IN THE COURT OF APPEALS OF IOWA

No. 2-103 / 11-1186
Filed April 25, 2012

REFUGIO OROZCO SERRATOS,
Petitioner-Appellant,

vs.

TYSON FOODS,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Richard G. Blane, II, Judge.

Refugio Orozco Serratos appeals a denial of his occupational disease claim by the workers' compensation commissioner. **AFFIRMED.**

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

Jean Z. Dickson and Edward J. Rose of Betty, Neuman & McMahon, P.L.C., Davenport, for appellee.

Heard by Vogel, P.J., and Tabor and Bower, JJ.

TABOR, J.

Refugio Orozco Serratos suffers from chronic obstructive pulmonary disease (COPD) and asserts he developed the condition as a result of his work at a meat packing facility now owned by Tyson Foods. Refugio sought workers' compensation benefits, alleging an occupational disease under Iowa Code chapter 85A (2011). The deputy commissioner's arbitration decision, the commissioner's appeal decision, and the district court on judicial review all denied compensation, concluding Refugio failed to prove his work environment caused his COPD.

In this appeal, Refugio argues the district court erred in its legal analysis and in finding substantial evidence to support the agency decision. While the deputy commissioner mistakenly applied an injury analysis to Refugio's chapter 85A claim, the commissioner "righted the ship" and reached his decision by looking to the occupational disease standards. Because the evidence supported the commissioner's findings, like the district court, we affirm the agency's determination that Refugio fell short of proving causation.

I. Background Facts and Proceedings

Refugio began working at Tyson's Columbus Junction facility on November 1, 1990,[1] when he was forty-eight years old. Over the following eight years, he held various positions on the line and as a janitor in the refrigerated area of the plant. At times Refugio was required to clean meat with water heated to one hundred and eighty degrees.

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[1] IBP operated the facility when Refugio started, but now Tyson Foods is the owner. We will refer to Refugio's employer as Tyson throughout the remainder of the opinion.

In addition to its janitorial staff, Tyson contracted with a night cleaning crew to sanitize the plant. Refugio testified this crew left chemical residue on the machines he touched, which irritated his breathing. He claimed the water vapor and fumes from the animal parts bothered him as well. David Duncan, the plant's human resource manager, testified none of Refugio's positions exposed him to any chemicals. The manager said the plant's cleaning crew members used detergents and chlorine products, but they were required to rinse the machines to avoid contaminating the meat.

The record revealed Refugio to be a cigarette smoker, though some of the evidence conflicted on the extent and duration of his tobacco habit. Based on medical files and Refugio's testimony, the deputy commissioner found he smoked one to three packs daily for approximately forty years.

In August 1996, Refugio arrived at the Washington County Hospital emergency room complaining of difficulty breathing and reporting similar symptoms existed over the previous year. Doctors diagnosed Refugio with asthma and green mucus in his lungs, but a chest x-ray produced unremarkable findings. He returned to the hospital the following year and received a diagnosis of COPD with exacerbation and acute bronchitis. Doctors advised him to stop using tobacco. Over the next two years, Refugio had multiple hospitalizations and clinical visits, resulting in diagnoses of chest pain, dyspnea, and asthma.[2] Refugio estimated he quit smoking in 1998.

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[2] Refugio testified to being exposed to ammonia, which resulted in one of these visits, but medical records lack any documentation of ammonia exposure.

On June 26, 1998, Refugio filled out a form entitled "Injury/Illness Information" for his employer, in which he reported:

> Beginning janitor duties, area is cold causing problems breathing—feels throat close off when first going into work area causing difficult breathing. Vapors from machines made him feel desperate. Suffocating.

On the same day, as he and his daughter were driving to a medical appointment in Iowa City, Refugio collapsed at a rest area after becoming "weak and fighting for air." An ambulance transported him to the University Hospitals' emergency room, where he told a doctor he was working with chemicals that were making his symptoms worse. Dr. John McBride diagnosed Refugio with reactive airways disease or COPD with exacerbation and non-cardiac chest pain. Refugio heeded medical advice to wear a mask to complete his duties as reject butcher and avoid respiratory irritants.

