IN THE COURT OF APPEALS OF IOWA

No. 6-975 / 06-0977
Filed January 31, 2007

CITY OF MADRID, IOWA, and
EMC INSURANCE COMPANIES,
Petitioners-Appellants,

vs.

ANGELA BLASNITZ,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

An employer appeals an award of penalty benefits in a workers' compensation case. **AFFIRMED.**

Lori A. Brandau and Michael L. Mock of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellants.

Jim Lawyer of Lawyer, Lawyer, Dutton & Drake, L.L.P., West Des Moines, for appellee.

Considered by Mahan, P.J., and Vaitheswaran, J., and Brown, S.J.*

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

BROWN, S.J.

I. Background Facts & Proceedings

Angela Blasnitz was employed as a police officer by the City of Madrid Police Department. On January 17, 2003, she responded to a domestic call at the home of Michael and Susan Palmer. There was snow on Blasnitz's shoes, and Susan had thrown soda on the floor. Blasnitz stated she slipped as she came into the home and fell, hitting her right shoulder and elbow on the door jam. On an audio recording Blasnitz's fall can be heard. On Michael's questioning, Blasnitz stated she was "fine." Blasnitz proceeded to address the couple's domestic complaints.

During her shift later that night, Blasnitz searched a vehicle as part of a traffic stop, using her right and left arms. During a videotape of the search she is heard to say "ouch" once. Blasnitz's patrol activity report does not note any injury during her shift. Blasnitz testified she told the police captain, Tim Brown, about her injury on January 18, 2003. Captain Brown denied he was told about an injury.

In February, Captain Brown placed Blasnitz on suspension without pay for three days for failure to follow directives. On the last day of her suspension, February 24, 2003, Blasnitz went to a chiropractor, Dr. Alex Murphy, complaining of pain in the shoulder, neck, and arm, beginning about three weeks previously. She returned to work full-time following her suspension.

Blasnitz saw Dr. Mark Kirkland on March 19, 2003, reporting she had hit her shoulder while falling. Dr. Kirkland told the employer's workers'

compensation insurer that Blasnitz's pain was caused when she fell at work and hit her shoulder and elbow. The insurer obtained a surveillance video of Blasnitz on April 22, where she can be seen grooming horses with both arms.

Blasnitz was seen by Dr. Donna Bahls on May 7, 2003, for a second opinion. Dr. Bahls determined Blasnitz had a complete tear of the rotator cuff. Dr. Bahls was shown the surveillance tape, and she opined the activities she observed would not cause a rotator cuff tear.

On May 21, 2003, Michael Palmer told the insurer Blasnitz fell straight down and landed on her bottom. Blasnitz called Michael on June 2. On June 3, Michael told the insurer he had been slightly turned away, and did not actually see Blasnitz fall. He stated that after she fell he turned back, and he saw her with her feet in the air and her back against the wall. The insurer told Blasnitz that while it believed she had a work-related fall on January 17, 2003, that fall was not the cause of her injuries, and it refused to pay for her medical treatment.

Dr. Scott Neff performed surgery to repair Blasnitz's torn rotator cuff on June 20, 2003. Blasnitz reinjured her shoulder on July 16 while rolling over in bed. A second surgery was performed on August 29. Dr. Neff gave the opinion that Blasnitz's torn rotator cuff was caused by the work-related fall on January 17. After viewing the surveillance tape, Dr. Neff pointed out that his opinion was based on the history given to him by Blasnitz. Blasnitz was discharged from her employment as a police officer on November 13, 2003.

On December 2, 2003, Dr. Bahls wrote a letter stating that Blasnitz's activities in the surveillance video were not inconsistent with someone that had a

torn rotator cuff. In January 2004, Dr. Neff stated in a deposition that he believed the January 17, 2003, fall caused the injury to Blasnitz's shoulder. In a deposition in March 2004, Michael stated he was fully turned around when Blasnitz fell. Susan Palmer stated in a deposition that she saw Blasnitz fall, and she did not see her hit any part of her body on the door or door frame. Susan stated Blasnitz fell onto her bottom.

An administrative hearing was held on August 18, 2004, with evidence presented as outlined above. A deputy workers' compensation commissioner determined there was a causal connection between the fall on January 17, 2003, and Blasnitz's injury to her shoulder. Blasnitz was found to have an industrial disability of twenty percent. The deputy also determined the employer should pay penalty benefits under Iowa Code section 86.13 (2003), of fifty percent of the weekly benefits due from June 20, 2003, through August 18, 2004.

