IN THE COURT OF APPEALS OF IOWA

No. 22-1944
Filed February 21, 2024

JAMIE L. DAVIS,
Petitioner-Appellant,

vs.

GORDON FOOD SERVICE, INC., and STANDARD FIRE INSURANCE CO.,
Respondents-Appellees.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge.

A claimant appeals from judicial review following denial of his workers' compensation claim. **AFFIRMED.**

Jacob M. Oeth of Dickey, Campbell & Sahag Law Firm, PLC, Des Moines, for appellant.

Jean Z. Dickson of Betty, Neuman & McMahon, P.L.C., Davenport, for appellee.

Considered by Tabor, P.J., Buller, J., and Mullins, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2024).

BULLER, Judge.

Jamie Davis appeals from judicial review following the workers' compensation commissioner's denial of his claim due to a drug test positive for methamphetamine and amphetamines. Davis asserts the commissioner and district court erred in their interpretation of Iowa's private-employer drug-testing law and the presumptions afforded positive drug tests under the workers' compensation statute. We find the district court and commissioner correctly interpreted the relevant statutes and substantial evidence supports the commissioner's factual determinations.

I. Background Facts and Proceedings

Davis was a truck driver for Gordon Food Service, Inc. (Gordon Foods), a food distributor. His regular route took him from Des Moines to Sioux City and back, twice each week. At the first stop of his route in Sioux City, Davis usually moved between 200 and 300 pounds of dry goods and frozen food up stairs using a handcart. During one of those stops in August 2018, David was unloading when his back "gave out." He fell to the ground, was unable to stand for more than half an hour, and he required assistance to get back to his truck.

Davis contacted his supervisor and an injury hotline, which directed him to a Sioux City clinic. Doctors at the clinic evaluated Davis for his injury and administered a drug test as required by company policy for any employee injured on the job. Davis tested positive for methamphetamine and amphetamines. The test utilized a single urine sample, rather than a split sample. Because the sample was not split, Davis could not pursue a second, independent confirmatory test.

See Iowa Code § 730.5(7)(b) (2018).[1] Davis signed a written consent form at the clinic, agreeing the sample had not been tampered with or altered and that it was sealed in his presence. Despite relying on a single urine sample, the physician who analyzed the sample opined that the testing methodology eliminated the potential for false positives. The same physician explained he had no concerns about collection methods or chain of custody, and he believed the test to be valid. After providing the sample, Davis drove himself back to Des Moines.

In Davis's sworn testimony, he admitted he "had problems" with methamphetamine and was not entirely surprised by the positive drug test. He had served time in federal prison for drug-related charges and was on parole at the time of the injury. As part of that parole, he submitted to drug testing twice a month. And the drug-testing at issue in this case led to a federal court finding a parole violation that warranted additional incarceration. In sworn testimony, Davis admitted to using methamphetamine three or four days before he got hurt. He testified that a "meth high" usually lasts "six to eight hours" and affects his mental status, motor functions, coordination, and decision-making. He maintained, however, that he was not "high on meth" the day he was injured, and no one made observations that would indicate otherwise.

Davis filed a petition in arbitration with the Iowa Division of Workers' Compensation against Gordon Foods and its workers' compensation insurance carrier. Both organizations answered denying the claim. The parties stipulated

[1] Although the arbitration petition and judicial review petition are governed by later versions of the Iowa Code, the relevant statutes did not substantively change between Davis's injury and when they would apply. Therefore, we limit our citation to the 2018 version of the Iowa Code for readability.

that Davis was injured during the course of employment. The fighting issues, as relevant to this appeal, were whether the testing procedures violated Iowa's private-employer drug-testing law and whether Davis overcame the presumption of intoxication under the workers' compensation statute.

A deputy workers' compensation commissioner found the drug-testing law did not bar admission of the drug tests and Davis did not overcome the presumption of intoxication. Davis appealed to the commissioner, who affirmed that the private-employer drug-testing law "does not apply in workers' compensation cases in Iowa" and that Davis "failed to overcome the section 85.16(2) presumption that [his] intoxication was a substantial factor in causing the work injury."

Davis petitioned for judicial review, challenging application of the private-employer drug-testing statute and the commissioner's decision on the intoxication presumption. The district court affirmed the commissioner, finding that the private-employer drug-testing statute does not apply to workers' compensation cases and deferring to the credibility determinations and fact-finding of the commissioner on the intoxication issue. Davis appeals.

II. Standard of Review

This case is before us under Iowa Code chapter 17A, the Iowa Administrative Procedure Act. *See* Iowa Code § 86.26; *Chavez v. MS Tech. LLC*, 972 N.W.2d 662, 666 (Iowa 2022). Under chapter 17A, we may only interfere with an agency decision if it is erroneous under one of the grounds enumerated in the statute and a party's substantial rights have been prejudiced. Iowa Code § 17A.19(10). For example, we must reverse if the agency's decision was

"unreasonable, arbitrary, capricious, or an abuse of discretion." *Id.* § 17A.19(10)(n).

