IN THE COURT OF APPEALS OF IOWA

No. 1-208 / 00-1362
Filed June 29, 2001

FILED
JUN 29 2001
CLERK SUPREME COURT

FRUEHAUF TRAILER CORP. and NATIONAL UNION FIRE INSURANCE COMPANY,
Petitioners-Appellants,

vs.

CLINT WATTS,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Linda R. Reade, Judge.

The petitioners appeal from the district court's ruling on judicial review affirming the workers' compensation commissioner's decision awarding the respondent permanent partial disability benefits. The petitioners claim that the district court erred in affirming the agency's decision because the commissioner improperly relied upon medical opinions issued almost two years prior to the date of the respondent's last surgical procedure, and because the commissioner's decision failed to provide any analysis or discussion of petitioners' appeal issues.

AFFIRMED.

John E. Swanson and Aaron T. Oliver of Hansen, McClintock & Riley, Des Moines, for appellants.

Stephen D. Lombardi of Lombardi Law Firm, Des Moines, for appellee.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

000123

MILLER, J.

Fruehauf Trailer Corporation (Fruehauf) and its workers' compensation insurer National Union Fire Insurance Company (National) appeal from the district court's ruling on judicial review affirming the workers' compensation commissioner's decision awarding Clint Watts permanent partial disability benefits. Fruehauf claims the district court erred in affirming the decision of the workers' compensation commissioner because (1) the commissioner improperly relied upon a medical opinion issued almost two years prior to the date of Watts' last surgical procedure, and (2) the commissioner failed to provide any analysis or discussion of Fruehauf's appeal issues. We affirm.

I. BACKGROUND FACTS

Clint Watts was employed as an aluminum welder by Fruehauf from August 1991 until August 1992. In May 1992 Watts experienced a loss of feeling in his fingers and tingling in his hands. The symptoms persisted and a medical examination revealed active bilateral carpal and cubital tunnel syndrome in both hands.

In the summer of 1992 Dr. David Boarini, M.D., performed separate surgeries on both of Watts' hands and elbows. Dr. Boarini subsequently opined Watts had sustained a two percent impairment rating to each of his upper extremities. A functional capacity evaluation was performed prior to Watts' release to return to work. It indicated he was not restricted from work involving simple grasping, fine manipulation, vibration or repetitive motions. A weight restriction was imposed, however it was subsequently lifted in October of 1992.

Dr. Marc Hines, M.D., conducted an independent medical evaluation on December 1, 1992. Dr. Hines gave watts a forty-five percent impairment rating to his right upper extremity and a thirty-seven percent impairment rating to his left upper extremity.

Watts received additional medical care and treatment from Dr. William Eversmann, M.D. Dr. Eversmann performed further surgery on Watts' left hand and elbow in August of 1994. Dr. Barbara Ohnemus, D.O., issued a work release for Watts in October 1995 stating he was unable to do any lifting greater than twenty pounds. Dr. Eversmann saw Watts again in November 1995 and noted that Watts' wrist grip had improved and there were only minor stresses to his wrists. Eversmann gave the opinion that Watts had no impairment at that time.

Watts filed a claim for workers' compensation benefits. After an arbitration hearing, the deputy workers' compensation commissioner issued an arbitration decision determining Watts sustained forty-three percent whole body impairment and awarded permanent partial disability benefits. The deputy commissioner determined Boarini's ratings were not credible because they were given prior to Watts' second surgery on his left arm. The deputy also rejected Eversmann's rating as without merit given "the numerous surgeries claimant has undergone, and the problems he still encounters when performing repetitive work." The deputy determined Hines gave the most credible ratings and used Hines' ratings in determining Watts' permanent disability rating.

Fruehauf and National appealed the deputy's decision to the workers' compensation commissioner, specifically arguing that the deputy erred in relying

on Hines' opinion rather than Eversmann's after Eversmann performed later, additional surgeries on Watts. The appeal was decided by the chief deputy workers' compensation commissioner, who had been designated by the commissioner to issue the final agency decision pursuant to Iowa Code section 86.3 (1999). The chief deputy (hereafter referred to as the "commissioner") summarily affirmed and adopted the deputy's decision in full as final agency action.

Fruehauf and National filed a petition for judicial review challenging the commissioner's decision. The district court affirmed the commissioner's decision. The court determined Dr. Hines' opinion could serve as a basis for Watts' impairment rating, and there was substantial evidence in the record to support the commissioner's conclusion that Dr. Hines provided the most credible impairment rating. The court further concluded the commissioner's adoption of the deputy's detailed decision satisfied both common law and statutory requirements for such a decision. Fruehauf and National (hereafter collectively referred to as "Fruehauf") appeal from the district court's ruling.

II. STANDARD OF REVIEW

Our review of a final decision of the workers' compensation commissioner, like that of the district court, is for correction of errors of law. *Second Injury Fund of Iowa v. Shank*, 516 N.W.2d 808, 812 (Iowa 1994). 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) to the agency action to determine whether our conclusions are the same as those of the district court. *Williamson v. Fansteel,* 595 N.W.2d 803, 806 (Iowa 1999). The agency's findings are akin to

a jury verdict, and we broadly apply them to uphold the decision. *Shank,* 516 N.W.2d at 812. While we give weight to the commissioner's interpretations of relevant statutory provisions, we are not bound by them. *Bergen v. Iowa Veterans Home*, 577 N.W.2d 629, 630 (Iowa 1998).

