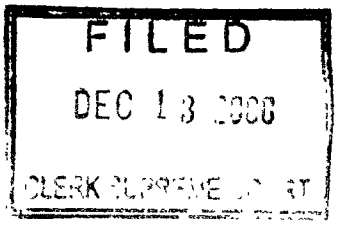
IN THE COURT OF APPEALS OF IOWA

No. 0-662 / 00-0372
Filed December 13, 2000



JANET MCCOOL,
Petitioner-Appellant,

vs.

DOWD DRUG and ALLIED MUTUAL LIFE INSURANCE CO.,
Respondents-Appellees.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Petitioner appeals from the district court ruling which affirmed on judicial review a decision of the workers' compensation commissioner awarding petitioner some workers' compensation benefits, but not permanent partial disability benefits. **AFFIRMED.**

Dennis L. Hanssen and Marci B. H. Tooman of Hopkins & Huebner, P.C., Des Moines, for appellant.

Lori A. Brandau and David L. Jenkins of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellees.

Considered by Huitink, P.J., and Mahan and Vaitheswaran, JJ.

MAHAN, J.

Petitioner appeals from the district court ruling which affirmed on judicial review a decision of the workers' compensation commissioner awarding petitioner some workers' compensation benefits, but not permanent partial disability benefits. Petitioner contends the court erred in affirming the commissioner's decision because (1) the commissioner failed to consider petitioner's testimony concerning her physical limitations following injury, and instead relied solely on medical evidence; and (2) the commissioner's failure to award permanent partial disability benefits was not supported by substantial evidence. We affirm.

Janet McCool works for Dowd Drug as a pharmacy technician and an accounts payable clerk. On July 2, 1996, her supervisor asked her to deliver a cassette holding medications to the courthouse in Guthrie Center. A woman at the courthouse was to deliver the cassette to a nursing home. McCool delivered the cassette, picked up an empty cassette to return to the pharmacy, and exited the courthouse. She walked out of the courthouse, stepped off a curb approximately eighteen inches high, heard her ankle pop, and fell to the ground.

An ambulance transported McCool to the Guthrie County Hospital. X-rays revealed a fracture and dislocation of the right ankle. She was transferred to Mercy Hospital in Des Moines, where Dr. Formanek performed an open reduction and internal fixation of the right trimalleolar ankle fracture. Dr. Farber provided follow-up care. He placed McCool in a short walking cast on July 12, 1996. He released her to return to light-duty work effective July 15, 1996. She

returned to light duty on July 17, 1996, and resumed her usual working schedule on July 20, 1996. McCool saw Dr. Farber again on August 23, 1996. He reported, "she is doing well," but told her "she is always going to have some stiffness and soreness in her ankle as a manifestation of traumatic arthritis. . . . The more she soaks this and works it, the better off she will be. I will plan on seeing her back PRN."

Dr. William Koenig, Jr., a specialist in physical medicine and rehabilitation, evaluated McCool on October 27, 1997. Utilizing the AMA *Guides to the Evaluation of Permanent Impairment*, 4th edition, he opined McCool sustained a seventeen percent impairment of the right lower extremity due to residual weakness.

Dr. Formanek re-evaluated McCool on February 26, 1998. He concluded:

> She has no true restriction in her ankle motion. In reviewing the AMA *Guides to the Evaluation of Permanent Impairment*, I would opine that she has no residual impairment of her ankle or lower extremity. There is the possibility she will require removal of the internal fixation due to the subcutaneous nature of the distal screws in the fibular area. . . . Otherwise, I do not believe she will need any further future medical care for this.

Dr. Koenig disagreed with Dr. Formanek's conclusions:

> He notes "good subtalar motion", but does not specify degrees of inversion and eversion during the exam. He also notes the range of motion of the ankle is from 10 degrees of dorsiflexion to 50 degrees of plantar flexion. This is normal range of motion for plantar flexion, but normal range for dorsiflexion at the ankle is 20 – 30 degrees. Thus, his examination implies some impairment based upon that.
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> Dr. Formanek notes that there is no instability of the ankle and, indeed, I noted none on my exam of October 27, 1997. However, he does not indicate strength testing to be present in his examination, which I used as the basis for my disability rating and

is referred to in Table 38 of the AMA *Guides to the Evaluation of Permanent Impairment*, fourth edition.

McCool filed a petition in arbitration before the Iowa Workers' Compensation Commissioner against Dowd Drug, employer, and Allied Mutual, insurance carrier (hereinafter referred to collectively as "respondents"), for the injury sustained on July 2, 1996. At the hearing before deputy workers' compensation commissioner Teresa Hillary on March 1, 1998, McCool testified prior to the injury she had no problems with her ankle. At the time of the hearing, she experienced difficulty going down steps, standing for long periods of time, and wearing dress shoes. She was unable to go on long walks with her husband as much anymore, and experienced difficulty dancing due to her stiff ankle.

In an arbitration decision filed April 13, 1998, the workers' compensation commissioner found McCool's injury did not arise out of her employment and ordered McCool "take nothing from this file." McCool appealed to the industrial commissioner. The industrial commissioner reversed, finding McCool's injury compensable as arising out of and in the course of her employment, and ordering respondents to pay healing period benefits and temporary partial disability benefits. The industrial commissioner went on to determine, however, McCool was not entitled to an award of permanent partial disability benefits because she sustained no loss of function of her right lower extremity.

McCool sought judicial review of the commissioner's determination she sustained no permanent partial disability in connection with the injury to her right ankle. The district court affirmed the industrial commissioner, concluding

substantial evidence supported the determination McCool sustained no permanent disability. McCool appeals.

