IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

SHEET METAL CONTRACTORS OF IOWA; and NATIONAL FEDERATION OF INDEPENDENT BUSINESS, STATE OF IOWA,

Petitioners-Appellants,

vs.

COMMISSIONER OF INSURANCE OF THE STATE OF IOWA, INSURANCE DEPARTMENT OF IOWA AND THE NATIONAL COUNCIL ON COMPENSATION INSURANCE,

Respondents-Appellees.

Filed January 27, 1988

7-420
87-101

Appeal from the Iowa District Court for Polk County (No. AA4-980) - Joel D. Novak, Judge.

Petitioners appeal from rulings of the district court affirming the action of the Commissioner of Insurance. **REVERSED.**

I. John Rossi of Woodward, Davis & Rossi, Des Moines, and Dennis D. Hogan, West Des Moines, for petitioners-appellants.

Denny M. Dennis and David J. Lynch of Bradshaw, Fowler, Proctor & Fairgrave, Des Moines, for respondent-appellee NCCI.

Fred M. Haskins, Assistant Attorney General, for other respondents-appellees.

Heard by Oxberger, C.J., and Donielson, and Sackett, JJ.

SACKETT, J.

In this appeal we examine procedures of the Commissioner of Insurance in approving a rate filing requesting an increase in workers' compensation insurance premiums filed under Iowa Code section 515A.6(7) (1985).

I.

On November 18, 1985, the National Council on Compensation Insurance (NCCI) filed a rate filing with the Commissioner of Insurance of the State of Iowa requesting a 25.2 percent increase in premium rates to be effective February 1, 1986. NCCI is a voluntary association of insurance carriers who are licensed to write workers' compensation insurance.

On December 18, 1985, notice of the proposed rate filing was published in the Iowa Administrative Bulletin. The Petitioners-Appellants Sheet Metal Contractors of Iowa and National Federation of Independent Business, State of Iowa, filed with the commissioner written demands for hearing on the rate filing. See Iowa Code §515A.6(7)(b).

On January 10, 1986, the commissioner entered an order setting a hearing on the rate filing for January 22, 1986. The order postponed the effective date of the rate filing, see Iowa Code §515A.6(7)(e), and stated the commissioner would select an actuary to perform an independent analysis and to provide assistance in rendering a decision on the rate filing, with the costs to be shared equally by the Petitioners and NCCI.

On January 22, 1986, a hearing was held and evidence was taken.

On February 6, 1986, the commissioner filed a Decision and Order. In the order, the commissioner expressed his frustration that section 515A.6(7), under which the hearing was held, placed such strict time constraints on the commissioner that it precluded any thorough analysis, discovery, cross-examin-

ation or other extensive hearing. The commissioner noted that the parties declined to pay for an independent actuarial review and the department does not have a property and casualty actuary on its staff nor the funds to hire one. The commissioner held NCCI had the burden of proof to support the proposed rates with a preponderance of evidence, see Iowa Code §515A.6(7)(d), and that the rates must meet the tests of Iowa Code section 515A.3.

Upon questioning, NCCI's actuarial witness stated the major reason for the extraordinary proposed increase of 25.2 percent in the overall premium level was a "sharp claims increase relative to the premium that's been collected." NCCI admits that it failed to include data in the filing to support the representation that a claims increase has occurred in Iowa. The commissioner also found the record contained exhibits and testimony concerning factors which could explain the reasons for the alleged sharp increase in claims in Iowa, including rising Iowa medical costs. The evidence also shows unprecedented underwriting losses in 1984.

Given the above, the commissioner concluded as follows:

> [T]he rate filing must be disapproved at this time. Based upon a review of the record, it is clear that the filing is incomplete in one respect, and that is its most critical part. Respondent has failed to support its major premise that a premium increase of 25.2 percent is required due to a sharp increase in claims or claims costs in Iowa. Respondent's statements and representations may be true but without the data to back them up, the standard set out in the code for approval has not been met.
>
> The commissioner would like to see data showing an increase in claims costs in Iowa. Respondent has indicated a willingness to provide such data. If in fact claims costs have been escalating rapidly in Iowa and nationwide, insurers must have timely rate increases if they are to maintain reserves and remain financially viable.
>
> The commissioner would prefer to defer a decision in this matter until additional data and information is provided at his request, but the statute leaves no room to do this. It requires a decision within fifteen days from the start of the hearing.

