

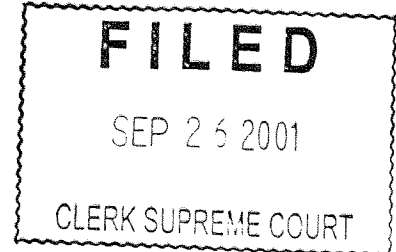
IN THE COURT OF APPEALS OF IOWA

No. 1-364 / 00-1407
Filed September 26, 2001

MANPOWER, INC. OF DES MOINES
and NATIONAL UNION FIRE
INSURANCE COMPANY,
Petitioners-Appellants/Cross-Appellees,

vs.

JOANN VAN ECK,
Respondent-Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

The petitioners appeal from the district court's ruling on judicial review affirming the chief deputy workers' compensation commissioner's decision which awarded the respondent workers' compensation benefits. **AFFIRMED.**

William D. Scherle and Aaron T. Oliver of Hansen, McClintock & Riley,
Des Moines, for appellants.

Arthur C. Hedberg, Jr. and Joseph L. Walsh of Hedberg, Owens &
Hedberg, P.C., Des Moines, for appellee.

Considered by Huitink, P.J., and Miller and Hecht, JJ.

HUITINK, P.J.

I. Background Facts and Proceedings.

In August of 1996 JoAnn Van Eck began employment with Manpower, Inc. Her primary job duties included cleaning machinery, sweeping, mopping, and vacuuming. On September 9, 1996, Van Eck sought medical treatment for pain in her wrists and arms, which was later diagnosed as bilateral carpal tunnel syndrome. She eventually underwent bilateral carpal tunnel surgery to alleviate her symptoms. Van Eck's subsequent workers' compensation claim was denied by Manpower, which claimed her injuries were not causally related to her employment.

At arbitration the deputy commissioner concluded Van Eck suffered a fourteen percent permanent partial disability as a result of repetitive tasks at Manpower. The deputy commissioner also awarded Van Eck penalty benefits, finding Manpower's denial of Van Eck's claim prior to conducting a proper investigation resulted in a delay in payments without reasonable cause. In reviewing the arbitration decision, the industrial commissioner and the district court both affirmed the deputy commissioner's decision.

On appeal Manpower contends the district court erred in affirming the industrial commissioner's award of fourteen percent permanent partial disability and penalty benefits.

II. Standard of Review.

Our review is limited to correction of errors of law. *Koehler Elec. v. Wills*, 608 N.W.2d 1, 3 (Iowa 2000). When we review findings of the industrial

commissioner, those findings carry the effect of a jury verdict. *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 271 (Iowa 1995). We will reverse an agency's findings only if, after reviewing the record as a whole, we determine substantial evidence does not support them. *Id.* Evidence is substantial if a reasonable mind would accept it as adequate to reach the given conclusion. *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 649 (Iowa 2000).

III. Permanent Partial Disability Benefits.

Manpower argues that a finding of fourteen percent permanent partial disability is not supported by substantial evidence. In determining Van Eck's entitlement to permanent partial disability benefits the findings adopted by the commissioner state:

Claimant has two impairment ratings. Dr. Rosenfeld, her treating physician, has determined she has sustained a 5 percent impairment to both arms and Dr. Ban has determined that claimant has sustained a total of 14 percent impairment pursuant to the AMA Guides to the Evaluation of Permanent Impairment and the conversion tables contained therein. Dr. Ban offers the more credible impairment rating. It is clear that Dr. Ban's evaluation was done pursuant to the Guides and that he had access to all of claimant's medical records. Thus, it is determined that claimant is entitled to 14 percent of 500 weeks of permanent partial disability benefits, or a total of 70 weeks of permanent partial disability benefits.

Manpower contends the industrial commissioner erred in failing to adopt Dr. Rosenfeld's impairment rating in that he was Van Eck's treating physician and provided the more credible impairment rating. In reviewing the industrial commissioner's findings of fact, the question is not whether the evidence might support a different finding, but whether it supports the findings actually made. *Kiesecker v. Webster City Custom Meats Inc.*, 528 N.W.2d 109, 110 (Iowa 1995).

