IN THE COURT OF APPEALS OF IOWA

No. 8-566 / 07-1755
Filed August 27, 2008

MARTHA ALANIZ,
Petitioner-Appellant,

vs.

NABISCO/KRAFT,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Nancy S. Tabor, Judge.

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

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

Nathan R. McConkey of Huber, Book, Cortese, Happe & Lanz, P.L.C., West Des Moines, for appellee.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

MILLER, J.

Martha Alaniz 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.

Alaniz was hired by Nabisco/Kraft (Kraft) in February 2000 to package candy. Her job required her to stack bags of candy on a pallet, which she would then move to different areas of the plant. On February 19, 2001, she was pushing a pallet loaded with bags of candy through a set of automatic doors when the doors closed on her. Her left leg got caught between the doors.

Alaniz sought medical treatment from physician assistant, Blythe Waltersdorf, on February 22, 2001, complaining of pain in her left hip. Waltersdorf assessed her with left hip strain and imposed light-duty work restrictions. By March 15, 2001, Alaniz's symptoms had improved. She was experiencing "very little hip discomfort" and was released to work without restrictions.

Unfortunately, on March 21, 2001, Alaniz's left hip pain returned while she was stacking and pulling bags of candy on a pallet. Her symptoms worsened the next day, causing her to return to Waltersdorf for additional medical treatment on March 23, 2001. She complained of severe pain in her left hip along with some pain in her left lower back. Waltersdorf again imposed light-duty work restrictions.

Alaniz's symptoms did not improve, and she began seeing Dr. Thomas Young on April 13, 2001. Dr. Young noted that an MRI performed on April 6 revealed Alaniz suffered from degenerative disc disease with an annular tear at the L4-5 level as well as mild central canal stenosis. He continued her work restrictions and recommended that she receive an epidural steroid injection. Alaniz's symptoms improved after receiving the injection and participating in physical therapy. Dr. Young accordingly released her to work without restrictions on April 27, 2001.

Alaniz was evaluated by orthopedic surgeon Dr. Daniel McGuire on May 8, 2001. Dr. McGuire noted she was "slowly doing better" and there was little he could do for her due to the good care she had already received from Dr. Young. He advised her that "[m]oderation is the key," and "if she works seven days a week with a lot of hours, she is more likely to be symptomatic."

In August 2001, Alaniz accepted a part-time job as a housewalker at SunBest Foods, L.L.C. (SunBest). She typically worked eighteen hours every weekend at SunBest in addition to working at least thirty-two hours during the week at Kraft. Her job at SunBest required her to engage in "moderate to heavy" manual labor sweeping floors, scooping manure, and pulling dead chickens from cages. She was terminated from her employment at SunBest in March 2002.

Alaniz returned to Dr. Young in August 2002 complaining of low back pain. She advised him that she had been experiencing pain since April 2001[1] and that her work caused her additional discomfort. Dr. Young recommended physical

[1] Alaniz complained of pain in her left hip and back during appointments with her family physician, Dr. Mydhili Cheerala, in December 2001 and February 2002.

therapy and home exercises. He also "had a very frank discussion with her husband suggesting that if his wife was having chronic pain for a year and a half, she should strongly consider a different type of work." He released her to work with permanent restrictions, noting her work exacerbated her condition.

Due to Alaniz's worsening condition, Dr. Young recommended that she return to Dr. McGuire for further evaluation. Dr. McGuire saw Alaniz in November 2002 at which time she was complaining "bitterly of back and leg pain." He diagnosed her with chronic back problems and sciatica, opining that these conditions "are probably related to work and the aggravation from repetitive work." He ordered a myelogram and CT scan, which were benign and did not show any structural damage to her spine as a result of working. He suggested that "she may want to cease working," although he could give her no "objective reason[ ]" to do so. Alaniz continued working at Kraft until she was terminated in December 2003 following a dispute with several other employees. She has not worked since then.

