

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

A-TEC RECYCLING, INC. AND EMCASCO INSURANCE COMPANY, Petitioners, vs. CHARLES E. WOOD, Respondent.	CVCV056268 ORDER ON JUDICIAL REVIEW
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This is a petition for judicial review from a final decision of the Iowa Workers' Compensation Commission. A telephonic hearing was held in this matter on September 21, 2018. Petitioner A-Tec Recycling, Inc. and EMCASCO Insurance Company (employer and insurance company, collectively referred to as "A-Tec") appeared through attorney Brian Scieszinski. Respondent Charles Wood ("Wood") appeared through attorney Nicholas Pothitakis.

I. PROCEDURAL POSTURE AND FACTUAL BACKGROUND.

Wood sustained a work injury on March 4, 2013 to the right side of his body. The Parties stipulated that the March 4, 2013 injury arose out of and in the course of employment with A-Tec. This matter came before Deputy Workers' Compensation Commissioner Erica J. Fitch on March 1, 2016 for Arbitration Hearing. The issues before the Deputy Commissioner were: 1) whether the stipulated injury of March 4, 2013 caused permanent disability, 2) the extent of Wood's industrial disability, 3) whether A-Tec was responsible for claimed medical expenses, and 4) whether Wood was entitled to reimbursement of an independent medical evaluation pursuant to Iowa Code section 85.39.

The Deputy Commissioner found Wood proved by a preponderance of the evidence that the work injury sustained on March 4, 2013 caused permanent disability. The Parties stipulated that any disability occurring to Wood should be evaluated industrially and the Deputy Commissioner assigned a 10 percent industrial disability as a result of the work-related injury. A-Tec appealed. Wood cross-appealed the 10 percent industrial disability. The Appeal Decision issued by Commissioner Cortese adopted the same analysis, findings, and conclusions as the Arbitration Decision. A-Tec sought judicial review in this Court.

The March 4, 2013 injury occurred when Wood slipped off the back of his work truck. He struck the right side of his body on the truck before falling to the ground. The incident was witnessed by Wood's supervisor. After striking the right side of his body on the truck, Wood remained at work. He informed the supervisor, who witnessed Wood's injury, that he was hurt but did not require emergency medical attention. Wood suffered severe bruising to the right side of his body.

Over the following weeks, Wood's condition progressively worsened. On March 25, 2013, Wood sought emergency medical treatment after he experienced chest pain, difficulty breathing, and fluttering of his heart. Dr. Randleman and Dr. Hawthorne evaluated Wood. Wood complained of chest pains during the previous weeks and shortness of breath. Dr. Randleman and Dr. Hawthorne noted Wood sustained trauma to his right lateral chest and ribs in a fall from his truck. The providers conducted a chest CT that revealed a large right-sided pleural effusion with consolidation in Wood's right lung. Wood was diagnosed with atrial fibrillation, pneumonia, and pleural effusion. Prescriptions were issued and Wood was advised to follow up with his personal physician.

On April 4, 2013, Wood visited cardiologist Dr. Stevens. Dr. Stevens opined the pleural effusion was probably traumatic in nature, due to the fall Wood sustained at work. Dr. Stevens further noted that Wood was a twenty-five-year smoker and advised him on smoking cessation and weight loss. Wood was directed to return in one week for an EKG and in six weeks for a stress test.

On April 20, 2013, Wood collapsed at his home. He was transported to the emergency department of Iowa Lutheran Hospital and evaluated by Dr. Webster. Wood's CT revealed pneumonia in the right lung base. Dr. Webster assessed systemic inflammatory response syndrome, right lower lobe pneumonia, and leukocytosis. Wood was admitted into the intensive care unit, due in part, to kidney and heart problems from his low blood pressure.

While hospitalized, several physicians evaluated Wood. Dr. Hicklin, a pulmonologist, identified an increasing pleural effusion of Wood's right lung. A culture of the tapped fluid grew *Streptococcus intermedius*. Dr. Best-Bandenay, an infectious disease specialist, assessed empyema of the right pleural space, right lower lobe necrotizing pneumonia, and acute renal failure. Dr. Best-Bandenay adjusted Wood's antibiotic regimen. Dr. Stevens also assessed Wood. Wood had developed intermittent atrial fibrillation with rapid ventricular response, as well as hypotension. Dr. Stevens was able to correct the atrial fibrillation to normal sinus rhythm. Dr. Schmolck, a nephrologist, assessed Wood with right chest empyema with sepsis, acute kidney injury, and intermittent atrial fibrillation. Wood was discharged from hospital care on April 29, 2013.

