

IN THE COURT OF APPEALS OF IOWA

No. 9-658 / 09-0273
Filed November 25, 2009

JOHN BELGER,
Petitioner-Appellant,

vs.

**UNITED PARCEL SERVICE and
LIBERTY MUTUAL INSURANCE COMPANY,**
Respondents-Appellees.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg,
Judge.

A petitioner for workers' compensation benefits appeals the district court's
affirmance of the workers' compensation commissioner's denial of penalty
benefits. **AFFIRMED.**

Mark Soldat of Soldat & Parrish-Sams, P.L.C., West Des Moines, and
Steven Crowley of Crowley & Bungler, Burlington, for appellant.

Patrick McNulty and Lisa Perdue of Grefe & Sidney, P.L.C., Des Moines,
for appellees.

Considered by Vaitheswaran, P.J., Mansfield, J., and Schechtman, S.J.*

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

VAITHESWARAN, P.J.

John Belger, a driver for United Parcel Service, was injured when the back door of his UPS truck fell on his right shoulder. A mechanic later discovered that a spring in the door had broken.

Belger immediately reported the injury to his supervisor, Duane Hepker. Meanwhile, Hepker learned from another UPS employee, Cody Ferrill, that Belger fell while walking his dog approximately three weeks before this incident. Hepker reported this information to the office of the company physician, along with his opinion that Belger's statements concerning his current injury lacked credibility. One of the physicians in that office, Dr. Garrels, later opined that he was unsure of the cause of Belger's injury and could not distinguish between the damage caused by the dog-walking injury and the work injury. Another physician, Dr. Magnus, initially opined that Belger's shoulder problems were consistent with being hit by a door. After receiving information from UPS's insurer, he changed his opinion to include the prior injury as a possible cause of Belger's shoulder problems.

Belger filed a claim for workers' compensation benefits. A deputy workers' compensation commissioner awarded healing period benefits and ordered the payment of medical expenses. In addition, the deputy concluded that UPS denied Belger benefits without a reasonable basis for contesting Belger's entitlement to those benefits. Based on this conclusion, the deputy ordered UPS to pay Belger \$25,000 in penalty benefits.

On intra-agency appeal, the commissioner reluctantly reversed the penalty award. He stated:

Despite the clear weakness of defendants' reasons for their denial of benefits, the court's instruction requires that the agency focus on the mere existence of a debatable issue, not on which party was correct. While defendants' denial borders on the illogical, due to the strong evidence of claimant's physical condition prior to [the date of the work-related injury], the record does contain the testimony of Mr. Hepker and Mr. Ferrill upon which defendants could rely as well as the medical opinions of Dr. Garrels and Dr. Magnus. Therefore, it is concluded that defendants have established a reasonable basis to deny payment of benefits. On rehearing, the commissioner stated, "The undersigned is unwilling, upon rehearing, to alter the legal framework relied upon in the appeal decision Any further clarification is best left to the appellate courts upon a petition for judicial review."

On judicial review, the district court affirmed the commissioner's final agency decision. Belger appealed, essentially inviting the appellate courts to modify the Iowa Supreme Court's interpretation of the statute governing penalty benefits. We decline to accept this invitation. Instead, we review the agency's application of the governing law to the facts to determine if it is "irrational, illogical, or wholly unjustifiable." See Iowa Code § 17A.19(10)(m) (2007).

The commissioner began with the penalty benefits statute, which provides in part:

If a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were unreasonably delayed or denied.

Id. § 86.13. The commissioner next cited the Iowa Supreme Court's interpretation of this statute, as follows:

A reasonable cause or excuse [for the delay or termination in benefits] exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to contest the employee's entitlement to benefits.

City of Madrid v. Blasnitz, 742 N.W.2d 77, 81 (Iowa 2007) (quoting *Christensen v. Snap-On Tools Corp.*, 554 N.W.2d 254, 260 (Iowa 1996)). According to the court in *Blasnitz*,

A reasonable basis exists for denial of policy benefits if the insured's claim is fairly debatable either on a matter of fact or law. A claim is "fairly debatable" when it is open to dispute on any logical basis. Stated another way, if reasonable minds can differ on the coverage-determining facts or law, then the claim is fairly debatable.

The fact that the insurer's position is ultimately found to lack merit is not sufficient by itself to establish the first element of a bad faith claim. The focus is on the existence of a debatable issue, not on which party was correct.

Whether a claim is fairly debatable can generally be decided as a matter of law by the court. That is because "where an objectively reasonable basis for denial of a claim *actually exists*, the insurer cannot be held liable for bad faith as a matter of law." *As one court has explained, "[c]ourts and juries do not weigh the conflicting evidence that was before the insurer; they decide whether evidence existed to justify denial of the claim."*

Id. at 82 (quoting *Bellville v. Farm Bureau Mut. Ins. Co.*, 702 N.W.2d 468, 473–74 (Iowa 2005)).

After citing the correct legal standard, the commissioner applied the law to the facts and properly concluded that evidence existed in the record to justify the denial of Belger's claim. For this reason, we agree with the district court that the commissioner's decision to deny penalty benefits was not "irrational, illogical, or wholly unjustifiable" and must be affirmed.

AFFIRMED.