

IN THE COURT OF APPEALS OF IOWA

No. 9-980 / 09-0808
Filed February 10, 2010

SWIFT & COMPANY,
Petitioner-Appellant.

vs.

AMOS E. FREEMAN,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen,
Judge.

Employer appeals from a district court judicial review ruling affirming the
workers' compensation commissioner's benefit award. **AFFIRMED.**

Timothy Wegman, Des Moines, for appellant.

Randall Schueller, Des Moines, for appellee.

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

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

EISENHAUER, P.J.

Swift & Company appeals from the district court's ruling affirming the Iowa Workers' Compensation Commissioner's decision awarding Amos Freeman permanent total disability benefits. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

In March 2001, Freeman started a manual labor job as a livestock supervisor for Swift. Freeman's prior employment included manual labor in both factory and construction jobs. In November 2004, Freeman sustained a left knee injury at work and Swift directed him to Dr. Cooper for treatment. By February 2005, Dr. Cooper noted Freeman was walking with a limp and, in March 2005, Dr. Cooper performed a left knee arthroscopic surgery. On May 18, 2005, Dr. Cooper returned Freeman to work without restrictions.

On June 28, 2005, Dr. Cooper saw Freeman for the last time and released him from care. Although Freeman was still having knee pain and stiffness, Dr. Cooper opined Freeman had no permanent restrictions and had reached maximum medical improvement (MMI) on June 9, 2005. Dr. Cooper assessed a five percent left lower extremity permanent functional impairment and indicated Freeman might need injections in his knee in the future.

Swift sent Freeman to Dr. Schulte for a second opinion on November 9, 2005. Freeman reported continued pain, swelling, stiffness, and catching of the knee. Dr. Schulte opined the degenerative arthritis in the knee was not work related. Dr. Schulte released Freeman to work without restrictions.

In January 2006, Freeman saw his family physician, Dr. Greenberg, who stated: “Going to need left knee replacement in the near future. He has had an arthroscopy with removal of some bone spurs and cartilage that did not help, probably made it worse.” In September 2006, Dr. Greenberg prescribed a painkiller for Freeman’s increasing knee pain and noted Freeman “is severely limited in [his] ability to walk.”

On October 16, 2006, Dr. Greenberg noted Freeman was walking with a cane, had an altered gait, and stated: “Some degenerative changes of back and large joints but not severe.” In subsequent fall appointments Dr. Greenberg continued to document chronic inflammation, altered gait, and cane usage. Dr. Greenberg’s November 16, 2006 disability evaluation stated Freeman is totally disabled from his regular occupation as of September 2006, and indicated he would probably require knee surgery.

On November 28, 2006, Dr. Greenberg injected Freeman’s left knee for the first time, with two subsequent injections in December 2006. Dr. Greenberg’s December 2006, January 2007, February 2007, and March 2007 office notes indicate Freeman is walking with an altered gait and using a cane.

Dr. Greenberg’s March 13, 2007 disability evaluation stated Freeman had a physical impairment—severe limitation of functional capacity making Freeman incapable of minimal sedentary activity and also noted restricted employment activities beginning September 2006 and continuing indefinitely.

On April 26, 2007, Dr. Cooper answered questions posed by Swift’s attorney. Dr. Cooper had not seen Freeman since June 2005, and indicated

Freeman had significant underlying degenerative changes predating his work injury. Dr. Cooper opined: "I think that his work injury would have aggravated his underlying degenerative changes but was not the major cause for his arthritis or any subsequent future total knee replacement."

Freeman returned to Dr. Greenberg on August 8, 2007, complaining of "intermittent nonradiating low back pain and some hip pain for approximately three months." Dr. Greenberg found Freeman had a reduced range of motion in both his hips and his back. During Freeman's last visit to Dr. Greenberg on August 14, 2007, Dr. Greenberg noted chronic back pain and knee pain, altered gait, cane usage, generalized degenerative changes in the spine, and reduced range of motion in both the neck and low back.

