

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1095 / 12-0999  
Filed February 27, 2013

**ALICE TALTON,**  
Petitioner-Appellant,

**vs.**

**FLEUR DELIS MOTOR INNS, INC.**  
**and CAMBRIDGE INTEGRATED**  
**SERVICES GROUP, INC.,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom,  
Judge.

An injured employee appeals from the district court's decision affirming the  
agency's denial of workers' compensation benefits. **AFFIRMED.**

Nicholas W. Platt of Hopkins & Huebner, P.C., Des Moines, for appellant.  
Charles A. Blades of Scheldrup, Blades, Schrock, Smith & Aranza, P.C.,  
Cedar Rapids, for appellee.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

**MULLINS, J.**

We consider whether there is substantial evidence to support the workers' compensation commissioner's (commissioner) conclusion that employee Alice Talton's work injury did not cause her arthritis or the pain in her knee and back, that she was not entitled to alternate medical care, and that she was not entitled to additional temporary disability or healing period benefits. The district court affirmed the commissioner's ruling and so do we.

**I. Background Facts**

On April 17, 2007, Talton sustained a stipulated work-related injury when a seven-pound can of tomatoes fell about six feet onto her left foot.

Talton's primary care physician referred her to podiatrist Dr. Robert Eells. Dr. Eells evaluated her foot and x-rays, and diagnosed an injury to the first metatarsal head. Talton saw Dr. Eells periodically for about three months. On July 18, 2007, Dr. Eells referred Talton to Dr. Eric Barp, a foot surgeon, for possible removal of a fractured sesamoid.

Talton met with Dr. Barp on July 19, 2007. He diagnosed a fractured fibular sesamoid on her left foot that he believed would heal with conservative treatment. He noted her back and hip pain "should subside once we get her out of the CAM boot. We will get her out of the CAM boot." Dr. Barp's assessment was sesamoiditis and arthritis in her big toe joint. In a November 20 letter to the nurse case manager, Dr. Barp stated he told Talton to stop using the CAM boot that day. The letter indicated he believed she had reached maximum medical improvement and that her left big toe arthritis was unrelated to her work injury.

On January 11, 2008, Talton sought treatment on her own initiative from Dr. Vincent Mandracchia, a podiatrist at Broadlawns Medical Center. Dr. Mandracchia assessed her condition as degenerative joint disease with hallux limitus first metatarsal phalangeal joint, left. Dr. Denise Mandi, a foot surgeon at Broadlawns Medical Center, performed an exostectomy on January 31.

Talton had follow-up appointments with Dr. Mandi on February 26 and March 25, 2008. Talton was recovering well from surgery, but reported that her pain was “about the same.” Dr. Mandi suggested hemi-implant surgery to replace the left big toe joint.

Talton saw other doctors throughout 2008 to treat pain in her right knee and lower back. Dr. David Wadle and Dr. Dana Simon of the Mercy Pain Medicine Center treated her for back pain. Dr. Simon indicated Talton’s back pain was “probably secondary to the antalgic gait abnormality, maybe somewhat contributory.” Dr. Wadle similarly stated that Talton’s altered weight bearing activities seem to have aggravated a pre-existing condition in her lower back.

On March 26, 2008, Talton saw Dr. Timothy Kenney from the Iowa Orthopaedic Center for her knee pain. Dr. Kenney believed Talton’s altered weight bearing aggravated a pre-existing condition in her arthritic right knee but that this was a temporary condition caused by her altered gait while wearing the CAM boot.

On July 8, 2009, Dr. Mandracchia wrote a letter explaining that he believed the joint disease and cartilage damage in Talton’s left big toe directly

resulted from her April 2007 work injury and that joint replacement was a better option than conservative treatment.

## **II. Prior Proceedings**

On January 16, 2009, Talton filed a workers' compensation petition. The parties stipulated she sustained a left foot injury arising out of and in the course of her employment on April 17, 2007. Talton claimed she also experienced right knee and low back problems resulting from the injury. On August 19, 2010, the deputy workers' compensation commissioner (deputy) ruled in Talton's favor, finding her left foot injury altered her gait and thereby caused her right knee and low back problems. The deputy awarded continuing temporary partial disability benefits and alternate medical care. The deputy found Talton had not yet reached maximum medical improvement, and therefore permanent partial disability issues were not ripe.

