

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ALLSTEEL, INC. and ACE AMERICAN INSURANCE COMPANY, Petitioners, vs. SEYDOU N. LOH and SECOND INJURY FUND OF IOWA, Respondents.	CASE NO. CVCV064139 RULING ON PETITION FOR JUDICIAL REVIEW
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This is a judicial review proceeding in which the petitioners seek judicial review of a decision of the worker's compensation commissioner dated July 21, 2022 in which the commissioner affirmed the deputy's decision that the claimant had established a causal connection between a work-related injury to his right leg sustained on April 3, 2017 and a total knee replacement which resulted in permanent disability and an award of healing period benefits. The issue before the court on judicial review is whether that decision was correct.

The appropriate standard of review for this court is governed by Iowa Code §17A.19(10). Any factual determinations would be clearly vested by a provision of law in the discretion of the agency, as it must make such findings to determine any claimant's rights to benefits under chapter 85. Mycogen Seeds v. Sands, 686 N.W.2d 457, 465 (Iowa 2004); Regional Care Hospital Partners, Inc. v. Marrs, 2021 WL 609072 *1 (Iowa Ct.App., Case No. 19-2138, filed February 17, 2021). Accordingly, the reviewing court is bound by the commissioner's findings of fact if supported by substantial evidence in

the record before the court when that record is viewed as a whole. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 126 (Iowa 1995); Iowa Code §17A.19(10)(f) (2021).

Substantial evidence is defined for purposes of the Administrative Procedure Act as “the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.” Iowa Code §17A.19(10)(f)(1) (2021). Substantial evidence is not absent simply because it is possible to draw different conclusions from the same evidence. Id.; see also Riley v. Oscar Mayer Foods Corp., 532 N.W.2d 489, 491-92 (Iowa App. 1995) (“The focus of the judicial inquiry is whether the evidence is sufficient to support the decision made, not whether it is sufficient to support the decision not made.”). This would be the appropriate deference afforded to this agency function, as required by Iowa Code §17A.19(11)(c). Mycogen, 686 N.W.2d at 465. Accordingly, the petitioners may not rely upon the argument that their position may be supported by a preponderance of the evidence; rather, the burden is upon them to show that the commissioner’s determination is lacking in substantial evidence. Midwest Ambulance Service v. Ruud, 754 N.W.2d 860, 865 (Iowa 2008).

The court on judicial review is required to engage in a “fairly intensive review” of the record to ensure the agency’s fact finding was reasonable. Neal, 814 N.W.2d at 525; Univ. of Iowa Hosps. v. Waters, 674 N.W.2d 92, 95 (Iowa 2004). However, courts on judicial review may not engage in a “scrutinizing analysis,” or something that would resemble de novo review, as such a standard of review “would tend to undercut the overarching goal of the workers’ compensation system.” Neal, 814 N.W.2d at 525;

Midwest Ambulance, 754 N.W.2d at 866. That purpose has been consistently summarized as follows:

The fundamental reason for the enactment of this legislation is to avoid litigation, lessen the expense incident thereto, minimize appeals, and afford an efficient and speedy tribunal to determine and award compensation under the terms of this act.

It was the purpose of the legislature to create a tribunal to do rough justice-speedy, summary, informal, untechnical. With this scheme of the legislature we must not interfere; for, if we trench in the slightest degree upon the prerogatives of the commission, one encroachment will breed another, until finally simplicity will give way to complexity, and informality to technicality.

Zomer v. West Farms Inc., 666 N.W.2d 130, 133 (Iowa 2003) (quoting Flint v. City of Eldon, 191 Iowa 845, 847, 183 N.W. 344, 345 (1921)); see also Arndt v. City of Le Claire, 728 N.W.2d 389, 394 (Iowa 2007) (“Making a determination as to whether evidence ‘trumps’ other evidence or whether one piece of evidence is ‘qualitatively weaker’ than another piece of evidence is not an assessment for the district court or the court of appeals to make when it conducts a substantial evidence review of an agency decision”).

On the other hand, the application of the law by the commissioner to its own factual determinations requires a different standard upon judicial review. As the application of law to facts is also vested in the discretion of the agency, it is only to be reversed if found to be irrational, illogical or wholly unjustifiable. Jacobson Transp. Co. v. Harris, 778 N.W.2d 192, 196 (Iowa 2010); Iowa Code §17A.19(10)(m) (2021):

A decision is irrational when it is not governed by or according to reason. A decision is illogical when it is contrary to or devoid of logic. A decision is unjustifiable when it has no foundation in fact or reason.

