E-FILED 2020 FEB 23 11:28 AM LINN - CLERK OF DISTRICT COURT

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

Luke Benning,	)	
	)	
Petitioner,	)	
	)	**No. CVCV093906**
vs.	)	
	)	**RULING ON JUDICIAL REVIEW**
Climate Engineers, Inc. and Climate River Valley, Inc.,	)	
	)	
	)	
Respondents.	)	

On this date, the above-captioned matter came before the undersigned for review of Petitioner's Petition for Judicial Review. The Court finds a hearing on the Petition is unnecessary. Having considered the file, relevant case law, and written arguments of counsel, the Court hereby enters the following ruling:

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Luke Benning filed a petition in arbitration with the Iowa Workers' Compensation Commissioner, and a hearing took place before Deputy Workers' Compensation Commissioner Erin Q. Pals on October 11, 2017. References to "Claimant" in the procedural history of this Ruling are to Petitioner, as the agency referred to Petitioner as Claimant in the underlying proceedings. References to "Defendants" in the procedural history of this Ruling are to Respondents, as the agency referred to Respondents as Defendants in the underlying proceedings.

Petitioner sought workers' compensation benefits from the Respondents and Twin City Fire Insurance Company, the insurance carrier. Petitioner, Bill Holst, Erik Lewis, and Pete Watson testified at the hearing, and Joint Exhibits JE1-JE5, Claimant's Exhibits 1-8, and Defendants' Exhibits A-F were admitted at hearing. In an Arbitration Decision issued February 16, 2018, Deputy Commissioner Pals noted that the following issues had been submitted for resolution:

1. Whether Petitioner sustained an injury on January 5, 2015, which arose out of and in the course of employment?

2. Whether Petitioner's claim is barred by operation of Iowa Code § 85.23 for failure to provide timely notice of his injury?

3. The nature and extent of permanent disability, if any, Petitioner sustained as a result of the January 5, 2015 work injury?

4. Whether Petitioner is entitled to past medical benefits?

5. Whether Petitioner is entitled to an independent medical evaluation under Iowa Code § 85.39?

6. Assessment of costs.

Deputy Commissioner Pals made the following factual findings and conclusions (citations to the agency exhibits are omitted):

> Mr. Benning testified that his back began to bother him in August and September of 2014. He noticed the pain was worse with extended forklift operation, bending, twisting, and lifting heavier items. Mr. Benning sought treatment with Gordon B. Urbi, M.D. on September 23, 2014. Mr. Benning reported a 6 day history of back pain which was getting worse. He had pain in his legs when he twists around. He reported he did a lot of twisting and lifting at work and that he drove a forklift. The doctor's assessment was back pain, most likely muscular strain. He was given muscle relaxers, anti-inflammatories, and allowed to return to work on September 25, 2014.
>
> Mr. Benning testified that he mentioned his back pain to his supervisor, Bill Holst, in September of 2014. At hearing, Mr. Benning said that he told his supervisor he thought his back pain was probably from bouncing around on the forklift. According to Mr. Benning, Mr. Holst told him something to the effect that the pain would go away or deal with it. Mr. Benning testified that his pain progressed and became more continuous and sharp and eventually went down his leg.
>
> Mr. Benning went to see his primary care physician, Savita V. Hegde, M.D. on January 5, 2015. By this point, his pain was affecting his activity level and made it hard for him to get out of bed. Dr. Hegde informed Mr. Benning that he was probably going to require surgery. He was eventually referred to Kevin Eck, M.D.
>
> Dr. Eck performed a left micro-hemilaminectomy with discectomy at L4-L5 on April 22, 2015. Mr. Benning continued to follow-up with Dr. Eck and recovered well. Dr. Eck placed Mr. Benning at maximum medical improvement (MMI) as of June 30, 2016.
>
> On October 4, 2016, Mr. Benning was riding a motorcycle when he was involved in a motor vehicle accident. He was treated at UnityPoint where they noted pain and swelling in his low back.
>
> The first issue to be determined is whether claimant sustained an injury which arose out of and in the course of employment. There are several physicians in this case who have rendered their opinions regarding causation. The surgeon, Dr. Eck, stated:
>
> > The pain form lumbar spondylosis and the paracentral disc herniation at L4-5 that resulted in left lower extremity radiculopathy necessitating surgery was more likely than not exacerbated by his manual work duties including driving a forklift. It is possible the herniation necessitating surgery was directly related to an injury he sustained at work.

