

IN THE COURT OF APPEALS OF IOWA

No. 8-835 / 08-0222
Filed October 29, 2008

PELLA CORPORATION,
Petitioner-Appellant,

vs.

MARY JANE FRANKS,
Respondent-Appellee.

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

Employer appeals from the district court's ruling on its petition for judicial review affirming the workers' compensation commissioner's award of mental health treatment benefits to employee. **AFFIRMED.**

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

Dennis L. Hanssen and Wendy D. Boka of Hopkins & Huebner, P.C., Des Moines, for appellee.

Considered by Huitink, P.J., and Vaitheswaran and Potterfield, JJ.

HUITINK, P.J.

Pella Corporation (Pella) appeals from the district court's ruling on its petition for judicial review affirming the workers' compensation commissioner's award of mental health treatment benefits to Mary Jane Franks. Pella complains Franks' mental condition is not causally related to an injury to her fingers and therefore it should not be held responsible for treatment. Pella also argues that even if it is properly obligated to provide mental health treatment, the agency erred in concluding treatment should continue with providers chosen by Franks. We affirm.

I. Background Facts and Proceedings. Franks sustained a work-related injury to her right hand on January 25, 2000, while employed by Pella. Four fingers of Franks' right hand were cut when her hand was pulled into machinery and pinched between rollers of the machine and the glass of the window on which she had been working. The cuts required several sutures and resulted in permanent restrictions.

On March 11, 2002, Dr. Kip Burkman evaluated Franks and his "Impressions of Findings Caused By 1-25-00 Work Injury" included "development of multiple right finger contractures . . . [s]econdary effect of right shoulder pain . . . [s]econdary depression." Following the January 2000 injury, Franks was no longer able to use her right hand, but doctors could find no physiological reason for the condition. A deputy workers' compensation commissioner determined Franks sustained a fifty percent disability to her right hand and awarded permanent partial benefits.

In July 2004 Franks filed a petition for medical benefits seeking to have her ongoing psychological care paid for by Pella. Pella denied responsibility for any work-related injury involving a mental or psychological component. A hearing was scheduled before a deputy commissioner to determine whether Franks was “entitled to additional medical care in the form of psychiatric and psychological care to treat an alleged work related mental or psychological condition.”

Franks sought a continuance of the hearing in order to obtain deposition testimony of her treating psychiatrist, which she had been unable to obtain earlier due to scheduling conflicts. The hearing proceeded as scheduled, and the deputy allowed additional time after the hearing for the parties to submit “additional expert testimony . . . needed by both sides.”

At the hearing held on April 19, 2005, Franks testified about her hand injury, the “loss” of her hand, and her subsequent feelings of depression, including thoughts of suicide. She testified she had experienced depression since the injury and that she had “tried to manage it” on her own until March 2003 when she “couldn’t take it anymore.” She testified she told Dr. Alan Jensen she was extremely depressed and he prescribed antidepressants. (Alan Jensen, M.D., was the doctor to whom she had been referred for treatment in the form of pain management. Apparently, neither Franks nor Pella was aware that Dr. Jensen was a psychiatrist, as well as physician.) She testified Pella “fired Dr. Jensen” and referred her to Dr. Jay G. Shaaf. She testified at the time of hearing she was receiving mental health treatment from Dr. Michael Egger, M.D., and

Susan Narducci, M.S., which she found helpful. She also testified she was contemplating the amputation of her index finger on her right hand.

Exhibits submitted to the deputy include notes from Dr. David Clough, who treated Franks for her hand injury. Dr. Clough referred Franks to Dr. Jensen for pain management. Dr. Jensen's notes of March 3, 2003, indicate that Franks

brought up the fact that she is totally depressed . . . she sees her situation as hopeless and helpless. . . . At this point, I believe that she has developed a mood disorder, secondary to her general medical condition or an adjustment reaction with mixed emotional features. I believe that she is off of work completely due to the depression that is related to her Workers' Compensation-related injury.

