IN THE COURT OF APPEALS OF IOWA

No. 2-269 / 11-1375
Filed May 23, 2012

EMCO,
Petitioner-Appellant,

vs.

SUAD SAMARDZIC,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Karen A. Romano, Judge.

An employer appeals the district court ruling that affirmed the decision of the workers' compensation commissioner awarding an employee additional medical care. **AFFIRMED.**

Timothy W. Wegman and Joseph M. Barron of Peddicord, Wharton, Spencer, Hook, Barron & Wegman, L.L.P., West Des Moines, for appellant.

Gerald Jackson of Moranville & Jackson, P.C., West Des Moines, for appellee.

Considered by Danilson, P.J., Bower, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MAHAN, S.J.

I. Background Facts & Proceedings.

Suad Samardzic injured his left wrist in 2001 when a pallet fell on it while he was working for Hy-Vee. Dr. Teri Formanek performed surgery on the wrist. Subsequently, Dr. Formanek found Samardzic had a four percent impairment of his left upper extremity as a result of his wrist problem. Samardzic eventually returned to work without restrictions.

In 2005, Samardzic began employment as a production worker for Emco, a company that manufactures windows, doors, and frames. On February 13, 2007, Samardzic was transferring a window to a cart, when he felt something snap in his left wrist. Dr. Formanek diagnosed him with a loose piece in the joint and irregularity of the joint surface. He performed surgery, distal radioulner joint arthrotomy, on Samardzic's left wrist on September 21, 2007. Samardzic was discharged from care with no restrictions on March 6, 2008.

On June 17, 2008, Samardzic returned to Dr. Formanek complaining of ongoing pain in his wrist. Dr. Formanek diagnosed him with, "left wrist pain, secondary to distal radioulnar joint dysfunction." Dr. Formanek recommended reconstructive surgery on the left wrist, and Samardzic agreed.

Samardzic and the employer entered into an agreement for settlement under Iowa Code section 85.35(2) (2007), which provided that as a result of the February 13, 2007 injury Samardzic had a permanent partial disability in the left arm of 10.1%, and was entitled to compensation for that disability. Paragraph eight of the settlement provided, "[c]laimant is entitled to medical care for the

injury, including care in the future." The settlement was approved by the workers' compensation commissioner on June 30, 2008.

The employer's claims representative asked for a second opinion and sent Samardzic to see Dr. Michael Gainer. Dr. Gainer gave the opinion that Samardzic's current wrist problems were the result of "progressive arthritis of the wrist culminating from his original injury in 2001." Dr. Gainer also stated, "I think the etiology goes back to his original injury, but certainly all the activities he has done on a daily basis since that point [have] contributed to the arthritis that he now has in his wrist." The claims representative denied coverage for further surgery on Samardzic's left wrist.

Samardzic filed a petition seeking workers' compensation benefits on October 21, 2008. Dr. Formanek signed a letter in December 2008 agreeing with the following question by Samardzic's attorney:

> In your medical opinion, would the combination of the surgery performed on Suad's [left] wrist in September 2007 and the repetitive work that he has done since that time more than likely play a significant role in the exacerbation or acceleration of the arthritis in Suad's [left] wrist?

Dr. Formanek signed a letter on August 31, 2009, which stated, "The need for the surgery is related to the progression of arthritis in this area as a result of the original injury back in 2001." Dr. Formanek further clarified in a letter dated September 14, 2009, as follows:

> [T]he patient has arthritis in his distal radioulnar joint and that is the primary clinical indication for the surgery proposed in treatment of this. . . . In addition, the patient's work activities as we have reviewed are likely a factor which can aggravate the underlying condition as well. While his work activities are not the exclusive factor in the causation of surgery, they are likely a factor which

> contributes to the increased symptoms from the arthritis for which he is ultimately having the surgery.

An administrative hearing was held on September 14, 2009. A deputy workers' compensation commissioner found Samardzic had failed to show the injury of February 13, 2007, was a substantial factor in the need for the surgery recommended by Dr. Formanek. The deputy found, "[n]o doctor has opined that claimant's February 13, 2007 injury was a substantial factor in causing a need for the suggested surgery." The deputy ordered the employer to pay $250 and $325 for the cost of two reports by Dr. Formanek.

Samardzic appealed and the employer cross-appealed the deputy's decision. The commissioner found:

> The preponderance of the evidence supports a finding that the claimant's injury of February 13, 2007, is a substantial factor in the need for the recommended surgery. Dr. Formanek, the authorized physician in this case, has clearly articulated his medical opinion that claimant's activity level in his work with defendant resulted in the need for surgery on September 21, 2007 to remove loose bodies and was sufficient to escalate claimant's symptoms in his arthritic joint. . . . The uncontested testimony of claimant that he worked for defendant full duty and had no problem in his activities of daily living from 2002 until 2007 bolsters the opinion of Dr. Formanek. Therefore, of the two medical opinions, Dr. Formanek's opinion is the most credible.

The commissioner concluded Samardzic had proven his request for medical care. The commissioner also affirmed the assessment of the costs of the two reports to the employer.

The employer filed a petition for judicial review. The district court determined there was substantial evidence in the record to support the commissioner's conclusion the 2007 injury was a substantial factor in creating the need for surgery. The court noted, "While Dr. Formanek does not explicitly

state there is a link between the 2007 injury and the need for the surgery, a reasonable person could infer such a link from the statements made in the reports." The court determined Dr. Formanek related the need for surgery to Samardzic's "work activities," which would have included the 2007 injury. The court also determined the commissioner had properly assessed the costs of the two reports to the employer. The employer appeals the decision of the district court

II. Standard of Review.

Our review of decisions of the workers' compensation commissioner is governed by Iowa Code chapter 17A. Iowa Code § 86.26. We review the commissioner's decision for the correction of errors at law, not de novo. *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 330 (Iowa 2005). We review the district court's decision by applying the standards of section 17A.19 to the commissioner's decision to determine if our conclusions are the same as those reached by the district court. *Univ. of Iowa Hosps. & Clinics v. Waters*, 674 N.W.2d 92, 95 (Iowa 2004).

