IN THE COURT OF APPEALS OF IOWA

No. 6-261 / 95-1252

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CLERK SUPREME COURT

IBP, INC.,
Appellant,

vs.

TODD DANKER,
Appellee.

Appeal from the Iowa District Court for Polk County, George Bergeson, Judge.

The petitioner-employer appeals the district court's ruling on judicial review affirming the industrial commissioner's review-reopening decision awarding the respondent permanent total disability benefits on his workers' compensation claim.

AFFIRMED.

Paul T. Kirchner and John M. Comer, Dakota City, Nebraska, for appellant.

Sheldon M. Gallner, Council Bluffs, for appellee.

Considered by Sackett, C.J., and Cady and Vogel, JJ.

VOGEL, J.

IBP, Inc. (IBP) appeals a district court ruling, affirming the industrial commissioner's review-reopening decision, awarding Todd Danker permanent total disability benefits on his workers's compensation claim. IBP claims there was not substantial evidence supporting a change of condition, allowing a review-reopening of Danker's claim. We affirm.

In December of 1986, Todd Danker suffered major injury to his left hand while working for IBP. Danker had been working at IBP so he could earn enough money to return to college. He also had plans to marry in the near future. The injury required several surgeries, yet left his hand maimed for life. Danker also suffered emotional problems attendant to the injury.

Danker sought worker's compensation benefits and a hearing followed. Michael Taylor, M.D., a psychiatrist who had examined and treated Danker, testified Danker suffered from depression but was treatable and would not suffer any long term limitations provided Danker followed through with medication and counseling. Unfortunately, Dr. Taylor was located in Des Moines and Danker lived in Council Bluffs, making the availability of IBP-approved medical care an enormous drain on Danker as he did not have the money nor the transportation to make regular trips to Des Moines. A settlement agreement was entered into June 4, 1992, which was based on the scheduled injury to the hand.

Danker filed a petition in July 1993 for a review-reopening proceeding seeking additional permanent partial disability benefits and alternate medical treatment. In July 1994 the industrial commissioner awarded Danker additional benefits and ordered IBP to authorize a psychiatrist in the Council Bluffs-Omaha area. The district court affirmed the ruling of the industrial commissioner.

IBP appeals.

Our scope of review is for the correction of errors at law. *King v. City of Mt. Pleasant*, 474 N.W.2d 564, 565-66 (Iowa 1991). In determining whether the district court erred in exercising its power of judicial review, we apply the standards of Iowa Code section 17A.19(8) (1993) to the agency action to determine whether our conclusions are the same as those of the district court. *Jackson County Pub. Hosp. v. PERB*, 280 N.W.2d 426, 429-30 (Iowa 1979). On review, the industrial commissioner's findings of fact are binding on this court if reasonable minds can draw different inferences from the evidence or if the evidence is in dispute. *Gallardo v. Firestone Tire & Rubber Co.*, 482 N.W.2d 393, 395 (Iowa 1992). The test is whether the commissioner's decision is supported by substantial evidence. *Id.* at 395.

The standard of review for a review-reopening proceeding, pursuant to Iowa Code Section 86.14(2), is a showing of a change in a claimant's condition. IBP maintains Danker did not meet his burden of proof as he could not show by a preponderance of evidence his condition was any different at the time of the hearing in May of 1994 than it was when the settlement agreement was entered into in June

of 1992. IBP bases this position on two main factors: 1) no change in medical condition according to Drs. Taylor and Severa, and 2) no change in Danker's medical condition or earning capacity according to Danker's own testimony.

IBP interpreted the two physicians diagnosis and prognosis as being unchanged from 1992 to 1994. Dr. Taylor stated in October 1991 Danker's mental condition was completely treatable with no functional limitations. However, he warned that depression will reoccur if Danker did not continue with medication and counseling. The record does not indicate Dr. Taylor saw Danker after October 1991.

Dr. James D. Severa, M.D., first saw Danker on March 24, 1992. At that time, Dr. Severa noted a variety of problems including depression, anxiety and nightmares stemming from the accident at IBP. Dr. Severa's notes indicate he saw Danker on the following dates: April 6, and July 27, 1992; December 21, 1993; January 11, and February 1, 1994. Numerous psychological problems were observed at each appointment. In December of 1993, Dr. Severa notes a deterioration from earlier sessions. This downhill slide continued through the last session in February of 1994 with increased depression and decreased ability to handle even the simplest daily chores. Although IBP claims Danker was depressed in 1992 and also in 1994, Dr. Severa's report indicated a "marked deterioration in function progressing into the present." As we find Dr. Severa's report standing alone is substantial evidence to affirm the industrial commissioner's ruling, we do not address the other issues raised by IBP.

We do, however, feel compelled to address the issue of IBP refusing to provide accessible medical care to Danker. Dr. Taylor anticipated Danker would be able to resume full employment, with proper medical care. Failure to improve to the extent anticipated at the original award is sufficient to establish a basis for a review-reopening hearing. *Meyers v. Holiday Inn*, 272 N.W.2d 24, 26 (Iowa App. 1978). Danker's failure to improve as Dr. Taylor had originally anticipated is due in part to the failure of IBP to provide the medication and locally-accessible medical treatment to Danker in Council Bluffs. Dr. Taylor first saw Danker in March of 1990 at which time Danker's mental status was "entirely within normal limits," with a mild to moderate degree of depression which could be fully resolved with appropriate treatment. On June 7, 1990, Dr. Taylor saw Danker again and reported his condition as "deteriorated." A July appointment was canceled due to car problems. In August, Dr. Taylor reported Danker was finally taking his medication regularly "now that a mechanism has been established for him to charge that medication." Two more appointments were canceled by Danker, citing transportation problems. At the appointment in December, Dr. Taylor recommended inpatient treatment for more aggressive treatment of Danker's depression. In a letter to IBP in January of 1991, Dr. Taylor stressed the need for medical treatment "geographically convenient" and "financially feasible" for Danker. In July of 1991, Dr. Taylor recommended to IBP that Danker have inpatient treatment at Iowa Lutheran Hospital in Des Moines. He was admitted on September 5, 1991 and discharged on October 26, 1991 "with no

psychiatric functional limitations" provided he continue to receive treatment and medication. In March of 1992, Danker was evaluated by Dr. Severa in Council Bluffs. Finally, after Danker qualified for Social Security Disability benefits, he was able to seek local care, on a regular basis, through Dr. Severa. Both Deputy Industrial Commissioner Lantz and this court question the failure of IBP to provide local treatment to Danker and what effect such failure may have had on Danker's deteriorated condition.

We affirm the ruling of the district court affirming the review-reopening decision of the industrial commissioner.

AFFIRMED.