

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

NEWTON COMMUNITY SCHOOL DISTRICT and EMCASCO INSURANCE COMPANY, Petitioners, v. CASSIDY HUBBARD-MCKINNEY, Respondent.	05771 CVCV061913 RULING ON JUDICIAL REVIEW
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This is a petition for judicial review from a final decision of the Iowa Workers' Compensation Commission. A hearing was held in this matter on October 29, 2021. Petitioners Newton Community School District and EMCASCO Insurance Company (collectively Newton Cmty. School Dist.) appeared through attorney Brian Scieszinski. Respondent Cassidy Hubbard-McKinney ("Hubbard-McKinney") appeared through attorney Richard Schmidt.

I. Background Facts and Procedural Posture.

Cassidy Hubbard-McKinney was employed by the Newton Community School District in the food service department beginning in 2008. On February 19, 2018, she fell at work and allegedly injured her left hand¹ and left knee. The Parties stipulated that Hubbard sustained a work-related injury to the knee. Hubbard-McKinney first visited a provider related to the fall on May 15, 2018 regarding knee pain. Eventually, she was referred to a specialist, Christopher Vincent, M.D.

¹ The Arbitration Decision found any injuries to the left hand had not been proven to be as a result of a work injury. That decision is not at issue on judicial review.

Dr. Vincent ordered an MRI and diagnosed a posterior horn medial meniscus tear. Dr. Vincent performed arthroscopic surgery on October 18, 2018 and some follow up care, including a pain injection. He released Hubbard-McKinney from his care on February 28, 2019 and in March 2019, assigned a 2 percent permanent impairment rating as a result of the work injury. In providing an opinion, Dr. Vincent noted that Hubbard-McKinney has “loss of range of motion and significant preexisting osteoarthritis of the knee,” but did not assign any additional rating because he found those conditions “are not related to her work-related injury.” (Ex. A).

Dr. Kuhnlein provided an Independent Medical Exam opinion. Dr. Kuhnlein agreed with a 2% left lower extremity impairment rating for the partial medial meniscectomy. In addition, Dr. Kuhnlein assigned a 7% left lower extremity impairment for the arthritic changes in the left knee, for a total of 9%. Dr. Kuhnlein found that the chondromalacia and degenerative changes predated the injury. However, Dr. Kuhnlein also found that the February 19, 2018 work injury “served to ‘light up’ and materially aggravate the previously asymptomatic osteoarthritis in the left knee and make it symptomatic,” and, therefore, “such ‘lighting up’ of the osteoarthritis and aggravation related to the February 19, 2018, work incident.” (Ex. 5 at 15). Dr. Kuhnlein noted that Hubbard-McKinney indicated she had strained her knee several years ago, but that she had a complete recovery and did not have any ongoing problems with the left knee.

Dr. Vincent provided a response to Dr. Kuhnlein’s report. Dr. Vincent agreed that Hubbard-McKinney had a 7% impairment due to the degenerative changes but disagreed that such impairment had been “lighted up” or aggravated by the February 19, 2018 fall. Dr. Vincent highlighted that the degenerative changes were pre-existing to the fall and that Hubbard-McKinney had received an x-ray or scan of the knee on five prior occasions. Although Dr. Vincent did not have the medical records or clinical visit notes to determine the reasons for the scans, he opined

that the existence of the scans demonstrated Hubbard-McKinney must have had pre-existing symptoms. (Ex. A page 4).

The Arbitration Decision found Dr. Kuhnlein's report to be more persuasive and awarded 9% lower left extremity impairment rating. The ALJ found it to be "highly unlikely and improbable that [Hubbard] was suffering from significant, chronic left knee symptoms prior to the stipulated February 19, 2018 work injury." (Arb. Dec. at 6). The ALJ found some episodes of prior insignificant treatment but noted there had been no prior aggressive treatment or surgery, no permanent restrictions, and no evidence of a chronic or ongoing, disabling pain. In the Appeal Decision, the Commissioner affirmed the ALJ. In particular, the Commissioner rejected Dr. Vincent's assumption that just because x-rays or scans had previously been taken there was a "long history of the patient seeking medical care for left knee pain." Instead, the Commissioner found Dr. Kuhnlein most convincing.

Newton Cmty. School Dist. filed for judicial review.

II. Standard of Review.

Chapter 17A of the Iowa Code governs judicial review of final decisions by the 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 to review decisions of the Workers' Compensation Commission. Meyer v. IBP, Inc., 710 N.W.2d 213, 219 (Iowa 2006). The standard of review varies based upon the type of error allegedly committed by the Commissioner. Jacobson Transp. Co. v. Harris, 778 N.W.2d 192, 196 (Iowa 2010).