On November 13, 2007, Dr. Wolfe conducted an independent medical exam of Freeman. Freeman reported left knee, left hip, and low back pain, as well as activity limitations. Dr. Wolfe noted Freeman's altered gait and cane usage and opined Freeman's November 2004 work injury aggravated the underlying degenerative arthritis in his left leg causing a small tear in the medial meniscus. Dr. Wolfe stated Freeman's left hip and back pain was the result of the altered gait Freeman used as he attempted to avoid left knee pain while walking. Additionally, Dr. Wolfe indicated Freeman's altered gait may have also aggravated an underlying degenerative condition in his left hip and low back.

Based on his examination and on a detailed review of the other physicians' medical records, Dr. Wolfe opined Freeman sustained twenty percent impairment to the body as a whole. Dr. Wolfe recommended an orthopedic

consultation regarding a left knee replacement, an evaluation by a pain management physician, and a consultation with a rehabilitation physician.

At the March 2008 workers' compensation hearing, Swift argued Freeman's disability is confined to his left leg and is compensable as a scheduled member injury. Freeman argued his left leg injury has involved both his left hip and low back, which is compensable as an industrial disability. In concluding Freeman's altered gait developed from the left leg injury and aggravated his underlying degenerative arthritis in the left hip and low back, making those conditions a part of the injury, the deputy stated:

[Freeman] credibly testified the problems with his left hip and low back developed over time and were the result of favoring his right leg due to the pain in his left knee. The medical records would bear this out, as [Freeman's] subsequent altered gait problems developed later, after the initial work injury. Even Dr. Cooper recorded problems with [Freeman's] gait in February of 2005.

After concluding Freeman sustained a whole body injury including the hip and back, the deputy next analyzed Freeman's industrial disability and found him to be permanently and totally disabled. Finally, the deputy ordered Swift to provide the medical care recommended by Dr. Wolfe. Swift appealed to the industrial commissioner, who adopted the deputy's decision as its final agency action. The district court affirmed the agency action and this appeal followed.

II. SCOPE AND STANDARDS OF REVIEW.

Iowa Code section 17A.19 (2007) lists the instances when a court may, on judicial review, reverse, modify, or grant other appropriate relief from agency action. We do not apply a "scrutinizing analysis" to the commissioner's findings. *Midwest Ambulance Serv. v. Ruud*, 754 N.W.2d 860, 866 (Iowa 2008). Rather,

we are bound by the agency's findings of fact if supported in the record as a whole and will reverse only if we determine substantial evidence does not support the agency's findings. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). The question is not whether the evidence supports a different finding, but whether the evidence supports the findings actually made. *Id.* "The burden on the party who was unsuccessful before the commissioner is not satisfied by a showing that the decision was debatable, or even that a preponderance of evidence supports a contrary view." *Ruud*, 754 N.W.2d at 865.

Unlike the commissioner's findings of fact, "we give the commissioner's interpretation of the law no deference and are free to substitute our own judgment." *Lakeside Casino v. Blue*, 743 N.W.2d 169, 173 (Iowa 2007). "On the other hand, application of the workers' compensation law to the facts as found by the commissioner is clearly vested in the commissioner" and may be reversed "only if it is irrational, illogical, or wholly unjustifiable." *Id.*

III. CAUSATION.

Swift argues there is not substantial evidence supporting the agency's finding of a whole body condition causally related to the November 2004 injury. "A cause is proximate if it is a substantial factor in bringing about the result." *Blacksmith v. All-American, Inc.*, 290 N.W.2d 348, 354 (Iowa 1980).

At the hearing Freeman testified his low back and hip problems developed over time because he had to put more weight on his right leg due to his left knee pain. While we agree Dr. Greenberg's records do not specifically state the left hip and back pain is caused by the earlier knee injury, the records' numerous,

consistent notations of chronic knee pain accompanied by altered gait and cane usage buttress Freeman's testimony, which the deputy specifically found to be credible.

