

IN THE COURT OF APPEALS OF IOWA

No. 9-506 / 09-0323
Filed October 7, 2009

STANLEY GLEN STEWART,
Claimant-Appellant,

vs.

JOHN DEERE DES MOINES WORKS,
Defendant-Appellee.

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

Employee appeals from the district court's ruling affirming the workers'
compensation commissioner's finding that the employee's claim was barred by
the statute of limitations. **AFFIRMED.**

Thomas J. Reilly, Des Moines, for appellant.

Joseph A. Quinn of Nyemaster, Goode, West, Hansell & O'Brien, P.C.,
Des Moines, for appellee.

Heard by Sackett, C.J., and Eisenhauer and Doyle, JJ.

SACKETT, C.J.

Stanley Stewart appeals from the district court ruling affirming the workers' compensation commissioner's finding that his claim for benefits was barred by the statute of limitations of Iowa Code section 85.26 (2005). We affirm.

I. BACKGROUND AND PROCEEDINGS. On February 10, 2001, Stewart slipped on ice and fell while working for John Deere Des Moines Works (John Deere). During the fall, he essentially did the splits and reported that "one leg went one way and one went the other." He reported the injury and was diagnosed by Dr. Wesley Brown with straining his right inguinal (groin) and back. The doctor determined Stewart was fit for full duty, wrapped ace bandages around the groin area, and gave Stewart ibuprofen. Stewart's groin strain worsened and was re-aggravated over the course of the next year. Dr. Brown monitored Stewart's condition over this period but maintained he was fit for full duty. He therefore received no temporary disability payments (TPD) for this injury during this time period.

On February 4, 2002, Stewart strained his back at work while bending over and loading a part. He was diagnosed with a back strain. Stewart received TPD benefits from February 4 until February 11. In a follow-up appointment on February 18, 2002, the doctor placed Stewart on work restrictions, instructing him not to lift over twenty-five pounds, to avoid repetitive bending and twisting, and to attend physical therapy three times per week. On February 21, 2002, the doctor described Stewart's injury as a "lumbar strain and inguinal strain." In addition to maintaining the previous restrictions, the doctor instructed that Stewart work half

days on days he attended physical therapy. Stewart received TPD benefits from February 18, 2002, to March 3, 2002, from March 25, 2002, to April 7, 2002, and from April 15, 2002, to April 28, 2002, due to these modified duty work restrictions. Stewart requested to be returned to full duty on April 29, 2002. He believed a full-duty position would be better for his back because the light-duty position involved more bending. He was placed on full duty.

At a follow-up appointment on May 28, 2002, Stewart was placed on modified duty again. The doctor's notes state Stewart had "[d]egenerative disc disease with recent strain" and that he was limping on his right side. Stewart reported to the doctor on June 4, 2002, that he had numbness down his right leg. Stewart received TPD benefits from June 3, 2002, to June 9, 2002. In June and July of 2002, Stewart was treated with epidural injections.

In the fall of 2002, Stewart met with a new doctor, Dr. Lynn Nelson. Nelson reported that Stewart's "[b]ack looks good, but [his] hip [is] tore up," and that the doctor believed the condition was related to Stewart's injury from falling on the ice in February 2001. Nelson recommended Stewart see a hip specialist. In a follow-up appointment with Dr. Brown on November 12, 2002, Dr. Brown noted Stewart had been diagnosed with osteoarthritis of the hip by the hip specialist, Dr. Fellows, but whether this condition was work-related was undetermined. The nurse's notes from this appointment state that it is uncertain whether this injury was related to the February 2001 fall and requested clarification. After reviewing the hip specialist's report, the nurse stated the "[n]otes indicate progressive arthritis, could have been caused by aggravation

from incident.” The charting summary from a follow-up appointment with Dr. Brown on December 6, 2002, states that the degenerative arthritis of the hip is work-related and Stewart should continue working on modified duty with the current restrictions. After Dr. Nelson diagnosed Stewart’s problem as largely stemming from a hip condition rather than a back strain, John Deere paid Stewart TPD payments from October 7, 2002, to January 19, 2003. However, payment records from John Deere and Workforce Development show these payments were made for Stewart’s back injury that occurred on February 4, 2002.