On May 7, 2013, Wood sought Dr. Beltran-Garcia for follow up of his kidney condition. Dr. Beltran-Garcia opined Wood experienced fatigue and foggiess from his recent hospitalization and decreased renal function. It was recommended Wood not return to work until

his symptoms improved, but once the symptoms resolved and renal function improved, Dr. Beltran-Garcia opined Wood could return to work without restriction. Wood was released to return to work on May 13, 2013 with a maximum lifting restriction of 20 pounds.

On June 3, 2013, Wood visited Dr. Mohr for follow up of his hospitalization. A CT scan revealed a small residual fluid collection in the lower portion of the right lung. Dr. Mohr assessed COPD and empyema. Wood was assessed as reaching maximum medical improvement and was released to return to work on regular duty. Wood also visited Dr. Schmolck on June 3, 2013, and complained of occasional rib pain.

Wood returned to Dr. Stevens on July 9, 2013. Dr. Stevens assessed atrial fibrillation, hyperlipidemia, obesity, and nicotine dependence. Dr. Stevens also opined Wood's episode of chest wall rib contusion, bacterial pneumonia, and empyema all seemed to be temporally related and that the atrial fibrillation was then secondary to those conditions. Dr. Stevens recommended Wood stop smoking. Wood again returned to Dr. Stevens on October 9, 2013. Dr. Stevens recommended Wood continue on medication in order to avoid recurrence of paroxysmal atrial fibrillation, but released Wood to full work duties without restriction.

On February 17, 2014, Wood presented to Dr. Brimeyer with complaints of right-sided chest pain that had occurred during the previous one to two months. After an abnormal chest x-ray, Dr. Brimeyer believed Wood's chest pain was related to the presence of scar tissue in the lower right lobe, caused by the empyema.

On April 22, 2014, Wood left work after feeling poorly. Wood went home to rest and later awoke with a severe episode of atrial fibrillation. After seeking emergency care, Wood was diagnosed with atrial fibrillation with rapid ventricular response. In a follow up to his emergency hospitalization, Dr. Stevens noted Wood complained of residual right-sided chest

pain and opined the pain was probably from the chest tube or pleural scarring from the empyema. Wood returned to Dr. Stevens on September 16, 2014 and reported experiencing palpitations after pushing barrels at work. Although Wood denied persistent palpitations, Wood had previously endured episodes of atrial fibrillation while performing work duties. Dr. Stevens recommended Wood continue the regimen of medication therapy, cease smoking, and lose weights. Dr. Stevens imposed a work restriction that prohibited Wood from pushing or lifting weight over 100 pounds without assistance. Wood testified such restriction was permanent in nature.

On February 23, 2015, Dr. Kline examined Wood for an independent medical evaluation. With regard to the atrial fibrillation, Dr Kline opined the atrial fibrillation in April 2013 was temporally related to Wood's accident/empyema/sepsis. Dr. Kline stated that Wood may have had a preexisting tendency to develop atrial fibrillation that was unveiled by his acute illness, but could not state whether that is more likely than not. Dr. Kline's opinion was that he was not able to state that is was more likely than not that Wood sustained any permanent impairment of his cardiac or pulmonary system as a direct result of his work accident. (Exhibit 9).

On July 17, 2015, Dr. Stevens signed a statement explaining his opinion that Wood currently suffers from atrial fibrillation associated with the work injury, pneumonia, and related hospitalization. He stated that lifelong medication is necessary for Wood as a result of the atrial fibrillation. Dr. Stevens opinion was that to a reasonable degree of medical certainty, the work related injury and accompanying pneumonia was a substantial contributing factor to Wood's atrial fibrillation. (Exhibit 5).

At the Arbitration Hearing, Wood testified he continued to experience atrial fibrillation. Wood was able to perform the trucking duties required by his then current job, but was

foreclosed from performing more physical trucking jobs. Trucking jobs that required loading and unloading, or tarping and chaining, earned higher wages. Wood believed the more physical trucking jobs would often exceed moving 100 pounds and increase his likelihood of suffering atrial fibrillation.

The Deputy Commissioner found Wood sustained two forms of permanent injury: 1) permanent disability to his right lung/rib region, and 2) permanent disability to Wood's cardiac system in the form of atrial fibrillation. The Deputy Commissioner found the right lung/rib region injury did not result in industrial disability, but held that the atrial fibrillation resulted in a 10% industrial disability. The Deputy Commissioner was affirmed on appeal by the Commissioner in a final agency decision.

A-Tec appeals the determination of permanent injury from atrial fibrillation and the finding of industrial disability. A-Tec did not need to appeal the finding of permanent disability to the right lung/rib region because the Deputy Commissioner did not rely on that injury. A-Tec asks this Court to reverse the agency's Appeal Decision, or alternatively, remand this matter to the agency to consider all the evidence in this case.

