

IN THE COURT OF APPEALS OF IOWA

No. 6-1020 / 06-0157
Filed February 14, 2007

DEREK D. RIDGEWAY,
Petitioner-Appellant,

vs.

**IBP, INC., n/k/a TYSON FOODS, INC., and
IOWA WORKERS COMPENSATION COMMISSION,**
Respondents-Appellees.

Appeal from the Iowa District Court for Woodbury County, Gary E. Wenell,
Judge.

Derek D. Ridgeway appeals from the district court's decision on judicial review affirming the workers' compensation commissioner's dismissal of his appeal for failure to timely file a transcript. **AFFIRMED.**

Robert W. Green, Sioux City, for appellant.

James L. Drury II, Dakota Dunes, South Dakota, for appellees.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

EISENHAUER, J.

Derek D. Ridgeway appeals from the district court's decision on judicial review affirming the workers' compensation commissioner's dismissal of his appeal for failure to timely file a transcript. Ridgeway contends the commissioner's decision was an abuse of discretion and an error of law.¹ We affirm.

On March 24, 2005, Ridgeway filed a notice of appeal from a March 15, 2005 arbitration decision on his worker's compensation claim. Ridgeway had ten days to file an affidavit stating that he had ordered a transcript of the contested case proceeding. Iowa Code § 86.24(4) (2005). He had thirty days to file the transcript with the commissioner. Iowa Admin. Code r. 876-4.30. Ridgeway failed to comply with either requirement. On May 19, 2005, the commissioner issued a notice of default to Ridgeway's attorney. The notice stated, in pertinent part:

Our records indicate that you . . . have failed to file the transcript within the time required by Division of Workers' Compensation rule 876 IAC 4.30 Unless this default is remedied by filing the transcript within fifteen days from service of this notice, your client's appeal will be dismissed

On June 3, 2005, the fifteenth day after the commissioner filed the notice of default, Ridgeway filed a motion seeking an extension of time to file the transcript. The motion claimed, based upon the issues Ridgeway was raising on

¹ The commissioner dismissed Ridgeway's appeal without reaching the merits of the case. Our review is limited to the correction of errors at law made by the workers compensation commissioner and the district court. *Aluminum Co. of Am. v. Musal*, 622 N.W.2d 476, 478 (Iowa 2001). Accordingly, we do not reach Ridgeway's argument that the deputy commissioner erred when ruling on a statute of limitations issue. See *Myers v. F.C.A. Servs., Inc.*, 592 N.W.2d 354, 358 (Iowa 1999) (stating "the deputy industrial commissioner's proposed findings are not a consideration on judicial review.").

appeal, a transcript was not needed. The motion also indicated the transcript was ordered, but it would not be available until June 7, 2005. On June 7, 2005, Ridgeway filed a Notice of Filing of the Transcript. In a ruling filed June 13, 2005, the commissioner overruled Ridgeway's motion for extension of time and dismissed Ridgeway's appeal based on his failure to file the transcript within fifteen days of the notice of default. Ridgeway sought judicial review and the district court affirmed the commissioner's decision.

Our statutory scope of review provides for reversal if the commissioner's decision to dismiss the appeal was "unreasonable, arbitrary, capricious, or an abuse of discretion." Iowa Code § 17A.19(10)(n). An agency's action is arbitrary or capricious when "it is taken without regard to the law or facts of the case" and unreasonable when "it is clearly against reason and evidence." *Soo Line R.R. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 688-89 (Iowa 1994). Unreasonableness is defined as action in the face of evidence that leaves "no room for difference of opinion among reasonable minds, or not based on substantial evidence." *Stephenson v. Furnas Elec. Co.*, 522 N.W.2d 828, 831 (Iowa 1994). "Abuse of discretion is synonymous with unreasonableness, and involves lack of rationality, focusing on whether the agency has made a decision clearly against reason and evidence." *Id.*

