

IN THE COURT OF APPEALS OF IOWA

No. 8-497 / 08-0079
Filed August 27, 2008

**OTC HOLDINGS, INC. and
HARTFORD FIRE INSURANCE COMPANY,**
Petitioners-Appellees,

vs.

CATHY L. PRUCHA,
Respondent-Appellant.

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

Cathy Prucha appeals the district court's judicial review ruling remanding
her case to the workers' compensation commissioner. **REVERSED.**

Rick D. Crowl of Stuart Tinley Law Firm, L.L.P., Council Bluffs, for
appellant.

Thalia Downing-Carroll of White, Wulff & Jorgensen, Omaha, Nebraska,
for appellees.

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

MAHAN, J.

Cathy Prucha appeals the district court's judicial review ruling remanding her case to the workers' compensation commissioner. She contends the workers' compensation commissioner has already decided her failure to submit to surgery does not bar her recovery of workers' compensation benefits. We agree. We therefore reverse the district court decision.

I. Background Facts and Proceedings.

Cathy Prucha was employed as a "pick and packer" for OTC Holdings, Inc., a position that consisted of taking items of varying weights off shelves and putting them in boxes to send down the line. Prucha injured her shoulder January 12, 2004, during the course of her employment. An MRI revealed an undersurface tear. Prucha was referred to a shoulder specialist, Dr. Jack McCarthy. She received physical therapy, steroid injections, and medications, which have not improved her condition.

Dr. McCarthy recommended surgery in January 2005. He acknowledged there were risks with the arthroscopy, but told Prucha he attempts to provide patients ninety percent pain relief and eighty percent function. Dr. McCarthy further opined that Prucha had suffered a twelve percent permanent impairment rating with or without the surgery. Prucha declined the surgery because her sister and others she knew had received bad results from the same procedure. Prucha was restricted from reaching or overhead jobs and limited use of a box cutter. She was kept on light duty employment for one and one-half years at OTC, but was terminated because she declined to have surgery.

At the time of hearing, Prucha was fifty-four years old. She completed the ninth grade, but her grades were mostly D's. She does not have a GED, despite three attempts to obtain one. She has difficulty reading, and is unable to make change, balance her checkbook, type, or use a cell phone by herself. She has no sales or reception experience. She is 4'11" and weighs eighty-nine pounds. Upon her termination from OTC Holdings, Inc., Prucha applied for 130 jobs but was not offered employment. Amy Botkin, a vocational specialist, identified employers likely to have positions consistent with Prucha's background and physical capabilities. However, another vocational specialist, Jim Rogers, concluded Prucha was totally disabled and unable to perform normal workday operations.

Prucha sought workers' compensation benefits. An arbitration decision was filed in September 2006. A deputy workers' compensation commissioner determined Prucha made a prima facie showing she was not employable in the competitive labor market and was an odd-lot employee. The deputy found the employer failed to produce evidence showing the availability of suitable employment. The deputy concluded Prucha should be considered permanently and totally disabled under the odd-lot doctrine. The commissioner affirmed the deputy's decision.

The employer filed a petition for judicial review, claiming the commissioner erred in finding Prucha permanently and totally disabled. The district court affirmed that Prucha was an odd-lot employee. The district court went on to remand the case to the workers' compensation commission for a determination

of whether Prucha's refusal to undergo surgery was reasonable, and whether such refusal bars her recovery of benefits. Prucha now appeals.

II. Scope and Standard of Review.

Our scope of review in workers' compensation cases is governed by the Iowa Administrative Procedure Act, chapter 17A of the 2007 Iowa Code. Iowa Code § 86.26; *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). Our review of the commissioner's decision is for errors at law, not de novo. *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 330 (Iowa 2005). "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. We must examine whether the commissioner's conclusions are supported by substantial evidence in the record made before the agency when the record is viewed as a whole. *Finch*, 700 N.W.2d at 331. Evidence is substantial if a reasonable mind would accept it as adequate to reach a conclusion. *Heartland Specialty Foods v. Johnson*, 731 N.W.2d 397, 400 (Iowa Ct. App. 2007). An agency's decision does not lack substantial evidence because inconsistent conclusions may be drawn from the same evidence. *Id.* We broadly and liberally construe the commissioner's finding to uphold, rather than defeat the decision. *Id.*

The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 463 (Iowa 2004). 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).

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*, 686 N.W.2d at 464-65. 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. Merits

It is well-established law that the commissioner must state the evidence relied upon and detail the reasons for his conclusions. *Bridgestone/Firestone v. Accordino*, 561 N.W.2d 60, 62 (Iowa 1997); *Heartland Specialty Foods*, 731 N.W.2d 397 at 400. However, the commissioner need not discuss every evidentiary fact and the basis for its acceptance or rejection so long as the commissioner's analytical process can be followed on appeal. *Heartland Specialty Foods*, 731 N.W.2d at 400-01. Thus, the commissioner's duty is satisfied if it is possible to work backward from the agency's written decision and to deduce what must have been the agency's legal conclusions and its findings of fact. *Id.*

The district court remanded this case because the commissioner's determination of whether Prucha's failure to submit to surgery affected her disability was "based only on inferences." As the district court noted, the commissioner mentioned Prucha's failure to submit to surgery "briefly during the factual findings" of his decision, but "did not address or even mention the issue in his reasoning and conclusions of law." At the time of judicial review, the district court may remand a case to the commissioner. *Rethamel v. Havey*, 715 N.W.2d 263, 267 n.1 (Iowa 2006). However, we conclude a remand is not necessary in this case because we find the decision contains adequate findings of fact and analysis to support the commissioner's conclusion.

In his decision, the commissioner cited evidence from Prucha's treating physician recommending surgery:

Dr. McCarthy treated the claimant with steroid injections and medication but ultimately in January 2005 he recommended surgery. The claimant has declined to have surgery because her sister and others she knows have gotten bad results. Dr. McCarthy opines that the claimant has sustained a 12 percent permanent impairment *with or without surgery*. Dr. McCarthy acknowledges that there are risks with the arthroscopy but tells patients that he attempts to provide 90 percent pain relief and 80 percent function.

(Emphasis added.)

The commissioner's reference to the treating physician's opinion with regard to Prucha's permanent impairment rating with or without surgery reflects that he accepted such opinion and gave weight to it. While the commissioner's findings could have specifically expanded on whether the surgery was inherently risky or without potential recovery, his references to the physician's opinion and Prucha's decision to decline the surgery were sufficient.

We conclude remand of the commissioner's decision was not necessary because the decision contained adequate findings of fact and proper analysis to support it. There is substantial evidence to support the commissioner's decision in all respects. It certainly can be construed to conclude Prucha's refusal to have surgery does not bar her from benefits.

Accordingly, we reverse the district court's order and affirm the decision of the workers' compensation commissioner.

REVERSED.