
IN THE IOWA DISTRICT COURT FOR POLK COUNTY

HORMEL FOODS CORP.,

Petitioner,

v.

YUNIOR TAMAYO-PEREZ,

Claimant/Respondent.

Case No. CVCV063836

**RULING ON PETITION FOR JUDICIAL
REVIEW AND PETITIONERS'
APPLICATION FOR STAY OF
AGENCY PROCEEDINGS**

The above captioned matter came before the Court for hearing on October 14, 2022. Petitioner, Hormel Foods Corp (Petitioner), was represented by attorney Abigail Wenninghoff. Attorney Jennifer Zupp represented Respondent Yunior Tamayo-Perez (Claimant). Having entertained the arguments of counsel, having reviewed the court file (including the briefs provided by the parties and the certified record), and being otherwise fully advised in the premises, the Court now rules and, for the reasons stated herein, **DENIES** Petitioner's Petition for Judicial Review.

I. BACKGROUND FACTS AND PROCEEDINGS

The facts and the underlying procedural posture of the case before the Court are lengthy. The Court will only address the facts relevant and helpful in the analysis of the pleadings and motions currently before the Court. The Claimant experienced a lower back injury while employed at Hormel Food Corp on December 19, 2019. Petitioner authorized and directed medical care for the lower back injury since its occurrence through April 18, 2022. On July 12, 2021, Claimant filed his first alternate medical care petition where Petitioner admitted liability. The application was

ultimately voluntarily dismissed without prejudice. The Division of Workers Compensation (Agency) never formally accepted Petitioner's admission of liability since Claimant dismissed it.

On September 28, 2021, Claimant filed his second alternate medical care petition. In this petition, Claimant sought prerequisite treatment in order to receive a spinal cord stimulator (SCS) prescribed by Dr. Eckhoff, an authorized treating physician. On October 8, 2021, Petitioner answered Claimant's petition and accepted liability. The Agency awarded the alternate medical care requested. On October 15, 2021, Claimant filed a third alternate care petition where he claimed the SCS prerequisite treatment had still not been authorized. On October 15, 2021, Plaintiff admitted liability for a second time. Alternate medical care was again awarded.

Claimant never had the SCS implanted and his pain management treatment continued through April 18, 2022. On this date, Claimant had an appointment where Dr. Eckhoff provided an updated opinion and summary of Claimant's prior treatment. Certified Record (Cert. Rec.) Part 4 pp. 73-4. On the same day, Petitioner's counsel sent a denial letter to Claimant's counsel stating all benefits to Claimant would cease in 30 days. Petitioner relied on Dr. Eckhoff's opinion and a report done by Dr. Harbach in February, 2022, wherein Dr. Harbach noted his opinions regarding Claimant's injury and treatment had not changed. Cert. Rec. Part 4 pp. 73-4, 62-3. In succeeding emails between Petitioner's counsel and Claimant's counsel, Petitioner also cited to a June 24, 2021 report from Dr. Harbach to support the denial of benefits. Cert. Rec. Part 4 pp. 59-60.

On April 27, 2022, Claimant filed another alternate medical care petition requesting the treatment recommended by Dr. Eckhoff. Petitioner filed an answer on April 28, 2022, wherein Petitioner denied liability for the first time. The deputy commissioner dismissed the claim without prejudice. Claimant immediately requested a rehearing where Claimant raised the issue of judicial estoppel and claimed Petitioner was barred from denying liability. The deputy commissioner stated

a rehearing was not the appropriate forum to claim judicial estoppel, denied the rehearing, and told Claimant he may refile his petition.

Claimant refiled his alternate medical care petition on May 12, 2022. After a hearing, on May 25, 2022, the deputy commissioner concluded Petitioner was barred by judicial estoppel from denying liability when it had twice before admitted liability. Petitioner then filed a Petition for Judicial Review for the May 25 alternate medical care decision. Claimant filed an answer on June 15, 2022. On June 27, 2022, Claimant filed a Motion for Entry of Judgment. Simultaneously, and while this case was still pending, Claimant filed another petition for alternate medical care asking the deputy commissioner to find Petitioner had abandoned care.

