IN THE COURT OF APPEALS OF IOWA

No. 8-057 / 06-1888
Filed May 14, 2008

PHILIP CATES,
Petitioner-Appellant,

vs.

TRUCKER SERVICES ASSOCIATION and ILLINOIS GUARANTY FUND,
Respondents-Appellees.

Appeal from the Iowa District Court for Linn County, Denver D. Dillard, Judge.

Philip Cates appeals from the district court's ruling on judicial review affirming the Iowa Workers' Compensation Commissioner's dismissal of his claim for lack of subject matter jurisdiction. **AFFIRMED.**

Matthew G. Novak and Thad J. Collins of Pickens, Barnes & Abernathy, Cedar Rapids, for appellant.

Jane V. Lorentzen and Wendy D. Boka of Hopkins & Huebner, P.C., Des Moines, for appellees.

Heard by Sackett, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

Philip Cates appeals from the district court's ruling on judicial review affirming the Iowa Workers' Compensation Commissioner's dismissal of his claim against Truckers Services Association and Illinois Guaranty Fund for lack of subject matter jurisdiction. We affirm.

I. Background Facts and Prior Proceedings

Truckers Services Association (TSA) is a nonprofit organization with a membership of approximately 1300-1400 individuals who identify themselves as truck drivers. TSA's principle place of business is Cedar Rapids, Iowa. An individual may join TSA by filling out a form and paying a monthly five-dollar membership fee. Benefits of the membership include quarterly newsletters and a book that gives discounts on items such as prescriptions, hotels, and rental cars. Most importantly, TSA members may purchase various kinds of group-type insurance with an insurance carrier. Individuals must remain members of TSA in order to maintain their insurance coverage.

Cates began working as an over-the-road truck driver in 1995. At some point, he purchased his own truck so he could work as an independent owner/operator. In 1998 he entered into a lease arrangement as an independent contractor for Trans-Lease, Inc., a company based out of Missouri. Trans-Lease made Cates acquire his own workers' compensation insurance before he could begin hauling loads under the lease agreement. Trans-Lease directed Cates to TSA as a possible source for such insurance. Cates joined TSA and purchased workers' compensation insurance and non-trucking liability insurance. The monthly premium for his workers' compensation insurance was $149. This

premium was based on an annual net income of $25,250. He also paid twenty-nine dollars per month for non-trucking liability coverage and five dollars per month for his TSA membership fee. The insurance carrier for this policy was Credit General Insurance.

Once he secured his own workers' compensation insurance, Cates began hauling loads for Trans-Lease in July 1998. A Trans-Lease dispatcher told Cates where and when to pick up loads, the time frame to arrive at a location, and the type of load he would be carrying. Cates hauled loads throughout the United States. In doing so, he made only a handful of stops in Iowa.

In September 1998 Cates was injured when he fell while unloading a truck for Trans-Lease in Arizona. At the time of this injury, Cates was domiciled in Illinois. Shortly after the injury, Cates began receiving weekly workers' compensation benefits in the amount of $312.87 from Credit General Insurance pursuant to the policy he had purchased as a member of TSA.

Over the next several months, Cates initiated workers' compensation claims against TSA and Credit General Insurance in both Missouri and Iowa. The Iowa claim noted that the issues disputed by Cates were the "[n]ature and extent of TTD, PPD, medical benefits, industrial disability, and wage rate." Counsel for Credit General Insurance handled the claims for TSA in both Iowa and Missouri. In Iowa, TSA's counsel filed an answer admitting that TSA was Cates's employer. Counsel then filed a motion to stay the Iowa case until the Missouri case was resolved. Cates responded to this motion by voluntarily dismissing his claim in Missouri. Noting that the Missouri case was now dismissed, a deputy commissioner denied TSA's motion to stay.

Cates sent TSA a request for admissions. TSA's counsel answered the request for admissions admitting (1) Cates, "for purposes of workers' compensation benefits," was an employee of TSA, (2) Cates suffered a work injury within the scope and course of his employment with TSA, and (3) Cates was working under a contract of hire made in Cedar Rapids for employment not principally localized in any state and that Cates spent a substantial part of his working time working for TSA in the state of Iowa.

In February 2001 the proceedings were stayed when Credit General Insurance went into receivership. Eventually, Illinois Guaranty Fund assumed the position of workers' compensation carrier from Credit General Insurance, and the stay was lifted. Counsel for Illinois Guaranty replaced TSA's previous counsel.

