

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

**JIMMY COCHRAN,**

Petitioners,

**QUESTLINER, INC.,**

Employer,

**and**

**STANDARD FIRE INSURANCE CO.,**

Insurance Carrier,

Respondents.

Case No. **CVCV059692**

**ORDER ON JUDICIAL REVIEW**

This is a petition for judicial review from a final decision of the Iowa Workers' Compensation Commission. An unreported hearing was held in this matter on May 22, 2020. Petitioner Jimmy Cochran ("Cochran") appeared through attorney Gary Nelson. Respondents Questliner, Inc. and Standard Fire Insurance Company (collectively "Questliner") appeared through attorney Edward Rose. After hearing the arguments of counsel, reviewing the court file, the administrative record, and being otherwise advised in the premises, the court enters the following ruling:

**I. PROCEDURAL POSTURE AND FACTUAL BACKGROUND.**

The facts relating to this petition for judicial review, including the nature and extent of the petitioner's injury and course of treatment, are largely undisputed. Cochran sustained an injury on February 3, 2017, to his right upper extremity and hand. (Tr. 14; Def. Ex. A; JE 1-1.) The parties stipulated that the February 3, 2017, injury arose out of and in the

course of Cochran's employment with Questliner. Although he was initially able to work, Cochran's symptoms did not improve. His employer sent him to Allen Hospital for treatment where he engaged in physical therapy. (Tr. 15). Physical therapy was unsuccessful in resolving Cochran's symptoms and additional testing was ordered. (JE 1-10.) On May 1, 2017, an MRI of Cochran's right upper extremity was performed. (JE 1-10.) The MRI showed no acute injury, mass or formation. (JE 1-10.) On May 2, 2017, Cochran presented for a second MRI, this time of his right hand and wrist. (JE 1-7 ). The May 2<sup>nd</sup> MRI showed a small perforation of central fibers of the scapholunate ligament in Cochran's right wrist. (JE 1-7).

On May 16, 2017, Cochran presented to Dr. Thomas Gorsche, an orthopedic specialist, for treatment. (JE 2-21). Over his course of treatment, Dr. Gorsche ordered physical therapy and injection treatment for Cochran. (JE 2-26). He also placed Cochran on light duty work restrictions. (JE 2-22). Cochran continued to have symptoms during this time, and Dr. Gorsche ordered EMG testing. (JE 2-23). The EMG was performed on June 5, 2017, which returned normal results. (JE 2-23). As Cochran continued to have symptoms in his right extremity, Dr. Gorsche ordered additional physical therapy. ( JE 2-26). He also administered an injection in Cochran's third MCP joint. (JE 2-26). Even after this treatment, Cochran continued to complain of symptoms in his second and third MCP joints. (JE 2-26). Cochran reported he had difficulty shifting his truck and that he believed he would not be able to perform job duties because of his symptoms, even if had a no-load job. (JE 2-26).

On July 20, 2017, Cochran visited Dr. Gorsche for the last time. (JE 2-29). Dr. Gorsche's examination noted some possible swelling to Cochran's third MCP joint. (JE

2-29). Dr. Gorsche did not notice any evidence of sagittal band syndrome and indicated Cochran had full extension and good flexion. (JE 2-29). Dr. Gorsche did not have any additional treatment for Cochran and recommended he see a hand specialist. (JE 2-29). Based on Cochran's continued complaints, Dr. Gorsche restricted him to no gripping, grasping, pushing or pulling with his right hand. (JE 2-31).

Shortly after his last appointment with Dr. Gorsche, Cochran's FMLA leave expired and he was terminated from Questliner on August 25, 2017. (Def. Ex. B). Shortly thereafter, Cochran moved to Scottsbluff, Nebraska. (Tr. 29). In December 2017, Cochran requested referral to a hand specialist. ( Ex 2-29; 30).

On January 15, 2018, Dr. Jeffrey MacMillan of RWPC Orthopedics North evaluated Cochran. (JE 3-34.) Dr. MacMillan ordered a MRI study of Cochran's right upper extremity and diagnosed him with right hand pain, carpal tunnel syndrome of the right wrist, and right cubital tunnel syndrome. (JE 3-35, 36.) Cochran returned to Dr. MacMillan in March 2018. At that time, he reported severe pain in his MCP joints, as well as swelling and occasional numbness or tingling in his right fingers. (JE 2-37.) Cochran returned to Dr. MacMillan on March 15 and 29, 2018. (JE 3-39, 41; JE 2-42, 43.) Dr. MacMillan released Cochran from his care, placing him at maximum medical improvement at the March 29, 2018 visit. (JE 3-43).

Following Dr. MacMillan's finding of maximum medical improvement, Questliner terminated Cochran's weekly disability payments effective May 16, 2018. (Def. Ex. C-2, 3.) Following his discharge from Dr. MacMillan's care, Cochran never received an impairment rating.

On June 7, 2018, Cochran presented to Dr. Thomas Fry for an independent medical examination. (Ex 1-9; 20-28). Dr. Fry found Cochran “has a fairly classic presentation for saddle syndrome (adhesions between intrinsic muscles at the intermetacarpal ligament) which is maximal involving the long finger but has some affect on the index and ring finger.” (Cl. Ex. 1.) Dr. Fry disagreed Cochran had reached MMI, stating “it is not appropriate to give permanent restrictions [or] permanent impairment...” (Cl. Ex. 1).

