

IN THE COURT OF APPEALS OF IOWA

No. 3-1069 / 13-0567
Filed January 23, 2014

LARSON MANUFACTURING COMPANY
and ZURICH NORTH AMERICAN,
Plaintiffs-Appellants,

vs.

ALLEN G. WANDER,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Robert J. Blink,
Judge.

Larson Manufacturing Company and Zurich North American appeal from
the denial of their petition for judicial review of the acting workers' compensation
commissioner's award of benefits to Allen G. Wander. **AFFIRMED.**

Stephanie L. Marett of Nyemaster Goode, P.C., Des Moines, for appellant.

James T. Fitzsimmons of Fitzsimmons & Vervaecke Law Firm, P.L.C.,
Mason City, for appellee.

Considered by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.

POTTERFIELD, J.

Larson Manufacturing Company (Larson) and Zurich North American (Zurich) appeal from the denial of their petition for judicial review of the workers' compensation commissioner's award of benefits to Allen Wander. Larson and Zurich argue substantial evidence does not support a finding of medical causation and the acting commissioner's application of law to the facts was irrational, illogical, or wholly unjustifiable. We affirm.

I. Facts and Proceedings.

On March 24, 2005, Allen Wander injured himself while lifting a wooden storm door core onto an assembly line for installation while working at Larson Manufacturing Company. He immediately felt pain in his right lower back and was sent by Larson to Dr. Mixdorf. Dr. Mixdorf treated Wander until April 22, 2005, when he referred Wander to a neurosurgeon—Dr. Walski-Easton—for more extensive treatment. Dr. Walski-Easton prescribed several high-dose steroid regimens between May 2005 and July 2006. Dr. Walski-Easton also ordered an MRI in July 2005, which showed a broad-based disk bulge and possible avascular necrosis.¹

Wander began seeing Dr. O'Rourke in September 2005. O'Rourke reviewed the MRI and found the avascular necrosis worsened over the next two years. Dr. O'Rourke concluded the March 24, 2005, work injury aggravated or accelerated the problem in Wander's right hip. In January 2008, Wander began

¹ Wander was also evaluated by Dr. Emerson who performed an independent medical evaluation on December 28, 2005. Dr. Emerson concluded the work incident was the cause of the injury which lead to the need for Wander's surgery. He was asked later for an opinion regarding Wander's necrosis, which is discussed below.

seeing Dr. Noiseux for his ongoing pain. Dr. Noiseux agreed Wander's necrosis was caused or materially aggravated by the work injury. This conclusion was based on Wander's reports and the records indicating the increase in avascular necrosis. Dr. Noiseux performed a total hip replacement on February 22, 2008.

Wander also began exhibiting necrosis in his shoulder. In March 2009, Larson contacted Dr. Emerson again for an opinion regarding the cause of Wander's necrosis. Dr. Emerson concluded the necrosis was likely a condition that existed prior to March 2005 but was aggravated by the accident. Dr. Emerson noted the steroid treatment could have worsened the necrosis. That same month, Wander was seen by Dr. Galles regarding his shoulder. Dr. Galles concluded the necrosis in Wander's shoulder (and hip) resulted from the steroid treatment for his pain.

Wander filed a petition in arbitration for workers' compensation benefits. A hearing was held November 4, 2009. The parties stipulated that Wander's shoulder necrosis arose out of his steroid treatment. The deputy workers' compensation commissioner concluded Wander's hip necrosis arose from the March 2005 incident.

Larson and Zurich appealed the decision. In its final agency decision, the deputy workers' compensation commissioner (as acting workers' compensation commissioner)² affirmed the arbitration decision, noting the deficiencies in the opinions of all the physicians who rendered opinions about Wander's condition. Ultimately, the deputy commissioner affirmed, concluding "the views of treating

² The deputy commissioner was delegated authority to enter this final ruling on behalf of the workers' compensation commissioner.

physician Dr. Noiseux . . . are simply more convincing than Dr. Emerson.”

Larson and Zurich petitioned for judicial review. The district court also affirmed, making the following findings:

An employee seeking workers' compensation benefits has the burden of proving an injury arose out of and in the course of employment. The agency found that the steroid treatments for Larson's March 24, 2005 back injury caused the development of or materially aggravated Wander's hip necrosis. Larson argues that substantial evidence does not support this finding.

