

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

<p>BRETT V. SULLIVAN,</p> <p>Petitioner,</p> <p>v.</p> <p>WEST CENTRAL COOPERATIVE, FARMLAND MUTUAL INSURANCE COMPANY</p> <p>Respondents.</p>	<p>CVCV055660</p> <p>ORDER ON JUDICIAL REVIEW</p>
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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 August 31, 2018. Petitioner Brett Sullivan ("Sullivan") appeared through attorney Daniel Anderson. Respondents West Central Cooperative and Farmland Mutual Insurance Company (employer and insurance company, collectively referred to as "West Central") appeared through attorney Jeffrey Lanz.

I. Background Facts and Procedural Posture.

Sullivan sustained a work injury on October 2, 2011 to his low back, upper back, ribs, right hip, right shoulder, and head. The injury occurred when a wheel loader Sullivan was operating was struck by a train and he was thrown from the wheel loader. West Central admitted the injury, paid Sullivan lost time, paid all of Sullivan's medical bills, and voluntarily paid permanent partial disability benefits.

The matter went to Arbitration Hearing on June 3, 2015 before Deputy Commissioner Michelle McGovern. The only issues before the Deputy Commissioner were: 1) Sullivan's appropriate weekly rate based on a determination of whether he had a common law marriage at the time of the injury, 2) whether Sullivan suffered a mental health condition as a result of the

work injury, 3) the extent of Sullivan's entitlement to permanent disability and whether he is permanently and totally disabled (and the credits West Central was entitled to for benefits already paid), and 4) costs.

The only issue on judicial review is number two above: whether Sullivan suffered a mental health condition as a result of the work injury. The Deputy Commissioner found Sullivan failed to prove a mental health condition was causally related to the work injury. Sullivan appealed the Deputy Commissioner's decision at the commission level. Deputy Commissioner Erica Fitch was assigned to decide the Appeal Decision. The Appeal Decision affirmed and adopted the Deputy Commissioner's decision regarding the alleged mental health injury, the only issue on review here.

Following the train accident, Sullivan had serious injuries that required emergency treatment, including emergency right hip surgery. Sullivan returned to work on November 20, 2011, performing paperwork and desk duties but not any physical duties. On January 19, 2012, Sullivan had left knee surgery and then returned to a desk job on February 5, 2012. On August 10, 2012, Sullivan had right total hip replacement surgery and then returned to the desk work on September 10, 2012.

On October 21, 2012, Sullivan was placed at MMI for his back. On November 19, 2012, it was noted in his medical records that he was feeling and doing well. On February 12, 2013, Sullivan was placed at MMI for his left knee. On May 28, 2013, Sullivan was placed at MMI for his right hip.

On October 10, 2013, Sullivan was terminated by West Central. He signed a release and received severance, as well as uncontested unemployment benefits.

On February 26, 2014, Sullivan's attorney requested treatment for Sullivan with a pain psychologist to address symptoms of depression. The following factual findings summarize the reports and IMEs of medical experts who saw Sullivan for pain or mental health issues. Sullivan also had IME and medical appointments relating to his physical injuries and functional level of impairment. However, since the only issue on appeal is the alleged mental health condition, the Court does not recite medical reports relating to the physical injuries.

On May 12, 2014, Dr. Chesen, a psychiatrist and neurologist, performed an IME regarding the potential mental health issues. Dr. Chesen determined that Sullivan did not have any psychiatric diagnosis and did not have any psychiatric diagnosis caused by or materially aggravated by the work injury. Dr. Chesen did not recommend any further treatment.

Sullivan sought a second opinion from Dr. Wheeler on September 3, 2014. Dr. Wheeler made some recommendations regarding pain but did not make a mental health diagnosis.

On October 27, 2014, Dr. Kuhnlein performed an IME at the request of Sullivan's attorney. Sullivan reported nightmares to Dr. Kuhnlein. Dr. Kuhnlein is not a psychiatrist or psychologist but he noted that Sullivan "should be assessed by a qualified objective psychiatrist" regarding PTSD.

