IN THE COURT OF APPEALS OF IOWA

No. 4-301 / 93-1582

FILED
NOV 28 1994
CLERK SUPREME COURT

JAMES JONES,

Appellant,

vs.

PRAIRIE FARMS, INC., Employer, and **NATIONAL UNION FIRE INSURANCE COMPANY,** Insurance Carrier,

Appellees.

Appeal from the Iowa District Court for Polk County, William H. Joy, Judge.

The petitioner challenges the district court's order upholding the industrial commissioner's decision denying him workers' compensation benefits. **AFFIRMED.**

Arvid D. Oliver, Des Moines, for appellant.

Dorothy L. Kelley, Des Moines, for appellees.

Considered by Donielson, C.J., and Hayden and Huitink, JJ.

DONIELSON, C.J.

James Jones was employed by Prairie Farms Dairy, Inc. On June 3, 1988, Jones informed his supervisor at Prairie Farms he had hit his head while working. The supervisor for that shift examined Jones's head, but could see no bump or bleeding. Jones worked his full shift on June 3, 1988, and did not miss any work until June 24, 1988.

Jones did not seek medical treatment until June 24, 1988, when he went to the emergency room at Des Moines General Hospital. He complained of headaches, blurred vision, and some numbness of the left side of his body. He also complained of memory loss and slowness in thinking. He claimed these symptoms commenced when he injured his head on June 3, 1988. Jones received several medical examinations. Doctors could find no physical evidence of a head injury.

Jones also had psychological testing to determine if he had a neurological injury. Dr. Peltan, who performed the tests concluded:

> Mr. Jones' neuropsychological findings are highly inconsistent with one another. He did well on some tests but poorly on similar tests. As such, it is difficult to describe a pattern of deficit. Furthermore, there is no consistent data to indicate a locus of a lesion as one might expect in an individual with a closed head injury. His forgetfulness and other problems might be understood best in terms of the secondary gain that his injury and supposed deficit might provide him.

Jones was then seen by a psychiatrist, Dr. Yates, who determined Jones suffered from atypical depression, and

gave the diagnosis of major depressive disorder. Dr. Yates stated that in view of the time sequence of the onset of symptoms, he felt the head injury was a contributing cause to Jones's psychiatric condition. However, Dr. Yates did not obtain a full medical history prior to giving his diagnosis.

Jones filed a claim for workers' compensation benefits on March 1, 1989, claiming that he was suffering from a major depressive disorder which was caused by a head injury on June 3, 1988.

Jones was subsequently examined by several doctors on behalf of Prairie Farms. Dr. Graham, a psychologist, determined Jones failed to cooperate in testing and concluded his behavior was consciously motivated to create or magnify symptoms as part of the legal process. Dr. Doro, a neurologist, found no neurological basis for Jones's symptoms. Also, Dr. Gallagher, a psychiatrist reviewed Jones's records. Dr. Gallagher noted the many inconsistencies in the results of neuropsychological testing and concluded Jones's complaints were highly suspicious.

Additionally, Patricia Conway, a rehabilitation consultant, administered vocational tests to Jones. Jones did very poorly on a general aptitude test. He claimed he did not understand the words used in the test and was unable to correctly complete basic arithmetic problems. However, he was able to complete in a timely fashion

another test which explores a person's personality type and vocational interests. He expressed no difficulty with this test, which uses much more difficult language. Conway found Jones's results were inconsistent and concluded he did not give his full effort to the testing.

An administrative hearing in the worker's compensation case was held on July 30, 1991. The deputy industrial commissioner reviewed the evidence which we have outlined above. In addition, Prairie Farms presented evidence to show Jones was experiencing financial problems at the time of the alleged injury. At about that same time, Jones was involved in litigation with his former wife concerning child support and litigation with Prairie Farms concerning back-pay.

The deputy found Jones's report of his injury was unreliable. The deputy held Jones's inconsistent test results and convenient memory failures supported the conclusion that his depression did not result from any incident at work. The deputy denied Jones's workers' compensation claim. On appeal, the industrial commissioner affirmed the deputy's decision. Jones filed a petition for judicial review. The court concluded the commissioner's decision was supported by substantial evidence and affirmed. Jones appealed.

