IN THE COURT OF APPEALS OF IOWA

No. 3-805 / 12-2296
Filed November 20, 2013

SMITHWAY MOTOR XPRESS, INC.,
n/k/a WESTERN XPRESS,
Petitioner-Appellant,

vs.

JAMES MCDERMOTT,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Mary Pat Gunderson, Judge.

Smithway Motor Xpress appeals the district court ruling affirming the workers' compensation commissioner's decision finding James McDermott had suffered a compensable workplace injury. **AFFIRMED.**

Maureen Roach Tobin and Ashleigh E. O'Connell of Whitefield & Eddy, P.L.C., Des Moines, for appellant.

Ryan T. Beattie of Beattie Law Firm, P.C., Des Moines, for appellee.

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

BOWER, J.

Smithway Motor Xpress appeals the district court ruling affirming the workers' compensation commissioner's decision finding James McDermott had suffered a compensable workplace injury, which resulted in a forty percent permanent partial disability. Smithway argues the workers' compensation commissioner's decision is not supported by substantial evidence; is the product of a process which failed to consider important evidence; and is the product of an irrational, illogical, or otherwise unreasonable decision making process. We find the commissioner considered all relevant evidence, the decision is supported by substantial evidence, and the commissioner engaged in a rational decision-making process.

I. Background Facts and Proceedings

James McDermott is a former employee of Smithway Motor Xpress (Smithway). McDermott was employed by Smithway as a truck driver when he suffered an injury to his back on December 29, 2008. The injury was not reported to Smithway until January 15, 2009. McDermott was sent to see Dr. Epp who noted back pain and pain in the left SI joint. Dr. Epp suggested physical therapy and medication to treat the injury and asked to see McDermott two weeks later. None of these recommendations were followed. McDermott was offered work by Smithway that would accommodate his injury; however, McDermott turned down the offer because of impending medical leave due to an unrelated surgery.

On February 11, 2009, while on medical leave, McDermott saw his primary care physician, Dr. Kahn, complaining of lower back pain. Dr. Kahn noted the injury was an exacerbation of a preexisting condition caused by lifting weight at work. McDermott returned to work on February 18, 2009, and continued working for Smithway until he resigned.

McDermott began working for Amhof, another trucking company, on April 7, 2009. Before he could begin his employment at Amhof, he was required to file a medical examination report and engage in a department of transportation (DOT) physical. McDermott did not mention lower back pain on the report and the DOT physical did not note any back problems.[1] On May 19, 2009, McDermott returned to see Dr. Kahn for lower back pain. Dr. Kahn reexamined McDermott on July 30, 2009, and noted lower back pain and pain in the right SI joint. At this time Dr. Kahn referred McDermott to Dr. Pederson, who issued a report that noted a history of chronic low back pain worsening in the prior six months.

McDermott was examined by Dr. Neiman for purposes of an independent medical evaluation (IME) on June 17, 2010. The IME found a causal connection between McDermott's back problems and the December 29, 2008 workplace injury.

McDermott filed a claim for workers' compensation benefits, which proceeded to an arbitration hearing before Deputy Commissioner Walleser. The arbitration decision denied benefits because McDermott had failed to prove a

[1] McDermott admits he withheld the facts of his back injury from Amhof so he would be hired.

causal connection between the December 29, 2008 incident and his ongoing symptoms. The deputy's decision was overturned on appeal by the workers' compensation commissioner who decided a causal connection had been established and McDermott was entitled to forty-percent permanent partial disability. The decision of the commissioner was affirmed by the district court on judicial review.

II. Standard of Review

The standard of review in workers' compensation cases is governed by section 17A.19(10) (2009) of the Iowa Administrative Procedures Act. *See Meyer v. IBP, Inc.*, 710 N.W.2d 213, 216 (Iowa 2006). The court may reverse, modify, or grant other relief when the commissioner's decision meets any of the criteria found in section 17A.19(10).

A. Substantial Evidence

When presented with a substantial-evidence argument, we are bound by the commissioner's decision if the evidence is of "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." Iowa Code § 17A.19(10)(f)(1). We view the evidence in light of all relevant evidence in the record. *Id*. § 17A.19(10)(f)(3). The substantial evidence standard applies to the commissioner's findings on the operative facts from the evidence presented. *See Meyer*, 710 N.W.2d at 219.

