

IN THE COURT OF APPEALS OF IOWA

No. 9-554 / 08-2045
Filed November 12, 2009

MERCY MEDICAL CENTER,
Petitioner-Appellant,

vs.

RENEE SIMMONS,
Respondent-Appellee.

Appeal from the Iowa District Court for Linn County, Fae Hoover-Grinde,
Judge.

An employer appeals a final decision of the workers' compensation
commissioner awarding a claimant permanent total disability benefits.

AFFIRMED.

Robert M. Hogg and David A. Elderkin of Elderkin & Pirnie, P.L.C., Cedar
Rapids, for appellant.

Daniel J. Anderson and Thomas M. Wertz of Wertz & Dake, Cedar
Rapids, for appellee.

Heard by Vaitheswaran, P.J., Mansfield, J. and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VAITHESWARAN, P.J.

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I. Background Facts and Proceedings

Renee Simmons, a dialysis nurse at Mercy Medical Center, was injured in March 2003, when a patient fell on her. Prior to the injury, Simmons received treatment for depression. After the injury, she was again treated for depression. Additionally, several physicians evaluated and treated her for pain in her lower back and leg.

Simmons petitioned for workers' compensation benefits based on the March 2003 injury. She also filed a separate petition based on a claimed work-related injury in October 2003, but she eventually dismissed that petition.

Following an arbitration hearing, a deputy workers' compensation commissioner concluded that Simmons "failed to prove" a permanent disability resulting from her March 2003 injury. That decision was reversed on intra-agency appeal, with the commissioner¹ awarding permanent total disability benefits and medical expenses.

Mercy filed a petition for judicial review. The district court affirmed the agency's final decision and this appeal followed.

¹ The commissioner designated a deputy commissioner to consider the appeal. See Iowa Code § 86.3 (2005). We will refer to the final decision as the decision of the commissioner.

II. Analysis.

Mercy initially argues that the commissioner erroneously rejected a finding by the deputy commissioner that Simmons's testimony was "not convincing." The hospital contends the deputy's finding was a credibility determination that had to be afforded deference by the commissioner and this court.

There is no question that, when faced with a substantial-evidence challenge to an agency's fact findings, a court must consider "any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses." Iowa Code § 17A.19(10)(f)(3) (2007). But, "[e]ven when credibility is involved, the agency, not the hearing officer, is charged with the authoritative responsibility to decide what the evidence means under the governing statute." *Iowa State Fairgrounds Sec. v. Iowa Civil Rights Comm'n*, 322 N.W.2d 293, 295 (Iowa 1982). In other words, it is not the deputy's proposed decision but the commissioner's final decision that is subject to judicial review. *Myers v. F.C.A. Servs., Inc.*, 592 N.W.2d 354, 358 (Iowa 1999) ("[T]he deputy industrial commissioner's proposed findings are not a consideration on judicial review. Only final agency action is subject to judicial review.").

"This does not mean a disagreement on the facts between the officer and the agency may not affect the substantiality of the evidence supporting the agency decision." *Iowa State Fairgrounds Sec.*, 322 N.W.2d at 295. As our supreme court has explained:

When the agency decision is attacked on the substantial evidence ground in section 17A.19[(10)(f)], the district court must examine the entire record. This includes the hearing officer's decision. The hearing officer's decision is not evidence, but his findings may affect its weight when credibility issues are involved.

Id. (internal citation omitted); see also Iowa Code § 17A.12(6)(e), (f) (stating the record in a contested case “shall include . . . [a]ll proposed findings” and “[a]ny decision, opinion or report by the officer presiding at the hearing”).

Based on this law, we conclude the deputy’s determination that certain evidence was “not convincing” was simply one consideration in the total calculus of whether the commissioner’s fact findings are supported by substantial evidence. See Iowa Code § 17A.19(10)(f)(1) (defining substantial evidence as the quality and quantity of evidence “that 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.”). We turn to that question.

The commissioner determined the March 2003 work injury was the cause of Simmons’s “current low back, leg and mental conditions,” which in turn was a cause of “significant permanent physical and mental impairment to the body as a whole.” On our review of the record as a whole, we are persuaded that this determination is supported by substantial evidence.

Dr. Jeffrey Wilharm, a psychiatrist who treated Simmons before and after the injury, opined

that absolutely Renee’s work injury of March 5, 2003 and temporary exacerbation on October 4, 2003 resulting in permanent physical limitations and chronic pain constitutes a substantial contributing factor in bringing about and continuing to contribute to her [ongoing] depression condition

. . . .
 . . . [B]ased on Renee’s psychiatric condition, she is not capable of gainful employment. Her psychiatric status impairs her ability to concentrate or cognitively perform up to employment

standards. Her energy is minimal, her motivation and interest have been impaired. She cannot at this time function in a job setting.

Mercy attempts to discredit Dr. Wilharm's opinion based on his reliance on the October 2003 incident, which Mercy characterizes as "imaginary." See *Newman v. John Deere Ottumwa Works*, 372 N.W.2d 199, 203 (Iowa 1985) ("If the physical trauma was imaginary it can form no basis for recovery because, on this record, it was a product of [the claimant's] mental condition and not his work."). While Simmons dismissed her workers' compensation petition grounded on this incident, the record includes evidence that the incident occurred. Cf. *id.* at 200 (noting employer introduced evidence indicating the explosion the claimant (who suffered from hypochondria) alleged occurred at work "was physically impossible"). In addition, while Dr. Wilharm mentioned the October 2003 incident, he merely characterized it as a "temporary exacerbation" of the March 2003 work injury. For these reasons, we are not persuaded that Dr. Willharm's reference to the October 2003 incident is grounds for disregarding his opinion.

Mercy also complains that those physicians who found a causal connection between Simmons's March 2003 injury and her disability relied on her rendition of events, which the deputy found unconvincing. For example, Dr. Douglas Sedlacek, who diagnosed Simmons with chronic low back pain and opined "there was a temporal relationship between the patient's onset of her symptoms and the injury that occurred on March 5, 2003," stated his opinion was "[p]er the history given to me by the patient."

We are not persuaded that the deputy's adverse "credibility" finding with respect to Simmons's testimony is as broad as Mercy characterizes it. That

finding specifically related to Simmons's testimony concerning her worsening back condition after she returned to work in August 2003, as well as her dismissal of the petition relating to the October 4, 2003 incident. The deputy's finding cannot be read as an overall indictment of all her testimony. Therefore, certain physicians' reliance on her testimony is not grounds for discrediting their opinions.

Because substantial evidence supports the agency's determination that Simmons was permanently and totally disabled as a result of her March 5, 2003 work injury, we agree with the district court that the agency's award of permanent total disability benefits must be affirmed.

AFFIRMED.