If the alleged error is one of fact, the Court reviews the record to determine if 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) (quoting Iowa Code § 17A.19(10)(f)) (finding this Court will defer to the Commissioner's findings of fact if based on "substantial evidence in the record before the court when that record is viewed as a whole"). "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)). "[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)). This Court's review "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)).

If the agency's application of the law to the facts is challenged, "the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence." Meyer, 710 N.W.2d at 219; Iowa Code § 17A.19(10)(i), (j).

If a challenge is to the interpretation of law, the standard of review depends upon whether interpretation of the provision of law at issue has been clearly vested in the discretion of the agency. Compare Iowa Code §17A.19(c) with §17A.19(l). The Iowa Supreme Court has repeatedly found the Iowa Workers' Compensation Commission is not vested with authority to interpret Iowa's workers' compensation statutes. See e.g. Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (finding legislature did not vest commission with authority to interpret

provision at issue and noting the Court has declined to defer to the commissioner's interpretations of various provisions in recent years). Therefore, review is for correction of errors at law. Id. at 768; Iowa Code §17A.19(c) (court reviews whether agency action was “based 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.”)

III. Conclusions of Law.

A. Interpretation of Iowa Code 85.34(2)(x).

Iowa Code section 85.34 provides for compensation for permanent disabilities during a healing period and, then after the employee reaches maximum medical improvement, for a certain number of weeks. A scheduled disability is evaluated under the functional method, which provides a schedule of benefits for injuries to specific members of the body. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). When the injury is to a scheduled member, the benefits are calculated based on functional disability and not a loss of earning capacity. The permanent partial disability benefits are calculated utilizing the percentage of impairment applied to a set number of weeks based on the injured body part.

Iowa Code section 85.34(2)(x) provides that:

In all cases of permanent partial disability described in paragraphs “a” through “u”, or paragraph “v” when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs “a” through “u”, or paragraph “v” when determining functional disability and not loss of earning capacity.

Iowa Code Ann. § 85.34(2)(x). Newton Cmty. School Dist. contends that the guides assign a 7% impairment for Hubbard's degenerative changes regardless of pain and, therefore, since the

physical changes were pre-existing, the 7% cannot be assigned to the work injury under Iowa Code section 85.34(2)(x). However, this interpretation fails to distinguish between the assignment of an impairment rating and the issue of causation. Iowa Code section 85.34(2)(x) prevents the Commission from assigning a percentage impairment that does not derive from the guides but is instead based on a layperson's testimony or agency experience.

The issue here, however, is not a deviation from the guides, but a disagreement between experts regarding whether a pre-existing condition is causally related to the work-injury based on the question of whether it had been "aggravated" or "lit up." Here, Dr. Kuhnlein rooted his impairment rating in the guides and made a determination that the work injury "served to 'light up' and materially aggravate the previously asymptomatic osteoarthritis in the left knee and make it symptomatic" and, therefore, the osteoarthritis was "related to" the work injury. (Ex. 5 at 15).

Work injuries that aggravate or light up of a pre-existing condition are compensable. "If plaintiff was diseased and his condition was aggravated, accelerated, worsened or 'lighted up' by the injury so it resulted in the disability found to exist plaintiff was entitled to recover." Rose v. John Deere Ottumwa Works, 76 N.W.2d 756, 761 (Iowa 1956) (affirming award despite evidence of pre-existing osteoarthritis and noting plaintiff had testified he never had any trouble with his back previously); Hawkeye Wood Shavings, Inc. v. Parrish, 695 N.W.2d 333 (Iowa Ct. App. 2004) (affirming decision that a degenerative disk condition was causally related to employment where one expert opined that employment had "accelerate[d] his lumbar degenerative disc disease causing his need for surgery."). Archer Daniels Midland, Inc. v. Warren, 2015 WL 1849503 (Iowa Ct. App. 2015) (affirming finding that employment had materially aggravated and contributed to progression of osteoarthritis hip condition resulting in the need for hip replacement).

Dr. Kunhlein relied on Hubbard-McKinney's history, in part, to reach a causation decision. Then, after making a causation decision, Dr. Kuhlein relied on the guides to determine the appropriate impairment rating. Since providers are unlikely to have actually witnessed a patient's injury, they almost always must consider the patient's report of injury, medical history, and whether the patient's report is consistent with the provider's physical examination or review of any imaging in their assessment of causation. After making a causation determination, a provider or expert then utilizes the guides to determine the appropriate functional impairment rating. Although Dr. Vincent disagrees with Dr. Kuhnlein's causation determination, each doctor utilized the guides to provide an impairment rating and the Commission found one expert more convincing than the other. (See Appeal Decision at 2).