Substantial evidence supports a causal connection. Some deficiencies exist in the Arbitration Decision, but it is the Appeal Decision that the Court reviews. In the Appeal Decision, the Commissioner explained that he relied on the expert opinions of Galles and Noiseux. He found Noiseux's opinion especially convincing because Noiseux had “the best credentials” and was “more familiar clinically” with Wander's condition. He did not find Emerson's opinions convincing. “It is the commissioner's role as finder of fact to determine the weight to be afforded expert testimony.” In this case, the Commissioner chose to give weight to the experts who found a causal connection, and the record supports this conclusion. Noiseux personally treated Wander and reviewed images of the necrosis in his hips. Noiseux's opinion was also consistent with the opinions of two other physicians. Emerson, on the other hand, admitted that he had not viewed any hip imaging studies and was only basing his opinion on the documentation that Larson sent him. Substantial evidence supports reliance on the opinions of Noiseux.

Wander's testimony also supports a causal connection. As the Commissioner noted, the Deputy found Wander credible. Wander testified that the nature of his hip pain changed after the March 24, 2005 injury. His report of symptoms remained consistent—whether he was reporting to his doctors or giving testimony at hearing. The timing of his symptoms lends support to the existence of a causal connection. Larson points to alcohol abuse as a potential cause of Wander's hip necrosis. It argues that [Wander]'s history of alcohol use, in addition to the expert testimony regarding causes of necrosis, support the conclusion that the March 24, 2005 injury did not cause hip necrosis. Even if Larson was correct in this argument, this conclusion does not merit reversal of the agency decision. The determinative factor is not whether evidence supports a different finding, but whether the evidence supports the finding actually made. Because substantial evidence supports a causal connection, the Court must affirm the agency's decision.

For the same reasons articulated above, the agency's application of the law to the facts was not irrational, illogical, or wholly unjustifiable. The Commissioner conducted a de novo review and concluded that the expert opinions and Wander's credible testimony supported the existence of a causal connection. This application was proper in light of the record. Out of the four experts who provided an opinion, three opined that a causal connection existed. Noiseux, who was exceedingly qualified, reviewed the relevant medical records to reach his conclusion, but Emerson failed to review important and relevant medical records. Because the agency's decision was rational, logical, and justifiable, the Court must affirm its decision.

Larson and Zurich appeal from this unfavorable ruling. They argue first that the agency in its final ruling made improper findings of fact. They point to its finding that Wander's prior hip pain was not related to his pain after March 2005, its reliance on the opinion of Dr. Noiseux over Dr. Emerson, its finding that the deputy commissioner found Wander credible, the finding the steroid use lead to Wander's hip necrosis, and in factoring into its determination Wander's steroid-related shoulder necrosis.

"[W]e defer to the commissioner's factual determinations if they are based on 'substantial evidence in the record before the court when that record is viewed as a whole.'" (quoting Iowa Code § 17A.19(10)(f). *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009). Upon our "fairly intensive review" of the record, we conclude the agency's findings are supported by substantial evidence in the record as a whole. *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 525 (Iowa 2012). We therefore affirm on this issue without further opinion. Iowa Ct. R. 21.26(1)(a), (b), (d), (e).

Larson and Zurich also argue the agency's application of the law to the facts was improper. They argue the agency's conclusion linking the cause of

Wander's hip necrosis to steroid use was improper. When reviewing an agency's application of the law to the facts, "we reverse only if the commissioner's application was irrational, illogical, or wholly unjustifiable. This standard requires us to allocate some deference to the commissioner's determinations, but less than we give to the agency's findings of fact." *Thorson*, 763 N.W.2d at 850. The foundation of Larson and Zurich's argument rests on the weight the agency gave to the opinion of Dr. Noiseux. Such a determination is especially within the province of the agency. *Dunlavey v. Econ. Fire and Cas. Co*, 526 N.W.2d 845, 853 (Iowa 1995). While Larson and Zurich argue that Dr. Noiseux's opinion was based on incomplete information, the agency weighed the credibility and completeness of information given to each expert and ultimately concluded Dr. Noiseux's opinion was the most credible. We therefore affirm on this issue as well without further opinion. Iowa Ct. R. 21.26(1)(a), (b), (d), (e). Costs on appeal are assessed to Larson and Zurich.

AFFIRMED.