

IN THE COURT OF APPEALS OF IOWA

No. 2-441 / 11-1781
Filed June 27, 2012

BENITO VILLAFANA,
Petitioner-Appellant,

vs.

**BLACKHAWK FOUNDRY
and TRAVELERS,**
Respondent-Appellees.

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

Benito Villafana appeals a district court's ruling affirming a finding by the workers' compensation commissioner that Villafana's injuries were not caused by his employment. **AFFIRMED.**

William J. Bribriesco of William J. Bribriesco & Associates, Bettendorf, for appellant.

Tonya A. Oetken of Law Offices of Daniel P. Hanson, West Des Moines, for appellees.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

TABOR, J.

Benito Villafana challenges the conclusion of the workers' compensation commissioner that his carpal tunnel and neck injuries were not caused by his work as a scale operator at Blackhawk Foundry & Machine Company. He argues the agency findings are not supported by substantial evidence. The deputy commissioner found the views of the employer's medical expert to be more convincing than the opinion of the neurosurgeon who evaluated Villafana. The district court deferred to the agency's fact finding, as do we. Because the denial of benefits is supported by substantial evidence, we affirm.

I. Background Facts and Proceedings

Benito Villafana was born in Mexico and immigrated to the United States in 1976 after completing the sixth grade. Once in America, he worked as a farm laborer until 1988, when he began his employment at Blackhawk Foundry & Machine Company (Blackhawk). The foundry produces iron castings used for agriculture, manufacturing, and construction. Villafana started as a grinder, performing that job for about ten years until he suffered a carpal tunnel injury related to his repetitive work.

To accommodate the permanent work restrictions resulting from the injury, including a lifting limit of fifty pounds, the company moved him to the position of scale operator, where he picked up castings, weighed them, recorded their weights, and returned them to a box. Because some castings weighed up to 100 pounds, the company instructed Villafana to request help from his supervisor or

the forklift operator who delivered and retrieved the boxes of castings for those that were in excess of his lifting restrictions.

In 1999, Villafana suffered a shoulder injury while working as a scale operator. To compensate for his right shoulder impingement and biceps tear, in 2004 the agency awarded Villafana benefits, finding he sustained a thirty-five percent permanent partial industrial disability. Villafana was unrestricted in lifting objects weighing up to twenty pounds, but limited to occasional lifting of objects weighing twenty-one to fifty pounds, and prohibited from lifting anything over fifty pounds.

Villafana's present claim is based on neck and hand pain beginning in 2006. He attributes the pain to his repetitive lifting of castings in his job as scale operator. He continued to work at Blackhawk until June 2009, when he lost his job in a plant-wide layoff. At the hearing before the deputy commissioner—in addition to his earlier carpal tunnel injury—Villafana admitted to experiencing ongoing neck problems before his listed injury dates. In 1997, he reported neck pain in conjunction with finger pain. He also received treatment for neck pain in 1998. In 2002, he again complained to a physician that he was experiencing neck pain in conjunction with the pain from his shoulder injury, and in 2003 a neurosurgeon evaluated Villafana for neck pain and ultimately recommended neck surgery.

Villafana lists his first injury date as April 28, 2006, when he went to orthopedic surgeon Peter Pardubsky regarding his neck pain. Dr. Pardubsky believed Villafana's neck pain was caused by his earlier shoulder injury; the

surgeon's report is silent as to whether the symptoms could have been caused by work activities. Dr. Pardubsky provided Villafana with scapular stabilization and strengthening exercises. In a subsequent visit, Dr. Pardubsky told Villafana he could offer nothing further for his shoulder pain and referred him to a neurologist and oral surgeon for help with his neck and facial pain. Villafana did not follow up with either specialist.

Villafana's second alleged injury date is January 2, 2007, when Blackhawk referred him to Dr. Camilla Frederick. The doctor's notes show that during an office visit, Villafana complained of chronic right trapezium and cervical pain, as well as numbness and tingling in his right fourth and fifth fingers. Dr. Frederick noted the right trapezium and cervical pain had been well documented since his injury in 1999. She offered stretching exercises, and prescribed a trial use of a transcutaneous electrical nerve stimulation (TENS) unit to aid in any recurrent carpal tunnel syndrome. In a follow-up visit, Dr. Frederick noted that Villafana's electromyogram (EMG) was "positive for moderate to severe right carpal tunnel." She believed the condition was work-related based on the history provided by Villfana that he was performing "highly repetitive grasping tasks" in his job. But Dr. Frederick also explained that the employer told her Villafana's new position did not require as much gripping as his old job.

Blackhawk did not offer further treatment for Villafana's carpal tunnel or other chronic problems related to the prior work injury, nor did Villafana seek treatment for his ailments, aside from some chiropractic care. His chiropractor conducted an MRI, which did not reveal cervical disc involvement. The

chiropractor told Villafana that ultimately surgery may be necessary to mitigate his neck pain.

