IN THE COURT OF APPEALS OF IOWA

No. 7-587 / 06-1217
Filed November 29, 2007

STEPHEN MELSON,
Petitioner-Appellant,

vs.

CITY CARTON RECYCLING,
VIRGINIA SURETY COMPANY,
and SECOND INJURY FUND OF IOWA,
Respondents-Appellees.

Appeal from the Iowa District Court for Linn County, Mitchell E. Turner, Judge.

Employee appeals from a district court judicial review ruling affirming the appeal decision of the workers' compensation commissioner. **AFFIRMED.**

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

Chris Scheldrup and Charles A. Blades of Scheldrup Law Firm, P.C. Cedar Rapids, for appellees City Carton Recycling and Virginia Surety Company.

Thomas J. Miller, Attorney General, and Deborah M. Stein, Assistant Attorney General, for appellee Second Injury Fund of Iowa.

Heard by Huitink, P.J., and Miller and Eisenhauer, JJ.

MILLER, J.

Stephen Melson appeals from a district court judicial review ruling affirming the appeal decision of the workers' compensation commissioner. We affirm the judgment of the district court.

I. BACKGROUND FACTS AND PROCEEDINGS.

Melson's employment with City Carton Recycling, a paper recycling company, began in 1992. He worked for City Carton as a route driver, which involved driving a truck to various businesses and picking up their recyclable paper with a skid loader. At each pick-up site, Melson had to pull out steel ramps weighing approximately "137 pounds apiece." He would then drive the skid loader down the ramps and use it to load the recyclable paper onto the trailer of the truck. On August 16, 2001, Melson was walking down the ramps when his right foot slipped out from under him and got caught between the ramps. He sought medical treatment immediately following the accident and was eventually diagnosed by Dr. Nate Brady in St. Luke's Work Well Clinic with a non-displaced fracture of his right ankle. He was placed in an equalizer boot, given exercises to perform at home, and removed from work.

Melson was released to work with assistance on September 13, 2001. He resumed working as a route driver on September 17, and was released to work with no restrictions about one week later. Around that same time, Melson also returned to his part-time job delivering pizzas.

On December 21, 2001, Melson visited Dr. Karen Harmon for a routine checkup after his former physician closed his practice. During his initial appointment with Dr. Harmon, Melson reported a history of depression and

"problems with his legs, knees and ankles." After examining Melson, Dr. Harmon noted he had a "[h]istory of arthritis in the ankles secondary to post traumatic changes" and "[m]ild varicosities in the ankles."

Melson did not seek further medical treatment until May 2002 when he saw a nurse practitioner at Mercy Care North for "left foot and ankle pain and swelling" that had "been bothering him off and on for about a year." An x-ray was taken, and it showed multiple "degenerative changes" within the left foot and Achilles tendon area. Melson was referred to Dr. Jeffrey Nassif for treatment of his left ankle pain. Dr. Nassif noted Melson "has had intermittent leg pain for several years but for the last 4-5 months has been getting worse in his ankle." Dr. Nassif's impression after examining Melson was Achilles tendonitis. He placed Melson in an equalizer boot and ordered an MRI. On June 10, 2002, Dr. Nassif informed Melson that his MRI revealed he had "chronic distal Achilles tendinopathy with some more limited acute injury." Dr. Nassif recommended "further immobilization" of his left ankle with the equalizer boot and restricted Melson to "sit-down work only."

Melson returned to Dr. Brady for treatment at the Work Well Clinic on June 25, 2002. He informed Dr. Brady "his lower legs have been hurting over the course of months," which he attributed "to the pedaling of the skid loader that he uses while at work." Melson also informed Dr. Brady he "has pain in his legs when he gets out of the loader to pull the steel ramps in and out of his truck." Dr. Brady "reiterated Dr. Nassif's recommendation for sitting job only and to use the wheelchair as needed to get around while at work." Melson saw Dr. Brady again on July 9, 2002, due to "increased lower extremity pain." Dr. Brady stated he

"continue[d] to be unsure about the cause of all of Mr. Melson's lower extremity pain." He restricted Melson from working "to see if completely stopping his activities and allowing him to elevate and ice his legs will improve this pain." Melson returned to Dr. Brady about one week later with "no improvement in his pain" despite being off work.

