IN THE COURT OF APPEALS OF IOWA

No. 23-0018
Filed October 25, 2023

DEBRA STUART,
Plaintiff-Appellant,

vs.

DICKTEN MASCH PLASTICS, LLC and EMPLOYERS PREFERRED INS. CO.,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge.

Debra Stuart appeals from the district court's ruling on judicial review affirming the workers' compensation commissioner's denial of her review-reopening petition. **REVERSED AND REMANDED WITH INSTRUCTIONS.**

John P. Dougherty of Lawyer, Dougherty & Palmer, P.L.C., West Des Moines, for appellant.

Nathan R. McConkey of Huber, Book, Lanz & McConkey, PLLC, West Des Moines, for appellees.

Heard by Bower, C.J., and Buller and Langholz, JJ.

LANGHOLZ, Judge.

Under Iowa's workers' compensation statutes, an injured worker receiving benefits can seek to reopen her award or settlement to obtain more benefits by showing a change in her condition—even a purely economic change—proximately caused by her original injury. *See* Iowa Code § 86.14(2) (2020); *E.N.T. Assocs. v. Collentine*, 525 N.W.2d 827, 829 (Iowa 1994). But what if the claimed economic change is that the worker cannot find work after being laid off in a plant closure by an employer who had been accommodating her disability? The workers' compensation commissioner here concluded that when a worker loses her job in a plant closure, she cannot show the required economic change regardless of any other factors preventing her from finding a new job. And so, the commissioner denied Debra Stuart's review-reopening petition.

But the Iowa Supreme Court has not interpreted our statute to establish any such bright-line rule. A worker may be entitled to reopening—even where one cause of the economic change is unrelated to the injury—so long as the continued inability to work is proximately caused by the injury. We thus reverse and remand for the commissioner to apply the proper legal standard to decide whether Stuart has shown that she is entitled to reopening here.

I.

Over ten years ago, Debra Stuart fell and injured herself while working at Dickten Masch Plastics, LLC. She eventually settled her claim for workers' compensation benefits with Dickten Masch and its insurance carrier, Employers Preferred Insurance Company. The parties entered into an agreement for settlement that Stuart was entitled to permanent partial disability of thirty-five

percent of the body as a whole, resulting in weekly benefits of $403.38 for 175 weeks. *See* Iowa Code § 85.35(2). And the settlement was approved by the commissioner.

Stuart kept working full-time at Dickten Masch after her injury. But instead of her previous lead operator role, she worked in a less physically demanding job inspecting light parts. Generally, other employees would bring boxes of the parts to her for inspection while she remained seated. Or she would wheel herself in her chair over to a box and drag it to where she needed it with her cane. Dickten Masch allowed her—but not other employees—to take breaks to get up and walk around every thirty or forty-five minutes.

According to Stuart, Dickten Masch created this job for her as an accommodation to her disability. And she said she would not have agreed to the settlement if she could not continue working in the accommodated job. But the settlement agreement included no text addressing her continued employment or accommodation by Dickten Masch.

About three years after the settlement, Dickten Masch closed the plant where Stuart worked, and she lost her job. Stuart then filed a review-reopening petition seeking to increase workers' compensation benefits. In briefing and at a contested case hearing, she argued that her economic condition had changed because she lost her heavily accommodated job and could not find new employment. She pointed to her more than two dozen applications that resulted in only three responses, all of which were fruitless once the employers learned of her disability. Dickten Masch countered with expert opinion from a vocational rehabilitation counselor that she was still employable and had not been applying

for suitable jobs. Stuart also argued that her physical condition had changed, serving as an alternate basis for reopening her settlement. But she does not advance that claim on appeal.

