

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

JACQUES COALE

Claimant-Respondent,

v.

BARR-NUNN TRANSPORTATION, INC.,

Employer-Petitioner,

YORK RISK SERVICES GROUP,

Insurance Carrier-Petitioner.

Case No. CVCV061910

**RULING ON PETITION FOR
JUDICIAL REVIEW**

In this Petition for Judicial Review, Petitioners Barr-Nunn Transportation, Inc. (“Barr-Nunn”) and York Risk Services Group seek review of the Iowa Workers’ Compensation Commissioner’s Appeal Decision awarding benefits to Claimant Jacques Cole. This case came before the Court for a hearing on February 4, 2022. Dillon Carpenter represented Petitioners. Nicholas Pothitakis represented Mr. Coale. The matter is now fully briefed and submitted.

Introduction

It is undisputed that on February 28, 2018, Mr. Coale developed a foot injury while employed as a truck driver for Barr-Nunn Transportation, Inc. (“Barr-Nunn”). He discovered on his left foot multiple blisters with blood and fluid discharge. Barr-Nunn advised Mr. Coale to go to an emergency room, and Mr. Coale did so. Although prescribed an antibiotic, Mr. Coale did not get the prescription filled until at least March 7, 2018, when he sought additional treatment. Over the course of this period, Mr. Coale’s wound became infected. Ultimately, Mr. Coale had surgery on May 11, 2018, to amputate portions of three toes on his left foot. The fighting issue is whether these injuries were caused by his job duties or were instead caused by his pre-existing conditions.

The Deputy Workers' Compensation Commissioner found that the injury was job-related and awarded benefits in his November 18, 2020, Arbitration Decision. Iowa Workers' Compensation Commissioner Joseph S. Cortese II affirmed the Arbitration Decision in his May 5, 2021, Appeal Decision.¹ Petitioners filed this Petition for Judicial Review on May 28, 2021.

Petitioners seek to overturn the Appeal Decision on numerous grounds. However, the grounds all boil down to the assertion that the opinion of Petitioner's hired expert should be accepted over the opinions of other doctors who treated or examined Mr. Coale.

Standard of Review

Iowa Code Chapter 17A governs judicial review of final agency action. "Under the Act, [the Court] may only interfere with the commissioner's decision if it is erroneous under one of the rounds enumerated in the statute, and a party's substantial rights have been prejudiced." Meyer v. IBP, Inc., 710 N.W.2d 213, 218 (Iowa 2006). A party challenging agency action bears the burden of demonstrating the action's invalidity and resulting prejudice. Iowa Code §17A.19(8)(a). In exercising the power of judicial review, the district court acts in an appellate capacity. Nance v. Iowa Dept. of Revenue, 908 N.W.2d 261 (Iowa 2018) (quoting Mycogen Seeds v. Sands, 686 N.W.2d 457, 463 (Iowa 2004)).

Where an agency has been clearly tasked with the power to make determinations of fact, "it follows that application of the law to those facts is likewise 'vested by a provision of law in the discretion of the agency'." Burton v. Hilltop Care Center, 813 N.W.2d 250, 256 (Iowa 2012) (citing Mycogen Seeds v. Sands, 686 N.W.2d 457, 465 (Iowa 2004)). In reviewing factual findings made by the Commissioner, the question is simply whether there is substantial evidence

¹ Because the Arbitration Decision is more detailed and was affirmed by the Commissioner in all respects, this Order will generally refer to the work of the Deputy Workers' Compensation Commissioner who issued the Arbitration Decision.

in the record to support the Commissioner's findings. Iowa Code §17A.19(10)(f); see also Meyer v. IBP, Inc., 710 N.W.2d 213, 219 (Iowa 2006).

Where the reviewing court is asked to review an agency's interpretation of law, the level of deference afforded depends on whether the authority to interpret that law has "clearly been vested by a provision of law in the discretion of the agency." Burton v. Hilltop Care Center, 813 N.W.2d 250, 256 (Iowa 2012). The determination of whether an injury arises out of and in the course of employment is a determination clearly vested with the Workers' Compensation Commission. Thus, in reviewing the Commissioner's application of the law to the facts in this matter, this Court reviews for "correction of errors at law". Waldinger Corp. v. Mettler, 817 N.W.2d 1, 7 (Iowa 2012).

The Iowa Supreme Court has instructed that "workers' compensation law should be liberally construed to accomplish the object and purpose of the legislation: to benefit the worker and his dependents." Dillinger v. City of Sioux City, 368 N.W.2d 176, 180 (Iowa 1985). Whether an injury arose out of and in the course of employment presents a mixed question of law and fact on appeal. Meyer v. IBP, Inc., 710 N.W.2d 213, 218 (Iowa 2006). After resolving any dispute facts leading to the claimed injury, the agency then considers the legal question of whether the facts demonstrate that the injury arose out of and in the course of employment.