In September 2002 TSA's new counsel filed a motion to amend TSA's answer and deny that it was Cates's employer. In this motion, TSA claimed Cates would not be prejudiced by this amendment as he had already admitted through deposition testimony that he was the owner/operator of his own truck and an independent contractor. TSA also pointed to Cates's income tax returns, which reflected that he operated as a sole proprietor and paid self-employment tax. Cates resisted this motion, claiming it was untimely and claiming he would be "severely and unfairly prejudiced" by such an amendment. TSA filed a supplemental response to its previous admissions specifically denying that Cates was an employee of TSA.

On November 21, 2002, a deputy commissioner denied the motion to amend and stated that the arbitration hearing would occur, as scheduled, on

January 22, 2003. TSA immediately filed a motion for rehearing. TSA also filed a separate motion for leave to respond to amend the request for admissions. Cates resisted both the rehearing motion and the motion to amend the admissions.

A deputy commissioner summarily denied the motion for rehearing on two separate occasions, December 5, 2002, and December 18, 2002. Beyond statements by TSA's counsel that she would appeal the rulings on the motion to amend the answer and the motion to amend the admissions, there was no record that the deputy ever actually ruled on TSA's motion to amend its prior admissions.

The matter proceeded to a hearing. The primary issue in dispute was whether Cates was a sole proprietor or an employee of TSA. TSA argued he was a sole proprietor and therefore limited to the coverage he had purchased. Cates claimed he was an employee of TSA and therefore should be compensated based on the significantly higher income he had earned under his lease arrangement with Trans-Lease.

On September 29, 2003, the deputy entered an arbitration decision favorable to Cates[1] specifically finding, based on the previous admissions, that TSA was Cates's employer. TSA appealed this decision to the commissioner.

On April 27, 2004, the commissioner entered an order remanding the case back to the deputy to determine whether the agency had subject matter jurisdiction over this out-of-state-injury-claim due to the ongoing dispute over

[1] The deputy ordered the defendants to pay Cates weekly benefits of $881.41 as opposed to the $312.87 weekly benefit he had been receiving pursuant to his insurance coverage through Credit General Insurance and Illinois Guaranty Fund.

whether Cates was actually employed by TSA. In so ruling, the commissioner found that the deputy had never ruled on the pending motion to amend the admissions and that the deputy should have allowed TSA to amend its admissions. The commissioner directed the deputy to conduct a second evidentiary hearing so that both parties could introduce additional evidence on the issue of employment.

Neither party presented any additional evidence to the deputy. On March 14, 2005, the deputy issued a remand decision dismissing the claim for lack of subject matter jurisdiction. The deputy found there may have been an employment relationship between Cates and Trans-Lease, but concluded there was clearly no employment relationship or contract of hire between Cates and TSA so as to satisfy the jurisdictional requirements set forth in Iowa Code section 85.71 (2005).

The commissioner affirmed and adopted the deputy's decision noting the "facts overwhelming[ly] establish that [TSA] was solely an association utilized by claimant to facilitate the purchase of workers' compensation insurance" and that "there is absolutely nothing in the evidence to suggest this defendant was claimant's employer at any time." The district court affirmed the commissioner's decision on judicial review.

Cates raises four issues on appeal: (1) the commissioner erred when he did not apply the doctrine of judicial estoppel to prohibit TSA from amending its answer and withdrawing its admissions after Cates had dismissed his claim in Missouri, (2) the commissioner abused his discretion by failing to apply the correct legal standards when granting TSA's motion to withdraw its admissions,

(3) the commissioner's decision to remand the case and ultimate decision to dismiss the claim were not supported by substantial evidence, and (4) the commissioner's decision to allow withdrawal of the admissions on the "eve of hearing" violates due process principles and the test of "Fundamental Fairness."

II. Standard of Review

Our review of a final decision of the Iowa Workers' Compensation Commissioner, 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). In determining whether the district court erred in exercising its power of judicial review, we apply the standards of Iowa Code section 17A.19(10) to the agency action to determine whether our conclusions are the same as those of the district court. *Williamson v. Wellman Fansteel*, 595 N.W.2d 803, 806 (Iowa 1999).

III. Merits

The following provisions of section 17A.19(10) are relevant to Cates's arguments:

> The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that *substantial rights of the person seeking judicial relief have been prejudiced* because the agency action is any of the following:
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> . . . .
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> d. Based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure or decision-making process.
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> . . . .
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> f. Based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole.

(Emphasis added.)

Our supreme court has found the "substantial rights" language in section 17A.19(10) analogous to a harmless error rule. *Hill v. Fleetguard, Inc.*, 705 N.W.2d 665, 671 (Iowa 2005). Accordingly, the commissioner's action "should not be tampered with unless the complaining party has in fact been harmed." *Id.* (quoting *City of Des Moines v. Public Employment Relations Bd.*, 275 N.W.2d 753, 759 (Iowa 1979)). Therefore, Cates bears the burden of demonstrating both the invalidity of the agency action and resulting prejudice. *Id.* For the reasons that follow, we find Cates has failed to prove he has been harmed by any alleged error.

