

IN THE COURT OF APPEALS OF IOWA

No. 1-225 / 10-1718
Filed May 25, 2011

ABCM CORPORATION and CCMSI,
Petitioners-Appellants,

vs.

MELISSA V. MANNING,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,
Judge.

Employer and insurer appeal from the district court's decision affirming the
agency's award of workers' compensation benefits. **AFFIRMED.**

Charles A. Blades of Scheldrup Blades Schrock Smith Aranza P.C., Cedar
Rapids, for appellants.

Robert R. Rush of Rush & Nicholson, P.L.C., Cedar Rapids, for appellee.

Heard by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

EISENHAUER, P.J.

ABCM Corporation, owner of Harmony House, and its insurer, CCMSI (jointly Harmony House), appeal from the district court's decision affirming the agency's award of workers' compensation benefits to Melissa Manning.

I. Background Facts and Proceedings.

Harmony House is a care facility for geriatric, brain-injured, and mentally-challenged persons. Manning obtained an LPN license in 1987 and worked as a nurse for Harmony House for almost twenty years. Manning was fired on February 28, 2008.

On April 24, 2008, Manning filed a workers' compensation petition alleging cumulative injuries due to the nature of her work at Harmony House. Manning pled an injury date of February 28, 2008. At the time of the hearing, Manning was fifty-six. After the hearing, the deputy's July 2009, findings of fact state:

[Manning] did not realize that her medical conditions were work related until after she had left her employment and sought legal counsel to pursue a discrimination claim. It was in the process of evaluating [Manning's] discrimination claim that she was advised that she might have a claim for a work injury and this led to her filing her petition

. . . .
On February 13, 2002, [Manning] sought treatment . . . for knee pain. Dr. Burgett attributed [the] knee pain to degenerative joint disease and prescribed ibuprofen [and regular exercise]. [Manning] has a family history of osteoarthritis. . . . On March 11, 2005, [Manning] saw [Dr. Giles] with bilateral knee pain. . . . [After a series of Synvisc injections concluding] on May 4, 2005 . . . [Manning] reported improvement in both of her knees.

On September 6, 2005 . . . Dr. Giles referred [Manning to Dr. Crouse], an orthopedic surgeon. Dr. Crouse recommended a left knee arthroplasty to be followed in two weeks with a right knee arthroplasty. [Manning] underwent the left total knee arthroplasty on October 3, 2005. However, Dr. Crouse was unable to perform the second arthroplasty . . . because [Manning's] blood sugars were

out of control. . . . [Dr. Crouse gave Manning] another series of Synvisc injections . . . which resulted in some improvement On January 26, 2006, Dr. Crouse released [Manning] to return to work [Manning] underwent additional injections in 2006 and 2007 in her right knee. [Manning] has continued to treat with her family doctor . . . for ongoing knee and leg pain

In January 2003, [Manning] started developing lower back pain On February 18, 2005, she underwent an MRI that revealed degenerative disc disease and degenerative facet disease

. . . . [Manning] underwent an independent medical evaluation [IME] at her attorney's request with [Dr. Manshadi] on January 12, 2009. With respect to causation, Dr. Manshadi opines: ". . . It is my opinion that as a result of her work activities at Harmony House her pre-existing arthritic changes in her knees and lower back and lumbar region were aggravated, causing her to have significant pain in her knees. Also, probably due to her abnormal gait related to her knee pain, she did develop low back pain and aggravated her pre-existing degenerative changes in her lumbar spine."

The deputy noted Manning had been approved for social security disability and stated three of Manning's treating physicians "opined that [her] work aggravated [her] underlying degenerative arthritis, resulting in the need for [Manning] to undergo a total knee arthroplasty on the left and the need for . . . a right knee replacement as well."

The deputy's conclusions of law state:

The first issue . . . is whether [Manning] sustained an injury arising out of and in the course of her employment on February 28, 2008.

. . . . Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. . . .

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. . . . For time limitation purposes, the discovery rule then becomes pertinent so the statute

of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. [Citations omitted].

