

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LAURA PAULSEN f/k/a LAURA TIMM,

Claimant,

vs.

CITY OF DAVENPORT,

Employer,
Self-Insured,
Defendant.

File No. 5033124

A P P E A L

D E C I S I O N

FILED

MAY -7 2015

WORKERS' COMPENSATION

Head Note Nos.: 1503, 1803, 2501, 2907

Defendant, the City of Davenport, appeals from an arbitration decision filed on June 26, 2014, which awarded workers' compensation benefits to claimant, Laura Paulsen (f/k/a Laura Timm). Specifically, claimant was awarded 100 weeks of permanent partial disability benefits, medical benefits and reimbursement for an independent medical evaluation.

The record, including the transcript of the May 28, 2014, hearing before the deputy and all exhibits admitted into the record at that hearing, was reviewed de novo. Also reviewed de novo was the record in prior proceedings stemming from defendant's original motion for summary judgment filed on January 9, 2012. The following is a history of this litigation relevant to this appeal.

Claimant originally filed a petition for workers' compensation benefits on May 7, 2010. A motion to dismiss the petition by defendant on the grounds that the agency lacked subject matter jurisdiction was denied on June 22, 2010, by the deputy commissioner on grounds that material facts were in dispute. An interlocutory appeal of that ruling was denied by the workers' compensation commissioner. Prior to hearing on the petition, claimant voluntarily dismissed her petition without prejudice on April 12, 2011.

Claimant re-filed her petition for workers' compensation benefits on December 30, 2011. On January 9, 2012, defendant filed a motion for summary judgment asserting claimant is not eligible for workers' compensation benefits as she was a police officer at the time of her injury covered by chapters 410 and 411 of the Iowa Code. On February 6, 2012, the deputy commissioner denied this motion on grounds that this was previously ruled on in the ruling on the motion to dismiss. An application for rehearing on that ruling was denied. On March 19, 2012, on interlocutory appeal, this ruling was reversed by the commissioner and the case was remanded to the deputy commissioner for ruling on the motion for summary judgment.

On March 23, 2012, the deputy granted the motion for summary judgment and dismissed the claim. In an appeal decision filed April 9, 2013, the workers' compensation commissioner overruled the deputy's ruling on the motion for summary judgment and remanded the case back to the deputy level for hearing and decision on the merits of the claim. Defendant sought judicial review of this appeal decision.

The deputy commissioner heard the claim on April 30, 2014, and issued the arbitration decision awarding benefits.

On November 13, 2014, the Iowa Court of Appeals affirmed the decision of the District Court which dismissed the petition for judicial review as interlocutory and remanded this matter back to this agency to adjudicate the entire claim. Neither the District Court, nor the Court of Appeals dealt with the merits of whether claimant was eligible for workers' compensation benefits.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

ISSUE ON APPEAL

Defendant, on appeal, does not challenge the findings in the arbitration decision that her injury arose out of and in the course of employment or that her injury is a cause of permanent 20% loss of earning capacity. The only issue raised by defendant in this appeal is whether claimant is precluded from workers' compensation benefits by Iowa Code section 85.1(4).

Defendant also challenges the deputy's ruling in the arbitration decision that the April 9, 2013, appeal decision on the motion for summary judgment is the law of the case. I agree with the defendant that the ruling on its motion for summary judgment in the April 9, 2013, appeal decision is not res judicata or the law of the case as it was not a final agency decision, but an interlocutory ruling as held by the Court of Appeals. However, the deputy was correct in refusing to revisit the motion for summary judgment because the commissioner remanded the case to the deputy level only to determine the merits of the claim, not the merits of the motion for summary judgment. Also, as it was only interlocutory, the April 9, 2013, appeal decision on the merits of defendant's motion for summary judgment is not binding on me in this appeal proceeding. I am able to revisit the merits of the motion for summary judgment and did so in this decision.

FINDINGS OF FACT

Defendant, the City of Davenport, Iowa, will be referred to in this section as simply the City.

The facts relevant to the issue in this appeal are not in significant dispute. Claimant was hired by the City as a police officer on December 14, 2009, contingent upon successful completion of various testing, evaluations and interviews. Claimant satisfied these initial requirements and was thereafter required to attend and successfully complete police officer training at the Iowa Law Enforcement Academy ("the Academy"). Claimant made deductions from her paycheck to pay for her membership into the Police Pension Fund, a fund set up to administer benefits to police officers pursuant to chapters 410 and 411 of the Iowa Code.

