In the Missouri Court of Appeals
Eastern District

DIVISION ONE

LINDA MILLER, Appellant, vs. HENNIGES AUTOMOTIVE SEALING SYSTEMS NORTH AMERICA, INC., TRAVELERS INDEMNITY COMPANY OF AMERICA, and TREASURER OF MISSOURI AS CUSTODIAN OF THE SECOND INJURY FUND, Respondents.	)	No. ED109432 Appeal from the Labor and Industrial Relations Commission FILED: September 14, 2021

Introduction

Linda Miller ("Miller") appeals from the decision of the Labor and Industrial Relations Commission (the "Commission") granting the Second Injury Fund's ("SIF's") motion to dismiss Miller's Application for Review ("AFR") of two awards made by an administrative law judge ("ALJ") on Miller's claims against the Respondents. Miller raises one point on appeal. Miller claims the Commission acted without or in excess of its power when it granted the SIF's motion to dismiss. The SIF challenged the AFR claiming that it did not comply with the requirements of

8 C.S.R. 20-3.030(3)(A)[1] because the AFR summarily stated that the awards of the ALJ were not supported by competent and substantial evidence without providing the specificity required to explain why the ALJ's awards were wrong. Because Miller specifically stated the reasons she maintains the findings and conclusions of the ALJ were not properly supported by the evidence, the Commission erred in granting the SIF's motion to dismiss the AFR. Accordingly, we reverse the Commission's decision and remand to the Commission to continue proceedings consistent with this opinion.

Factual and Procedural History

Miller brought her workers' compensation claims for two work-related injuries, which were consolidated for a hearing before an ALJ on October 19, 2019. The first claim involved an acute injury to the cervical and thoracic spine occurring in August 2015. The second claim was for a bilateral, upper-extremity injury caused by occupational disease through January 1, 2016. The ALJ issued final awards finding the 2015 injury was not compensable and awarding permanent partial disability benefits against the employer for the 2016 injury. The ALJ awarded no benefits from the SIF in either claim.

Miller filed an AFR with the Commission in which she alleged the ALJ's awards were not supported by competent and substantial evidence. More specifically, Miller reasoned that the ALJ misapplied the restrictions placed on her by Dr. Raymond Cohen ("Dr. Cohen"). Miller's AFR noted that Dr. Cohen corrected his initial report by clarifying "that the bilateral upper extremity restrictions are attributable to the 2016 occupational disease injury and ***not***, the 2015 injury by accident." Miller claims that in the awards for the 2015 injury and 2016 injury, the ALJ, improperly "ignor[ed] the addendum and deposition of Dr. Cohen".

[1] All Code of State Regulations references are to 8 C.S.R. 20-3.030 (Oct. 30, 2019).

Henniges Automotive Sealing Systems North America, Inc. ("Henniges"), Miller's employer, filed an answer in response to Miller's AFR. Miller filed her brief and a motion to submit additional evidence regarding her AFR. The SIF then moved the Commission to dismiss the AFR because it did not satisfy the pleading requirements of 8 C.S.R. 20-3.030(3)(A). Miller filed responsive briefing and Henniges submitted its response in support of the SIF's motion to dismiss. Miller and Henniges both requested oral argument before the Commission. On January 5, 2021, the Commission issued an order granting the SIF's motion to dismiss, finding Miller's AFR failed to satisfy the minimum requirements pursuant to 8 C.S.R. 20-3.030(3)(A).

Point on Appeal

In Miller's sole point on appeal, she claims the Commission acted without or in excess of its power when granting the SIF's motion to dismiss by finding that Miller's AFR failed to satisfy the minimum requirements of 8 C.S.R. 20-3.030(3)(A) in that the AFR sufficiently specifies the reasons Miller asserts the findings and conclusions of the ALJ are not properly supported.

Standard of Review

We may modify, reverse, remand or set aside the Commission's decision on limited grounds. Section 287.495.[2] When the Commission dismisses an application for review, we review only whether the Commission "acted without or in excess of its power." Crawford v. Ronald McDonald House Charities, 587 S.W.3d 696, 698 (Mo. App. S.D. 2019) (quoting Dickens v. Hannah's Enters., Inc., 360 S.W.3d 910, 913 (Mo. App. S.D. 2012); Wilkey v. Ozark Care Ctr. Partners, L.L.C., 236 S.W.3d 101, 103 (Mo. App. S.D. 2007)). The claimant bears the burden to "establish error that warrants relief." Id. at 699 (quoting Dickens, 360 S.W.3d at 913).

[2] All Section references are to RSMo (2016), unless otherwise indicated.

Discussion

The Commission has the authority to enact and enforce procedural rules governing review of ALJ decisions, including the rule at issue on appeal, 8 C.S.R. 20–3.030(3)(A). See Taluc v. Trans World Airlines, 34 S.W.3d 831, 833 (Mo. App. E.D. 2000); Szydlowski v. Metro Moving & Storage Co., 924 S.W.2d 325, 327 (Mo. App. E.D.1996); see also Mo. Nat'l Educ. Ass'n v. Mo. State Bd. of Mediation, 695 S.W.2d 894, 897 (Mo. banc 1985) (holding "[r]ules of a state administrative agency duly promulgated pursuant to properly delegated authority have the force and effect of law and are binding upon the agency adopting them"). Missouri courts have previously upheld 8 C.S.R. 20-3.030(3)(A) as a lawful exercise of the Commission's authority to promulgate rules. Crawford, 587 S.W.3d at 699 (internal citation omitted).

