

IN THE COURT OF APPEALS OF IOWA

No. 8-336 / 07-1515
Filed June 11, 2008

THEODORE L. WINTER,
Petitioner-Appellant,

vs.

**ROSENBOOM MACHINE & TOOL, INC.,
and ALLIED INSURANCE COMPANY,
a/k/a AMCO INSURANCE COMPANY,**
Respondents-Appellees.

Appeal from the Iowa District Court for Polk County, Carla T. Schemmel,
Judge.

Theodore Winter appeals from the ruling on judicial review from his
workers' compensation claim. **AFFIRMED.**

Mark Soldat of Soldat & Parrish-Sams, P.L.C., West Des Moines, for
appellant.

Sarah Kleber of Heidman Law Firm, L.L.P., Sioux City, for appellee.

Heard by Sackett, C.J., and Vogel and Mahan, JJ., and Nelson, S.J.*

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

VOGEL, J.

Theodore Winter appeals from the ruling on judicial review from his workers' compensation claim. We affirm

Background Facts and Proceedings.

In February of 2000, Winter was hired by Rosenboom Machine & Tool, Inc. (RMT), a company that manufactures hydraulic cylinders. He worked as a welder, fabricating material for machines and fixtures. Winter had a long and varied history of respiratory ailments and treatment pre-dating his November 2001 work injury. From January 1994 through November 2001, he was treated for such respiratory problems as bronchitis, acute bronchitis, upper respiratory infections, bacterial infections, tonsillar infections, hay fever, acute pharyngitis, and probable asthma. The record shows a total of some thirty office visits involving respiratory problems before the work injury. Just six weeks prior to the incident, he was seen at the Mayo Clinic and diagnosed with an upper respiratory infection and ten days prior to the incident he was seen for a persistent sore throat and was diagnosed with bronchitis.

Winter also has a long-term and substantial smoking habit. After having had his first cigarette at the age of eight, Winter progressed until he was smoking a carton of cigarettes per week by the age of twenty. At one point, he was smoking two packs a day. This use continued despite repeated warnings from treating physicians to stop smoking.

On November 1, 2001, he sustained a work injury as a result of smoke and fume inhalation. Winter was exposed to smoke when a plasma torch was not operating properly and emitted a large volume of "white dry smoke." On

November 2, Winter returned to work, but reportedly felt worse than the day before. After seeking treatment from RMT's occupational health clinic, he was released to work with some restrictions. However, Winter did not immediately return to work.

On November 8, 2004, Winter filed a petition against RMT and its insurance carrier, Allied Insurance Company, seeking workers' compensation benefits. In an arbitration decision, the deputy workers' compensation commissioner found no evidence that the November 1, 2001 work injury was a proximate cause of permanent disability and she therefore denied permanent disability benefits. She further denied temporary total disability benefits because Winter took himself off work, rather than having been taken off by a physician. On intra-agency appeal, the deputy (on designation from the commissioner) affirmed. The district court again affirmed on judicial review. Winter appeals from this ruling.

Scope and Standard of Review.

Iowa Code chapter 17A (2007) governs judicial review of the decisions of the workers' compensation commissioner. In exercising its judicial review power, the district court acts in an appellate capacity. *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 the conclusions we reach are the same as those of the district court. *Id.* If they are the same, we affirm; otherwise we reverse. *Id.*

In this case, the issues involve the agency's factual determinations and its application of law to the facts. The agency's factual determinations "are clearly

vested by a provision of law in the discretion of the agency.” Iowa Code § 17A.19(10)(f). In workers’ compensation cases the agency is vested by Iowa Code chapter 85 with the responsibility of determining an employee’s right to benefits. Because the agency is charged with such responsibility, the agency must necessarily make factual findings to determine that right. See Iowa Code § 85.21; *Zomer v. West River Farms, Inc.*, 666 N.W.2d 130, 132-33 (Iowa 2003). We are therefore bound by the agency’s findings of fact if supported by substantial evidence. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 465 (Iowa 2004). We can reverse the agency action regarding its findings of fact only if they are not supported by substantial evidence. *Id.* By applying the substantial evidence requirement, we are giving “appropriate deference to the view of the agency with respect to particular matters that have been vested by a provision of law in the discretion of the agency.” Iowa Code § 17A.19(11)(c).

The application of the law to those facts is likewise “vested by a provision of law in the discretion of the agency.” Iowa Code § 17A.19(10)(f). In order to determine an employee’s right to benefits, which is the agency’s responsibility, the agency, out of necessity, must apply the law to the facts. An agency’s application of the law to the facts can only be reversed if we determine such an application was “irrational, illogical, or wholly unjustifiable.” Iowa Code § 17A.19(10)(m). Applying this “irrational, illogical, or wholly unjustifiable” standard, we are likewise giving “appropriate deference to the view of the agency with respect to particular matters that have been vested by a provision of law in the discretion of the agency.” Iowa Code § 17A.19(11)(c).

Stipulated Work Injury.

Winter first maintains the “trial court erred by affirming the commissioner’s disregard of the parties’ stipulated cumulative-trauma work injury.” In particular, he contends that although the parties stipulated to a cumulative injury, the agency analyzed it as a specific trauma event that occurred on November 1, 2001.

In Winter’s petition, he pled an injury date of “on or about 11/01/01” that occurred as follows: “From the date of hire in 2/00 there was a cumulative trauma exposure to plasma torch and other smoke and/or pollutants, and on 11/01/01, plastic on tubes caught fire and steel cutting and fire increased the smoke and/or pollutants.” In its answer, RMT admitted the injury date of “on or about 11/01/01” but denied the cumulative trauma assertion.¹ Prior to the hearing before the deputy, the parties stipulated, among other things, that on “11/01/01, Winter sustained an injury which arose out of and in the course of his employment” with RMT.