The Sherwin-Williams Co. v. Iowa Dep't of Revenue, 789 N.W.2d 417, 432 (Iowa 2010)

(internal quotation marks and citations omitted). The difference between these varying standards of review was best summarized in this quote from the Iowa Supreme Court:

Although a claim of insubstantial evidence is usually used to challenge findings of fact, we understand how it can be implicated, as in this case, in a challenge to a legal conclusion. Error occurs when the commissioner makes a legal conclusion based on facts that are inadequate to satisfy the governing legal standards. Yet, a claim of insubstantial evidence to support a legal conclusion does not give rise to the standard of review applicable to the claim of substantial evidence to support the factual findings by the commissioner. When the commissioner takes a piece of evidence and uses it to draw a legal conclusion..., we do not review the conclusion by looking at the record as a whole to see if there was substantial evidence that could have supported the ultimate decision, as argued by IBP in this case. Instead, we review the decision made. If the commissioner fails to consider relevant evidence in making a conclusion, fails to make the essential findings to support the legal conclusion, or otherwise commits an error in applying the law to facts, we remand for a new decision unless it can be made as a matter of law.

Meyer v. IBP, Inc., 710 N.W.2d 213, 219-20 n.1 (Iowa 2006). As a result, even if this determines that the commissioner's factual findings are supported by substantial evidence, this is only the beginning of the analysis. If the commissioner's factual findings are upheld, this court must then determine "whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence." Id. at 219.

Taking the agency record as a whole, the following facts were available to the commissioner: The claimant Seydou Loh (Loh) sustained a work-related injury on April 3, 2017 while employed at Allsteel, Inc. when a car loaded with wood fell on him. The

car struck him in the back and right knee. He received an MRI of his right knee, which revealed sizable joint effusion, internal debris and a small free edge tear mid-medial meniscus. It was determined that the meniscal tear was causally related to the work-related incident of April 3. On July 25, 2017, Loh underwent a medial and lateral meniscectomy with chondroplasty of the medial femoral condyle. The surgery was performed by Dr. Suleman Hussain. Although he initially reported some improvement after the surgery, Loh began reporting severe pain in his right leg in November of 2017. Dr. Hussain continued to provide conservative treatment and injections for the pain, which he opined was related to Loh's "underlying knee arthritis." By January of 2018, Dr. Hussain was of the opinion that Loh would require a total right knee replacement and that he had reached MMI as of January 17, 2018.

Loh continued to have symptoms in his right knee. A second MRI revealed quad tendonitis without any tears to the muscles or tendons, but also demonstrated progressive osteoarthritis with a moderate-size full-thickness cartilage defect in the right knee. Dr. Hussain continued to be of the opinion that a total knee replacement was called for. When the employer questioned the causal connection between the April 3, 2017 incident and the need for a replacement, Dr. Hussain confirmed to a degree of medical certainty that the two were causally connected.

Loh was then seen by Dr. Abdul Foad for an independent medical examination arranged by the employer. Dr. Foad was of the opinion that the April 3, 2017 work injury was not a substantial contributing factor for the degenerative changes in Loh's right knee which he diagnosed as progressive pre-existing osteoarthritis. Dr. Foad confirmed the connection between the incident and the meniscal tear, but felt that his ongoing

symptoms were the result of the progressive and symptomatic osteoarthritis. Loh underwent a total right knee replacement on December 6, 2018.

On July 23, 2019, Loh was seen by Dr. Richard Kreiter for an independent medical examination arranged by his attorney. In his report following the IME, Dr. Kreiter made the following observations regarding the connection between the April 3, 2017 injury and the total knee replacement:

I do not believe the 04/03/2017 work accident was the direct cause for the right knee arthroplasty. The MRI of 05/15/2017 showed only a meniscal tear, no bucket handle tear, but effusion and also the lateral superior patellar bursa with internal debris. This [is] the area Dr. Hussain debrided but did not describe in his operative note. Dr. Hussain elected to operate and did partial meniscectomy and chondroplasty “removal of soft articular cartilage” in various areas. This evidently caused reaction in the knee with deterioration. The postoperative MRI which was done on 02/05/2018 stated “moderate size full thickness cartilage defect involving the medial compartment, new from the prior study.” There is also noted quad tendonitis without tear. In the orthopedic field, there seems to be less enthusiasm recently toward aggressive chondroplasty due to this creating increasing problems and joint deterioration. The increased symptoms and failure to respond to injections led to the decision for the total knee replacement.

