

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>JESSICA HEYER,</p> <p>Petitioner,</p> <p>v.</p> <p>IOWA STATE UNIVERSITY and STATE OF IOWA,</p> <p>Respondents.</p>	<p>CASE NO. CVCV058529</p> <p>RULING ON PETITION FOR JUDICIAL REVIEW</p>
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The above-captioned matter came before the Court on December 13, 2019. Petitioner, Jessica Heyer (“Heyer”) was employed by Respondent, Iowa State University (“ISU”) when she sustained injuries to both her right lower extremity and right upper extremity during the course of her employment (“the Accident”). The sole issue in this judicial review action is whether Heyer also sustained a hip injury that was caused by the Accident.

I. FACTUAL AND PROCEDURAL BACKGROUND

Heyer worked as an animal caretaker at ISU’s dairy where her responsibilities included moving the cows from their pens and cleaning the barn. On January 14, 2016, Heyer was moving cows from one of the pens when a sound frightened the last cow. That cow ran towards Heyer, who was standing near a metal fence. Heyer tried to evade the cow by jumping the fence but ended up twisting her ankle and getting pinned by her right wrist and torso against the fence. The cow kicked Heyer in the knee as she pushed it away from her body. Heyer completed the remaining half hour of her shift and went home around noon. Heyer then showered and napped for a couple of hours before picking her daughter up from school. Shortly thereafter, Heyer experienced vaginal bleeding and shortness of breath, so she contacted her supervisor. The supervisor told Heyer to return to the farm to fill out paperwork and then visit the emergency room, which Heyer did.

Dr. Erickson was Heyer's treating physician in the emergency room. Heyer maintains that she complained of hip pain at the emergency room, however, there is no mention of hip pain in the medical records of the visit. (Ex. JE 2:10-12). Dr. Erickson performed a transvaginal ultrasound because of the bleeding and found bilateral cysts but no torsion, no free fluids, and no uterine tears. *Id.* at 11. Heyer had minimal tenderness in her examination and no bony tenderness, which ruled out a pelvic fracture. *Id.* Dr. Erickson also hypothesized that the vaginal bleeding was irregular menses due to general stress from Heyer's job. *Id.* at 12. Heyer also complained of chronic wrist pain that worsened after the accident and right ankle pain, both of which are documented in the medical record. *Id.* Dr. Erickson did not order an x-ray for Heyer's ankle because she had full range of motion, no swelling, and no ecchymosis. *Id.* Heyer also received a wrist splint for her comfort. *Id.*

Over the next several months, Heyer had physical therapy, many doctor visits, and underwent surgery on her right knee, right wrist, and right ankle. She also went to the chiropractor.

In September 2016, Heyer complained of hip pain to her orthopedic surgeon, Dr. Greenwald, who then ordered an MRI and referred Heyer to Dr. Warne. On October 11, 2016, an MRI was performed on Heyer's right hip, which did not show a labral tear. (Ex. JE 9:40). On October 13, 2016, Heyer met with Dr. Warne about her right hip pain. Dr. Warne did not find any objective signs of a hip injury. (Ex. JE 10:41). Still, Dr. Warne ordered a radiology-guided diagnostic injection, which would have indicated a hip injury if it eased Heyer's hip pain. *Id.* When Heyer returned for her follow up with Dr. Warne on December 13, 2016, she reported that she did not experience any relief from the injection. (Ex. JE 10:43). At that point, Dr. Warne asserted that there was nothing else that he could do for Heyer and referred her back to Dr. Greenwald. *Id.*

On November 10, 2016, Heyer visited Christopher A. Feil, DC, and complained primarily about right hip pain due to the Accident. (Ex. JE 11:49). Heyer reported that her hip pain had remained the same since the Accident, and that the pain was 8 on a scale of 10. *Id.* Dr. Feil opined that Heyer's hip pain was exacerbated by her limited motion in her right ankle and lack of stability in her right leg due to her

injuries. (Ex. JE 11:52). Heyer continued chiropractic treatment with Dr. Feil, and told Dr. Warne that some improvement had been made. (Ex. JE 10:45).