Melson was evaluated by Dr. Warren Verdeck on July 23, 2002, for possible surgical intervention. Melson told Dr. Verdeck he was experiencing pain in both ankles, "but his main problem is the left one." Dr. Verdeck opined Melson "may not be able to return to" his job as a route driver "even with surgery." Melson followed up with Dr. Verdeck on August 6, 2002, complaining of continuing "problems with both ankles" despite the equalizer boot and therapy. Dr. Verdeck "suspect[ed] with the problems he is having that he is likely going to be unable to return to his regular occupation, which involves a lot of repetitive work with foot pedals." He believed "both ankle problems are more of a chronic repetitive stress syndrome." Dr. Verdeck gave Melson a "prescription for a wheelchair for any prolonged distance." Dr. Verdeck and Dr. Brady released Melson to work with the restriction that he perform "sit down" work only.

Melson's condition persisted with minimal improvement. On October 22, 2002, Dr. Verdeck consequently stated Melson had reached maximum medical improvement. He believed Melson would "continue to be restricted to a sit-down job only, likely on a permanent basis." However, with the exception of one week in September, City Carton was unable to accommodate Melson's work restriction. His employment with the company was accordingly terminated in

November 2002. He sought treatment for depression following his termination from City Carton.

Melson filed a petition with the Iowa Workers' Compensation Commissioner on January 16, 2003, alleging he suffered a right ankle injury on August 16, 2001, and a cumulative bilateral injury on June 10, 2002. He sought recovery from City Carton and its insurance carrier, Virginia Surety Company, for both injuries. He also sought recovery from Second Injury Fund of Iowa (the Fund) under the provisions of Iowa Code section 85.63 (2003).

Following an arbitration hearing, the deputy workers' compensation commissioner awarded Melson temporary total disability benefits for the August 16, 2001 right ankle injury at a weekly rate of $390.01 and medical expenses in the amount of $848.53.[1] However, he concluded Melson did not suffer any permanent disability from the August 16, 2001 injury and accordingly denied Melson's request for permanent disability benefits. The deputy further concluded City Carton and Virginia Surety paid Melson at an incorrect rate, resulting in an underpayment of $60.24 for the temporary benefits for the August 16, 2001 injury, but he declined to award Melson penalty benefits. As to the June 10, 2002 claimed injury,[2] the deputy determined the injury did not arise out of the course of Melson's employment with City Carton and rejected his remaining claims as to that injury date against all of the defendants. Finally, the deputy

[1] Prior to the arbitration hearing, the parties stipulated Melson's August 16, 2001 right ankle injury arose out of the course of his employment with City Carton. The parties also stipulated he was entitled to 4.429 weeks of temporary total disability for that injury.

[2] The parties stipulated that Melson's alleged cumulative injury manifested itself on June 10, 2002.

awarded City Carton and Virginia Surety a credit of $14,699.28 for payments made to Melson for the June 10, 2002 noncompensable injury.

Melson appealed, and the workers' compensation commissioner affirmed and adopted the deputy's decision. Melson then filed a petition for judicial review. Following a hearing, the district court affirmed the agency decision.

Melson appeals. He claims the agency erred in not (1) making essential findings to support legal conclusions; (2) finding permanent impairment arose out of the August 16, 2001 right leg injury; (3) finding he suffered a work injury on June 10, 2002; (4) finding the June 10, 2002 injury and resulting termination was a proximate cause of his depression; (5) awarding industrial disability benefits; (6) finding he suffered from two qualifying injuries entitling him to recovery from the Fund; (7) assessing a penalty for underpayment of benefits; and (8) awarding medical expenses for the June 10, 2002 injury. He also claims the amount of the credit awarded to City Carton and Virginia Surety was incorrect.

II. SCOPE AND STANDARDS OF REVIEW.

The Iowa Administrative Procedure Act, chapter 17A of the 2005 Iowa Code, governs the scope of our review in workers' compensation cases. Iowa Code § 86.26; *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). "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." *Meyer*, 710 N.W.2d at 218. The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002). In reviewing the district court's decision, we apply the standards of chapter 17A to

determine whether our conclusions are the same as those reached by the district court. *Clark v. Vicorp Rests., Inc.*, 696 N.W.2d 596, 603 (Iowa 2005).

"If the claim of error lies with the agency's findings of *fact*, the proper question on review is whether substantial evidence supports those findings of fact" when the record is viewed as a whole. *Meyer*, 710 N.W.2d at 219. Factual findings regarding the award of workers' compensation benefits are within the commissioner's discretion, so we are bound by the commissioner's findings of fact if they are supported by substantial evidence. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464-65 (Iowa 2004).

