IN THE COURT OF APPEALS OF IOWA

No. 7-968 / 07-0936
Filed February 13, 2008

MARIA ESPINOSA,
Petitioner-Appellant,

vs.

EXCEL CORPORATION n/k/a
CARGILL MEAT SOLUTIONS,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

Employee appeals from a district court judicial review decision affirming the workers' compensation commissioner's award of workers' compensation benefits. **AFFIRMED.**

Pamela G. Dahl, Des Moines, and Philip F. Miller, West Des Moines, for appellant.

Jennifer A. Clendenin of Ahlers & Cooney, P.C., Des Moines, for appellee.

Considered by Vogel, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

Maria Espinosa appeals from a district court judicial review decision affirming the workers' compensation commissioner's award of workers' compensation benefits. We affirm the judgment of the district court.

I. Background Facts and Proceedings.

Espinosa immigrated to the United States from Mexico in 2001. She obtained her first job in the United States in September 2003 when she was hired by Excel Corporation n/k/a Cargill Meat Solutions (Cargill) as a skinner machine operator.

On January 13, 2004, Espinosa was processing a piece of meat through the skinner machine when her right hand was pulled into the machine. She suffered lacerations on her right index and long fingers, and the fingernail on her fifth finger was torn off by the machine. She was taken to the emergency room where she received treatment from Dr. Donald Berg. He performed "a generalized wound debridement, irrigation, scrubbing and wound closure" on her right index and long fingers.

Dr. Berg saw Espinosa several days after the surgery and noted her hand appeared to be healing satisfactorily. However, he also noted she was experiencing "numbness on the radial side of the index finger and also on the radial side of the long finger." He believed the "sensory nerve was lacerated on the index finger." At an appointment about a month after the accident, Dr. Berg determined she was "gaining motion. Her 5th finger is not having any pain or discomfort. The 4th finger is doing well. The 3rd finger is also moving well, no pain or discomfort." Her index finger remained "the only problem" due to "limited

flexibility and limited extension." She was also still having a numb sensation in her right index and long fingers.

Espinosa began seeing Dr. Eugene J. Cherny, a physician at the Hand Surgery Center of Iowa, in March 2004 due to constant pain radiating from her right hand to elbow and numbness in her right index and long fingers. She also told Dr. Cherny she was "unable to make a fist and unable to grasp with her right hand." He recommended physical therapy and electromyogram (EMG) testing for her right upper extremity.

A March 2004 EMG revealed Espinosa had "moderate to severe" carpal tunnel syndrome at the right wrist. Dr. Cherny recommended "exploration of the digital nerve of the right index finger and long finger and right carpal tunnel release." These procedures were performed in April 2004, but they did not relieve her symptoms. At the end of July 2004, in an attempt to relieve her ongoing symptoms, Dr. Cherny injected "the neuroma on her right index finger and excis[ed] . . . the scar mass on the long finger."

In September 2004 Espinosa informed Dr. Cherny she was again suffering from persistent pain radiating from her hand to her right shoulder, and she was unable to straighten her right index finger. By October 2004, she stated her "index finger pain and pain along the entire arm to shoulder. . . . throbs all day long and at times there is a sharp pain." She additionally complained of numbness in her arm and hand at night, and she was unable to make a fist. Dr. Cherny recommended another EMG test, which again showed right carpal tunnel syndrome with the "index finger . . . much more involved than the long finger." After receiving the results of the second EMG, Dr. Cherny recommended

another "surgery to release the right carpal tunnel syndrome and inject the neuromas of the right middle and index fingers."

Despite her continuing pain, Espinosa decided against the surgery recommended by Dr. Cherny because "he couldn't guarantee that the results were going to be any better than the last two surgeries." Dr. Cherny consequently found that Espinosa had reached maximum medical improvement at his last appointment with her on December 30, 2004. In lieu of surgery, he issued the following permanent restrictions: no lifting, pushing, or pulling over twenty pounds, and no use of knives and scissors.

