IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 4-158 / 93-1010

DUANE FRANCIS KIESECKER, JR.,

Petitioner-Appellant,

vs.

WEBSTER CITY CUSTOM MEATS, INC., and LIBERTY MUTUAL INSURANCE COMPANY,

Respondents-Appellees.

Appeal from the Iowa District Court for Hamilton County, Kurt L. Wilke, Judge.

Plaintiff appeals from a ruling of the district court on judicial review affirming the Industrial Commissioner's ruling that he had suffered an eight percent permanent partial disability. **AFFIRMED.**

Mark S. Soldat, Algona, for appellant.

Tito Trevino and Janece M. Winterhof of Trevino & Leehey, Fort Dodge, for appellees.

Considered by Donielson, C.J., and Sackett and Huitink, JJ.

PER CURIAM

Petitioner-appellant Duane Francis Kiesecker, Jr., sought workers' compensation benefits from his employer, respondent-appellee Webster City Custom Meats, Inc., and its insurer, Liberty Mutual Insurance Company. Kiesecker's claim was heard by a Deputy Industrial Commissioner and the Deputy's decision was appealed to the Commissioner. Kiesecker then appealed the Commissioner's decision to the district court. The district court remanded five issues to the Commissioner, affirmed the Commissioner on seven other issues, reversed and remanded two issues and reversed one issue. Kiesecker now appeals the district court's decision. He claims: (1) the trial court erred by affirming the Commissioner's failure to determine permanent partial disability in addition to the medical impairment rating of a medical doctor; (2) the trial court erred by affirming in part the Commissioner's failure to award Iowa Code section 86.13 penalties, particularly on temporary partial benefit payment delays, principal accrued interest penalty delays; (3) the trial court erred in affirming the Commissioner's failure to determine the facts and applicable law to compute interest on late compensation payments; and, finally, (5) the district court erred in taxing one-half of the costs of appeal to the Commissioner and one-half of the costs of appeal to the district court to Kiesecker. We affirm.

Kiesecker began working for Webster City Custom Meats in September 1986. His job involved heavy lifting, pushing carts, and pulling meat on overhead racks. On November 27, 1987, Kiesecker claimed he suffered a work-related cumulative trauma injury to both knees resulting from the heavy lifting the job required.

Dr. Gitchell, a medical doctor at McFarland Clinic in Ames, diagnosed Kiesecker as suffering bilateral chondromalacia, or cumulative trauma to the knees. Gitchell determined Kiesecker's work aggravated a preexisting congenital predisposition that had been latent and not symptomatic prior to Kiesecker's job at Custom Meats. In December 1987, Kiesecker, at Dr. Gitchell's advice, was transferred to a different job that did not require heavy lifting.

Kiesecker missed work for doctor's appointments and surgery on his knees. Otherwise, he worked until he was discharged on April 13, 1988, because of a wage dispute.

The Deputy Industrial Commissioner's decision concluded Kiesecker received a cumulative trauma injury to both of his knees on November 27, 1987, and, as a result of work-related injury, Kiesecker suffered an eight percent permanent partial impairment to the body as a whole. The Deputy concluded Kiesecker sustained no partial reduction in earning ability when he was transferred to a different job in the plant. On appeal, the Industrial Commissioner adopted and affirmed the decision of the Deputy.

On judicial review, the district court concluded the Industrial Commissioner acknowledged Kiesecker was transferred on Dr. Gitchell's advice. The court further concluded Kiesecker's reduced hours and pay were the result of a slow down rather than his disability. The court found the Commissioner had failed to award temporary partial disability benefits for the periods December 20, 1987 to February 24, 1988 and April 11, 1988 to April 13, 1988, and remanded this issue. The district court found the Industrial Commissioner awarded healing period benefits for the four dates Kiesecker had doctor appointments and missed work, but remanded to the Industrial Commissioner to clarify how the compensation should be computed. The district court upheld the Industrial Commissioner's determination of an eight percent impairment rating. The district court found the Industrial Commissioner failed to address whether payments should first be applied to interest due, then to principal, and remanded this issue. The district court found the Industrial Commissioner's decision failing to find respondents unreasonable in initially calculating Kiesecker's rate of compensation was not supported by substantial evidence and reversed this decision and remanded to the Industrial Commissioner to consider the amount of penalty to be awarded. The district court found the Industrial Commissioner failed to address Kiesecker's request for a section 86.13 penalty for respondents' failure to timely pay him for his lost time to