Because factual determinations are within the discretion of the agency, so is its application of law to the facts. *Clark*, 696 N.W.2d at 604; *see also Meyer*, 710 N.W.2d at 219 (stating the reviewing court should "allocate some degree of discretion" in considering the agency's application of law to facts, "but not the breadth of discretion given to the findings of facts"). We will reverse the agency's application of the law to the facts if we determine its application was "irrational, illogical, or wholly unjustifiable." *Meyer*, 710 N.W.2d at 218.

III. MERITS.

We must first address Melson's claim that the deputy commissioner and the commissioner did not make essential findings to support their legal conclusions. "It is well-established law that the commissioner must state the evidence relied upon and detail the reasons for his conclusions" pursuant to Iowa Code section 17A.16(1). *Heartland Specialty Foods v. Johnson*, 731 N.W.2d 397, 400 (Iowa Ct. App. 2007); *see also Bridgestone/Firestone v. Accordino*, 561 N.W.2d 60, 62 (Iowa 1997). "[T]he commissioner's decision must be 'sufficiently

detailed to show the path he has taken through conflicting evidence.'" *Accordino*, 561 N.W.2d at 62 (citation omitted). However, "the commissioner need not discuss *every* evidentiary fact and the basis for its acceptance or rejection" so long as the analytical process can be followed on appeal. *Id.* The commissioner's duty to furnish a detailed opinion is therefore fulfilled if it is possible to work backward from the agency's written opinion and deduce what must have been the agency's legal conclusions and findings of fact. *Id.*

According to this standard, we find the deputy's decision adopted by the commissioner contains sufficiently detailed legal conclusions supported by findings of fact. We reject Melson's argument that the agency's decision is lacking in factual findings and legal conclusions because the commissioner "summarily adopted the decision without commentary." *See id.* (affirming the commissioner's summary adoption of the deputy commissioner's decision because "[n]o purpose would be served by requiring the commissioner to duplicate the deputy's efforts").

A. August 16, 2001 Injury.

We next turn to Melson's claim that the agency's finding that he did not suffer a permanent impairment or disability from his August 16, 2001 injury is not supported by substantial evidence in the record. We are bound by the commissioner's fact findings if they are supported by substantial evidence in the record as a whole. *Meyer*, 710 N.W.2d at 218. Substantial evidence is defined as evidence of the quality and quantity "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(f)(1); *Mycogen*, 686 N.W.2d at 464. Thus, evidence is substantial when a reasonable person could accept it as adequate to reach the same finding. *Asmus v. Waterloo Cmty. Sch. Dist.*, 722 N.W.2d 653, 657 (Iowa 2006). "The fact that two inconsistent conclusions may be drawn from the same evidence does not prevent the agency's findings from being supported by substantial evidence." *Id.* "Because the commissioner is charged with weighing the evidence, we liberally and broadly construe the findings to uphold his decision." *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 331 (Iowa 2005).

With these principles in mind, we reject Melson's claim that the agency "erred in concluding the August 16, 2001 injury did not result in permanent impairment or disability." The deputy determined Melson did not suffer a permanent impairment or disability as a result of his August 16 injury because he returned to work following the injury without any additional limitations or restrictions. Melson argues the deputy's finding in this regard is not supported by substantial evidence because he returned to work "in pain, not fully healed and with continued home therapy."

The record, however, shows Melson was released to work following his August 16 injury without any restrictions. Although he testified at the arbitration hearing that he continued to experience "pain and discomfort" in his right ankle upon his return to work, he did not seek any additional medical treatment for his right ankle until after problems developed with his left ankle. He did not mention any specific problems with his right ankle at his December 2001 physical with Dr. Harmon. Nor did he include his August 16, 2001 right ankle fracture in the

medical history he provided to Dr. Harmon. When he sought medical treatment in May 2002, his primary complaint concerned his left ankle. We therefore reject Melson's argument in this regard.

Melson further argues the deputy's finding that he did not suffer permanent impairment or disability as a result of his August 16, 2001 injury is not supported by substantial evidence because he was "found to be both permanently impaired and restricted." In October 2002, Dr. Verdeck assigned Melson a five percent permanent impairment rating for his right leg and stated he felt Melson "will continue to be restricted to a sit-down job only, likely on a permanent basis." Melson's expert witness, Dr. F. Manshadi, assigned an eighty percent permanent impairment of the whole person, while the defendants' expert witness, Dr. Kenneth McMains, did not assign a permanent impairment rating.

