IN THE COURT OF APPEALS OF IOWA

No. 9-820 / 09-0615
Filed November 12, 2009

ROBERTSON/STAR BUILDING and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,
Petitioners-Appellants,

vs.

JESSE COOHEY,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom, Judge.

The petitioners appeal the district court's ruling on their petition for judicial review, which affirmed the workers' compensation commission's award of benefits to the respondent. **AFFIRMED.**

Aaron T. Oliver of Hansen, McClintock & Riley, Des Moines, for appellant.

Thomas M. Wertz and Daniel J. Anderson of Wertz & Dake, Cedar Rapids, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MAHAN, S.J.

Robertson/Star Building Systems and its insurer, Insurance Company of the State of Pennsylvania, appeal the district court's ruling on their petition for judicial review, which affirmed the workers' compensation commission's award of benefits to Jesse Coohey. They contend the district court erred in concluding (1) Coohey's claim is not barred by the statute of limitations, (2) Coohey's treatment is causally related to his 1997 work injury, and (3) Coohey is entitled to attorney fees. We affirm.

I. Background Facts and Proceedings. Coohey was working for Robertson/Star Building Systems on December 9, 1997, when he sustained an injury to his left arm. The following day, he underwent surgery with Dr. Pape to install hardware in his arm. Coohey received healing period and permanent partial disability benefits for the injury. He was released from work restrictions on March 17, 1998.

Coohey was terminated from his employment with Robertson/Star Building Systems in the summer of 1998. He worked for two other employers in the following years, performing duties that required the repetitive use of both hands. He suffered a minor injury to his left arm when he slipped and fell while at work in December 2000.

Although Coohey was released from medical care for his 1997 work injury in June of 1998, he continued to experience discomfort and ongoing pain in his left arm. In 2005, he returned to Dr. Pape to have the hardware installed in

December 1997 removed. Dr. Pape opined the 1997 work injury was "a substantial contributing factor" to the hardware-removal surgery.

In June 2006, Coohey filed a petition claiming he was entitled to additional medical benefits for the 1997 injury. Robertson/Star Building Systems and its insurance carrier denied the claim, arguing it was barred by the statute of limitations and that the surgery was not causally related to the 1997 work injury. Following a hearing, the deputy workers' compensation commissioner filed an arbitration decision awarding Cooney medical benefits and $1500 in attorney fees. The decision was affirmed by the commissioner. On judicial review, the district court affirmed the agency decision.

II. Scope and Standard of Review. Iowa Code chapter 17A governs our review of the decisions of the workers' compensation commissioner. Iowa Code § 86.26 (2007); *Midwest Ambulance Serv. v. Ruud*, 754 N.W.2d 860, 864 (Iowa 2008). 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). The factual findings of the commissioner are reversed only if they are not supported by substantial evidence. Iowa Code § 17A.19(10)(f); *Midwest*, 754 N.W.2d at 864. Evidence is substantial if a reasonable mind would accept it as adequate to reach a conclusion. *Heartland Specialty Foods v. Johnson*, 731 N.W.2d 397, 400 (Iowa Ct. App. 2007). 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 v. IBP, Inc*., 710 N.W.2d 213, 218 (Iowa 2006). 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. Statute of Limitations. We first address the petitioners' claim that Coohey's claim for medical benefits is barred by the statute of limitations. They argue Coohey failed to bring the claim within three years of the last weekly compensation payment as required by Iowa Code section 85.26 (2005).

Section 85.26(2) reads in pertinent part:

> An award for payments or an agreement for settlement provided by section 86.13 for benefits under this chapter or chapter 85A or 85B, where the amount has not been commuted, may be reviewed upon commencement of reopening proceedings by the employer or the employee within three years from the date of the last payment of weekly benefits made under the award or agreement. *If an award for payments or agreement for settlement as provided by section 86.13 for benefits under this chapter or chapter 85A or 85B has been made* and the amount has not been commuted, *or if a denial of liability is not filed with the workers' compensation commissioner* and notice of the denial is not mailed to the employee, in the form and manner required by the commissioner, within six months of the commencement of weekly compensation benefits, *the commissioner may at any time upon proper application make a determination and appropriate order concerning the entitlement of an employee to benefits provided for in section 85.27*. The failure to file a denial of liability does not constitute an admission of liability under this chapter or chapter 85A, 85B, or 86.

(Emphasis added.) The commissioner concluded Coohey's claim for medical benefits was not barred because there was no award for payments or agreement for settlement, and Robertson/Star Building Systems did not file a denial of liability.

The petitioners do not dispute there was no denial of liability filed. Rather, they challenge the commissioner's interpretation of the law. They cite the

following language from our supreme court's opinion in *Beier Glass Co. v. Brundige*, 329 N.W.2d 280, 286 (Iowa 1983), as controlling:

> A review of the operation of the statute as a whole lends weight to our holding the legislature intentionally incorporated our judicial definitions in section 85.26(2). As revised, "an award for payments or agreement for settlement . . . for benefits" is a condition precedent not only to three-year review-reopening, but also to unlimited medical benefits under section 85.27.