While attending the Academy, on January 14, 2010, claimant sustained a back injury while performing required fitness training. The City provided claimant with suitable light duty employment during treatment for her back injury. The treatment for her back injury resulted in surgery in March, 2010. Following treatment, claimant received permanent restrictions on her physical activity which precluded her from continued employment as a police officer for the City. Mike Farris, the risk manager for defendant, testified without contradiction that claimant's medical care, including surgery, was paid for according to chapters 410 and 411. Claimant was paid her wages by the city during her healing period.

Defendant holds itself out as self-insured for workers' compensation matters in the state of Iowa. Defendant states that all injuries to sworn police and fire employees are handled according to chapters 410 and 411. Claimant paid into the Police Pension Fund via deductions from her paycheck. Claimant was a member of the Municipal Fire & Police Retirement System of Iowa from December 28, 2009, through April 16, 2010.

Claimant and defendant dispute the circumstances that led to the end of claimant's employment with the City. Defendant asserts that claimant voluntarily resigned. Claimant asserts that she was involved in a March 17, 2010, meeting with Dawn Sherman, director of human resources, Major Donald Schaeffer, and Chief of Police Francis Donchez during which she was provided two options: resign or be terminated. Claimant subsequently resigned stating she was concerned about a termination on her record. She attempted to withdraw her resignation but was denied the opportunity to do so. Claimant stated that her attempt to withdraw her resignation occurred "when she realized what defendant was trying to do." Whether or not the termination of employment was voluntary, claimant's employment with the City ended on April 16, 2010.

After her employment with the City ended, claimant sought permanent disability under chapters 410 and 411. On July 13, 2010, claimant was notified that the retirement system received her application for disability signed on July 9, 2010. Because the system's records show a termination date of April 16, 2010, claimant's application for benefits was denied. The notification states as follows:

Iowa Code Chapter 411.6 provides that an individual must be a "member in service" to be eligible to apply for disability retirement from the System. In accordance with this statutory provision, Laura Timm was no longer a member in service at the time of application and therefore is ineligible to apply for a Disability Retirement with the System.

(Def. Exhibit F)

There is no evidence in this record to suggest that this denial of benefits was not a final decision.

CONCLUSIONS OF LAW

Iowa Code section 85.1(4) states that the Iowa Workers' Compensation Act does not apply to "persons entitled to benefits pursuant to chapters 410 and 411."

Claimant asserts that due to the ruling of the pension board stating she is not eligible for benefits pursuant to chapters 410 and 411, she therefore is not excluded from receiving workers' compensation benefits. Claimant asserts the application of Iowa Code section 85.1(4) is ambiguous, but she asserts that the section should be interpreted broadly and liberally in favor of claimant as required by Iowa case law. Claimant asserts that the sole purpose of Iowa Code section 85.1(4) is to avoid a double recovery of benefits and there can be no double recovery in this case because the City denied her claim for benefits under chapters 410 and 411. The claim in this case is for only permanent disability benefits. The Iowa Workers' Compensation Act is now claimant's only remedy to obtain compensation for a significant work injury.

Defendant asserts there is no ambiguity in Iowa Code section 85.1(4). Claimant clearly was injured while performing required duties as a police officer trainee and thereby was entitled to benefits pursuant to chapters 410 and 411. The City asserts that eligibility for benefits is determined at the time of injury, not at the time of application for benefits. Claimant was paid medical benefits and full salary benefits during her treatment pursuant to chapters 410 and 411. The only reason she was denied permanent disability benefits under these chapters was that her claim for such benefits was not timely filed. Defendant argues that a finding that claimant is not "entitled" to police pension benefits because she was denied permanent disability benefits would be analogous to a finding that a claimant is not entitled to workers' compensation benefits when the claimant received temporary disability and medical benefits, but was denied permanency benefits. Defendant asserts that Iowa case law supports the denial of this workers' compensation claim.

