

IN THE COURT OF APPEALS OF IOWA

No. 8-999 / 08-1320
Filed January 22, 2009

MARK RECTOR,
Petitioner-Appellee,

vs.

**SHELDON COMMUNITY SCHOOL and
EMC INSURANCE COMPANIES,**
Respondents-Appellants.

Appeal from the Iowa District Court for O'Brien County, Nancy L. Whittenburg, Judge.

Respondents appeal from the district court order remanding the petitioner's workers' compensation claims to the agency for consideration of additional evidence. **REVERSED AND REMANDED.**

Erin Q. Pals and Wendy D. Boka of Hopkins & Huebner, P.C., Des Moines, for appellants.

Harold D. Dawson of DeKoter, Thole & Dawson, P.L.C., Sibley, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Doyle, JJ.

EISENHAUER, J.

Sheldon Community School and EMC Insurance Companies appeal from the district court's ruling on Mark Rector's application to present additional evidence on his workers' compensation claim. The court remanded this matter to the agency for receipt of additional evidence. Our review is for correction of errors of law. *Midwest Automotive III, L.L.C. v. Iowa Dep't. of Transp.*, 646 N.W.2d 417, 422 (Iowa 2002). Because we find the petitioner failed to show good reason for failing to introduce additional evidence at the agency level, we reverse the district court and remand the matter for further proceedings.

I. Background Facts and Proceedings. Mark Rector filed a workers' compensation petition against his employer, Sheldon Community School, and its workers' compensation insurance carrier, EMC Insurance Companies. The respondents filed a motion for summary judgment, alleging Rector's claims were not timely filed. They claimed the last disability payment for the claimed injury was made on December 12, 2002, making the petition filed on January 31, 2007, untimely. Rector filed a resistance, claiming his several work-related injuries were "successive" and his last disability benefit was received on March 22, 2005. The respondents replied and provided evidence showing the benefits received on March 22, 2005, were for an unrelated injury. The deputy commissioner agreed and granted summary judgment. Rector's appeal to the industrial commissioner was affirmed.

On March 20, 2008, Rector filed a petition for judicial review, alleging the deputy commissioner (1) erred in finding no material issues of fact existed, and

(2) failed to follow the Iowa Rules of Civil Procedure in granting summary judgment. He sought a reversal of the ruling and remand to the commission for further proceedings. On April 28, 2008, Rector filed an application to present additional evidence “for the Court’s consideration on his petition for judicial review.”

On June 20, 2008, after a hearing, the district court filed its “Ruling on Application to Present Additional Evidence.” In the ruling, the court found the deputy commissioner failed to comply with Iowa Rule of Civil Procedure 1.981(3). It sustained Rector’s application to present additional evidence and “remanded to the original hearing officer herein for receipt of Petitioner’s additional evidence in resistance to Respondents’ motion for summary judgment.” The respondents’ motion to reconsider was overruled.

II. Analysis. Iowa Code section 17A.19(7) (2007) states:

In proceedings for judicial review of agency action a court may hear and consider such evidence as it deems appropriate. . . . Before the date set for hearing a petition for judicial review of agency action in a contested case, application may be made to the court for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the contested case proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision in the case by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court and mail copies of the new findings or decisions to all parties.

The rule allows the district court to accept additional evidence in its judicial review of agency action, and provides that if certain criteria are met, the court may order the agency to take the additional evidence. The court was informed

the additional evidence was a letter written in March 2005 from EMC to Rector addressing multiple injuries sustained by Rector and establishing the last date of payment of disability payments. The court then determined Rector had shown the criteria required by section 17A.19(7). It found the letter was material and good reason existed for failure to present it to the agency because the agency ruled on the motion for summary judgment without scheduling oral argument or a date for nonoral submission. The court then directed the agency take the additional evidence.

The respondents contend the court erred in finding good reason existed for Rector's failure to present the letter to the agency. They argue the deputy commissioner had no duty to hold a hearing on their motion for summary judgment or to fix a date for nonoral submission. Rule 1.981(3) states in pertinent part, "[T]he time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the court." The district court found the use of the word "shall" in the rule is mandatory language, not permissive, and therefore "the court is required to set either a date for hearing argument on the pending motion or a date by which the matter will be submitted to the court with a hearing (nonoral submission) for determination." The respondents counter that the use of the word "shall" relates to the time in which the hearing or nonoral submission date must be fixed, not whether a hearing or nonoral submission date must be fixed. There is no caselaw addressing this issue.

Rector asserts the commissioner's failure to inform him of a particular date when the case would be submitted deprived him of the opportunity to present the additional evidence. He offers no reason for failing to submit the additional evidence as part of his resistance to summary judgment. We conclude a plain reading of the rule does not require a tribunal to provide the parties with notice of a date for nonoral submission. A tribunal need not inform the parties of the date it fixes for nonoral submission "unless a shorter time [than twenty days] is ordered. . . ." Iowa R. Civ. P. 1.981(3).

The district court considered the deputy commissioner's failure to fix a date for nonoral submission to be a good reason for Rector's failure to present his evidence in the contested case proceeding. Because the deputy commissioner had no duty to fix a date for nonoral submission, we conclude Rector has not shown good reason for failing to present the evidence. Accordingly, we reverse the district court ruling on Rector's application to present additional evidence. The case is remanded to the district court for further proceedings on Rector's petition for judicial review.

REVERSED AND REMANDED.