A. Failure to Apply the Correct Legal Standard

Cates contends the commissioner erred when he granted TSA's motion to amend its prior admissions because he failed to address the potential prejudice such an amendment would have on Cates's claim. Because the commissioner dismissed this case for a lack of subject matter jurisdiction, we address Cates's argument in the context of the commissioner's jurisdiction to hear this out-of-state-injury-claim.

Subject matter jurisdiction "is the power to hear and determine cases of the general class to which the proceedings belong." *Shirley v. Pothast*, 508 N.W.2d 712, 714 (Iowa 1993) (citation omitted). Because jurisdiction "'spring[s] from the nature and limits of the judicial power' . . . and is 'inflexible and without exception,'" a court "without subject matter jurisdiction over a particular area 'cannot proceed at all in any cause.'" *Heartland Exp. v. Gardner*, 675 N.W.2d 259, 266 (Iowa 2003) (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95, 118 S. Ct. 1003, 1012, 140 L. Ed. 2d 210, 227 (1998)).

Subject matter jurisdiction over workers' compensation claims is vested in the commissioner, subject to circumscription by the legislature. *Id.* at 262. One example of such circumscription is Iowa Code section 85.71, which limits the commissioner's subject matter jurisdiction over workers' compensation claims based on injuries sustained outside of Iowa. *Id.* Section 85.71 limits the commissioner's jurisdiction to four specific situations. Section 85.71 states, in pertinent part,

> If an employee, while working outside the territorial limits of this state, suffers an injury on account of which the employee . . . would have been entitled to the benefits provided by this chapter had such injury occurred within this state, such employee . . . shall be entitled to the benefits provided by this chapter, if at the time of such injury any of the following is applicable:
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> 1. The employment is principally localized in this state, that is, the employee's employer has a place of business in this or some other state and the employee regularly works in this state, or if the employee's employer has a place of business in this state and the employee is domiciled in this state.
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> 2. The employee is working under a contract of hire made in this state in employment not principally localized in any state and the employee spends a substantial part of the employee's working time working for the employer in this state.
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> 3. The employee is working under a contract of hire made in this state in employment principally localized in another state, whose workers' compensation law is not applicable to the employee's employer.
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> 4. The employee is working under a contract of hire made in this state for employment outside the United States.

Each of these four situations requires an employee-employer relationship between the claimant and his or her employer or a contract of hire. In the present case, the commissioner concluded he did not have subject matter jurisdiction to hear this claim because there was no employee-employer relationship or contract of hire between Cates and TSA.

In Iowa, it is clear that parties cannot confer subject matter jurisdiction on the commissioner by waiver or consent. *Heartland Exp., Inc. v. Terry*, 631 N.W.2d 260, 265 (Iowa 2001); *Springville Cmty. Sch. Dist. v. Iowa Dep't of Pub. Instruction*, 252 Iowa 907, 914, 109 N.W.2d 213, 217 (1961). Likewise, "Admissions of fact, which are contrary to the truth, and which would have the effect of . . . importing jurisdiction to a tribunal are not binding." 32 C.J.S. *Evidence* § 470, at 243 (1996).[2] Upon our review of the evidence we find the pre-trial admissions were contrary to the truth because the facts in this case clearly prove that there was no employee-employer relationship or contract of hire between Cates and TSA.

The factors by which to determine whether an employer-employee relationship exists for purposes of workers' compensation in Iowa are

> (1) the right of selection, or to employ at will (2) responsibility for the payment of wages by the employer (3) the right to discharge or terminate the relationship (4) the right to control the work, and (5) is the party sought to be held as the employer the responsible authority in charge of the work or for whose benefit the work is performed.

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[2] Cates contends there is a difference between admissions to the existence of jurisdiction and admissions of facts that serve to establish subject matter jurisdiction. In support of this argument, Cates cites to *Ferguson v. Neighborhood Housing Services of Cleveland, Inc.*, 780 F.2d 549, 551 (6th Cir. 1986), where the Court of Appeals for the Sixth Circuit stated that a federal district court did not abuse its discretion when it refused to allow a party to amend its original answer admitting an employee-employer relationship. The Sixth Circuit also concluded the district court properly used this pre-trial admission as the basis for jurisdiction because "parties may admit the existence of facts which show jurisdiction, and the courts *may* act judicially upon such an admission." *Ferguson*, 780 F.2d at 551 (citation omitted) (emphasis added). The Sixth Circuit then went on to explain why the evidence in the record actually supported the underlying factual admission relied upon by the district court for jurisdiction. *Id.* at 551-52.

