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**DAVID RODDA, Plaintiff-Appellant, vs. VERMEER MANUFACTURING AND
EMC RISK SERVICES, INC., Defendants-Appellees.**

No. 6-674 / 05-1371

COURT OF APPEALS OF IOWA

2006 Iowa App. LEXIS 1852

December 13, 2006, Filed

NOTICE:

NO DECISION HAS BEEN MADE ON PUBLICATION OF THIS OPINION. THE OPINION IS SUBJECT TO MODIFICATION OR CORRECTION BY THE COURT AND IS NOT FINAL UNIL THE TIME FOR REHEARING OR FURTHER REVIEW HAS PASSED. AN UNPUBLISHED OPINION MAY BE CITED IN A BRIEF; HOWEVER, UNPUBLISHED OPINIONS SHALL NOT CONSTITUTE CONTROLLING LEGAL AUTHORITY.

PRIOR HISTORY: [*1] Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge. David Rodda appeals the order of summary judgment in favor of defendants, dismissing his claim for first party bad faith for failure to pay workers' compensation benefits.

Rodda v. Vermeer Mfg., 728 N.W.2d 223, 2006 Iowa App. LEXIS 2114 (Iowa Ct. App., 2006)

DISPOSITION: REVERSED AND REMANDED.

COUNSEL: Donald G. Beattie of Beattie Law Firm, P.C., Des Moines for appellant.

Dale Knoshaug and Lu Ann White of Hanson, Bjork & Russell, L.L.P., Des. Moines, for appellee Vermeer Manufacturing.

Matthew G. Novak of Pickens, Barnes & Abernathy, Cedar Rapids, for appellee EMC Risk Services, Inc.

JUDGES: Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

OPINION BY: VAITHESWARAN

OPINION

VAITHESWARAN, J.

David Rodda sued his former employer and the employer's workers' compensation claims handler for bad faith

denial of portions of his workers' compensation claim. The district court granted summary judgment for the defendants. We reverse and remand.

I. Background Facts and Proceedings

Rodda injured his back while working for Vermeer Manufacturing. Rodda continued working but was placed on light duty. On March 8, 2001, approximately 200 people, including Rodda, were permanently laid off from [*2] Vermeer. Rodda applied for and received unemployment benefits from March 2001 to July 2001.

Approximately fourteen months after Rodda sustained his back injury, he filed a claim for workers' compensation benefits. The deputy commissioner awarded Rodda 300 weeks of permanent partial disability benefits and ordered Vermeer to pay healing period benefits for March 8, 2001, through July 1, 2001, and for January 29, 2001. The deputy determined that Rodda's receipt of unemployment benefits did not preclude the receipt of healing period benefits because he was "unable to return to the type of work he was performing at the time of the work injury and had not achieved maximum healing." The deputy also determined that Rodda's absence from work on January 29 "was authorized by" a physician. On intra-agency appeal, the Commissioner adopted the deputy's decision, with supplementation. This decision was affirmed on judicial review.¹

1 The judicial review decision is not a part of our record but Vermeer asserts this was the disposition and Rodda does not dispute that.

[*3] Rodda then sued his employer and its workers' compensation handler, EMC Risk Services, Inc., for compensatory and punitive damages. He alleged that they acted in bad faith "by wrongfully terminat[ing] and denying payment of disability healing benefits for the dates of March 8, 2001 through July 1, 2001 and January 29, 2001." The district court granted summary judgment for the defendants. The court determined that the defendants had reasonable grounds to contest Rodda's receipt of workers' compensation benefits during the time he was receiving unemployment benefits and the defendants were not aware of a benefits claim for January 29, 2001 until the date of the workers' compensation hearing.

On appeal, Rodda takes issue with both these determinations. Our review of the district court's summary judgment ruling is on error. *City of Johnston v. Christenson*, 718 N.W.2d 290, 296 (Iowa 2006).