The deputy workers' compensation commissioner rejected both arguments and denied Stuart's review-reopening petition. The deputy acknowledged that a purely economic change could be a basis for reopening and that Stuart had shown that her economic condition had changed. But the deputy explained that "the reason her employment ended was because the entire plant closed and this was not related to the original work injury." And the deputy reasoned that any accommodation in her lost job was irrelevant because her "ability to earn in the competitive job market without regard to the accommodation furnished by one's present employer was to be taken into account" when she entered into the settlement. Thus, the deputy concluded that "the facts and circumstances related to her earning capacity remain the same and were known at the time of the original settlement" and Stuart failed to show "an economic change of condition related to the work injury." The deputy did not weigh or analyze Stuart's or Dickten Masch's other evidence about Stuart's current ability to find a job after her layoff.

Stuart appealed to the workers' compensation commissioner, and he affirmed the deputy's decision without further analysis. Stuart then brought this judicial review proceeding in district court. She mainly argued that the commissioner "misinterpreted controlling case law" interpreting the review-reopening statute in denying her petition because she was laid off in a plant closure. The district court also affirmed. This appeal followed.

II.

A judicial review proceeding is appellate in nature—even in the district court. *See Black v. Univ. of Iowa*, 362 N.W.2d 459, 462 (Iowa 1985). And on appeal, we apply the same statutory standard of review of the agency action as the district court. *See Carreras v. Iowa Dep't of Transp.*, 977 N.W.2d 438, 444 (Iowa 2022). A court "shall reverse" an agency action "if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is . . . [b]ased upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(10)(c); *see also Green v. N. Cent. Iowa Reg'l Solid Waste Auth.*, 989 N.W.2d 144, 147 (Iowa 2023) ("In reviewing the commissioner's interpretation of a statute, we apply a correction-of-errors-at-law standard."). Yet when reviewing the "application of law to fact," a court must reverse only when the action is "[b]ased upon an irrational, illogical, or wholly unjustifiable application." Iowa Code § 17A.19(10)(m).

At the start, we must resolve the parties' dispute over which of these two standards of review applies here. Dickten Masch contends that Stuart's "true contention on appeal is that the Agency's application of the relevant law to the facts of this case was in error." But Stuart's main argument on judicial review—and the one on which we decide this appeal—is that the commissioner misinterpreted the requirements of the review-reopening statute as interpreted by governing supreme court precedent. This is a pure legal question properly reviewed for correction of errors at law under section 17A.19(10)(c), without any deference to the district court's or commissioner's decisions. *See Green*, 989

N.W.2d at 147; *Carreras*, 977 N.W.2d at 444; *see also Iowa Ins. Inst. v. Core Grp. of Iowa Ass'n for Just.*, 867 N.W.2d 58, 65 (Iowa 2015).

III.

Section 86.14 of the Iowa Code authorizes the workers' compensation commissioner "to reopen an award for payments or an agreement for settlement" if "the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon." Iowa Code § 86.14(2).[1] In a review-reopening proceeding to increase benefits, the injured worker has the burden to show—by a preponderance of the evidence—a change in her condition that was "proximately caused by the original injury." *E.N.T. Assocs. v. Collentine*, 525 N.W.2d 827, 829 (Iowa 1994). "A cause is proximate if it is a substantial factor in bringing about the result." *Blacksmith v. All-Am., Inc.*, 290 N.W.2d 348, 354 (Iowa 1980). "It only needs to be one cause; it does not have to be the only cause." *Id.*

The change in condition can be physical or economic. *See Collentine*, 525 N.W.2d at 829. So "proof of change in physical condition" is not required. *Id.* As our supreme court has explained, "industrial disability is the product of many factors, not just physical impairment." *Id.* "Other factors include age, education, experience, and inability, because of the injury, to engage in employment for which the employee is fitted." *Id.*

[1] A 2017 statutory amendment also gives a right to reopen to certain workers who were awarded compensation for a permanent partial disability and return to work with the same employer if the worker is later terminated. *See* 2017 Iowa Acts ch. 23, § 8 (now codified at Iowa Code § 85.34(2)(v) (2023)). The parties do not argue that this statute has any applicability here. So we do not consider how—if at all—it would affect the analysis in a case in which it does apply.