On February 9, 2017, Heyer met again with Dr. Greenwald and reported that she was improving overall. She also stated that she was working closely with Dr. Warne on her hip. (Ex. JE 6:27).

Heyer met with Dr. Warne for a follow-up appointment on February 28, 2017, and described a burning sensation in her hip, which would be consistent with a nerve injury. (Ex. JE 10:45). Dr. Warne noted that Heyer made some improvements while working with Dr. Feil. *Id.* Still, there were no MRI findings that he could address with surgery. *Id.* Dr. Warne expressed that he was content with Heyer continuing her chiropractor appointments with Feil, if they were easing her symptoms. *Id.*

On April 4, 2017, Heyer had a 15-minute status conference with her caseworker and Dr. Greenwald. (Ex. JE 6:28). Heyer complained of stiffness in her right ankle, which Dr. Greenwald identified as normal after her surgery. *Id.* Dr. Greenwald noted that Heyer was free to resume normal activities with regard to her knee and her ankle, and that no more follow-up appointments were necessary. *Id.* Dr. Greenwald also noted that Heyer continued to have hip discomfort and will continue to work with her chiropractor to improve her discomfort. *Id.* On the same date, Dr. Greenwald responded to a letter dated March 21, 2017, stating that Heyer reached maximum medical improvement for her right ankle work injury and that there were no permanent work restrictions for her right ankle work injury. *Id.* at 29. Still, Dr. Greenwald assessed that Heyer sustained a seven percent lower extremity impairment to her right ankle. *Id.*

On May 17, 2017, Heyer visited Dr. Aviles, an orthopedic surgeon, for an independent medical examination at the request of the workers compensation claim administrator. (Ex. H). Dr. Aviles also did not find evidence of a labral tear. (Ex. H:64). Dr. Aviles identified significant inconsistencies in Heyer's medical records, specifically regarding her hip complaints and the associated medical findings by the doctors she had seen until that point. *Id.* At 65. Dr. Aviles did not believe that Heyer's hip-related symptoms were caused by the Accident. *Id.* At 66.

On June 23, 2017, Heyer filed a petition for arbitration with the Iowa Workers Compensation Commissioner, disputing “85.27 medical benefits, healing period benefits, extent of disability, 85.39 IME.”

On February 20, 2018, Heyer visited Dr. Rondinelli for an independent medical examination after her attorney sent a referral letter, which detailed questions for the doctor to answer. (Ex. 1:1, 7). After performing a physical examination and reviewing Heyer’s medical records, Dr. Rondinelli noted in his impressions that the cause of Heyer’s hip pain was unclear, but nevertheless she was not at maximum improvement at that time. *Id.* at 6-7. Dr. Rondinelli stated that he suspected “that there was a strong psychological basis to her persisting symptoms and delayed recovery in view of her relatively benign residual findings on today’s physical examination...” *Id.* at 7.

On April 17, 2018, Heyer visited Dr. Gutnik for an independent psychiatric evaluation. (Ex. I:68). On April 19, 2018, Dr. Gutnik issued his report based on the two-hour evaluation of Heyer in his office and Heyer’s medical records *Id.* Dr. Gutnik concluded that Heyer either has a Somatic Symptom Disorder with Predominate Pain, or was malingering in regard to her pain symptoms, finding that Heyer’s pain was either subconsciously or consciously the result of secondary gain. *Id.* at 76.

On May 18, 2018, Heyer had another visit with Dr. Warne, who documented the visit, and restated his earlier findings. (Ex. JE 10:48). Additionally, Dr. Warne noted that Heyer received a second opinion and independent medical examination from Dr. Aviles, who also did not believe that Heyer’s hip injury was work related. *Id.* Heyer indicated that she did not want to return to Dr. Aviles for further evaluation. *Id.* Dr. Warne again opined that hip surgery would not help Heyer because the majority of her pain appeared to come from her SI joint and radicular nerve-type symptoms. *Id.* Nevertheless, he recommended another diagnostic ultrasound-guided injection that could include a steroid, which might provide some therapeutic value. *Id.* Heyer and Dr. Warne also discussed seeking additional medical opinions from hip surgeons in Des Moines and Iowa City. *Id.*