On February 3 and 4, 2015, Sullivan saw Dr. Mills at the request of his attorney. Dr. Mills noted a decline in attention and memory as a result of a mild traumatic brain injury. He also diagnosed Mild Neurocognitive Disorder, Posttraumatic Stress Disorder with Delayed Expression, and Major Depressive Disorder.

On March 26, 2015, Sullivan saw Dr. Gallagher, a psychiatrist. Dr. Gallagher found Sullivan had symptoms consistent with major depressive episode and PTSD.

On April 26, 2015, Dr. Chesen reviewed the reports of Dr. Mills and Dr. Gallagher and confirmed that he disagreed with Dr. Mills and Dr. Gallagher and that his opinion remained unchanged.

On June 26, 2015, Dr. Andrikopoulos, a neuropsychologist in Des Moines, conducted an IME at West Central's request. Dr. Andrikopoulos concluded that Sullivan was malingering based on the late onset of any symptoms, the failure to complain of cognitive problems prior to his recent IMEs, and the lack of any treatment or medication.

The Deputy Commissioner determined Sullivan had not proven a mental condition caused by the work injury. This determination was affirmed on appeal in a final agency decision. Sullivan appeals this determination and asks this Court to remand to the Commission on the issue of his alleged mental health condition.

II. Conclusions of Law.

The standards set forth in Iowa Code chapter 17A govern judicial review of final decisions by the workers' compensation commissioner. Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 768 (Iowa 2016), reh'g denied (May 27, 2016). Sullivan argues that the commission erred as a matter of law because he argues it failed to consider and weigh the expert opinions. Sullivan's petition raises all statutory bases for appeal in section 17A.19(10): subsections a-n. However, the focus of Sullivan's brief appears to be on sections b and c (in violation of or erroneous application of law), f and j (lacking substantial evidence or failure to consider evidence), or I, l, m (illogical, irrational, wholly unjustifiable).

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. With regard to the commission’s consideration of expert testimony,

[t]he commissioner must consider [such] testimony together with all other evidence introduced bearing on the causal connection between the injury and the disability. The commissioner, as the fact finder, determines the weight to be given to any expert testimony. Such weight depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. The commissioner may accept or reject the expert opinion in whole or in part.

Id. (quotations omitted).

The Iowa Workers’ Compensation Commission is also required to set forth a reasoned opinion. Iowa Code section 17A.16(1) requires an agency’s proposed or final decision in a contested case to be in writing, to include findings of fact and conclusions of law, that the decision include an “explanation of why the relevant evidence in the record supports each material finding of fact,” and that “each conclusion of law shall be supported by cited authority or by a reasoned opinion.” Iowa Code section 17A.16(1). The Iowa Supreme Court has held that this requirement is “not intended to be onerous.” Schutjer, 780 N.W.2d at 560-61.

[T]he commissioner's decision must be sufficiently detailed to show the path he has taken through conflicting evidence, [but] 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. Such a requirement would be unnecessary and burdensome.

Schutjer, 780 N.W.2d at 560-61 (quoting Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 274 (Iowa 1995)).

Petitioner’s argument on appeal is that the Deputy Commissioner failed to expressly indicate which expert opinion(s) she credited and why. Medical benefits or treatment are not in dispute. Only the liability payments are in dispute. Sullivan appeals the determination that he does not have a mental health injury causally related to the work injury and seeks remand to the commission. Sullivan argues the Deputy Commissioner did not rely on any expert testimony and

the matter should be remanded to the Commission for a determination on expert credibility, and for the Commission to re-consider the appropriate industrial disability percentage if reanalysis of the expert reports results in a determination that he does have a mental health injury.

