IN THE COURT OF APPEALS OF IOWA

No. 3-782 / 13-0288
Filed September 18, 2013

RICHARD DECKERT,
Plaintiff-Appellant/Cross-Appellee,

vs.

JELD-WEN, INC.,
Defendant-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

A workers' compensation claimant contends that the commissioner erred in concluding that he was not permanently and totally disabled, and the employer cross-appeals, asserting the claimant should not have been afforded healing period benefits. **AFFIRMED.**

Gary Nelson of Rush & Nicholson, P.L.C., Cedar Rapids, for appellant.

Joseph A. Quinn of Nyemaster Goode, P.C., Des Moines, for appellee.

Considered by Eisenhauer, C.J., and Vaitheswaran and Doyle, JJ.

VAITHESWARAN, J.

Richard Deckert was exposed to certain chemicals while working at Jeld-Wen, Inc. He developed a sensitivity to those chemicals, which prevented him from continuing to work in an environment that contained them. Deckert petitioned for workers' compensation benefits, contending he was permanently and totally disabled. The commissioner found industrial disability of twenty-five percent rather than one hundred percent.

Deckert appeals that determination. Jeld-Wen cross-appeals from the portion of the commissioner's decision awarding Deckert healing period benefits.

I. Appeal

"Industrial disability measures an injured worker's lost earning capacity." *Myers v. F.C.A. Servs., Inc.,* 592 N.W.2d 354, 356 (Iowa 1999). "The focus is not solely on what the workers can or cannot do; industrial disability rests on the ability of the worker to be gainfully employed." *Id.* A challenge to the commissioner's industrial disability determination is a challenge to the agency's application of law to facts and will not be disrupted unless the application is "irrational, illogical, or wholly unjustifiable." *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 526 (Iowa 2012) (quotation marks and citation omitted).

The deputy commissioner, whose arbitration decision was affirmed on intra-agency appeal, provided a detailed explanation for her determination that Deckert only had industrial disability of twenty-five percent rather than one hundred percent. She noted that Deckert was fifty-seven years old and had a high school diploma and a current commercial driver's license. She explained that, while he had a lifting restriction associated with his right arm, he was able to

perform his job at Jeld-Wen without accommodation. She cited a physician's opinion that Deckert's asthma resulting from exposure to diisocyanates resulted in a permanent impairment of twenty-five percent of the body as a whole. She noted that "[t]he only restriction claimant has is that he not be exposed to isocyanate or diisocyanates" and "the record is silent as to the prevalence of isocyanate or diisocyanates in the environment or the workplace." She acknowledged that while "[c]laimant's restriction prevented him from returning to work at the Jeld-Wen plant where he worked," "he was offered work at another Jeld-Wen plant where he would not be exposed to isocyanate or diisocyanates and he declined because he did not want to move." She also evaluated the conflicting vocational evidence and determined that an opinion finding Deckert unemployable was "inconsistent with the facts that claimant's only additional restriction from his occupational asthma [w]as no exposure to isocyanate or diisocyanates." She pointed out that Deckert temporarily continued a part-time job after leaving Jeld-Wen. Finally, she found that Deckert's "inability to find work other than at the Jeld-Wen plant where he worked is not because of his restriction regarding isocyanate or diisocyanates." These findings are supported by substantial evidence. *See* Iowa Code § 17A.19(10)(f) (2011). Additionally, the commissioner's application of law to fact resulting in the assignment of twenty-five percent industrial disability is not "irrational, illogical, or wholly unjustifiable." *See Neal*, 814 N.W.2d at 526.

II. Cross-Appeal

The deputy commissioner awarded healing period benefits for just under a year. Healing period benefits are payable

> until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

Iowa Code § 85.34(1); *see Broadlawns Med. Ctr. v. Sanders*, 792 N.W.2d 302, 306–07 (Iowa 2010).

The deputy commissioner found that "[i]f substantially similar employment for claimant would be employment that involved exposure to isocyanate or diisocyanates, he is not able to do substantially similar employment." The deputy also found that under the clear opinion of a physician as to when Decker reached maximum medical improvement, Deckert was entitled to healing period benefits until that date of maximum medical improvement. These findings were affirmed on intra-agency appeal.

Jeld-Wen contends the commissioner erroneously interpreted the statutory provision on healing period benefits. We are convinced the employer's challenge is not to the commissioner's interpretation of the statute but to the commissioner's findings of fact cited above, which we review for substantial evidence. *See* Iowa Code § 17A.19(10)(f). Those findings are supported by substantial evidence.

If Jeld-Wen's argument could be read as a challenge to the commissioner's interpretation of the statute, we discern no error in that interpretation. *See Waldinger Corp. v. Mettler*, 817 N.W.2d 1, 7 (Iowa 2012) (concluding commissioner was not clearly vested with authority to interpret section 85.34(1) and, accordingly, reviewing for errors of law rather than to determine whether interpretation was "irrational, illogical, or wholly unjustifiable").

Contrary to Jeld-Wen's assertion, the commissioner did not interpret section 85.34(1) to require "that a physician specifically opine that a Claimant was capable of substantially similar employment." The commissioner did exactly what Jeld-Wen asked it to do: "consider the evidence and determine whether the medical restrictions imposed would allow a Claimant to perform substantially similar employment." Accordingly, we affirm the commissioner's healing period award.

AFFIRMED.