Subsequent clinical appointments produced mixed diagnoses. Dr. James Merchant concluded Refugio's asthma was related to his occupation and that he should not be exposed to his current working environment. Dr. Dale Minner found Refugio's condition was not caused by his work environment, but that he should nonetheless avoid laboring in the cold. Based on Dr. Minner's conclusions, Tyson denied any connection between Refugio's ailment and his work environment, but transferred him into a position on the "hot side" of the plant involving exposure to water vapor and the contents of hog stomachs.

Over the following nine years, Refugio periodically sought treatment at hospitals and clinics for his COPD. Some attacks would occur on the job, causing him to leave work. Doctors would restrict him from working at the plant

intermittently, and some opined that occupational exposures could be triggering his flare-ups. In July 2005, Refugio filed another claim with Tyson, alleging that an incident occurred when he was "[p]erforming duties of feed stomach machine, working in temperatures above 60 degrees. . . . Repeated lifting up meat on cold side and inhaling ammonia and chemicals sanitation uses." Tyson denied the claim, responding that the medical records indicated that Refugio had been exposed to "lots of smoke" at a party he attended on July 3, 2005.

Refugio took an extended leave of absence from the plant during 2006. Dr. Bedell wrote a clinical note in November 2006 indicating that Refugio was "permanently disabled" and would not be coming back to his job at Tyson. Tyson fired Refugio on December 1, 2006, for "job abandonment."

Refugio filed his petition with the worker's compensation commissioner on August 17, 2007, alleging he sustained an occupational disease on May 10, 2006. In preparation for arbitration, Tyson sent Refugio to Dr. Paul Conte, a specialist in cardiovascular thoracic surgery at the Family Care Center in Des Moines. The specialist agreed Refugio suffered from COPD, but identified its cause as chronic exposure to tobacco and heavy dust. During the arbitration hearing, Dr. Conte was unable to recall any documented case of COPD caused by pure water vapor.

Dr. Thomas Hughes performed an independent medical examination of Refugio. Dr. Hughes testified that steam or water vapor did not cause COPD, though it could exacerbate it, and that a cold environment would be worse than a warm setting for the condition. The doctor noted that aside from mentioning

ammonia, Refugio was unable to detail what chemicals or detergents he encountered at work. Dr. Hughes relied upon a medical reference book that identified cigarette smoking as the prevailing cause of COPD, though only ten to fifteen percent of smokers develop COPD. Dr. Hughes produced a detailed report of his impressions, concluding Refugio's exposure to irritants in the work place aggravated his respiratory condition, but that non-occupational activities likely caused his condition.

On January 6, 2009, the deputy commissioner heard testimony from Refugio, Tyson staff, and medical experts. On September 30, 2009, the deputy issued an arbitration decision, denying Refugio's claim because he did not show a connection between his work environment and his COPD. Refugio appealed to the commissioner, who affirmed the denial. On judicial review, the district court affirmed the agency decision. Refugio now appeals the district court's ruling.

II. Standard of Review

We review final agency action for correction of legal error. *Eyecare v. Dep't of Human Servs.*, 770 N.W.2d 832, 835 (Iowa 2009). Under the Iowa Administrative Procedure Act, we examine whether our conclusions parallel those of the district court. *Univ. of Iowa Hosp. & Clinics v. Waters*, 674 N.W.2d 92, 95 (Iowa 2004). So long as the agency's findings are supported by substantial evidence, we will affirm its decision. *Eyecare*, 770 N.W.2d at 835. The act defines "substantial evidence" as

> 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) (2011). We decide the substantial evidence question after viewing the record as a whole. *See* id. § 17A.19(10)(f)(3).

