

IN THE COURT OF APPEALS OF IOWA

No. 8-630 / 08-0559
Filed August 27, 2008

**DANKA HOLDINGS and ZURICH
AMERICAN INSURANCE GROUP,**
Petitioners-Appellants,

vs.

JERRY MYERS,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Karen Romano,
Judge.

An employer appeals from the district court's affirmance of an award of
workers' compensation benefits to the claimant. **AFFIRMED.**

Mark W. Thomas and Lisa R. Perdue of Grefe & Sidney, P.L.C., Des
Moines, for appellants.

Pete Leehey of Pete Leehey Law Firm, P.C., Cedar Rapids, for appellee.

Considered by Mahan, P.J., and Vaitheswaran and Potterfield, JJ.

VAITHESWARAN, J.

This is an employer's second appeal from a workers' compensation decision. We affirm.

I. Background Facts and Proceedings

The Workers' Compensation Commission found Jerry Myers "mentally incapable of gainful employment" as a result of a work-related injury. The Commission awarded him permanent total disability benefits. Myers's employer, Danka Holdings, and its insurer, Zurich American Insurance Group, sought judicial review of that decision. The district court reversed and remanded, after concluding the agency gave more weight as a matter of law to Myers's treating physicians than to the physicians who examined Myers in anticipation of litigation. *Danka Holdings v. Myers*, No. 05-1210 (Iowa Ct. App. May 24, 2006).

On remand, the agency corrected this aspect of its earlier decision but reached the same conclusion on Myers's entitlement to benefits. The defendants again sought judicial review. Myers countered with a motion for entry of judgment on the workers' compensation award. The defendants responded by filing a motion for stay and a resistance to entry of judgment. The district court affirmed the agency decision and, later, entered judgment in favor of Myers for \$122,195.51.

On appeal, the defendants take issue with the agency determination that Myers was permanently and totally disabled. They also challenge the district court's ruling on their motion for stay and Myers's motion for judgment.

II. Agency Fact-Findings

We review the agency's fact-findings to determine if there is substantial evidence to support them. See Iowa Code § 17A.19(10)(f) (2007). Applying this standard, we agree with the district court that there is substantial evidence.

In its remand decision, the agency thoroughly summarized the divergent medical opinions and explained why certain opinions were given less weight than others. This was its prerogative. *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998).

We recognize that the weight given to a particular expert opinion depends on the accuracy of facts on which the expert relied. *Id.* The accuracy of Myers's complaints was called into question by surveillance tapes that appeared to show Myers in better condition than his complaints would indicate. The agency provided a detailed explanation of why, in its view, the tapes were not persuasive.

The deputy commissioner, whose decision was adopted in full, found Myers's testimony more credible than the images on the tapes. On our review of that testimony, we note that Myers frankly admitted to engaging in certain activities that were against medical advice, such as driving short distances on four occasions to fill prescriptions or get tobacco. Some of the taped activity, such as replacing boards on the porch, took him a month to accomplish with the assistance of his brother-in-law. Finally, it is clear that Myers engaged in certain contraindicated activity simply out of a sense of guilt that his wife was working fourteen-hour days at two jobs.

The deputy also placed less weight on the tapes based on evaluations and reviews performed in connection with Myers's application for social security disability benefits. A consultant who examined these medical records for the Appeals Council of the Social Security Administration specifically addressed record evidence that Myers might be faking his symptoms. The consultant essentially opined that this evidence was reflective of an organic mental disorder.

The deputy finally cited the opinion of a treating physician, Dr. Hines. As the deputy pointed out, Dr. Hines was "unequivocal and unwavering" in his opinion that Myers was disabled as a result of his work-related injury. Notably, Dr. Hines maintained this opinion in the face of evidence that Myers was "malingering."

Based on this evidence, we conclude the deputy commissioner and commissioner did not act unreasonably in declining to afford more weight to the surveillance videos. We concede reasonable minds might disagree with the agency's rationale for rejecting the surveillance images. However, as substantial evidence supports the findings actually made by the deputy and by the agency, we affirm. *See Hill v. Fleetguard*, 705 N.W.2d 665, 674 (Iowa 2005).

III. Denial of Stay, Entry of Judgment

We turn to the district court's denial of the defendants' motion for stay and its entry of judgment on the workers' compensation award. The Iowa Supreme Court recently addressed these types of motions. *See Grinnell College v. Osborn*, 751 N.W.2d 396, 398, 404 (Iowa 2008). We find it unnecessary to belabor the issue. Based on our affirmance of the agency's fact findings, and the holding of *Osborn*, we conclude the district court did not abuse its discretion in

denying the motion for stay of the agency decision and did not err in entering judgment on the workers' compensation award.

AFFIRMED.