E-FILED 2020 FEB 23 11:28 AM LINN - CLERK OF DISTRICT COURT

Defendants argue Dr. Eck's opinion should be rejected because they believe he provided a contradictory opinion. I do not find Defendants' argument to be persuasive.

At the request of his attorney, Mr. Benning underwent an independent medical examination (IME) with Robin Sassman, M.D. on April 17, 2017. Dr. Sassman opined that the work activities were a substantial factor in the development of his low back pain, radicular symptoms, his need for surgery, and his ongoing symptoms. Defendants argue that her opinion must be rejected because it is based on an incomplete history. However, I do not find this argument to be persuasive. A review of the entire IME report reveals that she did have and considered a complete history including the prior accidents and the subsequent motorcycle accident.

At the defendants' request claimant underwent an IME with Chad Abernathey, M.D. on September 8, 2017. Dr. Abernathey stated that the patient did not have a singular event which would have caused a small disc protrusion. He opined that the chronic low back pain was related to multiple injuries and degenerative changes of his lumbar spine. He felt there was no objective evidence to support a specific work accident. I do not find the opinions of Dr. Abernathey to be persuasive. His report is not well-reasoned. Furthermore, his report fails to take an exacerbation or aggravation into account.

I find the opinions of Dr. Eck and Dr. Sassman to carry greater weight in this case. I further find that Mr. Benning has shown by a preponderance of the evidence that he sustained an injury to his back which arose out of and in the course of his employment with the defendant employer.

The next issue to address is whether Mr. Benning gave timely notice of his injury to the defendants.

Claimant contends that he told Bill Holst and others at work, at least in passing, that his back pain was related to bouncing around on the forklift. Mr. Benning testified that when he told Mr. Holst about the forklift causing pain, Mr. Holst told him to just deal with it. In later testimony, Mr. Benning stated that when he told Mr. Holst about the forklift causing back pain, Mr. Holst said he did not have to complete an injury report because there was no specific date of injury. Mr. Holst denies that Mr. Benning ever told him that the forklift was causing him pain. Mr. Holst also testified that if Mr. Benning had said the back pain was related to the job, then he would have sent him to the safety director, Erik Lewis, to have him complete an injury report.

After the January 5, 2015, medical appointment, Mr. Benning met with Peter Watson, the President of Climate Engineers. Mr. Benning testified that he told Mr. Watson he was going to have back surgery. According to Mr. Benning, Mr. Watson was not interested in the cause of his back pain. Mr. Watson decided to lay off Mr. Benning so Mr. Benning could collect unemployment benefits. Mr. Benning understood that once he was cleared to return to work after the surgery, then the defendant employer would have a position for him. Mr. Benning testified that it was only he and Mr. Watson at that meeting. Mr.

Benning admitted that he never directly told Mr. Watson that his back pain was from operating the forklift. Mr. Benning said that he told Mr. Holst and Mr. Watson, so he figured the chain of communications gave the information to Mr. Watson. After the January 5, 2015 meeting, the only Climate employees that Mr. Benning spoke with were Pete or an office lady transferring him to talk to Pete.

However, during a later part of his testimony under direct examination, Mr. Benning testified that Mr. Watson asked him if the back pain happened at home and Mr. Benning said no. Mr. Benning testified that he might have also told Mr. Watson that bouncing around on the forklift caused his back pain. Mr. Watson admitted that Mr. Benning never told him that his back pain was work-related.

Mr. Benning also testified that he did not complete an injury report for his January 5, 2015 back injury. From prior experience, he knew it was Climate's policy that when you were hurt at work you were to report the injury to your immediate supervisor and then complete an accident or near-miss accident report. Mr. Benning had completed accident reports on two prior occasions due to other work-related injuries. However, Mr. Benning did not complete a report for his back injury because Mr. Holst told him he did not need to complete a report because there was not a specific incident or specific date of an accident. Mr. Benning testified that after he was laid off he probably told Mr. Holst, Mr. Watson, and Mr. Lewis in one of the messages he sent them, that his back pain was probably from bouncing around on the forklift.