The workers' compensation commissioner affirmed the decision of the deputy. On the issue of penalty benefits, the commissioner stated:

> A view of the totality of the evidence is required to determine whether reasonable or probable cause or excuse existed. *Substantial evidence that has a reasonable chance of prevailing is required.* Courts and administrative tribunals have a sufficient volume of work to make it unnecessary to encourage litigating positions that have no reasonable prospect of prevailing.

(Emphasis added).

The commissioner also noted Blasnitz was employed as a peace officer, stating this was "a position that judges and juries typically consider to be one that brings credibility."

The employer and its insurer sought further review. The district court, in a comprehensive and well-reasoned decision, concluded the commissioner used an improper legal standard when analyzing whether penalty benefits should be awarded, by requiring "[s]ubstantial evidence that has a reasonable chance of prevailing . . . ." The court found the focus should be on whether there is a fairly debatable issue, not which party is ultimately correct. The court also determined the commissioner improperly found Blasnitz was credible because she was a police officer. The court concluded the issue of penalty benefits should be remanded to the commissioner for reconsideration in light of the correct legal standard.

The employer appealed, claiming, as a matter of law, Blasnitz's workers' compensation claim was fairly debatable, consequently the commissioner's award of penalty benefits was erroneous.

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 standards 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. Penalty Benefits

Iowa Code section 86.13 provides:

> If a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the

> workers' compensation commissioner shall award benefits in addition to those payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were unreasonably delayed or denied.

Thus, penalty benefits are awarded if an employer does not have a reasonable or probable cause or excuse for a delay in making payments or a denial of benefits. Iowa Code § 86.13.

An employer has a reasonable excuse if (1) the delay was necessary for the insurer to investigate the claim, or (2) the employer had a reasonable basis to contest the employee's entitlement to benefits. *Christensen v. Snap-On Tools Corp.*, 554 N.W.2d 254, 260 (Iowa 1996). If there is a good faith dispute over the employee's factual or legal entitlement to benefits, the claim is fairly debatable, and an award of penalty benefits is not appropriate under the statute. *Gilbert v. USF Holland, Inc.*, 637 N.W.2d 194, 199 (Iowa 2001).

"Whether the issue was fairly debatable turns on whether there was a disputed factual issue that, if resolved in favor of the employer, would have supported the employer's denial of compensability." *Id*. However, the reasonableness of an employer's denial of benefits is not dependent upon whether the employer was ultimately right. *Keystone Nursing Care Ctr. v. Craddock*, 705 N.W.2d 299, 307-08 (Iowa 2005). "The issue is whether there was a reasonable basis for the employer's position that no benefits were owing." *Id.* at 308.

We assume without deciding the district court properly concluded the commissioner's reformulation of the legal standard by requiring substantial

evidence which has a reasonable chance of prevailing was incorrect.[1] We agree with the district court that Blasnitz should not be considered credible in her own workers' compensation case merely because she is a police officer. *See State v. Graves*, 668 N.W.2d 860, 879 (Iowa 2003) (stating police officers should not be considered more credible than other witnesses simply based on their job title).

We turn then to the question of the proper relief. The district court determined the commissioner should have the opportunity to apply all of the facts of the case under the correct legal standard. The employer claims there is no need to remand the case to the agency as Blasnitz's entitlement to benefits was fairly debatable as a matter of law, and the award of penalty benefits should be reversed.

After a careful review of the record, we again agree with the district court's conclusion that the issue of penalty benefits can not be decided as a matter of law. Whether the employer acted reasonably should be determined in the first instance by the commissioner. *See Ellingson v. Fleetguard, Inc.*, 599 N.W.2d 440, 447 (Iowa 1999) (noting it is the commissioner's responsibility to rule on penalty issues). Section 17A.19(10) provides that the court may affirm the agency action, reverse or remand to the agency for further proceedings. We affirm the district court's conclusion that the matter should be remanded to the commissioner for reconsideration using the correct legal standard.

AFFIRMED.

[1] The City asserts in its brief that the district court's determination that this is an erroneous standard was correct without analysis, and Blasnitz does not address the issue.