Dr. Kreiter felt that Loh was not yet at MMI from the knee replacement (an opinion he shared with that previously given by Dr. Hussain), but gave a provisional disability rating of 20% to the whole person and suggested a number of restrictions. On August 14, 2019, Loh’s attorney followed up with a letter to Dr. Kreiter that requested a “definitive statement” regarding the causation issue between the 2017 injury and whether the meniscus surgery aggravated Loh’s right knee to the point that it necessitated replacement. In a letter dated that same day, Dr. Kreiter provided the following response:

Seydou had no history of right knee problems, never having been seen by an MD, DO or chiropractor for right knee problems until the injury on 04/03/2017. The MRI following that injury indicated normal ligaments, small meniscal tears, but primarily lateral superior patellar pathology, most likely a quad tendon injury as its attachment to the superior patella. Dr. Hussain performed an arthroscopy, but also an open procedure with incision noted in the superior area of the patella. He did not describe in the operative note what he actually did to the patella. In the arthroscopy procedure, he only trimmed the cartilage and did shaving of the medial compartment and patellofemoral joint; as mentioned, we do not know what he did in regard to the lateral patellar and quad tendon pathology. The arthroscopic procedure accelerated the joint pathology and led to total knee replacement. Chondroplasty along with the quad/patellar pathology surgery accelerated the condition and the MRI which was done on 02/05/2018 showed rapid deterioration of the medial compartment.

In summary, the injury, treatment and surgery caused an acceleration of the joint to the point that total knee replacement was carried out for pain relief.

Ultimately, Dr. Hussain found Loh to have reached MMI as of one year post-total knee replacement and indicated in a letter dated April 7, 2021 that Loh had a 37% lower extremity impairment, which converted to 15% of the whole person.

Loh's claim against his employer and the Second Injury Fund came on for hearing before the deputy commissioner on August 25, 2021. Prior the hearing, the parties confirmed a number of stipulations, including 1) Loh was off work during the period he is claiming healing period benefits (December 6, 2018 to December 6, 2019);¹ and 2) the existence of two qualifying injuries for purposes of the claim against the Second Injury

¹ The period stipulated to in the hearing report was October 1, 2018 through December 6, 2019. This was modified by Loh's counsel at hearing and accepted by the deputy.

Fund.² The deputy entered his arbitration decision on January 31, 2022. In addressing the competing theories on causation, the deputy found as follows:

Having considered the competing medical opinions, I accept the medical opinion of Dr. Hussain as the most credible and convincing in this evidentiary record. To the extent that Dr. Kreiter's opinion explains the acceleration of claimant's degenerative right knee changes, I find it to be convincing and supportive of Dr. Hussain's opinions. However, I did not find the opinions of Dr. Foad convincing in this situation.

Dr. Foad evaluated claimant once. Dr. Kreiter evaluated claimant once. Dr. Hussain, on the other hand, had the opportunity to evaluate claimant numerous times, including twice intra-operatively. Dr. Hussain had the opportunity to evaluate claimant on an ongoing basis and observe the degeneration in progress via diagnostic testing, clinical evaluation, and intra-operatively.

Moreover, Dr. Hussain's opinion is consistent with the timeline of events. Claimant did not have significant arthritic symptoms in the right knee prior to the injury at work. After the work injury, claimant required surgical intervention and subsequently developed significant arthritic changes quickly thereafter. Dr. Kreiter explained how the injury and surgery accelerated the degenerative process and clearly supports the causation opinion offered by Dr. Hussain. Dr. Hussain's opinion is entitled to significant weight and is found to be convincing and accurate. Therefore, I find that claimant proved the right total knee replacement is causally related to, or accelerated by, the April 3, 2017 work injury. To the extent that Dr. Kreiter's causation opinion supports and further explains the acceleration of claimant's degenerative arthritis caused by the work injury and initial surgery, it is also accepted.

The deputy accepted the conclusions of Dr. Hussain and Kreiter that Loh had reached MMI on December 6, 2019 (one year post-replacement); he also accepted Dr. Hussain's disability rating of 37% impairment to the right lower extremity. Ultimately,

² The first qualifying injury was to Loh's left leg, which occurred in June of 2008.

the deputy found that Loh had proven that he sustained a 40% loss of future earning capacity as the result of the two qualifying injuries. He also awarded Loh healing period benefits for the one year after the knee replacement; in doing so, he noted that:

Defendants disputed entitlement to the claimed healing period. However, the parties stipulate that claimant was off work during the claimed healing period. I find that claimant was unable to perform substantially similar work between December 6, 2018 and December 6, 2019.³

The deputy's decision was appealed to the commissioner, who affirmed the decision in its entirety after adopting the deputy's analysis, findings and conclusions after a de novo review. The commissioner's appeal decision was filed on July 21, 2022; a timely petition for judicial review was commenced on August 11, 2022.

Medical causation. The role of the commissioner in analyzing conflicting testimony on the issue of medical causation is well-settled:

Medical causation is essentially within the domain of expert testimony. The commissioner, as trier of fact, has a duty to weigh the evidence and measure the credibility of witnesses. The weight given to expert testimony depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. Also, an expert's opinion is not necessarily binding upon the commissioner if the opinion is based on an incomplete history. Ultimately, however, the determination of whether to accept or reject an expert opinion is within the peculiar province of the commissioner.

