IN THE COURT OF APPEALS OF IOWA

No. 6-239 / 05-1065
Filed July 26, 2006

HAROLD L. COFFMAN,
Plaintiff-Appellant,

vs.

KIND & KNOX GELATINE, INC., Employer,
and LIBERTY MUTUAL INSURANCE,
Defendant-Appellees.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge.

Claimant appeals the award of workers' compensation benefits for an injury to his eyes. **REVERSED AND REMANDED.**

Harold K. Widdison, Sioux City, for appellant.

Michael J. Moss of Law Offices of Kelli Ann Svensson, Omaha, Nebraska, for appellees.

Considered by Huitink, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

"We must know what a decision means before the duty becomes ours to say whether it is right or wrong." *United States v. Chicago*, *M.*, *St. P. & P.R. Co.*, 294 U.S. 499, 511, 55 S. Ct. 462, 467, 79 L. Ed. 1023, 1032 (1935).

I. Background Facts and Proceedings

Harold L. Coffman was a by-products supervisor at Kind & Knox Gelatine, Inc.[1] He sustained an injury to his eyes when a valve on a tank of hydrochloric acid burst.

Coffman sought workers' compensation benefits. The deputy workers' compensation commissioner articulated the fighting issue as follows: "whether claimant has permanent disability that is limited to the loss of two eyes or extends into the body as a whole."[2] After making several findings and conclusions on this issue, the deputy determined Coffman was entitled to ninety-five weeks of permanent partial disability benefits.

The workers' compensation commissioner affirmed the decision on intra-agency review, as did the district court on judicial review. Coffman sought further judicial review.

II. Standards of Judicial Review

We are authorized to grant appropriate relief if an agency decision is "[b]ased upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole." Iowa Code §

[1] The company is now known as Gelita USA.

[2] The deputy commissioner also resolved a penalty benefits issue. The agency's resolution of this issue is not challenged on appeal.

17A.19(10)(f) (2005). We are also authorized to grant appropriate relief where an agency decision is "[b]ased upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(10)(m). The workers' compensation commissioner has discretion to make findings of fact and to apply law to fact in contested cases addressing compensation for permanent partial disabilities. Iowa Code §§ 85.34, 86.3, 86.8(1), 86.14(1), 86.17(1); *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 465 (Iowa 2004).

III. Substantive Law on Permanent Partial Disability Compensation

Coffman contends that his injury was not simply to his eyes but extended to his "body as a whole." Specifically, he urges "[t]he 'spill over' effects from [his] bilateral eye injuries plus the injury to the visual system as a whole include chronic headache, dizziness and halo effect" and that "[t]hese 'spill over' effects go beyond the simple loss of use of his eyes and extend this injury into the body as a whole."

Coffman's argument implicates two Code provisions: Iowa Code section 85.34(2)(s) (Supp. 2005) and Iowa Code section 85.34(2)(u) (Supp. 2005). Iowa Code section 85.34(2)(s) states in pertinent part:

> For all cases of permanent partial disability compensation shall be paid as follows . . .
>
> > *s.* The loss of both arms, or both hands, or both feet, or both legs, *or both eyes*, or any two thereof, *caused by a single accident*, shall equal five hundred weeks and shall be compensated as such;

(Emphasis added). Section 85.34(2)(s) provides compensation for injuries to specific parts of the body pursuant to an established schedule. *Prewitt v.*

Firestone Tire & Rubber Co., 564 N.W.2d 852, 854 (Iowa Ct. App. 1997). These are known as "scheduled injuries." *Second Injury Fund of Iowa v. Shank*, 516 N.W.2d 808, 813 (Iowa 1994).

Iowa Code section 85.34(2)(u) states:

> *u.* In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs "*a*" through "*t*" hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred.

Section 85.34(2)(u) provides compensation for "unscheduled injuries." *Shank*, 516 N.W.2d at 813. These can either be injuries to an area of the body not identified in the schedules or injuries that spill over from areas identified in the schedules to other parts of the body. *Prewitt*, 564 N.W.2d at 854; *Mortimer v. Fruehauf Corp.,* 502 N.W.2d 12, 16-17 (Iowa 1993); *Lauhoff Grain Co. v. McIntosh*, 395 N.W.2d 834, 837-38 (Iowa 1986) (citing 2 A. Larson, *The Law of Workmens' Compensation* § 58.21, at 10-222 to 10-243 (1979)).

The distinction between scheduled and unscheduled injuries is important because "the amount of compensation for an unscheduled injury is often much greater than for a scheduled injury." *Prewitt*, 564 N.W.2d at 854.[3] And, the method for determining compensation is different. *See Mortimer*, 502 N.W.2d at 505 ("[A] specific scheduled disability is determined by the functional method; an unscheduled disability is determined by the industrial method.")