II. Bad Faith Analysis

A person asserting a first party claim for bad faith failure to pay benefits must prove (1) the absence of a reasonable basis for denying benefits, and (2) knowledge or reason to know that the denial was without basis. *McIlravy v. North River Ins. Co.*, 653 N.W.2d 323, 329 (Iowa 2002). [*4] "The reasonableness of the denial of a workers' compensation claim by an insurer is a question of law only when the evidence is undisputed and only one inference can be drawn from the evidence." *Id.* at 333. We turn to Rodda's two challenged denials.

A. Benefits from March 8 through July 1, 2001

The district court determined that the defendants had a reasonable basis for denying healing period benefits from March 8 through July 1, 2001. The court relied on two statutory provisions: *Iowa Code sections 96.4(3) and 85.34(2) (2001)*. Under *section 96.4(3)*, Rodda was entitled to unemployment compensation only if he certified that he was able to work, was available for work, and was earnestly and actively seeking work. Under *section 85.34(2)*, Rodda was only entitled to healing period benefits until he "returned to work" or it was "medically indicated that significant improvement from the injury was not anticipated" or until he was "medically capable of returning to employment substantially similar to the employment in which he was engaged at the time of the injury." The district court stated: "If an employee claims [*5] to be both able and available for work, it is entirely reasonable to conclude that he may also be medically capable of returning to employment substantially similar to the employment he was engaged in at the time of his injury." The court recognized that the workers' compensation commissioner reached a contrary conclusion in the

agency action preceding this lawsuit; however, the court found that "statutory language and agency precedent" rendered the defendants' denial of benefits "objectively reasonable." The court essentially conflated the two factors of the *McIlravey* bad faith denial test and concluded the defendants' denial did not amount to bad faith.

As a preliminary matter, EMC argues that Rodda failed to prove he was "denied" benefits, as he did not seek the contested benefits until the workers' compensation hearing. We are not persuaded by this contention. It is undisputed that Rodda received workers' compensation healing period benefits until he was laid off and began receiving unemployment compensation benefits. At that point, Vermeer stopped paying healing period benefits. This was essentially a denial. *Cf. Brown v. Liberty Mut. Ins. Co.*, 513 N.W.2d 762, 763 (Iowa 1994) [*6] ("Our *Boylan* decision rested, at least in part, on the employer's affirmative duty under *section 86.13* 'to act reasonably in regard to benefit payments in the absence of specific direction by the commissioner.'" (citation omitted)); *Boylan v. Am. Motorists Ins. Co.*, 489 N.W.2d 742, 743 (Iowa 1992) ("*Section 86.13* does not require that the unreasonable delay or termination of benefits for which a penalty may be ordered occur after a determination of benefit eligibility by the industrial commissioner.").

We turn to the question of whether there was a reasonable basis to deny workers' compensation benefits based on Rodda's receipt of unemployment compensation. *Section 96.5(5)* allows an employee to receive the difference between the unemployment compensation due and the workers' compensation paid, if the workers' compensation is less than the unemployment compensation due.² This statutory language envisions the receipt of both types of benefits. Conversely, the language does not preclude the receipt of one type of benefit based on receipt of the other but simply provides for an offset. We conclude that the district court erred in granting summary judgment for the [*7] defendants on this portion of the claim.

² *Section 96.5(5)* states in pertinent part, where an individual "is receiving or has received . . . [c]ompensation for temporary disability under the workers' compensation law of any state . . . if the remuneration is less than the benefits which would otherwise be due under this chapter [unemployment compensation], the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration."

In reaching this conclusion, we have considered the two statutory provisions cited by the district court. We are convinced *section 96.5(5)* is consistent with Rodda's obligation to certify that he was able to work, was available for work, and was earnestly and actively seeking work. *See Iowa Code § 96.4(3)*. *Section 96.5(5)* also is consistent with the provision authorizing healing period benefits. *See Iowa Code § 85.34*. Application of all three provisions to the undisputed [*8] facts of this case shows how the three provisions can be harmonized. It is undisputed that Rodda was able to work, as Vermeer placed him on light duty after his injury. It is also undisputed that Rodda could not return to "employment substantially similar to the employment" in which he was engaged prior to the injury. *See Iowa Code § 85.34* (specifying when healing period benefits are available). Therefore, Rodda met the requirements for receipt of healing period benefits under *section 85.34*, satisfied the requirements for receipt of unemployment compensation under *section 96.4(3)*, and, as a matter of law, was entitled to both between March 8 and July 1, 2001, subject to an offset, as authorized by *section 96.5(5)*.