On July 1, 2022, Petitioner filed a Motion for Stay of agency proceedings with the Court. On July 11, 2022, the deputy commissioner found Petitioner had abandoned the care of Claimant, therefore, Claimant could choose his own physician at the expense of Petitioner. On July 18, 2022, Petitioner filed a Petition for Judicial Review for the July 11 alternate medical care petition.¹ The Court then consolidated the two cases.

II. SCOPE AND STANDARD OF REVIEW

The Court's review of administrative proceedings are governed by Iowa Code section 17A.19 (2022). The Court may “reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced” by meeting any of the statutorily enumerated grounds. Iowa Code § 17A.19(10). The burden of demonstrating the required prejudice and the invalidity of the agency action is on the party asserting the invalidity. Iowa Code § 17A.19(8)(a); *Colwell v. Iowa Dep’t of Hum. Servs.*, 923 N.W.2d 225, 231 (Iowa 2019). This

¹ The July 18, 2022 Petition for Judicial Review was originally filed as CVCV064030.

can be shown in a number of ways, including proof the action was: 1) legally erroneous; 2) unsupported by substantial evidence in the record when that record is viewed as a whole; 3) unconstitutional; 4) inconsistent with a rule of the agency; or 5) otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. Iowa Code § 17A.19(10).

The district court acts in an appellate capacity in exercising judicial review of agency action. Iowa Code § 17A.19; *Nance v. Iowa Dep't of Revenue*, 908 N.W.2d 261, 267 (Iowa 2018). The applicable standard of review depends on the issues underlying the petition for judicial review. Iowa Code § 17A.19(8)(a). Petitioner asserts the deputy commissioner lacked jurisdiction and statutory authority to hear and issue rulings on Claimant's May 9 application for rehearing, May 12 petition for alternate care, and June 27 petition for alternate care, claiming abandonment by Petitioner.² Review of jurisdictional questions are for correction of errors at law. *Heartland Exp. V. Gardner*, 675 N.W.2d 259, 262 (Iowa 2003), *as amended on denial of reh'g* (Feb.27, 2004).

Beyond jurisdictional claims, Petitioner argues the deputy commissioner erred in finding Petitioner was judicially estopped from denying liability in Claimant's request for alternate medical care. If the claim focuses on the application of law to the facts, the Court will determine whether the commissioner's findings and determinations are "based upon irrational, illogical, or wholly unjustifiable application of law to fact." *Jacobson Trans. Co. v. Harris*, 778 N.W.2d 192, 196; Iowa Code § 17A.19(10)(m). Factual findings regarding the award of workers' compensations benefits are within the commissioner's discretion, so the Court is bound by the commissioner's findings of fact if they are supported by substantial evidence. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464-65 (Iowa 2004). Substantial evidence is defined as evidence of the quality and quantity "that would be deemed sufficient by a neutral, detached, and reasonable

² In its Judicial Review Brief, Petitioner cites the application for rehearing as being filed on May 19, 2022. This appears to be a typo and the record indicates the application for rehearing was filed on May 9, 2022.

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).

III. MERITS

A. Petitioner’s Motion to Stay Respondents Petition for Entry of Judgment

To accurately rule on the Petition for Judicial Review before the Court, the Court must first rule on Petitioner’s Application for Stay of Agency Proceedings. Iowa Code section 86.26(2) provides that the party seeking judicial review, with the posting of a bond, shall receive a stay. However, the granting of a stay under 86.26 must also be pursuant to Iowa Code 17A.19(5). Iowa Code § 86.26(2). Therefore, the Court is to consider and balance the following four factors under 17A.19(5):

- (1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter.
- (2) The extent to which the applicant will suffer irreparable injury if relief is not granted.
- (3) The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.
- (4) The extent to which the public interest relied on by the agency is sufficient to justify the agency’s action in the circumstances.

Iowa Code §17A.19A(5)(c); *Snap-On Tools Corp. v. Schadendorf*, 757 N.W.2d 339, 342 (Iowa 2008).