A letter dated April 11, 2003, from Pella's insurer to Dr. Jensen stated:

It is my understanding that this patient was referred to you for pain complaints to her hand, which was injured at work on 1/25/00. It is our position that she was not referred to you for orthopedic treatment of the shoulder, nor was she referred to you for treatment of depression. Please be advised that we will not authorize any more treatment for depression or the shoulder.

. . . .

We would ask that you confine your activities to the condition for which the referral was made.

Dr. Jensen continued to treat Franks for the next five months and then referred her to Dr. Schaaf. Pella authorized Dr. Schaaf to treat Franks for pain, but not for depression. Dr. Schaaf continued to treat Franks for depression, but Franks was required to pay for her Zoloft prescription, an anti-depressant medication.

On April 16, 2003, Pella sent Franks for evaluation by Dr. Bruce Gutnik, a psychiatrist. Dr. Gutnik's report summarizes his opinion:

Ms. Franks has an Anxiety Disorder NOS [not otherwise specified] that includes some symptoms of depression and a history of phobias. At the present time she has either a Conversion Disorder or is Malingering his [sic] physical symptoms, and in either case these are not a result of the injury per se, but rather, unconscious

or conscious secondary gain. Since Ms. Franks' physical symptoms are in my opinion not caused by a physical injury, it follows that her Anxiety Disorder NOS is also not related to the physical injury. In my opinion, with a reasonable degree of medical certainty Ms. Franks suffers from no psychiatric or psychological symptoms directly related to her physical injury.

By letter dated July 3, 2003, Dr. Jensen provided Franks with the following medical opinions:

1. The last time I saw Mary Franks was on 6/20/03. The history that she had given me was that she had improved with the Zoloft, Seroquel, Bextra and Lasix. However she still has issues surrounding her ability to work and felt that she had been discarded by Pella Windows. She still had depressive features of a sleep disturbance, decreased interest in her activities, a degree of hopelessness and helplessness regarding her present situation after hand injury at Pella Windows, a decreased energy level, some degree of impairment of memory and concentration My diagnosis at this time was depression secondary to a general medical condition related to her hand. . . .

2. I believe that Ms. Franks depressive features are directly causally related to the work related injury that she sustained at Pella Windows in January 25, 2000. Referring to the proper definition outlined in your letter, a work related injury is a substantial factor in bringing about the change in her mood and her inability to adjust to her present circumstances after her injury.

3. I would recommend that Mary continue with the Zoloft . . . I would like to have her see a vocational counselor for a two-fold purpose. I would like to see her get help in obtaining employment for which she will be capable within the context of her injury. In addition, I would like her to see a counsel who would be able to deal with the psychotherapeutic issues of adjustment reaction with mixed emotional features.

I believe that if Ms. Franks' psychiatric symptoms are addressed in the above manner she will have an optimal outcome. However, I believe that if she does not have significant intervention at the time that she may become permanently totally disabled from a psychiatric basis. I believe that the further investment by the worker's compensation carrier are minimal compared to what has already been invested, and both the carrier and Ms. Franks will reap maximum medical benefit from a timely intervention as outlined above.

Dr. Egger, practicing psychiatry with Alegent Health Psychiatry Associates, first examined Franks on March 10, 2004. He diagnosed Franks with a major depressive disorder, status post right hand injury with contracture. Dr. Egger recommended drug therapy and psychotherapy. Franks began seeing Susan Narducci, an associate at Alegent Health for cognitive therapy.

Also submitted was deposition testimony of Dr. Gutnik, taken on March 23, 2005 prior to the workers' compensation benefits hearing. Dr. Gutnik's deposition testimony includes the following exchanges:

Q. It seemed like there was some conflict then as to the information she gave you as to when these various signs or symptoms began. Did you ever resolve the conflict? A. The best I could resolve it was the notion that she's given me a history suggestive to me of the correct diagnosis of anxiety disorder not otherwise specified, which entails not only anxiety symptoms, but signs of depression when stressed. And she had a history of several depressive episodes when stressed, and it appears to me that that's where her depression came from. So it's all part of an ongoing long-term kind of problem. I got the impression that she – based on what she told me -- it wasn't an impression – she flat out told me that she started having crying spells and was depressed from day one at the time of the injury, but that it got worse. I guess, about a year before I saw her.