Swift also contends Dr. Wolfe's conclusions are faulty because his opinion is based on an inaccurate history given by Freeman. Dr. Wolfe's report states the work injury in November "caused sudden pain in the left knee as well as the left hip and back with the left knee being more severe than that of the left hip and back." However, Dr. Wolfe's accurate and detailed four-page review of Freeman's medical records documents significant knee pain upon injury and significant hip and back pain in the summer of 2007. We are satisfied Dr. Wolfe properly considered the relevant factual history of symptoms contained in the prior medical reports in reaching his conclusions.

Finally, Swift argues Freeman did not mention hip or back pain to Dr. Cooper during the entire time of treatment and Dr. Cooper opined the work injury "was not the major cause for his arthritis or any subsequent future total knee replacement." However, Cooper did note limping and his treatment ended in 2005. Freeman's hip and back problems developed gradually after he was seen by Dr. Cooper and Swift did not return Freeman to Cooper for an evaluation after his symptoms continued and progressed in 2007.

It is not the role of the district court on judicial review, or this court on appeal, to reassess the weight and credibility of expert opinion evidence. See *Arndt v. City of Le Claire*, 728 N.W.2d 389, 394-95 (Iowa 2007). Rather, the weight to be given evidence is exclusively within the agency's domain. *Titan Tire*

Corp. v. Employment Appeal Bd., 641 N.W.2d 752, 755 (Iowa 2002). Further, any expert opinion may be accepted or rejected in whole or in part. *Frye v. Smith-Doyle Contractors*, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997).

The district court ruled substantial evidence supported the agency's determination Freeman's back and hip problems were causally related to the original injury. When we review 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." *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464 (Iowa 2004). We agree with the district court.

IV. PERMANENT AND TOTAL DISABILITY.

Swift argues the agency's finding of permanent and total disability is unsupported by substantial evidence. In concluding Freeman had sustained permanent total disability, the deputy explained:

[Freeman] was sixty-six years old at the time of the hearing. [Freeman] has restrictions which prevent him from doing the manual labor work that he has done during all of his employment life. They will prevent [him] from returning to the job that he had for [Swift].

Total disability does not equate to a state of absolute helplessness. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 633 (Iowa 2000). Rather, "[s]uch disability occurs when the injury wholly disables the employee from performing work that the employee's experience, training, intelligence, and physical capacities would otherwise permit the employee to perform." *Id.* The issue is whether "there [are] jobs in the community the employee can do for which the employee can

realistically compete.” *Second Injury Fund v. Shank*, 516 N.W.2d 808, 815 (Iowa 1994). “Thus, the focus is not solely on what the worker can and cannot do; the focus is on the ability of the worker to be gainfully employed.” *Second Injury Fund v. Nelson*, 544 N.W.2d 258, 266 (Iowa 1995).

Based on Freeman’s functional impairment, high school education, severity of injury, manual labor work experience, age, and work restrictions, we agree with the district court’s conclusion substantial record evidence supports the agency’s finding of permanent and total disability.

V. MEDICAL CARE BENEFITS.

Swift challenges the agency’s order authorizing the medical care recommended by Dr. Wolfe and argues the agency failed to properly apply the alternate care standard. Swift reiterates neither Dr. Cooper nor Dr. Schulte recommend knee replacement surgery. We agree with and adopt the district court’s conclusion: “The authorized treating physicians in this case [Cooper/Schulte] had little by way of further care to offer Freeman and the care offered was certainly less extensive than the care proposed by Dr. Wolfe.” Substantial evidence supports the agency’s decision to award medical benefits in order to pursue the treatment options articulated by Dr. Wolfe. See *Pirelli-Armstrong Tire Co. v. Reynolds*, 562 N.W.2d 433, 436 (Iowa 1997) (stating offering no care is the same as offering no care reasonably suited to treat the injury).

AFFIRMED.