

IN THE COURT OF APPEALS OF IOWA

No. 8-143 / 06-1746
Filed May 14, 2008

TERESA L. FOGLE,
Petitioner-Appellee,

vs.

PELLA CORPORATION,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Carla T. Schemmel,
Judge.

Pella Corporation appeals from the ruling on judicial review that remanded
Teresa Fogle's workers' compensation case to the agency for further hearing.

REVERSED.

David Jenkins of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des
Moines, for appellant.

Richard Schmidt of Berg, Rouse, Spaulding & Schmidt, P.L.C., Des
Moines, for appellee.

Heard by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

VOGEL, P.J.

Pella Corporation appeals from the ruling on judicial review that remanded Teresa Fogle's workers' compensation case to the agency for further hearing. We reverse.

Background Facts and Proceedings.

On August 7, 2000, Teresa Fogle sustained an injury at work that resulted in lower back pain and leg pain. See *Pella Corp. v. Fogle*, No. 02-1481 (Iowa Ct. App. Nov. 17, 2003). After considerable treatment, Dr. Douglas Koontz performed a decompression laminectomy, removed certain disks, and performed an interbody fusion on December 12, 2001. Initially, it appeared that Fogle received some benefit from the surgery; however, her condition quickly returned to pre-surgery status and Fogle, in fact, claimed that her situation had worsened. None of the experts, including the surgeon, Dr. Koontz, could offer an explanation of her post-surgical complaints of pain. She has since been treated with injections, physical therapy, and medications to manage her pain.

On October 13, 2004, a hearing was held on Fogle's workers' compensation petition. The deputy later issued an arbitration decision in which he determined Fogle was permanently and totally disabled and that she was entitled to be compensated for certain expenses. On February 7, 2006, Deputy Workers' Compensation Commissioner Helenjean Walleser, acting by designation of the then current commissioner (hereafter, "the commissioner"), issued the appeal decision, which modified the arbitration decision by reducing Fogle's disability from total permanent to forty percent permanent partial

disability. This decision also deemed numerous medical bills and mileage expenses to be not work related and thus not compensable.

Fogle filed a petition seeking judicial review of the appeal decision, arguing that the decision to reduce her level of disability and medical reimbursement was not supported by substantial evidence, was illogical, unreasonable, arbitrary, capricious, and an abuse of discretion. Following a hearing, the district court entered a ruling remanding the case to the “Commissioner for further hearing, to further clarify Mrs. Fogle’s disability level and, if necessary, make any changes to the liability findings.” Pella Corporation appeals from this order.

Standards of Review.

A party challenging agency action bears the burden of demonstrating the action’s invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a) (2007). This can be shown in a number of ways, including proof the action was ultra vires; legally erroneous; unsupported by substantial evidence in the record when that record is viewed as a whole; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. See *id.* § 17A.19(10).

Analysis.

On appeal, Pella claims generally the district court improperly remanded for clarification of an issue that “was clearly evaluated and discussed in the appeal decision, and on which the agency made appropriate findings and conclusions.” In analyzing this question, we believe the district court improperly reviewed this case as a matter of why Fogle’s disability was *reduced* from total and permanent as found by the deputy, to a forty percent permanent partial

disability as found by the commissioner. This analysis by the district court necessarily included and was dependent upon a review of the deputy's arbitration decision. Rather, the district court should have been analyzing whether the *commissioner's appeal decision and its award of forty percent industrial disability* was supported by substantial evidence. See *Myers v. F.C.A. Services, Inc.*, 592 N.W.2d 354, 358 (Iowa 1999) (holding that because the "deputy commissioner's proposed findings are not a consideration on judicial review" the court should not review in light of why the commissioner reduced the deputy's disability finding); Iowa Code § 17A.19(1) (noting review is from "final agency action.").

The appropriate question regarding the award of disability is not whether the commissioner's appeal decision properly "reduced" the award set forth in the arbitration decision, but rather whether the final award in the commissioner's appeal decision, as the final agency action, is supported by substantial evidence. Therefore, rather than reviewing this case as a comparison between the arbitration decision and the final agency decision, the court's sole task should have been to determine whether the commissioner's forty percent determination was supported by the law and by substantial evidence. See *IBP v. Al-Gharib*, 604 N.W.2d 621, 632 (Iowa 2000) (reviewing disability determination under a substantial evidence standard).

When analyzed in that fashion, we conclude the commissioner's appeal decision contained appropriate and sufficient explanation as to the bases of the award of forty percent permanent partial disability, including why Fogle's unexplained worsening of symptoms during the time frame following surgery

could not be causally connected to the injury or resulting disability. As the appeal decision notes: “Highly intricate diagnostic studies performed after her surgery offer no clue as to why she continues to report such severe and varied physical problems The many medical specialists who have treated or evaluated claimant cannot explain her ongoing symptoms.”

Furthermore, the appeal decision properly set forth and considered the factors to be considered in the assessment of industrial disability. In this regard, it stated:

Claimant is not an older worker. She has four years of post high school education. That fact also suggests that she is intellectually capable of retraining into more sedentary work. While she perceives herself as highly disabled, the objective medical findings do not suggest she would be physically incapable of retraining or physically incapable of light work category employment. It is expressly found that claimant has a 40 percent permanent partial disability under Iowa Code section 85.34(2)(u) as a result of her August 7, 2000 work injury.

Nor do we believe the appeal decision was unclear as to whether the effect of the surgery was taken into consideration in its conclusion that Fogle sustained a forty percent permanent partial disability. The agency addressed the effect of the surgery.

Conclusion.

The judicial review was explicitly and improperly influenced by the district court’s concern about what it perceived as a reduction in Fogle’s disability from the arbitration decision to the final agency appeal decision. Because substantial evidence supports the final agency determination of a forty percent permanent partial disability, the district court should have affirmed on judicial review. We

therefore reverse.

REVERSED.