IT IS THEREFORE ORDERED AS FOLLOWS:

1. The November 18, 1985, Iowa Workers' Compensation Filing for Revised Rates and Rating Values is hereby disapproved.

2. The rate filing will be approved at such time as [NCCI] provides the commissioner with the following:

   a. Data, including Iowa loss experience and a summary of Iowa loss experience for [NCCI] members, which was used in making the filing and which demonstrates that losses or claims costs have been rising sharply in Iowa at a rate sufficient to justify an overall premium level increase of 25.2%.

   b. A certification by the lead actuary responsible for the filing that the data upon which it is based, including the Iowa loss experience, has been validated in accordance with established procedures of [NCCI] as represented at the hearing.

On February 18, 1986, NCCI submitted additional data to the commissioner. A hearing limited solely to discussion of the additional data was held before the commissioner on March 17 at appellants' request. The commissioner filed an "Order upon Supplemental Data Submitted by NCCI and Approving Rate Filing" on April 1, 1986.

In the April 1 order, the commissioner expressed his opinion that NCCI was not required to file anew its entire rate filing and to recommence the formal statutory procedure set out in Iowa Code section 515A.6(7).

On judicial review, the district court affirmed the commissioner's April 1, 1986, order.

II. 181

When the district court exercises the power of judicial review conferred by section 17A.19(8), it functions in an appellate capacity to correct errors of law on the part of the agency. Barnes v. Iowa Dep't of Transp., 385 N.W.2d 260, 263 (Iowa 1986). In our review of such action by the district court, we merely apply the standards of section 17A.19(8) to the agency action to determine whether our conclusions are the same as those of the district court. Teleconnect Co. v. Iowa State Commerce Comm'n, 404 N.W.2d 158, 162 (Iowa 1987).

III.

The issue is whether the February 6, 1986, order was a final order. Iowa Code section 515A.6(7)(e) provides in relevant part that "[w]ithin fifteen days after the start of the hearing, the commissioner of insurance will approve or disapprove the proposed rates and specify the reasons therefor." The February 6 order was filed fifteen days after the hearing.

Appellants contend the February 6 order was a final order, the result of which was the rate filing was disapproved, and that the commissioner was without authority to order the rates would be approved at such time as additional data was presented. Appellants also argue the February 6 order clearly disapproves the filing and does so because the commissioner found NCCI had not provided certain required data. See Iowa Code §515A.6(7)(d) (rating organization has burden of proof to support proposed rates by a preponderance of the evidence).

The district court determined the commissioner had authority under section 515A.4(1) to issue a conditional order on February 6 and to issue his final order on April 1. We believe the district court erroneously applied section 515A.4(1) to this workers' compensation insurance rate filing. The special procedures for workers' compensation insurance rate filings are delineated in section

515A.6(7) and are to be followed "[n]otwithstanding any other provision of the Code."

The procedures set out in section 515A.4 pertain to rate filings that have completely different notice, hearing, and approval requirements than workers' compensation insurance rate filings have. See Iowa Code §515A.6(7). Section 515A.4(1) empowers the commissioner to require the insurer to furnish additional information to support its filing. But, even in the context of non-workers' compensation filings, section 515A.4(1) does not authorize the commissioner to receive additional data after a hearing. See Iowa Code §515A.5(4) (unnumbered paragraph two) (if commissioner finds filing inadequate after hearing, commissioner shall issue an order stating when filing shall be deemed no longer effective).

Furthermore, we cannot believe the legislature intended on the one hand to assure the rating organizations a timely decision would be made and on the other hand to allow the commissioner to indefinitely postpone a decision by holding it in abeyance for further data. See Iowa Nat'l Indus. Loan Co. v. Iowa State Dep't of Revenue, 224 N.W.2d 437, 441 (Iowa 1974) (agency not authorized to withdraw statutorily conferred right by administrative fiat).

Appellees contend the commissioner was authorized to make the February 6 order conditional and to enter the April 1 order. They argue that because section 515A.6(7)(e) is directory rather than mandatory the commissioner had the authority to extend the fifteen-day time limit.