Unlike the district court judge in *Ferguson* who opted to rely on the admission, in this case the commissioner expressly stated he would not rely on TSA's pre-hearing admissions for jurisdiction because "an admission that is wholly contrary to reality is not sufficient facts to justify jurisdiction." *Ferguson* does not bind the commissioner to the admission and therefore we find it inapplicable to the case at hand.

Henderson v. Jennie Edmundson Hosp., 178 N.W.2d 429, 431 (Iowa 1970).

Absent the disputed admissions, there is no evidence which stands to prove any of these five factors. Cates testified that he was an independent operator who made more money because he did not work as an employee. Also, Cates received no wages or compensation from TSA; instead, he was paid as an independent contractor by Trans-Lease—a Missouri motor carrier company with little connection to TSA.[3] During his deposition testimony, Cates stated that he did not even know who TSA was and confirmed that he received all of his orders through a dispatcher for Trans-Lease. TSA also did not direct or control Cates's work. Cates hauled loads exclusively for Trans-Lease, and there is no evidence that he performed any work for TSA or did anything for TSA's benefit (besides paying his monthly membership fee). Finally, a representative for TSA testified that Cates was not employed by TSA.

The only evidence that Cates had an employee-employer relationship with TSA came from Cates's insurance expert, who testified that he believed Cates was an employee of TSA because the workers' compensation insurance policy purchased by Cates did not identify Cates as a sole proprietor. We, like the commissioner, find that this opinion does not constitute sufficient proof of an employment relationship. On the contrary, we find the evidence in this case clearly establishes that there was no employment relationship or contract of hire between Cates and TSA. The facts clearly establish that TSA was merely an

[3] TSA was not exclusively linked with Trans-Lease. Many TSA members had leasing arrangements with motor carriers other than Trans-Lease.

association utilized by Cates to facilitate the purchase of workers' compensation insurance. TSA was not his employer.

In light of the overwhelming evidence establishing that there was no employment relationship between Cates and TSA, we find that Cates suffered no prejudice when the commissioner decided to allow TSA to amend its admissions because, as stated by the commissioner, "[a]n admission that is wholly contrary to reality is not sufficient facts to justify jurisdiction." *See* 32 C.J.S. Evidence § 470, at 243 ("Admissions of fact, which are contrary to the truth, and which would have the effect of . . . importing jurisdiction to a tribunal are not binding."). Accordingly, we find Cates has failed to prove he was prejudiced by the commissioners' allegedly improper decision-making process.

B. Substantial Evidence

Cates also claims he was prejudiced because there was not substantial evidence to support the commissioner's decision to dismiss his claim or substantial evidence to support some of his findings made pursuant to the decision to allow the withdrawal of the previous admissions. As set forth above, we find the commissioner correctly concluded that there was no employment relationship or contract of hire between Cates and TSA. Without the employment relationship or contract of hire, the commissioner had no jurisdiction to rule on this claim. Therefore we find no merit to Cates's remaining substantial evidence claims. *See Hill*, 705 N.W.2d at 671 ("[I]t would be inefficient for us to provide relief from invalid agency action when the particular invalidity has not prejudiced the substantial rights of the petitioner.").

Cates's remaining two claims—that the commissioner erred when he did not apply the doctrine of judicial estoppel to prohibit TSA from withdrawing its admissions and that his decision to allow withdrawal of the admissions violates due process principles and the test of "Fundamental Fairness"—were raised for the first time on appeal, and therefore are not preserved for our review. *See State v. Sanborn*, 564 N.W.2d 813, 815 (Iowa 1997) ("Fairness and considerations of judicial economy dictate that we not consider a contention for the first time on appeal."). As noted in *Winnebago Industries, Inc. v. Haverly*, 727 N.W.2d 567, 573 (Iowa 2006), an appellate court may choose to raise the issue of judicial estoppel on its own motion. However, because we find reason to doubt TSA's position in the Missouri case was unequivocally stated and because Cates voluntarily dismissed his own action in Missouri in order to avoid a motion to stay in Iowa, we find no reason to raise this motion on our own. *See Winnebago*, 727 N.W.2d at 573 (stating the doctrine prohibits a party who has successfully and unequivocally asserted a position in one proceeding from asserting an inconsistent position in a subsequent proceeding).

IV. Conclusion

The record, when viewed as a whole, contains substantial evidence in support of the agency decision to dismiss this claim for lack of subject matter jurisdiction. The district court was correct in upholding that decision upon judicial review. Having considered all arguments advanced on appeal, whether or not specifically addressed in this opinion, we affirm.

AFFIRMED.