Thus, a physician whose income was reduced after he decided he could no longer safely perform surgeries was entitled to increase his benefits in a review-reopening proceeding. *See id.* at 829–30. So too was a truck driver whose employer transferred him to a lower-paying dock job after deciding he was disqualified from driving because of his original injury. *See Blacksmith*, 290 N.W.2d at 354. And when a worker's benefit award was originally reduced by ten percent expressly because of an employer's promised accommodated employment, and the employer instead placed him on disability retirement, the worker was entitled to reopen the award to receive the extra ten percent benefits. *See Gallardo v. Firestone Tire & Rubber Co.*, 482 N.W.2d 393, 396–97 (Iowa 1992). But a worker's change in condition caused by her personal decisions unrelated to her original injury—including caring for grandchildren and closing her unprofitable business—does not justify reopening. *Simonson v. Snap-On Tools Corp.* 588 N.W.2d 430, 435–36 (Iowa 1999).

This much of the governing law is largely agreed. But the parties' views diverge on the effect of the supreme court's decision in *U.S. West Communications, Inc. v. Overholser*, 566 N.W.2d 873 (Iowa 1997). And this dispute is the crux of the case.

In *Overholser*—as here—a worker sought to increase her benefits from those agreed to in a settlement based on a change in economic condition after she lost her job in a larger layoff. *See Overholser*, 566 N.W.2d at 874. The commissioner agreed with the worker and increased her five percent permanent partial disability to thirty-five percent, reasoning that the original settlement

reflected her employer's continued accommodation that was lost in the layoff. *See id.* The supreme court disagreed. *See id.* at 876–77.

In a close review of the evidentiary record before the commissioner, the court held that substantial evidence did not support the commissioner's conclusions. *See id.* First, the court decided that "[t]he record does not support the contention that her work was modified in any way to accommodate her injury or that she received sheltered employment which distorted her true earning capacity." *Id.* at 877. The court explained that the worker stayed in the very same job performing the same duties without any accommodation for several years after the injury and that if any accommodation was even made, it happened only after the worker later suffered an unrelated injury and then transferred to a different position. *See id.* at 876–77. The court thus found the record distinguishable from *Gallardo*, where the prior award included an explicit statement that the disability rating was adjusted downward because of a promised accommodation. *See id.* at 876 (citing *Gallardo*, 482 N.W.2d at 396).

Second, the court decided the worker "failed to prove by a preponderance of evidence that her decreased earning capacity was proximately caused by her initial injury." *Id.* at 877. The court reasoned that "[t]he only change in [the worker's] condition between the time of the settlement and her appeal was her termination pursuant to the layoff." *Id.* The court also found it "[s]ignificant[]" that the worker had neither "been refused employment" nor been unable "to obtain a job because of her physical condition." *Id.* And it explained, "[h]er inability to secure employment after the layoff was not due to her back injury" but because of

unrelated factors "including her subsequent injuries, the downsizing by U.S. West, her lack of seniority, and her job seeking skills." *Id.*

Before the commissioner and in this judicial reviewing proceeding, Stuart has argued that *Overholser* sets "a template for analysis" of a review-reopening proceeding involving a worker who claims a change of economic condition after losing an accommodated position in a general layoff. She recognizes that the facts in *Overholser* did not support reopening there. But she seeks to have the same fact-intensive analysis applied here to decide whether she was receiving an accommodation that affected the disability rating in her settlement and whether her inability to secure work after the layoff was caused by her injury.

Dickten Masch, on the other hand, contends that Stuart's argument ignores "that the plain language contained in the *Overholser* decision specifically states that a general layoff *unrelated* to a work injury cannot be the basis for review-reopening." In essence, Dickten Masch seems to read *Overholser* as establishing a bright-line rule that if the change in a worker's economic condition is caused even in part by a general layoff, she can never be entitled to review-reopening. No further analysis needed.

