

IN THE COURT OF APPEALS OF IOWA

No. 2-035 / 11-1177
Filed March 28, 2012

HOWARD JOHN KOHLHAAS,
Petitioner-Appellant,

vs.

**HOG SLAT, INC., and ROYAL &
SUNALLIANCE INSURANCE
COMPANIES,**
Respondents-Appellees.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg,
Judge.

An injured worker appeals from the district court order affirming the denial
of his review-reopening petition by the workers' compensation commissioner.

AFFIRMED.

Mark S. Soldat of Soldat & Parrish-Sams, P.L.C., West Des Moines, for
appellant.

L. Tyler Laflin of Engles, Ketcham, Olson & Keith, P.C., Omaha,
Nebraska, for appellees.

Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, J.

Ten years ago, Howard Kohlhaas entered into a workers' compensation settlement with his former employer and its insurer. In 2005, he filed a petition for review-reopening of that settlement. The agency denied the petition, finding Kohlhaas failed to show by a preponderance of the evidence a change in his condition not contemplated at the time of settlement.

In his appeal from that ruling, our supreme court clarified the test for review-reopening proceedings. See *Kohlhaas v. Hog Slat, Inc.*, 777 N.W.2d 387, 392 (Iowa 2009) (disavowing obiter dictum from *Acuity Insurance v. Foreman*, 684 N.W.2d 212, 217 (Iowa 2004), suggesting a worker was required to prove the change in his condition since the time of the original injury must not have been contemplated at the time of the original award). The court remanded the case to the commissioner for the limited purpose of determining whether Kohlhaas met his burden of proof under the proper standard. After applying the clarified test to the facts already in the record, the commissioner again denied Kohlhaas's petition and the district court affirmed on judicial review.

In this appeal, Kohlhaas does not argue he met his burden of proof for review-reopening, but contends the commissioner read the remand order too narrowly. Because we agree with the district court that the commissioner's decision on remand correctly applied the test for review-reopening as set forth by our supreme court, we affirm.

I. Background Facts and Proceedings

In the original appeal of this matter, our supreme court set forth the following facts:

On October 21, 1999, a 400-pound concrete block fell on Howard Kohlhaas' right foot while working at Hog Slat. His foot was fractured in several places, and the skin was crushed and torn apart. On July 15, 2002, Kohlhaas and Hog Slat, along with its insurance companies Royal and SunAlliance Insurance Cos., filed an agreement for settlement pursuant to Iowa Code chapter 86 (2002), which was approved by the Iowa workers' compensation commissioner. The settlement established that the injury proximately caused a 50% permanent partial-disability to Kohlhaas' right leg. The settlement documents also contained the opinion of Dr. Crane that Kohlhaas' knee, hip, and back pain was not related to the work injury.

Kohlhaas I, 777 N.W.2d at 390.

Following the settlement, Kohlhaas continued to suffer from foot, knee, hip, and back pain in varying degrees. *Id.* He filed a review-reopening petition on July 14, 2005, requesting an increase in compensation for a 95 percent industrial disability. *Id.* Our supreme court described the review-rehearing proceedings as follows:

Kohlhaas presented evidence from his chiropractor, Dr. Mueller, who asserted Kohlhaas' knee, hip, and back problems were a direct result of his injury. Dr. Kuhnlein, who performed a medical evaluation, opined Kohlhaas had a 34% impairment of his right leg, and his knee and hip pain was related to the change in his gait after the injury. The review-reopening decision issued by the deputy commissioner on August 31, 2006 determined that an increase in compensation was not warranted because "the claimant has not proved by a preponderance of the evidence that there has been a change in the condition of the claimant that was not anticipated at the time of the original settlement." The deputy commissioner also denied Kohlhaas reimbursement for Dr. Kuhnlein's medical evaluation. Kohlhaas appealed, and the decision was affirmed by the commissioner.