III. Causal Connection.

The employer claims the commissioner erred by finding there was a causal connection between the February 13, 2007 injury and surgery recommended by Dr. Formanek. It asserts the medical opinions of Dr. Formanek and Dr. Gainer do not support a finding of a causal connection. The employer believes Samardzic failed to meet his burden of proof to show causation. It points out that Samardzic has not claimed a cumulative injury, but has instead claimed the need for surgery is related to the injury on February 13, 2007.

We reverse the factual findings of the commissioner only if those findings are not supported by substantial evidence. *Midwest Ambulance Serv. v. Ruud*, 754 N.W.2d 860, 864 (Iowa 2008). Substantial evidence is "the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue . . . ." Iowa Code § 17A.19(10)(f)(1). Evidence is substantial if a reasonable mind would accept it as adequate to reach the same conclusion. *Asmus v. Waterloo Cmty. Sch. Dist.*, 722 N.W.2d 653, 657 (Iowa 2006). The ultimate question is not whether the evidence might support a different finding, but whether it supports the findings actually made. *Grant v. Iowa Dep't of Human Servs.*, 722 N.W.2d 169, 173 (2006).

In workers' compensation cases, medical causation is essentially within the domain of expert testimony. *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011). The commissioner, as the finder of fact, must determine the credibility of the witnesses, weigh the evidence, and decide the facts at issue in a case. *See Arndt v. City of LeClair*, 728 N.W.2d 389, 394-95 (Iowa 2007). "Acceptance or rejection of an expert's testimony is within the 'peculiar province' of the industrial commissioner." *Morrison v. Century Eng'g*, 434 N.W.2d 874, 877 (Iowa 1989). One factor the commissioner considers is whether an expert's opinion is based upon an incomplete medical history. *Dunlavey v. Econ. Fire & Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995). We do not reweigh the evidence, but instead our review is limited to determining whether the commissioner's findings are supported by substantial evidence, viewing the record as a whole. *Id*. at 854.

In the agreement for settlement approved June 30, 2008, the parties agreed Samardzic sustained an injury on February 13, 2007, arising out of his employment. Under the agreement, Samardzic was "entitled to medical care for the injury, including care in the future." The employer did not contest that the surgery performed by Dr. Formanek on September 21, 2007, was causally connected to the injury on February 13, 2007.

In a letter dated May 21, 2009, Dr. Gainer states, "I think the loose body that was removed in 2007 is the arthritic progression from the original injury." Dr. Gainer also states, "[Samardzic] did not describe any particular injury to his wrist during his employment at Emco, which would substantiate a new injury to his wrist." Dr. Gainer then concluded, "I believe that this all relates back to his original injury in 2001." Based on the agreement, however, the employer agreed Samardzic's injury on February 13, 2007, was related to his employment. Based upon the record as a whole, we conclude the commissioner did not err in determining Dr. Gainer's medical opinion was not entitled to as much weight as Dr. Formanek's medical opinion.

Dr. Formanek gave the opinion that Samardzic's work activities were "likely a factor which contributes to increased symptoms from the arthritis for which he is ultimately having the surgery." Dr. Formanek also stated, "The exacerbation of underlying arthritic joints can be directly related to activity level and the activity level of Mr. Samardzic in his workplace would be sufficient to escalate his symptoms in his arthritic joint." An employee may receive workers' compensation benefits if work activities aggravate a preexisting condition. *Blacksmith v. All-American, Inc.*, 290 N.W.2d 348, 353 (Iowa 1980).

The district court noted that Samardzic's work activity would have included the 2007 injury, "which occurred while he was at work." We are bound by reasonable inferences that may be fairly drawn from disputed evidence. *Midwest Auto. v. Iowa Dep't of Transp.*, 646 N.W.2d 417, 428 (Iowa 2002). We conclude there is substantial evidence in the record to support the commissioner's finding Samardzic's injury of February 13, 2007, was a substantial factor in the need for the surgery recommended by Dr. Formanek.

IV. Cost of Reports.

The employer claims the commissioner erred by requiring it to pay for Dr. Formanek's reports of December 5, 2008, and September 14, 2009, in excess of $150. The employer was required to pay $250 for one report and $325 for the other report. Under Iowa Administrative Code rule 876-4.33(5), the commissioner may assess "the cost of doctors' and practitioners' deposition testimony, provided that such costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72." The employer claims that under these code sections the cost of depositions is limited to $150 per day and asserts the cost of a report should not exceed that of a deposition.

Iowa Code section 86.40, provides, "All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876-4.33(6) specifically addresses the costs of doctors' reports. This rule provides the commissioner may assess "the reasonable costs of obtaining no more than two doctors' or practitioners' reports." Iowa Admin. Code r. 876-4.33(6). Thus, the commissioner may assess the costs of two doctors' reports as long as the assessment is reasonable. *Id*. Rule 876-4.33(6) does not contain

the provision found in rule 876-4.33(5) limiting the assessment of costs to the amounts provided in section 622.69 and 622.72.

There is no evidence that $250 and $325 for the two reports by Dr. Formanek were unreasonable amounts. We conclude the commissioner did not abuse its discretion by assessing the costs of these two reports in these amounts to the employer.

We affirm the decision of the district court, which affirmed the decision of the workers' compensation commissioner.

AFFIRMED.