. . . .
The record shows that [Manning] has degenerative conditions in her knees and low back that were not caused by her work, but the record also demonstrates that those conditions were aggravated by [her] work duties. [Manning] has proven that her work duties included physical functions that aggravated her degenerative conditions, which is supported by the medical opinions in the record. The date chosen for her injury was February 28, 2008, which is the date [Manning] separated from her employment. It is apparent that [Manning] was requiring treatment for those injuries several years before her separation from her employment and it is also apparent that [she] did not understand the connection between those conditions and her employment. [Manning] understood that her medical conditions were degenerative in nature and like those that other family members had experienced. It was not until she sought legal advice for a discrimination matter that she realized that she had sustained a cumulative trauma to her bilateral knees and her low back as a result of her work activities substantially aggravating her conditions. [Manning] has established that she sustained a work injury, which occurred February 28, 2008.

The deputy concluded Manning “has sustained a permanent total disability” and determined her rate of compensation. The deputy ruled Harmony House failed to prove its affirmative defenses:

The next issue is whether the defendants have established their affirmative defenses related to notice pursuant to Iowa Code section 85.23 [ninety days from injury date] and statute of limitations pursuant to Iowa Code section 85.26 [two years from injury date].

The time period both for giving notice and filing a claim does not begin to run until the claimant as a reasonable person, should recognize the nature, seriousness, and probable compensable character of the injury. The reasonableness of claimant’s conduct is to be judged in light of claimant’s education and intelligence. Claimant must know enough about the condition or incident to realize that it is work connected and serious. Claimant’s realization that the injurious condition will have a permanent adverse impact on employability is sufficient to meet the serious requirement.

Positive medical information is unnecessary if information from any source gives notice of the condition's probable compensability. [Citations omitted].

. . . .
As already found, [Manning] knew that she had a degenerative condition and knew the nature of that condition, but did not understand that there might be a relationship between that condition and her work that would entitle her to make a claim for workers' compensation until she sought legal advice after her employment ended for an unrelated legal matter. [Manning] filed her petition April 24, 2008, which was within 90 days after her separation from employment and well within 90 days of when she first realized that she may have a condition that was work related for purposes of workers' compensation and well within the statute of limitations. The defendants have not established their affirmative defense.

Harmony House appealed the arbitration decision. In May 2010, the arbitration decision was adopted as the final agency decision with the following additional findings and analysis by the acting commissioner:

In addition to the findings of the presiding deputy, I find that [Manning] was terminated as a result of culmination of various work rule infractions [Manning] testified that a portion of the tardiness and absences were due to her work related knee and back condition. The presiding deputy believed that testimony in finding that she cannot be employed due to that condition. Therefore, her work injury found herein was also a significant cause of her termination from Harmony House.

Additionally, I find [Manning] was not only unaware of the probable compensable nature of her work injury until after she left Harmony House on February 28, 2008, she also was not aware that her knee or back problems would have a permanent adverse impact upon her employment until after she left the employ of Harmony House. She had returned to her regular job without permanent restrictions and remained in that job until her termination. She did not receive permanent restrictions until after her termination from Harmony House.

. . . [T]he presiding deputy's findings were based in part on his assessment that [Manning's] testimony was credible. While I performed a de novo review, I must give considerable deference to findings of fact that are impacted by the credibility findings The deputy . . . had the best opportunity to evaluate the demeanor of the persons who testified at the hearing.

Harmony House sought judicial review with the district court. In October 2010, the district court affirmed the agency.

Harmony House now appeals and raises three issues: (1) the commissioner erred in determining Manning timely filed her claim; (2) whether substantial evidence supports the commissioner's determination Manning's work activities caused her disability; and (3) whether substantial evidence supports the finding of permanent and total disability.

II. Scope of Review.

Iowa Code section 17A.19 (2007) lists the instances when a court may, on judicial review, reverse, modify, or grant other appropriate relief from agency action. "In exercising its judicial review power, the district court acts in an appellate capacity." *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 463 (Iowa 2004). When we review the district court's decision, "we apply the standards of chapter 17A to determine whether the conclusions we reach are the same as those of the district court. If they are the same, we affirm; otherwise, we reverse." *Id.* at 464.

