

**IN THE COURT OF APPEALS OF IOWA**

No. 7-862 / 07-0427  
Filed January 16, 2008

**CURRIES COMPANY and TRAVELERS  
INSURANCE COMPANY,**  
Petitioners-Appellants,

**vs.**

**CHRISTOPHER A. MCCURDY,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County, Don C. Nickerson,  
Judge.

Petitioners appeal the district court's ruling affirming that respondent  
sustained a compensable work-related injury and was entitled to penalty benefits.

**AFFIRMED.**

Aaron T. Oliver, Hansen, McClintock & Riley Law Firm, Des Moines, for  
appellants.

James T. Fitzsimmons, Fitzsimmons & Vervaecke Law Firm, Mason City,  
for appellee.

Considered by Sackett, C.J., Vaitheswaran and Baker, JJ.

**SACKETT, C.J.**

Petitioners-appellants, Curries Company (Curries) and Travelers Insurance Company (Travelers) appeal the district court's ruling affirming the Iowa Workers' Compensation Commissioner's findings that bilateral foot injuries suffered by Christopher McCurdy arose out of his employment with Curries, and McCurdy sustained a compensable work-related injury, and was entitled to penalty benefits because the petitioners had no reasonable basis to deny his claim. Curries and Travelers appeal these determinations. We affirm.

**I. BACKGROUND.**

McCurdy filed the petition that led to this appeal with the commissioner on March 3, 2003. He contended he was injured as a result of standing for long periods on a concrete floor. He claimed an injury date of July 1, 2001, and stated he was disabled from that date to the date of the petition and that the injury was continuing. McCurdy began working at Curries in 1988. He worked in various positions all of which required him to stand on concrete all day. He had job changes in 2000 which involved less movement in the work area and the availability of a rubber mat where he could stand.

In March 2001, McCurdy developed foot pain. In May, he reported the pain to the plant safety manager. In July, McCurdy began seeing a podiatrist, Dr. Henrich, for his foot problems. Dr. Henrich diagnosed McCurdy with severe bilateral plantar fasciitis which is commonly known as heel spur syndrome. Dr. Henrich, in the medical report from the initial examination, noted that this was a work-related situation. On October 11, a Travelers claim representative notified McCurdy by letter that the claim was investigated and Travelers was denying the

claim based on the information they had received. Dr. Henrich wrote several letters to Travelers stating that McCurdy's condition was work-related and due to "walking on hard surfaces for prolonged periods of time." He asked them to approve the claim and permit McCurdy to have surgery for the condition. Meanwhile, Dr. Henrich continued treating McCurdy's plantar fasciitis with conservative measures, including physical therapy, orthotic inserts, injections, restrictions on footwear, and anti-inflammatory medications.

At an appointment in December of 2001, Dr. Henrich restricted McCurdy's work, advising that he could not work overtime. Curries had a policy that anyone that had a work restriction that was from an injury that was not work-related, had to take sick leave until they were able to work without any restrictions. Since Travelers deemed the claim not work-related, and Curries considered the doctor's prohibition of overtime to be a restriction, McCurdy was forced to take sick leave. McCurdy took sick leave until April 2002 when a co-worker intervened to get McCurdy back at work. Despite multiple letters from Dr. Henrich advising the injury was attributable to work, Travelers continued to deny the claim, stating they had not received all of the medical notes and test results related to the claim. All of the medical records were subsequently sent to Travelers. Travelers did not provide any initial response to the receipt of the medical records but on April 17, 2002, Travelers confirmed to McCurdy's attorney that it had received the medical records. The record shows no additional correspondence indicating any further review or investigation of the claim by Travelers despite additional letters sent by Dr. Henrich and McCurdy's attorney in May and June of 2002.