Evaluating the four factors, the Court concludes the Petitioner’s likelihood of success, when assessing the remaining three factors, does not weigh in favor of a stay. *See generally Grinnell Coll. V. Osborn*, 751 N.W.2d 396, 402 (Iowa 2008). Further, in weighing the harm between the Petitioner and Claimant if the stay were to be granted, the Claimant’s harm substantially outweighs any potential harm for Petitioner. Claimant would be left without necessary alternate medical care ordered by the deputy commissioner for the duration of the judicial proceedings. The final factor considers the public’s interest. To set the standard that a

claimant injured in the course of their work duties will likely go without any benefits during a judicial review proceeding would clearly go against the public policy of workers compensation. *Id.* at 400 (“The Workers’ Compensation Act was enacted nearly a century ago to benefit workers and compensate them for industrial disabilities.”). Accordingly, the Court denies Petitioner’s Application for Stay of Agency Proceedings.

B. Claimant’s Petition for Entry of Judgment

Claimant filed a Petition for Entry of Judgment on June 27, 2022, claiming a judgment for specific performance should be entered pursuant to Iowa Code section 86.42 which states as follows:

Any party in interest may present a file-stamped copy of an order or decision of the commissioner, from which a timely petition for judicial review has not been filed or if judicial review has been filed, which has not had execution or enforcement stayed as provided in section 17A.19, subsection 5, or section 86.26, subsection 2. . . . The court shall render a decree or judgment. . . .”

Iowa Code § 86.42. As the Court ruled above, Petitioner’s Application for Stay of Agency Proceedings is denied. “Under statutes like section 86.42, a district court is bound to enter a judgment in conformance with the worker’s compensation award.” *Rethamel v. Harvey*, 679 N.W.2d 626, 628 (Iowa 2004).

Petitioner argues Claimant’s Petition for Entry of Judgment was premature because Petitioner had not yet filed its stay within the 30-day window provided by Iowa Code section 86.26(2). This timeline is factually identical to that in *Osborn*. There, *Osborn* was awarded weekly benefits by the commissioner. *Osborn*, 751 N.W.2d at 397-8. Grinnell College filed a petition for judicial review, where during the pendency of judicial review, *Osborn* requested an entry of judgment on the workers’ compensation award. *Id.* at 398. Grinnell resisted the motion and filed a motion to stay enforcement of the commissioner’s decision. *Id.* The district court entered

judgment on the award and denied Grinnell's motion to stay. *Id.* Grinnell then appealed both the judgment entry and the denial of the stay. *Id.* The Iowa Supreme Court affirmed the district court's decision. *Id.* at 397. The Court does not find the timing of Claimant's Petition for Entry of Judgment to preclude the Court from entering judgment in conformance with the worker's compensation award. *Harvey*, 679 N.W.2d at 628. The Court enters judgment on the award of compensation benefits prescribed by the deputy commissioner in their May 25 decision granting Claimant's application for alternate medical care. The Court will now address the remainder of Petitioner's claims set forth in its Petition for Judicial Review.

C. Whether the Deputy Commissioner had Jurisdiction to Hear and Rule on the May 9, 2022 Application for Rehearing

Petitioner first argues the deputy commissioner lacked subject matter jurisdiction to hear and issue a ruling on Claimant's May 9, 2022 application for rehearing on the grounds of judicial estoppel. This stems from the May 6, 2022 dismissal by the deputy commissioner of Claimant's April 27, 2022 petition for alternate medical care. The deputy commissioner dismissed the claim because for the first time, Petitioner denied liability for Claimant's injury. Claimant appealed this dismissal with the May 9 application for rehearing on the grounds of judicial estoppel. The deputy commissioner provided a ruling on May 12, 2022 wherein the Claimant was informed an application for rehearing was not the appropriate procedure for raising a judicial estoppel claim and he should instead file a new petition for alternate care wherein the issue of judicial estoppel could be appropriately raised.

