IN THE COURT OF APPEALS OF IOWA

No. 9-164 / 08-1637
Filed April 22, 2009

ABF FREIGHT SYSTEM, INC., and
ACE USA WORKERS' COMPENSATION,
Petitioners-Appellants,

vs.

BRADLEY J. HUFF,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge.

ABF Freight System appeals from the district court's judicial review decision that affirmed the agency decision awarding employee benefits for a permanent partial disability. **AFFIRMED.**

Stephen W. Spencer and Joseph M. Barron of Peddicord, Wharton, Spender, Hook, Barron & Wegman, Des Moines, for appellants.

Thomas M. Wertz and Daniel J. Anderson of Wertz Law Firm, Cedar Rapids, for appellee.

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

POTTERFIELD, J.

I. Background Facts and Proceedings

Bradley Huff began working at ABF Freight System, Inc. (ABF) as a dockman/driver in 1980. His job duties included loading and unloading trailers and delivering freight. Huff sustained several injuries during the time that he worked at ABF. Huff alleged that he was injured at work on November 24, 1997. Another injury on May 10, 1999, resulted in surgery on his shoulder and back on November 15, 1999. Huff filed a claim against ABF seeking workers' compensation benefits as a result of these injuries, but his claim was denied. An arbitration decision found that Huff failed to establish that he sustained a work-related injury on November 15, 1999, and that Huff failed to prove that the 1997 injury was the cause of a temporary or permanent disability. Huff filed another claim after an injury on November 14, 2001, while he was sorting and segregating freight. The deputy workers' compensation commissioner found that Huff failed to meet his burden of proving a compensable work injury occurred on November 14, 2001.

Huff was still undergoing treatment for his back two and one-half months later, in February 2002, though he did not have any formal job restrictions. On February 5, 2002, Huff was dispatched to the Nash Finch grocery warehouse to perform the task known as "sorting and segregating," which was the cause of his claimed November 2001 injury. This task required lifting and twisting, which had been problematic for Huff because of his prior back problems. Huff generally was not required to do sorting and segregating, but he had been reassigned from his normal schedule so that he would be able to attend a medical appointment to

receive an injection in his back later that day.[1] Huff spoke with the ABF dispatcher, Terry Hindt, and requested that he not be required to go to Nash Finch. After involvement by Teamster officials, ABF required Huff to make the run to Nash Finch.

Huff testified that while he was sorting and segregating, his low back pain intensified and he could not finish the job. Another driver from ABF relieved Huff of his duties, and Huff went to Mercy Medical Center. He received his previously scheduled back injection, a three-day release from work, and temporary lifting and twisting restrictions. Huff went to his family physician, Mark Hogenson, on February 18, 2002. Dr. Hogenson issued a work restriction limiting Huff to jobs "involving no sorting and segregating." On February 25, 2002, Huff saw Chad Abernathey, a physician by whom Huff had previously been treated for his back pain in November and December 2001. Dr. Abernathey continued Dr. Hogenson's restrictions until Huff's follow-up appointment with Dr. Hogenson the next week.

ABF sent Huff to see occupational specialist David R. Durand, who indicated Huff could return to work with no restrictions. Pursuant to the applicable union contract, Huff was sent to a third physician, Ray Miller, on April 15, 2002, to resolve the conflicting medical opinions. Dr. Miller's report stated, "I think it is appropriate that [Huff] have permanent restrictions and that one of those restrictions be no sort and segregate." ABF refused to honor these

[1] Huff had reached a level of seniority that allowed him to avoid sorting and segregating for the most part. He testified that he would have such a task assigned roughly one or two times per month.

restrictions and discharged Huff from employment. Huff took retirement and has not worked as a driver since February 5, 2002.

Huff filed a petition with the Iowa Workers' Compensation Commissioner on January 24, 2004, alleging that he sustained permanent injury to his low back and body as a result of his injury on February 5, 2002, while working for ABF. After a hearing, the deputy issued an arbitration decision finding Huff failed to prove that the February 5, 2002 incident caused a permanent worsening or aggravation of Huff's pre-existing condition. The parties introduced the conflicting medical evidence from Drs. Hogenson, Durand, Abernathey, and Miller.