To the extent our review turns on interpretation of the workers' compensation statute, interpretation has not been vested with the agency and we do not defer to the agency's legal conclusions. *See id.* § 17A.19(10)(c), (11)(b); *Chavez*, 972 N.W.2d at 666; *Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 769 (Iowa 2016). Instead, we correct errors at law. Iowa Code § 17A.19(10)(c); *Green v. N. Cent. Iowa Reg'l Solid Waste Auth.*, 989 N.W.2d 144, 147 (Iowa 2023).

Our review of the facts is limited to review for substantial evidence. *See* Iowa Code § 17A.19(10)(f); *Chavez*, 972 N.W.2d at 666*; Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). "Substantial evidence" is "the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code § 17A.19(10)(f)(1). In conducting this review, "we give due regard to the commissioner's discretion to accept or reject testimony based on his [or her] assessment of witness credibility." *Schutjer v. Algona Manor Care Ctr.*, 780 N.W.2d 549, 558 (Iowa 2010); *accord ConAgra Foods, Inc. v. Moore*, No. 21-0339, 2022 WL 1658707, at *3 (Iowa Ct. App. May 25, 2022) ("[T]he reviewing court only determines whether substantial evidence supports a finding according to those witnesses whom the commissioner believed.")

III. Discussion

Davis challenges whether Iowa Code section 730.5's regulation of private-employer drug-testing applies to workers' compensation proceedings and, if so, whether he was able to rebut the statutory presumption in section 85.16 that he was intoxicated at the time of the injury. We affirm on both issues.

A. Drug Testing Under Section 730.5

Iowa Code section 730.5 is titled: "Private sector drug-free workplaces." The section regulates drug-testing in private workplaces and specifically exempts "the state, a political subdivision of the state, including a city, county, or school district, the United States, the United States postal service, or a Native American tribe." Iowa Code § 730.5(1)(e). One of the requirements imposed by the section is that test administrators must obtain a "split sample" at the time of testing, such that there is sufficient quantity for both the employer's testing sample and a "second, independent confirmatory test" if the employee requests independent testing. *Id.* § 730.5(7)(b). We must decide whether this provision applies to workers' compensation proceedings; the district court and commissioner held it does not.

Davis argues that section 730.5 applies here based on legislative history, emphasizing the repeal of a provision exempting testing for workers' compensation benefits in 1998 and the silence of the 2017 re-write of chapter 85 on *how* to drug-test, while simultaneously adding a presumption of disqualification based on test results. *See* 2017 Iowa Acts, ch. 23, § 1; 1998 Iowa Acts, ch. 1011, § 1; 1987 Iowa Acts ch. 208, § 1; *see also* Iowa Code § 4.6(3) (noting that we may look to legislative history if we find a statute ambiguous). Davis also points to case law

applying section 730.5 in unemployment proceedings before the Employment Appeal Board (EAB), which is housed along with the Iowa Workers' Compensation Commissioner in the Iowa Department of Workforce Development (IWD). *See* Iowa Code § 84A.1 (describing the department of workforce development's director and divisions); *Harrison v. Emp't Appeal Bd.*, 659 N.W.2d 581, 589 (Iowa 2003) (applying section 730.5 to prohibit denial of unemployment claim based on drug test that did not comply with statute); *Eaton v. Iowa Emp't Appeal Bd.*, 602 N.W.2d 553, 556–57 (Iowa 1999) (same).

Gordon Foods, like Davis, also points to legislative history—but urges the opposite conclusion. Gordon Foods argues the General Assembly was aware of section 730.5 when it added the presumption regarding testing and intoxication in 2017 and maintains the lack of incorporation or cross-reference reflects a deliberate legislative omission. Gordon Foods also contends the interpretation advanced by Davis could not have been intended by the General Assembly, as section 730.5 only applies to private employers and applying the statute in workers' compensation cases would lead to disparate results between private and public employees. In short, Gordon Foods argues, "Iowa Code section 730.5 is a separate and distinct employment statute," with no remedy in the realm of workers' compensation.

We, like the district court and the commissioner, think Gordon Foods has the better argument. The 2017 amendments to the workers' compensation statute were significant and overhauled many aspects of the chapter. *See Brewer-Strong v. HNI Corp.*, 913 N.W.2d 235, 249 (Iowa 2018) (noting that "[l]ast year, the legislature made significant changes to much of the workers' compensation

scheme set forth in Iowa Code chapter 85" and recognizing the presumption that the General Assembly was aware of existing law when amending the statute). We consider both what the General Assembly said and what it did not say. *Eaton*, 602 N.W.2d at 556 (describing "the rule that legislative intent is expressed by omission as well as by inclusion" (internal quotation marks and citation omitted)).

