

IN THE COURT OF APPEALS OF IOWA

No. 8-499 / 08-0134

Filed July 30, 2008

**CYNTHIA CARPER, (Deceased), and
MICAH WILCOX, (after born child),**
Plaintiffs-Appellants,

vs.

DES MOINES PUBLIC SCHOOLS, et al.,
Defendants-Appellees.

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

The representatives of a workers' compensation claimant appeal from the
district court's ruling on judicial review. **AFFIRMED.**

Thomas J. Reilly of Thomas J. Reilly Law Firm, P.C., Des Moines, for
appellant.

Anne L. Clark of Hopkins & Huebner, P.C., Des Moines, for appellee.

Considered by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

Cynthia Carper's representatives appeal the denial of a review-reopening petition in a workers' compensation case.

I. Background Facts and Proceedings

In 1999, Cynthia Carper injured her back while working for the Des Moines Public Schools. She filed a petition for workers' compensation benefits. A deputy commissioner determined she "sustained a 40 percent permanent partial disability" as a result of the 1999 injury. The decision was affirmed and Carper received compensation. That decision is not directly at issue here.

Following her injury, Carper underwent two back surgeries that were considered in assessing her permanent partial disability. She was prescribed several pain medications, as well as an antidepressant. Carper became dependent on, and ultimately addicted to, those medications.

Carper filed a review-reopening petition alleging permanent total disability based on an injury "secondary to work-related back condition." Carper died before that petition could be heard. According to a deputy medical examiner, the cause of death was "mixed drug (methadone and amitriptyline) intoxication."

Carper's attorney amended the petition to seek death benefits on behalf of Carper's child, who was conceived and born after the 1999 injury. A deputy commissioner rejected that claim. The deputy also rejected the claim for permanent total disability compensation, concluding "claimant's representatives have not met their burden of establishing that the death was a result of the work injury." The deputy characterized the evidence as in "equipoise."

The workers' compensation commissioner affirmed the deputy's decision and adopted it as the final agency decision. On judicial review, the district court affirmed.

In this appeal, Carper's attorney makes the following arguments: (1) "Uncontroverted evidence shows an unbroken chain of events between decedent's work injury, her chronic related pain, the escalating dosages of medication she took for her pain, and her ultimate death," and (2) "Decedent's after-born child is entitled to workers' compensation death benefits."

The parties agree that we should review the first issue under the substantial evidence standard of Iowa Code section 17A.19(10)(f). As we find the first issue dispositive, we will not address the second issue.

II. Analysis

"When the employee files a review-reopening proceeding to increase benefits, the employee must establish by a preponderance of the evidence that 'he or she has suffered an impairment or lessening of earning capacity proximately caused by the original injury.'" *Acuity Ins. v. Foreman*, 684 N.W.2d 212, 216-17 (Iowa 2004) (quoting *Simonson v. Snap-On Tools Corp.*, 588 N.W.2d 430, 434 (Iowa 1999)).

The evidence on proximate cause was not uncontroverted. As the deputy noted, several physicians discussed Carper's 1999 injury and her subsequent death. The physician who performed the autopsy did not furnish an opinion on causation. A physician who reviewed the medical records for the claimant tied Carper's death to the 1999 injury. A physician who reviewed the medical records for the defense proffered a different opinion, stating he was "unable to find a

causal connection between Ms. Carper's 1999 work-related back injury and her overdose in March 2003." A fourth physician who saw Carper for pain management on the day she died opined that the pain Carper experienced was "causally related" to her 1999 injury. However, he did not opine that her death was causally related to that injury. He also conceded that he did not have the benefit of Carper's complete medical history.

According to that history, Carper used and abused several prescription drugs in the years following her 1999 injury. While it is undisputed that Carper was prescribed some of these medications to manage the pain associated with her back surgeries, reasonable minds could differ on whether the injury or the drug abuse was a substantial factor in her death. See *Blacksmith v. All-American, Inc.*, 290 N.W.2d 348, 354 (Iowa 1980) ("A cause is proximate if it is a substantial factor in bringing about the result."). "[W]here reasonable minds may differ on the inferences to be drawn from the proven facts and circumstances, the findings of the commissioner in such matters are conclusive." *Foreman*, 684 N.W.2d at 216.

As the record contains substantial evidence to support the commissioner's findings, we agree with the district court that the commissioner's decision must be affirmed.

AFFIRMED.