**IN THE COURT OF APPEALS OF IOWA**

No. 8-810 / 07-0551
Filed June 17, 2009

**FAYE ELLEN HOEFT,**
Petitioner-Appellee/Cross-Appellant,

**vs.**

**FLEETGUARD, INC., and TRAVELERS INSURANCE COMPANY,**
Respondents-Appellants/Cross-Appellees.

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Appeal from the Iowa District Court for Worth County, Stephen P. Carroll, Judge.

An employer and its insurance carrier appeal, and petitioner cross-appeals, a district court decision remanding the decision of the Iowa Workers' Compensation Commissioner for further findings concerning petitioner's medical condition. **REVERSED AND REMANDED.**

Richard G. Book of Huber, Book, Cortese, Happe & Lanz, P.L.C., West Des Moines, for appellants.

Mark Soldat of Soldat & Parrish-Sams, P.L.C., West Des Moines, for appellee.

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

**MILLER, J.**

## I. Background Facts & Proceedings

Faye Hoeft was formerly employed by Fleetguard, Inc. as a press operator. Hoeft injured her neck and shoulder on July 20, 1998, during the course of her employment, when she slipped and grabbed a scrap hopper with her right hand and arm. She was subsequently diagnosed with a spinous process fracture at the C6 level, and on July 28, 2000, had surgery to remove a bone fragment.[1] She was able to return to work as a press operator. She continued to report pain in her neck and shoulder.

Hoeft filed a claim for workers' compensation benefits. An administrative hearing was held on April 3, 2001. Hoeft was awarded benefits based on a finding:

> It is concluded that claimant had a preexisting Clay Shoveler's condition in her neck that was asymptomatic prior to July 20, 1998, but which became symptomatic after being aggravated by the work injury of July 20, 1998. Although later repetitious work activities occurring after July 20, 1998, may have contributed to claimant's symptoms, the greater weight of the evidence is that the traumatic slip injury of July 20, 1998, was the principal causative event that aggravated claimant's condition.

Hoeft's physical impairment rating was determined to be eight percent, and her industrial disability was determined to be twenty percent.

Hoeft continued to seek medical treatment for muscle spasms in her neck and right upper back. Her primary physician, Dr. Connie Arispe, diagnosed chronic myofascial pain. Dr. Arispe approved Hoeft for ongoing chiropractic

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[1] Hoeft's C6 bone fracture is also known as Clay Shoveler's syndrome.

treatments. Hoeft was placed on work restrictions by her chiropractor, Dr. Jeff Anderson, of no lifting over ten pounds, no reaching over shoulder height, and no repetitive shoulder motion. On January 15, 2002, Fleetguard informed Hoeft it had no work available that would meet her work restrictions.

Dr. Anderson revised Hoeft's work restrictions, but Fleetguard still stated it had no work available for her. Hoeft has not returned to work, and she was approved for long term disability through her employer. Hoeft has received a series of injections of botulinum toxin (Botox) to her shoulder, which give her temporary relief from her symptoms.

Hoeft filed a petition for review-reopening proceedings on January 21, 2003. On July 16, 2003, the employer's long term disability carrier determined Hoeft no longer qualified for benefits because she was capable of engaging in employment.[2] Fleetguard terminated Hoeft's employment the next day, July 17, 2003. In November 2003, Hoeft was approved for Social Security disability benefits effective July 27, 2001.

Hoeft had an independent medical examination on March 31, 2004, by Dr. John Kuhnlein, who determined "[t]he chronic myofascial pain syndrome would be an outgrowth of the original work injury." He found Hoeft's physical impairment rating had not increased from eight percent. A vocational rehabilitation evaluation found Hoeft was employable in a variety of occupations.

An administrative hearing was held on July 13, 2004. The employer raised an argument that Hoeft's condition had changed, but the change was

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[2] Hoeft sought a review of the long term disability insurance carrier's decision. The company reaffirmed the denial of her benefits on September 29, 2003.

caused by an injury that occurred on July 26, 2001, when Hoeft was pulling a 400-pound basket at work. The employer asserted Hoeft's current condition was not proximately caused by the July 20, 1998 work injury.

The deputy found Hoeft "has not sustained a change of condition warranting the award of additional industrial disability." The deputy found:

> The claimant has continued to have pain and problems as contemplated in the original award of disability. It was known that the claimant had exacerbations of her problems when she worked at the time of the award. Claimant obtains treatment and gets some temporary relief as a result of the treatment as she did at the time of the award. Perhaps in retrospect the award of industrial disability should have been larger but that is not the purpose of a review reopening.
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> As the claimant has not established a change of condition the issues of additional healing period, permanent disability and penalty are moot.