On intra-agency appeal from the arbitration decision, the final agency decision<sup>1</sup> found Talton's stipulated injury had healed and the ongoing problems with her left foot, right knee, and low back were unrelated. The commissioner awarded temporary disability benefits only through November 20, 2007, the date the commissioner found Talton reached maximum medical improvement. The commissioner denied Talton's requests for alternate medical care and penalty benefits.

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<sup>1</sup> A deputy workers' compensation commissioner issued a final agency decision pursuant to a delegation of authority from the commissioner.

Talton filed a petition for judicial review in district court. The district court affirmed the commissioner's decision.

### **III. Standard of Review**

Iowa Code chapter 17A governs judicial review of the decisions of the workers' compensation commissioner. Iowa Code § 86.26 (2009); *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 463 (Iowa 2004). In reviewing a district court's decision on appeal, we apply the standards of chapter 17A to determine whether the conclusions we reach are the same as those of the district court. *Mycogen Seeds*, 686 N.W.2d at 464.

Medical causation presents a question of fact that is vested in the discretion of the workers' compensation commission. *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 844 (Iowa 2011). The commissioner's finding of medical causation may only be reversed if it "is not supported by substantial evidence in the record before the court when the record is viewed as a whole." Iowa Code § 17A.19(10)(f); *Pease*, 807 N.W.2d at 844.

"Substantial evidence" is statutorily defined as: "[T]he 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). The question is not whether evidence might support a different finding but whether the evidence supports the finding actually made. *Larson Mfg. Co., Inc. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009). Our role as a reviewing court is not to weigh the evidence or

credibility of witnesses but to ensure that substantial evidence supports the finding according to the witnesses whom the commissioner believed. *Arndt v. City of Le Claire*, 728 N.W.2d 389, 394-95 (Iowa 2007).

Whether an injury arose out of and in the course of employment is a mixed question of law and fact. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). When an issue “involves mixed questions of law and fact, care must be taken to articulate the proper inquiry for review instead of lumping the fact, law, and application questions together within the umbrella of a substantial-evidence issue.” *Id.* at 219. An agency decision shall be reversed if it is “[b]ased upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.” Iowa Code § 17A.19(10)(m). If “the claim of error lies with the agency’s interpretation of the law, the question on review is whether the agency’s interpretation was erroneous.” *Meyer*, 710 N.W.2d at 219.

#### **IV. Analysis**

##### **A. Medical Causation**

At issue in this case is medical causation; namely, whether Talton’s April 17, 2007 work injury caused the ongoing problems in her left foot, right knee, and lower back. The commissioner relied on medical testimony from Dr. Barp, a podiatrist and foot surgeon who treated Talton from July through November 2007. The commissioner concluded that Talton’s left foot, right knee, and lower back problems are unrelated to her work injury. The commissioner found Talton’s knee and back pain related to her altered gait from wearing a CAM boot

and also that Talton “wore the boot long after she had been medically advised to discontinue wearing it.”

Medical causation “is essentially within the domain of expert testimony.” *Dunlavey v. Economy Fire & Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995). The weight to be given those opinions is for the commissioner and “that may be affected by the completeness of the premise given the expert and other surrounding circumstances.” *Id.* Unrebutted expert medical testimony cannot be summarily rejected. *Poula v. Siouxland Wall & Ceiling, Inc.*, 516 N.W.2d 910, 911-12 (Iowa Ct. App. 1994).

The majority of the evidence concerning medical causation comes from Drs. Barp, Mandi, and Mandracchia. Dr. Barp concluded that Talton reached maximum medical improvement on November 20, 2007, and that her left big toe arthritis was unrelated to her work injury. Dr. Mandi is a foot and ankle surgeon who performed an exostectomy on Talton’s left foot in January, 2008. Dr. Mandi stated her treatment was due to Talton’s work-related injury on April 17, 2007, and that the presentation was consistent with that type of blunt trauma injury to the joint. Dr. Mandracchia is a podiatrist who began treating Talton in January 2008. He believed the joint disease and cartilage damage in Talton’s left big toe directly resulted from her April 2007 work injury.