. . . .

Q. And in what way would that generalized grouped anxiety disorder have any causal relationship to the injury to her fingers? A. In my opinion, it would have none.

Q. Why not? A. As far as I can tell, she was really no different than she had been prior to the injury. Her reaction of depression while present she said from day one, apparently blew up sometime after more than a year went by. I wouldn't relate that to the injury, the exaggeration or increased symptoms.

. . . .

A. Sure. There's no question that she had an injury to her hand, that she cut her four fingers. The way she presented to me was, she said that she severed four fingers, which is not what happened. But in her own mind, she's blown this out of proportion to the actual physical injury. She developed a contracture of the hand, but it's not a physiologic contracture. . . . If it's not a physiologic reason, then we have to go to something psychological or we have to

assume she's malingering. . . . I couldn't tell which of those two was the case, but it is clear from all the records that the symptoms she has were not being generated by a physical problem and were psychological in origin.

. . . .
 Q. The fact that there's a temporal relationship between the anxiety disorder and the work injury is purely consequential, in your opinion? A. Well, in my opinion, she doesn't have much of a physical injury. And again, as I just outlined a few minutes ago, I feel that the symptoms that she's complaining of are psychologically generated. Not physically generated. And as such, I wouldn't relate the anxiety or the depressive symptoms to the physical injury. . . .

Q. . . . So when she became depressed and anxious in the months following the work injury, was there any relationship at that time between the anxiety and the depression and the work injury? A. There may well have been. Sure.

Q. Well, within a reasonable degree of medical probability, was the anxiety and the depression that she had in the – let's say the twelve months following the injury – was that related to the work injury? A. I'm going to say based on her telling me that she became depressed and had crying spells immediately following, that that depression was related to the injury.

Q. So would that be a situation where her preexisting anxiety disorder, as you call it, was lit up or aggravated by the work injury? A. Sure.

Following submission of briefs,¹ the deputy ruled that Franks was entitled to alternate medical care and Pella was liable for Iowa Code section 85.27 (2003) medical benefits necessary to treat a work-related condition. Pella was ordered to provide continued reasonable and necessary treatment “and said care shall rest with Michael Egger, M.D. and Susan Narducci, M.S.”

Pella appealed. The workers' compensation commissioner affirmed and adopted the deputy's decision. The commissioner agreed with the causation findings of the deputy and concluded Dr. Gutnik's opinion was less convincing than those of Drs. Jensen and Egger, because he “initially denied that the work

¹ Additional deposition testimony was later determined to be erroneously allowed and therefore is not included or considered here.

injury aggravated or lit up claimant's mental condition but he then appeared to change that opinion."

Pella sought judicial review before the district court, which affirmed. The district court determined substantial evidence supported the causation determination of the commissioner. The court also concluded the commissioner's conclusion that Franks should continue to receive treatment from Dr. Egger and Narducci was based on "entirely reasonable grounds" and was "well within the agency's authority." Pella appeals.

II. Scope and Standard of Review. Our scope of review in workers' compensation cases is governed by the Iowa Administrative Procedure Act, chapter 17A (2005). *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). Our review of the commissioner's decision is for errors at law, not de novo. *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 330 (Iowa 2005). "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. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 463 (Iowa 2004). 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).

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*, 686 N.W.2d at 464-65. 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. Causation. Pella argues that “if Franks is now depressed, such depression cannot logically be found to causally result from the January 24, 2000 injury to her fingers.” It is true that Dr. Gutnik opined, “Since Ms. Franks’ physical symptoms are in my opinion not caused by a physical injury, it follows that her Anxiety Disorder NOS is also not related to the physical injury.” However, Dr. Gutnik also testified:

Q. . . . So when she became depressed and anxious in the months following the work injury, was there any relationship at that time between the anxiety and the depression and the work injury?