"A claimant has the burden of proving his work-related injury was a proximate cause of his disability." *Ayers v. D & N Fence Co., Inc.*, 731 N.W.2d 11, 17 (Iowa 2007). "In order for a cause to be proximate, it must be a 'substantial factor.'" *Id.* (citation omitted). We conclude substantial evidence supports the agency's finding that Melson did not show his August 16, 2001 injury resulted in permanent impairment or disability.

Dr. Verdeck did not state whether he believed Melson's August 16, 2001 right ankle injury was a substantial factor in the permanent impairment rating he assigned to the right leg. Dr. McMains, however, did not see any "evidence of any industrial injury that would lead one to believe that there was a cause-and-effect relationship between Mr. Melson's job and development of the calcific tendinitis." He noted Melson's ankle "did heal fully with the worker returned to

full-duty on September 25, 2001, with no restrictions and no apparent impairment." Indeed, the record shows that Melson resumed work at City Carton and at his part-time job delivering pizzas with no further complaints of right ankle pain until the summer of 2002.

Melson reported to at least one physician that "he has had intermittent leg pain for several years." He had a history of injuries to his right lower extremities preceding his August 16, 2001 injury. He suffered a right knee fracture from a motor vehicle accident in 1969, and he fractured his right ankle in the mid-1980's or early 1990. Melson's medical records also describe him as "morbidly obese," which Dr. McMains believed contributed to his bilateral Achilles tendonitis. Dr. Manshadi, on the other hand, reported that Melson "has had a right ankle fracture and over time has developed bilateral Achilles tendonitis." Dr. Manshadi concluded Melson's bilateral Achilles tendonitis was work-related due to the "use of the ankles in flexion and extension to operate the skid loader."

The deputy considered the opinions of Dr. Verdeck, Dr. McMains, and Dr. Manshadi in arriving at his conclusion that Melson's August 16, 2001 injury did not result in a permanent impairment or disability. It is the role of the agency to determine the credibility of the witnesses and the weight to be given to any evidence, and it may accept or reject an expert opinion in whole or in part. *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998). Thus, the agency was free to accept the opinion of Dr. McMains over that of Dr. Manshadi.[3] It is

[3] Melson argues the agency erred in relying on Dr. McMains's report due to factual inaccuracies and Dr. McMains's bias in favor of the defense in workers' compensation cases. Upon review of the record, we do not believe Dr. McMains's report contains the inaccuracies alleged by Melson. Furthermore, although an expert's opinion "based upon an incomplete history . . . is not necessarily binding upon the commissioner," we

not the role of the district court on judicial review, nor this court on appeal, to reassess the weight and credibility of any of this evidence. *See Arndt v. City of Le Claire*, 728 N.W.2d 389, 394-95 (Iowa 2007). We accordingly conclude substantial evidence supported the agency's finding regarding the August 16, 2001 injury.

B. June 10, 2002 Injury.

Melson next claims the agency's finding that he did not suffer an injury arising out of his employment with City Carton on June 10, 2002, is not supported by substantial evidence.[4] At the administrative hearing, Melson alleged he suffered a cumulative bilateral injury to his lower extremities, which he attributed to the "repetition from the skid loader . . . and the foot pedals." The deputy rejected Melson's claim for benefits arising from the alleged June 10, 2002 cumulative injury, finding, "The claimant's condition was preexisting and

---

reiterate that the "commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence, together with other disclosed facts and circumstances, and then to accept or reject the opinion." *Dunlavey v. Economy Fire & Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995). We thus find Melson's contentions regarding Dr. McMains to be without merit.

[4] Melson initially argues that the agency's decision is not supported by substantial evidence because the defendants admitted the June 10, 2002 injury resulted in permanent impairment in their responses to interrogatories and request for admissions that he propounded. City Carton and Virginia Surety answered "N/A" in response to Melson's interrogatory requesting explanation of "all facts and circumstances" upon which the defendants denied that his "subject injury arose out of or in the course of" his employment. Katherine Walker, the human resources administrator for City Carton and Virginia Surety, testified she was "not sure which injury" the interrogatory was referring to when she answered it. Thus, it is not clear whether City Carton and Virginia Surety actually admitted the June 10 injury resulted in permanent impairment in their response to Melson's interrogatory. Furthermore, they denied that position at trial. The Fund did admit Melson's June 10, 2002 injury "was a proximate cause of permanent impairment" in response to Melson's request for admissions. *See* Iowa R. Civ. P. 5.11 (stating "[a]ny matter admitted" in responses to request for admissions "is conclusively established in the pending action"). However, the Fund's liability does not turn on the element of permanent impairment alone. *See Second Injury Fund v. Shank*, 516 N.W.2d 808, 812-13 (Iowa 1994) (setting forth the elements the employee must establish to recover benefits from the Fund). We accordingly conclude Melson's argument is without merit.