If an agency decision flows from an erroneous interpretation of the law, we will reverse or otherwise grant relief. Iowa Code § 17A.19(10)(c); *Andover Volunteer Fire Dep't v. Grinnell Mut. Reins. Co.*, 787 N.W.2d 75, 80 (Iowa 2010). Because the legislature did not vest authority in the workers' compensation commission to interpret whether the occupational disease or injury legal analysis best applies in a Chapter 85A petition, we accord no deference to the commissioner and may submit our own judgment in its place. *Neal v. Arnett Holdings, Inc.*, ___ N.W.2d ___, ___ (Iowa 2012).

III. Analysis

A. Does Substantial Evidence Support the Agency's Finding that Refugio Did Not Prove His Work at Tyson Caused His COPD?

Refugio disagrees with the commissioner's finding that he failed to prove a causal connection between his work environment at Tyson and his occupational disease. To recover under chapter 85A, Refugio must show: (1) his occupational disease was causally related to the exposure to harmful conditions of his field of employment, and (2) those harmful conditions were more prevalent in his employment than in everyday life or in other occupations. *IBP, Inc. v. Burress*, 779 N.W.2d 210, 214 (Iowa 2010) (reciting standard set out in *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 190 (Iowa 1980)); *see also* Iowa Code § 85A.8.

Refugio must prove both elements by a preponderance of the evidence. *Frit Ind. v. Langenwalter*, 443 N.W.2d 88, 90 (Iowa Ct. App. 1989).

On appeal, the commissioner identified section 85A.8 and recited both elements of causation, applying the deputy's factual findings to conclude Refugio failed to meet his burden of proof. The commissioner concentrated on the opinion of the claimant's own expert, Dr. Hughes, who noted:

> COPD is a condition that is prevalent in the general population and that 10 to 15 percent of all persons who smoke tobacco products develop the condition. Claimant had been a heavy smoker for many years, although he quit smoking when he first developed respiratory symptoms in approximately 1998.

The commissioner concluded that Dr. Hughes provided "significant evidence" that Refugio's COPD resulted from "a hazard to which claimant would have been equally exposed outside of his occupation." The commissioner pointed out that Refugio did not show that "he and his fellow workers were exposed to any risk that resulted in anyone else working with claimant to develop or suffer from COPD." Similarly, Refugio offered "no evidence that employees who work in meat processing facilities are routinely subject to a risk resulting in the development of COPD."

Refugio counters by highlighting doctors' recommendations that Tyson transfer him to different areas of the plant because chemical exposure could be triggering his condition. He also points to doctors' acknowledgement that animal substances can cause or exacerbate asthmatic conditions.

The causation question in an occupational disease claim is a fact-driven inquiry. *See Langenwalter*, 443 N.W.2d at 90. We broadly and liberally apply

the deputy's fact findings to uphold rather than defeat an agency decision. *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 501 (Iowa 2003).

Our conclusion is the same as that of the district court, which acknowledged while "there is some evidence here to support [Refugio's] contentions, there is also certainly evidence in the record to support the findings actually made by the Commissioner." In this situation, our task 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." *See Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011) (interpreting Iowa Code 17A.19(10)(f)).

In determining a causal connection, the commissioner considers medical testimony along with all other evidence tending to show a nexus between the work environment and the occupational disease. *Schutjer v. Algona Manor Care Ctr.*, 780 N.W.2d 549, 560 (Iowa 2010). The weight we afford such testimony depends upon the accuracy of the expert's facts, as well as other surrounding circumstances. *Id.* Here, both parties presented contradictory opinion testimony, and the commissioner was free to accept or reject any opinion, in whole or in part. *See Pease*, 807 N.W.2d at 850. The commissioner relied heavily on testimony by Dr. Hughes, Refugio's own medical expert, whose statements undermined Refugio's claim. We see no reason to disagree with these findings. *See Dunlavey v. Economy Fire & Cas. Co.*, 526 N.W.2d 845, 854–55 (Iowa 1995) (recognizing the commissioner's duty to weigh expert testimony, and the

appellate court's duty to determine whether substantial evidence supports the finding).