Standard of Review. Our review is limited to correction of errors of law. *Koehler Elec. v. Wills*, 608 N.W.2d 1, 3 (Iowa 2000). When we review findings of the industrial commissioner, those findings carry the effect of a jury verdict. *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 271 (Iowa 1995). We will reverse an agency's findings only if, after reviewing the record as a whole, we determine substantial evidence does not support them. *Terwilliger,* 529 N.W.2d at 271. Evidence is substantial if a reasonable mind would accept it as adequate to reach the given conclusion. *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 649 (Iowa 2000).

In reviewing the industrial commissioner's findings of fact in workers' compensation proceedings, the question is not whether the evidence might support a different finding, but whether it supports the findings actually made. *Kiesecker v. Webster City Custom Meats Inc.*, 528 N.W.2d 109, 110 (Iowa 1995). The mere fact we could draw inconsistent conclusions from the same evidence does not mean substantial evidence does not support the commissioner's determinations. *Terwilliger,* 529 N.W.2d at 271. The industrial commissioner weighs the evidence, and the court should broadly and liberally apply those findings in order to uphold, rather than defeat, the industrial commissioner's decision. *St. Luke's Hosp.*, 604 N.W.2d at 649.

Commissioner's Consideration of Non-medical Evidence. The determination of functional disability is not limited to impairment ratings

established by medical evidence. *Miller v. Lauridsen Foods, Inc.*, 525 N.W.2d 417, 421 (Iowa 1994). The workers' compensation commissioner must consider all evidence, both medical and non-medical, to determine the extent of an employee's disability. *Terwilliger*, 529 N.W.2d at 273. Expert medical testimony may be "buttressed by supportive lay testimony." *Miller*, 525 N.W.2d at 421.

It is the duty of the commissioner to state the evidence she relied on and to detail the reasons for her conclusion. *Terwilliger*, 529 N.W.2d at 274. The 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 she has rejected it. *Terwilliger*, 529 N.W.2d at 274. An administrative agency cannot in its decision set out verbatim all testimony in a case. *Pitzer v. Rowley Interstate*, 507 N.W.2d 389, 393 (Iowa 1993). "Nor, when the agency specifically refers to some of the evidence, should the losing party be able, ipso facto, to urge successfully that the agency did not weigh all the other evidence." *Id.*

McCool contends the commissioner erred as a matter of law in failing to consider non-medical evidence of her residual disability. Respondents argue McCool's argument is actually the commissioner afforded insufficient weight to her testimony. McCool presents a close case, but after a careful review of the record, we agree with respondents. The commissioner, in her appeal decision, stated: "The record, including the transcript of the hearing before the deputy and all exhibits admitted into the record, has been reviewed de novo on appeal." The

commissioner, therefore, reviewed McCool's testimony, included in the transcript of the hearing before the deputy. In addition, the commissioner considered Dr. Koenig's report, which contained a recitation of the complaints similar to those made by McCool at the hearing. The commissioner chose to place greater weight upon the opinion of Dr. Formanek, McCool's treating physician, in this case. Assessing the weight of the evidence remains within the agency's exclusive domain. *Robbennolt v. Snap-On Tools Corp.*, 555 N.W.2d 229, 234 (Iowa 1996). We must not reassess the weight of the evidence on appeal. *Id.* The agency's determination must be affirmed if supported by substantial evidence. *Terwilliger*, 529 N.W.2d at 272. As in *Terwilliger*, the decision of the commissioner was "sufficiently detailed" and explained so we could follow the process of analysis.

Substantial Evidence. The commissioner concluded as follows:

> Claimant either has no permanent partial disability to her right ankle, or has a 17 percent impairment of the right lower extremity due to residual weakness, according to Dr. Koenig. Dr. Formanek is her treating orthopedic surgeon and Dr. Koenig is a specialist in electrodiagnostic medicine who performed a one-time examination on October 17, 1997. Dr. Koenig opined that Dr. Formanek's report of February 26, 1998 did not alter the opinions expressed in his original report. Dr. Formanek noted upon examination on February 26, 1998 there is no instability of the ankle. Dr. Koenig agreed that during his examination he also noted no instability of the ankle.
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> Dr. Formanek's opinions are given preference over the opinions of Dr. Koenig. Dr. Formanek was the treating physician, and had the opportunity to treat and observe the claimant on more than one occasion, and his evaluation was performed more closer in time to the hearing in this case, giving a more accurate view of the function of claimant's right ankle following the work injury. Therefore, based on Dr. Formanek's opinions, claimant has no loss of function to her right ankle.

McCool contends Dr. Formanek did not follow the AMA Guides and gave no consideration to muscle weakness as provided in the Guides. Again, McCool's arguments go to the weight given by the commissioner to the evidence. We find substantial evidence in the record, taken as a whole, to support the commissioner's conclusions. As the district court correctly concluded:

> [T]he Commissioner reviewed all of the evidence before her, including Dr. Koenig's criticisms of Dr. Formanek's impairment evaluations. The Commissioner reasoned that Dr. Formanek, as the treating physician, was a more credible judge of the overall effect of the injury than Dr. Koenig, who examined McCool long after the injury had taken place. The Commissioner can accept or reject any evidence, medical or non-medical, and give such evidence whatever weight she determines to be justified. [Citations omitted.] The Commissioner need not make individual findings with respect to McCool's various arguments. [Citation omitted.] She referred to the evidence she relied upon and provided detailed reasons for her conclusions. [Citation omitted.] The Court will not reassess the weight given to evidence by the Commissioner on appeal. When viewed as a whole, there is substantial evidence in the record to support her determination that McCool sustained no permanent partial disability.

AFFIRMED.