IN THE COURT OF APPEALS OF IOWA

No. 9-186 / 98-0891
Filed May 26, 1999

DILTS TRUCKING INC.,
Appellant,

vs.

TODD BROCKMAN,
Appellee.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge.

Dilts Trucking, Inc. appeals from a district court ruling on judicial review affirming the agency award in a workers' compensation claim. **AFFIRMED.**

Theodore J. Stouffer, David A. Blagg, and James D. Garriott of Cassem, Tierney, Adams, Gotch & Douglas, Omaha, Nebraska, for appellant.

Laura L. Pattermann and Sheldon M. Gallner of Gallner & Gallner, P.C., Council Bluffs, for appellee.

Heard by Huitink, P.J., and Streit and Zimmer, JJ.

HUITINK, P.J.

This is an appeal from a district court sitting in judicial review of an administrative order requiring Dilts Trucking, Inc. to pay Todd Brockman workers' compensation benefits. The district court found the agency determination was supported by substantial evidence. We affirm.

I. Background Facts and Procedure.

Todd Brockman was employed as a driver with Dilts Trucking, Inc. While removing fifty-pound bags of wood chips in October 1993, Brockman sustained severe leg pain. The injury lead to the removal of a degenerative disc in Brockman's back.

Brockman filed a petition for workers' compensation benefits on March 2, 1994. Dilts filed its answer on May 9, 1994. On March 15, 1995, after denying Dilts' attorney's petition to withdraw, a deputy industrial commissioner ordered Dilts to file a first report of injury.[1] On April 24, 1995, the deputy ordered Dilts to show cause for its failure to file the first report of injury. On April 28, 1995, the deputy directed Dilts to secure replacement counsel or indicate in writing how it intended to defend the action. The order warned sanctions may result for failure to comply.

Dilts did not appear at the May 8, 1995, hearing to show cause for the failure to file a first report of injury. The deputy imposed a $100 fine. By the end of June 1995, Dilts had not responded to the April 28 order regarding replacement counsel.

---

[1] Dilts' attorney subsequently filed a second application to withdraw which was apparently granted. The date of the withdrawal is not clear from the record.

On June 29, 1995, the deputy sanctioned Dilts by closing the record to further activity or evidence by Dilts. At that time, the hearing was scheduled as the backup case for September 27, 1995.

On August 28, 1995, Dilts' original counsel filed a "reappearance of counsel" and requested a continuance and rescission of the sanctions. Dilts stated that while it was unrepresented it was attempting to settle the claim with Brockman. Dilts further maintained it had informed the agency by letter of the possibility of a settlement; however, no such letter was contained in the agency file.

On September 21, 1995, the deputy industrial commissioner denied the motion for a continuance, citing the date of the injury, date of the filing of the petition, and the late request for the continuance. The deputy ruled the issue of rescinding sanctions would be heard prior to the evidentiary hearing, and informed both parties to be prepared to proceed with the evidentiary hearing "in accordance with whatever ruling is made at the time by the deputy."

Prior to the evidentiary hearing on September 27, 1995, the sanctions were rescinded and Dilts was allowed to participate in it defense.[2] The deputy industrial commissioner denied Dilts' motion for continuance following the lifting of the sanctions. The deputy commissioner ultimately ordered Dilts to pay healing period benefits and permanent partial disability benefits in a lump sum with statutory interest.

---

[2] In deciding to lift the sanctions, the deputy commissioner relied solely on Dilts' counsel's representation that Dilts filed a written response to the April 28 order in June 1995. The deputy did not find Dilts' compliance was timely.

Dilts appealed the decision to the workers' compensation commissioner. It claimed the sanctions were improperly imposed because no court order was violated. It claimed the remedy for a sanction imposed in error was a new hearing. The workers' compensation commissioner affirmed, finding the sanctions were not imposed in error. She further rejected Dilts' argument the agency improperly refused to continue the hearing after the sanctions were lifted to allow it the opportunity to conduct discovery and obtain witnesses. The commissioner noted Dilts was given notice to be prepared to present evidence in the event of a favorable ruling. Although the commissioner noted Dilts was prevented by the sanctions from deposing Brockman and conducting certain other discovery, the sanctions were the result of Dilts' own conduct.

On judicial review, the district court affirmed the workers' compensation commissioner. The court concluded the agency had the authority to impose the sanctions, the evidence supported the agency's action in doing so, and the deputy did not abuse its discretion in denying the continuance after the sanctions were lifted. The court also noted that any limitation upon Dilts' ability to present evidence at the hearing due to the imposition of the sanctions was the result of Dilts' own conduct.

Dilts now appeals from the district court's findings.

II. Standard of Review.

Our supreme court has examined our standard of review under similar circumstances in *Stephenson v. Furnas Electric Co.*:

> Our review of agency action under Iowa Code section 17A.19(8) is to determine whether our conclusions are the same as those of the district court The district court, and we, accord only limited deference to the agency's interpretation of law, including statutory and agency rule interpretations. Our review of factual findings is greatly more circumscribed; we uphold the decision of the agency if it is supported by substantial evidence, when the record is viewed as a whole. We are not free to interfere with any agency finding where there is a conflict in the evidence or when reasonable minds might disagree about the inference to be drawn from the evidence, whether it is disputed or not.
>
> This is not to say we never interfere; the agency's decision cannot be unreasonable or involve an abuse of discretion. Unreasonableness is defined as action in the face of evidence as to which there is no room for difference of opinion among reasonable minds, or not based on substantial evidence. Abuse of discretion is synonymous with unreasonableness, and involves lack of rationality, focusing on whether the agency has made a decision clearly against reason and evidence. The agency of course cannot act unconstitutionally, in violation of a statutory mandate, or without substantial support in the record. The court must broadly and liberally apply the agency findings in order to uphold, rather than defeat, the agency's decision. The imposition of sanctions by administrative agencies is discretionary.

