

IN THE COURT OF APPEALS OF IOWA

No. 2-1091 / 12-0895
Filed February 13, 2013

JOSE SANCHEZ,
Petitioner-Appellant,

vs.

CELADON TRUCKING SERVICES,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Carla T. Schemmel,
Judge.

Petitioner appeals the district court's judicial review ruling affirming the workers' compensation commissioner's decision on Petitioner's review-reopening petition. **AFFIRMED.**

William J. Bribriesco of William J. Bribriesco and Associates, Bettendorf,
for appellant.

Charles Blades of Scheldrup Law Firm, P.C., Cedar Rapids, for appellee.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

MULLINS, J.

Jose Sanchez appeals the district court's judicial review ruling, which affirmed the workers' compensation commissioner's decision, asserting he is entitled to additional workers' compensation benefits and the employer is entitled to a smaller lien on the proceeds from his third-party settlement. We affirm the decision of the district court.

Sanchez was injured in an accident in Muscatine in the course and scope of his employment with Celadon Trucking. Sanchez settled a third-party lawsuit against the driver at fault for the accident for a gross settlement of \$200,000. Celadon was reimbursed its lien to date for the workers' compensation benefits already paid minus its pro-rata share of attorney fees and litigation costs. Because there were funds remaining after Celadon was paid its lien, Celadon retained a lien for future workers' compensation payments it would become liable to pay. See Iowa Code § 85.22(1) (2011). Following a hearing, the workers' compensation carrier awarded Sanchez twenty-five percent industrial disability.

Sanchez filed a review-reopening proceeding seeking additional compensation by asserting his physical condition had worsened and his industrial disability had increased. Sanchez also sought an adjudication of the extent of Celadon's remaining lien from the third-party settlement. After a hearing the deputy commissioner ruled Sanchez was not entitled to any additional workers' compensation benefits. The deputy found Sanchez lacked credibility. That finding, coupled with the conflicting medical opinions as to his physical condition, resulted in the deputy concluding, "I am unable to find that [Sanchez] has

suffered a change of condition, including any worsening of his earning capacity.” The deputy also found Celadon’s calculation of the amount of its current lien to be correct and ordered the lien to be honored by Sanchez.¹ Sanchez appealed the decision to the commissioner, who summarily affirmed the decision of the deputy on both issues.

Sanchez then petitioned the district court for judicial review. The district court agreed with the commissioner’s decision concluding substantial evidence supports the commissioner’s decision that Sanchez had not suffered a worsening of his physical condition or a decrease in his earning capacity. The court also agreed that Celadon’s calculation of the lien was correct.

Sanchez appeals asserting the district court erred in affirming the decision of the commissioner. Sanchez claims he has met his burden to show a worsening of his physical condition and a decrease in his earning capacity. He also claims the current amount of the lien is \$10,912.69.

Because Sanchez asserts the agency’s determination is not supported by substantial evidence, our review is governed by Iowa Code section 17A.19(10)(f). We judge the agency’s findings, “in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it.” *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011) (citing Iowa Code §

¹ The deputy’s decision, along with the appeal decision of the commissioner, stated the lien amount to be \$63,385.88. All documents submitted by Celadon to the agency and on judicial review claim the lien amount was \$64,385.88. Because the deputy accepted Celadon’s calculation without any reference to the \$1000 difference, we determine the agency’s recitation of the amount was simply a scrivener’s error, and commissioner intended to order the lien amount as \$64,385.88.

17A.19(10)(f)(3)). “Evidence is not insubstantial merely because different conclusions may be drawn from the evidence.” *Id.* “Our task, therefore, is not to determine whether the evidence supports a different finding; rather, our task is to determine whether substantial evidence, viewing the record as a whole, supports the findings actually made.” *Id.* It is the commissioner’s duty to weigh the evidence, determine the credibility of witnesses, and decide the facts in issue. *Arndt v. City of Le Claire*, 728 N.W.2d 389, 394–95 (Iowa 2007). “The reviewing court only determines whether substantial evidence supports a finding ‘*according to those witnesses whom the [commissioner] believed.*’” *Id.* at 395 (citation omitted).

While Sanchez asserts we should reverse the agency’s decision because he had satisfied his burden to prove by a preponderance of the evidence that his condition had worsened and his earning capacity had decreased, our review is limited to determining whether substantial evidence supports the decision the agency made. *See id.* We do not reweigh the evidence to see if the evidence could support the decision he desires. *See id.* There was medical evidence to support the agency’s conclusion that no change in condition occurred between the arbitration decision and the review-reopening proceeding. The agency did not find Sanchez credible, and we give weight to the agency’s finding as it is the agency’s duty to decide credibility. *See id.* We find substantial evidence supports the agency’s determination, and we affirm the district court’s judicial review ruling on this ground.

Sanchez also challenges the agency's acceptance of Celadon's calculation of its future lien, which resulted from the third-party settlement. Iowa Code § 85.22(1) provides:

If compensation is paid the employee . . . under this chapter, the employer by whom the same was paid, or the employer's insurer which paid it, shall be indemnified out of the recovery of damages to the extent of the payment so made, . . . and shall have a lien on the claim for such recovery and the judgment thereon for the compensation for which the employer or insurer is liable.

The future lien is to be reduced by the reasonable litigation costs and attorney fees incurred in obtaining the third-party recovery. *Sourbier v. State*, 498 N.W.2d 720, 725 (Iowa 1993). The lien serves a double purpose: "to prevent double recovery by the injured worker and to secure total reimbursement for the employer/insurer out of the proceeds of recoveries made against third parties." *Shirely v. Pothast*, 508 N.W.2d 712, 718 (Iowa 1993). As future benefits to Sanchez become payable, Celadon is responsible for reimbursing Sanchez an amount equal to the attorney fees and litigation costs Sanchez incurred in the third-party settlement, which are applicable to that payment. See *Ewing v. Allied Constr. Servs.*, 592 N.W.2d 689, 690–91 (Iowa 1999). We agree with the district court and the agency that Celadon has correctly calculated its lien in this case.

AFFIRMED.