

IN THE COURT OF APPEALS OF IOWA

No. 9-868 / 09-0724
Filed April 8, 2010

**CEDAR RAPIDS COMMUNITY SCHOOL
DISTRICT and EMC INSURANCE
COMPANIES,**
Petitioners-Appellants,

vs.

CHRISTINE PEASE,
Respondent-Appellee.

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

The petitioners appeal from the district court order affirming the agency
decision to award workers' compensation benefits to Christine Pease.

REVERSED AND REMANDED.

Tina M. Eick and Wendy D. Boka of Hopkins & Huebner, P.C., Des
Moines, for appellants.

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

Considered by Eisenhauer, P.J., Potterfield, J., and Huitink, S.J.*

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

EISENHAUER, P.J.

The petitioners, Cedar Rapids Community School District and EMC Insurance Companies, appeal from the district court order affirming the agency decision to award workers' compensation benefits to Christine Pease. They contend the district court erred in finding substantial evidence supports the workers' compensation commissioner's decision regarding causation and disability. They also contend the court erred in awarding payment of certain medical benefits. Because there is insufficient evidence to support the commissioners' ruling, we reverse and remand.

I. Background Facts and Proceedings. Christine Pease was employed by the Cedar Rapids Community School District as a job coach on January 26, 2005, when she slipped and fell. There is no dispute the injury to her right ankle resulting from the fall arose out of and in the course of her employment. As a result of her injury, Pease had a temporary screw surgically inserted in her right ankle. The screw was removed on April 26, 2005. On May 9, 2005, her doctor noted a good range of motion in her right ankle and noted she was planning to return to work on August 1, 2005, without restrictions. Video surveillance taken the same day shows Pease shopping at Home Depot, walking around the store without difficulty.

Pease has a long history of medical complaints predating her January 2005 injury, including injuries to both ankles, her back, and her neck, as well as issues with depression. The district court summarized this history:

For years, prior to Pease's work related injury that is the subject of this case, Pease struggled with "pain and swelling in the

left ankle.” Pease also struggled with problems related to her neck and back. At some point she underwent surgery on her neck. She also received epidural injections to address muscle spasms in her low back. Steven Eyanson, M.D. (hereinafter “Dr. Eyanson”) indicated in his medical records regarding Pease that she had “some decreased range of motion in both ankle joints” and “has had degenerative changes in the back and at the ankles” His records also indicate Pease reported feeling “somewhat anxious and a little depressed” and that she had “previously been on Lexapro but currently has been on amitriptyline.” Both medications are used for depression. Pease also reported problems with her sleeping pattern. As part of his recommendation and plan, Dr. Eyanson suggested Pease discuss with her treating physician “the possibility of increasing amitriptyline or another agent.”

In her visit to Dr. Eyanson on January 25, 2005, the day before the injury at issue, Pease reported the following complaints: weight gain; fatigue; muscle spasms in her lower back; depression; swelling in her feet; easy bruising; color changes in her hands or feet in the cold; morning stiffness; joint pain in her ankles, back, neck, left great toe, and fingers; and swelling of her hands and feet.

Pease filed a petition seeking workers’ compensation benefits as a result of her January 2005 injury. She claimed permanent and total disability from her “right ankle injury and subsequent sequelae to the left ankle and spine, as well as the resulting depression” Following a hearing, the deputy industrial commissioner filed an arbitration decision awarding Pease permanent total disability and medical expenses. The deputy concluded the fall in January 2005 led to aggravation of her pre-existing back condition, neck, left ankle, and depression and found the injury extended to the body as a whole. The award was affirmed on appeal to the workers’ compensation commissioner, who adopted the arbitration decision as final agency action.

The petitioners sought judicial review with the district court, which affirmed the award, with the exception of reimbursement of medical expenses for Pease's neck treatments. The court ruled that although the deputy commissioner's arbitration decision "was less than thorough concerning its discussion and analysis of the medical records in this case," there was substantial evidence to support the commissioner's finding the January 2005 injury caused a total industrial disability.

On appeal, the petitioners contend the workers' compensation commissioner failed to perform a de novo review of the record and incorrectly applied a substantial evidence review of the deputy commissioner's decision. They also contend there is not substantial evidence that the January 2005 injury aggravated Pease's various pre-existing condition. The petitioners argue the evidence shows Pease was disabled prior to her work injury. They also contend the district court erred in affirming the award of medical benefits relating to Pease's neck, left ankle, back, heart, and depression.