Stephenson v. Furnas Elec. Co., 522 N.W.2d 828, 831 (Iowa 1994)(citations omitted).

III. The Merits.

We find the workers' compensation commissioner possessed legal authority to impose sanctions on Dilts. *See* Iowa Admin. Code r. 873-4.36(86)(authorizing commissioner to impose sanctions for failure to comply with agency order or procedural rule). We also find the commissioner's affirmance of the deputy's decision to impose sanctions was not unreasonable. The record reflects Dilts was ordered on April 28, 1995, to secure counsel or indicate in writing how it planned to proceed with its defense. The order required compliance within twenty days. Even

accepting Dilts' position on appeal as absolutely true, the record indicates Dilts did not respond to the order until June 2, 1995, well after the twenty-day period had passed. Dilts has not proven or even alleged it complied with the April 28, 1995, order within the appropriate time frame.

We affirm the commissioner's finding the deputy commissioner acted within his discretion in initially imposing sanctions for Dilts' untimely compliance. The only question remaining for review is whether the commissioner abused her discretion in affirming the deputy's refusal to grant Dilts' motion for continuance after sanctions were lifted.

The crux of Dilts' argument on appeal is the sanctions were imposed in error, and, thus, the deputy should have taken remedial measures to place Dilts in the position it occupied prior to the imposition of the sanctions. Dilts therefore claims the deputy acted unreasonably in refusing to grant a continuance to allow Dilts adequate time to prepare.

In the commissioner's appeal decision, she specifically found the sanctions were not imposed "in error." The commissioner noted that for whatever reason, Dilts chose not to be represented by counsel and failed to comply with the deputy's April 28, 1995, order. She found the sanctions imposed were not caused by the agency or by Brockman, but by Dilts' conduct alone. We defer to the commissioner's findings.

The record reflects this case was on file for more than two years at the time of the hearing. Granting a continuance at such a late date would have required Brockman

to wait even longer based on Dilts' own neglect. Based on these circumstances, we find the commissioner did not act unreasonably in affirming the deputy's refusal to grant a continuance. *See Dunlavey v. Economy Fire & Cas. Co.*, 526 N.W.2d 845, 858-59 (Iowa 1995); *Stephenson*, 522 N.W.2d at 831-32.

We affirm the district court.

AFFIRMED.

No. 98-0891. [9-186] DILTS TRUCKING v. BROCKMAN

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge. **AFFIRMED.** Heard by Huitink, P.J., and Streit and Zimmer, JJ. Opinion by Huitink, P.J. (7 pages $2.80)

Brockman was employed with Dilts Trucking. Brockman filed a petition for workers' compensation benefits on March 2, 1994. Dilts filed its answer on May 9, 1994. On March 15, 1995, after denying Dilts' attorney's petition to withdraw, a deputy industrial commissioner ordered Dilts to file a first report of injury. Dilts' attorney filed a second application to withdraw which was granted. On April 24, 1995, the deputy ordered Dilts to show cause for its failure to file the first report of injury. On April 28, 1995, the deputy directed Dilts to secure replacement counsel or indicate in writing how

No. 98-0891. [9-186] DILTS TRUCKING v. BROCKMAN (continued)

it intended to defend the action. Dilts did not appear at the hearing to show cause for the failure to file a first report of injury. By the end of June 1995, Dilts had not responded to the April 28 order regarding replacement counsel. The deputy sanctioned Dilts by closing the record to further activity or evidence by Dilts. Dilts' original counsel filed a "reappearance of counsel" and requested a continuance and rescission of the sanctions. Dilts maintained it had informed the agency by letter of the possibility of a settlement; however, no such letter was contained in the agency file. On September 21, 1995, the deputy industrial commissioner ruled the issue of rescinding sanctions would be heard prior to the evidentiary hearing, and informed both parties to be prepared to proceed with the evidentiary hearing "in accordance with whatever ruling is made at the time by the deputy." Prior to the evidentiary hearing, the sanctions were rescinded and Dilts was allowed to participate. The deputy denied Dilts' motion for continuance following the lifting of the sanctions. The deputy ultimately ordered Dilts to pay healing period benefits and permanent partial disability benefits in a lump sum with statutory interest. Dilts appealed the decision to the workers' compensation commissioner who found although Dilts was prevented by the sanctions from deposing Brockman and conducting certain discovery, the sanctions were the result of Dilts' own conduct. On judicial review, the district court affirmed. We find the commissioner possessed legal authority to impose sanctions. We also find the commissioner's affirmance of the deputy's decision to impose sanctions was not unreasonable. Dilts was ordered on April 28, 1995, to secure counsel or indicate in writing how it planned to proceed with its defense within twenty days. Even accepting Dilts' position on appeal as absolutely true, the record indicates Dilts did not respond to the order until June 2, 1995, well after the twenty-day period had passed. The only question remaining for review is whether the commissioner abused her discretion in affirming the deputy's refusal to grant Dilts' motion for continuance after sanctions were lifted. We find the commissioner did not act unreasonably in affirming the deputy's refusal to grant a continuance.