The deputy found the issue of medical expenses was not moot, noting "Defendants essentially agreed to pay these medical expenses with the exception of those incurred with the chiropractor Dr. Anderson." Because Dr. Arispe recommended continuing chiropractic adjustments, the deputy awarded these expenses as well. Furthermore, the deputy determined the employer should provide alternate medical care consisting of Botox injections.

Hoeft appealed the deputy's decision. The workers' compensation commissioner affirmed and adopted the deputy's decision, with the additional analysis:

> I find that claimant's condition deteriorated in a way that was not contemplated when the arbitration hearing was held and formed the basis for the appeal decision that awarded benefits, including compensation for twenty percent permanent partial disability. I find that the evidence fails to prove that it is probable that the deterioration was proximately caused by the injury of July 20, 1998.

> Claimant sustained an injury, was treated and recovered. Her current state of ill health is not shown to be a consequence of that injury.

Hoeft filed a petition seeking judicial review of the commissioner's decision. The district court entered a decision on February 19, 2007, which found that while the issue of proximate cause had been raised at the administrative hearing, it was not raised in the intra-agency appeal of the deputy's decision. The court found the commissioner improperly brought up an issue not raised by the parties. The court also determined the commissioner's conclusions were not supported by a reasoned opinion as required by Iowa Code section 17A.16(1) (2003). The court remanded the matter to the commissioner for additional findings.

On February 28, 2007, Hoeft filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2) seeking to enlarge or amend the court's decisions. However, the motion was filed under the wrong case number in the wrong county.[3] She later realized her mistake, and in a motion filed on March 9, 2007, sought additional time to file her rule 1.904(2) motion. She filed a new rule 1.904(2) motion on March 14, 2007. Before the district court could rule on these motions, the employer and its insurance carrier (employer) filed a notice of appeal on March 21, 2007. Hoeft filed a conditional notice of appeal on the same day.

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[3] Hoeft's case was number CVCV011403 in Worth County. She filed her rule 1.904(2) motion under number CVCV015880 in Winnebago County. She later stated the mistake had been made because there had been previous judicial review proceedings in Winnebago County, and the improper caption had been placed on the motion she intended to file in Worth County.

Hoeft filed a motion with the Iowa Supreme Court for limited remand to allow the district court to rule on her rule 1.904(2) motion. The employer resisted the motion. The Supreme Court denied the motion for limited remand. The case was subsequently transferred to the Iowa Court of Appeals.

## II. Standard of Review

Our review is governed by the Iowa Administrative Procedure Act. Iowa Code ch. 17A; *Acuity Ins. v. Foreman*, 684 N.W.2d 212, 216 (Iowa 2004). We review the district court's decision by applying the standards of section 17A.19 to the agency decision to determine if our conclusions are the same as those reached by the district court. *Univ. of Iowa Hosps. & Clinics v. Waters*, 674 N.W.2d 92, 95 (Iowa 2004).

## III. Appellate Jurisdiction

Hoeft asserts we do not have jurisdiction to hear the employer's appeal because the district court did not rule on her pending motions, and thus, there has been no final decision in the district court proceedings.

When a timely rule 1.904(2) motion "is pending prior to the taking of an appeal, the decree to which the motion is addressed becomes in effect interlocutory until the court rules on the motion."[4] *Wolf v. City of Ely*, 493 N.W.2d 846, 848 (Iowa 1992). Hoeft points out that under Iowa Rule of Appellate

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[4] If a party who has filed a post-trial motion appeals, the party is deemed to have waived the motion. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 628 (Iowa 2000). When an appeal is filed by a party when another party's post-trial motion is pending, the appeal is considered interlocutory. *Id.* If the party with the pending post-trial motion then cross-appeals, the cross-appeal is not considered to have waived the party's motion. *Id.* at 629. Both the appeal and cross-appeal in that situation are considered interlocutory in nature, and are "subject to this court's discretion to accept or decline the appeal . . . ." *Id.*

Procedure 6.1(3), there is no appeal as of right from an interlocutory ruling.[5] Obtaining permission to bring an interlocutory appeal is jurisdictional. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 627 (Iowa 2000).