II. ANALYSIS AND CONCLUSIONS OF LAW.

A. Standard.

This Court's review of a workers' compensation action is governed by Iowa Code chapter 17A. Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 748 (Iowa 2002); see Iowa Code § 86.26. The commissioner's factual determinations are "clearly vested by a provision of the law in the discretion of the agency" and this Court will defer to those factual determinations if they are based on "substantial evidence in the record before the court when that record is

viewed as a whole.” Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 557 (Iowa 2010) (quoting Iowa Code § 17A.19(10)(f)). This Court may grant relief from an agency action if it determines the substantial rights of the claimant have been prejudiced because the agency action is unsupported by substantial evidence. Iowa Code § 17A.19(10)(f). “Evidence is substantial if a reasonable person would find the evidence adequate to reach the same conclusion.” Grundmeyer, 649 N.W.2d at 748. “[The] question is not whether there is sufficient evidence to warrant a decision the commissioner did not make, but rather whether there is sufficient evidence to warrant the decision he did make.” Musselman v. Cent. Tel. Co., 154 N.W.2d 128, 130 (Iowa 1967).

If the commissioner’s interpretation of law is the claimed error, the question on review is whether the commissioner’s interpretation was erroneous. See Clark v. Vicorp Rests., Inc., 696 N.W.2d 596, 604 (Iowa 2005). If the commissioner’s ultimate conclusion reached is the claimed error, “then the challenge is to the agency’s application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence.” Meyer, 710 N.W.2d at 219; Iowa Code § 17A.19(10)(i), (j).

B. Permanent Disability to Cardiac System from Atrial Fibrillation.

A-Tec argues the Commissioner’s determination that Wood sustained a permanent disability due to atrial fibrillation should be reversed or the issue remanded¹. At the commission level, “[a] claimant must prove by a preponderance of the evidence that the injury is a proximate cause of the claimed disability.” Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560

¹ A-Tec does not raise the Deputy Commissioner’s finding that Wood sustained a permanent disability due to injury to the pulmonary system because the Deputy Commissioner also found that Wood did not have an industrial disability stemming from that permanent injury. Instead, the industrial disability assessment was based on the finding of a permanent disability due to injury to the cardiac system in the form of atrial fibrillation.

(Iowa 2010) (quoting Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 752 (Iowa 2002)). “Ordinarily, expert testimony is necessary to establish the causal connection between the injury and the disability for which benefits are claimed.” Id. However, “[t]he commissioner, as the fact finder, determines the weight to be given to any expert testimony.” Id. “Because the commissioner is charged with weighing the evidence, we liberally and broadly construe the findings to uphold his decision.” Finch v. Schneider Specialized Carriers, Inc., 700 N.W.2d 328, 331 (Iowa 2005).

In the evaluation performed February 23, 2015, Dr. Kline opined that he could not state Wood had a permanent impairment to his cardiac system as a result of his work injury. (Ex. 9 p. 6). On the other hand, Dr. Stevens opined the work injury and pneumonia were a substantial contributing factor to Wood’s atrial fibrillation. (Ex. 5). The Deputy Commissioner found the atrial fibrillation to be a permanent injury because Wood would need ongoing care, require lifelong prescription medication, and because Dr. Stevens had imposed a restriction on physical activity. (Arbitration Decision at 15). The Deputy Commissioner specifically stated she found Dr. Stevens’ opinion to be entitled to the greatest weight because he had examined and evaluated Wood on a number of occasions.

A-Tec criticizes Dr. Stevens’ opinion and the Deputy Commissioner’s reliance on it for three reasons. However, for each criticism there is contrary evidence in the record upon which the Deputy Commissioner relied. First, A-Tec argues that Dr. Stevens did not opine that Wood would have future episodes of atrial fibrillation or that the condition was permanent. However, Dr. Stevens did opine that Wood had a diagnosis requiring ongoing medical care and lifelong medication, indicating the obvious inference that without proper future care and medication a future episode is possible. Broadlawns Med. Ctr. v. Sanders, 792 N.W.2d 302, 307 (Iowa 2010)

is instructive. In Sanders, the Iowa Supreme Court reversed the Iowa Court of Appeals, affirming the Commission and District Court ruling finding a permanent injury. A deputy commissioner had noted a doctor's reluctance to call a condition permanent based on a hope that it will improve, but noted the doctor had placed the employee at maximum medical improvement and the issue had not resolved three years later. The Iowa Supreme Court held that was substantial evidence to support a determination of permanent disability. Here, there is greater evidence of permanency than in Sanders. Dr. Stevens emphasized the lifelong need for medication, imposed work restrictions, and made no suggestion that the atrial fibrillation diagnosis would resolve.

Second, A-Tec points to Dr. Stevens' prior response to A-Tec agreeing Wood's problems were related to other comorbidities. The Deputy Commissioner did specifically consider that prior statement. However, the Deputy Commissioner found Dr. Stevens' more recent and more specific statement to be entitled to greater weight.