However, according to Winter, the arbitration decision, which was adopted in the appeal decision, appears to have found, and analyzed this case from the standpoint of, a specific trauma injury. It found:

Claimant sustained a work injury on November 1, 2001, as a result of smoke and fume inhalation. Claimant was exposed to smoke when he operated a plasma torch on that day By the end of claimant’s shift he was tired, coughing and his chest felt very full.

¹ On appeal in both its brief and at oral argument, RMT does “not dispute[] that the cumulative injury, which encompassed and included the specific events of November 1, 2001, was the stipulated injury.”

Winter argues this error led the court to improperly analyze the subsequent causation question.

Initially we find it at least arguable that the agency disregarded the cumulative injury and found this to be a specific trauma event. While the language quoted above appears to describe a specific trauma incident, the court did also consider some of Winter's cumulative exposure while working at RMT, as noted in Dr. Zoutendam's October 2001 report. Regardless, we believe the significance of this fact-finding is simply that the agency did in fact determine some work-related injury did occur. However, the next question still remained, that is, whether that work-related injury was the cause of any permanent disability. Appropriately, the court fully analyzed this question, utilizing the wealth of medical opinions, and after doing so answered in the negative, finding the injury was not the cause of any permanent disability. In other words, we conclude the court's findings as to the dates and type of injury suffered by Winter did not erroneously affect its ultimate determination of compensability.

“Temporary Aggravation of Pre-existing Injury.”

In the arbitration decision, the deputy found Winter had suffered a “temporary aggravation of [his] longstanding bronchitis.” In the subsequent appeal decision, the deputy affirmed, holding that “[g]iven this record, the deputy did not err in finding that the injury claimant sustained with defendants was a temporary aggravation of a long standing preexisting history of upper respiratory infections.” Winter claims the phrase “temporary aggravation” is not a term of art in workers' compensation law and that this erroneous finding improperly impacted the later finding regarding causation for a permanent disability.

We first agree with Winter that “temporary injury” and “temporary aggravation” are not statutory terms, and that the legislature did use the terms “temporary” or “permanent” in regard to *disability* determinations. See Iowa Code §§ 85.32-34. Moreover, we agree with his contention that the legislature intended that once *personal injury* is proven, the next determination is whether it was a proximate cause of disability, death, or the need for medical care. See *Thayer v. State*, 653 N.W.2d 595, 599-600 (Iowa 2002). However, when viewed in context, we believe the finding made by the agency regarding Winter’s “temporary aggravation” is nothing more than a straightforward fact-finding. We further believe that fact-finding is supported by substantial evidence in the record and does not improperly impact the agency’s bottom-line determination of non-compensability.

The court properly asked and analyzed the causation question next. RMT stipulated to the issue of temporary disability; thus, the central issue in the dispute was whether the alleged injury of November 1, 2001, was the cause of any permanent disability. We discuss the causation issue in the next division of this opinion.

Substantial Evidence.

Winter next assails a number of the agency’s fact-findings on substantial evidence grounds. Most significantly, he claims no substantial evidence supports the finding that his work injury was an aggravation of a preexisting bronchitis or other respiratory condition. Related to this claim, he argues substantial evidence does not support the finding that the stipulated work injury was *not* the proximate cause of any permanent disability.

We must first note the strong and detailed adverse credibility findings made with regard to Winter.

Theodore Winter is not found to be a highly credible witness. His testimony is not highly reliable and is found to be inconsistent with many of the objective findings contained in the medical records and numerous other documents in evidence. Given such, where discrepancies exist between claimant's testimony and other more objective documentary evidence, greater weight is given to the documentary evidence.

. . . .
Claimant's testimony, his appearance and overall demeanor as observed at hearing which lasted well over four hours, and the medical records and numerous other documents in evidence, including correspondence authored by claimant, all suggest that claimant lacks credibility and was found to be untruthful in his recollection of events. His testimony in this matter was found to be very self-serving, placing a positive spin on his interests than was suggested from a more objective view of the events.

In light of these credibility findings and the record before the agency, we conclude substantial evidence supports the finding that the work injury was a temporary aggravation of Winter's pre-existing condition that did not cause any permanent disability. Winter was diagnosed with hyperreactive airways disease following the November 1, 2001 injury; however, as the agency found, no physician established the requisite medical causation.

Dr. Gregory Hicklin reviewed Winter's medical records and history in October 2004, and theorized that Winter has "chronic obstructive pulmonary disease, secondary to cigarette smoking." He further opined that the workplace exposure to fumes and smoke "could act as a temporary aggravator of chronic obstructive pulmonary disease, but probably did not materially worsen the underlying lung function." These opinions are consistent with the findings of the agency and constitute substantial evidence.

The record further supports that Winter has a substantial history of tobacco use and respiratory ailments dating back many years. As noted previously, between 1994 and 2001, Winter was repeatedly seen for numerous respiratory and pulmonary problems. While there was some testimony suggesting that his exposure to metal smoke at RMT could have been a factor lighting up his hyperreactive airways disease, other substantial evidence in the record supports that the workplace welding was not a substantial causative factor. Where, as here, inconsistent conclusions may be drawn from the same evidence, we may not interfere with the agency's findings. *Second Injury Fund of Iowa v. Shank*, 516 N.W.2d 808, 812 (Iowa 1994).

Remand Request.

Finally, Winter asks this court to remand all determinations of benefit claims and costs taxation. However, he concedes this request would be moot in light of our affirmance on the preceding issues. We therefore deny this request.

AFFIRMED.