B. Causation

The question of causation, however, raises a mixed question of law and fact. In such circumstances, we consider whether relevant facts have been considered and whether the law was applied in an unjustifiable, irrational, or illogical manner. *Id.* We then consider whether the agency abused its discretion in reaching the ultimate conclusion. *Id.* at 219–20.

The facts of this case are not in dispute. Smithway challenges the ultimate conclusion reached by the commissioner, so we consider whether an error was made in applying the law to the facts.

III. Discussion

B. Causal Connection

Smithway argues the commissioner erred in finding a causal connection between the December 29, 2008 incident and McDermott's ongoing symptomology. There is no dispute McDermott was injured at work on December 29, 2008, and McDermott continues to have pain and discomfort. The issue before us is whether the December 29, 2008 incident is causally related to McDermott's continuing symptoms.

The commissioner relied on Dr. Nieman's report, which specifically found a causal connection between the workplace injury and McDermott's symptoms. In his report, Dr. Neiman found McDermott had a preexisting condition, which became symptomatic after the workplace injury. Smithway argues the commissioner ignored the fact McDermott first complained of left side pain at the SI joint, but later complained of right side pain at the SI joint. Smithway contends

this indicates the symptoms McDermott continues to experience are unrelated to the symptoms initially reported.

We find the commissioner considered all relevant evidence in reaching his conclusion. Though McDermott's failure to seek treatment immediately, failure to follow up on recommendations by his first treating physician, and a change in his symptoms from the left to the right side SI joint could lead a rational observer to conclude there is no causal connection between his current symptoms and the workplace injury, the only doctor's opinion on causation states the workplace injury is the cause of his ongoing condition. Whether causation exists is "essentially within the domain of expert testimony." *Dunlavey v. Econ. Fire & Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995). No doctor concluded McDermott's symptoms were unrelated to the workplace injury, and the commissioner is entitled to rely upon the one expert opinion provided.

Smithway contends Dr. Nieman's opinion must be rejected because it was based upon an inaccurate medical history. It is true McDermott was less than honest at times about his medical condition and history. Assuming he was partially dishonest in explaining his medical history to Dr. Nieman, however, it does not follow the doctor's opinion must be rejected entirely. It is within the discretion of the commissioner to accept or reject opinion testimony, and the commissioner is to decide how much weight the expert opinion should be given based, in part, upon the accuracy of facts presented to the expert. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 632 (Iowa 2000). The commissioner properly weighed the testimony and was entitled to rely on it as he believed appropriate.

B. Industrial Disability

Smithway argues the commissioner erred in determining McDermott suffered a forty percent industrial disability. Industrial disability is a measurement of reduced earning capacity. *Guyton v. Irving Jenson Co.*, 373 N.W.2d 101, 104 (Iowa 1985). Physical capacity is only one of several factors to be considered by the commissioner in assessing industrial disability. *Id.* The commissioner must also consider the employee's education, age, work experience, and capacity for retraining. *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998). The commissioner's focus is on the ability of the injured worker to be employed. *Keystone Nursing Care Ctr. v. Craddock*, 705 N.W.2d 299, 306 (Iowa 2005).

McDermott is forty-years old with a high school education. Most of his professional life has been spent driving trucks or buses. He suffers from a fourteen percent functional impairment and has lifting restrictions. Amhof terminated him from his employment because of these restrictions. The commissioner examined each of these factors and noted McDermott is relatively young and has taken a driving position that accommodates his restrictions and impairment. McDermott has also started working on a degree in the culinary arts. He cannot, however, return to the type of truck driving he previously performed. It is inconsequential we might draw a different conclusion from the same evidence. *See Mercy Health Ctr. v. State Health Facilities Council*, 360 N.W.2d 808, 811–12 (Iowa 1985). Nor does the possibility that, because of his retraining and further education, his earnings might increase in the future require a lower industrial disability rating. *See Craddock*, 705 N.W.2d at 306.

There is no dispute about the facts of the case. The commissioner considered each piece of relevant evidence in reaching his conclusions. We find no error in the decision making process employed by the commissioner.

AFFIRMED.