With these principles in mind, we turn to the agency ruling.

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[3] In this case, Coffman could receive five hundred weeks of compensation under subsection (s) and up to five hundred weeks under subsection (u).

IV. The Agency Decision

"Administrative findings of fact must be sufficiently certain to enable a reviewing court to ascertain with reasonable certainty the factual basis on which the administrative officer or body acted." *Catalfo v. Firestone Tire & Rubber Co*., 213 N.W.2d 506, 509 (Iowa 1973). Coffman's argument assumes that the commissioner compensated him for a scheduled injury under subsection (s) rather than a "body as a whole" injury under subsection (u). We cannot discern from the agency's decision whether this assumption is correct.

A. The Commissioner's Ruling.

In the final agency decision, the commissioner stated "[t]he injury was clearly limited to both eyes," a statement which supports Coffman's assumption that the injury was found to be a scheduled injury under subsection (s). However, the commissioner also affirmed and adopted the deputy commissioner's entire discussion concerning this issue, without modification. This discussion contains conflicting findings on the question of whether Coffman sustained a scheduled injury or an injury to the body as a whole.

B. The Deputy Commissioner's Decision.

In her "Findings of Fact and Analysis," the deputy commissioner summarized the medical evidence and discussed Coffman's testimony concerning the spill over effects from his eye injury. She noted that Coffman failed to bring these problems to the attention of medical providers. She found, "these conditions if they exist at all are not significantly disabling claimant." She then stated:

In exhibit 51, claimant lists a whole bevy of activities that he cannot perform as a result of his injury to his eyes. Claimant's recited difficulties in these areas appear to be greater than the difficulties reasonably to be anticipated when an individual has corrected visual acuity of 20/20 and 20/25. Claimant has provided no medical explanation for this discrepancy. Claimant's testimony and demeanor at hearing were such that the undersigned believes claimant's credibility was compromised by claimant's desire to receive substantial compensation on account of his injury.

No medical provider has given expert testimony as to the meaning of the phrase 'visual system as a whole.' The only definition of this phrase in the record is claimant's statement in his answers to interrogatories that the vision system includes the brain, a nonscheduled body part.

The AMA Guides to Evaluation of Permanent Impairment, Fifth Edition, at page 277 states that:

> The visual system consists of the eyes and the supporting structures, the neural pathways, and the visual cortex of the brain. The visual system is unique in that it combines the input from two separate eyes into a single visual perception.

Nothing in this definition suggests that claimant's injury related conditions are not consistent with the legal understanding of the word 'eyes' as used in section 85.34(2)(s). The eye conditions that claimant's doctors have diagnosed and the complaints claimant relates and that the medical evidence supports are both wholly consistent with loss of use of the eyes and are not after effects of his injury that extend claimant's impairment to the body as a whole.

The impairment ratings of Doctors Stanifer and Arkfeld are nearly equal. That of Dr. Stanifer is accepted over that of Dr. Arkfeld. Dr. Stanifer was claimant's treating ophthalmologist. He was in a better position to evaluate claimant's condition.

Neither of these physicians expressly referred to the AMA Guides, Fifth Edition, in rendering their impairment ratings. Both rendered opinions that are consistent with Chapter 12 of the Guides, however. Under Table 12-10 of the Guides, 10 percent to 29 percent visual system impairment correlates with 10 percent to 29 percent whole person impairment. Dr. Stanifer has opined that claimant has 19 percent impairment for the visual system as a whole. Nineteen percent impairment of the visual system as a whole correlates with 19 percent impairment of the whole person.

It is expressly found that claimant has demonstrated a permanent loss of use of both eyes that was sustained in a single injury equal to 19 percent of the body as a whole.

In the next section of the decision, "Conclusions of Law," the deputy commissioner stated:

> Benefits for permanent partial disability of two members caused by a single accident is a scheduled benefit under section 85.34(2)(*s*); the degree of disability must be computed on a functional basis with a maximum benefit entitlement of 500 weeks. *Simbron v. Delong's Sportswear*, 332 N.W.2d 886 (Iowa 1983).
>
> It is concluded that claimant has established a loss of use of both eyes in a single work accident.
>
> It is further concluded that claimant has established entitlement to permanent partial disability benefits of 19 percent of the body as a whole, which entitlement equals 95 weeks of permanent partial disability payable at the weekly rate of $575.27 with benefits to commence on May 10, 2003.