In August 2005 Dr. Cherny determined Espinosa sustained a forty-two percent impairment to her right index finger, which converted into an eight percent impairment rating for her right hand. He did not assign an impairment rating for her right middle finger because he found it had "normal light touch sensation" and "active motion . . . within normal limits." Dr. Kim Skibsted, a chiropractor who evaluated Espinosa in August 2004, conversely assigned a twenty percent whole body impairment rating based on his findings that she had mild carpal tunnel syndrome of the right wrist, loss of motion and sensation in her right fingers, and loss of right hand grip strength.

Espinosa continued working at Cargill after her accident. She performed jobs within her restrictions, such as "sorting skins, putting labels on boxes, making boxes, and packing." She was eventually assigned to a position "where she aligns hocks for the hacksaw." She occasionally has to work in the same area as the skinner machine, which makes her nervous and scared.

Eva Christiansen, a clinical psychologist, evaluated Espinosa at the beginning of December 2004 to determine whether she was suffering from a mental health condition as a result of her work injury. Espinosa told Dr. Christiansen she has trouble sleeping at night because of "bad dreams" and "pain in her hand." She reported feeling "worried," "nervous," "sad and angry" after the accident. She also experienced feelings of worthlessness because she was unable "to perform routine or fun activities that she did in the past." Espinosa's husband told Dr. Christiansen that she has difficulty maintaining concentration and that she is more irritable since the accident.

Dr. Christiansen diagnosed Espinosa with posttraumatic stress disorder and depression brought on by her work injury in addition to an aggravation of "long-standing anxiety related issues." She recommended that Espinosa obtain counseling and medication to address her conditions. Cargill, however, did not authorize her request for mental health counseling.

Espinosa filed a petition with the Iowa Workers' Compensation Commissioner on July 14, 2004, seeking workers' compensation benefits from her employer for her alleged January 13, 2004 physical and psychological injuries. Cargill admitted Espinosa suffered an injury to her right hand as a result of the accident on January 13, but it disputed the nature and extent of that injury. Cargill also disputed whether the work injury caused a psychological injury. Following an arbitration hearing, the deputy workers' compensation commissioner adopted Dr. Cherny's impairment rating and awarded Espinosa permanent partial disability payments limited to her right index finger. The

deputy concluded she was not entitled to any additional benefits for the psychological aspect of her injury.

Espinosa appealed, and the workers' compensation commissioner affirmed and adopted the deputy's decision. She then filed a petition for judicial review. After a hearing, the district court affirmed the agency decision.

Espinosa appeals. She claims the agency erred in limiting her permanent partial disability award to her right index finger despite evidence of symptoms in her right hand, wrist, and upper extremity. She further claims the agency erred in denying her compensation for the psychological injury she sustained as a result of her work injury.

II. Scope and Standards of Review.

The Iowa Administrative Procedure Act, chapter 17A of the 2005 Iowa Code, governs the scope of our review in workers' compensation cases. Iowa Code § 86.26; *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). "Under the Act, we may only interfere with the commissioner's decision if it is erroneous under one of the grounds enumerated in the statute, and a party's substantial rights have been prejudiced." *Meyer*, 710 N.W.2d at 218. The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002). In reviewing the district court's decision, we apply the standards of chapter 17A to determine whether our conclusions are the same as those reached by the district court. *Clark v. Vicorp Rests., Inc.*, 696 N.W.2d 596, 603 (Iowa 2005).

"If the claim of error lies with the agency's findings of *fact*, the proper question on review is whether substantial evidence supports those findings of

fact" when the record is viewed as a whole. *Meyer*, 710 N.W.2d at 219. Factual findings regarding the award of workers' compensation benefits are within the commissioner's discretion, so we are bound by the commissioner's findings of fact if they are supported by substantial evidence. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464-65 (Iowa 2004).

Because factual determinations are within the discretion of the agency, so is its application of law to the facts. *Clark*, 696 N.W.2d at 604; *see also Meyer*, 710 N.W.2d at 219 (stating the reviewing court should "allocate some degree of discretion" in considering the agency's application of law to facts, "but not the breadth of discretion given to the findings of facts"). We will reverse the agency's application of the law to the facts if we determine its application was "irrational, illogical, or wholly unjustifiable." *Meyer*, 710 N.W.2d at 218.