The commissioner, as fact finder, is responsible for determining the weight to be given to expert testimony. *Pease*, 807 N.W.2d at 848. The commissioner is free to accept or reject an expert’s opinion in whole or in part, particularly when relying on a conflicting expert opinion. *Id.*

The commissioner ultimately concluded that Dr. Barp's opinion deserved the greatest weight as it was consistent with the overall medical evidence. The commissioner noted that Talton's degenerative arthritis in her left big toe was present on the April 27, 2007 x-rays, ten days after her injury. The commissioner pointed out "[a]rthritis is a degenerative long-term process," and later radiographic studies showed no indication that the condition had progressed as one would expect it to if the work injury had caused or accelerated the arthritis. The commissioner concluded little weight should be given to the causation opinions of Drs. Mandracchia and Mandia because "their own contemporaneous medical treatment notes and records are not consistent with their later causation opinions." The commissioner pointed to the fact that the operative report for the January 2009 surgery expressly states there was no cartilage damage at that time. As in this case, when the record presents a conflict of medical evidence, the commissioner is entitled to place greater weight on one medical expert's opinion. *Id.*

Talton also argues the commissioner's conclusion she continued wearing the CAM boot after she had been medically advised to stop wearing it is not supported by substantial evidence. Evidence may be substantial even though the court may draw a different conclusion as a fact finder. *Arndt*, 728 N.W.2d at 393. The court's task, therefore, is not to determine whether the evidence supports a different finding but whether substantial evidence supports the findings actually made. *Thorson*, 763 N.W.2d at 850.



Dr. Barp's records show multiple points at which he advised Talton to stop wearing the boot. His July 19, 2007 notes state he talked with her about getting her out of the boot. His November 20, 2007 letter states he told her to get out of the boot that day. Talton claims she continued wearing the boot after November 20, 2007, because of a miscommunication with Dr. Barp. The record, however, contains substantial evidence to support the commissioner's conclusion that Dr. Barp advised her to stop wearing the boot on November 20.

**B. Out of and in the Course of Employment**

Talton argues the commissioner's decision that her ongoing left foot, right knee, and lower back problems did not arise out of and in the course of her employment is based on an "irrational, illogical, or wholly unjustifiable" application of law to facts. For an injury to arise "out of and in the course of employment," it must take place "within the period of employment, at a place where the employee reasonably may be, and while the employee is fulfilling work duties or engaged in doing something incidental thereto." *Meyer*, 710 N.W.2d at 222. The injury and the employment must "coincide as to time, place, and circumstances." *Thayer v. State*, 653 N.W.2d 595, 600 (Iowa 2002). A causal connection must exist between the conditions of employment and the injury. *Miedema v. Dial Corp.*, 551 N.W.2d 309, 311 (Iowa 1996).

The commissioner's decision that Talton's left toe stiffness and degenerative joint disease, right knee pain, and low back pain are unrelated to her April 17, 2007 injury, and therefore did not arise "out of and in the course of employment," is not illogical, irrational, or wholly unjustifiable. Medical causation

is within the domain of expert testimony, and the weight to be given those opinions is for the commissioner. *Poula*, 516 N.W.2d at 911-12. For the reasons previously discussed, the record shows substantial evidence to support the commissioner's conclusion on causation. Therefore, we affirm the district court's decision on this claim.

### **C. Alternate Medical Care**

If a claimant is dissatisfied with the medical care received, the agency may order "alternate care reasonably suited to treat the injury." Iowa Code § 85.27(4). The commissioner concluded Talton reached maximum medical improvement on November 20, 2007, and therefore alternate medical care was not necessary. For the reasons previously discussed, substantial evidence in the record, including Dr. Barp's testimony, supports this conclusion.

### **D. Additional Temporary Disability and Healing Period Benefits**

Temporary disability and healing period benefits are appropriate until an employee returns to work or is medically capable of returning. *Id.* §§ 85.33(1), 85.34(1). Substantial evidence supports the commissioner's conclusion that Talton reached maximum medical improvement on November 20, 2007. Accordingly, the commissioner's decision regarding temporary disability and healing period benefits may not be reversed.

### **V. Conclusion**

For the foregoing reasons, we find there is substantial evidence to support the commissioner's conclusions that Alice Talton's work injury did not cause her arthritis or her knee or back pain, that she was not entitled to alternate medical

care, and that she was not entitled to additional temporary disability or healing period benefits. Thus, we affirm the judgment of the district court.

**AFFIRMED.**