On October 25, 2018, Heyer went to the University of Iowa Hospitals and Clinics and met with Dr. Willey regarding her hip pain. (JE 12:56). She described the Accident and, among her other injuries, that she has experienced hip pain since. *Id.* at 57. Heyer's past surgical history was not on file at the University of Iowa, but Dr. Willey did have Heyer's MRI from October 11, 2016 for comparison purposes. (JE 12-56, 58). Dr. Willey ordered and reviewed X-rays, which demonstrated borderline hip dysplasia according to the doctor. *Id.* After reviewing the MRI performed on October 11, 2016, Dr. Willey identified a labral tear in the MRI. *Id.* Dr. Willey further noted, however, that "these may be incidental findings that she did not have any pain relief with local anesthetic intra-articular injection." *Id.* at 58. Dr. Willey ordered a repeat injection. *Id.*

The arbitration hearing in this case was held on December 4, 2018 before Deputy Workers' Compensation Commissioner, Jennifer Gerrish-Lampe ("the Deputy Commissioner"). Heyer's testimony at the hearing included that neither of her two intra-articular injections provided relief, but that, nevertheless, Dr. Willey verbally recommended surgery. There is no note of such a recommendation in her medical records.

The Deputy Commissioner filed her arbitration decision on February 8, 2019, finding that Heyer should not receive workers compensation benefits for her right hip injury. Arbitration Decision p. 16. The Deputy Commissioner found Heyer's testimony unreliable with regard to her hip, and instead focused on the documented evidence. *Id.*, p. 13. Moreover, the Deputy Commissioner afforded low weight to Dr. Rondinelli's findings insofar as they suggest a causal relationship between the Accident and Heyer's hip injury. Arbitration Decision p. 13. The Deputy Commissioner found Dr. Rondinelli's opinion was not reliable because of its heavily reliance on Heyer's historical account, which she found to be inconsistent and not credible. *Id.* Heyer filed a timely appeal of the arbitration decision to the Worker Compensation Commissioner.

On June 18, 2019, Worker Compensation Commissioner, Joseph S. Cortese II ("the Commissioner"), issued his appeal decision. Appeal Decision p. 1. The Commissioner adopted the same

analysis, findings, and conclusions as the Deputy Commissioner. *Id.*, p. 3. The Commissioner affirmed the Deputy Commissioner and found that Heyer failed to carry her burden to prove that the Accident caused her hip injury. *Id.*

On July 17, 2019, Heyer timely filed a Petition for Judicial Review in this case, asking the court to remand. She asserts two errors with the Commissioner's decision. First, that the Commissioner, by way of the Deputy Commissioner, did not detail the path taken through the conflicting evidence regarding the causation of Heyer's hip injury. Second, that the Commissioner erred in holding that the Accident did not cause Heyer's hip injury.

II. STANDARD OF REVIEW

Iowa Code Chapter 17A governs the standard for judicial review of final decisions by the Iowa Workers' Compensation Commission. *Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 768 (Iowa 2016), reh'g denied (May 27, 2016); see *Iowa Code* § 86.26. The district court acts in an appellate capacity having the ability to correct errors of law made by the Workers' Compensation Commission. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). The standard of review varies depending on whether the alleged error involves an issue of (1) findings of fact, (2) interpretation of law, or (3) an application of the law to facts. *Burton v. Hilltop Care Center*, 813 N.W.2d 250, 256 (Iowa 2012).

If the alleged error regards findings of fact, the standard of review is whether the findings are supported by substantial evidence. *Harris*, 778 N.W.2d at 196; *Schutjer v. Algona Manor Care Ctr.*, 780 N.W.2d 549, 557 (Iowa 2010). "[A] reviewing court can only disturb those factual findings if they are 'not supported by substantial evidence in the record before the court when that record is reviewed as a whole.'" *Burton*, 813 N.W.2d at 256 (quoting Iowa Code § 17A.19(10)(f)). The Court "is limited to the findings that were actually made by the agency and not other findings the agency could have made." *Id.* "In reviewing an agency's findings of fact for substantial evidence, courts must engage in a 'fairly intensive review of the record to ensure the fact finding is itself reasonable.'" *Neal v. Annett Holdings*,

Inc., 814 N.W.2d 512, 518 (Iowa 2012) (quoting *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003)).