there is insufficient evidence to establish that the work at City Carton Recycling permanently aggravated the preexisting condition as opposed to the activities of daily living or the concurrent employment as pizza delivery driver."

A cumulative injury is an "injury that develops over time from performing work-related activities and ultimately produces some degree of industrial disability." *Ellingson v. Fleetguard, Inc.*, 599 N.W.2d 440, 444 (Iowa 1999). In order for a cumulative injury to be compensable under our workers' compensation statute, the claimant must show that the injury "arose out of" his employment. *Meyer*, 710 N.W.2d at 220; *see also Ayers*, 731 N.W.2d at 17 ("In order to be compensable, the cumulative trauma must be work related."). "An injury 'arises out of' the employment if a causal connection exists between the employment and injury." *Meyer*, 710 N.W.2d at 222 (citation omitted). The injury must be a natural incident of the work, "meaning the injury must be a rational consequence of the hazard connected with the employment." *Id.* (internal quotation omitted). Thus, the claimant is required to demonstrate the injury was in some way caused by or related to the working environment or the conditions of employment.[5] *Id.*

"Whether an injury has a direct causal connection with the employment or arose independently thereof is ordinarily established by expert testimony, and the weight to be given such an opinion is for the finder of fact." *St. Luke's Hosp. v.*

[5] Melson asserts the "deputy applied the tort law standard of causation in deciding that employment did not proximately cause the injury." We do not agree. Contrary to Melson's assertion, the deputy did not require him "to show that City Carton work and only that work was the cause of the injury." Instead, the deputy correctly noted Melson was required to establish that the injury was a "rational consequence of a hazard connected with the employment and not merely incidental to the employment." *See Meyer*, 710 N.W.2d at 222 n.4 (noting the "arising out of" standard is "a less onerous standard than the proximate-cause standard from tort law").

Gray, 604 N.W.2d 646, 652 (Iowa 2000). Dr. McMains concluded Melson's bilateral Achilles tendonitis was "an arthritic degenerative process" that was not work-related, stating "when we look at workers performing the same tasks and using a skid loader, we do not see this condition." *See, e.g., McIlravy v. N. River Ins. Co.*, 653 N.W.2d 323, 332 (Iowa 2002) (finding claimant's knee injuries were work-related based on evidence that the nature of claimant's profession placed the worker at greater risk for knee injuries than other professions). Dr. Manshadi, on the other hand, believed Melson's condition was related to the frequent "use of the ankles in flexion and extension to operate the skid loader" required by his job.

"The commissioner must consider the expert testimony together with all other evidence introduced bearing on the causal connection between the injury and the disability." *Sherman*, 576 N.W.2d at 321. The weight to be afforded to the expert testimony "depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances." *Id.* In concluding Melson's bilateral Achilles tendonitis was not caused by his employment at City Carton, Dr. McMains noted, "In most cases of Achilles' tendinitis, the etiology is complex. . . . This is a degenerative process and not commonly associated with any particular cause." Melson's medical history supports Dr. McMains's statement. As previously mentioned, Melson "had intermittent leg pain for several years." He had several injuries to his lower extremities prior to his employment with City Carton, and he was severely overweight, which Dr. McMains believed was a significant factor in his condition.

Dr. McMains's conclusion that Melson's injury was not related to his employment at City Carton is also supported by the fact that Melson's treating physicians seemed to be perplexed as to the cause of his injury. Dr. Brady stated he was "unsure about the cause of all of Mr. Melson's lower extremity pain." Dr. Verdeck ambiguously stated, "In response to your question whether his current condition is related to his occupation, I feel that he has an aggravation of a pre-existing condition of both ankles." *See Ziegler v. United States Gypsum Co.*, 252 Iowa 613, 620, 106 N.W.2d 591, 595 (1960) (holding a claimant may recover for aggravation of a preexisting condition where the aggravation occurs in the course of employment and a causal connection is established). We reject Melson's argument that Dr. Verdeck's above-quoted statement conclusively establishes that his employment at City Carton aggravated a preexisting condition. *See IBP, Inc. v. Harpole*, 621 N.W.2d 410, 418 (Iowa 2001) ("The possibility of drawing inconsistent conclusions from the same evidence does not mean an agency's decision lacks substantial support.").