The undersigned notes that there is conflicting evidence and testimony from both sides. Because of the conflicting evidence, the issue of notice is a close call. However, I find that defendants have demonstrated by a preponderance of the evidence that claimant failed to provide timely notice. All three of defendants' witnesses testified that they did not receive notice from the claimant. Further, Mr. Benning testified that in the fall of 2014, he told Mr. Holst and others at work that his pain was related to driving the forklift; however, this testimony conflicts with his own testimony. On March 3, 2015, Mr. Benning completed a patient questionnaire. On that form he indicated that his back pain was not a workers' compensation claim. When asked about this at the hearing, Mr. Benning said that he checked no "[b]ecause at that time workmen's (sic) comp was not discussed, it was not offered, it wasn't even on my radar. It wasn't until later on that it became on my radar." I find that this action is not consistent with the actions of an employee who had reported a work injury to his employer. There are simply too many inconsistencies in Mr. Benning's account of how and when he provided notice to the defendants. Thus, I find that claimant failed to provide notice of his work injury to the defendants within 90 days of the injury. As such, claimant's claim is barred by operation of Iowa Code section 85.23.

Because claimant was not successful in his claim I exercise my discretion and do not assess costs in this matter. Each party shall bear their own costs.

All other issues are rendered moot.

See Arbitration Decision, pp. 2-5.

Deputy Commissioner Pals then cited to the applicable legal authorities, and entered the following additional conclusions:

> Based on the above findings of fact, I conclude that claimant did sustain an injury to his back that arose out of and in the course of his employment with the defendant employer.
>
> However, I find that claimant's claim is barred by operation of Iowa Code section 85.23. The Iowa Workers' Compensation Act imposes time limits on injured employees both as to when they must notify their employers of injuries and as to when injury claims must be filed. Iowa Code section 85.23 requires an employee to give notice of the occurrence of an injury to the employer within 90 days of the date of the occurrence, unless the employer has actual knowledge of the occurrence of the injury.
>
> …
>
> Based on the above findings of fact, I conclude that the defendants have shown by a preponderance of the evidence that the claimant failed to provide timely notice of his work injury.
>
> …
>
> All other issues are rendered moot because claimant's claim is barred by operation of Iowa Code section 85.23.

See Arbitration Decision, p. 6.

Petitioner appealed to the Iowa Workers' Compensation Commissioner, Joseph S. Cortese II, who entered his Appeal Decision on August 30, 2019. Commissioner Cortese adopted the findings, conclusions, and analysis of Deputy Commissioner Pals. See Appeal Decision, pp. 1-3.

The pending Petition for Judicial Review followed. In support of his brief on appeal, Petitioner has filed a transcript of the proceedings before Deputy Commissioner Pals. See Exhibit 1. By way of background facts, and relying on the transcript of proceedings before Deputy Commissioner Pals, Petitioner states that Climate Engineers, Inc. is a company involved in the installation and demolishing of HVAC systems and ductwork and the manufacture of sheet metal. Petitioner states he was hired on May 5, 2013 as a pre-apprentice, earning $10/hour, and he understood that he eventually would take on the role of apprentice. Petitioner further states he received regular raises over the course of his employment, and when his employment was terminated, he was nearly thirty years old.

Petitioner claims his work at Climate involves driving and operating a forklift on a daily basis; frequently lifting and moving up to fifty pounds; and occasionally lifting up to seventy pounds. Petitioner also claims he spent most of his day on a forklift, which lacked suspension,

moving heavy items around the warehouse and across rocky terrain in all types of weather conditions, including rain and snow. Petitioner asserts that starting in the summer of 2014, he began experiencing back pain arising out of his job duties, and the injury eventually worsened to the point of requiring surgery. Petitioner further asserts that on January 5, 2015, his pain increased in severity and he sought further medical treatment on that date. Petitioner states he was informed by his physician that he might need surgery, and he claims he relayed that information to Climate on January 5, 2015. Petitioner also claims that, upon learning of Petitioner's need for surgery, Climate immediately terminated Petitioner's employment.

Petitioner first argues that Commissioner Cortese erred in affirming the arbitration decision that concluded Petitioner did not give timely notice of his injury. Petitioner claims is it undisputed that from September 18, 2014 through January 5, 2015, Climate had actual knowledge that Petitioner had a back injury, which provided the basis for his termination. Petitioner points to his employment file, which contains a document citing "back troubles" as the reason for termination. Petitioner contends he reported his back injury to the employer on several occasions, and the knowledge the employer had was sufficient to alert Climate of a potential claim, and that the injury may have been work related. Petitioner relies on his conversations with Mr. Holst and Mr. Lewis, the meeting he had with Mr. Watson, and his medical records as bases for establishing that the employer had timely notice of Petitioner's injury.

