IN THE COURT OF APPEALS OF IOWA

No. 6-906 / 05-1889
Filed December 13, 2006

WADE GREEN,
Petitioner-Appellant,

vs.

WEITZ CONSTRUCTION,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Karen A. Romano, Judge.

Wade Green appeals the decision of the district court affirming the agency's final decision finding Green failed to prove causation. **AFFIRMED.**

Nathaniel R. Boulton and Joseph L. Walsh, Des Moines, for appellant.

Joseph Barron and Timothy Wegman of Peddicord, Wharton, Spencer & Hook, LLP, Des Moines, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

EISENHAUER, J.

Wade Green appeals the decision of the district court affirming the workers' compensation commissioner's final decision finding Green failed to prove causation.

On August 23, 2000, Green, a union carpenter, was working for Weitz Construction Co. when he fell and sustained an injury arising out of and in the course of his employment. Green contends he injured his neck in the fall and as a result is entitled to workers' compensation benefits. The deputy workers' compensation commissioner denied Green benefits, concluding he failed to establish a causal nexus by a preponderance of the evidence. The commissioner affirmed the deputy's decision denying the claim. On judicial review, the district court agreed with the deputy and reached the same conclusion. Green seeks further judicial review.

Our review in workers' compensation cases is governed by the Iowa Administrative Procedure Act, Iowa Code chapter 17A. *Myers v. F.C.A. Services, Inc.*, 592 N.W.2d 354, 356 (Iowa 1999). Under the Act, we may only interfere with the commissioner's decision if it is erroneous under one of the grounds enumerated in the statute, and a party's substantial rights have been prejudiced. Iowa Code section 17A.19(10) (2005). If there is substantial evidence in the record to support the agency's determinations of fact, then we are bound by such determinations. *Meyer v. IBP, Inc.,* 710 N.W.2d 213, 218 (Iowa 2006). We give some discretion to the agency's application of law to fact, but these decisions may be affected by erroneous interpretation of law, irrational reasoning, failure to consider relevant facts, or irrational, illogical, or wholly

unjustifiable application of law to the facts. *Id.* We afford no discretion when the agency exercises its decision based on an erroneous interpretation of law. *Id.*

Green was seen by and obtained evaluations from several physicians following the accident. N. John Prevo, D.O. evaluated and treated Green between September 7 and November 7, 2000. Prevo diagnosed Green with "carpal ulnar tunnel." In a letter to Weitz's counsel, Prevo agreed there was no causal connection between Green's alleged injury of August 23, 2000, and his carpal tunnel and ulnar tunnel syndrome. But, Prevo noted that it was possible the fall and contusion could have aggravated Green's cervical spine disease. Nonetheless, Prevo agreed Green's July 2002 surgery[1] was "related to [Green's] longstanding central stenosis and spondylosis as opposed to the alleged work injury of August 23, 2000." Prevo referred Green to Dr. Lynn M. Nelson. Nelson's "impressions" were "right cubital tunnel and carpal tunnel syndrome," "status post C4-5, C5-6 anterior cervical diskectomy and fusion," and "C6-7 spondylosis." Nelson opined, "I, like Dr. Prevo, cannot well relate cubital and/or carpal tunnel syndrome to the reported fall. . . ." Nelson further opined that Green's July 2002 surgery was not causally connected with the August 23 injury, nor did the alleged injury cause the need for the surgery.

Jerome G. Bashara, M.D. performed an independent medical evaluation of Green's cervical spine. Bashara opined, "This [severe spinal stenosis C3-4 and C6-7, postoperative fusion at both levels] is a substantial aggravation of a preexisting condition, which was caused by an injury on 8/23/00." Bashara gave Green an 18 percent partial physical impairment of his body as a whole.

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[1] On July 9, 2002, Dr. Patrick W. Hitchon performed C3-4 and C6-7 anterior cervical diskectomy infusion with plating on Green.

Dr. Hitchon, who performed the July 2002 surgery, diagnosed Green with "degenerative disease of the cervical spine with cervical stenosis." He opined, "Based on the history and the statements by Mr. Green it appears that the injury did contribute to aggravation of underlying pre-existing pathology in the cervical spine." However, approximately two months later when asked to confirm whether the degenerative disease and cervical stenosis was not the result of any work injury, Hitchon stated:

> Degenerative disease can occur due to a multitude of factors including participation in contact sports, multiple trauma and repetitive injury. These changes may or may not be related to ones work. . . . I believe that the period of time from injury to physician consultation is important in establishing a relationship. Mr. Green was first seen by me in January of 2002, nearly 1-1/2 years following the injury of August 2000.