A. There may well have been. Sure.

Q. Well, within a reasonable degree of medical probability, was the anxiety and the depression that she had in the – let’s say the twelve months following the injury – was that related to the work injury? A. I’m going to say based on her telling me that she became depressed and had crying spells immediately following, *that that depression was related to the injury.*

Q. So would that be a situation where her preexisting anxiety disorder, as you call it, was lit up or aggravated by the work injury?

A. Sure.

(Emphasis added.) Drs. Jensen and Egger also opine that Franks’ mental condition is a result of her physical injury.

Moreover, contrary to Dr. Gutnik's apparent belief, a lack of physiologic basis for Franks' contracture of her fingers does not necessarily negate that the same was caused by the work-related injury. See, e.g., *Dowell v. Wagler*, 509 N.W.2d 134 (Iowa Ct. App. 1993) (recognizing "phantom pain" as compensable injury). "The injury contemplated by the [workers' compensation statutory provisions] "is broader than mere reference to some objective physical break or wound to the body, but includes also the consequences therefrom, including mental ailments or nervous conditions.'" *Id.* at 137 (quoting *Deaver v. Armstrong Rubber Co.*, 170 N.W.2d 455, 466 (Iowa 1969)).

We conclude there is ample evidence in the record from which the commissioner could reasonably find that Franks' mental condition was caused by her work-related injury. The district court did not err in affirming the commissioner's ruling.

IV. Specific Treatment. Pella contends the commissioner erred in concluding Franks should continue to receive treatment from her chosen providers, Dr. Egger and Susan Narducci. Pella argues the commissioner abused its discretion in concluding Dr. Egger and Narducci were providing beneficial treatment to Franks. Franks responds that Pella has lost its right to control her medical care because it denied liability for her injury and has failed to offer appropriate treatment.

Like the district court, we conclude the commissioner's ruling was within its discretion. Pursuant to Iowa Code section 85.27, an employer is to furnish reasonable medical care. *Id.* § 85.27(1). If an employee is dissatisfied with the care offered, and the employer and employee cannot agree on alternate care,

“the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.” *Id.* § 85.27(4). Our supreme court has held that an employer has only a qualified right to control treatment

because the treatment must be (1) prompt, (2) reasonably suited to treat the injury, and (3) without undue inconvenience to the claimant. . . . [I]f the treatment the employer offers fails to meet any one of these qualifications, the commissioner has the authority to order alternate care, including care from a doctor chosen by the claimant.

West Side Transp. v. Cordell, 601 N.W.2d 691, 693 (Iowa 1999). Here, Pella has continually refused to offer Franks psychological care of any kind.

Under the workers’ compensation statutory provisions, Franks asked the commissioner to order alternate care and, as recognized in *Cordell*, the commissioner had the authority to order care chosen by Franks. The deposition testimony of Dr. Gutnik, while disagreeing with diagnosis, acknowledges that the treatment protocol of Dr. Egger and Ms. Narducci is appropriate. There was no abuse of discretion in the commissioner’s order to allow continuing care with these providers.

Pella argues that the offers of proof were outdated and thus could not reasonably be relied upon by the commissioner. An abuse of discretion occurs only when the commissioner exercised its discretion on untenable grounds or its exercise of discretion was clearly erroneous. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 630 (Iowa 2000). Under the circumstances presented in this case, we find no abuse of discretion.

V. Summary.

There is substantial evidence to support the commissioner's finding that Franks's mental condition is causally related to an injury to her fingers sustained in 2000. The commissioner did not abuse its discretion in ordering Pella to continue to provide mental health treatment with providers chosen by Franks, where Pella had failed to offer medical care of any kind for her psychological condition. We affirm.

AFFIRMED.