IN THE COURT OF APPEALS OF IOWA

No. 9-550 / 08-1964
Filed September 17, 2009

WILIAN HOLDINGS CONSTRUCTION PRODUCTS, INC. and TRAVELERS INS.,
Petitioners-Appellants,

vs.

DON RICE,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge.

An employer appeals a ruling affirming a workers' compensation award of penalty benefits to an employee, contending the penalty benefit award was erroneous and unsupported by substantial evidence. **REVERSED AND REMANDED.**

Peter Sand of Scheldrup Blades P.C., Cedar Rapids, for appellant.

Jerry Jackson of Moranville & Jackson P.C., West Des Moines, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Mansfield, JJ.

VAITHESWARAN, J.

Wilian Holding Construction Products, Inc. appeals a ruling affirming a workers' compensation award of penalty benefits to Don Rice.

I. Background Facts and Proceedings

Don Rice was awarded workers' compensation benefits for an on-the-job injury, and, in a divided ruling, this court affirmed the award. *Wilian Holding Constr. Prods. v. Rice*, No. 04-2085 (Iowa Ct. App. June 15, 2005).

Wilian did not pay Rice benefits until after the appeals were resolved. Rice sought penalty benefits, alleging that the company unreasonably delayed the payments. In the end, a deputy workers' compensation commissioner awarded Rice penalty benefits equal to 25% of the award he received in the underlying action. The commissioner upheld this decision, as did the district court on judicial review. Wilian appealed, contending the penalty benefit award was erroneous and unsupported by substantial evidence. *See* Iowa Code § 17A.19(10)(c), (f) (2007).

II. Analysis

The statute authorizing penalty benefits states:

> If a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were unreasonably delayed or denied.

Iowa Code § 86.13. The burden of proving a delay is on the claimant. *City of Madrid v. Blasnitz*, 742 N.W.2d 77, 81 (Iowa 2007). If the claimant establishes a delay, the burden shifts to the employer to prove a reasonable excuse for the

delay. *Id.* "A reasonable cause or excuse exists if . . . the employer had a reasonable basis to contest the employee's entitlement to benefits." *Id.* (quoting *Christensen v. Snap-On Tools Corp.*, 554 N.W.2d 254, 260 (Iowa 1996)). Under recent precedent,

> A reasonable basis exists for denial of policy benefits if the insured's claim is fairly debatable either on a matter of fact or law. A claim is "fairly debatable" when it is open to dispute on any logical basis. Stated another way, if reasonable minds can differ on the coverage-determining facts or law, then the claim is fairly debatable.

Id. at 82 (quoting *Bellville v. Farm Bureau Mut. Ins. Co.*, 702 N.W.2d 468, 473–74 (Iowa 2005)).

There is no question that Rice established a delay in payment, as the original arbitration decision was issued on October 22, 2003, and Wilian did not begin to pay benefits until June 27, 2005. The sole question is whether Wilian established a reasonable excuse for the delay.

In its final decision awarding penalty benefits, the commissioner relied on the employer's continuing duty to evaluate Rice's claim. *See Squealer Feeds v. Pickering*, 530 N.W.2d 678, 683 (Iowa 1995), *abrogated on other grounds by Wells Dairy, Inc. v. American Indus. Refrigeration, Inc.*, 690 N.W.2d 38 (Iowa 2004). The commissioner stated:

> [T]here was no evidentiary showing at hearing by defendants of any attempt to re-evaluate their position after the final agency decision was issued and no showing of the reasons for any expectation of success on judicial review. Defendants simply desire to rely solely on the reasonableness of their initial decision to deny the claim before the claim was initiated.

While these statements are accurate as far as they go, they do not answer the critical question posed in *Blasnitz*: whether the claim was "open to dispute on

any logical basis." 742 N.W.2d at 81. On this question, the deputy commissioner hearing the initial claim for benefits, whose findings were adopted by the commissioner, conceded that the claim raised a "hotly contested" issue of causation and a "close issue" of industrial disability. This court also found the evidence close on both issues. On the causation question, for example, the court ultimately affirmed the agency but spent considerable time addressing a physician's equivocal and inconsistent testimony. And, the court was not unanimous on the industrial disability question, with one member stating he did not believe there was "substantial evidence to support the agency's industrial disability award." The agency's characterization of the issues and the court's difference of opinion on one of those issues are prime indicators that the claim was open to dispute on any logical basis. *See Rodda v. Vermeer Mfg.*, 734 N.W.2d 480, 485 (Iowa 2007) (noting that commissioner issued several decisions supporting employer's position and stating, "Perhaps the most reliable method of establishing that the insurer's legal position is reasonable is to show that some judge in the relevant jurisdiction has accepted it as correct . . . . After all, if an impartial judicial officer informed by adversarial presentation has agreed with the insurer's position, it is hard to argue that the insurer could not reasonably have thought that position viable" (quoting William T. Barker & Paul E.B. Glad, *Use of Summary Judgment in Defense of Bad Faith Actions Involving First-Party Insurance*, 30 Tort & Ins. L.J. 49, 83 (1994))). Based on these characterizations and differences of opinion, we conclude the claim was fairly debatable as a matter of law and the commissioner erred in holding otherwise.[1]

[1] Normally, we would examine the record "as a whole" to evaluate the substantial

In light of our conclusion, we determine that it is unnecessary to address Wilian's argument that the penalty should not have been applied to the entire workers' compensation award.

We reverse the district court's affirmance of the commissioner's penalty benefit award and "remand this case to the district court for entry of an order reversing the commissioner's award of penalty benefits and directing the commissioner to deny the claimant's request for penalty benefits." *Blasnitz*, 742 N.W.2d at 84.

REVERSED AND REMANDED.

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evidence question. *See* Iowa Code § 17A.19(10)(f). Here, the original record was lost when the district court sent it to the wrong address. Because the parties attempted to recreate it and neither argues that the resurrected record is inadequate for our review, we also conclude that penalty award was unsupported by substantial evidence. *See Blasnitz*, 742 N.W.2d at 84.