McCurdy began suffering from night spasms and knee pain due to the plantar faciitis and Dr. Henrich prescribed night splints in July of 2002. In November, McCurdy was examined by another physician, Dr. Groen, for a second opinion as to whether the condition was work-related. Groen's initial report stated:

I cannot say that Chris'[s] work was the sole factor causing his foot condition. Although, in my opinion, the transition from a job allowing movement to a job requiring standing for extended periods of time in a welding position was a substantial contributing factor or cause of his bilateral foot condition. It would have been helpful had Chris'[s] foot condition been taken care of earlier.

In response to this opinion, counsel for Travelers advised Groen that McCurdy had been in the same position throughout his employment at Curries. Groen then revised his opinion to conclude that absent a job site change, Mr. McCurdy's condition could not be caused by his employment. After Groen received information clarifying McCurdy's various positions at Curries, he concluded that the position change was probably a contributing factor to the condition.

In April 2004, McCurdy decided he could no longer tolerate the pain and needed to have the surgery even though Travelers had denied his claim and despite his financial concerns. Dr. Henrich performed surgery on McCurdy's right foot in May of 2004 and his left foot in October of 2004. At the time of the hearing in February 2005, both feet were healing well with no permanent impairment predicted although McCurdy had not been released to go back to work. While recovering, McCurdy received some income from sick leave and long term disability payments.

A hearing on McCurdy's petition was held on February 9, 2005. A deputy commissioner ruled in McCurdy's favor finding (1) the injury arose out of and in

the course of his employment, (2) McCurdy was entitled to payment of medical expenses and healing period benefits, and (3) the denial of benefits without explanation warranted an award of penalty benefits in the amount of fifty percent of the healing period benefits, minus a credit for benefits previously paid. On appeal from the arbitration decision, the commissioner held that the failure to explain the denial of benefits “is not an independent ground for awarding penalty benefits.” However, the commissioner found the penalty award was supported because Travelers failed to pay benefits even after both examining doctors found the syndrome work-related. The district court found the agency did not abuse its discretion and its findings were supported by substantial evidence.

## **II. STANDARD OF REVIEW.**

In our review of workers’ compensation claims, we analyze the commissioner’s decision under the standards set forth in Iowa Code section 17A.19(10) (2005) and decide whether the district court correctly applied the law in exercising its judicial review function. *Lakeside Casino v. Blue*, \_\_\_ N.W.2d \_\_\_, \_\_\_ (Iowa 2007). “In determining the proper standard of review, we must first identify the nature of the claimed basis for reversal of the commissioner’s decision.” *Id.* Assertions that the commissioner incorrectly found an injury arose out of and in the course of employment “presents a mixed question of law and fact.” *Id.* We must carefully articulate the appellant’s challenge because review of mixed questions of law and fact varies depending on the precise claim of error asserted. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006).

Here, Travelers and Curries do not disagree with the commissioner’s fact findings or interpretations of law. Instead, their arguments are directed at the

commissioner's ultimate conclusion resulting from alleged misapplication of the law. For these claims, the question on review is whether the agency abused its discretion by reaching its conclusion through one of the forbidden means listed in Iowa Code section 17A.19(10). *Id.* Travelers and Curries contend the agency violated several provisions in this section by reaching a conclusion unsupported by substantial evidence, ignoring important and relevant evidence, and employing illogical and irrational reasoning. See Iowa Code § 17A.19(10)(f), (i), (j).

### **III. COMPENSABLE INJURY.**

Travelers and Curries first argue that the agency decision was in error because the commissioner ignored key evidence and there was not substantial evidence to support the conclusion that McCurdy's injury was related to his employment. On this claim, "[e]rror occurs when the commissioner makes a legal conclusion based on facts that are inadequate to satisfy the governing legal standards." *Meyer*, 710 N.W.2d at 220 n.1. This can happen "[i]f the commissioner fails to consider relevant evidence in making a conclusion, fails to make the essential findings to support the legal conclusion, or otherwise commits an error in applying the law to facts." *Id.*

The legal standard for determining whether an injury "arises out of" and "in the course of" employment has been defined by our case law:

An injury "arises out of" the employment if a causal connection exists between the employment and the injury. The injury arises "in the course of" employment when the injury and the employment coincide as to time, place, and circumstances. Both tests must be satisfied for an injury to be deemed compensable.