The Iowa Supreme Court case of Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560 (Iowa 2010) is on point and controlling in this matter. In Schutjer, the Iowa Court of Appeals had reversed the Workers' Compensation Commission because the Court of Appeals held the agency "based its causation ruling solely on its determination that [claimant] lacked credibility and that the agency failed to explain the weight given to the varied medical opinions or explain how it resolved the conflicts in the medical evidence." Id. The Iowa Supreme Court reversed the Court of Appeals and affirmed the holding of the Workers' Compensation Commission. Id.

The argument made in Schutjer is the argument made here. Sullivan argues the Commission rejected his mental health injury based on the Deputy Commissioner's determination of Sullivan's credibility and failed to explain what weight was given to the medical experts or how the conflicting medical reports were considered.

In Schutjer, the commissioner's written opinion appears similar to that at issue here. The opinion walked through each of the conflicting medical opinions and then set forth a conclusion. The conclusion did not expressly indicate which medical opinions were found credible but did identify certain facts on which the commissioner based the decision. Schutjer upheld the commissioner's decision, holding that when the commissioner's conclusion was considered in the context of the commissioner's review of the medical evidence, it was evident that the commissioner chose to rely on certain experts "because those opinions were more consistent with the factual findings made by the commissioner" with respect to certain symptoms of the

claimant. Schutjer, 780 N.W.2d at 562. Thus, Schutjer held that it was “possible to identify from the commissioner’s causation discussion the evidentiary basis of his conclusion and why he gave preference to the opinion testimony [of two of the three experts].” Id.

Here, the Deputy Commissioner walked through each of the expert medical opinions in depth. Pages eight through seventeen lay out in detail the reports from each of the medical experts that Sullivan saw from February 2014 forward, the first time that he or his attorney raised a concern of depression relating to pain. Page 20 outlines the timeline of Sullivan’s complaints and the summarizes the conflicting medical opinions. Page 21 presents the Deputy Commissioner’s determination that Sullivan does not have a mental condition that is the result of the October 2, 2011 work injury.

The Deputy Commissioner’s conclusion does not expressly state that she finds Dr. Chessen and Dr. Andrikopoulos more credible than Dr. Mills and Dr. Gallagher. She does note in the paragraph before that there are two experts (Mills and Gallagher) who favor Sullivan’s position and two experts (Chesen and Andrikopoulos) who favor West Central’s position. The Deputy Commissioner then lists numerous factual findings that she finds support a determination that Sullivan does not have a mental condition caused by the October 2, 2011 work injury.

Under the teaching of Schutjer, this Court is to read the Deputy Commissioner’s written opinion as a whole to determine if it is “possible to identify ... the evidentiary basis of [her] conclusion.” Schutjer, 780 N.W.2d at 562. This Court finds that it is. The Deputy Commissioner identifies a number of factual findings, many of which stem from Dr. Andrikopoulos’ and Dr. Chesen’s reports. The Deputy Commissioner noted that Sullivan attended numerous medical appointments for more than two years and never raised a concern depression, anxiety, or PTSD, nor did those treating physicians observe symptoms associated

with a mental condition. (Arbitration Decision at 21). The issue of timing is directly addressed in both the reports of Dr. Chesen and Dr. Andrikopoulos. Dr. Chesen noted that it would be “difficult to reconcile” the timing of Sullivan’s symptoms and the delayed onset of symptoms. (Ex. F. p. 50; Arbitration Decision at 9). Dr. Andrikopoulos noted the delayed complaint of cognitive problems and that it is “a little peculiar” and concluded Sullivan was malingering. (Ex. R pp. 186-187, Arbitration Decision at 17). The Deputy Commissioner also noted that claimant did not request treatment or drug therapy for any mental health issue. In fact, the Deputy Commissioner noted that Sullivan was not currently requesting medical care for any alleged mental health condition. (Arbitration Decision at 21). Dr. Andrikopoulos noted that Sullivan’s action of “not seeking psychiatric treatment when it was covered by workers’ compensation requires an explanation.” (Ex. R., pp. 186-87, Arbitration Decision at 17).