I agree that the application of Iowa Code section 85.1(4) to the facts of this case is ambiguous. The well-reasoned arguments from both parties demonstrate this ambiguity. I also agree with claimant that when there is ambiguity or unclarity, long standing case law mandates a liberal interpretation of the provisions in the Iowa Workers' Compensation Act in favor of the injured worker due to the humanitarian purposes of the statute. Ewing v. Allied Constr. Servs., 592 N.W. 2d 689 (Iowa 1999); Myers v. FCE Services Inc., 592 N.W.2d 354 (Iowa 1999); Danker v. Wilimek, 577 N.W.2d 634 (Iowa 1998); Haverly v. Union Const. Co., 236 Iowa 278, 18 N.W.2d 629 (Iowa 1945); Conrad v. Midwest Coal Co., 231 Iowa 53, 3 N.W.2d 511 (Iowa 1941). I disagree with defendant's contention that eligibility for police pension benefits is determined at the time of injury, not the time of application for such benefits. If that were the case, claimant would not have been denied a police disability pension.

In a case cited by defendant, Goebel v City of Cedar Rapids, 267 N.W.2d 388, 389-390 (Iowa 1978), the Court held that the children of two fireman cannot assert a common law tort action against the City for the death of their fathers because the children are entitled to and were paid death benefits under Iowa Code chapter 411. The Court stated the benefits payable to injured workers or their families pursuant to chapters 410 and 411 compare favorably to those available under workers' compensation. The systems are not identical, but they serve equivalent purposes and are mutually exclusive. The Court stated that as the benefits under workers' compensation are the exclusive remedy for injured workers, benefits under chapters 410 and 411 are also the exclusive remedies for injured police and fireman. Consequently, this case is not instructive as to whether claimant in this case is entitled to workers' compensation benefits. If anything, since the two compensation systems have the same purpose to alleviate the burden on injured workers and their families caused by work injuries, these statutes should be interpreted to carry out that purpose and not create gaps in coverage that would occur if we accept defendant's interpretation of section 85.1(4)

Although not cited by defendant, the Goebel decision cited to an earlier decision in Johnson v. City of Red Oak, 197 N.W.2d 548 (Iowa 1972). In that case, the Court reversed a workers' compensation award to an injured police officer and essentially directed the City to pay the claimant a police disability pension. In another case cited by defendant, Ogilvie v. City of Des Moines, 212 Iowa 117, 233 N.W. 526 (Iowa 1930) the children of a slain policeman who were paid benefits under chapter 411 were denied additional benefits under workers' compensation. In both of those cases, workers' compensation benefits were denied when the chapter 411 benefits were paid or were about to be paid.

I agree that the two disability systems are mutually exclusive, and injured persons cannot obtain benefits from both systems. The case law discussed above supports claimant's contention that the primary purpose of Iowa Code section

85.1(4) is to prevent double recovery for the same disability or death; a double recovery that will not occur in this case.

One could argue that allowing claimant to received workers' compensation benefits in this case would result in many claims being made to this agency by fire fighters and police officers who lost before the pension board and are seeking a second bite at the apple. I disagree because a fire fighter or a police officer who is denied benefits because he or she failed to establish a permanent disability is a denial of benefits based on the merits of the claim, not a denial because the fire fighter or police officer was not eligible for benefits. The claimant in this case was not denied benefits by the pension board on the merits of her claim. Benefits were denied because she was held to be "ineligible" to receive benefits under chapters 410 and 411.

Given the purposes of the Iowa Workers' Compensation Act, the instructions from the Courts as to how our statutes are to be interpreted and my understanding of applicable case law, I hold that claimant is entitled to workers' compensation benefits under chapter 85 for her permanent partial disability because she is not eligible for similar benefits under chapters 410 and 411.

ORDER

The award of benefits in the Arbitration Decision is affirmed.

Defendant shall pay claimant one hundred (100) weeks of permanent partial disability benefits, commencing on May 20, 2010, at the stipulated rate of five-hundred fifty-one and 23/100 dollars (\$551.23) per week.

All accrued benefits shall be paid in lump sum.

Defendant shall pay interest pursuant to Iowa Code section 85.30 on any benefits paid after they became due.

Defendant shall reimburse claimant for any out-of-pocket expenses and shall otherwise satisfy any outstanding medical expenses contained in Exhibit 20.

Defendant shall reimburse claimant's independent medical evaluation fees totaling one-thousand six-hundred and 00/100 dollars (\$1,600.00) and mileage expenses associated with that evaluation totaling an additional sixty-eight and 60/100 dollars (\$68.60).

Defendant shall reimburse claimant's costs associated with this case, as outlined in the arbitration decision and totaling seven-hundred thirteen and 89/100 dollars (\$713.89).

Defendant shall pay the costs of this appeal.

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 7th day of May, 2015.



JOSEPH S. CORTESE II
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