For the next several months Stewart’s hip condition was treated by applying heat daily to the hip and prescription medications. The nurse’s notes from a March 7, 2003 appointment explains,

There is overlap of pain territories arising from problems of both immediate hip joint and lumbar sites. Either or both can produce his pain pattern. However, we are at a holding pattern now because recent MRI and EMG do not indicate lumbar surgery [is] need[ed] and he is not ready for either hip replacement o[r] a repeat epidural. [The plan is to] [c]ontinue his present work description. If we can ascertain that this work description will never exceed 10 to 20 pounds lifting, prolonged standing or climbing or repetitive back bending/stooping/twisting, then we can remove him from the modified duty category and place him in the full duty category. Recheck in one month. Continued Bextra.

On 12/17/02 Dr. Fellows wrote a letter indicating that [Stewart] would require work restriction of any prolonged standing or climbing. He should have opportunities to sit periodically. Also noted was R[ight] hip progressive degenerative arthritis, caused or aggravated by his acute injury of 2/1[0]/01 when he slipped with the splits mechanism of injury. [Stewart] tells me that Dr. Fellows suggested a need for R[ight] hip replacement in the future if pain and walking difficulty magnify.

Stewart again received TPD payments from March 3, 2003, to March 9, 2003.

Stewart was released for regular duty on April 14, 2003, after having a surgery unrelated to this appeal and after having a steroid injection to his hip. Stewart ceased working for John Deere on July 18, 2003, because, after consulting with his union representative and another physician, Dr. Stanton Danielson, he believed he should apply for social security disability.

On March 4, 2005, Stewart filed a petition with the Iowa Workers' Compensation Commissioner seeking relief for depression and injuries to his hip, back, and body as a whole as a result of the February 10, 2001 fall. John Deere raised an affirmative defense, asserting that Stewart's claim was not timely filed under the statute of limitations of Iowa Code section 85.26. Following an arbitration hearing, the agency determined Stewart's petition was not timely filed. This decision was affirmed and adopted by the commissioner. Stewart sought judicial review of the decision. Following a hearing on the appeal, the district court affirmed, ruling that the commissioner's finding on the statute of limitations issue was supported by substantial evidence and not based upon an irrational, illogical, or wholly unjustifiable application of law to fact. Stewart appeals.

II. STANDARD AND SCOPE OF REVIEW. Judicial review of agency action is done pursuant to the Iowa Administrative Procedure Act. Iowa Code § 17A.19; *Second Injury Fund of Iowa v. George*, 737 N.W.2d 141, 145 (Iowa 2007). We may only interfere with the agency's decision if it is erroneous under one of the grounds listed in Iowa Code section 17A.19(10) and a party's substantial rights have been prejudiced. *Grant v. Iowa Dep't of Human Servs.*, 722 N.W.2d 169, 173 (Iowa 2006); *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218

(Iowa 2006). We apply the standards of the Administrative Procedure Act to determine whether we reach the same conclusion as the district court. *IBP, Inc. v. Harpole*, 621 N.W.2d 410, 414 (Iowa 2001). We analyze whether the district court correctly applied the law in its review. *Excel Corp. v. Smithart*, 654 N.W.2d 891, 896 (Iowa 2002).

III. STATUTE OF LIMITATIONS. Iowa Code section 85.26(1) sets forth the statute of limitations for workers' compensation claims and in pertinent part provides,

[a]n original proceeding for benefits under this chapter . . . shall not be maintained in any contested case unless the proceeding is commenced within two years from the date of the occurrence of the injury for which benefits are claimed or, if weekly compensation benefits are paid under section 86.13, within three years from the date of the last payment of weekly compensation benefits.

Stewart claims he was paid TPD benefits for his hip injury and therefore had three years from the date of his last payment to file his claim for additional benefits. John Deere contends Stewart did not receive any TPD payments for his hip condition caused by the February 2001 fall. Instead, it claims any TPD benefits paid were compensation for Stewart's back injury suffered in February 2002.