We may reverse, modify, or remand to the commissioner for further proceedings if the agency's action is affected by an error of law, or if it is not supported by substantial evidence when the record is viewed as a whole. *Quaker Oates Co. v. Ciha*, 552 N.W.2d 143, 150 (Iowa 1996). Evidence is substantial if a reasonable mind would find it adequate to reach the same findings. *Murillo v. Blackhawk Foundry*, 571 N.W.2d 16, 17 (Iowa 1997). The commissioner's decision does not lack substantial evidential support merely because inconsistent conclusions could be drawn from the same evidence. *Id.* The ultimate question is not whether the evidence supports a different finding, but whether it supports the finding the commissioner actually made. *Id.*

III. MERITS

Fruehauf argues the commissioner erred in adopting the opinion of Dr. Hines over the more recent opinion of Dr. Eversmann. Fruehauf asserts that Watts' subsequent improvements and impairment ratings were ignored and the commissioner failed to give any weight to the timing of the surgeries. Fruehauf contends the agency decision renders meaningless the "statutory requirement" that the injured worker's impairment rating not be determined until the injured worker has reached maximum medical improvement. Additionally, Fruehauf argues the commissioner's summary affirmance of the deputy's decision does not meet the requirements of Iowa law because it failed to address any of the

COPY

issues presented on appeal and therefore the commissioner has abrogated her duty to give meaningful review to deputies' decisions.

A. Medical Opinion Evidence

The general rule regarding expert testimony is that the workers' compensation commissioner (formerly the industrial commissioner), as the trier of fact, is free to accept or reject, in whole or in part, such testimony even if uncontroverted. *Sondag v. Ferris Hardware*, 220 N.W.2d 903, 907 (Iowa 1974); *Prewitt v. Firestone Tire & Rubber Co.*, 564 N.W.2d 852, 855 (Iowa Ct. App. 1997). The weight to be given expert testimony depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998). In the context of expert opinion concerning causal connection of an injury with employment, our supreme court has stated:

> The weight to be given such an opinion is for the finder of fact, in this case the commissioner, and that may be affected by the completeness of the premise given the expert and other surrounding circumstances.
>
> When the expert's opinion is based upon an incomplete history, the opinion is not necessarily binding upon the commissioner. The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion.

Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995) (citations omitted).

The commissioner is required to examine and consider all evidence in the record in making a disability determination. *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 273 (Iowa 1995). This would include the timing and sequence of medical treatments and evaluations. *See, e.g., Gilleland v. Armstrong Rubber*

Co., 524 N.W.2d 404, 408 (Iowa 1995). It is well-established law that the commissioner must state the evidence relied upon and detail the reasons for her conclusions. *Bridgestone/Firestone v. Accordino*, 561 N.W.2d 60, 62 (Iowa 1997); *Terwilliger,* 529 N.W.2d at 274. However, "the commissioner need not discuss *every* evidentiary fact and the basis for its acceptance or rejection so long as the commissioner's analytical process can be followed on appeal." *Accordino*, 561 N.W.2d at 62 (citing *Terwilliger*, 529 N.W.2d at 274). Thus, the commissioner's duty is satisfied if "it is possible to work backward [from the agency's written decision] and to deduce what must have been [the agency's] legal conclusions and [its] findings of fact." *Norland v. Iowa Dep't of Job Serv.*, 412 N.W.2d 904, 909 (Iowa 1987) (quoting *Ward v. Iowa Dep't of Transp.*, 304 N.W.2d 236, 239 (Iowa 1981)).

With respect to the expert medical opinion in this case the commissioner stated:

> None of the ratings in the record from the treating physicians is very credible. Dr. Boarini's ratings were given prior to claimant's second surgery to the left arm. Additionally, his ratings seem extremely low, considering the extensive surgeries claimant has undergone. Dr. Eversman's rating is without merit, given the numerous surgeries claimant has undergone, and the problems he still encounters when performing repetitive work.
>
> After considering all of the ratings, and the AMA Guides, it is determined that Dr. Hines has given the most credible ratings in this case, especially after considering Dr. Boarini's work restrictions (which, although were rendered prior to the second surgery, were predicated on the overall condition of carpal tunnel). Dr. Hines' ratings (45 percent to the right upper extremity; 37 percent to the left upper extremity) will be used to determine claimant's loss under Iowa Code section 85.34(2)(s).

The trier of fact need not rely on any medical opinion that is based on an incomplete medical history. *Dunlavey*, 526 N.W.2d at 853.[1] It is, however, within the discretion of the commissioner to accept such opinion over that of a more recent opinion if she determines it to be more credible and persuasive. *See id.* (stating the commissioner as trier of fact has the duty to determine credibility of witnesses and weigh evidence, together with the other disclosed facts and circumstances, and then accept of reject the opinion).