With respect to Respondents' statement that Petitioner did not complete a written accident report for the back injury, as he had with other unrelated work injuries, Petitioner asserts that Mr. Holst told him not to complete an accident report because he could not pinpoint the specific incident or date for the injury. Petitioner argues his testimony on this issue is consistent with the accident report form, which calls for the location, date, and time of the incident, and is consistent with Petitioner describing his injury as progressive and cumulative. Petitioner further argues any inconsistencies in his testimony are irrelevant to the analysis of whether Climate was on notice of the potential for a workers' compensation claim. Petitioner claims that Commissioner Cortese's statement that Deputy Commissioner Pals expressly found Climate representatives to be more credible that Petitioner is incorrect, and neither the Commissioner nor the Deputy Commissioner addressed the inconsistences in the testimony of Climate's representatives. Petitioner contends the inconsistences in Respondents' representatives' testimony reflect a lack of credibility.

Petitioner asserts that the Court should modify and reverse the agency decision because it was based on an erroneous interpretation of the law and improper decision-making; lacks substantial evidentiary support; is inconsistent with agency rules, practices, and precedent; and is the product of a decision-making process that improperly applied law to fact. Petitioner further asserts Respondents' actions violate concepts of fundamental fairness.

Petitioner's next argument is that the Commissioner erred in failing to award disability benefits. Petitioner contends that, as a direct result of his work-related injury, Petitioner became unable to carry on the type of work he has performed his whole adult life, or to earn anywhere near the amount he has earned in the past. Petitioner states he has ongoing back pain and numbness, and significant work restrictions. Petitioner claims he has attempted other

employment but has struggled to perform his work-related duties, and he can no longer compete for the jobs his experience, training, intelligence, and physical capacities would otherwise permit him to perform. Petitioner also claims his physical activity in his personal life has been affected by his injury.

Petitioner acknowledges that he is attending college courses, but argues that the course work is necessary because he receives lower pay and is no longer able to perform the only type of employment he has ever had, and he has established evidence of industrial disability. Petitioner asserts it is unclear whether his efforts in education will continue successfully or yield employment, particularly given the physical nature of some jobs. Petitioner contends he sustained a substantial industrial disability because of his inability to perform physical job duties, combined with his level of education, and an award for body as a whole industrial disability of not less than 50% under § 85.34(2) should be made on that basis and based upon the greater weight of the evidence. Petitioner also seeks permanent partial disability benefits of at least 75%.

Petitioner requests the following relief on judicial review:

1. A finding that Respondents failed to meet their burden of proof in establishing that Petitioner failed to timely report his work-related injury and that he is entitled to disability benefits as a result;

2. Petitioner is entitled to temporary total disability benefits from the date of his injury through at least October 1, 2015;

3. Because of ongoing permanence, Petitioner is entitled to permanent partial disability benefits from the date he reached MMI, on June 30, 2016; and

4. Petitioner is entitled to recovery of the expenses identified in the Parties' Hearing Report.

Respondents resist the relief sought by Petitioner on judicial review. Respondents' first argument is that the Commissioner did not err in affirming the Arbitration Decision that concluded Petitioner did not give timely notice of his injury. Respondents contend they were unaware of a work-related, low back injury; Petitioner's medical records do not support his claim of timely notice; Petitioner failed to file an incident report as per employer policy; and deference should be provided to Deputy Commissioner's Pals' determination of credibility.

Respondents also argue that the Commissioner did not err in failing to award disability benefits. Respondents contend that an industrial disability analysis was not required as both Deputy Commissioner Pals and Commissioner Cortese found Petitioner failed to provide notice of his injury to his employer. Respondents argue that if the Court finds otherwise, the industrial disability determination should be remanded to the Commissioner.

Respondents contend Petitioner has not suffered any industrial disability, and he is well-educated and holds numerous qualifications. Respondents also contend Petitioner has been released to work with no restrictions.

Petitioner has not filed a reply to Respondents' resistance.

CONCLUSIONS OF LAW

Petitioner is entitled to judicial review of this action pursuant to Iowa Code § 17A.19 (2019). "A person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof under this chapter." Iowa Code § 17A.19(1) (2019). "Iowa Code section 17A.19(8)(g) authorizes relief from agency action that is 'unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.'" Dico, Inc. v. Emp. Appeal Bd., 576 N.W.2d 352, 355 (Iowa 1998). "These terms have established meanings: 'An agency's action is "arbitrary" or "capricious" when it is taken without regard to the law or facts of the case…Agency action is "unreasonable" when it is "clearly against reason and evidence."'" Id. (citing Soo Line R.R. v. Iowa Dep't of Transp., 521 N.W.2d 685, 688-89 (Iowa 1994)). "An abuse of discretion occurs when the agency action 'rests on grounds or reasons clearly untenable or unreasonable.'" Id. (citing Schoenfeld v. FDL Foods, Inc., 560 N.W.2d 595, 598 (Iowa 1997)). The Iowa Supreme Court has stated that an "abuse of discretion is synonymous with unreasonableness, and involves a lack of rationality, focusing on whether the agency has made a decision clearly against reason and evidence." Id. (citing Schoenfeld, 560 N.W.2d at 598).