Kohlhaas filed a petition for judicial review, which the district court affirmed, stating “[i]t is clear that most of the complaints that the petitioner claims supports an increase in his disability were reported and known at the time of the settlement.” *Id.* Further, the district court determined

[t]he connection between the 1999 injury and the petitioner’s complaints of back, hip, and knee pain (while supported by Drs. Mueller and Kuhnlein) were discounted by Dr. Crane at the time of the original settlement. The agency was well within its rights to side with Dr. Crane’s evaluation of this issue.

Id.

On appeal, the supreme court clarified the standard for granting relief in a review-reopening. *Id.* at 391-93. The commissioner and district court had relied on the test articulated in *Acuity Insurance*, 684 N.W.2d at 217, reading it to require the employee to demonstrate his or her condition had changed and that change was not taken into account at the time of the original settlement. *Kohlhaas I*, 777 N.W.2d at 391. Kohlhaas argued the rule in *Acuity* stating the change in condition “must not have been within the contemplation of the decision maker at the time of the original award” was obiter dictum and not binding precedent. *Id.* Our supreme court agreed and clarified: “What we attempted to say in *Acuity* is that a condition that has already been determined by an award or settlement should not be the subject of a review-reopening petition.” *Id.* at 391-92. The correct test is whether there is proof by a preponderance of the evidence that the claimant’s current condition is “proximately caused by the original injury.” *Id.* at 392.

The supreme court noted there was arguably substantial evidence in the record that Kohlhaas's current condition did not warrant an increase in compensation. But given that the commissioner's determination may have been influenced by the disavowed language from *Acuity*, the court reversed and remanded the case to the commissioner "to determine on the record already made whether Kohlhaas has met the burden of proof required for a review-reopening petition under the standard we have set forth today." *Id.* at 393.

On remand, the commissioner concluded Kohlhaas had failed to present sufficient evidence to prove he was entitled to review-reopening. The commissioner noted Dr. Kuhnlein had opined his impairment rating was thirty-four percent of the right lower extremity following a February 17, 2006 independent medical examination—less than the fifty percent impairment the parties had agreed upon in the 2002 settlement.

The evidence in the record showed Kohlhaas's current complaints about his inability to work or engage in other activities he had formerly enjoyed were similar to those voiced at the time of the parties' settlement. For instance, at the time of the review-reopening, Kohlhaas alleged he was almost completely disabled—with a ninety-five percent permanent partial disability; in the six months leading up to the settlement, Kohlhaas was unemployed due to pain and alleged he was unable to stand an hour at a time and had difficulty driving, could not carry more than fifty pounds, and could not do ninety-nine percent of the activities he used to do. The commissioner noted Dr. Kuhnlein opined Kohlhaas had a gait alteration that caused calf atrophy and knee and hip pain, but that

there was no tissue-based impairment in either the hip or knee and he could not rate the pain complaints. The commissioner found the only “arguably new evidence” presented regarding Kohlhaas’s injury was that his right foot was suffering spasms, but held there was no evidence of any connection between the alleged spasms and an increase in his physical disability. On August 12, 2010, the commissioner denied Kohlhaas’s review-reopening petition, and following a timely request for rehearing, affirmed that decision on September 27, 2010.

Kohlhaas sought judicial review alleging several errors. The district court determined the only question properly before it was whether the commissioner erred in finding Kohlhaas failed to show by a preponderance of the evidence that he was entitled to review-reopening relief. The district court found substantial evidence supported the commissioner’s findings:

There is evidence in the record the Mr. Kohlhaas suffered back and hip pain prior to the 2002 settlement. While the pain may or may not have worsened in the subsequent years, the record as it stands supports a conclusion that Mr. Kohlhaas failed to show that such a conclusion is probable rather than merely possible. Subsequent doctors’ visits are mixed, some indicate he has had increased pain in his leg, back, and hip, while others, such as his Medicare evaluation, lack any indication he had such pain at that time. Taken together, there are enough uncertainties in all directions for the Commissioner to have properly concluded that Mr. Kohlhaas simply had not proven his argument by a preponderance of the evidence.