Alaniz filed a petition with the Iowa Workers' Compensation Commissioner in December 2002, seeking workers' compensation benefits from Kraft. She alleged her left hip and low back were permanently injured on February 19, 2001. Kraft disputed whether Alaniz's February 19, 2001 injury resulted in any permanent impairment or disability.

Alaniz was examined by Dr. Richard F. Neiman, a neurologist, in August 2003. Based on his examination, he opined that she suffered a sixteen percent permanent partial impairment to her body as a whole as a result of "her work at

Kraft pulling the pallet containing candy." Her treating physicians disagreed. Dr. McGuire determined there was no "objective evidence of structural damage to Ms. Alaniz's spine as related to her work incident on February 19, 2001." He believed her injury on that date was a temporary aggravation of normal degenerative changes associated with the aging process. Dr. Young agreed, stating her February 19, 2001 "injury was due to a temporary aggravation of a pre-existing condition." He also did not believe she suffered any permanent impairment as a result of that injury, noting "[w]hen engaging in conservative treatment, under my care, she did do well and did obtain a pain-free state."

Following an arbitration hearing, the deputy workers' compensation commissioner denied Alaniz's claim for permanent partial disability benefits, finding her February 19, 2001 injury did not result in permanent impairment or work restrictions. The deputy rejected Dr. Neiman's report in favor of the opinions of Drs. Young and McGuire, stating Dr. Neiman "did not render an opinion as to the cause of claimant's impairment or restrictions." Alaniz appealed, and the workers' compensation commissioner affirmed and adopted the deputy's decision with one exception: the commissioner determined the deputy "incorrectly stated that Richard F. Neiman, M.D., had not expressed an opinion on the issue of causation." Nevertheless, the commissioner found the deputy's decision reached the correct result because the "record shows [Alaniz] recovered from the February 19, 2001 injury."

Alaniz filed a petition for judicial review. Following a hearing, the district court affirmed the agency decision. She now appeals the district court's judicial

review ruling, claiming the agency erred in finding she did not suffer a permanent disability as a result of her February 19, 2001 work injury.

II. SCOPE AND STANDARDS OF REVIEW.

The Iowa Administrative Procedure Act, Iowa Code chapter 17A (2005), 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).

III. MERITS.

Alaniz claims the agency's finding that she did not suffer a permanent impairment or disability from her February 19, 2001 injury is not supported by substantial evidence in the record.[2] We are bound by the commissioner's

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[2] Alaniz also claims the agency's decision should be reversed under Iowa Code section 17A.19(10)(j). This section provides that an agency's action may be reversed where it is the

> product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action.

Iowa Code § 17A.19(10)(j). However, she does not cite any authority or appear to assert any arguments in support of this claim. *See* Iowa R. App. P. 6.14(1)(*c*). Nor does

findings of fact if they are supported by substantial evidence. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464-65 (Iowa 2004). 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.W2d 653, 657 (Iowa 2006). "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 Alaniz's claim that the agency's decision denying her permanent partial disability benefits is not supported by substantial evidence. She first argues that the agency's decision "inordinately emphasizes evidence adverse to [her] case and minimizes or completely ignores evidence that establishes [her] work injury and related impairment, restrictions, and disability." However, "[t]he fact that two inconsistent conclusions may be

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she explain what "relevant and important matter relating to the propriety or desirability of the action" the agency failed to consider. The mere mention of this issue, without elaboration or supportive authority, is insufficient to raise the issue for our consideration. *See id.*; *Soo Line R.R. Co. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 691 (Iowa 1994). Further, and more importantly, the district court did not address the issue of whether the agency's decision should be reversed under section 17A.19(10)(j). *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) *("*It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal."). Because Alaniz did not preserve error on this issue, we need not and do not address it any further.

drawn from the same evidence does not prevent the agency's findings from being supported by substantial evidence." *Asmus*, 722 N.W.2d at 657.

"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 Alaniz did not show her February 19, 2001 injury resulted in permanent impairment or disability.

