IN THE COURT OF APPEALS OF IOWA

No. 6-565 / 05-2127
Filed January 18, 2007

TYSON FOODS, INC.,
Petitioner-Appellant,

vs.

MIGDALIA HEDLUND,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge.

An employer appeals the district court decision affirming the ruling of the workers' compensation commissioner in an alternate care proceeding. **AFFIRMED.**

Coreen K. Sweeney and Scott A. Sundstrom of Nyemaster, Goode, West, Hansell & O'Brien, P.C., Des Moines, for appellant.

Randall P. Schueller of Hopkins & Huebner, P.C., Des Moines, for appellee.

Considered by Huitink, P.J., and Mahan, J., and Nelson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

NELSON, S.J.

I. Background Facts & Proceedings

Migdalia Hedlund was employed by Tyson Foods, Inc. In January 2005, Hedlund filed a claim for workers' compensation benefits alleging injuries to her arms, shoulder, and neck. Dr. Timothy Schurman diagnosed Hedlund with inflammatory arthritis, and stated her condition had been materially aggravated by the work place. Dr. Schurman recommended that she be seen by a rheumatologist. Instead of scheduling an appointment with a rheumatologist, Tyson Foods sought a second opinion from Dr. Delwin Quenzer.

Hedlund believed Tyson Foods was trying to switch her care from Dr. Schurman to Dr. Quenzer. In April 2005, she filed a request for alternate medical care under Iowa Code section 85.27 (2005). At the administrative hearing on her request, the employer stated it accepted liability on her claim. The parties straightened out the misunderstanding about the purpose of the scheduled appointment with Dr. Quenzer. The alternate care proceeding was then dismissed by a decision of the deputy workers' compensation commissioner.

In June 2005, Tyson Foods obtained a second opinion on Hedlund's injuries from Dr. Donna Bahls. Dr. Bahls gave the opinion that Hedlund had rheumatoid arthritis, and this was not a work-related condition. Because Tyson Foods had still not referred her to a rheumatologist, Hedlund filed a new request for alternate medical care. At the second proceeding, Tyson Foods denied liability for Hedlund's injuries based on Dr. Bahls's opinion.

A deputy workers' compensation commissioner determined Tyson Foods was bound by its admission in the first alternate care proceeding. The deputy granted Hedlund's application for alternate medical care, and ordered Tyson Foods to schedule a rheumatology consultation. The deputy was delegated authority to issue a final agency decision in the matter.

Tyson Foods filed a petition for judicial review. The court determined that under the doctrine of issue preclusion, Tyson Foods could not change its position on whether it was accepting liability for Hedlund's medical condition. The court found Tyson Foods was bound by its earlier admission. Tyson Foods now appeals.

II. Standard of Review

Our review is governed by the Iowa Administrative Procedure Act. Iowa Code ch. 17A; *Acuity Ins. v. Foreman*, 684 N.W.2d 212, 216 (Iowa 2004). We review the district court's decision by applying the standard of chapter 17A to the agency action to determine if 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).

III. Merits

A. Res Judicata. The district court determined that under the doctrine of res judicata, Tyson Foods' prior admission of liability precluded re-litigation of the exact same issue. A similar issue was raised in *Winnebago Industries, Inc. v. Haverly*, ___ N.W.2d ___, ___ (Iowa 2006), where an employer did not contest liability at an alternate care proceeding. At a later hearing on workers'

compensation benefits, however, the employer attempted to dispute liability. *Winnebago Indus.*, ___ N.W.2d at ___. The commissioner determined the employer's admission of liability in the alternate care proceeding was res judicata on the issue of liability for benefits. *Id*. The supreme court concluded the doctrine of issue preclusion did not apply because the issue had not actually been raised and litigated in the alternate care proceeding. *Id.* at ___.

In the present case, the issue of liability was not raised and litigated in the alternate care proceeding. We conclude Tyson Foods is not barred by the doctrine of res judicata, or issue preclusion, from disputing liability in a later proceeding. *See id.* ("Winnebago's admission of liability in the alternate-care proceeding did not constitute actual litigation for the purpose of applying issue preclusion.").

B. Judicial Estoppel. In *Winnebago Industries*, ___ N.W.2d at ___, the supreme court determined the employer was judicially estopped from denying liability for the employee's injury because it had conceded that issue in the alternate care proceeding. The court stated:

> We can assume in this case that Winnebago decided to admit liability for the purpose of maintaining control over Haverly's care, but rejected any broader application of that admission because it wanted to challenge its liability for payment of benefits. Under judicial estoppel, this is not permitted.

Winnebago Indus., ___ N.W.2d at ___.

The doctrine of judicial estoppel may be raised on the court's own motion because the doctrine is intended to protect the courts rather than the litigants. *State v. Duncan*, 710 N.W.2d 34, 43-44 (Iowa 2006). We may address the

doctrine of judicial estoppel, even though it was not addressed by the commissioner or the district court.

"The doctrine of judicial estoppel 'prohibits a party who successfully and unequivocally asserts a position in one proceeding from asserting an inconsistent position in a subsequent proceeding.'" *Duder v. Shanks*, 689 N.W.2d 214, 220 (Iowa 2004) (citations omitted). The doctrine reflects a common sense rule, "designed to protect the integrity of the judicial process by preventing deliberately inconsistent-and potentially-misleading-assertions from being successfully urged in succeeding tribunals." *Wilson v. Liberty Mut. Group*, 666 N.W.2d 163, 166 (Iowa 2003). A party asserting the doctrine of judicial estoppel must show "an intentional attempt to mislead the court with the inconsistency . . . ." *Graber v. Iowa Dist. Court*, 410 N.W.2d 224, 228 (Iowa 1987).

The doctrine of judicial estoppel does not apply unless there has been judicial acceptance of the prior, inconsistent position. *Schettler v. Iowa Dist. Court*, 509 N.W.2d 459, 467 (Iowa 1993). If there has not been judicial acceptance of the inconsistent position, application of the doctrine of judicial estoppel is unwarranted because there is no risk of inconsistent or misleading results. *Graber*, 410 N.W.2d at 228. "Parties may allege inconsistent theories and rely on them until there has been a judicial acceptance of one of them." *Schettler*, 509 N.W.2d at 467.

We find the doctrine of judicial estoppel applies in this case. During the administrative hearing at the first alternate care proceeding, Tyson Foods was asked whether liability was accepted on the claim, and it responded in the

affirmative. Under section 85.27(4), if an employer admits liability it "has the right to choose the care." On the other hand, if an employer disputes liability, it loses the right to control treatment. *Winnebago Indus.*, ___ N.W.2d at ___. Based on Tyson Foods' admission of liability, it continued to control Hedlund's care.

The representation of Tyson Foods that it accepted liability was judicially accepted at the first alternate care proceeding, because the deputy commissioner's decision assumes Tyson Foods will continue to control Hedlund's care. Tyson Foods may not now assert an inconsistent position in the second alternate care proceeding.

We affirm the decisions of the district court and the commissioner finding Tyson Foods should not be allowed to deny liability at the second alternate care proceeding, although for different reasons than those relied upon by the court and the commissioner.

AFFIRMED.