"Section 17A.19[10] provides that a party may successfully challenge an agency decision when the party's substantial rights have been prejudiced because the agency action 'is unsupported by substantial evidence' or 'is affected by other error of law.'" Titan Tire Corp. v. Emp. Appeal Bd., 641 N.W.2d 752, 754 (Iowa 2003). Factual findings are reversed "only if they are unsupported by substantial evidence in the record made before the agency when the record is viewed as a whole." Loeb v. Emp. Appeal Bd., 530 N.W.2d 450, 451 (Iowa 1995). "Evidence is substantial if a reasonable mind would find it adequate to reach the same conclusion. Id. (citing Dunlavey v. Economy Fire & Casualty Co., 526 N.W.2d 845, 849 (Iowa 1995)). "The agency's decision does not lack substantial evidence because inconsistent conclusions may be drawn from the same evidence." Id. (citing Dunlavey, 526 N.W.2d at 849).

"Substantial evidence is '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.'" University of Iowa Hospitals and Clinics v. Waters, 674 N.W.2d 92, 95 (Iowa 2004). "'While "courts must not simply rubber stamp the agency fact finding without engaging in a fairly intensive review of the record to ensure that the fact finding is itself reasonable ··· evidence is not insubstantial merely because it would have supported contrary inferences.'" Id. "'The substantial evidence rule requires to review the record *as a whole* to determine whether there is sufficient evidence to support the decision the commission made.'" Stark Const. v. Lauterwasser, No. 13-0609, 2014 WL 1495479, *8 (Iowa Ct. App. 2014) (citing Woodbury Cnty. v. Iowa Civil Rights Comm'n, 335 N.W.2d 161, 164 (Iowa 1983)).

"[T]he agency is not required to mention each item of evidence in its decision and explain why it found the evidence persuasive or not persuasive." Keystone Nursing Care Center v. Craddock, 705 N.W.2d 299, 305 (Iowa 2005). "While it is true that the commissioner's decision must be 'sufficiently detailed to show the path he has taken through conflicting evidence,'…the law does not require the commissioner to discuss each and every fact in the record and explain why or why not he has rejected it." Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 274 (Iowa 1995). "Such a requirement would be unnecessary and burdensome." Id.

If a "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 we may substitute our interpretation for the agency's." Meyer v. IBP, Inc., 710 N.W.2d 213, 219 (Iowa 2006). "Still, if there is no challenge to the agency's findings of fact or interpretation of the law, but 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 sum, when an agency decision on appeal involves mixed questions of law and fact, care must be taken to articulate the proper inquiry for review instead of lumping the fact, law, and application questions together within the umbrella of a substantial-evidence issue." Id.

Iowa Code § 85.23 provides:

> Unless the employer or the employer's representative shall have actual knowledge of the occurrence of an injury received within ninety days from the date of the occurrence of the injury, or unless the employee or someone on the employee's behalf or a dependent or someone on the dependent's behalf shall give notice thereof to the employer within ninety days from the date of the occurrence of the injury, no compensation shall be allowed. For the purposes of this section, "date of the occurrence of the injury" means the date that the employee knew or should have known that the injury was work-related.

Iowa Code § 85.23 (2019). "No particular form of notice shall be required…." Iowa Code § 85.24(1) (2019).