We review to determine whether the agency decision is supported by substantial evidence when viewing the record as a whole. Lithcote Co. v. Ballenger, 471 N.W.2d 64, 66

(Iowa App. 1991). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Id. The question is not whether the evidence might support a different finding, but whether the evidence supports the findings actually made. Gilliam v. Atlantic Bottling Co., 453 N.W.2d 230, 232 (Iowa App. 1990).

The industrial commissioner, not the court, weighs the evidence, and the court broadly and liberally construes the industrial commissioner's findings to uphold rather than defeat his decision. Department of Transportation v. Van Cannon, 459 N.W.2d 900, 903 (Iowa App. 1990). The possibility of drawing two inconsistent conclusions from the same body of evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Id.

Jones claims the decision of the industrial commissioner is not supported by substantial evidence. He alleges the only credible evidence in the record supports his claim that he developed a major depressive disorder from a blow on the head which occurred at work. He challenges the evidence presented by Prairie Farms, and argues the employer's evidence was not credible.

Jones has the burden of proving by a preponderance of the evidence that the disability on which he now bases his claim is causally related to injuries arising out of and in the course of his employment. See Lithcote, 471 N.W.2d at

66. In determining whether an injury or disease has a direct causal connection with the employment, or arose independently thereof, it is essentially within the domain of expert testimony, and the weight to be given such an opinion is for the finder of the facts. Van Cannon, 459 N.W.2d at 904. The general rule is that expert opinion testimony, even if uncontroverted, may be accepted or rejected, in whole or in part, by the trier of fact. Sondag v. Ferris Hardware, 220 N.W.2d 903, 907 (Iowa 1974).

Jones contends the commissioner should not have relied upon the opinion of Dr. Gallagher. He claims some of the records reviewed by Dr. Gallagher were for another person named Jim Jones, and this renders Dr. Gallagher's opinion unreliable.

In his report, Dr. Gallagher discusses the medical reports he relied upon. There is no evidence to show he relied upon any improper records. Jones raised his concerns during the administrative hearing, and the commissioner took this information into consideration when weighing the evidence. The weight to be given an expert's opinion is for the agency fact finder to decide, in light of the record developed by the parties.

Jones contends the commissioner should not have discounted the opinion of Dr. Yates. Jones claims the evidence is uncontradicted that he suffers from a major depressive disorder. Jones states his inconsistent

testimony at the hearing is further proof of his psychiatric condition.

The commissioner explained why it found the opinions of other experts more credible than the opinion of Dr. Yates. Only Dr. Yates, of the many doctors who examined Jones, expressed the opinion that Jones's condition was caused by a head injury. However, Dr. Yates admitted he did not obtain a full medical history from Jones. Also, Dr. Yates was not aware of Jones's financial and legal problems. As noted above, the weight to be given an expert's opinion is for the agency fact finder to decide.

Jones contends the deputy should not have admitted evidence of his activities prior to the accident. Prairie Farms presented evidence to show Jones had financial and legal problems which could have been the cause of depression. The evidence was also presented to show inconsistencies in Jones's statements.

We note administrative agencies are not bound by technical rules of evidence. Hamer v. Iowa Civil Rights Commission, 472 N.W.2d 259, 262 (Iowa 1991). It was reasonable for the deputy to admit evidence concerning Jones's social, medical, and work history to assess his credibility.

Finally, Jones contends the commissioner should not have given weight to the opinion of Patricia Conway, a rehabilitation counselor, that his test results were

inconsistent. Jones believes Conway did not have sufficient expertise to form an opinion.

Conway testified as to her educational background, training, and experience. Her testimony showed she was qualified to administer vocational tests. We are committed to a liberal rule of evidence with respect to the admission of expert testimony. Bandstra v. International Harvester Co., 367 N.W.2d 282, 288 (Iowa App. 1985). We conclude it was reasonable for the commissioner to consider her opinion.

We find there was substantial evidence in the record to support the commissioner's conclusion Jones failed to meet his burden to show his condition was caused by an injury which arose out of and during the course of his employment. We note no doctors found any evidence Jones received a head injury. There was no evidence connecting the alleged head injury to Jones's symptoms of depression. Furthermore, Drs. Peltan, Graham and Gallagher all gave the opinion Jones was exaggerating his symptoms. However, even if we were to assume Jones received an injury to the head and he suffers from a major depressive disorder, there is no evidence of a causal connection.

We affirm the decision of the Industrial Commissioner and the district court. Costs of this appeal are assessed to James Jones.

AFFIRMED.