Many of the factual findings the Deputy Commissioner cited to as a reason for the determination that Sullivan did not suffer a mental condition are reflected in the medical expert reports that align with her determination. Just as in Schutjer, it is evident the Deputy Commissioner chose to rely on certain experts “because those opinions were more consistent with the factual findings made by the commissioner.” Schutjer, 780 N.W.2d at 562. Based on the factual circumstances of this case, the Deputy Commissioner was required to evaluate the timing of Sullivan’s complaints of a mental condition and determine whether she agreed with Dr. Mills and Dr. Gallagher that Sullivan had experienced a late onset of a mental health condition nearly two years after the work injury or whether she agreed with Dr. Chesen and Dr. Andrikopoulos that the timing was “peculiar” and Sullivan did not have a mental condition. The Court finds that, read in context, the Court is able to identify the evidentiary basis of the Deputy

Commissioner's determination. Therefore, the Court finds the Deputy Commissioner did not err as a matter of law or act in violation of a provision of law.

The Court also finds the decision is supported by substantial evidence, did not fail to consider important evidence, and is not irrational, illogical, or wholly unjustifiable. The Deputy Commissioner walked through the medical reports of Dr. Chesen, Dr. Mills, Dr. Gallagher, and Dr. Andrikopoulos. As the Deputy Commissioner explained, two experts supported Sullivan's claim of a mental condition and two experts disputed it. Notably, Dr. Andrikopoulos determined that Sullivan is malingering, a determination uniquely tied to Sullivan's credibility. After having the opportunity to hear testimony and view the credibility of Sullivan, in addition to all other evidence, the Deputy Commissioner's decision aligned with Dr. Chesen and Dr. Andrikopoulos and listed factual findings those doctors had relied upon. In addition, the Deputy Commissioner noted that Sullivan had treated with a "myriad of physicians for numerous problems related to his work injury" and that "Not one of the treating physicians observed symptoms of depression, anxiety, or aspects of posttraumatic stress disorder." (Arbitration Decision at 15). The Deputy Commissioner is allowed to weigh all of the evidence in determining whether to accept or reject expert opinions. The weight given to expert testimony depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 845 (Iowa 2011). Weighing the expert opinions and the surrounding circumstances was within the province of the commission. Id. The basis of the Deputy Commissioner's determination is set forth above. The Court finds there was substantial evidence and the agency decision is not irrational, illogical, or wholly unjustifiable.

Finally, Sullivan argues that the Deputy Commissioner failed to determine whether Sullivan had a traumatic brain injury. The alleged traumatic brain injury is not raised as a separate injury that required a separate determination or treatment. Instead, Dr. Mills noted in his report that Sullivan had sustained a mild traumatic brain injury as part of the October 2, 2011 work injury and took that into account in his determination of diagnoses of mental health conditions. The traumatic brain injury was not raised as a separate issue to be decided by the Deputy Commissioner. Instead, it was one of many factual considerations taken into account by the medical experts as part of the consideration of whether Sullivan has a mental condition. The Deputy Commissioner did not find Dr. Mills' report to be persuasive and, as set forth above, made a decision that aligned with Dr. Chesen and Dr. Andrikopoulos based on other factual considerations. As set forth above, the Deputy Commissioner's written ruling set forth sufficient explanation that it was possible to identify the evidentiary basis of her conclusion. Schutjer, 780 N.W.2d at 562. Additional specific elaboration on the alleged traumatic brain injury was not required.

The decision of the Workers' Compensation Commission is affirmed. Costs are assessed to the Petitioner.



State of Iowa Courts

Type: OTHER ORDER

Case Number	Case Title
CVCV055660	BRETT V SULLIVAN VS WEST CENTRAL COOPERATIVE ET AL

So Ordered

Sarah Crane, District Court Judge
Fifth Judicial District of Iowa