In raising this argument, Hoeft asserts her rule 1.904(2) motion was properly filed. A rule 1.904(2) motion must be filed within the time allowed for a motion for new trial. Iowa R. Civ. P. 1.904(2). A motion for new trial must be filed within ten days after the filing of a verdict, report or decision "unless the court, for good cause shown and not ex parte, grants an additional time not to exceed 30 days." Iowa R. Civ. P. 1.1007; *State ex rel. Miller v. Santa Rosa Sales & Mktg., Inc.*, 475 N.W.2d 210, 213 (Iowa 1991). A motion for an extension of time must be filed within the time period for filing the motion, here ten days. *See Polk County v. Davis*, 525 N.W.2d 434, 436 (Iowa Ct. App. 1994). An untimely motion for extension of time should be denied. *See Sandler v. Pomerantz*, 257 Iowa 163, 167, 131 N.W.2d 814, 817 (1964); *McQueen v. Garrett*, 255 Iowa 761, 763, 124 N.W.2d 166, 167 (1963).

An untimely or improper rule 1.904(2) motion does not extend the time for appeal.[6] *In re Marriage of Okland*, 699 N.W.2d 260, 265-66 (Iowa 2005). When a rule 1.904(2) motion is untimely, the time for filing an appeal is computed from the date of the judgment that was the subject of the motion. *Estate of Morgan v.*

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[5] We note that an appeal should not be dismissed solely because a party has appealed from an interlocutory order. Iowa R. App. P. 6.1(4). We regard such an appeal as an application for an interlocutory appeal under rule 6.2(1), which then may be granted or denied.

[6] The timely filing of a rule 1.904(2) motion tolls the thirty-day period for filing a notice of appeal. *IBP, Inc.*, 604 N.W.2d at 627. The time for appeal is extended to thirty days after the court's ruling on the motion. Iowa R. App. P. 6.5(1).

*North Star Steel Co.*, 484 N.W.2d 199, 200 (Iowa 1992); *Hays v. Hays*, 612 N.W.2d 817, 819 (Iowa Ct. App. 2000).

The district court entered its ruling on the petition for judicial review on February 19, 2007. Hoeft filed her first rule 1.904(2) motion on February 28, 2007, under the wrong number in the wrong county. In a case involving judicial review of agency action, the case must be heard in a county permitted by statute.[7] *Anderson v. W. Hodgeman & Sons, Inc.*, 524 N.W.2d 418, 421 (Iowa 1994). "[O]nly the district court of the county where an administrative appeal may be filed has the power to hear the case." *Id.* We conclude Hoeft's motion, filed in the Iowa District Court for Winnebago County, did not properly invoke jurisdiction in the Iowa District Court for Worth County to address her motion. *Cf. Countryman v. Mt. Pleasant Bank & Trust Co.*, 357 N.W.2d 599, 604 (Iowa 1984) (finding the filing of post-trial motions in Van Buren County was acceptable, after trial had been held in Monroe County based on a change in venue, when parties and court had acquiesced in the continued filing of documents in Van Buren County).

Hoeft's motion for an extension of time, filed on March 9, 2007, and her second rule 1.904(2) motion, filed on March 14, 2007, were untimely, and did not extend the time for filing a notice of appeal. Because Hoeft's motions had either been filed in the wrong county or were untimely, there were no issues that could have been addressed by the district court. We conclude the employer's appeal

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[7] Under section 17A.19(2), a petition for judicial review of agency action may be filed "either in Polk county district court or in the district court for the county in which the petitioner resides or has its principal place of business."

was not interlocutory in nature, and we have jurisdiction to address the issues raised.

## IV. Commissioner's Decision

**A.** The employer claims the district court erred by remanding the case back to the commissioner for further findings. It asserts the commissioner did not decide an issue that had not been raised by the parties, and that the parties had not been denied due process by the commissioner's decision. The employer also disputes the district court's conclusion that the commissioner violated the spirit of Iowa Administrative Code rule 876-4.28 by failing to identify all of the issues to be reviewed in a notice to the parties.

There are two means of appeal of a deputy's decision. *Aluminum Co. of Am. v. Musal*, 622 N.W.2d 476, 478 (Iowa 2001). One of the parties may file a notice of appeal with the commissioner within twenty days of the deputy's decision. Iowa Admin. Code r. 876-4.27; *Aluminum Co.*, 622 N.W.2d at 478. In the second method, the commissioner decides to review the deputy's decision on his own motion. Iowa Admin. Code r. 876-4.29; *Aluminum Co.*, 622 N.W.2d at 478. "Under each method of review, the rules clearly contemplate that the issue or issues for review will be identified." *Aluminum Co.*, 622 N.W.2d at 478.