Having found the commissioner properly applied the law, the district court concluded the commissioner did not act without regard to the law or facts of the case, did not act in an arbitrary or capricious manner, and did not abuse its discretion. The district court affirmed the commissioner’s ruling in a July 5, 2011 order.

Kohlhaas filed a motion to enlarge or amend on July 11, 2011. In its August 2, 2011 order, the district court denied the motion. Kohlhaas filed his notice of appeal on August 4, 2011.

II. Scope and Standard of Review.

Our scope of review is for the correction of legal error. See *Kohlhaas I*, 777 N.W.2d at 390. In evaluating the judicial review order, we apply the standards of chapter 17A (2011) to determine whether the conclusions we reach are the same as those of the district court. *Mercy Med. Ctr. v. Healy*, 801 N.W.2d 865, 870 (Iowa Ct. App. 2011). If they are the same, we affirm; otherwise, we reverse. *Id.*

Our legislature delegated questions of fact to the workers' compensation commissioner. *Healy*, 801 N.W.2d at 870. We only reverse the commissioner's findings of fact if they are not supported by substantial evidence. *Id.* Substantial evidence is defined as

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). We do not ask whether the evidence supports a different factual finding, but rather if it supports the findings actually made. *Healy*, 801 N.W.2d at 870.

The application of law to the facts also falls within the purview of the commissioner, and we only reverse if such application is irrational, illogical, or wholly unjustifiable. *Id.*

III. Analysis.

The governing standard for review-reopening proceedings stems from Iowa Code section 86.14(2) (2005), which states:

In a proceeding to reopen an award for payments or agreement for settlement as provided by section 86.13, inquiry shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon.

To justify an increase in compensation benefits, the worker must establish by a preponderance of the evidence that, subsequent to the date of the settlement, he “suffered an *impairment or lessening of earning capacity proximately caused by the original injury.*” See *Simonson v. Snap-On Tools Corp.*, 588 N.W.2d 430, 434 (Iowa 1999) (citation omitted). In the instant case, the district court affirmed the commissioner’s determination on remand that Kohlhaas had not carried his burden to show an “increased disability since the settlement agreement.”

On appeal, Kohlhaas complains the district court erred in two regards. His first contention centers on the district court’s finding that his “disability must have increased in some respect since the original settlement” to warrant review-reopening. Kohlhaas interprets this statement to mean the commissioner and district court excluded two alternative ways in which he may have shown he was entitled to review-reopening: (1) his disability changed in character from a scheduled injury to an industrial injury following the 2002 settlement and (2) the nature of the original injury was unknown at the time of the settlement because

there existed a misconception as the cause, nature, and extent of the injury, and additional benefits are warranted.

In his brief in support of his rehearing application, Kohlhaas argued his compensation should be increased because his injury is to the body as a whole rather than a scheduled member, relying on the statements of Dr. Mueller and Dr. Kuhnlein in support of this claim. He argued the injury (1) either changed following the settlement or (2) was an injury to the body as a whole at the time of settlement, but that the evidence was not known at that time because Dr. Crane informed him there was no connection between his work injury and “his whole-body conditions.”

In denying the judicial review petition, the district court specifically found Kohlhaas had not met his burden to prove the injury changed in character, stating: “In making the arguments about the injury morphing or extending from partial body to whole body, Mr. Kohlhaas may have provided some evidence in favor of his position [but] he did not meet the burden of proof required.” In denying his motion to enlarge, the district court included the statement Kohlhaas now challenges regarding a claimant’s need to show an increase in disability:

To the extent that Mr. Kohlhaas argues that the Commissioner erred by discussing the standard in terms of an increase in disability rather than a mere change in disability, this Court finds that any distinction is meaningless. Mr. Kohlhaas would not be seeking review-reopening relief unless his condition warranted an increase in his benefits because his physical condition had worsened. Put another way, *his disability must have increased in some respect since the original settlement*. Otherwise, this entire process is moot because there is no possible claim for relief. This is true even if the disability has morphed or otherwise moved to a new body part; the change must still necessitate an increase in his benefits for there to be a valid claim for relief.