Petitioner contends there is no statute or ruling that allows for an application for rehearing. This is incorrect. Iowa Code section 17A.16(2) states in relevant part:

Except as expressly provided otherwise by another statute referring to this chapter by name, any party may file an application for rehearing, stating the specific

grounds for the rehearing and relief sought, within 20 days after the date of the issuance of any final decision by the agency in a contested case. The Workers' Compensation Division clearly adopts this standard of review in its own administrative code. Iowa Administrative Code 876-4.24 contains language nearly identical to the portion of 17A.16(2) recited above. Iowa Administrative Code 876-4.24 states "[a]ny party may file an application for rehearing of a proposed decision in any contested case by a deputy commissioner. . . within 20 days after the issuance of a decision." The code explicitly provides the rule is intended to implement Iowa Code section 17A.16. Iowa Admin. Code r. 876-4.24. There is clear statutory authority providing the deputy commissioner the jurisdiction to hear and issue a ruling on Claimant's application for rehearing. Thus, the Court finds there is no error at law as to the deputy commissioner's hearing of the May 9 application for rehearing.

D. Whether the Deputy Commissioner had the Jurisdiction to Hear and Rule on the May 12, 2022 Application for Alternate Medical Care

This lack of jurisdiction claim by Petitioner rests on the assertion that the May 12 application for medical care requests the same care as Claimant's April 27, 2022 application which was dismissed by the deputy commissioner. In dismissing the April 27 petition, the deputy commissioner dismissed without prejudice. The deputy commissioner overseeing the May 9 application for rehearing notified the claimant in the ruling that, because the petition was dismissed without prejudice, "the appropriate remedy for the claimant is to refile his petition and specifically assert the issue of judicial estoppel." Cert. Rec. Part 3 p. 21, Exhibit (Exh.) 2. The Commissioner directed this action because the agency "will not normally raise the issue of judicial estoppel *sua sponte*." *Id.* At the direction of the Commissioner, Claimant filed the May 12 application for alternate medical care where Claimant raised the issue of judicial estoppel.

Claimant's May 12 application does request the same medical care as the April 27 application. However, the substance of the application is wholly different as it requests the Petitioner be barred on the premise of judicial estoppel from denying liability when it had admitted liability twice before for Claimant's injury. Significantly, Petitioner does not provide any statutory or case law to support its position that the deputy commissioner did not have the jurisdictional authority to hear and rule on the May 12 application. The Court finds there is no error at law present. The Court will further analyze Petitioner's claim that the deputy commissioner incorrectly applied the law to the facts in the ruling on the May 12 application regarding judicial estoppel.

E. Whether the Deputy Commissioner Erred in Application of Law to the Facts on Claimant's Judicial Estoppel Claim

Petitioner claims the deputy commissioner erred in finding Petitioner was judicially estopped from disputing Claimant's request for alternate medical care because they incorrectly interpreted the law. "[J]udicial estoppel is a commonsense doctrine that prohibits a party who has successfully and unequivocally asserted a position in one proceeding from asserting an inconsistent position in a subsequent proceeding." *Tyson Foods, Inc. v. Hedlund*, 740 N.W.2d 192, 196 (Iowa 2007) (internal quotations omitted).

The Iowa Supreme Court has previously considered judicial estoppel in alternate medical care proceedings. The Court has noted that although the doctrine is called "judicial" estoppel, it is applicable to administrative proceedings. *Winnebago Indus., Inc. v. Haverly*, 727 N.W.2d 567, 573-4 (Iowa 2006). In *Winnebago*, the Court stated Winnebago was not permitted under judicial estoppel to admit liability in order to maintain control over the claimant's care, but later reject a broader application of the admission because Winnebago wanted to challenge liability for payment of benefits. *Id.* at 575.

The Iowa Supreme Court later elaborated on the principle of judicial estoppel in alternate medical care proceedings in *Hedlund*. There, the Court reiterated “judicial estoppel applies only when the position asserted by a party was material to the holding in the prior litigation.” *Hedlund*, 740 N.W.2d at 198. The inconsistent position must also be “judicially accepted by the commissioner at the first alternate medical care hearing” for judicial estoppel to apply. *Id.* at 197. Lastly, it would take a “significant change in facts after the admission of liability” for an employer to later deny liability. *Winnebago*, 727 N.W.2d at 575.