Cochran filed an arbitration petition, and her case came before the Deputy Workers’ Compensation Commissioner on July 31, 2018, for Arbitration Hearing. Prior to the hearing, the parties entered into several stipulations. (Hrg. Rep.) The issues before the Deputy Commissioner were (1) whether the stipulated injury was the cause of a permanent injury; (2) whether Cochran was entitled to a running award of healing period benefits; (3) whether penalty benefits should be assessed; and (4) the assessment of costs. (Arb. Dec. p.2).

The Deputy Commissioner ruled that Cochran was not at maximum medical improvement and therefore, that Cochran’s permanent disability claim was not ripe and should be bifurcated. (Arb. Dec., p.10). Instead, the Deputy Commissioner ordered the payment of healing period benefits to Cochran. (Arb. Dec., p. 10). The Deputy Commissioner further found that pursuant to Iowa Code Section 86.13, penalty benefits were not appropriate because Questliner reasonably relied on Dr. MacMillan’s findings when terminating Cochran’s weekly disability payments. (Arb. Dec., p.8-10). Cochran appealed the Arbitration Decision to the Commissioner, and the Commissioner affirmed the Arbitration Decision in its entirety in a final agency decision. (App. Dec., p. 2-3).

Cochran appeals the order denying penalty benefits. He asks this Court to remand this matter to the agency to assess penalty benefits.

## **II. ANALYSIS AND CONCLUSIONS OF LAW.**

### **A. Standard.**

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.

When a party claims that an agency erred in statutory interpretation, the court looks “to see if the legislature has clearly vested the authority to interpret the law with the agency.” City of Davenport v. Newcomb, 820 N.W.2d 882, 887 (Iowa Ct. App. 2012)(citing Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250, 252-53 (Iowa 2010)). If the agency has been vested with the authority, the decision will be reversed only if “irrational, illogical, or wholly unjustifiable. Id. If the legislature has not vested the agency with the authority to interpret the statute, the court accords “no deference to the interpretation of the commissioner and [is] free to substitute [its] own judgment for the agency’s interpretation if [it] conclude[s] the agency made an error of law.” Newcomb, 820 N.W.2d at 887 (internal

citations omitted). The agency is not vested with the authority to interpret Iowa Code § 85.13. Pettengill v. Am. Blue Ribbon Holdings, LLC, 875 N.W.2d 740, 745 (Iowa App. 2015), as amended (Feb. 16, 2016). Appropriate review is therefore for correction of errors at law. Pettengill, 875 N.W.2d at 745.

## **B. Analysis**

Cochran argues that the Deputy Commissioner and Commissioner erred in failing to order penalty benefits to be paid. Respondents counter that penalty benefits are not appropriate and the Commissioner did not err in failing to award them.

Iowa Code §86.13(4) governs the assessment of penalty benefits. It provides in relevant part:

If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.

Iowa Code § 86.13(4)(a) (2019).

“When the text of a statute is plain and its meaning clear, the court should not search for a meaning beyond the express terms of the statute or resort to rules of construction. Based on the plain language of section 86.13...an employee is entitled to penalty benefits if there has been a delay in payment unless the employer proves a reasonable cause or excuse.” Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 260 (Iowa 1996) (internal citations omitted). “A reasonable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer

had a reasonable basis to contest the employee's entitlement to benefits. A 'reasonable basis' for denial of the claim exists if the claim is 'fairly debatable.'" Christensen, 554 N.W.2d at 260. "An employer's bare assertion that a claim is 'fairly debatable' does not make it so...[T]he employer must assert facts upon which the commissioner could reasonably find that the claim was 'fairly debatable.'" Meyers v. Holiday Express Corp., 557 N.W.2d 502, 505 (Iowa 1996), as amended on denial of reh'g (Jan. 23, 1997), and abrogated on other grounds by Keystone Nursing Care Ctr. v. Craddock, 705 N.W.2d 299 (Iowa 2005).

In this case, there is no dispute that Cochran received weekly disability benefits through May 16, 2018. Instead, the parties disagree whether Questliner should be required to pay penalty benefits for failing to pay additional weekly benefits after that date. Cochran asserts Questliner should be required to pay penalty benefits because they failed to obtain an impairment rating before terminating his weekly benefits. The Deputy Commissioner and Commissioner found that because Dr. MacMillan had found him to be at maximum medical improvement, Questliner had reasonable cause to stop Cochran's weekly benefit payments. The court concludes this finding is neither based on an erroneous interpretation of Iowa Code section 86.13(b)(2) nor unsupported by substantial evidence in the record. Because no physician had determined Cochran was at maximum medical improvement, he was receiving temporary benefits prior to May 16, 2018. Temporary benefits are only available prior to a finding of maximum medical improvement. See e.g. Dunlap v. Action Warehouse, 824 N.W.2d 545, 557 (Iowa Ct. App. 2012). Once Dr. MacMillan found Cochran was at maximum medical improvement, Questliner had reasonable cause to accept this medical opinion and stop Cochran's

weekly benefit payments. At that point, the issue of whether Cochran was at maximum medical improvement, and therefore no longer entitled to temporary benefits, was fairly debatable. The obtainment of an impairment rating, if one had been given, would have determined whether the prior weekly benefits paid to Cochran should have been considered healing period benefits or temporary total disability payments. Dunlap, 824 N.W.2d at 556. It would not have entitled Cochran to additional weekly benefits. Accordingly, the court finds the decision of the Commissioner regarding penalty benefits should be affirmed.

**Order**

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





State of Iowa Courts

**Type:** OTHER ORDER

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So Ordered

A handwritten signature in black ink, appearing to read "Heather Lauber". The signature is written in a cursive style with a long horizontal flourish at the end.

Heather Lauber, District Judge,  
Fifth Judicial District of Iowa