III. Discussion.

A. Extent of Right Hand Injury.

Espinosa first claims the agency's finding that her permanent partial disability was limited to her right index finger was not supported by substantial evidence. She argues the agency ignored both medical and nonmedical "evidence that the injury involved [her] entire hand and wrist, including pain which radiated up her arm into her elbow and shoulder." We do not agree.

We are bound by the commissioner's fact findings if they are supported by substantial evidence in the record as a whole. *Meyer*, 710 N.W.2d at 218. Substantial evidence is defined as evidence of the quality and quantity "that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the

establishment of that fact are understood to be serious and of great importance." Iowa Code § 17A.19(f)(1); *Mycogen*, 686 N.W.2d at 464. Thus, evidence is substantial when a reasonable person could accept it as adequate to reach the same finding. *Asmus v. Waterloo Cmty. Sch. Dist.*, 722 N.W2d 653, 657 (Iowa 2006). "Because the commissioner is charged with weighing the evidence, we liberally and broadly construe the findings to uphold his decision." *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 331 (Iowa 2005).

The deputy gave more weight to the opinion of Espinosa's treating physician, Dr. Cherny, than the opinion of Dr. Skibsted who saw her once for the purpose of an independent examination. Espinosa contends the deputy erred in this regard because a treating physician's opinion is not entitled to greater weight "merely because he is the treating physician."

Espinosa is correct that our supreme court has "rejected the proposition that, as a matter of law, a treating physician's testimony will be given more weight than a physician who examines the patient in anticipation of litigation." *Gilleland v. Armstrong Rubber Co.*, 524 N.W.2d 404, 408 (Iowa 1994). However, the deputy did not rule as a matter of law that Dr. Cherny's opinion would be given greater weight. Instead, the deputy rejected the impairment rating assigned by Dr. Skibsted in favor of the rating assigned by Dr. Cherny because "Dr. Cherny treated [Espinosa] from March 2004 up through December 2004" during which time he "performed two surgical procedures on [her] right hand as well as monitored and managed her progress and physical and occupational therapy." The deputy detailed Dr. Cherny's numerous examinations of Espinosa and his findings based on those examinations, noting he did not assign an

impairment rating "for the right long finger based upon diagnostic results and normal range of motion." In rejecting Dr. Skibsted's opinion, the deputy characterized him as a "chiropractor and one time evaluator" retained "at the request of [Espinosa's] counsel."

Such considerations by the finder of fact are a valid part of determining the weight to be afforded to the physicians' opinions. *See Rockwell Graphic Sys., Inc. v. Prince*, 366 N.W.2d 187, 192 (Iowa 1985). We therefore reject Espinosa's argument that the agency should have afforded greater weight to Dr. Skibsted's opinion. *See Arndt v. City of Le Claire*, 728 N.W.2d 389, 394-95 (Iowa 2007) (stating it is the role of the agency, not the district court on judicial review nor this court on appeal, to assess the weight and credibility of evidence).

Espinosa next argues the agency erred in "failing to give proper weight to [her] and [her husband's] lay testimony" regarding the extent of her injury, "which corroborates Dr. Skibsted's rating and is contrary to Dr. Cherny's rating." Espinosa testified at the hearing she had to take an anti-inflammatory medication "twice a day for pain," and she is "limited in the housework she is able to do and requires assistance from her husband." The pain occasionally bothers her at night when she is sleeping. She also testified "she cannot do the things that she used to do due to the limited function of her right hand in grabbing or gripping." She is not able to garden, cook, clean, sew, or pick up and play with her four-year-old son. She and her husband both testified "she had suffered substantial loss of use of the hand, of about 70%."