Under the first method, the issues must be identified in the briefs filed by the parties. *Id.* Furthermore, rule 876-4.28(7), regarding the issues considered in an intra-agency appeal, provides:

> The appeal will consider the issues presented for review by the appellant and cross-appellant in their briefs and any issues necessarily incident to or dependent upon the issues that are expressly raised, except as provided in 4.29 (86,17A). An issue will

> not be considered on appeal if the issue could have been, but was not, presented to the deputy. An issue raised on appeal is decided de novo and the scope of the issue is viewed broadly. If the ruling from which the appeal was taken made a choice between alternative findings of fact, conclusions of law, theories of recovery or defenses and the alternative selected in the ruling is challenged as an issue on appeal, de novo review includes reconsideration of all alternatives that were available to the deputy.

Under the second method, "[t]he commissioner shall specify in a notice mailed to the parties . . . the issues to be reviewed and the additional evidence, if any, to be obtained by the parties." Iowa Admin. Code r. 876-4.29. The commissioner must give the parties notice of the issues it will consider, and allow the parties to file briefs. *Marovec v. PMX Indus.*, 693 N.W.2d 779, 784 (Iowa 2005).

This case involves the first method of appeal because Hoeft appealed the deputy's review-reopening decision. The commissioner could then consider "any issues incident to and dependent upon the issues that are expressly raised . . . ." Iowa Admin. Code r. 876-4.28(7). Before the deputy, the employer raised as alternative defenses the issue of whether Hoeft's condition had changed, or assuming it had changed, whether the change was proximately caused by the 1998 work-related injury. On intra-agency appeal, the commissioner engages in "de novo review includ[ing] reconsideration of all alternatives that were available to the deputy." *Id*. Thus, although the deputy found Hoeft's condition had not changed, the commissioner could properly conclude any changes to Hoeft's condition were not proximately caused by the work-related injury she received in 1998.

We determine the commissioner did not violate, either in actuality or in spirit, the rules of the Iowa Administrative Code dealing with intra-agency appeals of workers' compensation decisions. Hoeft was not denied due process by the commissioner's decision, because the administrative rules specifically provide that the commissioner may consider alternative arguments that were rejected by the deputy. We conclude the district court erred by finding the commissioner had decided an issue not raised by the parties in the intra-agency appeal. The commissioner had the ability to consider "any issues necessarily incident to or dependent upon the issues that are expressly raised . . . ." *Id.*

**B.** The employer contends the district court erred by finding the commissioner's decision did not comply with the requirements of section 17A.16(1). This section provides:

> A proposed or final decision or order in a contested case shall be in writing or stated in the record. A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. The decision shall include an explanation of why the relevant evidence in the record supports each material finding of fact. . . . Each conclusion of law shall be supported by cited authority or by a reasoned opinion.

Iowa Code § 17A.16(1).

"Administrative findings of fact must be sufficiently certain to enable a reviewing court to ascertain with reasonably certainty the factual basis on which the administrative officer or body acted." *Catalfo v. Firestone Tire & Rubber Co.*, 213 N.W.2d 506, 509 (Iowa 1973). The commissioner must state the evidence

relied upon and detail the reasons for the commissioner's decision. *Heartland Specialty Foods v. Johnson*, 731 N.W.2d 397, 400 (Iowa Ct. App. 2007).

On the other hand, "the commissioner need not discuss *every* evidentiary fact and the basis for its acceptance or rejection so long as the commissioner's analytical process can be followed on appeal." *Bridgestone/Firestone v. Accordino*, 561 N.W.2d 60, 62 (Iowa 1997). In *Accordino*, the commissioner affirmed and adopted the deputy's decision. *Id*. at 61. The Iowa Supreme Court concluded this "short form" decision by the commissioner met the requirements of section 17A.16(1). *Id*. at 62. The court noted, "No purpose would be served by requiring the commissioner to duplicate the deputy's effort." *Id.* We conclude the commissioner's decision in this case, which affirmed and adopted the decision of the deputy, with the commissioner including additional analysis, met the requirements of section 17A.16(1) and the district court erred in finding to the contrary.

## V. Cross-Appeal

Hoeft contends the district court erred by remanding to the commissioner without giving specific directions. We have already determined the district court erred by remanding the case to the commissioner. Because of our conclusion, we need not address Hoeft's argument concerning whether the commissioner should have been given specific directions.

## VI. Disposition

We reverse the decision of the district court remanding the case to the commissioner for additional factual findings. We conclude the commissioner did

not improperly raise new issues in the intra-agency appeal, and the commissioner's decision met the requirements of section 17A.16(1).

The employer asks that we find that the commissioner's decision is supported by substantial evidence and affirm the decision of the commissioner. The employer recognizes, however, that this issue was not addressed by the district court due to the court's conclusion that the matter should be remanded to the commissioner based on the issues discussed above. We determine the case should be remanded to the district court for consideration of those issues properly presented in the judicial review proceeding but not previously addressed by the district court.

**REVERSED AND REMANDED.**