We find that although the medical opinion relied upon by the commissioner was issued prior to Watts' last surgery and was not the most recent opinion, the reasons for such reliance are explicitly set forth in the deputy's decision, which is incorporated in the commissioner's decision, and the commissioner's analytical process can be followed on appeal.

The expert medical opinion of each of the three physicians involved in this case is clearly different than the opinion of each of the other two. However, it is equally clear all such evidence was before the commissioner and considered by the commissioner. It is evident from the commissioner's decision that the timing of the various medical treatments in conjunction with the sequence of the doctors' opinions was taken into account by the commissioner in rendering the agency's decision. Based on a review of the expert witness testimony the commissioner found both Dr. Boarini's opinion and Dr. Eversmann's opinion to be without merit and gave reasons for making such findings. The commissioner

---

[1] We also note that a treating physician's testimony will not necessarily, as a matter of law, be given more weight than that of an examining physician. *See Gilleland v. Armstrong Rubber Co.*, 524 N.W.2d 404, 408 (Iowa 1994); *Rockwell Graphic Sys., Inc. v. Prince*, 366 N.W.2d 187, 192 (Iowa 1985).

found that Dr. Boarini's rating was not only given before Watts' second surgery to his left arm (and the continuing and increasing problems that led to the second surgery), but the ratings seemed extremely low considering the extensive surgeries. The commissioner found Dr. Eversmann's rating without merit given the numerous surgeries Watts had undergone and the problems he continued to have. This left the deputy with only the earlier opinion by Dr. Hines to rely upon.

We find, when the record is viewed as a whole, there is substantial evidence to support the commissioner's discounting or rejecting of Dr. Boarini's opinion, and substantial evidence to support the commissioner's reliance on Dr. Hines' opinion over the more recent opinion of Dr. Eversmann in determining Watts' impairment rating. A reasonable mind could find the evidence adequate to reach the same conclusion. The commissioner's decision does not lack substantial evidential support merely because inconsistent conclusions could be drawn from the same evidence. *Murillo*, 571 N.W.2d at 17. The ultimate question is not whether the evidence would support a different finding, but whether it supports the finding the commissioner actually made. *Id.*

Fruehauf also argues that by allowing the agency to rely on Hines' opinion we would render meaningless the "statutory requirement" of waiting until an injured worker is at maximum medical improvement before determining whether or not any impairment has resulted from a particular injury. In support of its argument Fruehauf cites only generally to Iowa Code section 85.34. However, that code section deals with types and amounts of compensation, and timing of payments, for permanent disabilities. It contains no requirements or restrictions concerning the timing of impairment evaluations.

B. Summary Affirmance by Commissioner

Fruehauf further argues the district court erred in affirming the commissioner's summary affirmance and adoption of the deputy's decision because such procedure does not satisfy Iowa statutory and case law requirements. Specifically, Fruehauf alleges the commissioner's mere adoption of the deputy's decision does not comply with Iowa Code section 17A.16(1) which provides in pertinent part:

> A proposed or final decision or order in a contested case shall be in writing or stated in the record. A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. . . . Each conclusion of law shall be supported by cited authority or by a reasoned opinion.

Our supreme court has previously decided this issue adversely to Fruehauf in *Accordino*. In *Accordino* the court determined that the industrial commissioner's "short form" appellate decision, which was very similar to the appeal decision given by the commissioner here, satisfied the statutory mandate of section 17A.16(1). It stated:

> No purpose would be served by requiring the commissioner to duplicate the deputy's effort. We do not read the statute to require it. When the commissioner's affirmance rests on review yielding identical factual findings, and the commissioner's legal analysis mirrors that described by the deputy, no further recitals are necessary to satisfy section 17A.16(1) for purpose of judicial review. To read into the statute the necessity of a full opinion, as required by the district court here, exalts form over substance.

Accordino, 561 N.W.2d at 62.

Here the deputy's decision set forth findings of fact and conclusions of law in a four and one-half page, single-spaced opinion. We believe this decision is sufficiently detailed to show the path that was taken through the conflicting

evidence and to permit the parties to deduce the agency's legal conclusions and its finding of fact. *See Id.; Norland*, 412 N.W.2d at 909. The commissioner relied upon the deputy's legal conclusions and findings of fact and adopted them as her own in full. Therefore, we find the appeal decision satisfies the requirements of section 17A.16(1) and do not believe such a decision "trivializes" the appeal process as Fruehauf alleges.

IV. CONCLUSION

Based on our review of the evidence in the record as a whole, we agree with the conclusions of the district court and find the agency's decision should be affirmed. We find there is substantial evidence in the record to support the commissioner's determination that Dr. Hines provided the most medically accurate and credible opinion regarding Watts' impairment rating. Furthermore, based on the supreme court's decision in *Accordino,* we conclude the commissioner's "short form" or summary affirmance of the deputy's decision complies with applicable statutory requirements. Therefore, we affirm the district court's ruling affirming the workers' compensation commissioner's decision awarding Watts' permanent disability benefits.

AFFIRMED.