

IN THE COURT OF APPEALS OF IOWA

No. 3-593 / 13-0121
Filed September 5, 2013

LOPAREX, L.L.C. and SENTRY INSURANCE,
Plaintiff-Appellants,

vs.

JAMES BATES,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Carla T. Schemmel,
Judge.

An employer and its insurer ask us to review a workers' compensation
decision in favor of an injured employee. **AFFIRMED.**

Michael S. Roling of Peddicord, Wharton, Spencer, Hook, Barron &
Wegman, L.L.P., West Des Moines, for appellants.

William G. Nicholson of Rush & Nicholson, P.L.C., Cedar Rapids, for
appellee.

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

VAITHESWARAN, J.

We are asked to review a workers' compensation decision in favor of an injured employee.

I. Background Facts and Proceedings

James Bates was employed by Loparex, L.L.C., a company that manufactures double-sided tapes as well as roofing and pharmaceutical supplies. He was injured when his left hand got caught in a machine.

Bates underwent several surgeries that resulted in the amputation of two fingers. He developed "complex regional pain syndrome," characterized by temperature changes in his hand and muscle wasting. He also experienced abnormal sensations and sensitivity to touch. A byproduct of his hand injury was severe depression. Physicians prescribed a variety of medications for these conditions. Bates contended these medications made him drowsy.

Bates filed a petition for workers' compensation benefits. Following an evidentiary hearing, a deputy workers' compensation commissioner concluded that Bates was entitled to permanent total disability benefits. The commissioner affirmed that portion of the decision, as did the district court on judicial review.

On appeal, Loparex and its insurer, Sentry Insurance, argue that (1) "the commissioner erred in finding claimant's complaints of drowsiness are causally related to the work injury" and (2) "the commissioner erred in awarding claimant permanent total disability benefits." Our review of these issues is for substantial evidence. See Iowa Code § 17A.19(10)(f) (2011). This standard does not allow us to "engage in a scrutinizing analysis." *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 525 (Iowa 2012).

II. Drowsiness—Causation

One of the key fact questions before the commissioner was whether Bates's drowsiness was caused by the medications he took to address his work-related injuries or by non-work-related factors. The deputy commissioner resolved this question in favor of Bates, finding he had "severe problems with . . . somnolence" and, "according to the medical experts, [the condition] may relate to sleep apnea, obesity, or alcohol abuse, but the weight of that opinion convinces that Bates's extensive medication regimen is a substantial contributing factor." The deputy emphasized that the medication "need not be the sole factor in order to trigger liability." He also noted that despite Bates's lack of credibility in some of his testimony, he "did not have somnolence prior to his injury . . . and [he] does now." These findings were affirmed on intra-agency review.

The employer and its insurer take issue with the findings on the ground that (a) the deputy commissioner acknowledged Bates's lack of credibility; (b) Bates's partner, who supported his claim of significant drowsiness, had much to gain by testifying on his behalf; (c) the medical records did not contain consistent claims of sleepiness; (d) Bates was diagnosed with sleep apnea, and his symptoms improved with sleep apnea therapy; (e) Bates did not lose weight and avoid alcohol as instructed; (f) a subsequent on-the-job injury was not caused by drowsiness as he claimed; and (g) Bates had a history of carelessness at work.

The record contains some evidence to support each of these assertions, but that does not mean the record lacks substantial evidence to support the finding of a causal connection. See *id.* at 527 ("[F]actual findings are not

insubstantial merely because evidence supports a different conclusion or because we may have reached a different conclusion.”). The record is replete with references to Bates’s drowsiness and, more significantly, with references to medications being a cause of the drowsiness. As one of his physicians testified, “[Bates] just happens to have the cards stacked against him because I’m giving him four meds that I do know cause sleepiness.” While she acknowledged Bates also had sleep apnea and other conditions, the commissioner considered these factors before finding that Bates’s drowsiness was work-related. It is not our job to re-weigh that evidence. *Arndt v. City of Le Claire*, 728 N.W.2d 389, 394–95 (Iowa 2007).

The record contains substantial evidence to support the commissioner’s finding of a causal connection between Bates’s drowsiness and his work-related injury.

III. Permanent Total Disability

The employer next argues that Bates is

not permanently and totally disabled because: 1) None of the treating physicians in this case has given any indication whatsoever that [he] is not capable of maintaining employment, and 2) there was an insufficient analysis of [his] prior work history . . . which shows that [he] is in fact capable of performing work he has previously held.

As a preliminary matter, it is worth noting that Loparex stipulated Bates’s permanent disability would be compensated using the industrial method. See *Mannes v. Fleetguard, Inc.*, 770 N.W.2d 826, 830 (Iowa 2009) (“[P]ermanent benefits compensate either a disability to a scheduled member or a loss in earning capacity (industrial disability).”). “Industrial disability is determined by an

evaluation of the employee's earning capacity." *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 852 (Iowa 2011). The issue raises a mixed question of law and fact. *Neal*, 814 N.W.2d at 525. As discussed, we review the commissioner's fact findings for substantial evidence. *Id.* Its industrial disability determination involves the application of law to fact and will not be overturned unless it is "irrational, illogical, or wholly unjustifiable." *Id.* at 526; accord *Larson Mfg. Co., Inc. v. Thorson*, 763 N.W.2d 842, 856–57 (Iowa 2009).

The deputy commissioner found that "Bates is 46 years old with a high school level education and work experience as a drywall installer and factory production worker." He summarized the injury to Bates's hand, the attendant pain syndrome, lifting restrictions, a restriction in contact of the left hand with objects, and a restriction to "light" exertion. He also cited Bates's depression and somnolence before determining that Bates was "no longer capable of performing a sufficient quantity and quality of work as to be self supporting, and is therefore entitled to permanent total disability benefits." The findings and determination were affirmed on intra-agency appeal.

While we might draw different inferences from the record as a whole, we cannot say that the fact findings lack substantial evidentiary support or that the commissioner's determination of industrial disability is "irrational, illogical, or wholly unjustifiable." See *Neal*, 814 N.W.2d at 527 ("[I]n considering findings of industrial disability, we recognize that the commissioner is routinely called upon to make such assessments and has a special expertise in the area that is entitled to respect by a reviewing court.").

AFFIRMED.