"The law requires the commissioner to consider all evidence, both medical and nonmedical, in arriving at a disability determination." *Terwilliger v. Snap-On*

Tools Corp., 529 N.W.2d 267, 273 (Iowa 1995). The deputy expressly noted she considered both the medical and lay testimony before adopting Dr. Cherny's opinion as to the extent of Espinosa's injury. Dr. Cherny's impairment rating, which was limited to Espinosa's right index finger, was supported by other evidence in the record. Dr. Berg's notes following Espinosa's initial surgery indicate her right index finger remained the "only problem." Dr. Cherny's notes throughout his treatment of her likewise indicate her index finger was the source of her problems. Although Espinosa is correct there was evidence of nerve damage, loss of sensation, and grip strength in her medical records, her primary complaints to her physicians focused on pain in her right index finger. *See Asmus*, 722 N.W.2d at 657 ("The fact that two inconsistent conclusions may be drawn from the same evidence does not prevent the agency's findings from being supported by substantial evidence.").

Moreover, Dr. Cherny observed, "Patient does have exaggerated pain for our findings." Espinosa's physical therapy notes similarly indicate that she presented some "abnormal illness indicators, such as her lack of grip strength." The physical therapist opined that although it was "feasible that Ms. Espinosa continues to have pain, . . . a 0-pound reading in her grip strength is highly unlikely, and extremely non functional at this point."

It is a "basic tenet of law" that the weighing of the facts "remains within the province of the industrial commissioner," and "it is entirely within his right to reject any evidence he considers less reliable than other contradictory testimony." *Terwilliger*, 529 N.W.2d at 273 (affirming commissioner's decision to base his impairment rating on physicians' evaluations due to concerns that employee may

have magnified her symptoms). We conclude substantial evidence supports the agency's decision that Espinosa's permanent partial disability was limited to her right index finger.

B. Psychological Injury.

Espinosa next claims the agency erred in denying her compensation for the psychological injury she sustained as a result of her January 13, 2004 work injury. She argues the agency "arbitrarily and erroneously rejected uncontroverted medical and lay testimony about [her] psychological condition without a logical basis for the decision." She further argues the agency's decision denying her compensation for her psychological injury is not supported by substantial evidence in the record. We agree with the district court that this issue is "problematic" for the reasons that follow. However, we ultimately conclude, like the district court, that substantial evidence supports the agency's decision.

A psychological condition caused or aggravated by a work-related physical trauma is compensable under our Workers' Compensation Act, Iowa Code chapter 85. *Mortimer v. Fruehauf Corp.*, 502 N.W.2d 12, 16 (Iowa 1993).

> [W]hen there has been a compensable accident, and claimant's injury related disability is increased or prolonged by a trauma connected neurosis or hysterical paralysis, all disability, including effects of any such nervous disorder, is compensable.

Gosek v. Garmer & Stiles Co., 158 N.W.2d 731, 733 (Iowa 1968). "Whether an injury or disease has a direct causal connection with the employment or arose independently thereof is 'essentially within the domain of expert testimony.'" *Deaver v. Armstrong Rubber Co.*, 170 N.W.2d 455, 464 (Iowa 1969) (affirming

agency's finding that employee was entitled to benefits for depression caused by a work-related injury) (citation omitted).

The only expert evidence introduced on the issue of whether Espinosa's work injury caused a psychological condition was Dr. Christiansen's psychological evaluation of Espinosa. After interviewing Espinosa and her husband and reviewing Espinosa's medical records, Dr. Christiansen diagnosed her with "posttraumatic stress disorder, reactive depression because of the pain and changes in life circumstances, and long-standing anxiety related issues." She opined that Espinosa's work injury was "the most likely cause of both her PTSD diagnosis and her depression," noting Espinosa did not provide any "information to suggest any prior trauma or any other occurrence that would account for the PTSD symptoms and depression than the work injury." She also believed Espinosa's "anxiety related issues have been aggravated by her history of work injury." The deputy rejected Dr. Christiansen's opinion in its entirety, finding it was "unsupported and inconsistent with the evidence in this matter."

