

IN THE COURT OF APPEALS OF IOWA

No. 0-437 / 09-1850
Filed August 11, 2010

SWIFT & COMPANY,
Petitioner-Appellant,

vs.

ANGELINA RIVERA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

An employer contends that the workers' compensation commissioner erred in allowing an employee to amend her petition for workers' compensation benefits to include a claim for penalty benefits and also takes issue with the commissioner's fact findings. **AFFIRMED.**

Timothy W. Wegman of Peddicord, Wharton, Spencer, Hook, Barron & Wegman, LLP, Des Moines, for appellant.

James C. Byrne of Neifert, Byrne & Ozga, P.C., West Des Moines, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Tabor, JJ.

VAITHESWARAN, P.J.

Angelina Rivera was employed by Swift & Company, a meatpacking plant in Marshalltown, Iowa. Rivera slipped and fell on a patch of ice while leaving work. She was diagnosed with low back pain and pain in her left knee, underwent knee surgery, and was assigned to light-duty work at the plant. Eventually, Swift placed Rivera on medical leave. Swift's letter notifying Rivera of the leave stated that her employment would end after a year if "no crewed openings have been identified which match your restrictions." One year later, Swift terminated Rivera's employment.

Rivera petitioned for workers' compensation benefits. Following an arbitration hearing, a deputy workers' compensation commissioner awarded her permanent total disability benefits. The deputy denied Rivera's motion to amend her petition to include a claim for penalty benefits.

On intra-agency review, the commissioner, through a designee, reversed that portion of the decision disallowing the amendment. The commissioner concluded Rivera could assert a claim for penalty benefits and that claim would be considered at a separate hearing to be scheduled after his decision on the merits became final. The commissioner affirmed the balance of the deputy's decision.

On judicial review, the district court affirmed the final agency decision. This appeal followed.

Swift contends the commissioner erred in: (1) allowing the claimant to amend her petition to seek penalty benefits; (2) finding that Rivera sustained a

permanent disability extending to the body as a whole; and (3) awarding permanent total disability benefits under the odd-lot doctrine.

I. In allowing Rivera to amend her petition, the commissioner invoked an administrative regulation authorizing amendments to pleadings. See Iowa Admin. Code r. 876-4.9(5) (2009). In pertinent part, the rule provides that “[l]eave to amend, including leave to amend to conform to proof, shall be freely given when justice so requires.” *Id.*

Swift correctly points out that the commissioner did not explain why “justice” required an amendment. We are not convinced this omission requires reversal. *But see Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 274 (Iowa 1995) (noting commissioner “sufficiently detailed and explained his opinion so that we could follow his process of analysis”). In the same decision allowing the amendment, the commissioner adopted the deputy’s detailed analysis of the merits. Therefore, there could be little doubt as to why Rivera was afforded the opportunity to pursue a claim for penalty benefits. Additionally, the rule on which the commissioner relied gave him significant discretion to allow amendments. Finally, Swift suffered no prejudice from the amendment, as the company was given time to prepare a defense on the issue. See *Fischer v. Iowa State Commerce Comm’n*, 368 N.W.2d 88, 93 (Iowa 1985) (noting no prejudice resulted from failure to amend petition at an earlier time). *But see Michael Eberhart Constr. v. Curtin*, 674 N.W.2d 123, 128 (Iowa 2004) (concluding deputy abused discretion in granting motion to amend petition to assert “odd lot” doctrine” after record was closed, affording the employer no opportunity to satisfy its burden of showing jobs were available). Under these circumstances, we

conclude the commissioner did not err in granting Rivera leave to amend her petition.

II. Swift's second and third arguments take issue with the agency's fact findings. Our review is for substantial evidence. Iowa Code § 17A.19(10)(f)(1) (2009). After examining the record as a whole, we have no trouble concluding that the agency findings underlying the award of permanent disability benefits are supported by substantial evidence. No useful purpose would be served by recounting that evidence.

We affirm the commissioner's decision allowing an amendment to add a claim for penalty benefits. We also affirm the commissioner's decision awarding Rivera permanent total disability benefits.

AFFIRMED.