Stewart filed his petition on March 4, 2005. Therefore, under the three-year statute of limitations, if Stewart received any TPD payments for injuries caused by his February 2001 fall on or after March 4, 2002, his petition was timely filed and his claim is not barred by the statute of limitations.

The commissioner determined that any TPD benefits paid during this time period were for the lumbar strain Stewart suffered on February 4, 2002. The

commissioner found that John Deere's records showed no temporary benefits were paid for the February 2001 fall injuries and instead showed all temporary benefits were paid for the February 2002 back strain. Stewart argued that the records incorrectly documented the payments and even if they were recorded for the February 2002 injury, the purpose of the payments was to compensate him for the February 2001 injury. In response the commissioner stated, "The fact that the defendant 'should have been paying' for the February 10, 2001 injury does not mean that they actually made payments which would extend the statute of limitations from two years to three." The district court affirmed and noted substantial evidence supported the commissioner's finding. It also determined the commissioner's decision was not based upon an irrational, illogical, or wholly unjustifiable application of law to fact.

The commissioner's fact findings are binding on us if supported by substantial evidence. *Herrera v. IBP, Inc.*, 633 N.W.2d 284, 287 (Iowa 2001).

Substantial evidence exists if

the quantity and quality of evidence . . . would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.

Iowa Code § 17A.19(10)(f)(1).

[E]vidence is not insubstantial merely because it would have supported contrary inferences. Nor is evidence insubstantial because of the possibility of drawing two inconsistent conclusions from it. The ultimate question is not whether the evidence supports a different finding but whether the evidence supports the findings actually made.

City of Hampton v. Iowa Civil Rights Comm'n, 554 N.W.2d 532, 536 (Iowa 1996) (citation omitted) (quoting *Gaskey v. Iowa Dep't of Transp.*, 537 N.W.2d 695, 698 (Iowa 1995)). We are not to consider the evidence insubstantial merely because we would reach different conclusions from the record. *George*, 737 N.W.2d at 145; *Arndt v. City of Le Claire*, 728 N.W.2d 389, 393 (Iowa 2007). Our role is not to weigh the evidence, but rather to construe the commissioner's findings broadly and liberally to uphold, rather than defeat, those findings. *Kiesecker v. Webster City Custom Meats, Inc.*, 528 N.W.2d 109, 111 (Iowa 1995). When the evidence on the issue is conflicting or contradictory, we defer to the commissioner and do not interfere with the commissioner's findings. *Harpole*, 621 N.W.2d at 418; *Kostelac v. Feldman's, Inc.*, 497 N.W.2d 853, 856 (Iowa 1993).

The evidence in the record is conflicting on the issue before us. The commissioner's finding that all payment records show benefits were paid for the back injury suffered in February 2002 is accurate and supported by the record. However, the medical records submitted into evidence detailing Stewart's diagnosis, treatment, and work restrictions, indicate he was placed on modified duty, and received TPD benefits, between October 2002 and March 2003, at least in part, because of the hip problem stemming from the February 2001 fall.

When the commissioner's action is based upon a determination of fact clearly vested by a provision of law in the discretion of the commissioner, we may only interfere with the decision if it is not supported by substantial evidence in the record, viewed as a whole. Iowa Code § 17A.19(10)(f). A fact relating to the

recording of TPD payments for particular injuries is a factual determination that is left to the commissioner's discretion. See Iowa Admin. Code r. 876-3.1(17A)(2) (describing the process for reporting an initial injury and payments to the Workers' Compensation Division and the timeline for correcting errors in such reports). In evaluating whether there is substantial evidence to support the determination, we must "give appropriate deference to the view of the [commissioner] 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). Under our limited review, we agree that substantial evidence supports the commissioner's finding that all TPD benefits were paid for Stewart's February 2002 back injury. As this finding is supported by the record, we also agree that the commissioner's decision was not an irrational, illogical, or unjustifiable application of law to fact. Since Stewart was not paid benefits for his February 2001 fall, the two year statute of limitations applied, and Stewart's petition was untimely.

AFFIRMED.