We do not agree with appellees' argument this case is similar to the "delay in procedure" cases. See, e.g., Taylor v. Department of Transp., 260 N.W.2d 521, 523 (Iowa 1977) (twenty-day hearing time provision is directory and not mandatory). See also Larsen v. Oakland Community School Dist., ___ N.W.2d ___, ___ (Iowa App. 1987) (five-day time period in which school board must

render final decision discretionary under facts of case); Hartman v. Glenwood Tel. Membership Corp., 249 N.W.2d 468, 475 (Neb. 1977) (requirement commission file decision within thirty days of hearing is directory and not mandatory).

The question in this case is not whether the commissioner could delay making a decision on the basis of the evidence presented at the hearing. The question is whether the commissioner possessed the power to disapprove the rate filing but to reserve jurisdiction on the rate issue for an undesignated period of time to allow a reconsideration after the receipt of additional evidence. We hold he did not.

The commissioner acknowledged the fact the statute, section 515A.6(7)(e), required a decision be made within fifteen days after the start of the hearing. He disapproved the rate filing because he found the filing was "incomplete" and NCCI "failed to support its major premise."

We hold the February 6 decision that the rate filing of November 18, 1985, was disapproved on submitted data was a final and determinative order. The commissioner's second order of April 1 was made in excess of his statutory authority. See Iowa Code §17A.19(8)(b). Cf. Graber v. Iowa Dist. Court, 410 N.W.2d 224, 230 (Iowa 1987) (court lacked authority to alter final judgment in mortgage foreclosure proceedings); Snyder v. Allamakee County, 402 N.W.2d 416, 418 (Iowa 1987) (court had no power or authority to alter final default judgment).

Appellees argue appellants were not prejudiced by the commissioner's action regardless of its propriety. The court shall grant relief from agency action only if substantial rights of the complaining party have been prejudiced. Iowa Code §17A.19(8). Prejudice will not be presumed. McFee v. Iowa Dep't of Transp., 400 N.W.2d 578, 581 (Iowa 1987).

Appellees suggest the legislature established the procedure of section 515A.6(7)(e) in order to prevent undue delay in proceedings for review of workers' compensation insurance rates. Unnecessary delays would result in rate losses to insurance companies that could not be recovered at a later time. Appellees argue that because the expedited procedures are intended to benefit workers' compensation insurance carriers, the irregular procedure in this case did not prejudice appellants.

The district court concluded appellants "have not been prejudiced by the alleged error. . . . NCCI would have simply refiled their requested rate increase with the additional documentation and the commissioner would have approved the increase."

We find appellants were prejudiced by the unauthorized filing of the April 1 order. Had appellees simply refiled their request for a rate increase, it could not have been effective immediately but would require a thirty-day notice in the Iowa Administrative Bulletin before the effective date. See Iowa Code §515A.6(7)(a). Additionally, in objecting to the size of the proposed 25.2 percent rate increase, appellants disputed the accuracy of specific NCCI loss figures and of NCCI's characterization of the "trend" of losses. Had NCCI filed a new rate filing under section 515A.6(7), including the additional data, appellants would have had the benefit of more current data on loss trends, updated to the time of the new hearing, with which to attack NCCI's contention that losses would continue to increase at the rate suggested by NCCI's loss figures. Appellants would also have had the option at a hearing on the new rate filing to present expert actuarial testimony controverting all of NCCI's evidence and not just the additional loss experience data discussed at the March 17 hearing.

IV.

We reject appellants' unsupported contention the commissioner of insurance lacked the expertise necessary to evaluate the rate filing. See Iowa-Illinois Gas & Elec. Co. v. Iowa State Commerce Comm'n, 412 N.W.2d 600, 610 (Iowa 1987); Teleconnect, 412 N.W.2d at 162; Cerro Gordo County Care Facility v. Iowa Civil Rights Comm'n, 401 N.W.2d 192, 195-96 (Iowa 1987).

Appellants' claim that administrative rules require contested case procedures in this matter is without merit. See Iowa Code §515A.6(7) (provisions not subject to requirements of chapter 17A).

We have considered all of the issues raised by the parties but have addressed only those applicable to the outcome we reach.

V.

We find substantial rights of appellants have been prejudiced because the commissioner's April 1 decision approving the rate filing was entered without authority. See Iowa Code §17A.19(8)(b).

We reverse the decision of the district court.

REVERSED.