The commissioner was not convinced that the harmful conditions causing Refugio's COPD were more prevalent in the Tyson meat-packing plant than in other occupations or in Refugio's life outside of work. Not only did the commissioner credit Dr. Hughes's testimony that COPD is prevalent in the general population, especially among those who smoke tobacco, but the commissioner also noted the lack of evidence that any of Refugio's coworkers suffered from COPD.

The commissioner appropriately weighed the evidence, and concluded the greater weight of the evidence supported the deputy's determination that medical evidence did not satisfy the claimant's burden to show causation. *See Arndt v. City of LeClaire*, 728 N.W.2d 389, 394–95 (Iowa 2007). The evidence viewed as a whole backs the agency conclusion that Refugio's disability was not causally related to his employment, nor is the condition more prevalent at Tyson than in other occupations. *See Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). We will not usurp the agency's fact-finding mission by weighing the evidence ourselves to determine its qualitative value. *See Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996). Because substantial evidence supports the commissioner's decision, it should not be disturbed.

B. Does the Deputy's Error in Analyzing Refugio's COPD as an Injury Rather Than an Occupational Disease Warrant Reversal?

Refugio also challenges the deputy's analysis of his COPD as an "injury" rather than a "disease." He argues that COPD is properly viewed under the framework of an occupational disease—a point not contested by Tyson. Instead, Tyson urges us to look to the final agency action (manifested in the appeal rather than the arbitration decision) in determining whether the agency committed legal error.

Our code differentiates between injuries and occupational diseases for purposes of workers' compensation. *See* Iowa Code chapters 85, 85A. To qualify for injury-based benefits, claimants must show they (1) suffered a "personal injury," (2) had an employer-employee relationship with the respondent, (3) the injury arose out of the employment, and (4) the injury arose in the course of the employment. *Burress*, 779 N.W.2d at 214. This test is distinct from the two-part occupational disease test applied to Refugio's substantial evidence challenge.

Sections 85.61(4)(b) and 85A.14 provide symmetrical barriers preventing a claimant from recovering for an occupational disease under chapter 85 or for an injury under chapter 85A. As our supreme court has explained:

> The statutory definition describes an occupational disease in terms of a worker's "exposure" to conditions in the workplace. The term "exposure" indicates a passive relationship between the worker and his work environment rather than an event or occurrence, or series of occurrences, which constitute injury under the Workers' Compensation Act.
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> . . . .
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> [A]n "injury" is distinguished from a "disease" by virtue of the fact that an injury has its origin in a specific, identifiable trauma or physical occurrence or, in the case of repetitive trauma, a series of such occurrences. A disease, on the other hand, originates from a source that is neither traumatic nor physical.

Noble v. Lamoni Prods., 512 N.W.2d 290, 295 (Iowa 1994) (internal quotations omitted). In essence, the distinction between the two terms is their method of contraction. *Burress*, 779 N.W.2d at 215.

From the inception of his claim, Refugio alleged he contracted an occupational disease under chapter 85A. But in the arbitration decision, the deputy employed an injury-based analysis and concluded Refugio didn't prove he suffered an injury on May 10, 2006. Despite that glitch in the legal analysis, the deputy's fact finding and credibility determinations offered solid footing for the agency's ultimate decision on causation.

In his appeal decision, the commissioner recognized the deputy's use of the injury-framework, and clarified that Refugio was seeking compensation for an occupational disease. The appeal decision recited the definition of occupational disease from section 85A.8, as well as the corresponding two-part test. After identifying the evidence he found to be most persuasive, the commissioner concluded Refugio "has not proven that his COPD condition qualifies as an occupational disease under Iowa Code section 85A.8." The commissioner alternatively held the deputy did not err by considering COPD to be an injury, stating it qualifies under chapter 85 "as it is an impairment of health or a disease which results in damage to the function of the lungs of the affected worker." The commissioner expressly affirmed the deputy's finding under that alternative basis.