The deputy commissioner found the principles of judicial estoppel were present because the Petitioner had already admitted liability for Claimant’s work injury on two separate occasions which were judicially accepted and relied upon by the agency. Petitioner admitted liability in its October 8, 2021 Answer Concerning Application for Alternate Care when it checked the box stating “[a]dmits liability for the claim relating to. . . back/spine.” *See* Cert. Rec. Part 2 p. 7. Petitioner again admitted liability in its October 15, 2021 Answer Concerning Application for Alternate Care when it checked the box stating “[a]dmits liability for the claim relating to. . . back/spine.” *See* Cert. Rec. Part 3. p. 45. The Court finds there is substantial evidence in the record to support the deputy commissioner’s findings that Plaintiff has twice before admitted liability, which the Agency judicially accepted.

The deputy commissioner also found there were no substantial changes in the facts to warrant Petitioner’s later denial of liability in its April 28, 2022 Answer Concerning Application for Alternate Care. *See* Cert. Rec. Part 4 p. 55. The deputy commissioner found the Petitioner relied on an updated opinion from Dr. Harbach in its April denial. *See generally* Cert. Rec. Part 3 pp. 13-8. In February, 2022, Dr. Harbach clarified that, after reviewing the updated medical records, there was no change in his opinion since the original June, 2021 opinion. Cert. Rec. Part

3 p. 15; Cert. Rec. Part 4 pp. 57-60. Because Petitioner used the June, 2021 opinion in its determination to admit liability twice in October, the deputy commissioner found the same reliance on the February, 2022 opinion, which simply reiterated the same opinion as that of the June, 2021 opinion, failed to show a significant change in circumstances. Cert. Rec. Part 3 p. 18; Cert. Rec. Part 4 pp. 57-60. The Court concludes there is substantial evidence in the record to support the deputy commissioner's findings. Further, in application of the findings to law, the deputy commissioner's determinations are not irrational, illogical, or a wholly unjustifiable application of law to fact.

F. Whether the Deputy Commissioner had the Jurisdiction to Hear and Rule on the June 27, 2022 Application for Alternate Care - Finding of Abandonment

In its last claim, Petitioner contends the deputy commissioner did not have the authority to hear and rule on Claimant's June 27, 2022 application for alternate medical care because the same claim for alternate medical care was on appeal at the District Court. Claimant argues the petition for alternate care is substantively different because it is asking the deputy commissioner to find there has been an abandonment of care and to allow Claimant to seek his own medical providers at the expense of Petitioner. The Court finds that hearing and ruling on Claimant's June 27 application would make the Court's ruling on the pending judicial review judicially ineffective. The Claimant would effectively side-step the Court's ruling and any remedy it prescribes. The Court concludes the agency did not have the authority to hear and rule on the Claimant's newest application for alternate medical care while this Court was sitting in its appellate capacity to hear the claim already before it.

IV. CONCLUSION

For all the reasons set forth above, the Court concludes the Agency did not err in determining it had jurisdiction to hear and rule on Claimant's May 9 and May 12 applications for alternate medical care. However, the Court concludes the agency erred in determining it had jurisdiction to hear and rule on Claimant's June 27 application for alternate medical care. Accordingly, the Court vacates the accompanying July 11 order. The Court further concludes the deputy commissioner correctly applied the law to the facts in finding Petitioner was barred by judicial estoppel from denying liability for Claimant's injury in his May 12 application for alternate medical care. Based upon the foregoing, Petitioner's Petition for Judicial Review is **DENIED** and the Agency's June 27 order is **VACATED**.

Costs are taxed to Petitioner.



State of Iowa Courts

Case Number
CVCV063836
Type:

Case Title
HORMEL FOODS CORP V YUNIOR TAMAYO PEREZ
ORDER FOR JUDGMENT

So Ordered

Robert B. Hanson, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2023-01-10 17:53:19