*Id.* at 222. The “arising out of” element “requires that the injury be . . . a rational consequence of the hazard connected with the employment.” *Id.* The causal relation required is less demanding than that required under tort law. *Id.* at 223. The employment must only be the “condition out of which the event arises.” *Id.* The “course of employment” requirement is met if the injury occurs “within the period of the employment, at a place where the employee reasonably may be, and while the employee is fulfilling work duties or engaged in doing something incidental thereto.” *Id.* at 222.

The commissioner found these legal standards were met, explaining,

The defendants acknowledge that the claimant worked on concrete floors since he began his employment . . . yet argue that since nothing changed when he changed jobs his current foot conditions cannot be caused by the job change. It is of course not necessary that the job change in 2000 be the cause of the claimant’s current foot conditions. His burden is to show that his work conditions, perhaps throughout the time he worked for the employer, substantially caused his bilateral foot conditions. By pointing out that the claimant worked for 12 years on a hard concrete floor, the defendants only underscore the claimant’s case.

The commissioner noted that McCurdy’s condition was a cumulative injury which seemed to worsen when his movement became more restricted due to a job change. The commissioner rejected the argument that there lacked a causal relationship since McCurdy did not develop symptoms until several months after the job change stating, “by definition a cumulative injury will not result in symptoms the first day of a job.” The commissioner also found the legal standard was met because “all of the medical opinions in this case establish that the claimant’s current bilateral foot conditions are caused by his work conditions.”

Travelers and Curries argue the commissioner ignored evidence favorable to them, such as evidence showing that, (1) McCurdy has worked the entire time standing on a concrete floor at Curries, (2) McCurdy was actually able to work on a rubber mat after a job change in 2000, and (3) he worked at such position for several months before claiming his feet hurt.

The commissioner did consider this evidence and found these facts actually supported the legal conclusion that the condition arose out of and in the course of McCurdy's employment. The commissioner did not ignore this information. Also, a cumulative injury "develops over time from performing work-related activities and ultimately produces some degree of industrial disability." *Ellingson v. Fleetguard, Inc.*, 599 N.W.2d 440, 444 (Iowa 1999). The facts that a rubber mat was provided at one job position and that symptoms did not manifest until 2001 do not undercut the finding that the cumulative injury was work-related. McCurdy worked on a rubber mat for a relatively short period of time in comparison to his other positions and this position restricted his movement, which testimony showed aggravated the condition. The fact that McCurdy's symptoms manifested years into his career at Curries supports the finding that the condition developed over time and was cumulative.

Travelers and Curries also argue the commissioner abused its discretion in applying the law by employing illogical and irrational reasoning under Iowa Code section 17A.19(10)(i). Specifically they contend the commissioner failed to address inconsistencies in medical expert opinions and changing theories of recovery. Travelers and Curries argue the medical records show no causal connection because Dr. Henrich changed his opinions on the cause of the

condition over time and thus, McCurdy's theory of recovery changed. They argue Dr. Henrich's reports do not consistently state the cause of the condition, varying between being caused by "being on hard surfaces for long periods of time," "standing in one spot all day," and "walking on hard surfaces for long periods."

We find no inconsistency in Henrich's conclusion on causation. Dr. Henrich's testimony pointed out that the condition was due to the hard surfaces and inability to relax certain foot tendons. The condition is exacerbated when movement is restricted. McCurdy encountered these conditions while at work. The symptoms were merely aggravated the more movement was restricted at Curries. There was no inconsistency in Dr. Henrich's overall opinion and conclusion that the syndrome was work-related. Dr. Henrich's opinion on the cause of the syndrome was supported by McCurdy's co-workers' testimony about the working conditions in various positions at Curries. The minor inconsistencies argued by Travelers and Curries do not evince illogical reasoning by the commissioner.