Upon judicial review, the district court held that the commissioner's occupational disease analysis cured the deputy's error. The court dismissed the

agency's alternative approval of the deputy's analysis as "not relevant to the issue on appeal."

Judicial review is limited to the final agency action and not the proposed findings of the deputy's arbitration decision. *See* Iowa Code § 17A.19(1); *Myers v. F.C.A. Servs., Inc.*, 592 N.W.2d 354, 358 (Iowa 1999). But despite its otherwise proper analysis, the commissioner nonetheless incorporated the deputy's erroneous interpretation by expressly affirming it in its appeal decision. Such incorporation is error, and may be ground for reversal if it prejudiced Refugio. *See* Iowa Code § 17A.19(10)(f); *Hill v. Fleetguard, Inc.*, 705 N.W.2d 665, 671 (Iowa 2005).

Refugio can only succeed in this appeal if he can show the agency's decision was erroneous under a ground enumerated in chapter 17A and his substantial rights have been prejudiced. *Grant v. Iowa Dep't of Human Servs.*, 722 N.W.2d 169, 173 (Iowa 2006); *see also* Iowa Code § 17A.19(8)(a). The "substantial rights" language within section 17A.10 is tantamount to a harmless error rule, and we should not disturb an agency action absent the complaining party's proof of actual harm. *Hill*, 705 N.W.2d at 671. "This form of analysis is appropriate because it would be inefficient for us to provide relief from invalid agency action when the particular invalidity has not prejudiced the substantial rights of the petitioner." *Id.*; *see also Titan Tire Corp. v. Empl't Appeal Bd.*, 641 N.W.2d 752, 758 (Iowa 2002) (affirming agency's decision because any error "did not impact the determinative issue" and thus no prejudice resulted).

We find no prejudice here. As discussed in the previous section, substantial evidence undergirds the commissioner's determination that Refugio's COPD did not qualify as an occupational disease. Refugio had the benefit of the commissioner's application of the proper legal test to the deputy's fact-finding. Because the commissioner's alternative endorsement of the deputy's lapse into an injury-based analysis did not ultimately impact Refugio's substantial rights, the agency decision should stand.

C. Did the Deputy Apply an Improper Causation Standard?

Finally, Refugio contends the deputy employed the sole proximate cause standard from tort law rather than the less onerous causation standard used in workers' compensation cases.[3] *See Meyer*, 710 N.W.2d at 222 n.4 (differentiating these standards). In the realm of workers' compensation, the "proximate cause" standard is used to determine whether the injury caused the disability. *Id.* at 220 n.2. If a condition is a substantial factor in bringing about a particular result, it is considered to be a proximate cause. *Blacksmith v. All-American, Inc.*, 290 N.W.2d 348, 354 (Iowa 1990). A given condition only needs to be one cause, not the only cause. *Id.* The claimant must prove causation by a preponderance of evidence. *Langenwalter*, 443 N.W.2d at 90. "A preponderance of the evidence exists when the causal connection is probable rather than merely possible." *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998).

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[3] The commissioner adopted the analysis of the deputy in this regard.

The deputy's arbitration decision did not employ an overly stringent causation standard. The deputy stated: "The opinions supporting causation were based on a history of chemical exposure, not corroborated by credible evidence at trial." The deputy did not intimate that Refugio had to disprove his long-time smoking habit was a contributing factor to his COPD, or that he had to prove his work environment was the sole proximate cause of his condition. It was simply the deputy's assessment Refugio did not prove by a preponderance of the evidence that irritants in the plant aggravated or exacerbated his COPD. In other words, the fact finder did not believe the workplace exposure was even one of several causes for Refugio's disability. It was the deputy's prerogative to evaluate the credibility of the witnesses. *See Forristall*, 551 N.W.2d at 614. Because we find no misapplication of the legal causation standard, we defer to the agency's factual determinations.

AFFIRMED.