Based on the foregoing, we conclude substantial evidence supports the agency's finding that Melson's June 10, 2002 injury did not arise out of his employment at City Carton. Due to our conclusion that the agency did not err in finding the June 10, 2002 injury noncompensable, we reject Melson's claims that the agency erred in not (1) finding the June 10 injury and resulting termination was a proximate cause of depression; (2) awarding industrial disability benefits; (3) finding that Melson suffered two qualifying second injuries; and (4) awarding

medical expenses for the June 10 injury.[6] We accordingly affirm the agency's denial of those claims.

C. Penalty Benefits.

Finally, we address Melson's claim that the agency erred by denying his request for penalty benefits. Iowa Code section 86.13 provides,

> If a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were unreasonably delayed or denied.

Under section 86.13, an unreasonable delay in payment of benefits as well as benefits that are underpaid entitles an employee to penalty benefits, unless the employer establishes reasonable and probable cause or excuse. *See Robbennolt v. Snap-On Tools Corp.*, 555 N.W.2d 229, 237 (Iowa 1996). A reasonable cause or excuse exists if the employer had a reasonable basis to contest the employee's entitlement to benefits. *Christensen v. Snap-On Tools Corp.*, 554 N.W.2d 254, 260 (Iowa 1996). "A 'reasonable basis' for denial of the claim exists if the claim is 'fairly debatable.'" *Id.*

The deputy determined Melson was "underpaid $60.24 in temporary benefits on the August 16, 2001 injury due to City Carton Recycling and Virginia Surety Company paying the claimant at an incorrect rate." The deputy found City

[6] We also reject Melson's claim that the deputy erred in the amount of credit awarded to City Carton and Virginia Surety. Melson argues the defendants' answer to an interrogatory, instead of "a sheet of paper" submitted by the defendants at the hearing, establishes the correct amount of credit. Both the answer to the interrogatory and the "sheet of paper" were admitted into evidence at the hearing. There is a small difference between the amount of credit the defendants claimed in their answer to the interrogatory and the amount of credit they sought at trial. We cannot say the deputy's decision to adopt the amount of credit the defendants claimed at trial lacks substantial evidence. *See Harpole*, 621 N.W.2d at 418 ("An agency's decision does not lack substantial evidence because inconsistent conclusions may be drawn from the same evidence.").

Carton and Virginia Surety included two weeks of wages that were not representative of Melson's wages because those weeks included time off. However, Melson's request for penalty benefits was denied because the deputy concluded "the determination of what constitute[d] a representative week" was fairly debatable based on the evidence presented. A claim is fairly debatable when it is open to dispute on any logical basis. *City of Madrid v. Blasnitz*, ____ N.W.2d ____, ____ (Iowa 2007). The record shows there was a "reasonable factual dispute" as to the calculation of Melson's weekly earnings. *Gilbert v. USF Holland, Inc.*, 637 N.W.2d 194, 201 (Iowa 2001) (affirming the district court's judgment reversing the commissioner's award of penalty benefits). We therefore conclude substantial evidence supports the deputy's finding that the determination of what constitutes a representative week was fairly debatable in this case. *See City of Madrid*, ____ N.W.2d at ____. We accordingly affirm the agency's denial of penalty benefits.

IV. CONCLUSION.

The deputy's decision adopted by the commissioner contains sufficiently detailed legal conclusions supported by findings of fact. There is substantial evidence in the record supporting the agency's finding that Melson's August 16, 2001 injury did not result in permanent impairment or disability. There is also substantial evidence in the record supporting the agency's finding that Melson's June 10, 2002 injury did not arise out of his employment at City Carton. We reject Melson's remaining assignments of error relating to his June 10, 2002 injury due to our above conclusion. Finally, we conclude the agency did not err in denying Melson's penalty benefits claim because there is substantial evidence

in the record supporting the finding that the claim was "fairly debatable." The judgment of the district court is accordingly affirmed.

AFFIRMED.