Cedar Rapids Community School Dist. v. Pease, 807 N.W.2d 839, 845 (Iowa 2011)

(internal citations and quotation marks omitted). This court's task is not to determine

³ Loh did testify at hearing that he did attempt to go back to work on two occasions during this period of time. Both jobs (Loparex and Berry Bearing) were labor-intensive and caused his right knee to swell and become painful. He testified that he was fired from both jobs because he was unable to perform the work. His testimony was equivocal on the precise time he worked there; in previous answers to interrogatories, he indicated that the work may have occurred prior to the knee replacement. Exhibit C-3 (Loparex work was "[i]n 2018 sometime" and Berry Bearing work was "[i]n 2018 or 2019").

whether the evidence could support a finding different than that reached by the commissioner; rather, it is to determine whether substantial evidence supports the findings actually made by the commissioner. Id.

The court concludes that the commissioner's findings were supported by substantial evidence. In coming to his conclusions, the commissioner appropriately gave significant weight to the opinions of the treating physician, Dr. Hussain, as buttressed by the conclusions of the examining physician, Dr. Kreiter. It is not the province of the district court to reweigh the competing evidence presented to the commissioner. Finley Hosp. v. Holland, 2012 WL 170682 *4 (Iowa Ct.App., Case No. 11-0879, filed January 19, 2012) ("The substantial evidence standard also does not permit us to reweigh the evidence"). The commissioner's findings of fact regarding medical causation are supported by substantial evidence and will not be disturbed. Likewise, the court finds nothing within the commissioner's application of law to fact that would warrant reversal on the causation issue.

Healing period. Healing period benefits are payable "beginning on the first day of disability after the injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first." Iowa Code §85.34(1) (2021). The respondents contend that the commissioner erred in not taking into account the two periods of employment Loh attempted with Loparex and Berry Bearing. However, it is clear that the deputy (whose findings were

adopted by the commissioner) was relying on the parties' stipulation that Loh was off work from December 6, 2018 through December 6, 2019:

The parties stipulated that Mr. Loh was off work following his right knee replacement from December 6, 2018 through December 6, 2019. (Hearing Report) He remained under medical care and was not capable of performing substantially similar employment between December 6, 2018 and December 6, 2019.

The stipulation, without more, is binding on the factual issue of whether Loh was off work over the claimed healing period. Staff Management v. Jimenez, 839 N.W.2d 640, 656 (Iowa 2013). Stipulations tending to expedite the hearing should be enforced unless good cause is shown to the contrary. Weishaar v. Snap-On Tools Corp., 506 N.W.2d 786, 790 (Iowa Ct.App. 1993). However, any stipulations contained within a hearing report need not be considered in a vacuum; the colloquy between the deputy and the attorneys, the manner in which the parties conducted the hearing and the understanding of the deputy as to the issues must also be considered in addressing any stipulation in the report. Jimenez, 839 N.W.2d at 656-67 (parties may abandon stipulation through interaction with deputy and evidence introduced at hearing).

From a review of the record made before the deputy, the court cannot conclude that the parties intended to abandon the stipulation that Loh was off work for the entire claimed healing period. That part of the stipulation came into evidence without comment from counsel for the employer. While there was some evidence regarding Loh's efforts at work during the claimed healing period, it was offered by Loh's attorney, apparently in an attempt to document that he was unable to perform substantially comparable work because of his knee injury. Counsel for the employer never cross-examined Loh regarding the specific amounts of time he worked and what he earned during this period;

likewise, he never inquired of the deputy regarding the status of that part of the stipulation in an effort to indicate that it was no longer binding. As noted earlier, Loh's testimony on the precise timing of this work was non-specific and could have been outside of the claimed healing period. As a result, the deputy properly accepted and considered the stipulation in its entirety, including that part pertaining to when Loh was off work. As so stipulated, the deputy's finding that Loh was in fact off work for the entire claimed healing period would constitute substantial evidence as evidence that a reasonable mind would find adequate to reach the same conclusion. Fernandez, 528 N.W.2d at 126. The commissioner's adoption of this finding was appropriate and mandates affirmance of the healing period awarded.

IT IS THEREFORE ORDERED that the decision of the workers' compensation commissioner previously entered in this matter on July 21, 2022 is affirmed in its entirety. The costs associated with this proceeding are assessed to the petitioners.

In addition to all other persons entitled to a copy of this order, the Clerk shall provide a copy to the following:

Workers' Compensation Commissioner
1000 E. Grand Ave.
Des Moines, IA 50319-0209
Re: File No. 5064253.01



State of Iowa Courts

Case Number
CVCV064139
Type:

Case Title
ALLSTEEL INC ET AL VS SEYDOH N LOH ET AL
OTHER ORDER

So Ordered

A handwritten signature in black ink, appearing to read "Michael D. Huppert", written over a horizontal line.

Michael D. Huppert, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2022-12-21 10:21:13