IN THE COURT OF APPEALS OF IOWA

No. 0-119 / 99-1192
Filed February 7, 2001

CLAIMS MANAGEMENT CORP.,
Petitioner-Appellee,

vs.

GARY TOLL,
Respondent-Appellant,

V.O.S. EXPRESS, INC.,
Respondent.

FILED
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CLERK SUPREME COURT

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

Gary Toll appeals from a district court ruling on judicial review reversing the Industrial Commissioner's decision to uphold an entry of default judgment against Claims Management Corporation (CMC). **AFFIRMED.**

Timothy D. Ament and Peter J. Gartelos of Gartelos, Wagner & Ament, Waterloo, for appellant.

Rita C. Grimm of Heidman, Redmond, Fredregill, Patterson, Plaza & Dykstra, L.L.P., Sioux City, for appellee.

Considered by Streit, P.J., and Zimmer and Hecht, JJ.

HECHT, J.

Claimant-appellant, Gary Toll, appeals the district court ruling on judicial review reversing the industrial commissioner's decision which upheld entry of default judgment against Claims Management Corporation (CMC). Toll claims the district court erred in finding CMC's default should be set aside for excusable neglect. We affirm.

I. Background. Gary Toll was employed by V.O.S. Express (V.O.S.) as a truck driver. In February of 1995, he was injured in a motor vehicle accident. He filed a claim for worker's compensation benefits in October of 1996. He named V.O.S. as the employer and Claims Management Corporation (CMC) as the insurance carrier on his original notice and petition filed before the Iowa Industrial Commissioner[1]. He served both V.O.S. and CMC with notice, but neither filed an answer. Instead, CMC contacted the industrial commissioner's office by telephone and in writing indicating it was not V.O.S.'s workers' compensation insurance carrier, and forwarded a copy of the original notice and petition to Custard Insurance Adjusters, the workers' compensation administrator for Landstar System, Inc., the lessee of V.O.S.'s trucks. In a letter to Toll's attorney, CMC denied it was a proper party in the proceeding and asked to be dismissed from the case. Toll's attorney sent CMC a letter indicating he would dismiss CMC if V.O.S. or CMC would disclose the identity of the workers'

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[1] The commissioner is now known as the workers' compensation commissioner. *See* Iowa Code § 86.1 (1999).

compensation insurance carrier for the claim. Neither party provided that information.

On February 17, 1997, Toll filed a motion for default judgment but did not send notice of the motion to either V.O.S. or CMC because neither had filed a responsive pleading in the case. On March 17, 1997, V.O.S. and CMC were found to be in default and a hearing was set to determine the amount of benefits due. Copies of the default judgment were mailed to V.O.S. and CMC. CMC sent a copy of the default to Custard. A prehearing conference order issued May 13, 1997, and a hearing assignment order issued July 1, 1997, listing the insurance carrier as "unknown" were mailed to CMC which forwarded them to Custard.

Only Toll and his attorney attended the hearing in November of 1997 to determine benefits owed. The arbitration decision filed on January 16, 1998, awarded relief only against V.O.S. and expressly found the "insurance coverage status . . . [was] unknown." At the request of Toll's attorney, the deputy commissioner issued a nunc pro tunc order on February 3, 1998, clarifying that the award of benefits was entered against both CMC and V.O.S.

CMC filed a motion to set aside the default on March 12, 1998. It alleged good cause to excuse its default. CMC also asked for leave to present additional evidence. The commissioner found CMC failed to show good cause to set aside the default judgment, determined evidence that came into existence after the initial hearing was not admissible pursuant to Iowa Administrative Code rule 873-4.28, and denied the motion. CMC sought judicial review.

The district court ruled the commissioner's decision refusing to set aside the default was contrary to Iowa Rule of Civil Procedure 236 as it had been interpreted in recent cases, and ruled CMC established good cause for setting aside the default judgment. Toll appeals.

II. Scope of review. When we review the decision of a district court rendered pursuant to Iowa Code section 17A.19, we apply the standards of that section to the agency action to determine whether our conclusions are the same as those of the district court. *Jackson County Pub. Hosp. v. Public Employment Relations Bd.*, 280 N.W.2d 426, 429-30 (Iowa 1979). A reviewing court gives deference to agency findings of fact. *Cerro Gordo County Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192, 196 (Iowa 1987). However, we will set aside agency findings if the record clearly shows the agency decision unjustified. *Sierra v. Employment Appeal Bd.*, 508 N.W.2d 719, 720 (Iowa 1993). Our review, like that of the district court, is limited to correcting legal error. *Second Injury Fund of Iowa v. Shank*, 516 N.W.2d 808, 812 (Iowa 1994). 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. The agency's findings are binding on this court if the evidence is in dispute or if reasonable minds can draw different inferences from the evidence. *Gallardo v. Firestone Tire & Rubber Co.*, 482 N.W.2d 393, 395 (Iowa 1992). We may reverse, modify, or remand to the agency for further proceedings if that agency's action was affected by error of law, or if it is not supported by substantial evidence when the record is viewed as a whole. *Quaker Oates v. Ciha*, 552 N.W.2d 143, 149-50 (Iowa 1996). Evidence

is substantial if a reasonable mind would find it adequate to reach the same findings. *Murrillo v. Blackhawk Foundry*, 571 N.W.2d 16, 17 (Iowa 1997). We accord an agency only limited deference on matters of law. *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996).

III. Appellate claims. Toll claims the district court erred in reversing the commissioner's decision because CMC failed to establish its default should be excused for "mistake or excusable neglect." *See* Iowa R. Civ. P. 236. CMC contends the district court correctly concluded the commissioner's refusal to set aside the default was contrary to Iowa Rule of Civil Procedure 236. It also claims the commissioner's ruling was arbitrary and capricious.

a. Rule 236. Iowa Rule of Civil Procedure 236 provides in relevant part:

> On motion and for good cause shown, . . . the court may set aside a default or the judgment thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty.