Travelers and Curries further argue that Dr. Henrich did not know some specific details about when McCurdy changed positions at Curries, that he worked on a rubber mat at one position, and that Dr. Henrich admitted to an error in one report. They also urge that the article they provided about plantar fasciitis from a Workers' Compensation Manual provides a more reliable medical opinion than those of the two doctors who examined McCurdy. These arguments pertain to credibility determinations rather than errors in the application of law. Under our judicial review we give deference to the credibility

determinations of the agency's presiding officer and find no error on these grounds. See Iowa Code § 17A.19(10)(f)(3); *Lange v. Iowa Dep't of Revenue*, 710 N.W.2d 242, 247 (Iowa 2006).

#### **IV. PENALTY BENEFITS.**

Travelers and Curries also contend that the commissioner abused its discretion in awarding McCurdy penalty benefits. Travelers and Curries assert error was committed because the commissioner reached its conclusion by an erroneous interpretation of law, ignoring important and relevant evidence, and by employing illogical or irrational reasoning under Iowa Code section 17A.19(10). The commissioner awarded the penalty benefits, determining that Travelers had no reasonable basis to deny the claim because McCurdy's claim was not fairly debatable.

The applicable legal standards are established by statute and case law.

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 benefits payable under this chapter . . . up to fifty percent of the amount of benefits that were unreasonably delayed or denied.

Iowa Code § 86.13. This section imposes "an affirmative obligation on the part of the employer and insurance carrier to act *reasonably* in regard to benefit payments in the absence of specific direction by the commissioner." *Christensen v. Snap-On Tools, Corp.*, 554 N.W.2d 254, 260 (Iowa 1996). There is a reasonable cause or excuse to withhold payments if "the employer had a reasonable basis to contest the employee's entitlement to benefits." *Keystone Nursing Care Ctr. v. Craddock*, 705 N.W.2d 299, 307 (Iowa 2005). There is a reasonable basis for denial of benefits if the employee's claim is "fairly

debatable.” If payment was not made, we must focus on whether there was a reasonable excuse for not making timely payment.” *McIlravy v. North River Ins. Co.*, 653 N.W.2d 323, 328 (Iowa 2002). The employer’s failure to provide the employee with an explanation for the denial is not an independent ground warranting penalty benefits. *Keystone*, 705 N.W.2d at 308. Failing to reinvestigate a claim after receiving additional medical information can raise the inference that there is no reasonable basis for denying the claim. *McIlravy*, 653 N.W.2d at 332-33.

In the original arbitration decision the commissioner cited the failure to provide reasons for the denial as one justification for the penalty award. On appeal, the commissioner noted that under *Keystone*, this alone cannot justify a penalty award. Despite this error, the commissioner and district court found the record provided ample grounds for imposing the penalty award. The district court concluded “there was no good faith dispute that could be factually resolved in favor of the employer” because:

There have been no efforts at on-going investigation on behalf of Travelers and there was no reasonable decision which would involve the denial of the claim when all relevant medical evidence . . . supported the conclusion that [McCurdy’s] injury was work-related. Petitioners argue that this claim is “fairly debatable” for several reasons, none of which are persuasive enough to overcome the fact that the only medical professionals consulted in this proceeding indicated that the injury was work-related.

The court found Travelers also failed to reinvestigate the claim even when additional medical records were provided. Travelers and Curries point to the same “inconsistencies” and credibility arguments addressed above as reasons why the claim is “fairly debatable.” We agree with the district court that these arguments do not generate a reasonable basis to deny the claim in light of the

examining physicians' repeated assertions that the injury was work-related and their recommendations that Travelers' approve McCurdy's treatment and surgery. There was no abuse of discretion in affirming the maximum penalty award.

In conclusion, the district court properly upheld the commissioner's determinations that McCurdy's injury was work-related and the unreasonable denial of benefits warranted a penalty award.

**AFFIRMED.**