The mere fact we could draw inconsistent conclusions from the same evidence does not mean substantial evidence does not support the commissioner's determinations. *Terwilliger*, 529 N.W.2d at 271.

Because the resolution of this factual dispute implicates the commissioner's assessment of credibility, we are inclined to defer to her findings on this issue. See *St. Luke's Hosp.*, 604 N.W.2d at 649 (where commissioner's assessment as to credibility is implicated, appellate court should broadly and liberally apply findings to uphold the decision); *Kiesecker*, 528 N.W.2d at 111 (questions of reliability and credibility are best weighed by the commissioner, not the appellate court). As noted by the commissioner, Dr. Rosenfeld's impairment rating was supported only by a very terse description of Van Eck's injuries and virtually no explanation of his calculations, while Dr. Ban's report included a very detailed explanation of his evaluation and resulting calculation. We, like the district court, find the commissioner's findings enjoy substantial evidentiary support in the record. We affirm on this issue.

IV. Penalty Benefits.

The workers' compensation law contemplates an uncomplicated and prompt method of providing complete and speedy benefits to an injured party. *Henderson v. Iles*, 248 Iowa 847, 852, 82 N.W.2d 731, 734 (1957). Inherent in this goal is the principle that neither party should be allowed to delay or harass the other with unnecessary or useless procedure. *Id.* Consistent with this goal, Iowa Code section 86.13 provides in relevant part:

If a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the

worker's compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were unreasonably delayed or denied.

While this section recognizes that insurers with good faith disputes over the legal or factual validity of claims have a right to challenge these claims, it also establishes an affirmative duty for workers' compensation insurance carriers to act reasonably when a claim is filed. *Covia v. Robinson*, 507 N.W.2d 411, 412 (Iowa 1993); *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d 742, 743 (Iowa 1992). If the employer has a reason for the delay and conveys that reason to the employee contemporaneously with the beginning of the delay, no penalty will be imposed if the reason is of such character that a reasonable fact finder could conclude that it is a "reasonable or probable cause or excuse." *Meyers v. Holiday Express Corp.*, 557 N.W.2d 502, 504 (Iowa 1996). If, however, no reason is given for the delay or if the "reason" is not one that a reasonable fact finder could accept, penalty benefits are mandatory. *Id.* at 505. Where a claim is "fairly debatable" our supreme court has found that an employer has a reasonable basis for delay. See *Christensen v. Snap-On Tools Corp.*, 554 N.W.2d 254, 260 (Iowa 1996).

The gist of Manpower's argument is that its liability for Van Eck's injuries was fairly debatable and thus it had a reasonable basis to deny her claim. Manpower takes issue with the commissioner's conclusions that it had failed to investigate the claim prior to denial and that it failed to convey a reason for the delay to Van Eck contemporaneously with the beginning of the delay.

Van Eck testified that she spoke with Beth Geitl, a claims adjuster at AIG Claims Service, in early November 1996, who informed her that she would need to give a statement regarding her injuries, but that it would need to be given at a later date. Van Eck also testified that she made several subsequent attempts to re-contact Geitl, but that her calls were never returned and her statement never taken. Only after Van Eck obtained the services of an attorney, who wrote a letter to Geitl on December 6, 1996, did she receive a response from Manpower. This response, dated January 21, 1997, merely stated that Manpower was "currently taking the position that Ms. Van Eck's carpal tunnel problems are not causally related to her work at Manpower, Inc."

Manpower cites various reasons why Van Eck's claim could have been construed as "fairly debatable," many of which overstate the record and all of which fail to include reference to evidence in the record reflecting that Manpower had reasonable cause to believe that Van Eck's injuries were unrelated to her employment. In fact, the record indicates that Manpower did not even investigate the requirements of her job until May 27, 1997, five months after it denied her claim as not being causally related to these job duties. We find that the record supports the commissioner's conclusion that Manpower denied Van Eck's claim prior to investigating its liability, thus delaying payment of her benefits without reasonable justification. The judgment of the district court on judicial review of the industrial commissioner's decision is affirmed in full.

AFFIRMED.