And the commissioner apparently agreed. The deputy commissioner—whose ruling the commissioner adopted—did not make any findings about whether Stuart was being accommodated by Dickten Masch or whether any accommodation affected the benefits agreed to in the settlement. Nor did the deputy weigh the competing evidence about Stuart's ability to find work after her layoff to decide whether her current inability to work was proximately caused by her original injury. Instead, the deputy simply found that Stuart's employment

ended "because the entire plant closed and this was not related to the original work injury."

Stuart is correct that this short-circuiting of the proper review-reopening analysis was an error of law. The supreme court in *Overholser* did not establish a bright-line rule that a worker's loss of a job in a general layoff is an absolute disqualification from showing the required change of economic condition. Rather, *Overholser* demonstrates the opposite: that the commissioner must look at the full record to determine whether the worker's "inability to secure employment after the layoff . . . was proximately caused by her initial injury." *Overholser*, 566 N.W.2d at 877. It matters not that one cause—the general layoff—is unrelated to the original work injury. Because a proximate cause "only needs to be one cause; it does not have to be the only cause." *Blacksmith,* 290 N.W.2d at 354.

So the commissioner's finding that Stuart's layoff was unrelated to her original injury is not the end of the proper analysis. The commissioner still must decide whether Stuart's original injury was *another* proximate cause of her inability to find work after the layoff. And that decision requires the commissioner to weigh the competing evidence presented about the causes of Stuart's lack of success in her job search. For example, Stuart's evidence from multiple witnesses that she had been "heavily accommodated" by Dickten Masch—if found credible by the commissioner—may help show lack of transferability of Stuart's skills and thus the cause of her current inability to find work.[2]

[2] Dickten Masch contends that any accommodation is irrelevant because it should not have been factored into the original settlement. *See Murillo v. Blackhawk Foundry*, 571 N.W.2d 16, 18 (Iowa 1997) (holding that an employer's accommodation is only supposed to "be factored into the award determination to

In her briefing, Stuart seems to argue that we should go on and decide these questions in her favor now. But that would overstep our proper appellate role in a judicial review proceeding.[3] As we have explained, the commissioner did not complete all the necessary fact-finding to decide whether Stuart can reopen her settlement. And this is not a case in which those facts can be decided as a matter of law. *See Armstrong v. State of Iowa Bldgs. & Grounds*, 382 N.W.2d 161, 165 (Iowa 1986) (holding that it was improper for the court to decide facts on judicial review unless "the relevant evidence is both uncontradicted and reasonable minds could not draw different inferences from the evidence"); c*f. Blacksmith*, 290 N.W.2d at 354. The commissioner should have the chance to make these findings and decide whether Stuart is entitled to increased benefits under this proper standard in the first instance. *See Kohlhaas v. Hog Slat, Inc.*, 777 N.W.2d 387, 393 (Iowa 2009) (reversing and remanding to the commissioner "to determine on the record already made whether [the worker] has met the burden of proof required for a review-reopening petition" after clarifying the proper standard for that decision).

Stuart does not seek a new evidentiary hearing. And given the well-developed record already made by the parties, it is appropriate for the commissioner to decide based only on the existing evidentiary record. *See id.*

---

the limited extent the work in the newly created job discloses that the worker has a discerned earning capacity"). But that is a different question than whether the loss of an accommodation can be a change of economic condition justifying reopening. *See Gallardo*, 482 N.W.2d at 396–97 (holding that it can). And it does not undermine the relevance of the now-lost accommodation on deciding whether the worker's inability to find a job is caused by other employers' unwillingness to provide similar accommodations required by the original injury.

[3] At oral argument, Stuart's counsel also conceded that the agency record is lacking the necessary factual findings by the commissioner to decide whether Stuart has proven that she is entitled to an award of increased benefits.

We thus reverse the judgment of the district court and the decision of the workers' compensation commissioner and remand to the district court with instructions to remand to the commissioner to apply the correct legal standard to the existing evidentiary record on Stuart's review-reopening petition.

REVERSED AND REMANDED WITH INSTRUCTIONS.

IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	**Case Title**
23-0018	Stuart v. Dickten Masch Plastics, LLC

Electronically signed on 2023-10-25 08:13:08