Legal Analysis

Petitioners argue that the Commissioner erred in adopting the opinions of Mr. Coale's treating physicians rather than that of Petitioners' hired expert, Dr. David Berg. Dr. Berg testified as to his conclusion that Mr. Coale has Buerger's disease and that this condition, rather than job duties, caused the injuries at issue. Buerger's disease restricts blood supply, which in turn makes infection more likely. Dr. Berg also testified that the failure to treat the infection for 9-10 days

resulted in amputation. Mr. Coale was given a prescription for an antibiotic on February 28, 2018, but did not get it filled until at least March 7, 2018²

Mr. Coale points out that his numerous treating medical professionals all attributed his injuries, at least in part, to his duties as a driver for Barr-Nunn. Physician's Assistant Lauren Cartwright noted on May 31, 2018, that Mr. Coale "has to drive for 8 hours at a time without a break." Joint Exhibit 2-21. Dr. Jonathan Rayman checked "yes" on July 24, 2018, on a "check the box" letter from counsel asking "Do you believe that Mr. Coale's work activity in Late February/early March of 2018 of driving for long periods of time was a substantial contributing factor to his left foot condition and the progression of the left foot condition to the point where you needed to perform surgery and amputation?" Claimant's Exhibit 2. Dr. Mujahed Abbas opined twice, on April 9, 2018, and July 10, 2018, that Mr. Coale's injuries were "most likely related to trauma related to this patient [sic] occupation." Joint Exhibits 4-2 and 4-18. Dr. Sunil Bansal conducted an independent medical examination and stated on June 17, 2019: "In my medical opinion, Mr. Coale developed friction blisters across his left toes from driving for long hours with a wet sock." Claimant's Exhibit 3-10 (Agency Record Vol. 2 p. 24).

Petitioners attempt to poke holes in these various opinions with varying degrees of success. According to Petitioners PA Cartwright was misinformed when she thought Mr. Coale drove 8 hours without a break; Dr. Rayman was just signing off on counsel's language and may have misunderstood how long Mr. Coale was driving without a break; Dr. Bansal misunderstood the temporal aspect of the wet sock, saying the wet sock caused the blisters when Mr. Coale testified that his sock got wet because the blisters broke and fluid leaked out.

² Petitioners did not raise the affirmative defense that Mr. Coale's conduct in not filling the prescription and not promptly seeking follow-up treatment was an intervening cause of his eventual amputations. Thus, the Court does not fully recount all of the delays in treatment between February 28, 2018, and the surgery on May 11, 2018.

The Deputy Workers' Compensation Commissioner considered Petitioners' arguments, but determined that the medical opinions of Dr. Abbas and Dr. Rayman were "the most credible and convincing." Exhibit A p. 10. Further, unlike Dr. Berg, each of these professionals examined Mr. Coale as opposed to just looking at medical records. The Court shares the view of the Deputy Workers' Compensation Commissioner that although some of the professionals may have had inaccurate information about the precise number of hours driven by Mr. Coale on February 28, 2018, they were aware that he was an over-the-road truck driver who was sedentary for long periods. Further, Mr. Coale testified that he drove for seven hours and nine minutes on February 27, 2018, and 8 hours and 14 minutes on February 26, 2018. Hearing Transcript p. 35, lines 5-12. Given the limitations of the human bladder, the Court would find it surprising if the doctors assumed seven- or eight-hour driving shifts occurred with no breaks whatsoever.

Dr. Rayman, like Dr. Berg, suspected Buerger's disease, but that does not mean that the disease, as opposed to truck driving, caused the injury. Dr. Rayman later treated Mr. Coale for a foot ulcer that was definitively not caused by work (given that Mr. Coale had been off work for months before this new development). However, this event, and the stated suspicion of Buerger's disease, had both already occurred before Dr. Rayman signed the medical opinion on July 24, 2018, attributing the injury to Mr. Coale's work duties.

The role of this Court is not to make a determination as to which individual doctor's opinion is the most reliable. It is to evaluate the decision of the agency with the appropriate degree of deference. When considering all of the strengths and weaknesses of all of the medical opinions in the record, the Court finds there is substantial evidence supporting the agency's conclusion. The Court further does not find that the agency's action was arbitrary, irrational or capricious. Although Petitioners have called into question certain aspects of each of the

individual professional's opinions, the Court finds that Petitioners cannot overcome the cumulative effect of those opinions. Additionally, Dr. Berg's opinion – based entirely on a review of medical records – is not without its own drawbacks.

To be clear, Mr. Coale has an extensive medical history and many co-morbidities. He is obese, a heavy smoker, and has peripheral neuropathy and vascular disease. However, a claimant's pre-existing conditions do not preclude recovery if the pre-existing condition is "aggravated, accelerated, worsened or 'lighted up'" by workplace activity such that it results in a disability. Nicks v. Davenport Produce Co., 115 N.W.2d 812, 815 (1962). That is what the Deputy Workers' Compensation Commissioner found in this case. Exhibit A p. 10 ("I found that claimant proved by a preponderance of the evidence that he sustained an injury as a result of or at least a material aggravation of his underlying condition as a result of his work activities on February 28, 2018.").

The Court affirms the agency's conclusions that Mr. Coale sustained an injury arising out of his employment and that his injury occurred in the course of his employment. The Court affirms the agency's conclusion that Mr. Coale's injuries were caused or significantly exacerbated by his professional duties on February 28, 2018. Thus, the Court also affirms the determination that Mr. Coale's injuries are compensable.

Although Petitioners challenge the agency's findings regarding medical expenses, permanency benefits, and healing benefits, those challenges are based entirely on the contested conclusions that are affirmed by the Court. Thus, those challenges are rejected.

Conclusion

IT IS ORDERED THAT the Commissioner's Appeal Decision awarding benefits to Mr. Coale is **AFFIRMED** in all respects.



State of Iowa Courts

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Case Title
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AL
Type: OTHER ORDER

So Ordered

A handwritten signature in blue ink that reads "David Nelmark". The signature is written in a cursive style with a large, sweeping initial "D".

David Nelmark, District Judge
Fifth Judicial District of Iowa

Electronically signed on 2022-02-18 09:53:50