“Evidence is substantial if a reasonable person would find the evidence adequate to reach the same conclusion.” *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002) (citing *Ehteshamfar v. UTA Engineered Sys. Div.*, 555 N.W.2d 450, 452 (Iowa 1996)). The job of the court is “not to determine whether the evidence supports a different finding; rather our task is to determine whether substantial evidence, viewing the record as a whole, supports the findings actually made.” *Cedar Rapids Community School District v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011) (citations omitted) (internal quotations omitted).

When the claim of error lies with the agency's interpretation of the law, the question on review is whether the agency's interpretation was erroneous, and the court may substitute its interpretation for the agency's. *Meyer*, 710 N.W.2d at 219 (citing *Clark v. Vicorp Rests., Inc.*, 696 N.W.2d 596, 604 (Iowa 2005)). When “the claim of error lies with the ultimate conclusion reached, then the challenge is to the agency's application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence.” *Id.* In other words, the court will only reverse the Commissioner's application of law to the facts if “it is ‘irrational, illogical, or wholly unjustifiable.’” *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 518 (Iowa 2012) (quoting *Lakeside Casino v. Blue*, 743 N.W.2d 169, 173 (Iowa 2007)).

III. ANALYSIS

a. Whether the Agency Failed to Make Essential Findings to Support its Legal Conclusions.

The Commissioner held that Heyer failed to meet her burden to prove that her hip injury was caused by the Accident. Heyer seeks a remand, arguing that the Commissioner's decision “did not sufficiently detail the path taken through the conflicting evidence” in determining that the Accident did not cause Heyer's hip pain. Specifically, Heyer takes issue with the Commissioner considering the

following in making his causation determination: (1) Dr. Willey's treatment and testing, (2) Dr. Gutnik's psychological evaluation regarding Heyer's injuries, and (3) Heyer's statements.

"[T]he commissioner has a duty to state the evidence she relies on and to detail the reasons for her conclusions... she must sufficiently detail her decision to show the path she has taken through conflicting evidence." *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 633-34 (Iowa 2000). "An agency's decision is sufficient if it is possible to work backward [from the agency's written decision] and to deduce what must have been [the agency's] legal conclusions and [its] findings." *Id.* at 634 (citations omitted) (internal quotations omitted). "[A]n administrative agency cannot in its decision set out verbatim all testimony in a case. Nor, when the agency specifically refers to some of the evidence, should the losing party be able, ipso facto, to urge successfully that the agency did not weigh all the other evidence." *Pitzer v. Rowley Interstate*, 507 N.W.2d 389, 393 (Iowa 1993). "The commissioner, not the court, weighs the evidence." *Ward v. Iowa Dep't of Transp.*, 304 N.W.2d 236, 237 (Iowa 1981). A remand is proper when "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," unless the court can make a new decision as a matter of law. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 220 (Iowa 2006).

The crux of Heyer's argument appears to be that the Deputy Commissioner considered evidence not offered specifically to prove causation to determine that there was no causation. The facts and circumstances of this case do not, however, exist in a vacuum. The Deputy Commissioner did not err in considering Dr. Willey's treatment and testing, Dr. Gutnik's psychological evaluation, and Heyer's statements. All of the evidence is related and the Deputy Commissioner's reasoning is clear. Each piece of evidence that the Deputy Commissioner pointed to in her reasoning supports her determination that Heyer failed to meet her burden of proof regarding causation. The Deputy Commissioner made sufficient findings of fact to support her legal conclusion.

The Deputy Commissioner noted that Heyer relied primarily on Dr. Rondinelli's opinion and the fact that she was receiving treatment from Dr. Willey for her hip pain. She pointed out, however, that Dr. Willey did not provide a causation opinion and, moreover, that his treatment and testing results, which Heyer asserted are favorable to her position, are inconclusive and do not tend to prove causation, even circumstantially.