Therefore, the Court finds it was not an error of law to assign an impairment rating based on the aggravation or lighting up a pre-existing condition.

B. Substantial Evidence to Support Dr. Kuhnlein's Opinion.

Newton Cmty. School Dist. also argues substantial evidence does not support the Commissioner's decision to award 7% impairment relating to the degenerative changes. There is no dispute that a 2% award was appropriate.

At the commission level, "[a] claimant must prove by a preponderance of the evidence that the injury is a proximate cause of the claimed disability." Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560 (Iowa 2010) (quoting Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 752 (Iowa 2002)). "Ordinarily, expert testimony is necessary to establish the causal connection between the injury and the disability for which benefits are claimed." Id. However, "[t]he commissioner, as the fact finder, determines the weight to be given to any expert testimony." Id. "Because the commissioner is charged with weighing the evidence, we liberally and broadly

construe the findings to uphold his decision.” Finch v. Schneider Specialized Carriers, Inc., 700 N.W.2d 328, 331 (Iowa 2005).

“Evidence may be substantial even though [the court] may have drawn a different conclusion as fact finder.” Cedar Rapids Cmty. Sch. Dist. V. Pease, 807 N.W.2d 839, 845 (Iowa 2011). Weighing of competing expert opinions is within the province of the commission. Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 845 (Iowa 2011) (“the determination of whether to accept or reject an expert opinion is within the peculiar province of the commissioner.”). The commissioner considers expert testimony with all other evidence and determines the weight to be given any expert testimony. Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 752 (Iowa 2002); see also Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560 (Iowa 2010); Martinez Const. v. Ceballos, 836 N.W.2d 152, 2013 WL 2646833, at *4 (Iowa Ct. App. June 12, 2013) (“Lay witness testimony is also relevant and material to the causation determination, and the agency must consider all evidence—both medical and nonmedical—in arriving at a disability determination.”). To reverse the Agency Decision, this Court would be required to find the experts relied upon as so flawed as to not constitute substantial evidence. See Bahic v. Mercy Medical Center, 919 N.W.2d 768 (Iowa 2018) (citing Pease, 807 N.W.2d at 845).

Here, the Agency Decision is supported by substantial evidence. The Agency Decision relied upon one expert physician over another. The Arbitration Decision and the Appeal Decision found Dr. Kuhnlein’s opinion regarding causation more convincing. They relied on Hubbard-McKinney’s report that she had no chronic or significant knee pain prior to the injury. The Arbitration Decision found it “highly unlikely or improbable that claimant was suffering from significant, chronic left knee symptoms prior to the [work injury].” (Arb. Dec. at 6). The Arbitration Decision acknowledged prior insignificant treatment, but noted Hubbard-McKinney

had never received “aggressive treatment or surgery,” “never had permanent restrictions,” and that there was “no evidence she had chronic or ongoing, disabling pain.” (Id.).

On Appeal, the Commissioner rejected Dr. Vincent’s assumption that because there are prior x-rays or scans of Hubbard-McKinney’s left knee, she must have a “long history of [] seeking medical care for left knee pain.” Dr. Vincent had noted that he did not have the medical records or clinic notes and, therefore, did not know why these prior scans had been taken. Dr. Kuhnlein accepted Hubbard’s explanation that she had had prior insignificant treatment for a knee sprain but no ongoing pain.

The Commission accepted Dr. Kuhnlein’s causation determination that the work injury had materially aggravated or lit-up Hubbard-McKinney’s pre-existing knee condition. Although a different fact finder could have found Dr. Vincent’s opinion more persuasive, the decision actually made here is supported by substantial evidence.

IT IS HEREBY ORDERED that the Workers’ Compensation Commission is AFFIRMED. Costs are assessed to Petitioners. IT IS SO ORDERED.



State of Iowa Courts

Case Number
CVCV061913

Case Title
NEWTON COMM SCHOOL DIST ET AL VS CASSIDY
HUBBARD MCKINNEY
Type: OTHER ORDER

So Ordered

A handwritten signature in black ink, appearing to read "Sarah Crane", is written over a horizontal line.

Sarah Crane, District Court Judge
Fifth Judicial District of Iowa

Electronically signed on 2021-12-28 15:11:11