IN THE COURT OF APPEALS OF IOWA

FILED
OCT 25 1996
CLERK SUPREME COURT

No. 6-269 / 95-1504

FRANCIS A. SCHOENFELD, Claimant,

Petitioner-Appellant,

vs.

FDL FOODS, INC., Self Insured Employer,

Respondent-Appellee.

Appeal from the Iowa District Court for Dubuque County, Lawrence H. Fautsch, Judge.

The petitioner appeals from the district court's ruling on judicial review affirming the industrial commissioner's decision on a workers' compensation claim denying him permanent disability benefits. **AFFIRMED.**

Michael J. Coyle and Michael J. Shubatt of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for appellant.

James Heckmann and Les M. Blair, III of Bauer and Heckmann, P.C., Dubuque, for appellees.

Considered Huitink, P.J., and Habhab and Streit, JJ.

HUITINK, J.

Francis A. Schoenfeld appeals from the district court's decision affirming the Industrial Commissioner's denial of his claim for permanent partial disability benefits. We affirm.

The agency record indicates Schoenfeld injured his knee while working for F.D.L. Foods, Inc. on August 21, 1992. He initiated these proceedings by filing a petition for worker's compensation arbitration in January 1994. In a hearing assignment order filed in December 1993, a deputy industrial commissioner set a February 25, 1994 discovery deadline. The terms of this order required the parties to serve a list of witnesses and exhibits upon the opposing party prior to the deadline date. The hearing on Schoenfeld's claim was set for April 26, 1994.

Schoenfeld served F.D.L. with a proposed witness and exhibit list on April 13, 1994. On April 14, 1993, Schoenfeld was re-examined by his treating physician, Dr. David S. Field. On April 19, 1993, Dr. Field issued a report based on the April 14th examination in which he opined that Schoenfeld sustained a permanent injury as a result of work related activity. Dr. Field also stated that Schoenfeld suffered a seven percent impairment to his lower extremity. Schoenfeld's attorney sent a copy of this report to F.D.L.'s attorney on April 20, 1993. F.D.L.'s attorney received it on April 21, 1993, three working days before the scheduled hearing.

F.D.L. objected to the admission of Dr. Field's report at the hearing before the deputy industrial commissioner. F.D.L. cited the untimely service of Dr. Field's report and its resulting inability to prepare a response to the content of the report as reasons supporting its exclusion. Schoenfeld's attorney acknowledged the untimely service of the report. He, however, noted Dr. Field was Schoenfeld's treating physician and that both his name and medical records were included in Schoenfeld's initial witness and exhibit lists. Counsel also attributed the delayed report to Dr. Field's dissatisfaction with Schoenfeld's inability and F.D.L.'s insurance company's refusal to pay the accrued costs of Schoenfeld's treatment. Counsel further stated Schoenfeld's willingness to dismiss his claim and refile it as a means of avoiding its exclusion. *See generally* Iowa R. Civ. P. 215.

The report was admitted over F.D.L.'s objection. The deputy stated her reluctance to exclude evidence from Schoenfeld's treating physician. She also indicated that the weight of the opinions included in the challenged report could be fairly measured by comparing them with other medical records prepared by Dr. Field as well as other evidence in the record.

The deputy ultimately found Schoenfeld sustained a work related injury causing temporary and permanent disability. Schoenfeld was awarded benefits based on these determinations. F.D.L.'s insurance carrier was also ordered to pay Schoenfeld's medical expenses.

On appeal to the commissioner, the deputy's award for temporary total disability benefits and medical expenses was affirmed. The commissioner, contrary to the deputy's findings, excluded Dr. Field's report citing the prejudice resulting to F.D.L. by its admission. In the absence of this report, the commissioner found no other proof that Schoenfeld suffered a permanent injury and reversed the deputy's award of permanent partial disability benefits. The Industrial Commissioner's decision was affirmed on judicial review.

On appeal, Schoenfeld contends the exclusion of Dr. Field's report under these circumstances was an abuse of the Industrial Commissioner's discretion and it was error for the district court to conclude otherwise. He argues that the untimely submission of this report was not due to his lack of diligence but instead was caused by circumstances beyond his control. Schoenfeld also argues that by excluding the exhibit the commissioner acted contrary to the principle that workers compensation statutes should be liberally construed for the benefit of the employee. *See McSpadden v. Big Ben Coal Co.*, 288 N.W.2d. 181, 188 (Iowa 1980).

Our scope of review in this case is limited to errors of law. *Food, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162, 164-165 (Iowa 1982). The issue for our determination is whether the district court correctly applied the law. *Id.* The dispositive issue raised in this case concerns the commissioner's imposition of sanctions on a party for failing to comply with a hearing assignment order. The use of

discovery sanctions by an administrative agency is discretionary. *Stephenson v. Furnas Electric Co.*, 522 N.W.2d 828, 831 (Iowa 1994). We will not interfere unless the agency's imposition of sanctions was "unreasonable, arbitrary, capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion." Iowa Code §17A.15(8)(g); *Furnas*, 522 N.W.2d at 831. An abuse of discretion and unreasonableness are synonymous. Both implicate a lack of rationality focusing on whether the agency has made a decision clearly against reason and evidence. *Frank v. Iowa Dept. of Transportation*, 386 N.W. 2d 86, 87 (Iowa 1986).

In this case, the exercise of discretion on this issue by the commissioner conflicted with the decision of the deputy commissioner. However, the decision resulting from the deputy's exercise of discretion was not the final decision of the agency because F.D.L. appealed that decision to the commissioner. On appeal, the commissioner had all the power which it would have had in making the initial decision. Iowa Code §17A.15 (3). We accordingly limit our review to the commissioner's actions without regard for the deputy's findings and conclusions that were rejected by the commissioner on appeal.

We are, based on our review of the record, unable to find the commissioner's decision to exclude Dr. Field's report was an abuse of discretion. The report was prepared and served within six days of the arbitration hearing. The report contained the only evidence indicating Schoenfeld's injuries were permanent and the extent of his

disability. There was no practical way for F.D.L. to evaluate the implications of this newly disclosed evidence and prepare a response with only three working days remaining before trial. The commissioner acted well within its discretion by imposing the severe sanction of exclusion in view of the prejudice caused F.D.L. by Schoenfeld's untimely service of Dr. Field's report.

AFFIRMED.