In discussing Dr. Rondinelli's opinion on causation, the Deputy Commissioner noted that while he did express an opinion on causation, Dr. Rondinelli did not discuss causation of Heyer's hip injury, only that some her injuries or all of her injuries together were plausibly caused by the Accident. The Deputy Commissioner found that Dr. Rondinelli's opinion was not persuasive, reliable, or indicative of causation. Further, Dr. Rondinelli's opinion relied heavily on Heyer's historical account, which the Deputy Commissioner found to be inconsistent and not credible throughout the case.

In making findings, the Commissioner is charged with evaluating the reliability of evidence by making reasoned credibility determinations. Heyer's statements, even on matters not related to her hip pain, are relevant to the Commissioner's causation determination in that her tendency to be inconsistent affects her credibility when she talks about her hip pain. Dr. Gutnik's psychological evaluation that Heyer's hip pain is either consciously or subconsciously motivated by secondary gain is, likewise, relevant.

To sum up the path taken by the Deputy Commissioner: it is not proven that Heyer has a hip injury; Dr. Rondinelli's causation opinion relies on Heyer's historical account, which is not credible; Heyer's historical account is not credible because she has made unfounded statements in her testimony and to health providers; Dr. Gutnik's independent psychiatric evaluation found that Heyer's pain is motivated by secondary gain, which also tends explain her unfounded statements. The Deputy Commissioner made all of the essential findings of fact to support her legal conclusion that Heyer failed to meet her burden. Accordingly, a remand is not proper.

b. Causation

Next, Heyer argues that the Commissioner erred in holding that her hip injury was not caused by the Accident. Heyer's first argument is closely intertwined with this argument because she essentially makes the same assertions but to different ends. Accordingly, much of the above reasoning applies here as well.

Medical causation "is essentially within the domain of expert testimony." *Dunlavey v. Economy Fire & Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995). "The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion." *Id.* The commissioner, as the fact finder in arbitration, is responsible for determining the weight to given to expert opinions. *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998). The commissioner is empowered to accept or reject an expert's opinion, in whole or in part, especially when confronted with conflicting expert opinion. *Id.*

[T]he findings of the commissioner have effect of a jury verdict. The commissioner, not the court, weighs the evidence. The court should broadly and liberally apply those findings in order to uphold rather than defeat the commissioner's decision. The question on judicial review is not whether the evidence might support a different finding but whether the evidence supports the findings the commissioner actually made. Hence the findings of the commissioner are binding on appeal unless a contrary result is demanded as a matter of law.

Ward v. Iowa Dep't of Transp., 304 N.W.2d 236, 237–38 (Iowa 1981) (Citations omitted).

Here, Heyer's argument fails to acknowledge that it is was her burden to prove causation. She argues that the evidence opposing causation is flawed, ignoring the Commissioner's findings that her own evidence is insufficient to meet her burden because it is not persuasive or reliable. For example, Heyer argues that Dr. Aviles' opinion is biased and that the Commissioner implicitly relied on Dr. Aviles' causation opinion. The Deputy Commissioner, however, did not mention Dr. Aviles' opinion in her reasoning on causation. The Deputy Commissioner held that Heyer failed to meet her burden, not that ISU proved a lack of causation. The Deputy Commissioner's reasoning in concluding that Heyer failed to meet her burden is sound as discussed earlier. Regardless, it is the Commissioner's job to weigh the evidence and make credibility determinations, not the court's. The Commissioner does not err when

reasonable minds can differ; the Commissioner errs when he abuses his discretion or when his findings are not supported by substantial evidence. Neither occurred in this case.

IV. RULING

The Commissioner's decision is affirmed. Costs are assessed to the Petitioner.

IT IS SO ORDERED.



State of Iowa Courts

Case Number
CVCV058529
Type:

Case Title
JESSICA HEYER VS IOWA STATE UNIVERSITY ET AL
OTHER ORDER

So Ordered

A handwritten signature in black ink, appearing to read 'Joseph Seidlin'.

Joseph Seidlin, District Court Judge
Fifth Judicial District of Iowa

Electronically signed on 2020-02-10 13:10:41