C. Findings Supporting Scheduled Injury Under Subsection (s).

Many of the deputy commissioner's findings suggest that she intended to compensate Coffman for a scheduled injury to the eyes under subsection (s). First, the deputy commissioner stated the spill over effects of Coffman's eye injury either did not exist or were not significantly disabling. Second, the deputy commissioner found Coffman's testimony on the spill over effects not credible. This testimony went to the heart of Coffman's assertion that he sustained an injury to his body as a whole. Next, the deputy commissioner appeared to reject a portion of the opinion of Coffman's treating ophthalmologist, Dr. Ralph Stanifer. She noted the absence of a definition for "visual system as a whole," a term used by Dr. Stanifer. Finally, the deputy commissioner explicitly rejected Coffman's claim that his eye conditions were after effects of his eye injury and an injury to his body as a whole. From these findings, one could surmise that the deputy commissioner found a scheduled rather than an unscheduled injury.

D. Findings Supporting Body as a Whole Injury Under Subsection (u).

Many of the deputy commissioner's findings of fact also suggest that she intended to compensate Coffman for an injury to the body as a whole under subsection (u). As we noted above, the deputy appeared to reject that portion of Dr. Stanifer's opinion that found an injury to the visual system as a whole. Later, however, the deputy commissioner expressed a preference for Stanifer's opinions as the treating physician over those of Dr. Dean Arkfeld, a physician retained by the employer to review Coffman's medical file. The deputy commissioner then made the following key finding:

> Dr. Stanifer has opined that claimant has 19% impairment for the visual system as a whole. Nineteen percent impairment of the visual system as a whole correlates with *19% impairment of the whole person*.

(Emphasis added). This finding is inconsistent with Dr. Stanifer's records. He did not convert his impairment ratings for the eyes and "visual system as a whole" to a "body as a whole" rating. Other witnesses did do so, but the deputy commissioner either rejected their testimony or made no mention of it. First, Dr. Arkfeld opined that Coffman sustained a seventeen percent impairment rating to the body was a whole. The deputy commissioner rejected Dr. Arkfeld's opinion. Second, a rehabilitation consultant called by Coffman found a sixty percent impairment rating to the body as whole. The deputy commissioner made no mention of this opinion. In sum, the deputy commissioner found an impairment rating to Coffman's body as a whole based on a medical opinion that contained no such rating, and she rejected or ignored other evidence that would have supported the finding.

The deputy commissioner ended with the following finding: "It is expressly found that claimant has demonstrated a permanent loss of use of both eyes that was sustained in a single injury equal to 19 percent of the body as a whole." Although this finding contains language from subsection (s), it also mentions "the body as a whole," which is consistent with a determination that Coffman sustained an unscheduled loss under subsection (u).[4]

E. The Agency's Application of Law to Fact.

In her "Conclusions of Law", the deputy commissioner stated "that claimant has established a loss of use of both eyes in a single work accident." This language is a determination that Coffman sustained a scheduled injury under subsection (s). In the next sentence, however, the deputy commissioner stated, "It is further concluded that claimant has established entitlement to permanent partial disability benefits of 19 percent of the body as a whole. . . ." This language is a determination that Coffman sustained an injury to the body as a whole under subsection (u).

V. Disposition

The key question before the agency was whether Coffman sustained a scheduled injury or an injury to the body as a whole. We cannot discern how the agency answered this question. Without knowing the agency's answer, we cannot determine whether the agency's fact findings are supported by substantial

[4] The commissioner also did not determine Coffman's industrial disability as she was required to do if this was an unscheduled loss under Iowa Code section 85.34(2)(u). *See Clark v. Vicorp Restaurants , Inc*. 696 N.W.2d 596, 605 (Iowa 2005).

evidence and whether the agency's application of law to fact is irrational, illogical, or wholly unjustifiable.

We reverse the decision of the workers' compensation commissioner and remand the case to the commissioner to determine whether the evidence supports compensation as a scheduled or an unscheduled loss. *See Catalfo*, 213 N.W.2d at 510 (noting entitlement to permanent partial disability compensation "remains a question of fact to be resolved on the present record by the commissioner or deputy commissioner").

REVERSED AND REMANDED.

Eisenhauer, J. concurs; Huitink, P.J., dissents.

HUITINK, P.J. (dissenting)

I respectfully dissent. The outcome of this case is dictated by our standard of review. The resolution of conflicting testimony, even that which is arguably self contradictory, is the statutory responsibility of the agency as the finder of fact. The mere fact that we have discovered the existence of an arguable contradiction is insufficient to justify the relief granted by the majority.

Here, the commissioner resolved any arguable contradictions in Dr. Stanifer's records in favor of the employer. When Dr. Stanifer's records are read as a whole, they provide sufficient evidentiary support for the commissioner's ultimate conclusions concerning the nature of the employee's injuries.

I would affirm the commissioner's decision.