Factual questions in workers' compensation are "delegated by the legislature to the commissioner." *Larson Mfg. Co., v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009). Therefore, we do not apply a "scrutinizing analysis" to the commissioner's factual findings. *Midwest Ambulance Serv. v. Ruud*, 754 N.W.2d 860, 866 (Iowa 2008). Rather, "[f]actual findings of the commissioner are reversed only if they are not supported by substantial evidence." *Id.* at 864. The question "is not whether the evidence supports different [factual] findings than

those made by the commissioner, but whether the evidence supports the findings actually made.” *Thorson*, 763 N.W.2d at 850. “The burden on the party who was unsuccessful before the commissioner is not satisfied by a showing that the decision was debatable, or even that a preponderance of evidence supports a contrary view.” *Ruud*, 754 N.W.2d at 865.

“The application of the law to the facts is also an enterprise vested in the commissioner.” *Thorson*, 763 N.W.2d at 850. “Accordingly, we reverse only if the commissioner’s application was irrational, illogical, or wholly unjustifiable.” *Id.*

“Finally, interpretation of workers’ compensation statutes and related case law has not been clearly vested within the discretion of the agency, so this court is free to substitute its judgment de novo for the agency’s interpretation of law.” *Ruud*, 754 N.W.2d at 864.

III. Notice and Statute of Limitations.

A. Injury Date. Harmony House argues the commissioner’s February 28, 2008 injury date determination is incorrect because Manning was on notice of the compensable nature of her cumulative injury prior to that date due to actual knowledge or due to a “reasonable person’s” knowledge. The Iowa Supreme Court has summarized the interplay of the “manifestation” of a cumulative injury and the discovery rule:

To summarize, a cumulative injury is manifested when the claimant, as a reasonable person, would be plainly aware (1) that he or she suffers from a condition or injury, and (2) that this condition or injury was caused by the claimant’s employment. Upon the occurrence of these two circumstances, the injury is deemed to have occurred. Nonetheless, *by virtue of the discovery rule, the statute of limitations will not begin to run until the employee also knows that the physical condition is serious enough to have a*

permanent adverse impact on the claimant's employment or employability, i.e., the claimant knows or should know the "nature, seriousness, and probable compensable character" of his injury or condition.

Herrera v. IBP, Inc., 633 N.W.2d 284, 288 (Iowa 2001) (emphasis added) (quoting *Orr v. Lewis Cent. Sch. Dist.*, 298 N.W.2d 256, 257 (Iowa 1980)).

Manning's knowledge of the three triggering factors "may be actual or imputed from the record." See *Thorson*, 763 N.W.2d at 854-55 (stating claimant "deemed to know" the three factors "when she knows her physical condition is serious enough to have permanent adverse impact on her employment or employability"). "The question of whether a claimant knew, or should have known, of the nature, seriousness, and probable compensability of her injury is a question of fact to be determined by the commissioner." *Ruud*, 754 N.W.2d at 865.

We recognize there is some evidence in the record that could support an earlier injury date. However, the district court recognized the existence of contrary evidence and properly focused its consideration on whether the evidence supports the decision made, not whether it supports a different decision. The district court ruled: "While an earlier discovery date could have been supported, the finding made by the commissioner is supported by substantial evidence in the record." After our review of the record, we agree with the district court. See *Thorson*, 763 N.W.2d at 852 (stating commissioner's determination of injury date receives "a substantial amount of latitude" because "it is an inherently fact-based determination derived from a multitude of factors").