Given our limited review of the motion to dismiss the AFR, we do not address the substance of Miller's claim that the ALJ misapplied the restrictions from Dr. Cohen. See id. at 698. Rather, we review the AFR to determine whether, consistent with the requirements of 8 C.S.R. 20-3.030(3)(A), Miller sufficiently specified her reasons as to how and why the ALJ misapplied Dr. Cohen's restrictions when issuing the awards. See id.

Miller posits the Commission erred in granting the SIF's motion to dismiss her AFR because she complied with the plain language of 8 C.S.R. 20-3.030(3)(A) which provides:

> An applicant for review of any final award, order, or decision of the administrative law judge shall state specifically in the application the reason the applicant believes the findings and conclusions of the administrative law judge on the controlling issues are not properly supported. It shall not be sufficient merely to state that the decision of the administrative law judge on any particular issue is not supported by competent and substantial evidence. The allegations of error in an application for review are not an opportunity for early briefing, but rather serve to notify the commission and opposing parties of the nature of the issues that will be addressed on appeal. Accordingly, the application for review should not extend beyond a maximum of five (5) pages. The [C]ommission may decline to consider any portion of an application for review that extends beyond this page limitation.

We previously have held an AFR fails to meet the pleading requirements of 8 C.S.R. 20-3.030(3)(A) when it "provides no specific allegation as to why the [ALJ] may have erred or how the decision is not properly supported by evidence as required by the Commission's rule." Taluc, 34 S.W.3d at 834. Additionally, other courts routinely have held that bare recitation of the substantial-evidence standard in an AFR ***without specification*** does not comply with 8 C.S.R. 20-3.030(3)(A). See Crawford, 587 S.W.3d at 699–700 (holding that "a [claimant] must state specifically ***why*** the ALJ's decision was wrong"); Wilkey, 236 S.W.3d at 102 (finding a claimant's "'reasons' failed to specifically identify why the [ALJ's] findings and conclusions were not properly supported by the record that was before that judge").

Here, the Commission found Miller's AFR to be insufficient because it "does not specifically state the issues within the [ALJ's] awards that she is appealing." The Commission seemingly bases its action on the coversheet of Miller's AFR, which simply states that the decision of the ALJ was "not supported by substantial evidence." If Miller's AFR was limited to the coversheet, we would agree that the AFR was insufficient under 8 C.S.R. 20-3.030(3)(A). See Crawford, 587 S.W.3d at 700 (quoting 8 C.S.R. 20-3.030(3)(A)) (noting the rule specifically states "[i]t shall not be sufficient merely to state that the decision of the [ALJ] on any particular issue is not supported by competent and substantial evidence" (alterations in original)).

The Commission, however, allows for attached sheets to explain the claimant's reasoning. The coversheet, which is provided by the Commission, provides: "[t]he [ALJ's] award, decision or order is erroneous for the following specific reasons: . . . (You may attach additional sheets)." On the cover page, Miller clearly writes "[s]ee attached sheets" on the form. In those additional pages, Miller recounts with sufficient specificity the reasons why the ALJ's awards were erroneous.

In her AFR, Miller clearly bases her appeal on the ALJ's misunderstanding and misapplication of the restrictions Dr. Cohen placed on Miller following his examination of her. The AFR plainly asserts in several places that the ALJ incorrectly associated the bilateral upper extremity conditions to the 2015 injury instead of the 2016 injury. The AFR indicated that Dr. Cohen had corrected himself to "make it clear that the bilateral upper extremity restrictions are attributable to the 2016 occupational disease injury and ***not***, the 2015 injury by accident."

Our review of the referenced "attached sheets" confirms that Miller explained her reasoning for requesting review of the ALJ's awards. Miller's stated reasoning exceeds that of a mere assertion that the decision of the ALJ was not supported by competent and substantial evidence. To the contrary, in the attached sheets that form part of the AFR, Miller adequately sets forth her challenge to the ALJ's decision by going into detail about Dr. Cohen's testimony and why this testimony contributed to a lack of substantial evidence supporting the ALJ's awards. We do not address the merits of Miller's claim, but are persuaded that the Commission was not "left to speculate as to what part of the ALJ's decision was disputed and why [Miller] believed the ALJ's decision was unsupported by the evidence." Crawford, 587 S.W.3d at 700.

The record reveals that Miller's AFR was not limited to a bare recital of the standard for a substantial-evidence challenge as listed on the cover-sheet. Rather, Miller asserted that the ALJ's findings and conclusions are not properly supported because the ALJ misapplied the restrictions that Dr. Cohen placed on her following her 2016 injury. Miller's allegations adequately comply with the Commission's procedural rule 8 C.S.R. 20-3.030(3)(A). Accordingly, the Commission erred in granting the SIF's motion to dismiss. See Crawford, 587 S.W.3d at 698. The point on appeal is granted.

Conclusion

The decision of the Commission is reversed. We remand to the Commission to overrule the SIF's motion to dismiss and proceed on Miller's AFR consistent with this opinion.

KURT S. ODENWALD, Judge

Sherri B. Sullivan, C.J., concurs.
Kelly C. Broniec, J., concurs.