



PELLA CORPORATION , P etitioner - Appell ant , vs. MARY JANE FRANKS , Respondent - Appell ee

2008 | Cited 0 times | Court of Appeals of Iowa | October 29, 2008

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 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) award of mental health treatment benefits to Mary Jane Franks. Pella complains

d 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.

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

-25- of multiple right finger contractures . . . [s]econdary effect of right shoulder

pain . . . [l]lowing the January 2000 injury, Franks

was no longer able to use her right hand, but doctors could find no physiological

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

psychological care to treat an alleged work related mental or psychological

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



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due to scheduling conflicts. The hearing proceeded as scheduled, and the

deputy allowed additional time after the hearing for the parties to submit

At the hearing held on April 19, 2005, Franks testified about her hand

including thoughts of suicide. She testified she had experienced depression

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 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

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 -related injury.

sen 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

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 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. . . . addressed in the above manner she will have an optimal outcome.

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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 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 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 suggest 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 ongoing long-term kind of problem. I got the impression that she

based on what she told me -- 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. to the injury, the exaggeration or increased symptoms.

. . . . 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.

then we have to go to something psychological or we have to was the case, but it is clear from all the records that the symptoms



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she has were not being generated by a physical problem and were psychological in origin. . . . anxiety disorder and the work injury is purely consequential, in your

opinion? physical injury. And again, as I just outlined a few minutes ago, I

psychologically generated. Not physically generated. And as such,

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 the twelve months following the injury was that related to the work

injury? 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 treatm

findings of the deputy and concluded

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

reatment from

II. Scope and Standard of Review. compensation cases is governed by the Iowa Administrative



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Procedure Act,

chapter 17A (2005). Meyer v. IBP, Inc., 710 N.W.2d 213, 218 (Iowa 2006). Our

Finch v.

Schneider Specialized Carriers, Inc., 700 N.W.2d 328, 330 (Iowa 2005).

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

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).

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

the Meyer, 710 N.W.2d at 218.

III. Causation. depression cannot logically be found to causally result from the January 24, 2000

,

symptoms are in my opinion not caused by a physical injury, it follows that her

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 the twelve months following the injury was that related to the



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work

injury? 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.

condition is a result of her physical injury. Moreover

same was caused by the work-related injury. See, e.g., *Dowell v. Wagler*, 509

N.W.2d 134 (Iowa Ct. App. 199 wound to the body, but includes also the consequences therefrom, including

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

her work-related injury. The district court did not err in affirming the

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 co 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



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care offered, and the employer and employee cannot agree on alternate 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.

n 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

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.

rs sustained

in 2000. The commissioner did not abuse its discretion in ordering Pella to



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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.