(Emphasis added.)

Even if the district court's terminology may have been abbreviated, a fair reading of the ruling shows that the district court required Kohlhaas to show a change or increase in disability or a reduction in earning capacity that would entitle him to an *increase in benefits*, whether it be from (1) an increase in his scheduled injury, (2) a change from a scheduled injury to an industrial injury, or (3) a misunderstanding as to the nature of the injury in 2002. Nothing in the commissioner's ruling limits Kohlhaas's recovery to a situation where his leg injury increased following settlement.

To the extent Kohlhaas complains the commissioner failed to mention the various ways a worker could prove he was entitled to review-reopening and failed to offer specific findings as to Kohlhaas's failure of proof with regard to each way, the commissioner was not required to do so. While the commissioner's decision must be "sufficiently detailed to show the path he has taken through conflicting evidence," the commissioner is not required to discuss each and every fact in the record or explain why he has accepted or rejected every given argument. Such a requirement would be unnecessary and burdensome. *Terwilliger v. Snap-On Tools Corp.* 529 N.W.2d 267, 274 (Iowa 1995). It is enough that we can follow the commissioner's analytical process on appeal. *Bridgestone/Firestone v. Accordino*, 561 N.W.2d 60, 62 (Iowa 1997).

Although the commissioner does not specifically state that Kohlhaas's permanent partial disability to the right lower extremity did not transform into an industrial injury, the commissioner rejected evidence the injury now

encompassed the hip and knee—the evidence Kohlhaas relies on to show an industrial injury. The commissioner also discounted Kohlhaas’s claim his impairment increased from fifty percent to ninety-five percent, noting Kohlhaas’s own expert opined his disability rating was lower than it had been at the time of settlement. Further, the commissioner found many of Kohlhaas’s complaints were identical to those made in 2002, indicating the injury was not worse than believed at the time of settlement. Taken in its entirety, the remand decision effectively rejected all three grounds for review-reopening.

Kohlhaas’s second contention focuses on the district court’s discussion of res judicata and the notion that a review-reopening petition is not a “means to re-argue entire case.” The district court was paraphrasing the supreme court’s decision in *Kohlhaas I*, which explained:

Although we do not require the claimant to demonstrate his current condition was not contemplated at the time of the original settlement, we emphasize the principles of res judicata still apply—that the agency, in a review-reopening petition, should not reevaluate an employee’ level of physical impairment or earning capacity if all of the facts and circumstances were known or knowable at the time of the original action.

Kohlhaas I, 777 N.W.2d at 393.

Kohlhaas alleges the commissioner and district court misapplied the doctrine of res judicata and erroneously restricted his ability to prove he was entitled to review-reopening benefits based on an increase in his permanent partial disability to his right lower extremity. In his brief, he states, “[I]f permanent functional disability developed in the whole body after 7/15/02, the settlement was not preclusive in the review-reopening determination.”

From our reading of the record, it does not appear the commissioner or the district court limited the way in which Kohlhaas was allowed to show he was entitled to review-reopening. The doctrine of res judicata is only discussed as it was in *Kohlhaas*—to form the baseline from which the agency must determine whether there has been an increase or change in the level of impairment. Moreover, as stated above, the agency record shows Kohlhaas was aware of his condition at the time of the settlement. His case does not fall within those situations addressed by *Gosek v. Garmer & Stiles Co.*, 158 N.W.2d 731, 735 (Iowa 1968) (allowing reopening when critical facts existed but were unknown and could not have been discovered through reasonable diligence at the time of the prior award or settlement).

Kohlhaas does not assert he met the burden of proof for the review-reopening. Instead, he seeks reversal and remand to the commissioner “with a specification of all the correct legal principles preserved by Kohlhaas to be applied to the record already made” Because we find the commissioner correctly applied the law on remand, we affirm.

AFFIRMED.