II. Scope and Standard of Review. Our review of an industrial commissioner's decision is for correction of errors at law. *Great Rivers Med. Ctr. v. Vickers*, 753 N.W.2d 570, 573 (Iowa Ct. App. 2008). In reviewing the district court's decision, "we apply the standards of chapter 17A to determine whether the conclusions we reach are the same as those of the district court. If they are the same, we affirm; otherwise we reverse." *Id.*

We review the commissioner's factual findings for substantial evidence based on the record viewed as a whole. Iowa Code § 17A.19(10)(f). Substantial evidence is

the quantity and quality 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.

Id. § 17A.19(10)(f)(1). The commissioner's decision does not lack substantial evidence merely because inconsistent conclusions may be drawn from the same evidence. *Myers v. F.C.A. Services, Inc.*, 592 N.W.2d 354, 356 (Iowa 1999). Evidence is still substantial even though it would have supported contrary inferences. *Id.* In such a case we cannot interfere with the commissioner's findings of fact. *Id.* The findings of the commissioner are akin to a jury verdict, and we broadly apply them to uphold the commissioner's decision. *Id.* However, courts must not "simply rubber stamp the agency fact finding without engaging in a fairly intensive review of the record to ensure that the fact finding is itself reasonable." *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003).

III. Analysis. We first conclude the commissioner's review was de novo as required and proceed to consider the evidence. In his appeal decision, the commissioner stated:

Upon de novo review, it is apparent that the presiding deputy relied most heavily on the opinions of Ray Miller, M.D., and Raymond Stutts, D.O., Ph.D., to find that claimant's pre-existing conditions were substantially and permanently aggravated as a result of her injury of January 26, 2005. Both Dr. Miller and Dr. Stutts provide in-depth and substantiated medical opinions that are consistent

with claimant's ability to maintain her employment position prior to her fall, but no longer able to maintain her employment position following her fall.

The district court found this to be a credibility determination warranting deference.

The agency, as the fact finder, determines the weight to be given to any expert testimony. *Dodd v. Fleetguard, Inc.*, 759 N.W.2d 133, 138 (Iowa Ct. App. 2008). Such weight depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. *Id.*

Dr. Miller opined Pease's back and left ankle injuries were exacerbated by the injury to her right ankle.¹ In doing so, he relied on the history Pease provided him. Our review of the evidence, including surveillance video evidence that directly contradicts Pease's sworn testimony, reveals the accuracy of the history Pease provided is questionable. Dr. Miller's opinion must be viewed in light of this fact. The deputy also found Dr. Kline had "opined" Pease's back pain was caused by her abnormal gait following the ankle injury. Dr. Kline's notes reveal this was Pease's claim; however, his opinion was clearly given in a letter dated September 8, 2005, where he stated, "I would not attribute her ongoing need for treatment of her back to her ankle injury of 01/26/2005." The deputy's conclusion, adopted by the commissioner, was not supported by substantial evidence.

¹ Although the arbitration decision states Dr. Miller attributed Pease's neck problems to the left ankle injury, the commissioner correctly noted this finding was in error and disregarded it.

Dr. Stutts, who only saw Pease once, opined Pease's right ankle injury was a substantial contributing factor causing the level of depression she was experiencing, and the depression was more likely than not permanent. Again, his opinion was based in part on an inaccurate history of depression provided by Pease, who downplayed the depression she experienced prior to her right ankle injury. He was not told of the depression and medications taken before the January fall, nor was he aware of her reports to Dr. Eyanson on the day before the injury. The weight given to Dr. Stutts's opinion must be considered in light of these inaccuracies. The deputy's conclusion, adopted by the commissioner, was not supported by substantial evidence.

In our review of Pease's medical records, we note the lengthy history of symptoms relating to Pease's back, left ankle, and depression, including the symptoms Pease provided to Dr. Eyanson one day prior to her right ankle injury. We also note the conflicts in Pease's testimony, the surveillance videos showing Pease significantly more mobile than she reported to her medical providers, and the opinion of Dr. Crowe that Pease was malingering. In viewing the record as a whole, we cannot find the evidence is sufficient to establish a causal connection between Pease's right ankle injury in January 2005 and any worsening of back, left ankle, or depression symptoms. Because we find no causal connection between these injuries, we need not address the petitioners' argument regarding disability.

The petitioners also contend the agency erred in awarding Pease medical expenses for visits to certain doctors in July 2006 and for shoes purchased from

Famous Footwear in October 2006 because they were not related to the right ankle injury. Pease claims the July 2006 medical expenses are related to her depression. Because there is insufficient evidence to connect the right ankle injury with Pease's symptoms of depression, it was error to award her compensation for these expenses.

We reverse the district court ruling and remand to the district court for an order remanding the matter to the agency for entry of judgment denying Pease's claim for permanent total disability benefits and the disputed medical expenses.

REVERSED AND REMANDED.