The deputy commissioner found the opinions of Dr. Prevo and Dr. Nelson—that there was no causal nexus between the July 2002 surgery and the August 23 injury–did not support Green's claim. The deputy found Dr. Hitchon "retreated" from his opinion that the injury contributed to the aggravation of Green's underlying pre-existing pathology in the cervical spine, and his opinion was "clearly not supportive" of Green's claim either. The deputy acknowledged that Bashara opined the injury was the cause of the substantial aggravation of a preexisting condition. But, the deputy discounted Bashara's opinion because it failed to address two significant facts: "Green denied neck pain when he first sought medical treatment three days after the original injury, and did not begin to develop numbness in the right extremity until a few days before visiting Dr. Prevo on September 7, 2000, two weeks later." The deputy accepted the opinions of Prevo, Nelson and Hitchon as "more persuasive." Thus, based on their opinions,

the deputy found Green failed to establish the necessary causation and denied Green benefits.

The commissioner "affirm[ed] and adopt[ed] as final agency actions those portions of the proposed decision in this matter that relate to issues properly raised on intra-agency appeal," with a short additional analysis clarifying that Hitchon was aware of Green's pre-2000 cervical problems.[2] Nonetheless, the commissioner agreed with the deputy that Hitchon's views are not particularly supportive of Green's claim and the claim was properly denied.

On judicial review, the district court agreed that Dr. Nelson and Dr. Prevo did not find a causal connection between the August injury and the need for surgery in July 2002. The court found substantial evidence supported the conclusion of the agency. The district court also found the commissioner's decision comported with the requirements of Iowa Code section 17A.16. The court affirmed the agency decision.

Green contends the deputy's decision with respect to the medical causation is "wholly illogical as to render it irrational, or a wholly unjustifiable application of law to fact." *See* Iowa Code § 17A.19(10)(i), (m). The commissioner may accept or reject opinion testimony on causation in whole or in part because the commissioner, as the fact finder, determines the weight to be

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[2] Green obtained a spinal fusion in 1990 following a work-related injury. Hitchon's second opinion, which the deputy interpreted as "retreating" from his first opinion, actually stated:

> Mr. Green was seen on June 17, 2002 after review the above diagnostic studies surgery was recommended for the treatment of his narrowing and his symptoms. These recommendations were made without knowledge of a pre-existing injury in August of 2000.

The deputy restated Hitchon's opinion as saying that Hitchon "had previously been unaware of an injury *preceding* August 2000." (Emphasis added).

given to any expert testimony. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 631 (Iowa 2000); *Sherman v. Pella Corp*., 576 N.W.2d 312, 321 (Iowa 1998). The deputy adopted the opinions of Drs. Nelson, Prevo and Hitchon, and rejected the opinion of Dr. Bashara. Dr. Nelson opined that the "alleged injury of August 23, 2000 did not cause the need for the surgery of July 2002 and is further supported by the surgery being necessary at two levels." Dr. Prevo agreed with Dr. Nelson "that the subsequent surgery performed by Dr. Hitchon would be related to the claimant's long standing central stenosis and spondylosis as opposed to the alleged work injury of August 23, 2000." Whether an injury has a direct causal connection with the employment or arose independently thereof is essentially within the domain of expert testimony. *Dunlavey v. Economy Fire and Cas. Co*., 526 N.W.2d 845, 853 (Iowa 1995); *Blanchard v. Belle Plaine/Vinton Motor Supply Co*., 596 N.W.2d 904, 909 (Iowa Ct. App. 1999). Remembering the agency was free to accept or reject the experts' opinions, even if the deputy misinterpreted the statement of Dr. Hitchon as Green argues, the opinions of Dr. Prevo and Dr. Nelson provided substantial evidence to support the findings of the agency. And, the deputy explained why he discounted Dr. Bashara's opinion. We cannot conclude the deputy's decision is illogical as to render it wholly irrational, or is a wholly unjustifiable application of law to fact.

Green also asserts the agency decision did not contain separate findings of fact and conclusions of law as required by Iowa Code section 17A.16. We disagree and find the decision comports with the statute. Additionally, Green contends the agency applied an incorrect test regarding medical causation. The deputy stated the law on causation as:

> Green has the burden of proving by a preponderance of the evidence the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. *Blacksmith v. All-American, Inc.*, 290 N.W.2d 348, 354 (Iowa 1980).

This is a correct statement of the law. *See Miller v. Lauridsen Foods, Inc.*, 525 N.W.2d 417, 420 (Iowa 1994). Green's contention is without merit.

The agency decision is supported by substantial evidence and based upon a correct application of law. We affirm the decision of the district court, affirming the agency decision.

AFFIRMED.