At Blackhawk's request, Dr. Frederick revisited her opinion as to whether Villafana's recurrent carpal tunnel was work-related and whether he suffered a new neck injury. While she did not re-examine Villafana, the doctor conducted an extensive review of his past medical records. In a December 20, 2007 report, Dr. Frederick described conflicting information that she received regarding the nature of Villafana's most recent work. A job description provided by Blackhawk detailed lifting tasks that appeared to be repetitive in nature. But a physical therapist who performed a jobsite evaluation did not find Villafana's work to be repetitive.

Dr. Frederick concluded that Villafana "[d]efinitely has had a worsening of the median nerve," but expressed an opinion "with a reasonable degree of medical certainty" that she could not "relate this recurrent right carpal tunnel to his job at Blackhawk Foundry." She also determined that Villafana did not suffer a new neck injury as of 2006, and that his pain was likely caused by "an ongoing cervical spondylosis from 1998 that has never resolved." She based her view in part on the fact that Villafana did not report an injury during subsequent medical appointments with her and two other physicians.

Villafana visited neurosurgeon Robert Milas on June 30, 2009, about one month before the deputy commissioner heard his compensation claim. Dr. Milas obtained an oral history from Villafana, but reported that the facts of the case were "somewhat confusing" because the patient was "such a poor historian."

The neurosurgeon noted Villafana experienced a significant change in cervical pain as well as loss of strength in his right hand in 2007. He opined the 2007 injury was linked to his recurrent carpal tunnel syndrome and cervical radiculopathy, and that the injuries caused Villafana to be permanently impaired.

The deputy commissioner held an evidentiary hearing on August 4, 2009. On September 14, 2009, the deputy ruled that Villafana failed to show he suffered an injury of and in the course of his employment at Blackhawk Foundry, and denied his claim. The deputy explained why he was more persuaded by the conclusions of Dr. Frederick than the opinion of Dr. Milas:

While Dr. Milas may have superior qualifications as a specialist in neurosurgery than those of Dr. Frederick, the record does not indicate what prior medical records, if any, were reviewed by Dr. Milas before making his opinion. This is a critical flaw in claimant's case given Benito's past medical history involving not only cervical and right extremity pain, but facial numbness dating back four years prior to the claimed neck injury. Also, it is not clear if Dr. Milas had any understanding of what claimant's job at Blackhawk involved.

In addition, the deputy was troubled by the doctor's reference to a January 2, 2007 injury without explaining its cause or whether Dr. Milas agreed it was a cumulative injury arising from repetitive work. Accordingly, the deputy found "Dr. Milas's views simply are not more convincing than those of Dr. Frederick."

On appeal, the workers' compensation commissioner found the deputy's findings to be "well-reasoned and supported by a preponderance of the evidence contained within the record." The commissioner issued its one-page decision on November 24, 2010, affirming the deputy's holding "without further comment."

The district court considered Villafana's petition for judicial review on July 15, 2011. In its October 5 decision, the district court affirmed the agency

determination. Villafana appeals this ruling, alleging “the district court erred as a matter of law” in finding he failed to carry his burden to prove he suffered a new carpal tunnel injury, and not finding he suffered a permanent aggravation of a previous cervical spine injury.

II. Scope and Standard of Review

We review final agency action for correction of legal error. *Eyecare v. Dep’t of Human Servs.*, 770 N.W.2d 832, 835 (Iowa 2009). If we reach the same conclusions as the district court, we affirm; otherwise, we reverse. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 463 (Iowa 2004).

To the extent the agency’s decision reflects factual determinations that are “clearly vested by a provision of law in the discretion of the agency,” we are bound by the commissioner’s findings of fact if they are supported by substantial evidence. *Schutjer v. Algona Manor Care Ctr.*, 780 N.W.2d 549, 557 (Iowa 2010). “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 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) (2009). Evidence may be substantial even if it could support contrary inferences. *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003). We view the agency record as a whole to decide whether substantial evidence exists. Iowa Code § 17A.19(10)(f)(3).

III. Preservation of Error

Although Blackhawk does not challenge Villafana's preservation of error, we may do so on our own accord. See *Top of Iowa Coop. v. Sime Farms, Inc.*, 608 N.W.2d 454, 470 (Iowa 2000). In the argument section of his brief, Villafana does not point to a single case, statute, or other legal ground for his position. Under our appellate rules, "[f]ailure to cite authority in support of an issue may be deemed waiver of that issue." Iowa R. App. P. 6.903(2)(g)(3). While we are tempted to find Villafana has waived his appellate claims for failing to cite authority, because he sets out general legal principles in discussing the standard of review, we opt to address his issues on their merits.

IV. Analysis

A. Did the Commissioner Properly Find Villafana Failed to Prove that He Suffered a New Carpal Tunnel Injury?

Villafana argues his carpal tunnel syndrome arose out of and in the course of employment on either of two injury dates: April 28, 2006, or January 2, 2007. He attacks the hearing testimony of the Blackhawk human resource manager, who speculated that his impairment arose from a three-week stint as a janitor while on vacation from Blackhawk. He contends "Blackhawk's speculation was based on a rumor." Any speculation concerning other employment appeared to have no effect on the deputy, who did not mention that testimony in his thoroughly analyzed arbitration decision. The deputy instead relied on the reports of medical experts concerning Villafana's condition.