attend medical care and remanded this issue. The district court denied Kiesecker's request for a section 86.13 penalty for failure to timely pay temporary partial disability benefits. The district court found the Industrial Commissioner failed to address Kiesecker's request for a section 86.13 penalty for respondents' termination of his healing period benefits after his second knee surgery and remanded this issue. The district court found the Industrial Commissioner failed to address Kiesecker's request for a section 86.13 penalty for respondents' delay in payment of healing period benefits and remanded this issue. The district court denied Kiesecker's request for a section 86.13 penalty for respondents' failure to timely pay interest. The district court denied Kiesecker's request for a section 86.13 penalty for respondents' failure to timely pay Iowa Code section 85.27 medical expenses. The district court upheld the Industrial Commissioner's decision to award Kiesecker $500 for respondents' untimely payment of permanent partial disability benefits. The district court reversed the Industrial Commissioner's assessment of costs on appeal and assessed one-half to Kiesecker and one-half to respondents.

Kiesecker first contends the trial court erred by affirming the Industrial Commissioner's failure to determine the amount of permanent partial disability compensation which was in addition to Dr. Gitchell's medical impairment rating.

There was considerable testimony from Kiesecker's friends and family he suffered limitations in his activities as a result of the problems with his knees. Kiesecker seems to claim this testimony supported, as a matter of law, a higher impairment rating. Iowa Code section 17A.19(8)(f) provides in a contested case the court shall grant relief from an agency decision which is unsupported by substantial evidence made before the agency when that record is viewed as a whole. Eaton v. Iowa Dep't of Job Serv., 376 N.W.2d 915, 916-17 (Iowa App. 1985). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Id. at 917. The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986). The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. Id. We affirm the district court on this issue.

Kiesecker's second contention is the trial court erred in affirming, in part, the Industrial Commissioner's failure to award a section 86.13 penalty for the delays in the temporary disability compensation payments. Kiesecker contends he is entitled to a penalty award under section 86.13 due to the frequent delays in paying healing period and temporary partial disability benefits.

Respondents contend the trial court correctly affirmed the Commissioner's decision not to award Iowa Code section 86.13 penalties. Iowa Code section 86.13 (1988), in pertinent part, provides:

> If a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the industrial commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were unreasonably delayed or denied.

The Commissioner assessed a penalty of $500 for a ninety-day delay in paying permanent partial disability benefits. We have considered Kiesecker's other claims for penalties and find them to be without merit. We affirm on this issue.

Kiesecker's third contention is the trial court erred by affirming the Industrial Commissioner's failure to determine the law and facts necessary to compute interest on late compensation payments.

Respondents contend the trial court correctly interpreted the law regarding interest calculations on compensation benefits. This claim was rejected in Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Kiesecker's last contention is the trial court erred in taxing one-half of the Industrial Commissioner's appeal costs and one-half of the judicial review costs to him. The Commissioner had discretion to tax costs. See Iowa Code § 86.40.

Respondents contend the trial court did not abuse its discretion in taxing one-half of the costs of appeal and judicial review to Kiesecker.

The question is whether the trial court abused its discretion in taxing appeal and judicial costs. Matters committed to the discretion of a lower court are not reviewable upon appeal; only the alleged abuse of that power is reviewable. State v. Frank, 298 N.W.2d 324, 327 (Iowa 1980). For us to find an abuse of discretion in a trial court ruling, it must be shown by the complaining party that the trial court's action was unreasonable under the attendant circumstances. Michael v. Harrison County Rural Elec. Coop, 292 N.W.2d 417, 419 (Iowa 1980). Generally, abuse of discretion will be found only where there is no support in the record for the trial court's action. See Kreamer v. College of Osteopathic Medicine and Surgery, 301 N.W.2d 698, 700 (Iowa 1981); Rath v. Sholty, 199 N.W.2d 333, 336 (Iowa 1972). We find the trial court did not abuse its discretion.

AFFIRMED.