Huff appealed to the workers' compensation commissioner, who issued an appeal decision reversing the deputy's determination. The commissioner found Huff met his burden of proving a compensable aggravation injury that created the need for permanent restrictions. ABF filed a petition for judicial review. On September 12, 2008, the district court issued a ruling affirming the agency decision. ABF now appeals, arguing that the commissioner erred in finding that Huff met his burden to prove that he sustained permanent disability relating to his injury on February 5, 2002.

II. Standard of Review

Judicial review of an agency decision is governed by Iowa Code chapter 17A (2007). *Quaker Oats Co. v. Ciha*, 552 N.W.2d 143, 149 (Iowa 1996). We apply the standards of chapter 17A to determine whether we reach the same conclusions as the district court. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464 (Iowa 2004). If we reach the same conclusions, we affirm; if not, we reverse.

Id. Our review of administrative agency decisions is limited to correcting errors of law. *Id.*

The commissioner's findings have the same weight as a jury verdict, and we apply those findings to uphold rather than defeat the commissioner's decision. *Id.* We reverse the agency if its decision is "[b]ased upon an irrational, illogical, or wholly unjustifiable application of law to fact." Iowa Code § 17A.19(10)(m). To the extent that ABF appeals from the agency's findings of fact, we reverse if the agency action is "[b]ased upon a determination of fact . . . that is not supported by substantial evidence in the record before the court when that record is viewed as a whole." Iowa Code § 17A.19(10)(f).

> *"Substantial evidence"* means the quantity and quality of evidence 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(10)(f)(1). We are therefore bound by the agency's findings of fact if they are supported by substantial evidence. *Mycogen Seeds*, 686 N.W.2d at 465. "The mere fact that we could draw inconsistent conclusions from the same evidence does not mean that substantial evidence does not support the commissioner's determinations." *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 271 (Iowa 1995).

III. Finding of Permanent Partial Disability

ABF argues that the commissioner improperly used the previous denials of Huff's workers' compensation claims to shift the burden of proof on the February 2002 claim. The commissioner discussed the contrary medical opinions of Drs. Durand and Abernathey, which stated that the work activities of

February 5, 2002, were not the cause of Huff's condition and need for restrictions, saying:

> The opinions of Drs. Durand and Abernathey acknowledge claimant's present physical condition and need for activity restrictions, but dispute that the work activities of February 5, 2002, are the cause. Dr. Durand specifically ties the need for restrictions to claimant's pre-existing low back condition. However, this agency had previously concluded that claimant had no permanent condition resulting from his prior work activities and injuries. There is no evidence in the record that claimant sustained any low back injury outside of his employment with ABF.

ABF argues that the commissioner's language reveals a misunderstanding of previous denials of Huff's workers' compensation claims and a refusal to acknowledge Huff's pre-existing condition. However, the commissioner's ruling clearly acknowledges the pre-existing condition as well as the conflicting medical testimony regarding the extent of the condition before and after the February 2002 injury. The commissioner did not find, as ABF suggests, that the prior denials of Huff's claims meant that he had no prior disability.

The commissioner properly imposed the burden of proof on Huff and ruled that he had proved causation and permanency of a disability as a result of the February 5, 2002 injury. As the district court noted, the commissioner was entitled to rely on the medical opinions of Drs. Hogenson and Miller, supported by Huff's subjective complaints, and was not required to accept the conflicting opinions of Drs. Durand and Abernathey. The four doctors involved had differing opinions as to whether the aggravation of Huff's pre-existing condition was permanent or temporary. The evidence for both conclusions was substantial and fairly evenly divided. However, we do not change an agency decision simply

because we may have reached a different conclusion. *Terwilliger*, 529 N.W.2d at 271.

AFFIRMED.