

IN THE COURT OF APPEALS OF IOWA

No. 3-269 / 12-1658
Filed April 24, 2013

BRENDA HERNANDEZ f/k/a BRENDA FLORES,
Petitioner-Appellant,

vs.

OSCEOLA FOODS,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Brad McCall, Judge.

An employee appeals the district court order denying her petition for judicial review of the Commissioner's review-reopening decision. **AFFIRMED.**

Steven C. Jayne, Des Moines, for appellant.

Edward J. Rose of Betty, Neuman & McMahon, P.L.C., Davenport, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

VOGEL, P.J.

Brenda Hernandez appeals the district court's ruling affirming the workers' compensation commissioner's decision finding she did not prove she suffered from a change in economic condition¹ to allow her claim against her self-insured former employer, Osceola Foods, to be reopened and reviewed. Because the agency decision is supported by substantial evidence, we affirm.

I. Background Facts and Proceedings

Hernandez was employed by Osceola Foods from January 2003 until April 2008. She injured her back at work on May 7, 2004. The parties entered into a settlement agreement on May 22, 2006, in which they agreed Hernandez suffered from a degenerative back condition aggravated by her work with Osceola. She was awarded permanent partial disability for a fifteen percent loss of earning capacity resulting in seventy-five weeks of compensation under Iowa Code section 85.34(2)(u) (2003). At that time, she had a permanent thirty-pound lifting restriction.²

¹ The district court also found she suffered no change in physical condition since the settlement agreement. Hernandez does not appeal that decision. Moreover, the agency decision from which the judicial review was based also granted her petition for alternate medical care. That portion was not appealed to the district court. Therefore, the only issue properly before us on review is whether she suffered from a change in economic condition sufficient to reopen her workers' compensation settlement.

² Hernandez's lifting restrictions varied considerably since the date of her injury. For example, on January 19, 2005, Kurt A. Smith, D.O. assigned her a ten-pound restriction. The restriction rating closest to the time of settlement was given on February 3, 2006, when Dr. Smith placed a forty-pound lifting restriction on Hernandez. Her restriction fluctuated during the remainder of her time at Osceola Foods ranging from thirty-pounds on March 26, 2007, by Robin Epp, M.D., M.P.H., to only ten-pounds by Christian P. Ledet, M.D. on April 19, 2007. However, what is pertinent to this appeal is she never had a lifting restrict that would accommodate the necessary qualifications of the job at Farley's and Sathers: fifty-pounds. At the time Hernandez filled out the application for employment with Farley's and Sathers, she was still representing to her physicians a thirty-pound weight restriction, twenty-pounds less than the required weight.

She continued to work for Osceola Foods for almost two years after the settlement when her employment was terminated for dishonesty; she improperly filled out an employment application for her husband and intentionally misrepresented his employment history. The next day, Hernandez went to a temporary staffing agency and filled out an application to work at Farley's and Sathers Candy Company, acknowledging she was "able to perform ALL duties" as set forth in the position description, including that she could lift up to fifty pounds. She also answered the question of "What weaknesses do you bring to an employer" as "only if I have emergency [sic]." She was hired through the agency immediately and hired permanently by Farley's and Sathers on September 15, 2008. However, on January 9, 2009, when her lifting restriction became known to Farley's and Sathers, her employment was terminated because she "misrepresented ability to do job."

She filed a petition in review-reopening based on an allegedly greater loss of earning capacity. The deputy commissioner found "Hernandez does have a change in actual earning, but it is due to her dishonest conduct resulting in the loss of her job rather than the work injury." The commissioner affirmed and adopted the deputy's decision. A petition for judicial review was filed in the district court. The district court affirmed the agency's determination finding "The Commissioner is correct that the only change in Hernandez's employability is due to her own actions." She again appeals.

II. Standard of Review

Our scope of review in this case is for correction of errors at law. *Kohlhaas v. Hog Slat, Inc.*, 777 N.W.2d 387, 390 (Iowa 2009).

Iowa Code section 17A.19(10) [(2011)] governs judicial review of agency decision making. We will apply the standards of section 17A.19(10) to determine whether we reach the same results as the district court. The district court may grant relief if the agency action has prejudiced the substantial rights of the petitioner, and the agency action meets one of the enumerated criteria contained in section 17A. 19(10)(a) through (n).

Evercom Sys., Inc. v. Iowa Utils. Bd., 805 N.W.2d 758, 762 (Iowa 2011).

To the extent the commissioner'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. Further, the commissioner's application of law to the facts as found by the commissioner will not be reversed unless it is "irrational, illogical, or wholly unjustifiable.

Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 518 (Iowa 2012) (citation omitted). Substantial evidence means 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).

III. Change in Economic Condition

Under Iowa Code section 86.14(2), the workers' compensation commissioner is authorized to "reopen an award for payments or agreement for settlement . . . [to inquire] into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon." The change can be either a change in physical condition or a change in economic condition such as earning capacity. *Simonson v. Snap-On Tools Corp.*, 588 N.W.2d 430, 435 (Iowa 1999). "A compensable review-reopening claim filed by an employee requires proof by a preponderance of the

evidence that the claimant's current condition is proximately caused by the original injury." *Kohlhaas*, 777 N.W.2d at 392. The employee bears this burden. *Id.* at 391. The fact-finder is not to "re-determine the condition of the employee which was adjudicated by the former award." *Id.* These same principles apply when the determination of disability is by the parties through their agreement for settlement. *Id.*

Hernandez attempts to frame her issue as an error at law, however we agree with the district court the crux of her argument is whether she proved by a preponderance of the evidence there has been a compensable change in her economic circumstances. Our review is therefore whether the conclusion reached by the agency is supported by substantial evidence in the record and we will not reverse lightly. See *Arndt v. City of Le Claire*, 728 N.W.2d 389, 393 (Iowa 2007) (holding merely because we may draw different conclusions from the record does not mean the evidence is insubstantial).

Hernandez's initial job loss with Osceola Foods had nothing to do with her physical impairment but rather her dishonesty with the company. Hernandez testified she believes she would still be working at Osceola Foods but for her dishonesty and misconduct. Her subsequent job loss with Farley's and Sathers was not because she had a lifting restriction, it was because she was dishonest in obtaining the employment when she answered affirmatively she was able to lift fifty pounds though she thought she was restricted at twenty pounds less than that. She was told by Farley's and Sathers had she been honest about her work

restrictions she would not have been offered the job.³ The agency was correct in finding “Any loss of access to the labor market she now has is no different than the loss of access she had when the agreement for settlement was approved.”

No facts about Hernandez’s employability attributable to her injury have changed subsequent to her injury and settlement. The substantial evidence in the record supports finding her earning capacity at the time of the review-reopening hearing remained as it was the day the settlement was reached, even if her actual earnings have decreased due to other circumstances.

IV. Conclusion

Because the agency’s decision finding Hernandez has not suffered a change in economic circumstances due to her injury is supported in the record, we affirm the district court’s decision affirming the agency’s decision.

AFFIRMED.

³ Hernandez makes reference in her brief that Farley’s and Sathers violated the Americans with Disabilities Act of 1990 by inquiring about the existence of a disability. This issue is clearly not properly before this court in this appeal.