically find that Ms. Liford’s left knee condition was based **solely and merely** on an aggravation of her earlier right knee injury in order to conclude that that she had suffered just one injury and not “separate and distinct” injuries. This Court disagrees with Ms. Liford that the holding in *Gumm* in any way supports such an argument.

First, it is Ms. Liford who had the burden of proving, by a preponderance of the evidence, that the alleged second injury actually occurred on December 5, 2014, and that it arose out of and in the course of employment. *Quaker Oats Co. v. Ciha*, 552 N.W.2d 143 (Iowa 1996); Iowa Code § 85.64. It was not the Defendants’ burden to prove that Ms.

Liford's condition was "solely" and "merely" an aggravation of an existing injury. Nothing in *Gumm* suggests that the Commissioner is required to use certain language or a certain analysis in determining that a second injury did not occur.

Second, the court in *Gumm* was addressing a narrow issue: when a claimant is limited to a "review-reopening" remedy for additional disability benefits after already receiving disability benefits for a prior compensable injury. The *Gumm* court held that a claimant is so limited to the "review-reopening" remedy unless she can prove a "separate and discrete" injury. The *Gumm* Court's ruling was limited to a narrow set of circumstances, not found in this case.

In this case, the Deputy Commissioner was not tasked with determining whether Ms. Liford was limited to a "review-reopening" remedy. Instead, the Commissioner was asked to determine *for the first time* the full extent of Ms. Liford's injuries, *and* whether Ms. Liford was entitled to benefits under the Second Injury Fund. (Arbitration Decision, p. 2). There is no indication in the *Gumm* decision that its analysis of "distinct and discrete" injuries applies to claims made against the Second Injury Fund.

Iowa Code § 85.64 sets forth the requirements for making a claim against the Second Injury Fund. This statute states, in relevant part,

If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently disabled by a compensable injury which has resulted in the loss of or loss of use of another such member or organ, the employer shall be liable only for the degree of disability which would have resulted from the latter injury if there had been no preexisting liability. . .

In order for a claimant to prove section 85.64 is applicable to her loss, she must establish:

- (1) she has either lost, or lost the use of a hand, arm, foot, leg, or eye;
- (2) she sustained the loss, or loss of use of another such member or organ through a work related—that is, compensable—injury; and

(3) there is some permanent disability from the injuries.

Second Inj. Fund of Iowa v. George, 737 N.W.2d 141, 146 (Iowa 2007)

Again, it is Ms. Liford's burden to establish that she sustained two separate qualifying injuries for her claim against the Second Injury Fund. The Second Injury Fund has no burden to prove that Ms. Liford's loss of use of her left knee occurred "solely and merely" because of the aggravation of an existing injury, and thus that there was no second qualifying injury. Further, nothing in the statute or accompanying case law requires the Commissioner to engage in a "solely and merely" analysis in order to have its conclusions as to second injuries upheld.

Finally, the Court considers Plaintiff's argument that the Commissioner's findings in *Second Injury Fund v. Greenman*, somehow requires that the Commissioner must make a different determination in this case. 2006 WL 3017955, 725 N.W.2d 658 (Iowa Ct. App. 2006) (unpublished opinion). In *Greenman*, the Commissioner determined that Greenman had sustained two separate workplace injuries. The Claimant had injured her right arm after repetitive lifting, was placed on light duty (writing and typing) and subsequently reported that her left arm was injured. Claimant stated that the injury was from doing everything with her left arm which she had previously done with both arms. The Commissioner stated, "The left arm injury was not simply [a] sequela of the right arm condition because it developed from subsequent work induced trauma, not merely as a consequence of the right arm condition." *Id.* at *3.

To the extent that the Commissioner's findings in *Greenman* are inconsistent with the Commissioner's findings in the instant case, such inconsistency is inconsequential to this Court. This Court is not tasked with ensuring consistency among all of the

Commissioner's rulings. The ultimate question is not whether the evidence supports a different finding than that made by the agency in this case, but whether the evidence supports the findings actually made. *Reed*, 478 N.W.2d at 846.

This Court, as a reviewing Court, is only required to determine that substantial evidence supports the Commissioner's factual findings, and that the Commissioner has made no errors of law. Further, the Court must find that the Commissioner's application of the law to the facts of this case was not "irrational, illogical, or wholly unjustifiable." *Mycogen*, 686 N.W. 2d at 465.

This Court finds that the Commissioner's factual findings were supported by substantial evidence in the record, that the Commissioner made no errors in interpretation of law, and the Commission's ultimate conclusion was not irrational, illogical or wholly unjustifiable. Accordingly, the Commissioner's decision must be upheld and may not be reversed.

RULING

Based on the above analysis, and for all of the above reasons, the Court concludes that the Commissioner's Appeal Decision filed May 18, 2021, should be affirmed on appeal. Substantial evidence supports the Commissioner's factual findings (which incorporate the Deputy Commissioner's factual findings), that Ms. Liford's left knee condition developed as a sequela of her March 10, 2014, right knee injury, and did not constitute a new, separate, and distinct injury compensable by the Second Injury Fund.

Under Iowa case law, Plaintiff had the burden of proving that her left knee condition was a separate and distinct injury, and failed to discharge that burden. The burden never shifted to Defendants to prove that Plaintiff's left knee condition was "solely" or "merely"

an aggravation of an existing injury. The Commissioner had no legal obligation to make such a determination in affirming the Deputy Commissioner's decision. The Commissioner applied a correct interpretation of the law to the facts of this case, and his decision should be upheld.

IT IS THEREFORE ORDERED that the Workers' Compensation Commissioner's Appeal Decision filed May 18, 2021, is **AFFIRMED**. Costs on appeal are assessed to Plaintiff.



State of Iowa Courts

Case Number
CVEQ005483

Case Title
LIFORD V CHRISTENSEN FARM, LIBERTY MUTUAL &
2ND IF
Type: OTHER ORDER

So Ordered

A handwritten signature in cursive script that reads "Lucy J. Gamon". The signature is written in dark ink and is positioned above a horizontal line.

Lucy J. Gamon, District Court Judge,
Eighth Judicial District of Iowa

Electronically signed on 2022-09-21 14:51:59