

IN THE COURT OF APPEALS OF IOWA

No. 6-434 / 05-1726
Filed July 12, 2006

RANDY LUKE AMLAND,
Plaintiff-Appellee,

vs.

**C & L DEVELOPMENT and
UNITED FIRE & CASUALTY CO.,**
Defendant-Appellants.

Appeal from the Iowa District Court for Johnson County, Thomas M. Horan, Judge.

C & L Development and United Fire & Casualty Co. appeal the district court's ruling on a petition for judicial review. **REVERSED.**

Charles Blades of Scheldrup Law Firm, P.C., Cedar Rapids, for appellants.

Paul McAndrew, Coralville, for appellee.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

HUITINK, J.

C & L Development and United Fire & Casualty Co. (hereinafter collectively referred to as “C & L”) appeal from a district court ruling that reversed a decision by the workers’ compensation commissioner denying Randy Amland workers’ compensation benefits. C & L challenges the district court’s determination that Amland suffered an injury arising out of and in the course of his employment with C & L on September 30, 2002. We reverse the district court and reinstate the commissioner’s decision denying benefits.

I. Background Facts and Proceedings

Amland filed two petitions seeking workers’ compensation benefits from C & L, alleging work-related back injuries on August 15, 2002, and September 30, 2002. C & L stipulated that Amland sustained an injury arising out of and in the course of employment on August 15, 2002, but denied the incident was the cause of any disability. C & L denied any work injury occurred on September 30, 2002. The matters were consolidated for hearing. The deputy workers’ compensation commissioner, in a written decision filed June 28, 2004, concluded (1) Amland suffered no permanent injury on August 15, 2002, and (2) Amland failed to prove he suffered an injury arising out of and in the course of employment on September 30, 2002. The workers’ compensation commissioner filed a written appeal decision affirming the deputy’s decision on April 27, 2005. Amland filed a petition for judicial review in the district court. The district court reversed and remanded to the agency, concluding “a full examination of

Dr. Mendoza's¹ testimony provides substantial evidence that [Amland] suffered a work-related back injury on September 30, 2002, and the injury arose out of and in the course of [Amland's] employment." C & L appeals the district court's ruling.

Amland, who was forty years old at the time of the workers' compensation hearing, has worked as a laborer in construction for most of his adult life. He began experiencing back pain as early as 1994. In October 1998 Amland suffered a right shoulder injury while employed as a general laborer for All-Rite Sites. He claimed a lower back injury occurred at the same time. He underwent back surgery in December 1998. A workers' compensation claim for the low back injury was later denied by the workers' compensation commissioner. The commissioner concluded Amland failed to establish the low back condition was related to the October 1998 incident. The commissioner's findings of fact noted that "claimant's testimony at the time of hearing was extraordinarily evasive during cross-examination," and thus "detract[ed] from the weight given claimant's testimony."

From May 2002 to September 2002, Amland was employed by C & L,² a small construction company owned and operated by Amland's brother-in-law, Ed Cole. He operated machinery and worked as a general laborer in laying sewer and water main.

On August 15, 2002, Amland experienced pain in his back while trying to fit two pieces of pipe together in a trench. He immediately reported the injury to

¹ Dr. Sergio Mendoza performed surgery on Amland in December 2002.

² C & L is no longer in business.

Ed Cole. He continued to work that day and in the following days, and did not seek medical treatment until August 22. At the hearing before the deputy commissioner, Amland's wife described the injury as relatively minor.

The events surrounding the alleged September 30 injury were the subject of much controversy and contradiction at the hearing before the deputy. Amland testified he was injured two times on September 30, when working with Howard Lewis and others to hook pipe fittings together.³ According to Amland, Howard Lewis was operating the machinery used at the time of the alleged incidents. After the second incident, Amland told Shane Lewis and Fred Fehrman, coworkers at the site, he was hurt and going home. Amland went home and called Ed Cole to report the injury. When Ed Cole did not answer his phone, Amland left five or six messages. Amland's wife reported the injury to Ed Cole in person a few days after the incident.

Howard Lewis, Amland's wife's uncle, denied operating machinery at the job site on September 30, and denied knowing of anything unusual happening to Amland that day. Howard Cole, Amland's brother-in-law and a supervisor at the job site, testified he did not know of Amland's alleged injury until four or five days after September 30. When he asked coworkers about Amland after noticing his absence at some point that day, no one said anything about an injury. Ed Cole denied receiving phone messages from Amland on September 30. Ed Cole testified he first heard of the alleged injury when Amland's wife reported it to him a week later.

³ During previous deposition testimony, Amland described only *one* incident on September 30.