Section 96.5(5) was in effect when Vermeer and EMC made the decision to deny healing period benefits from March 8 through July 1, 2001. Notwithstanding this statutory authority, the defendants contend agency precedent supported their decision to deny benefits and rendered that decision reasonable. We agree that, on several occasions, the workers' compensation commission concluded a claimant could not receive workers' compensation benefits while [*9] also receiving unemployment compensation. *See, e.g., Weatherwax v. Boesen*, No. 5011784 (Iowa Workers' Comp. Comm'n June 17, 2005) ("Claimant cannot collect both healing period and unemployment benefits simultaneously"); *Darnell v. Experian Info. Solutions*, No. 5009064 (Iowa Workers' Comp. Comm'n Oct. 7, 2004) ("Claimant cannot collect unemployment and healing period benefits simultaneously"); *Nock v. GKN Armstrong Wheels, Inc.*, No. 5006172 (Iowa Workers' Comp. Comm'n Aug. 17, 2004) (stating claimant was not allowed to "collect both healing period and unemployment benefits simultaneously"). However, these decisions were issued after the defendants denied Rodda workers' compensation benefits. Therefore, they are inapposite on the question of whether the denial of healing

period benefits was reasonable.

Vermeer also cites one early agency decision favoring its position. *Cf. Wagner v. Giese Sheet Metal Co.*, No. 1217613 (Iowa Workers' Comp. Comm'n Sept. 15, 2000) ("Claimant cannot collect both healing period benefits and unemployment benefits simultaneously."). That decision is inconsistent with *Iowa Code section 96.5(5)*. Moreover, the workers' [*10] compensation commission is not the agency vested with discretion to interpret *Iowa Code chapter 96*. That job has been delegated to the Iowa Department of Workforce Development. *Iowa Code § 96.11*. As the commissioner has no special authority to interpret this statute, we would not be required to give any deference to its interpretation, if this were a judicial review action. *Iowa Code § 17A.19(11)(b)*; *ABC Disposal Systems, Inc. v. Dep't of Nat. Resources*, 681 N.W.2d 596, 606 (Iowa 2004). For this reason, we are not convinced the *Wagner* decision renders the defendants' decision to deny benefits reasonable.

To summarize, we conclude the cited statutory provisions did not preclude Rodda's receipt of healing period benefits during periods when unemployment compensation was due. Because *section 96.5(5)* was in effect at the time Vermeer and EMC denied benefits, we conclude their decision to deny healing period benefits based on Rodda's receipt of unemployment compensation was unreasonable. *McIllravey*, 653 N.W.2d at 329. For the same reason, the defendants were charged with knowledge that the denial was [*11] unreasonable. *Id.* We reverse the grant of summary judgment in favor of Vermeer and EMC.

B. Benefits for January 29, 2001

We turn to Rodda's claim for benefits covering January 29, 2001. The district court found that

the defendants were never aware of the potential for such a claim until the date of the hearing on December 24, 2002. . . . While the defendants have an affirmative duty to make healing period payments, that duty does not exist in a vacuum; it is not triggered until the defendants have knowledge that the statutory requirements for such benefits have been met.

On appeal, Rodda points to medical records showing that he missed work on January 29 based on his work-related injury. Those records, included within the summary judgment record, state: "Alice from Vermeer contacted the office today reporting that David is unable to work due to mid to lower back pain." Based on this uncontested evidence, we conclude Rodda generated a genuine issue of material fact on the question of whether Vermeer and EMC acted in bad faith in denying Rodda's claim for workers' compensation benefits for January 29, 2001. Therefore, we reverse the grant of summary judgment [*12] in favor of Vermeer and EMC.

REVERSED AND REMANDED.