Villafana points to the same medical evidence to urge that it is more probable his carpal tunnel syndrome arose from his job as a scale operator. He emphasizes a 2001 medical examination where a physician noted his “chronic pain on neck, shoulder, and upper back” were caused by the repetitive movements of his job, and highlights Dr. Frederick’s original opinion that Villafana’s job was highly repetitive. Villafana also relies on Dr. Milas’s conclusion that the injury is work related.

The success of Villafana’s argument depends on his ability to prove his present disability was proximately caused by a work-related injury. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 220 (Iowa 2006). He must establish the causation by a preponderance of the evidence, meaning the connection “is probable rather than merely possible.” *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998). In the realm of workers’ compensation, we consider a cause to be proximate if it is a substantial factor in bringing about the result. *Ayers v. D & N Fence Co.*, 731 N.W.2d 11, 17 (Iowa 2007). “It only needs to be one cause; it does not have to be the only cause.” *Armstrong Tire & Rubber Co. v. Kubli*, 312 N.W.2d 60, 64 (Iowa Ct. App. 1981).

The arbitration decision detailed why the deputy found Dr. Frederick to be more convincing than Dr. Milas. As discussed above, Dr. Milas did not reveal whether he reviewed any medical records, Villafana’s actual labor requirements for scale operators, or whether his injury was caused by the repetitive nature of his work. Conversely, Dr. Frederick documented her decision-making process, and although her ultimate conclusion contradicts her initial stance on Villafana’s

injury, she explains what subsequent information—an on-site job inspection—persuaded her to change her opinion. The deputy also credited Dr. Frederick’s review of Villafana’s prior medical records, contrasted with Dr. Milas, who found the case factually confusing because Villafana was a “poor historian.”

In workers’ compensation claims, expert testimony is essential to show a causal connection. *Sherman*, 576 N.W.2d at 321. As the finder of fact, the agency determines the weight to assign an expert opinion, assessing the accuracy of the facts provided to the expert as well as other surrounding circumstances. *Id.* The agency may reject or accept the expert evidence entirely or in part. *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 850 (Iowa 2011). In our appellate posture, we “are not at liberty to accept contradictory opinions of other experts in order to reject the finding of the commissioner.” *Id.* (citation omitted). Accordingly, we decline Villafana’s invitation to give greater weight to his medical expert than that afforded by the agency’s decision.

B. Did Villafana Suffer a Permanent Aggravation of a Previous Injury to his Cervical Spine?

Villafana next asserts that the agency should have been persuaded by the testimony of Blackhawk’s human resource manager and the report of Dr. Milas that Villafana further injured his cervical spine as a result of his work conditions. As with the first issue, Villafana is asking us to substitute our opinion of the evidence for that reasonably reached by the commissioner.¹

¹ Villafana takes this request one step further, relying on the testimony of a human resource manager who thought the neck injury was resolved prior to the injury date, but that after the injury she learned the cervical injury began “lighting up.” He suggests this

Medical records show Villafana's long history of neck pain. In 1998, he told a doctor he had been experiencing neck problems for years, and that same year, another physician found he had a sixty-two percent neck pain disability. Before his injury dates, other medical professionals told him he could need surgery to alleviate the pain. Blackhawk responds to Villafana's claims by pointing to Dr. Frederick's conclusion that rather than suffering a new neck injury on the proposed dates, Villafana continues to experience the same long-term neck problems that have afflicted him for years. The employer believes the agency rightly found Dr. Frederick to be more credible because of her familiarity with Villafana, having previously treated him and being closely acquainted with his medical history, as contrasted with Dr. Milas, who saw Villafana just one month before the arbitration hearing and relied on Villafana's own confusing narrative of his medical history.

Villafana has not carried his burden to overturn the agency's decision. "Evidence is not insubstantial merely because we may draw different conclusions from it; the ultimate question is whether it supports the finding actually made, not whether the evidence would support a different finding." *Fischer v. City of Sioux City*, 695 N.W.2d 31, 34-35 (Iowa 2005). Given the gravity of medical evidence on the issue of causation, and the fact-finder's ability to accept or reject expert evidence in whole or in part, Dr. Frederick's conclusion she "do[es] not feel there has been any new injury to his neck [and that] he has an ongoing cervical spondylosis from 1998 that has never resolved" supports the commissioner's

lay testimony, coupled with his own testimony that "the pain was getting worse," should be persuasive against the medical evidence in favor of Blackhawk.

finding. See *Sherman*, 576 N.W.2d at 321. Villafana has failed to show the agency decision was not supported by substantial evidence. Accordingly, we affirm the decision of the district court.²

AFFIRMED.

² Because we hold substantial evidence supports the agency's finding that Villafana's claim lacks causation, we do not address his claimed loss of earning capacity related to his alleged injury.