Shane Lewis, who considers Amland like a father, observed Amland, Fred Fehrman, and Howard Lewis maneuvering a valve into a skid loader on September 30. He came to assist when he saw Amland straighten up, holding his back. Shane Lewis testified Amland did not do much at the work site that day after the incident, but that he was surprised to hear two weeks later that Amland was having back problems.

Fred Fehrman described Amland as a “whiner” and indicated it was “quite possible” Amland was using the September 30 incident as an excuse to get out of the rain and get home that day, although he stated, “I can’t say he wasn’t hurt.” Fehrman was surprised when he found out a week or two later that Amland was claiming a work injury.

Jerry Strawn, the office manager for C & L, described Amland as a “complainer.” He testified he first heard of the September 30 injury on October 8, 2002, when he received a phone call from Amland’s attorney.

Medical records from Amland’s visits to the University of Iowa Hospitals and Clinics on October 2, 2002, and October 4, 2002, indicate Amland did not report an injury as the cause of his symptoms. Dr. Jerry Jochims, an independent medical examiner (IME) hired by Amland, initially opined that the September 30, 2002 incident “resulted in a permanent aggravation of the pre-existing condition resulting in an additional level of impairment” However, Dr. Jochims later opined “the actual injury occurred on August 15, 2002.” Dr. Thomas Hughes, a second IME hired by Amland, opined the most likely date of injury would be August 15, 2002. Other physicians presented similar conflicting opinions.

After reviewing the evidence, the deputy commissioner concluded:

The claimant was not credible and his witnesses were self-interested. The only witness who was not self-interested [Jerry Strawn] provided a consistent version of events that does not support the claimant. The claimant at hearing provided a new version of what was to have happened on September 30, 2002. This new version was required when Howard Lewis, his wife's uncle, would not support the version of events the claimant had been telling. The claimant has not met his burden of establishing that he sustained an injury arising out of and in the course of employment on September 30, 2002. As such all other issues are moot.

The commissioner, in affirming the deputy commissioner's decision, concluded:

The deputy properly characterized claimant's testimony as evasive. Claimant's evasiveness is evident from simply reading the hearing transcript without the opportunity to consider claimant's demeanor I independently find that the only testimony that can be given significant probative value is that from Mr. Strawn, the former office manager for the employer, because he has the least personal connect[ion] to the claimant or the claim.

II. Standard of Review

Our review of workers' compensation cases is governed by Iowa Code chapter 17A, the Iowa Administrative Procedure Act. Iowa Code § 86.26 (2005). We apply the standards of Iowa Code section 17A.19(10) to the agency's decision to determine whether our conclusions are the same as those reached by the district court. *University of Iowa Hosp. & Clinics v. Waters*, 674 N.W.2d 92, 95 (Iowa 2004). Our review, like that of the district court, is limited to correcting legal error. *Second Injury Fund of Iowa v. Shank*, 516 N.W.2d 808, 812 (Iowa 1994). The findings of the commissioner are akin to a jury verdict, and we broadly apply them to uphold the commissioner's decision. *Id.*

III. Discussion

The issue on appeal is whether substantial evidence supports the commissioner's determination that Amland did not sustain an injury arising out of and in the course of employment on September 30, 2002.⁴ We are bound by the commissioner's finding of fact if supported by substantial evidence in the record as a whole. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). Therefore, the question on appeal "is not whether the evidence supports a different finding than the finding made by the commissioner, but *whether the evidence 'supports the findings actually made.'*" *Id.* (citation omitted) (emphasis added).

As mentioned, the district court relied solely upon the testimony of Dr. Sergio Mendoza, Amland's treating physician, and concluded that Amland had presented substantial evidence of work-related injury on September 30, 2002. We conclude the district court failed to give the appropriate deference to the agency's findings of fact in reaching its conclusion. As outlined above, Amland contradicted his own prior deposition testimony at the hearing before the commissioner, and testimony from disinterested witnesses (Fehrman and Strawn) does not support Amland's version of events. The evidence before the commissioner, from both witnesses and medical experts, clearly was contradictory. It was the commissioner's responsibility to sort through the conflicting evidence before it and reach a conclusion. While there may be evidence in the record to support a different conclusion, our review is limited to

⁴ The district court's ruling did not address the commissioner's conclusion that Amland suffered no temporary disability from the August 15, 2002 injury. Amland did not request a ruling from the district court on this issue; therefore, he has waived any claim of error and we will not address this issue on appeal. *Hill v. Fleetguard, Inc.*, 705 N.W.2d 665, 670-71 (Iowa 2005).

whether the evidence supports the commissioner's decision. Based on our review of the record, we conclude substantial evidence supports the findings made by the commissioner. Accordingly, we reverse the decision of the district court and reinstate the decision of the workers' compensation commissioner.

REVERSED.