Ridgeway contends the commissioner erred because he should have granted the requested extension or applied some other sanction short of dismissal. Ridgeway argues that before the commissioner could dismiss the appeal for failure to file a transcript, the commissioner was required to find the failure to comply was a result of willfulness, fault, or bad faith. While such a

finding is necessary before a district court may dismiss an action for failure to comply with a discovery order, *see, e.g., Kendall/Hunt Publ'g Co. v. Rowe*, 424 N.W.2d 235, 240 (Iowa 1988), there is nothing in the statutes or administrative rules which impose a similar requirement when the commissioner dismisses an appeal for failure to comply with the commissioner's rules. *Marovec v. PMX Indus.*, 693 N.W.2d 779, 786 (Iowa 2005). The proper inquiry is whether Ridgeway established "good cause" for the failure to file the transcript within the established deadlines. *Id.* at 785-86. Good cause "is a sound, effective, and truthful reason. It is something more than an excuse, a plea, apology, extenuation, or some justification, for the resulting effect." *Id.* at 785 (quoting *Handy v. Handy*, 250 Iowa 879, 883, 96 N.W.2d 922, 925 (1959) (citation omitted)).

As stated in his reasoning for overruling Ridgeway's motion for extension and for dismissing the appeal, the commissioner clearly found Ridgeway did not demonstrate good cause for the delinquent filing of the transcript:

On May 19, 2005, a notice of default was issued giving claimant until June 3, 2005, to file the transcript of the proceeding or that the appeal would be dismissed. He did not do so. In lieu of filing the transcript, claimant moved for an extension. It is noted that claimant did not comply with section 86.24(4) by filing the required affidavit of having ordered the transcript within ten days after filing the notice of appeal. Claimant did not file a request to waive a transcript before falling into default. Nothing in the motion for extension alleges facts that constitute good cause that could not have been avoided through the exercise of reasonable diligence to justify the default. The notice of default demanded that a transcript be filed to avoid dismissal. The notice did not invite a motion for extension. Since claimant did not file the transcript or show good cause that could not have been avoided through the exercise of reasonable diligence to excuse the failure, the appeal should be dismissed.

We agree Ridgeway failed to articulate good cause for not filing the transcript in a timely manner. Ridgeway's argument that no transcript was needed for this appeal should have been raised by motion before the expiration of the time to file a transcript. Similarly, his statement that the transcript was ordered, but would not be ready until June 7, 2005, only begged the question—when was the transcript ordered? If the transcript was ordered in a timely manner, but not completed for reasons beyond his control, then the commissioner could have granted the extension. Without such further explanation, the commissioner was correct to conclude good cause did not exist for failing to file the transcript in a timely manner.

Similarly, we find no abuse of discretion in the commissioner's choice of sanction. The commissioner has discretion in imposing sanctions for failure to comply with an agency order or to follow the rules. *Walsh v. Schneider Nat'l Carriers*, 497 N.W.2d 895, 897 (Iowa 1993); Iowa Admin. Code r. 876-4.36. That discretion includes dismissing an appeal. *Walsh*, 497 N.W.2d at 897; Iowa Admin. Code r. 876-4.36. As recently stated by our supreme court, "[i]t is of no concern to a court reviewing an administrative sanction whether a different sanction would be more appropriate or whether a less extensive sanction would have sufficed; such matters are the province of the agency." *Marovec*, 693 N.W.2d at 786 (citations omitted).

According to statute, administrative rules, and case law, the commissioner had the authority and the discretion to dismiss the appeal. See, e.g., *id.* at 785-87 (holding commissioner did not abuse her discretion in dismissing appeal when claimant failed to file timely brief). We cannot say the commissioner's decision

meets the definition of “unreasonable, arbitrary, capricious, or an abuse of discretion.” Iowa Code § 17A.19(10)(n). The district court correctly evaluated the commissioner’s exercise of discretion and affirmed. Therefore, we affirm the decision of the district court.

AFFIRMED.