

IN THE COURT OF APPEALS OF IOWA

No. 1-536 / 11-0171
Filed September 8, 2011

**QUAKER OATS COMPANY and
ACE-CIGNA,**
Petitioners-Appellants,

vs.

GARY DOBBE,
Respondent-Appellee.

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

Employer and its insurer appeal from the district court's decision on
judicial review affirming the workers' compensation commissioner's benefit
award. **AFFIRMED.**

Mark A. Woollums and Edward J. Rose of Betty, Neuman & McMahon,
P.L.C., Davenport, for appellants.

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

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

EISENHAUER, P.J.

Quaker Oats Company¹ appeals a ruling on judicial review affirming the workers' compensation commissioner's benefit award to Gary Dobbe for a back injury. We affirm.

Dobbe performed heavy work at Quaker Oats from 1988 to May 2007. In March 2010, the commissioner ruled Dobbe had suffered a cumulative trauma injury to his back while working at Quaker Oats. The commissioner also determined Dobbe's back injury caused permanent total disability to the body as a whole. The commissioner found:

I base [my] findings primarily on the views of the treating neurologist, [Dr. Risk]. I found his views more convincing than those of the two onetime evaluators, [Dr. Westpheling and Dr. Boarini]. Dr. Risk was far more familiar with [Dobbe's] clinical presentations than the other doctors The causation views of both Drs. Boarini and Westpheling also were quite troublesome in that they appear to deny causation simply because [Dobbe] did not report a specific traumatic event or injury, only chronic low back pain. . . . The law of this State compensates for cumulative or gradual onset work injuries.

. . . The permanent activity restrictions recommended by Dr. Risk due to the work-related back condition were also far more convincing than those of other doctors given [Dr. Risk's] greater clinical familiarity with [Dobbe's] clinical presentations and their consistency with [Dobbe's] uncontroverted testimony as to his limitations.

(Citations omitted.)

Quaker Oats raises three issues: (1) whether the commissioner applied an erroneous legal causation standard to the facts; (2) whether the commissioner's causation findings are supported by substantial evidence; and

¹ Our references to Quaker Oats include the company's insurer, ACE-CIGNA. Quaker Oats did not appeal to the district court the commissioner's award of tinnitus-based benefits to Dobbe.

(3) whether the commissioner's award of permanent total disability benefits is supported by substantial evidence.

Iowa Code section 17A.19 (2009) 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.

Regarding the first issue, Quaker Oats acknowledges the commissioner's citations regarding causation are correct, but argues he "failed to apply these requirements to the facts." The district court disagreed and ruled:

The Commissioner found that Dobbe did not have known back problems predating his employment with Quaker Oats, and that his symptoms had progressively worsened over the years. Dr. Risk testified that he believed that Dobbe's employment had aggravated his back condition to some extent. Under the applicable case law, such testimony was sufficient to generate a question on causation. The Commissioner applied the proper causation standards in the Appeal Decision, and despite [Quaker Oats'] assertions to the contrary, the record does not show [the Commissioner] failed to follow those standards. Consequently, the Commissioner did not apply a clearly erroneous causation standard, and the Appeal Decision must be affirmed on this point.

(Citations omitted.)

We note "[t]he application of the law to the facts is . . . an enterprise vested in the commissioner." *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009). "Accordingly, we reverse only if the commissioner's application was

‘irrational, illogical, or wholly unjustifiable.’” *Id.* (quoting Iowa Code § 17A.19(10)(f)). 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 reached by the district court”).

In analyzing whether the commissioner’s causation findings are supported by substantial evidence, the district court ruled:

Essentially then, there is a proverbial battle of the experts. In such a case it is not for this Court to substitute its own judgment of credibility or weight of any one opinion for that of the Commissioner. Again, the question is not whether this Court would find differently, but whether there is substantial evidence to support the findings of the Commissioner. Taking the record as a whole, in light of the findings of the Commissioner that Dr. Risk is more credible than the other doctors, there is enough evidence such that a reasonable person could find as the Commissioner did. Consequently, the findings as to causation are supported by substantial evidence in the record, and the decision of the agency must be affirmed on this issue.

It is the role of the commissioner, not the court, to determine the credibility of witnesses and the weight to be given to any evidence. *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998) (stating commissioner, as fact finder, determines the weight to be given to any expert testimony and “may accept or reject the expert opinion in whole or in part”). After our review of the record as a whole, we agree with the district court. See *Kohlhaas*, 777 N.W.2d at 390.

Finally, in ruling the commissioner’s award of permanent total disability benefits is supported by substantial evidence, the district court stated:

Again, in what is essentially a battle of the experts, it is not for this Court to substitute its own judgment for that of the Commissioner. Nor is the question under a substantial evidence analysis what this Court would do, but rather whether a reasonable

person could find the same way as the Commissioner. Looking at the record as a whole while considering the credibility and weight of the evidence as determined by the Commissioner, there is substantial evidence to support the finding of total industrial disability and the awarding of permanent total disability benefits. Consequently, the Appeal Decision of the Commissioner must be affirmed.

Dobbe is a high school graduate in his early sixties who has held physically demanding jobs most of his adult life. In addition to his back injury, Dobbe has tinnitus and an amputated left index finger. After our review of the record as a whole, we agree with the district court. *See id.*

AFFIRMED.