The weight to be afforded such an opinion is for the finder of fact. *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 652 (Iowa 2000). In general, the commissioner, as the finder of fact, may accept or reject expert evidence in whole or in part. *Poula v. Siouxland Wall & Ceiling, Inc.*, 516 N.W.2d 910, 911 (Iowa Ct. App. 1994). However, the commissioner may not arbitrarily or totally reject the expert's opinion, but rather, must weigh the evidence and determine the credibility of witnesses. *Id.*; *see also Deaver*, 170 N.W.2d at 464. "We are reluctant to allow the commissioner totally to reject expert testimony which is the only medical evidence presented." *Poula*, 516 N.W.2d at 911-12; *see also Leffler*

v. Wilson & Co., 320 N.W.2d 634, 635 (Iowa Ct. App. 1982). If the commissioner "disregards uncontroverted expert medical evidence he must say why he has done so." *Catalfo v. Firestone Tire & Rubber Co.*, 213 N.W.2d 506, 510 (Iowa 1973).

The deputy disregarded Dr. Christiansen's uncontroverted medical evidence diagnosing Espinosa with posttraumatic stress disorder, depression, and anxiety "[b]ased upon claimant's testimony and the medical records in evidence." In particular, the deputy found Espinosa did not suffer a psychological injury because she continued to work full time within her restrictions in the vicinity of the machine she was injured by. The deputy further found Espinosa did not request "to be removed from the area to alleviate any anxiety caused by working near the skinner machine." The "most telling" reason for disregarding Dr. Christiansen's opinion, according to the deputy, "is that [Espinosa] has not undergone any mental health treatment beyond the hour and half hour evaluation by Dr. Christiansen"[1] at the request of her attorney. Finally, the deputy noted

[1] The district court rejected Espinosa's argument in the judicial review proceeding that the deputy's dismissal of Dr. Christiansen's evaluation on that ground was "arbitrary and capricious because she was unable to afford more than one session." The court reasoned, in part, that her argument was unpersuasive because she did not file an alternate medical care claim under Iowa Code section 85.27(4), which the court stated "allows a claimant to receive alternate medical care at cost to the employer." However, the procedure set forth in section 85.27(4) is available "only when the employer does not contest the compensability of the injury." *R.R. Donnelly & Sons v. Barnett*, 670 N.W.2d 190, 196 (Iowa 2003); *see also* Iowa Admin. Code r. 876-4.48(7) ("If the application [for alternate care] is filed where the liability of the employer is an issue, the application will be dismissed without prejudice."). In this case, Cargill disputed its liability for Espinosa's claimed psychological injury. Thus, she could not have filed an application for alternate medical care after Cargill denied her request for psychological treatment. The district court's reasoning to the contrary, however, does not require reversal due to our agreement with the court that the agency's denial of benefits for Espinosa's claimed psychological injury is supported by substantial evidence. In addition, we reject Espinosa's argument that the deputy's finding denies her compensation based on her

there was no "mention in the medical records . . . of any subjective mental health complaints to [Espinosa's] health care providers."

Although we may have drawn a different conclusion from the evidence in the record, we are constrained by our standard of review in this matter. *See Arndt*, 728 N.W.2d at 393 ("An appellate court should not consider evidence insubstantial merely because the court may draw different conclusions from the record."). There is sufficient evidence in the record supporting the deputy's reasons for rejecting Dr. Christiansen's evaluation. We must therefore affirm the agency's finding that Espinosa did not suffer a compensable psychological injury as a result of her work injury. *See Klein v. Furnas Elec. Co.*, 384 N.W.2d 370, 374 (Iowa 1986) (affirming agency's finding that there was no psychological impairment attributable to claimant's employment where agency was presented with conflicting evidence on the issue).

IV. Conclusion

We conclude substantial evidence supports the agency's decision that Espinosa's permanent partial disability was limited to her right index finger. We further conclude substantial evidence supports the agency's finding that Espinosa did not suffer a compensable psychological injury resulting from her January 13, 2004 work injury at Cargill. We accordingly affirm the judgment of the district court.

AFFIRMED.

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wealth. The deputy's observations as to the reason Espinosa was evaluated by Dr. Christiansen, the length of the evaluation, and the fact that she did not obtain further treatment beyond that initial session are valid considerations in determining the value of Dr. Christiansen's opinion. *See Rockwell Graphic Sys.*, 366 N.W.2d at 192.