Iowa R. Civ. P. 236. We are guided by the principle that the purpose of rule 236 is to allow determination of controversies on their merits rather than on the basis of nonprejudicial inadvertence or mistake. *Whitehorn v. Lovik*, 398 N.W.2d 851, 853 (Iowa 1987). Our supreme court has set out four factors to help determine whether good cause for setting aside the default has been demonstrated:

> First, did the defaulting party actually intend to defend? . . . Second, does the defaulting party assert a claim or defense in good faith? Third, did the defaulting party willfully ignore or defy the rules of procedure or was the default simply the result of a mistake? Last, whether relief is warranted should not depend on who [e.g. the litigant or an attorney or an insurer] made the mistake.

Millington v. Kuba, 532 N.W.2d 787, 791 (Iowa 1995) (quoting *Central Nat'l Ins. Co. of Omaha v. Insurance Co. of North America*, 513 N.W.2d 750, 756 (Iowa

1994)). A liberal approach is to be used in applying these factors to advance the goal of resolving controversies on the merits. *Millington*, 532 N.W.2d at 790.

1). Intent to defend. Based on CMC's failure to file an answer or a motion to dismiss, the commissioner determined CMC did not demonstrate it intended to defend. We agree with the district court's determination a reasonable person could not find on this record CMC did not intend to defend. After service of process upon it, CMC promptly sought to be removed from the case and made Toll and the commissioner aware CMC was not a workers' compensation carrier. Its telephone call and letter to the agency explaining it was only the administrator of a group accident policy, its letters to Toll's attorney explaining it was not the workers' compensation carrier and asking to be dismissed from the case, and its consistent forwarding of documents concerning the case to Custard, the workers' compensation administrator for V.O.S., clearly demonstrate CMC's intent to defend. In short, we affirm the district court's determination substantial evidence does not support the commissioner's finding CMC did not intend to defend.

2). Good faith defense. While acknowledging the question was a close one, the commissioner determined "it cannot be said that CMC can assert a defense in good faith." This was based on CMC's admission it paid benefits under a plan covering accidents and its failure to identify with specificity the actual workers' compensation carrier. The commissioner appears to find CMC culpable because it did not file proper pleadings or proffer information to Toll's counsel identifying the worker's compensation carrier. The agency decision does

not cite authority for the proposition CMC had a legal obligation to provide the identity of the carrier to Toll.

To determine whether CMC asserted a good faith defense, the commissioner must ascertain from the evidence whether facts exist which, if established in a hearing on the merits, would prima facie constitute a defense. *See Flexsteel Indus., Inc. v. Morbern Indus. Ltd.*, 239 N.W.2d 593, 599 (Iowa 1976). CMC raised the defense it is not the workers' compensation carrier. If established, that fact would preclude any judgment for workers' compensation benefits against CMC. The district court correctly determined the agency's finding CMC did not assert a good faith defense is not supported by substantial evidence in the record.

3). Willful ignorance or defiance of the procedural rules. The commissioner determined CMC "chose to ignore" the default entry, the notice of the hearing, the arbitration decision, and it had not been dismissed as a party. This finding is not supported by substantial evidence in the record. CMC clearly bungled this case initially by contacting the agency and Toll's attorney directly to inform them it was not the workers' compensation carrier instead of filing an answer. Thereafter, documents filed in the contested case did not list CMC as a party, listed the workers' compensation carrier as unknown, or even identified CMC as "an apparent adjusting firm." CMC promptly sent copies of all relevant documents, pleadings, notices, and decisions to Custard. Toll's counsel did not

contact CMC regarding preparation of the joint prehearing conference report[2], and did not mail a copy of it to CMC. The arbitration decision filed on January 16, 1998, referred to CMC as "an apparent adjusting firm" which may have handled this matter. The agency decision did not find CMC was the workers' compensation insurer or CMC was liable for workers' compensation benefits. Even the nunc pro tunc order filed February 3, 1998, did not include a finding CMC was the worker's compensation carrier for V.O.S. After receipt of notice of the nunc pro tunc order, however, CMC filed its motion to set aside the default on March 16, 1998. The district court correctly determined the commissioner's finding CMC acted willfully in ignoring or defying the applicable procedural rules is not supported in the record by substantial evidence.

4). Who made the mistake. The evidence in the record reveals an unfortunate series of mistakes by CMC after process was served on it. But its mistakes or "bungles" do not mandate the default judgment be affirmed on judicial review. The district court correctly noted "[r]ule 236 does not contemplate a blameless party." Moreover, we agree with the district court's determination CMC's neglect was excusable as a matter of law.

b. Failure to give notice before seeking a default. CMC claims Toll's counsel should have notified it of the motion for default judgment. We believe an intervening change in rule 236 requiring notice to the party against whom default judgment is sought will prevent recurrence of the scenario presented in this case.

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[2] Toll claims CMC was in default at the time these documents were generated and was not entitled to notice. We do not suggest here that under the rules of procedure prevailing at the time Toll was obligated to include CMC in the preparation of the documents.

Furthermore, in view of our affirmance of the district court's ruling, we need not address this issue.

For the reasons discussed above, we conclude the district court correctly concluded CMC met its burden as a matter of law to demonstrate good cause for setting aside the default. The commissioner erred in determining the default judgment should not be set aside. We affirm the judgment of the district court to order the default be set aside and to remand this case to the agency for further proceedings. The costs of this appeal are taxed to Toll.

AFFIRMED.