Alaniz's treating physicians opined that her February 19, 2001 injury was a temporary aggravation of a pre-existing degenerative condition. Dr. Young explained that Alaniz's diagnostic studies did not reveal any structural damage to her spine. He further noted she had experienced "a fairly extensive pain-free interval following conservative treatment of her initial low back pain" and obtained a "full range of motion of her lumbar spine and left hip region." He discharged her from his care and returned her to work without restrictions on April 27, 2001.

Dr. McGuire likewise declined to assign any "permanent lifelong impairment and/or restrictions pertaining to the work incident of February 19, 2001" based on her "history, the physical examination, and the diagnostic studies, combined with [his] years of clinical experience." He noted that her symptoms "resolved relatively quickly" following her February 19, 2001 injury, although he did not "doubt[ ] that she had other incidences that again aggravated her symptoms for a period of time." He critiqued Dr. Neiman's assessment of Alaniz's condition, noting Dr. Neiman saw her nearly two and a half years after

her work incident and did not review her diagnostic studies before issuing an impairment rating.

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 opinions of Drs. Young and McGuire over the opinion of Dr. Neiman.[3] Alaniz nevertheless argues the agency erred in relying on the opinions of Drs. Young and McGuire because their conclusion that she did not suffer structural damage to her spine as a result of her February 19, 2001 injury ignores the April 6, 2001 MRI, which revealed degenerative disc disease and an annular tear at the L4-5 level. However, both physicians reviewed that MRI and other diagnostic studies on multiple occasions before issuing their reports on Alaniz's condition, while Dr. Neiman did not. In addition, as Kraft correctly observes, the MRI was performed after Alaniz began experiencing pain in her back upon her initial return to work without restrictions in March 2001.

When Alaniz first sought medical treatment for her February 19, 2001 injury, her complaints focused on pain in her left hip. By March 15, 2001, her left hip pain was minimal, and she was released to work without restrictions. However, on March 23, she returned to Waltersdorf complaining of renewed pain in her left hip in addition to a new symptom of pain in her left lower back, which she experienced while stacking and pulling bags of candy on a pallet on March

[3] We reject Alaniz's argument that the deputy erred in stating that Dr. Neiman did not render an opinion as to the cause of her permanent impairment and restrictions as this error was corrected by the commissioner on appeal.

21 and 22. She told Waltersdorf that "she had been getting along well" up until that time. These symptoms were again resolved by the end of April 2001, and she was able to resume working at Kraft without restrictions. She was also able to work at SunBest for eighteen hours every weekend from August 2001 through March 2002.

Alaniz did not seek further medical treatment from either Dr. Young or Dr. McGuire until August 2002. Her primary complaint upon returning to see these physicians was low back pain. Both of them believed that her condition at that time was "probably related to work and the aggravation from repetitive work." However, neither physician suggested that her low back pain was related to her February 19, 2001 work injury, which primarily manifested itself with left hip pain.

Finally, we reject Alaniz's argument that the agency "[e]mphasiz[ed] only the negative aspects of the" functional capacity examination (FCE) performed on her in February 2004 and ignored "the fact that the FCE was, in a majority of factors, probative of [her] permanent restrictions and impairments." Although the FCE demonstrated Alaniz's functional abilities were limited in several different areas due to her low back pain, the evaluator stated her "overall performance was a combination of self-limited and functionally limited." The agency properly noted the results of the FCE and the inconsistencies observed by the evaluator in Alaniz's performance.

Alaniz's arguments on appeal essentially request us to reweigh the evidence. It is 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). In light of the foregoing, we conclude, as did the district court, that substantial evidence supports the agency's finding that Alaniz did not suffer a permanent impairment or disability as a result of her February 19, 2001 work injury.

IV. CONCLUSION.

The district court did not err in affirming the agency's decision denying Alaniz's claim for permanent partial disability benefits. There is substantial evidence in the record supporting the agency's finding that her February 19, 2001 injury did not result in permanent impairment or disability. We therefore affirm the judgment of the district court.

AFFIRMED.