Based on this language, the petitioners argue a claimant is entitled to unlimited medical benefits if there has been an agency ward of benefits or an agreement for settlement, neither of which are present here.

The district court rejected the petitioners' argument, noting section 85.26(2) was amended after the court's ruling in *Beier Glass Co.* to include the language regarding denial of liability, thereby creating an additional situation under which the commissioner may make a medical benefits determination beyond the three-year statute of limitations. The petitioners argue on appeal that the district court's ruling violates rules of statutory construction and produces an absurd result. We disagree.

Before engaging in statutory construction, it must be determined the language of the statute is ambiguous. *Holstein Elec. v. Breyfogle*, 756 N.W.2d 812, 815 (Iowa 2008). A statute is ambiguous if reasonable persons could disagree on its meaning. *Id.* There is no ambiguity here regarding the language of section 85.26(2) as amended. Furthermore:

> The legislature enacted the workers' compensation statute primarily for the benefit of the worker and the worker's dependents. Therefore, we apply the statute broadly and liberally in keeping with the humanitarian objective of the statute. We will not defeat the

> statute's beneficent purpose by reading something into it that is not there, or by a narrow and strained construction.

Id. at 815-16. We conclude the commissioner's application of the law to the facts in determining Coohey's claim was not irrational, illogical, or wholly unjustifiable.

II. Causation. The petitioners next contend Coohey's medical treatment since his August 2005 surgery to remove the hardware in his arm was not causally related to the 1997 work injury. They note Coohey suffered work-related injuries to his left arm after leaving his employment with Robertson/Star Building Systems, and argue these injuries aggravated or caused a new injury to his left arm and forearm.

A claimant must prove by a preponderance of the evidence that the injury is a proximate cause of the claimed disability. *Grundmeyer v. Weyerhaeuser Co*., 649 N.W.2d 744, 752 (Iowa 2002). The real issue is whether there was substantial evidence that the 1997 work injury was a substantial contributing factor to Coohey's August 2005 surgery. *See, e.g., Blacksmith v. All American, Inc*., 290 N.W.2d 348, 354 (Iowa 1980). Expert testimony is ordinarily necessary to establish a causal connection between the injury and the disability for which benefits are sought. *Id.* The weight to be given the expert's testimony is for the finder of fact. *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 652 (Iowa 2000).

Here, the deputy commissioner weighed the expert opinions and found as follows, which finding was adopted by the commissioner:

> Dr. Pape in his deposition acknowledged the hardware was still in place and claimant's fracture was healed. However, Dr. Pape clearly feels the presence of the hardware contributed to claimant's left forearm pain. Neither Dr. Pape, nor Dr. Weston, nor Dr. First opines that claimant suffered a new traumatic or cumulative injury

> while working for Orbis or M-C Industries. Dr. Pape clearly attributes claimant's ongoing pain to the hardware, and the medical treatment and removal of the hardware in 2005 to the original 1997 injury. Defendants can point to no medical evidence to the contrary. Defendants can only offer speculation that his work for other employers might have caused his pain.

Because the expert witness evidence shows the 1997 work injury was a substantial contributing factor to the August 2005 surgery, we conclude substantial evidence supports the commissioner's decision.

IV. Attorney Fees. Finally, the petitioners contend the commissioner erred in ordering them to reimburse Coohey for $1500 in attorney fees for their "failure to admit request for admission number five." This request for admission states, "Petitioners did not file a denial of liability pursuant to Iowa Code section 85.26(2)." The petitioners initially denied the request for "lack of knowledge," and later amended their response to, "Deny."

Iowa Rule of Civil Procedure 1.517(3) allows a party an award of attorney fees where "a party fails to admit the genuineness of any document or the truth of any matter requested under rule 1.510" and "the party requesting the admissions thereafter proves the genuineness of the document or truth of the matter." Attorney fees will not be ordered, however, where the admission sought was held objectionable or was of no substantial importance, the party failing to admit had reasonable grounds to believe the party might prevail on the matter, or there was good reason for failure to admit. Iowa R. Civ. P. 1.517(3).

The petitioners argue the request for attorney fees should have been denied because the claim is barred by the statute of limitations. Like the district court, we have already found the statute of limitations defense is not applicable

and do not need to revisit our reasoning. We likewise conclude none of the exceptions to rule 1.517(3) urged by the petitioners is applicable here.

The petitioners also claim such an award is not permissible in the context of a workers' compensation claim. Although an award of attorney fees is not available in such cases, it was not ordered as part of Coohey's recovery. Rather, Coohey was awarded attorney fees for a violation of a rule of civil procedure. As such, it is permitted.

Finally, the petitioners argue the award is inappropriate because there is no explanation as to how the amount was determined. Coohey provided a list of itemized expenses to the commissioner, and the commissioner determined which amount was attributable to the denial of the request for admissions. We conclude the amount, $1500, was not irrational, illogical, or wholly unjustifiable.

AFFIRMED.