"The workers' compensation law should be liberally construed to accomplish the object and purpose of the legislation: to benefit the worker and his dependents." Dillinger v. City of Sioux City, 368 N.W.2d 176, 180 (Iowa 1985). The Iowa Supreme Court has applied the discovery rule to the notice provision of § 85.23. Id. "While the discovery rule aids the employee by preventing the limitation period from commencing until the claimant knows of his injury and its probable compensable nature…the notice requirement of section 85.23 protects the employer by insuring he is alerted 'to the possibility of a claim so that an investigation can be made while the information is fresh.'" Id. (citing Robinson v. Dept. of Transp., 296 N.W.2d 809, 811 (Iowa 1980)). "[W]here the employer or the employer's representative has actual knowledge of the occurrence, notice from the employee to the employer is not required." Johnson v. International Paper Co., 530 N.W.2d 475, 477 (Iowa Ct. App. 1995). "Actual knowledge must include information that the injury might be work-connected." Id. "It requires more than the fact that the employer was aware of any employee's illness." Id. "A statement to

an employer that an employee is ill, without more, does not satisfy the actual knowledge requirement of Iowa Code section 85.23." Id. In Johnson, the Court of Appeals held that where the deputy made a finding of fact that the employee failed to give the required statutory notice of a work-connected injury, the Court of Appeals was bound by the finding because it was supported by substantial evidence. Id.

The Court concludes it was proper for the agency to deny workers' compensation benefits to Petitioner, due to his failure to provide notice to the employer of the work-related injury pursuant to § 85.23. The Court agrees with Deputy Commissioner Pals' assessment that the notice issue is a close call. However, there is substantial evidence to support the finding that Petitioner failed to give the required statutory notice of the work-connected injury. Further, the Court is not persuaded that the agency committed an error of law in so finding, applied wholly irrational reasoning, or ignored important and relevant evidence.

Mr. Holst, Mr. Lewis, and Mr. Watson (the Court will refer to these individuals collectively as Petitioner's supervisors) all testified that Petitioner never reported a work-related injury to them, and Petitioner has testified that he did not file an incident report for the alleged low back injury. Mr. Holst testified that while he had a conversation with Petitioner in September, 2014, he did not remember specifics about the conversation, and recalled that Petitioner told him the back injury was personal and not related to work. There are also records in Petitioner's personnel files stating that Petitioner had a personal back injury that was not work-related, and that he was being treated by a chiropractor. Petitioner also offered testimony that in September, 2014, he was unaware of the cause of his injury. While at times Petitioner's supervisors may have confused dates as to when certain conversations with Petitioner occurred, it is clear that the general timeframe for the discussions that the supervisors had with Petitioner was from September 18, 2014 through September 22, 2014. Thus, the Court does not find any credibility problems with any of the supervisors having testified about a date a conversation took place that later was shown to be off by a day or two.

Further, Petitioner's own testimony providing conflicting information as to when he allegedly provided notice to the employer, including that he did not provide details about a back-related injury, or say anything about the forklift. Much of Petitioner's testimony regarding his conversations with his supervisors was that he "probably," "may have," or was "pretty sure" that he provided the necessary information to the employer about his injury in order to comply with § 85.32. Petitioner's medical records also include inconsistent dates pertaining to the injury. Petitioner's supervisors were specific in their testimony that Petitioner failed to report a work-related injury to them, and it was not inappropriate for the agency to rely on the testimony of the supervisors as being more reliable and credible than that offered by Petitioner. The agency did not commit an error of law in its application of § 85.23, did not apply wholly irrational reasoning on the issue of notice, and did not ignore important and relevant evidence on the issue of the notice allegedly provided by Petitioner.

With respect to Petitioner's first argument on judicial review, the Court concludes that the Commissioner did not err in affirming the arbitration decision that concluded Petitioner did not give timely notice of his injury.

Petitioner's second argument is that the Commissioner erred in failing to award disability benefits. Because the Court has concluded that the Commissioner properly found that Petitioner did not give timely notice of his injury, the Commissioner did not err in failing to award disability benefits. If the Court were to have found that Petitioner gave timely notice of his injury, the Court would have remanded the case to the agency for further fact-finding and conclusions on the question of disability benefits; the Court would not have engaged in making the initial fact-finding and conclusions on the disability benefits issue. However, based on the Court's conclusion that the agency did not err in finding that Petitioner did not give timely notice of his injury, the Court concludes the agency also did not err in failing to award disability benefits.

The agency's decision should be affirmed on judicial review, and Petitioner's request for relief on judicial review should be denied.

RULING

IT IS THEREFORE ORDERED that Petitioner's request for relief on judicial review is **DENIED**. The agency's decision is affirmed. If there are costs to be assessed, they are assessed to Petitioner.

Clerk to notify.

E-FILED 2020 FEB 23 11:28 AM LINN - CLERK OF DISTRICT COURT

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV093906	LUKE BENNING VS CLIMATE ENGINEERS INC ETAL

So Ordered

Andrew Chappell, District Court Judge
Sixth Judicial District of Iowa