Third, A-Tec argues the Deputy Commissioner was incorrect to rely on the lifting restriction imposed by Dr. Stevens. A-Tec notes Dr. Stevens released Wood to work without restrictions on November 9, 2013. A-Tec also asserts that when Dr. Stevens imposed the lifting restriction, he did not specifically state it was a permanent restriction or due to the work injury. Dr. Steven's September 2014 work restriction took place after Wood experienced another incident of atrial fibrillation on April 22, 2014 and after Wood reported he had recently experienced palpitations after pushing barrels at work. Therefore, additional evidence had come to Dr. Stevens' attention since the November 9, 2013 release. Further, Wood testified Dr. Stevens told him the lifting restriction was permanent. The imposition of lifting restrictions

derived from treatment for atrial fibrillation and Dr. Stevens has opined that the work injury was a substantial contributing factor to the atrial fibrillation.

Each of A-Tec's criticisms may be responded to with contradictory evidence in the record. The Deputy Commissioner was entitled to weigh the expert opinions and accept the opinion she found credible. The Deputy Commissioner and Commissioner's decisions are supported by substantial evidence and are not arbitrary, unreasonable, irrational, or illogical.

C. Finding of 10% Industrial Disability.

A-Tec next asserts there is no basis for a finding of 10% industrial disability. "Industrial disability measures an injured worker's lost earning capacity." Myers v. F.C.A. Servs., Inc., 592 N.W.2d 354, 356 (Iowa 1999). The factors to be considered include the "employee's functional disability, age, education, qualifications, experience, and the ability of the employee to engage in similar employment." Id.

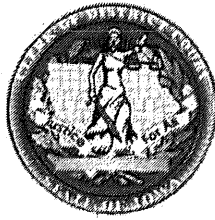
A-Tec argues the finding of industrial disability is unsupported because A-Tec contends there is no expert opinion imposing work restrictions related to a work injury. This is the same argument addressed above. Dr. Stevens' September 2014 work restriction were in direct response to another incident of atrial fibrillation on April 22, 2014 and after Wood reported to Dr. Stevens that Wood had recently experienced palpitations after pushing barrels at work. Further, Wood testified Dr. Stevens told him the lifting restriction was permanent. Although Dr. Stevens did not specifically state the lifting restriction was due to a work injury, the imposition of lifting restrictions derived from treatment for atrial fibrillation and Dr. Stevens separately opined the work injury was one of the causes of the atrial fibrillation, linking the two. There is substantial evidence that the work restriction is permanent and related to atrial fibrillation and that the atrial fibrillation is related to the work injury.

Second, A-Tec argues Wood does not have any current loss of income because he is currently employed at a higher hourly rate than when he was employed by A-Tec. The Iowa Court of Appeals has previously rejected the argument that an employee cannot be assessed an industrial disability impairment if the employee is currently earning a higher rate. As the court explained: "The operative phrase here is loss of earning capacity, not loss of actual earnings. Thus, it is conceivable that an employee may presently earn a higher wage than his or her pre-injury earnings and still have a reduced earning capacity." Arrow-Acme Corp. v. Bellamy, 500 N.W.2d 92, 95 (Iowa Ct. App. 1993) (affirming industrial disability rating despite employee's currently higher wage); see also Wilian Holding Const. Prod. v. Rice, 705 N.W.2d 106 (Iowa Ct. App. 2005) ("Although there is no evidence that Rice's injury resulted in an actual reduction in income, a finding of industrial disability does not depend on a loss of earnings. Indeed, our courts have long held proof of a loss of employment and a loss of actual earnings is not essential to a finding of industrial disability.").

Wood left A-Tec's employment in the summer of 2015. The fact that Wood currently earns a higher hourly rate does not prohibit a finding of industrial disability. The question for the Deputy Commissioner and Commissioner was whether there has been a reduction of earning capacity. Here, the Deputy Commissioner found that Wood's lifting restriction will impact which job positions he can take and, therefore, reduce his ultimate earning capacity. The Deputy Commissioner noted that truck driving requires drivers to physically load and unload heavy freight or secure loads with heavy tarps and changes and that those positions would either not be available to Wood or would pose a risk to his health. The Deputy Commissioner also noted that Wood has missed some work to recover from episodes of atrial fibrillation. The Deputy

Commissioner's determination is supported by substantial evidence and is not arbitrary, unreasonable, irrational, or illogical.

IT IS HEREBY ORDERED that the decision of the Worker's Compensation Commission is AFFIRMED. Costs are assessed to Petitioners.



State of Iowa Courts

Type: OTHER ORDER

Case Number	Case Title
CVCV056268	ATEC RECYCLING INC ET AL VS CHARLES E WOOD

So Ordered

A handwritten signature in cursive script, appearing to read "Sarah Crane", is written over a horizontal line.

Sarah Crane, District Court Judge
Fifth Judicial District of Iowa