IN THE COURT OF APPEALS OF IOWA

FILED
OCT 28 1982
CLERK SUPREME COURT

JOSEPH J. KURIMSKI,	)	
Petitioner-Appellant,	)	
vs.	)	
LOVILIA COAL COMPANY,	)	Filed October 28, 1982
Employer,	)	257
and	)	
BITUMINOUS INSURANCE COMPANY,	)	
Insurance Carrier,	)	2-274 2-67676
and	)	
ROBERT E. LANDESS, Iowa Industrial Commissioner,	)	
and	)	
IOWA INDUSTRIAL COMMISSION,	)	
Respondents-Appellees.	)	

Appeal from Monroe District Court, Richard J. Vogel, Judge.

The claimant, Joseph J. Kurimski, was awarded a 40 percent industrial disability in a review-reopening decision rendered by a deputy industrial commissioner. Upon appeal to the industrial commissioner, this award was reduced to 25 percent, which reduction was affirmed by the district court on claimant's petition for judicial review. AFFIRMED.

John N. Moreland, Ottumwa, for petitioner-appellant.

William D. Scherle of Hansen, McClintock & Riley, Des Moines, for respondents-appellees employer and insurance carrier.

Considered en banc.

PER CURIAM

The claimant, Joseph J. Kurimski, was awarded a 40 percent industrial disability in a review-reopening decision rendered by a deputy industrial commissioner. Upon appeal to the industrial commissioner, this award was reduced to 25 percent, which reduction was affirmed by the district court on claimant's petition for judicial review.

The injury occurred on September 25, 1975. For the following one and a half years, appellees paid temporary total disability. On March 3, 1977, one of the physicians who had been treating him, Dr. Misol, released him for work. A few days later, he entered the University of Nebraska Medical Center Pain Clinic. He was discharged from the program "with marked relief of his pain and ability to work" and "in good condition." Thereafter, he became employed at the Lake Rathbun Fish Hatchery as a driver-janitor.

Dr. Misol assesses his impairment at 10 percent. Another physician, Dr. Scheibe, rated his disability at 45 percent.

Kurimski appeals from the district court decision on judicial review affirming the agency's finding of 25 percent permanent-partial disability, asserting that the agency decision was not supported by substantial record evidence.

I. Scope of Review

Our review is limited under the provisions of Iowa Code sections 17A.19 and 17A.20 (1981). Under section 17A.19(8)(f), we may reverse or modify an agency's action when the record made before the agency, viewed as a whole, does not support the agency's determination by substantial evidence. Under section 17A.19(8)(g), we may reverse or modify the agency's action if such action is "[u]nreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion." The scope of our review of the industrial commissioner's decision is not de novo. The findings of the

commissioner have the effect of a jury verdict. Ward v. Iowa Dept. of Transportation, 304 N.W.2d 236, 237 (1981). "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." Id., citing Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296, 298 (Iowa 1974). "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 at 237-38, citing Wetzel v. Wilson, 276 N.W.2d 410, 412 (Iowa 1979). Where the evidence is in dispute or reasonable minds may differ on the inferences fairly drawn from the facts, the industrial commissioner's findings of fact are conclusive. McClure v. Union, et al., Counties, 188 N.W.2d 283 (Iowa 1971).

II. Substantiality of the Evidence.

Kurimski places great weight upon the report of Dr. Scheibe. The commissioner carefully weighed Dr. Scheibe's report in light of the fact that he had based his rating on one examination, which had been conducted for the sole purpose of arriving at a disability rating. The court found that some of Dr. Scheibe's conclusions contradicted Kurimski's own testimony concerning the same matters. Furthermore, the court concluded that there were not sufficient physical criteria to support Dr. Scheibe's rating. After considering other factors as well, the court concluded that Dr. Scheibe's disability rating must be given little weight.

After examining the record in light of the limitations placed upon us by the Code and earlier decisions, we conclude that there was substantial evidence to support the industrial commissioner's conclusions, and that the commissioner did not abuse his discretion or engage in an unwarranted exercise of discretion. We therefore affirm.

AFFIRMED.