B. Application of the Law. Harmony House argues the commissioner misinterpreted and misapplied the notice/statute of limitations law. The district court rejected this claim, ruling:

[T]he record does not support that Ms. Manning had suspicions from the beginning of her knee and back pain that there was a connection between her work and her injuries. The deputy noted that she believed the medical conditions were degenerative in nature and similar to family members' experiences. While she was aware that her job was physically demanding, she testified at the hearing before the commissioner that she had no knowledge of a connection between her work and her injuries until after her termination. The commissioner determined that she would not have been on notice until after her termination of the adverse impact of her employment. This is not a misinterpretation of the law. The Court finds that the commissioner's determination is not based upon an illogical, irrational and wholly illogical application of the law to fact.

We note the commissioner's additional analysis states Manning "returned to her regular job without permanent restrictions and remained in that job until her termination. She did not receive permanent restrictions until after her termination." After our review of the record as a whole, we agree with the district court. See *Kohlhaas v. Hog Slat, Inc.*, 777 N.W.2d 387, 390 (Iowa 2009) (stating we review "to determine if our conclusions are the same").

IV. Causation.

Harmony House argues "the commissioner's determination that Manning's work activities at Harmony House were a substantial factor in causing the need for total knee replacement and resulting disability is not supported by substantial evidence." Harmony House claims "Manning's knee condition was a degenerative condition that continued to deteriorate without regard to her work activities" and cites Dr. Jackson's November 2008 IME report: "[W]hile her work

activities may cause her to be symptomatic, they did not contribute to the onset or to the advancement of her condition beyond its normal rate of progression.”

Whether Manning’s injury has a causal connection with her employment or arose independently “is ordinarily established by expert testimony and the weight to be given such an opinion is for the finder of fact.” See *St. Luke’s Hosp. v. Gray*, 604 N.W.2d 646, 649 (Iowa 2000). An expert opinion, “even if uncontroverted, may be accepted or rejected in whole or in part” by the agency. *Frye v. Smith-Doyle Contractors*, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997).

The district court detailed the medical evidence and concluded:

There is substantial evidence in the record to support the commissioner’s determination that Ms. Manning’s conditions arose out of and in the course of her employment. Dr. Manshadi, Dr. Giles, Dr. Johnston, and Dr. Crouse opined that Ms. Manning’s work aggravated her degenerative arthritis. The commissioner, as the trier of fact, is in the best position to evaluate the credibility of expert testimony and must determine the weight to be given. “In the case of a conflict in the evidence, the court is not free to interfere with the commissioner’s findings.” [*Id.*] . . . Therefore, despite Dr. Jackson’s contrary opinion, the Court will not disturb the commissioner’s findings. Because there is substantial evidence in the record, the commissioner’s determination should be affirmed.

After our review, we agree with the district court.

V. Permanent Total Disability.

Harmony House argues the commissioner’s permanent total disability award is not supported by substantial evidence and asserts Manning “could have continued working at Harmony House, but for her well-documented disciplinary issues.”

Total industrial disability occurs when an injury “wholly disables the employee from performing work that the employee’s experience, training,

intelligence, and physical capacities would otherwise permit the employee to perform.” *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 633 (Iowa 2000). Total disability does not require a state of absolute helplessness. *Id.* The district court ruled:

While [Harmony House] is correct that Ms. Manning was performing her job up until she was terminated, she did not receive the restrictions until after her termination. Therefore, the record contains sufficient evidence to support the commissioner’s determination that Ms. Manning could not return to her job with the permanent restrictions.

. . . . The deputy found Ms. Manning to be a credible witness and gave weight to her testimony that she was often tardy as a result of her work injuries.

Additionally, the deputy found that her current condition would only allow Ms. Manning to work on an occasional basis as in her current job. Ms. Manning testified that she works approximately 3 to 4 hours at a time, two days a week. The record supports the determination that Ms. Manning suffered a permanent total disability. The physical work restrictions placed by physicians on Ms. Manning would not enable her to return to a charge nurse position, and there is substantial evidence in the record which demonstrates she could not do more than the limited work schedule she currently maintains. A finding of permanent total disability does not require a showing that the claimant is completely helpless, but only that she would be unable to compete in the type of position she was trained for and previously performed. The record contains substantial evidence to support such a showing, and the commissioner’s determination should be affirmed.

We agree with the district court.

AFFIRMED.