The elected branches spoke expressly by codifying that intoxication proven by a "positive test result" is presumed to establish "the employee was intoxicated at the time of the injury and that intoxication was a substantial factor in causing the injury." Iowa Code § 85.16(2)(b)(1). They did not include any reference to regulations for drug-testing, whether by cross-reference to section 730.5 or otherwise. *See State v. Lopez*, 907 N.W.2d 112, 120 (Iowa 2018) ("In interpreting [a] statute, we also consider the overall structure and context of the statute, not just specific words or phrases in a vacuum."); *see also Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 381 (2013) ("The force of any negative implication, however, depends on context."). We presume this omission deliberate. Also, while not dispositive to our analysis, we recognize the potential constitutional difficulties that would arise if the commissioner applied section 730.5 to private employers and not public employers, despite both being otherwise similarly situated under the workers' compensation statute. *See Simmons v. State Pub. Def.*, 791 N.W.2d 69, 74 (Iowa 2010) ("If fairly possible, a statute will be construed to avoid doubt as to constitutionality."). Likewise, the cases cited by Davis for the contrary proposition both contained an analysis of section 730.5 in unemployment, rather than workers' compensation, cases.

Although Davis's arguments have some appeal, we are not persuaded. For example, we are not convinced the repeal of the workers' compensation drug-testing exemption in the 1990s tells us much about how to interpret a statutory provision added as part of a comprehensive workers' compensation overhaul in 2017. We also put little stock in the structural argument about how the Workers' Compensation Commissioner and EAB are both divisions of IWD, given each agency draws on a different statute for their authority. *See* Iowa Code § 10A.601 (EAB); *id.* ch. 85 (workers' compensation). All agencies are ultimately subunits of "the State," and we would give little credence to the notion that one subunit of the State cannot be affected by laws differently than another, particularly when each has their own chapter in the Code.

Perhaps the most compelling argument Davis puts forth is that, because workplace injuries are discussed in section 730.5(8)(f), allowing private employers to violate the statute and still use the test results under section 85.16 is arguably "inconsistent" or renders part of the statute superfluous. But we do not think our interpretation renders section 730.5 a nullity. While there are no restrictions placed on drug-test use in workers' compensation proceedings, section 730.5 places restrictions on other employer uses of drug-test results—like in unemployment proceedings—and affords a private civil right of action and potential injunctive relief. Iowa Code § 730.5(15)(a)(1). The section also provides limited enforcement authority to the attorney general or her designee, as well as a county attorney and his or her designee. *Id.* § 730.5(14)(a), (15)(a)(2). The statute is not, as Davis suggests, toothless; it applies to circumstances other than workers' compensation cases.

Based on our construction of the statute, we affirm the district court and commissioner's conclusions that section 730.5's drug-testing restrictions do not apply to workers' compensation cases.

B. Evidence Rebutting the Intoxication Presumption

Davis also argues in the alternative that, if section 730.5 does not apply, he overcame the presumption of intoxication. The workers' compensation statute provides:

> Once the employer has made a showing [of a positive test result] as provided in subparagraph (1), the burden of proof shall be on the employee to overcome the presumption by establishing that the employee was not intoxicated at the time of the injury, or that intoxication was not a substantial factor in causing the injury.

Id. § 85.16(2)(b)(2). Davis points to his own testimony claiming he was not intoxicated, his experience that a "meth high" would last hours rather than days, and that he drove and otherwise behaved without incident around the time of the injury. The deputy commissioner rejected this testimony, which she described as "self-serving," and noted the absence of any expert testimony or independent witnesses. This is a credibility finding, implicit or otherwise, and we defer to it. *See Schutjer*, 780 N.W.2d at 558. The ruling is supported by substantial evidence and Davis's mere disagreement with the conclusion is no basis for reversal.

Last, we note both parties point us to agency orders from other workers' compensation cases, seemingly comparing the facts or outcomes of those cases to this one. We are skeptical we can take judicial notice of other workers' compensation case files. *Cf.* 7 Laurie Kratky Doré, *Iowa Practice Series: Evidence* § 5.201:5 (West 2023) ("[R]ecords in a proceeding before a different court ordinarily cannot be judicially noticed."); *see also Empower Pharmacy v. Iowa Bd.*

of Pharmacy, No. 22-0052, 2023 WL 1814272, at *8 n.9 (Iowa Ct. App. Feb. 8, 2023) (noting other cases before administrative agency "are not part of the record before us"). But even assuming we could take judicial notice of orders from other cases, we decline to do so here, mindful that a dispositional order from each case does not "tell the full story" leading up to that order. *Cf. State v. Washington*, 832 N.W.2d 650, 656 (Iowa 2013) (refusing to take judicial notice of other sentencing orders, as they did not "tell the full story" leading up to judgment). And even if these orders were properly before us, unpublished dispositions are never controlling and these would not change our analysis of the facts and law in this case given the applicable standards of review; even if the commissioner issued conflicting decisions on identical facts, we would be bound to affirm in both divergent rulings, so long as they were supported by substantial evidence. *See Gits Mfg. Co. v. Frank*, 855 N.W.2d 195, 197 (Iowa 2014) ("Substantial evidence supports an agency's decision even if the interpretation of the evidence may be open to a fair difference of opinion.").

IV. Disposition

We affirm the district court's decision on judicial review, finding section 730.5 does not apply to workers' compensation proceedings and substantial evidence supports the commissioner's determination that Davis did not rebut the presumption of intoxication.

AFFIRMED.